

# Environmental aspects in free trade agreements in the Asia-Pacific region

Astrid Fritz Carrapatoso

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**Abstract** The trade and environment interface has become a topic of growing importance. Until the early 1990s, the General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organisation (WTO), were the major forums to address the relationship between trade and the environment. Significant progress in this area has not yet been made. Since the 1990s, environmental issues have been addressed by the North American Free Trade Agreement (NAFTA) and in recent times by trans-regional and bilateral free trade agreements (FTAs) such as the Trans-Pacific Strategic Economic Partnership Agreement (SEP), the U.S.–Singapore FTA (USSFTA), the Canada–Chile FTA or the New Zealand–Thailand Closer Economic Partnership Agreement (CEP). Not only questions on the effectiveness of FTAs in global and regional environmental governance arise but also on the various actors involved in these negotiations. The question here is whether the integration of environmental issues in FTAs is a top-down approach, leaving the negotiations and implementation of environment cooperation frameworks in the hands of governments, or whether environmental arrangements are the result of a multi-stakeholder dialogue, consequently committing governments, the private sector and civil society to the objective of making trade and environmental policies mutually supportive. This article seeks to address these questions by analysing environmental issues and stakeholder participation in the Asia-Pacific Economic Cooperation (APEC), the Trans-Pacific SEP and the New Zealand–Thailand CEP.

## Introduction

As part of the sustainable development agenda, the interlinkages between trade and environmental policies are discussed on the global, regional and bilateral level,

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A. Fritz Carrapatoso (✉)  
Seminar für Wissenschaftliche Politik, Albert-Ludwigs-Universität Freiburg, Rempartstr. 15, D-79085  
Freiburg, Germany  
e-mail: astrid.carrapatoso@politik.uni-freiburg.de  
URL: <http://www.politik.uni-freiburg.de>

including states, international organisations and regimes, the private sector and civil society. It is widely acknowledged among these actors that free trade affects the environment, and that these policy fields can no longer be addressed separately. However, though first attempts have been made to “green” international free trade policies, only minor consideration of environmental problems has so far been taken in negotiations on free trade agreements (FTAs).

One of the major challenges is to make trade and environmental policies mutually supportive instead of pursuing rather contradictory policies. While some Western countries such as the U.S. or New Zealand integrated environmental issues into their trade policies, Asian countries, for instance, are less willing to address the ecological dimension of free trade. The reasons for this are manifold and range from socioeconomic to cultural and political aspects. Fact is that even though some initiatives have been made on the integration of trade and environmental policies in the Asia-Pacific region, there is still a large gap between what is said and what is done. It is also striking that environmental issues seem to be set on the agenda of free trade negotiations only when Western countries act as negotiating partners but not when Asian countries negotiate with each other. Consequently, two questions arise: Who are the drivers behind the trade and environment agenda in the Asia-Pacific region and what can be realistic achievements in terms of policy integration?

This article seeks to provide an overview of the trade and environment agenda in a global, regional and bilateral context. Examples include the World Trade Organisation (WTO), the Asia-Pacific Economic Cooperation (APEC), the Trans-Pacific Strategic Economic Partnership Agreement (SEP) between Brunei, Chile, New Zealand and Singapore and the New Zealand–Thailand Closer Economic Partnership Agreement (CEP). While the WTO will only be addressed briefly to set the wider context of the trade and environment debate, the role of environmental issues in the two FTAs and APEC will be analysed more carefully. The major objective of this article will be to define the actors involved in negotiations on trade and environment and to work out reasons that help or hinder the integration of environmental issues into international trade policy. First, the major arguments against or in favour of free trade from an environmental perspective will be outlined. I will then continue with a brief overview of the institutional development of the trade and environment debate before explaining the trade and environment agenda of the WTO. This will be followed by the analysis of the three case studies: APEC, the Trans-Pacific SEP and the New Zealand–Thailand CEP.

## **The ecological impact of trade liberalisation**

The effects of free trade on the environment are controversially discussed. Advocates of trade liberalisation generally respect environmental concerns but are nevertheless sceptic about increased environmental regulations in international trade policy. In their view, the integration of environmental standards in international trade policy could be used as a means of disguised protectionism. Protectionist policies could reduce efficiency gains from global trade and countries could use “green protectionism” as a means to shield domestic markets from world competition (Cole 2000: 21). Based on the ideas of Ricardo (1973), one of the major benefits is

seen in the specialization of national economies because they can concentrate on fields where they have a comparative advantage. Natural resources, for example, could be used more efficiently and associated waste could be further reduced (OECD 1994; Grossman and Krueger 1993). Further positive effects could be achieved through an increased exchange of environmental goods and services (OECD 2000) and from the removal of many direct and indirect trade-distorting policies such as export subsidies.

