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Environmental Aspects of a Potential Philippines-European Union Free Trade Agreement

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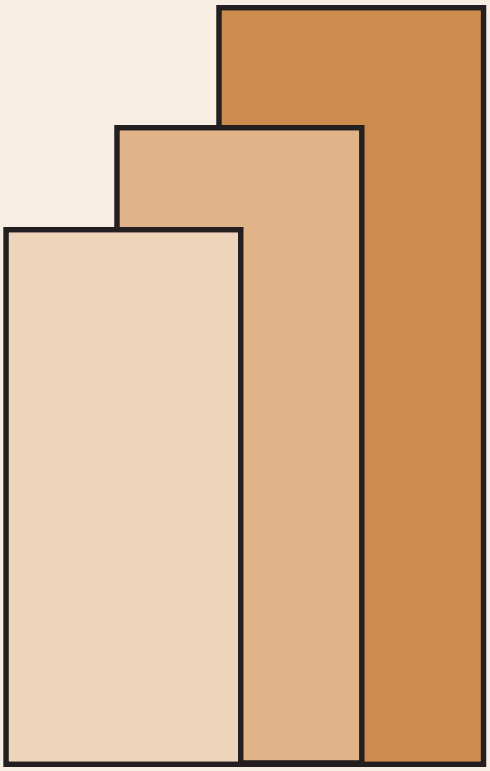

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ENVIRONMENTAL ASPECTS OF A POTENTIAL PHILIPPINES-EUROPEAN UNION FREE TRADE AGREEMENT (PHILIPPINES-EU FTA)

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Abstract

This paper is on the environmental aspects of a potential Philippines-European Union Free Trade Agreement (Philippines-EU FTA). Potential environmental issues in the negotiation of such an FTA (if at all undertaken) are identified to better prepare the Philippine negotiating panel and equip them with information and analysis to make well-informed positions on such issues. It looks at the interaction between the multilateral trade regime – the World Trade Organisation principally –and multilateral environmental agreements (MEAs), reviews the Philippine approach to environment –related trade measures, and looks at Philippine practice and implementation of environmental agreements from a trade perspective. EU policies on trade, environment and development are also discussed to anticipate what could be EU positions during the FTA negotiations with the Philippines.

The paper ends with the following conclusions and recommendations: (1) The EU will most likely push for more harmonization of the FTA provisions with WTO rules. On the sustainable development front, the EU would push for including sustainable development principles into all levels and in cross-cutting policy areas. ; (2) The Philippines can expect the EU to come with a strong position on sustainable development, expecting the Philippines to make concrete commitments to principles of sustainable development; (3) Philippines sustainable development goals are not inconsistent with the EU. However, the Philippines in the FTA negotiations would be best served to emphasize poverty reduction and financial and technical support from its EU partners.

Keywords: trade and sustainable development, Philippines and multilateral environmental agreements, trade and environment, Philippine practice of international environmental law, Conflict between trade and environment

EXECUTIVE SUMMARY

This paper focuses on the environmental aspects of a potential Philippines-European Union Free Trade Agreement (Philippines-EU FTA). Its object is to identify the potential environmental issues in the negotiation of such an FTA so as to better prepare the Philippine negotiating panel and equip them with information and analysis to make well-informed positions on such issues. The paper does not however address the environmental impacts of a Philippines-EU FTA. That is further study based on the substance of the FTA if it is indeed negotiated. That would require some form of environmental assessment which this team is not mandated to do.

The paper has four main sections. Part I is on "Trade, Environment and Sustainable Development under the Multilateral Regime". Part II is a "Review of Philippine Approach to Environment-Related Measures". Part III looks at "EU Policies on Trade, Environemnt and Sustainable Development". Part IV contains our "Conclusions and Recommendations".