From an environmentalist's perspective, the quality of the environment would be negatively affected because of an increase in the scales of production and in the production and consumption of environmentally unfriendly goods and services. Not only that the amount of resources to be used can cause more pollution as some countries specialize in pollution-intensive goods (Rauscher 1997: 1), but more pollution emissions threaten the earth's assimilative capacity (Ratnayake 1999). Further negative effects could be caused by increased international transportation, which empirical studies on international transportation and the allocation of resources have proven (Dolzer and Buß 2000; Rauscher 1997; Holtz-Eakin and Selden 1993; Birdsall and Wheeler 1992). Though they are generally sceptical regarding the promotion of international free trade, environmentalists nevertheless admit that there might be positive effects if clean industries were to expand and dirty industries to decrease. The effects of scale could thus be neutralized. In addition, trade may also increase the access to cleaner technologies (World Bank 2004: 57).

One of the strongest arguments raised by adherents of free trade is that trade liberalisation leads to an increase in financial resources, which means that governments and individuals can spend more on environmental protection, which has been confirmed by empirical research (Voigt 1993; Ratnayake and Townsend 2000; Dasgupta et al. 2001). This position is however challenged, arguing that it does not provide a comprehensive picture, including both positive and negative effects of higher incomes per capita (Esty 2001; Grossman and Krueger 1993; Lopez 1994; Antweiler et al. 2001). Critics of free trade interpret this relatively positive environmental performance as a result of the "outsourcing" of pollution-intensive industries to countries with low environmental standards, thus creating a competitive advantage (Grossman and Krueger 1993; Pearson 1997; Rauscher 1997). The pressure to lower environmental standards consequently increases. This hypothesis however cannot be convincingly supported by empirical studies (Mani and Wheeler 1997; Xu 1999; Wilson et al. 2001; Eskeland and Harrison 2003).

Environmental regulation is another issue of growing concern. One position is that free trade would not have any negative impact on domestic and international environmental regulation. Environmental issues should therefore not enter the realm of free trade negotiations. The opposite perspective is that trade liberalisation limits the ability of states to protect the environment on both the unilateral and the multilateral level. One means to deal with global externalities is through the establishment of Multilateral Environmental Agreements (MEAs). Some of these MEAs such as the Montreal Protocol (1987), the Basel Convention (1989) and the Convention on International Trade in Endangered Species (CITES 1973) contain trade-based enforcement mechanisms to safeguard the effectiveness of the agreements. The often contradictory policy perceptions of the WTO and MEAs have regularly surfaced in trade disputes such as the tuna–dolphin or shrimp–turtle cases or in debates on product and process standards (Sorsa 1992a,b; Rauscher 1997).

Environmentalists envisage a comparative advantage in environmental regulation because it might stimulate further innovation of environmentally friendly technologies (Porter and Van der Linde 1995).

Bearing the pros and cons of free trade with regard to the environment in mind, the following sections will focus on the institutional and actor-specific dimension of this debate. It has become explicit why the integration of trade and environmental policies is so difficult. Both supporters and critics of international trade liberalisation have strong arguments against or in favour of a further proliferation of free trade agreements, which is on both sides sustained by empirical evidence. Embedded in the principle of sustainable development, environmental issues have not only been set on the agenda of the multilateral trade regime but also on that of regional and bilateral free trade initiatives, partly as a result of the slow progress to be made on the WTO level. The most prominent example here is the North American Free Trade Agreement (NAFTA) which established the North American Agreement on Environmental Cooperation (NAAEC) alongside the original trade agreement. More recent bilateral and regional FTAs such as the New Zealand–Thailand CEP and the Trans-Pacific SEP also include side-agreements on environmental cooperation. The question here is how successful policy integration can be achieved, i.e. through what means and with which actors.

### **The institutionalisation of the trade and environment debate**

The United Nations (UN) Conference on the Human Environment in Stockholm in 1972 can be considered as a milestone in setting the environment on the free trade agenda. Even though environmental issues were supposed to be addressed in context of the General Agreement on Tariffs and Trade (GATT), the environment played a relatively minor role in the GATT and its succeeding organisation, the WTO until 1994. In this year, the WTO Committee on Trade and Environment (CTE) was founded. The CTE is now the major forum for discussions on the impact of trade on the environment and vice versa. In addition to the CTE, which mainly deals with the relationship between Multilateral Environmental Agreements (MEA), eco-labelling and environmental goods and services, several working groups negotiate environmental issues, too. This has to do with the policy interlinkages that occur in rule-making on fisheries, non-agricultural market access or investment (Cole 2000; Puth 2003; Schimmelpfennig 2005).

The Rio Declaration and the Agenda 21 of 1992 regard global trade as one of the important factors to realise sustainable development. The Principle 12 of the Rio Declaration points up that “[s]tates should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus”

(*Rio Declaration*: Principle 12). This principle was translated into the Programme of Action, the Agenda 21, to achieve the objective of making trade and environmental policies mutually supportive (*Agenda 21*: Chapter 2). The Agenda 21 also stressed the role of NGOs (Chapter 27) and business and industry (Chapter 30) in promoting sustainable development. This implies that the integration of trade and environmental policies as part of the sustainable development agenda should be more or less equally promoted by international organisations, particularly the WTO, governments, civil society and the private sector.

A good example to illustrate such a multi-stakeholder dialogue on trade and environment is the negotiation process of the North-American Free Trade Area (NAFTA). The integration of environmental issues into U.S. trade policy can be traced back to domestic pressure during NAFTA negotiations. The establishment of the North American Agreement on Environmental Cooperation (NAAEC) alongside NAFTA, for instance, was to provide political cover for the Democratic Party to support the negotiations while at the same time it was meant to prevent Democrats from incurring the anger of environmental NGOs. So, both political institutions as well as civil society finally had a significant impact on the outcome of NAFTA, which is strongly supported by empirical evidence (Cameron and Tomlin 2000; Audley 1997; Gilbreath and Ferretti 2004; Hufbauer and Goodrich 2004; Lovett et al. 2004). Compared to recent and current negotiations on free trade agreements, these multi-stakeholder dialogues do not seem to be the regular procedure. While other organisations such as the Asia-Pacific Economic Cooperation (APEC) and the Organisation for Economic Cooperation and Development (OECD) at least rhetorically emphasise the importance of environmental issues in trade (Fritz Carrapatoso 2007: 114–121), they are relatively resistant to civil society's influence. Environmental issues are mainly discussed among the political elites. In contrast, negotiations on bi- or trans-regional FTAs seem to be more open and consultations between governments and civil society actors have become more frequent.

The following sections will give an outline of the level of policy integration in trans-regional and bilateral initiatives and will clarify the roles of the different actors, particularly civil society actors. It will finally be worked out whether there are actor-specific reasons for a failure or success of an integration of trade and environmental policies.

### **Trade and environment in a trans-regional context: the case of APEC**

Since the beginnings of the APEC<sup>1</sup>, sustainable development was, at least rhetorically, part of the group's agenda. APEC's dedication to this objective was made explicit in the APEC Economic Leader's Economic Vision Statement in 1993<sup>2</sup>, and once again reaffirmed in 1995 in the APEC Economic Leaders' Declaration for

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<sup>1</sup> For a general introduction to APEC see Ravenhill 2001; Rüländ et al 2005.

<sup>2</sup> APEC Leaders' Declaration 1993, [http://www.apec.org/apec/leaders\\_\\_declarations/1993.html](http://www.apec.org/apec/leaders__declarations/1993.html) (07.02.08).

Action.<sup>3</sup> Economic leaders reiterated their commitment in 1997, 1998 and 2001, saying that achieving sustainable development remained “at the heart of APEC’s mandate”<sup>4</sup>. Three themes are of major concern: sustainability of the marine environment, clean technology and clean production, and sustainable cities.<sup>5</sup> Since 1996, activities in these areas have been annually reviewed and reports been prepared by the APEC Secretariat.<sup>6</sup> Despite its rhetoric, APEC has hardly any forum in which environmental policies are regularly discussed because of its rather shallow institutionalisation. Yet, it has to be emphasised that APEC is a relatively young institution and is still undergoing a learning process in many areas. A first visible result of this learning process was the Ocean-related Ministerial Meeting in Korea in 2002. Here, APEC leaders agreed on the Seoul Oceans Declaration, presenting new plans for future implementation of sustainable development measures on maritime affairs.<sup>7</sup> While previous declarations had a predominantly rhetorical and thus symbolic function, the Seoul Oceans Declaration features concrete steps to achieve sustainable development objectives in ocean-related issues. On the domestic and regional level, for example, APEC members decided to improve the conservation of critical coastal and marine habitats, to eliminate illegal, unreported and unregulated (IUU) fishing activities from the APEC region, to address the threats posed by introduced marine pests, marine pollution and destructive fishing practices and to involve all relevant stakeholders in these issues.<sup>8</sup> In addition to the Fisheries Working Group (FWG) and the Marine Resource Conservation Group (MRCWG), APEC has done work on sustainable development in several other groups such as the Energy Working Group (EWG) or the Tourism Working Group (TWG).