The first section – "Trade, environment and sustainable development under the multilateral regime" – discusses the interaction between the multilateral trade regime – the World Trade Organisation principally –and multilateral environmental agreements (MEAs). In this section, the authors trace the history of both the international trade and environmental regimes, identifying how they intersect and mutually support each other. Possible areas of conflict and tension are also identified between the regimes. Knowing the interface of these two regimes is important to a potential EU-Philippines Free Trade Agreement because it is likely that a sustainable development chapter will be proposed for such an FTA. The context of that chapter is likely the trade-environment policy nexus that is elaborated in this section. Philippine negotiators must be equipped with knowledge of this nexus in order to respond properly to such a proposed chapter. Specifically, the Philippine negotiators must be aware of the outstanding issues in both the WTO and MEA negotiations so that our positions in the multilateral processes are not undermined in this bilateral trade talks.

The second section reviews the Philippine approach to environment –related trade measures and looks at Philippine practice and implementation of environmental agreements from a trade perspective. The authors conclude that while the Philippines is a party to most MEAs, including the most important ones, it has had limited success in implementing these MEAs. This is due to lack of resources and capacity. With the expectation that an EU-Philippines FTA will commit the Philippines to stronger and accelerated implementation of MEAs, it is important for the Philippines to secure financial resources, technology transfer, and assistance in capacity building that would enable the country to implement the MEAs properly. Otherwise, it will not make sense to make such commitments.

The third section of this paper focuses on EU policies on trade, environment and development. The analysis specifically anticipates what could be EU positions during the FTA negotiations with the Philippines. The section highlights the EU 2020 Strategy which focuses EU competitive advantage on innovation and green technology. It observes that the EU advocated in the Doha Development Round for liberalization of environmental goods and services and will most likely

push for the same in bilateral free trade agreements. The section then identifies and elaborates the environmental issues that are most likely to emerge in an FTA negotiation between the Philippines and the EU.

The paper ends with the following conclusions and recommendations:

1. Overall, the EU, while actively pursuing regional and bilateral agreements with different states, remains a multilateralist. It will most likely push for more harmonization of the FTA provisions with WTO rules. However, on the sustainable development front, the EU has much more developed set of policies and programs within the Union and is one of most aggressive regional groupings working at including sustainable development principles into all levels and in cross-cutting policy areas.

2. The Philippines can expect the EU to come with a strong position on sustainable development, expecting the Philippines to make concrete commitments to principles of sustainable development. The South Korea-EU FTA can provide guidance on the extent of commitments the EU could push for in this area.

3. On the part of the Philippines, policy-wise, its sustainable development goals are not inconsistent with the EU. However, given the wide disparity in the Philippines' and EU's capacity to effectively implement sustainable development policies at the local level and the differences in economic development between the two economies, the Philippines would be best served to emphasize poverty reduction and financial and technical support from its EU partners.

In PH-EU FTA negotiations, the EU would most likely seek the following concessions, which the Philippines may consider and respond to as follows:

No.	EU	Philippines
1	Those that they cannot get in multilateral negotiations, such as, influence the Philippines on its position in Durban climate change negotiations and get it to accept mitigation commitments	Resist this and demand consistency with multilateral agreements, except where beneficial for Philippines On the climate change negotiations front, the Philippines can only commit whatever it has identified as mitigation actions in National Climate Change Action Plan. It should leverage the FTA negotiations for more support for climate change adaptation and disaster risk reduction.
2	Push for preferential treatment and market access to their green technology and products based on innovation, including environmental goods and services	Open to green technology and products subject to (1) applicability to Philippines (domestic technology/conditions), including safety issues, (2) analysis of what sectors in Philippines will be affected, and (3) transition of affected sectors