The question remains whether these initiatives are effective in addressing environmental problems in the Asia-Pacific region, i.e. do they make a real difference. The rapid economic growth of this region seems to be a success story and has led to an even further economic integration as can be observed in the many FTAs

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<sup>3</sup> See Sustainable Development, [http://www.apec.org/content/apec/apec\\_groups/other\\_apec\\_groups/sustainable\\_development.html](http://www.apec.org/content/apec/apec_groups/other_apec_groups/sustainable_development.html) (12.02.08); APEC Economic Leaders’ Declaration for Action, [http://www.apec.org/content/apec/leaders\\_declarations/1995.html](http://www.apec.org/content/apec/leaders_declarations/1995.html) (12.02.08).

<sup>4</sup> APEC Economic Leaders’ Declaration: Connecting the APEC Community, [http://www.apec.org/content/apec/leaders\\_declarations/1997.html](http://www.apec.org/content/apec/leaders_declarations/1997.html) (12.02.08); efforts on climate change are stated in this declaration as well.; APEC Economic Leaders’ Declaration: Strengthening the Foundations for Growth, [http://www.apec.org/content/apec/leaders\\_declarations/1998.html](http://www.apec.org/content/apec/leaders_declarations/1998.html) (12.02.08); APEC Economic Leaders’ Declaration: Meeting New Challenges in the New Century, [http://www.apec.org/content/apec/leaders\\_declarations/2001.html](http://www.apec.org/content/apec/leaders_declarations/2001.html) (12.02.08).

<sup>5</sup> 1997 APEC Environment Ministerial Meeting on Sustainable Development, [http://www.apec.org/content/apec/ministerial\\_statements/sectoral\\_ministerial/environment/1997\\_environment.html](http://www.apec.org/content/apec/ministerial_statements/sectoral_ministerial/environment/1997_environment.html) (12.02.08).

<sup>6</sup> See Sustainable Development, [http://www.apec.org/content/apec/apec\\_groups/other\\_apec\\_groups/sustainable\\_development.html](http://www.apec.org/content/apec/apec_groups/other_apec_groups/sustainable_development.html) (12.02.08).

<sup>7</sup> See Sustainable Development, [http://www.apec.org/content/apec/apec\\_groups/other\\_apec\\_groups/sustainable\\_development.html](http://www.apec.org/content/apec/apec_groups/other_apec_groups/sustainable_development.html) (12.02.08); 2002 APEC Ocean-Related Ministerial Meeting, [http://www.apec.org/content/apec/ministerial\\_statements/sectoral\\_ministerial/ocean-related0/ocean-related.html](http://www.apec.org/content/apec/ministerial_statements/sectoral_ministerial/ocean-related0/ocean-related.html) (12.02.08).

<sup>8</sup> See 2002 APEC Ocean-Related Ministerial Meeting, [http://www.apec.org/content/apec/ministerial\\_statements/sectoral\\_ministerial/ocean-related0/ocean-related.html](http://www.apec.org/content/apec/ministerial_statements/sectoral_ministerial/ocean-related0/ocean-related.html) (12.02.08).

that have been negotiated in this region (Dent 2006). And yet, this economic success has come at the expense of environmental degradation. The consequences of uncontrolled economic integration and increased trade became visible in water and air pollution, depletion of resources and a loss of biodiversity (Ban 2000; Hirsch and Warren 1998). Deforestation, for instance, is a major problem in the region (Schad et al. 2007; Dauvergne 2005). To name one example, a large part of the Indonesian rainforest is planned to be burnt to make space for palm oil production. Even though the locals can make short-term economic gains, the long-term environmental problems such as air pollution arising from the burning and intensive use of the land could cost them more (Schad et al. 2007). Deforestation was also a major topic of the 2007 World Conference on Climate Change where participating states worked out a concept to financially reward developing countries for protecting their forests (Fritz Carrapatoso 2008). The conference once more revealed that both global and regional initiatives have to be set up to deal with environmental problems. The problem of deforestation or logging shows that environmental issues that have a strong economic impact are difficult to deal with. In the Asia-Pacific region, strong networks between loggers, state officials, corporate executives and societal power brokers allow for strategic bargaining and compromises that finally dilute pressures for genuine environmental governance (Dauvergne 2005: 169). This illustrates that an organisation like APEC is not capable of effectively dealing with environmental problems in the region if the political will is weak and societal and corporate actors have the power to oppose strong environmental policies.