3	Allow EU subsidies on green technologies /products/goods/services/agriculture which could have a negative impact on competing and emerging products in the Philippines.	Acknowledge that subsidies exist (use as a negotiating tool for Philippines), analysis of its impacts, exploring how Philippines can also provide similar subsidies, in a way compliant with WTO rules. The challenge to the Philippines, however, is in establishing a set of objective standards in determining which areas to subsidize, as the EU will likely demand such standards.
4	Impose its stringent SPS requirements	The challenge to the Philippines is its limited capacity to meet such stringent requirements, particularly, as these require objective scientific basis.
5	Commit to closing opportunities to engage in waste disposal	Philippines must assess its economic interests in this area
6	Push for greater enforcement against illegal trade of timber and endangered species, including imposing certification and licensing requirements that may be onerous to the Philippines	Leverage to get support for enforcement. Also, assess the potential social and economic costs and benefits to the Philippines. Reject where certification and licensing requirements are too burdensome to the Philippines, or offer alternative mechanisms that will produce the same benefits.
7	Push for energy efficiency and renewable energy, especially as it benefits EU industries	Leverage this for support, as this is also important to the Philippines. Also, assess the long-term interest of the Philippines in building its own renewable energy sector and ensure that future opportunities to grow will not be curtailed by commitments under the FTA
8	Push for acceptance of stringent anti-GMO rules for import and labeling, including food and animal feeds	Argue for application of Cartagena Protocol
9	Push for access to Philippines' genetic resources	Agree in accordance with multilateral rules on access to genetic resources to the extent that it is socially and economically beneficial

The Philippines should also have a clear understanding of the social and economic costs to pushing for concessions from the EU. Among the concessions it may consider from a sustainable development perspective are:

- It should try to get concessions from EU matters that it cannot get at the multilateral level.
- Push for more support for sustainable development, including for enforcement, policy development, implementation and investments.

- Push for more technology transfer, including certain exceptions from IPR and preferential treatment on IPR
- Exchange of information and support for innovations in areas like ICT, biotechnology, renewable energy, climate adaptation
- Capacity building programs, including educational scholarships, exposure trainings, work exchange, educational partnership and accreditation scheme, etc.
- Support for research and development programs.

Finally, in crafting our positions on environmental issues related to the FTA, it is important to include in the discussions the following agencies – the Departments of Environment and Natural Resources, Agriculture and Foreign Affairs. It goes without saying that the Departments of Finance and Trade and Industry and the National Economic Development Authority would also have something to contribute to the crafting of such positions.

PART I. TRADE, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT UNDER THE MULTILATERAL REGIME

A. The Growth of the Sustainable Development Paradigm

a. Environmental Degradation and Changes to the Natural Environment

The past two decades have been a period of awakening for the rest of the world to the environmental degradation that has been occurring on a global scale. Such environmental degradation resulted from two categories of change in the natural environment. One is the dramatic increase in the consumption of the earth's natural resources, or the so-called renewable resources. Human consumption of these resources, such as the forests, the air, the soils, the fish and animal life, have far exceeded its sustainable yields.[1]

The per capita gross world product (GWP) – the total of goods and services produced and consumed per person throughout the world – has been growing faster than world population for decades. Consumption of natural resources by modern industrial economies remains high: from 45 to 85 metric tons per person annually when all materials (including soil erosion, mining wastes and other ancillary materials) are counted.[2]

The second category of change is the exponential growth of pollution. Pollution is occurring at an unprecedented scale worldwide. It is pervasive, affecting in some way virtually everyone and everything on the globe, from carbon dioxide in the atmosphere, to polychlorinated biphenyl (PCB) in human bodies, and acid rain on land.[3]

The combination of these two developments caused global environmental threats, the most major of which are as follows: (a) Acid-rain and regional-scale air pollution; (b) Ozone depletion by chlorofluorocarbons and other industrial and agricultural chemicals; (c) Global warming and climate change due to the increase in "greenhouse gases" in the atmosphere; (d) Deforestation, especially in the tropics; (e) Land degradation due to desertification, erosion, compaction, salinization, and other factors; (f) Freshwater pollution and scarcities; (g) Marine threats, including overfishing, habitat destruction, acidification, and pollution; (h) Threats to human health from persistent organic pollutants and heavy metals; (i) Declines in biodiversity and ecosystem services through loss of species and ecosystems; and (j) Excessive nitrogen production and over fertilization.[4]

b. Public Awareness of Environmental Threats and the Development of the Sustainable Development Paradigm

[1] James Gustave Speth and Peter Haas, *Global Environmental Governance* (Island Press, 2006), 17.
[2] Chasek, 2-3.
[3] Speth, 17-18.
[4] *Ibid.*, 18.