Climate change has become a topic of growing importance in the international trade regime, which consequently affects regional and bilateral initiatives. APEC's statements on climate change seem to be contradictory. The U.S. initiated a Major Economies Meeting on Energy Security and Climate Change (MEM) to assemble those 17 states that are responsible for most of the greenhouse gas emissions. The last one took place in January 2008.<sup>9</sup> APEC supports this U.S. initiative, which has to be seen as one alternative means to discuss climate issues. APEC however emphasised that the MEMs should be considered as a contribution to a succeeding agreement of the Kyoto Protocol. It can nevertheless be assumed that the U.S. objective in setting up this dialogue is not necessarily to promote Kyoto II but to find voluntary solutions to the climate change problem, potentially undermining UN policies. Given that APEC highlighted the importance of UN institutions in developing comprehensive and consequently binding policies on climate change, the organisations encouragement for the MEMs bares an inconsistent policy approach.

APEC was founded to establish a forum for promoting trade liberalisation in the Asia-Pacific region. It nevertheless realised relatively early in its history that the principle of sustainable development and consequently the trade and environment interface had become pivotal to safeguard economic interests in the future. And yet, there is this everlasting problem of rhetoric and reality. Like many other intergovernmental organisations, APEC is always as good as its members allow it to be. Progress on trade and environment issues largely depends on members' commitment and their willingness to integrate other actors such as societal actors, particularly non-governmental organisations (NGOs), into the policy-making process

<sup>9</sup> <http://www.state.gov/g/oes/climate/mem> (25.03.08).

to make it more transparent, more representative, more legitimate and finally more effective.<sup>10</sup> The establishment of special working groups dealing with environmental issues is a step to further deepen environmental cooperation within APEC. Whether these groups have a real effect on a further greening of APEC's trade policy can be doubted. The Senior Environment Officials' Group, for instance, has never convened since 1997 and the APEC Secretariat has only a monitoring function. It has been argued that the Secretariat fails to provide effective leadership and monitoring even in APEC's central area, business and economy.<sup>11</sup> It is thus not surprising that an institutionalisation of trade and environment has either failed to develop or not even been considered at all. Monitoring of sustainable development activities therefore remains difficult. Sustainable development initiatives, including environmental issues, have mostly been carried out by relevant sectional forums. Bringing all activities related to sustainable development under the supervision of one institution is a challenging task. APEC's contribution to sustainable development is to be strengthened and to be further institutionalised by its member states. In addition to the creation of a Small Group, which had already analysed APEC's sustainable development activities during 1997 to 2004, a High Level Meeting on Sustainable Development was organized in 2006. The decisions taken there include better coordination of the work done by the various working groups, an enhancement of the exchange of information between APEC and other international organisations and a consideration of civil society's participation<sup>12</sup>. While the dialogue with business and academic and research institutions is institutionalised (APEC Business Advisory Council (ABAC) and the APEC Study Centres), an official consultation or dialogue forum for civil society has not yet been established<sup>13</sup>.

The integration of trade and environmental policies within APEC has not been actively pursued by the member states. As Zarsky and Hunter pointed out in 1995, the trade policy track is disconnected from environmental policy and consequently from the sustainable development objective (Zarsky and Hunter 1995). Since 1995, nothing has significantly changed. This can be partly explained by the attitudes and behaviour of major actors. Important member states of APEC, particularly the U.S., opposed policies that could challenge or slow down the process of free trade in the Asia-Pacific region. But also developing countries are still reluctant towards an integration of environmental management policies in trade agreements. They fear that their rapid economic growth could be stopped or slowed down by setting up higher environmental standards (Ivanova and Angeles 2006: 639). While the private sector seems to be more influential because they are responsible for flourishing

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<sup>10</sup> The role of NGOs is critically debated among scholars. While on the one hand NGOs are considered a strong source of public legitimization of international policy-making, others argue that just because of NGOs being part of civil society does not automatically mean that they are legitimising these policy-making processes. See Brand et al. 2000.

<sup>11</sup> For an evaluation of APEC see Ravenhill 2001; Rüländ et al. 2002; Rüländ et al. 2005.

<sup>12</sup> For latest developments see Sustainable Development, [http://www.apec.org/content/apec/apec\\_groups/other\\_apec\\_groups/sustainable\\_development.html](http://www.apec.org/content/apec/apec_groups/other_apec_groups/sustainable_development.html) (25.03.08); for information on the High Level Meeting on Sustainable Development see [http://www.apec.org/apec/news\\_\\_\\_media/speeches/200706\\_chile\\_hlm-sustdevtt.html](http://www.apec.org/apec/news___media/speeches/200706_chile_hlm-sustdevtt.html) (25.03.08).

<sup>13</sup> For stakeholder participation in APEC see [http://www.apec.org/content/apec/about\\_apec/how\\_apec\\_operates/stakeholder\\_participation.html](http://www.apec.org/content/apec/about_apec/how_apec_operates/stakeholder_participation.html) (19.03.08).



business in the region, civil society does not have the potential to influence the trade liberalisation process within APEC. This shows that the integration of environmental issues in free trade depends on a strong political will and a multi-stakeholder coalition. Whether this is different in negotiations involving fewer states will be analysed in the following sections.

### **Environmental issues in mini- and bilateral free trade agreements in the Asia-Pacific region**

The reality gap between what is rhetorically affirmed and what is finally implemented becomes ostensible when looking at the mini- and bilateral FTAs in the Asia-Pacific region. Trade agreements between Southeast Asian nations totally lack provisions on the environment and an integration of trade and environmental policies is not pursued on this level. Many Asian countries, and developing countries in particular, are afraid of green protectionism, i.e. that environmental policies could be used as trade barriers, thus being a legal basis for protectionist policies (Rao 2000). Moreover, developing countries do not have neither the capacities nor the ambition to seriously deal with social and ecological issues before they are satisfactorily developed. Once a country reaches a certain income level, social and environmental issues are set on the policy agenda (Hufbauer and Goodrich 2004: 46). And yet, in negotiations with Western countries, Asian countries agree on environmental provisions such as in the Trans-Pacific SEP or in the New Zealand–Thailand CEP. Their unwillingness to address these issues however permeates these negotiations as well, leaving trade-related environmental provisions in FTAs often vague and non-binding. Nevertheless, Western countries like New Zealand succeed in setting environmental issues on the trade negotiations agenda and to find solutions that are acceptable to all negotiating partners. The question here is whether these solutions are just symbolic and mere rhetoric or whether they have a real impact on the environmental governance of the region. Here, the various actors involved in these negotiations play a vital role because their preferences and bargaining behaviour not only determine the provisions to be made in the actual agreement but also influence the implementation of such an agreement.

In the case of the Trans-Pacific SEP, negotiating parties including Brunei, Chile, New Zealand and Singapore (and potentially the U.S.) agreed on a binding environmental side-agreement, the Environment Cooperation Agreement. This means that if a party wants to withdraw from the Environment Cooperation Agreement, it automatically withdraws from the Trans-Pacific SEP and vice versa. The side-agreement, however, cannot be legally enforced.<sup>14</sup> It can be argued that the Environment Cooperation Agreement was established for allegedly symbolic and strategic reasons—similar to the whole Trans-Pacific SEP itself. Nevertheless, it has the potential to foster more intensive cooperation in environmental issues. It does make existing environmental cooperation between Chile and New Zealand more visible and it obliges the two other parties to the agreement, Singapore and Brunei

<sup>14</sup> See Environment Cooperation Agreement, <http://www.mfat.govt.nz/tradeagreements/transpacepa/pdfs/environment-agreement.pdf> (23.03.08).

Darussalam, to actively participate in such cooperation. The negotiating parties were realistic enough to take different histories, cultures, values, geographies and positions in the world into account. It should therefore not only be seen as a failure, as some civil society groups think, but as a significant achievement. Moreover, it should not be forgotten that the parties to this agreement made it binding, which is a significant step, given that these countries do not entirely share the same objectives and cooperation cultures.