Public awareness to creeping environmental threats started in the 1960's after the publication of Rachel Carson's Silent Spring[5] and in the early 1970s. It placed into question the existing market-based paradigm that has fueled globalization and the accompanying growth of the world economy, but offered no viable alternative.[6]

During the 1970s and the 1980s an alternative paradigm challenging the prevailing assumptions of classical economics began to develop. Two studies published around this time provided a basis for the shaping of the alternative paradigm. These were the Limits to Growth study by the Club of Rome, published in 1972, and the Global 2000 Report to the President, by the U. S. Council of Environmental Quality and the Department of State in 1980. Each of these studies suggested that economic development and population growth were on a path that would eventually strain the earth's "carrying capacity."[7] The basic principle underlying these studies has come to be known as the "limits-to-growth" perspective.[8] However, this thinking has since been challenged and overturned by evidence that technology and market behavior can provide the capacity to conserve and allocate resources efficiently.[9]

In 1972, the United Nations Conference on the Human Environment (UNCHE) convened in Stockholm, Sweden (the "Stockholm Conference"). The conference focused on the interplay of environment and development, which reflected the conflicting interests of developed and developing countries: North vs. South, environment vs. development, the pollution of the affluent vs. the degradation of poverty. As a result of discussions among developed and developing country representatives, a compromise was agreed upon which gave rise to a doctrine of environment and development – the precursor of the current understanding of "sustainable development" – where governments agreed "(a) that environment and development are two mutually reinforcing sides of the same coin, and (b) that the industrial world would accept the principle of "additionality" by which they would pay some or all the additional costs of environmental initiatives in the developing world with new and additional development assistance resources."[10]

The results of the Stockholm Conference were: (a) the Stockholm Declaration that embodied a list of 26 principles that was intended to govern future behavior of societies towards the environment; and (b) the Stockholm Action Plan (the "Action Plan") that set out 109 policy recommendations in six areas: human settlements, natural resource management, pollutants, environment and development, the social

[5] In *Silent Spring*, Ms. Carson exposed the hazards of the pesticide DDT. She meticulously described how DDT entered the food chain and accumulated in the fatty tissues of animals, including human beings, and caused cancer and genetic damage. A single application on a crop, she wrote, killed insects for weeks and months, and not only the targeted insects but countless more, and remained toxic in the environment even after it was diluted by rainwater. Carson concluded that DDT and other pesticides had irrevocably harmed birds and animals and had contaminated the entire world food supply (National Resources Defense Council, *The Story of Silent Spring,* (accessed June 03, 2012); available from http://www.nrdc.org/health/pesticides/hcarson.asp).
[6] Chasek, 29.
[7] Carrying capacity refers to the total population that the earth's natural systems can support without undergoing degradation.
[8] Chasek, 29.
[9] Trade and Environment at the WTO, WTO Secretariat, April 2004, p. 3.
[10] Speth, 58-59.

context of underlying perceptions of environmental issues, and international organizational behavior.[11]

In proposing solutions to the problem, the Action Plan took an integrative approach of linking the different actors and sectors and by considering the underlying factors that cause environmental degradation. In doing so, it showed that environmental problems cannot be addressed separately from interlinking factors.[12]

In 1987, the World Commission on Environment and Development (known as the Brundtland Commission, after the chair of the commission, former Norwegian prime minister Gro Harlem Brundtland), issued its Report, Our Common Future (the "Brundtland Report"), which popularized the term, "sustainable development."[13]

The Brundtland Report defined sustainable development as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs." [14] Flowing from the limits-to-growth principle, sustainable development emphasizes the need to redefine development from the market-driven model that assumes an unlimited supply of natural resources to one that takes into account the source and sink functions of the Earth's ecosystem.

In the Rio Earth Summit in 1992, also sponsored by the UNCED, a broad set of principles known as the Rio Declaration, which elaborated on the 26 principles already set out in the Stockholm Declaration was agreed upon. In addition, a specific policy framework to address environmental issues, both at the local, national and global levels was drawn and approved. This was embodied in a non-binding document called Agenda 21, which consisted of four broad areas:[15] (a) Social and economic development;[16] (b) Conservation and management of resources for development;[17] (c) Strengthening the role of major groups;[18] and (d) Means of implementation.[19]

The Rio Earth Summit served to refine the concept of sustainable development and presented concrete solutions to the environmental problem on a local, national and global scale. These solutions call for an integrated approach to the problem by

[11] *Ibid.*, 59.
[12] *Ibid.*, 60.
[13] Chasek, 30.
[14] Brundtland Report.
[15] Speth, 70.
[16] Highlighting international cooperation and assistance, poverty reduction, overconsumption, population trends, health, humansettlements, and pol.icymaking for sustainable development; Id.
[17] Addressing issues of energy use, integrated land resource use, deforestation, desertification and drought, mountain ecosystems, agricultural needs and rural development, biodiversity, biotechnology, oceans, freshwaters, toxic chemicals, and hazardous and radioactive wastes; *Id.*
[18] Focusing on actors other than governments: women, youth, indigenous peoples, NGOs, business and industry, scientists, communities, workers, trade unions, and farmers; *Id.*
[19]Addressing how international and national support should e organized, including a transfer to the South of financial resources and environment-friendly technology; building capacity through technical assistance, environmental education, and scientific information; creating better environmental databases to bridge the data gaps between nations; and improving international environmental organizations, coordination, and legal processes; *Id*.

balancing the interests of all actors and sectors, in accordance with the principle of common and differentiated responsibilities.[20]

Twenty years after the Rio Earth Summit, the United Nations Conference on Sustainable Development convened again in Rio de Janeiro, Brazil from June 20-22, 2012. It brought together world leaders, stakeholders from governments, the private sector, civil society, and other groups to formulate a plan of action to "reduce poverty, advance social equity and ensure environmental protection on an ever more crowded planet to get to the future we want."[21]

The Rio+20 Outcome Document entitled, "The Future We Want" reiterated the global commitments first articulated in the Rio Earth Summit. That is, one, to achieve a greater integration among the three pillars of sustainable development: economic, social and environmental. Two, to accomplish this through an integrated and participatory decision making process to fill in implementation gaps and promote coherence across institutions at the global, national and local levels. Three, in accordance with the principles of common and differentiated responsibilities and the sovereign right of states over their natural resources.[22]

Rio+20 went further by underscoring the importance of building a "Green Economy" as a means of achieving sustainable development. Mindful of the differences in the development of various economies, the parties resolved to support international efforts to assist less endowed economies to transition into the Green Economy. This is sought to be achieved without, among others, creating new trade barriers.[23]

Thus, the whole environmental movement progressed since the early 1970s from a movement that sees itself as in conflict with other social, economic and political interests, to one that seeks to find complementarity between environment and development in the pursuit of sustainable development, and to a movement that seeks to redefine the concept of economic growth that factors in environmental costs, while ensuring the efficient functioning of the markets through trade, among others.