The main drivers for an integration of environmental issues were the governments of Chile and New Zealand. Both governments had shown a long-standing and good working relationship, also in the area of environmental cooperation, in addition to their experiences made in previous trade negotiations or to their negotiating mandate. Even though Singapore was not one of the strongest promoters of an environmental side-agreement, the country has nevertheless implemented sound and successful environmental policies on the domestic level and developed expertise in waste and water management, energy efficiency and conservation (Ministry for the Environment and Water Resources 2004). In contrast, domestic environmental policies are hardly existent in Brunei. Moreover, Brunei is a member to hardly any multilateral environmental agreements.<sup>15</sup> Because Brunei wanted to benefit from the free trade agreement, and because it entered negotiations very late, it simply accepted the binding side-agreement.<sup>16</sup>

The role of civil society and the private sector in setting up this agreement was marginal. While New Zealand's records show that the government consulted with domestic stakeholders, including environmental NGOs and the private sector, consultations on the environmental aspect of the Trans-Pacific SEP in Chile, Singapore and Brunei are difficult to trace. But given that discussions between government officials, civil society and business groups were not extensively pursued in New Zealand, it can be assumed that the situation in the other countries was similar or even reached a level of almost non-existent. In Singapore, for example, civil society faces real constraints because of various mechanisms of state control. There are occasions when the government was not immune to pressure from civil society groups as, for instance, the participation of the environmental group *The Nature Society* (NSS) in the development of a Green Plan in the 1990s showed (Kadir 2004). Empirical evidence on the role of civil society in the politics of Brunei, and specifically in the fields of trade and environment, does not seem to exist (Lee 2004: Preface). The private sector normally does not show great interest in the integration of environmental issues into FTAs as they consider this a means of protectionism and unnecessary trade barriers. Their position is clear to the negotiators and given that not only business groups oppose binding environmental standards but also many governments as well, the private sector does not significantly engage in consultations on environmental subjects because it does not seem to be necessary (Fritz Carrapatoso 2007: Chapter 5). With regard to the Environment Cooperation Agreement, it can thus be argued that this was a top-down

<sup>15</sup> See <http://www.brunei.gov.bn> (17.03.08).

<sup>16</sup> Personal interview, Wellington, 20.02.06.

initiative, i.e. it was mainly government-driven and less the result of an exhaustive consultation process between governments, civil society and the private sector.

Negotiations on the New Zealand–Thailand CEP showed a similar pattern. While the interest of civil society groups in these negotiations seemed to have been stronger compared to the Trans-Pacific SEP, their influence on the final outcome, i.e. the Arrangement on Environment<sup>17</sup>, was minor. Even though domestic consultations on this FTA were more frequent, at least in New Zealand, the relatively low impact of NGOs on the integration of environmental provisions had to do with the generally difficult negotiating process between New Zealand and Thailand. Some reasons can be found in the history of their bilateral relations (Smith 2005), but also in Thailand's cooperative principle of regional resilience and a consensus-based approach to decision-making.<sup>18</sup> A good illustrative example would be the non-binding nature of Thai environmental law, particularly with regard to dispute settlement. Non-litigious means of settlement have long been preferred in Thai culture and environmental disputes are therefore settled through mediation efforts rather than through legally enforceable dispute settlement mechanisms (Tan 2002). Translated into negotiations on trade and environment issues this implies that the Thai Government is generally suspicious of binding and thus legally enforceable provisions with regard to environmental policy.

Both New Zealand and Thai environmental and social advocacy groups criticised environmental provisions for not being “worth the paper they are written on, as they are totally non-binding and unenforceable”<sup>19</sup>. The Political Ecology Movement in Thailand opposed the Thai free trade policy for not being in the people's interest and that the power of interest groups that belonged to the elite class and penetrated both the political and bureaucratic level, and were mostly part of big industrial players, had more influence on the government's policy than the people.<sup>20</sup> Though civil society groups articulated their opinions to key policy-makers, they nevertheless failed in realising their preferences. The reason for setting up this side-agreement can be found in the tactical skills of New Zealand negotiators, who finally had to fulfil their executive requirement to integrate environmental issues in the FTA. In current negotiations on the linkage between the ASEAN Free Trade Area (AFTA) and the Australia–New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) or the New Zealand–Malaysia FTA, the role of civil society actors with regard to the integration of environmental aspects can be expected to be of secondary importance.

Even though business and civil society groups do not play a significant role in the actual negotiations on trade and environment, at least not on the regional and bilateral level, this does not mean that they will not participate in the implementation

<sup>17</sup> For the full text of the agreement, see <http://www.mfat.govt.nz/Trade-and-Economic-Relations/0—Trade-archive/0—Trade-agreements/Thailand/0-environment.php> (25.03.08).

<sup>18</sup> This principle is typical for all states being members of the Association of Southeast Asian Nations (ASEAN). For ASEAN decision-making principles and the “ASEAN Way” see Acharya 2003, 2005; Haacke 2003; Thambipillai 2000; Nischalke 2000; Rüländ 2002; Capie and Evans 2003; Katsumata 2004; Haacke 2003; Hund 2003.

<sup>19</sup> See Rod Donald, ‘Pigs will fly before Sutton's Thai trade benefits eventuate’, press release, March 9, 2005.

<sup>20</sup> Kritsada Boonchai, Project for Ecological Recovery, Korean Federation for Environmental Movement, [http://english.kfem.or.kr/international/east/0111/Thai\\_ngo.doc](http://english.kfem.or.kr/international/east/0111/Thai_ngo.doc) (24.03.2008).

of the agreed environmental cooperation frameworks. In the case of the New Zealand–Thailand CEP and the Trans-Pacific SEP, however, progress to be made on the establishment of a well-functioning cooperation framework is slow. Based on the New Zealand government’s trade and environment framework<sup>21</sup>, likely cooperation between Thailand and New Zealand will be on the exchange of environmental goods and services and in development assistance projects such as in conservation and water management, where New Zealand has expertise. The involvement of the commercial sector in cooperation efforts seems to be more likely than the strategic integration of civil society actors. Both governments have worked on the cooperation framework for more than 2 years, but outcomes of their joint efforts have not yet been made public. With regard to the Trans-Pacific SEP, the situation is similar.<sup>22</sup> Whether there will be a multi-stakeholder coalition within the environmental cooperation frameworks alongside FTAs or whether the participation of civil society actors and the private sector will change in future FTA negotiations, remains to be seen.

### Concluding remarks

The trade environment interface has been set on the agenda of multilateral, regional and bilateral negotiations and is discussed within the concept of sustainable development. The integration of trade and environmental policies has been primarily pursued on the multilateral level at the WTO. In recent times, regional and bilateral FTA initiatives have started to address environmental issues as well. While there is still scepticism among developing countries towards an integration of ecological aspects into FTAs, non-binding complementary arrangements such as the side-agreements to the Trans-Pacific SEP or the New Zealand–Thailand CEP are believed to foster bilateral, regional and trans-regional environmental cooperation. APEC, too, has set the environment on its agenda, primarily focussing on sustainability of the marine environment, clean technology and production, and sustainable cities. But the question whether these initiatives promote a further integration of trade and environmental policies cannot yet be satisfactorily answered. It has become clear, though, that making trade and environmental policies mutually supportive often depends on the actors of the negotiations. Governments have to show a strong political will to honestly pursue environmental objectives in their trade negotiations, but the private sector and civil society have to further support these policies and to be involved in the negotiation and implementation process. Otherwise, environment cooperation frameworks alongside FTAs are nothing more than symbolic agreements not meant to set up effective policy integration.

The integration of trade and environmental policies in mini- and bilateral FTAs is not the result of a multi-stakeholder coalition consisting of governments, the private sector and civil society. Even though consultations take place on the domestic level,

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<sup>21</sup> For the full text of the framework, see <http://www.mfat.govt.nz/Trade-and-Economic-Relations/0—Trade-archive/WTO/0-environment-framework.php> (25.03.08).

<sup>22</sup> See <http://www.mfe.govt.nz/laws/trade/trade.html> (25.03.2008).

they have mainly served as a means to legitimise the governments' FTA policies and to ensure political survival. In some occasions, however, governments' relied on the expertise of business groups and civil society, which is particularly the case in smaller countries. But there are other decisive factors for a fruitful cooperation between governments, business and civil society such as, for example, democratic values, norms, cooperative behaviour and the political system. Furthermore, both business and civil society groups must show the will to actively cooperate and engage in a multi-stakeholder dialogue, which is difficult as both sides often take oppositional views with regard to the ecological effects of free trade. The integration of trade and environmental policies is further dependent on the negotiation settings, i.e. which countries negotiate, what are their preferences, what is their political, economic and cultural background. If, for example, a developing country is involved, the expected unwillingness to address environmental issues in trade negotiations makes negotiators from Western countries use their diplomatic skills rather than form domestic coalitions on the environment to put pressure on the negotiating counterpart. Bargaining tactics such as issue-linkage, side-payments or rewards seem to be more promising than threats and domestic coalition-building, given that the economic aspect is of primary concern.

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