B. Sustainable Development in the Multilateral Trade Regime

a. GATT 1947

[20] Center for International Sustainable Development Law (CISDL), *The Principle of Common but Differentiated Responsibilities: Origins and Scope, A CISDL Legal Brief,* (accessed June 03, 2012); available from http://www.cisdl.org/pdf/brief_common.pdf "*The principle of 'common but differentiated responsibility evolved from the notion of the 'common heritage of mankind' and is a manifestation of general principles of equity in international law. The principle recognizes historical differences in the contributions of developed and developing States to global environmental problems, and differences in their respective economic and technical capacity to tackle these problems. x x x The principle of common but differentiated responsibility includes two fundamental elements. The first concerns the common responsibility of States for the protection of the environment, or parts of it, at the national, regional and global levels. The second concerns the need to take into account the different circumstances, particularly each State's contribution to the evolution of a particular problem and its abiity to prevent, reduce, and control the threat*."

[21] Rio+20 United Nations Conference for Sustainable Development <http://www.uncsd2012.org/about.html> accessed 08 August 2012.

[22] The Future We Want, United Nations, paras. 5 and 9, 17-22.

[23] The Future We Want, United Nations, paras. 25-31.

The relationship between trade and environment has been recognized as early as the General Agreement on Tariffs and Trade 1947 ("GATT 1947"). Article XX of GATT 1947, which has since been incorporated in the General Agreement on Tariffs and Trade 1994 ("GATT 1994),[24] allows the adoption of measures inconsistent with GATT principles, particularly on non-discrimination and market access,[25] if justified by certain societal values and interests. These values and interests include the protection of human, animal or plant life or health, and the conservation of exhaustible resources.[26]

However, the general goal of GATT 1947 was to ensure that the relations of the Contracting Parties "in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, **developing the full use of the resources of the world and expanding the production and exchange of goods**."[27] This reflects the then existing market-based paradigm that characterized economic policy-making since the end of the Second World War.

While slower to catch up with the burgeoning environmental movement since the 1970s, the international trade regime has and is experiencing a slow transformation in accepting environmental and sustainable development measures as legitimate policy tools to promote trade and development.

This transformation began with the participation of the Secretariat of GATT 1947 in the Stockholm Conference where it prepared and presented a study entitled, "Industrial Pollution Control and International Trade." The study was aimed at addressing concerns of trade officials over trade protectionist implications of environmental measures. This was also presented before the GATT 1947 Contracting Parties and led to the establishment of the Group on Environmental Measures and International Trade ("EMIT") within the GATT. The EMIT was mandated to convene upon the request of GATT members.[28]

While the EMIT was never convened from the early 1970s to the early 1990s, the trade and environment debate continued to flourish within the WTO. In the Tokyo Round of trade negotiations (1973-1979), trade-related technical regulations and standards aimed at protecting the environment was part of the agenda and led to the adoption of the Agreement on Technical Barriers to Trade, or the "Standards Code," in 1979.[29]

The EMIT was finally convened in the early 90s upon request of the European Free Trade Association (EFTA) (then composed of Austria, Finland, Iceland,

[24] GATT 1994, 1(a).
[25] *See* GATT 1994, Arts. I (MFN), III (National Treatment), and XI (Elimination of Quantitative Restrictions); *See also* United States – Standards for Reformulated and Conventional Gasoline (*US-Gasoline*), adopted 20 May1996, WT/DS2/AB/R, p. 18.
[26] GATT 1994, Art.XX (b) and (g).
[27] GATT 1947, Preamble, para. 2.
[28] Early years: emerging environment debate in GATT/WTO, WTO website.
[29] Hugo Cameron, The Evolution of the Trade and Environment Debate at the WTO, in Trade and Environment: A Resource Book, Adil Najam, eds., Mark Halle, Ricardo Melendez-Ortiz, ICTSD, IISD. 2007,.3

Liechtenstein, Norway, Sweden and Switzerland) to address trade-related environmental issues and contribute to the 1992 UNCED "Earth Summit" in Rio de Janeiro,Brazil.

In the meantime, the Tuna-Dolphin cases filed by Mexico and the European Union on behalf of Netherlands Antilles against the United States (US), while not adopted, fueled discussions on trade and environment linkages. These cases raised the questions of whether: (a) one State can impose its own environmental regulations on another State; and (b) process and production methods (PPMs), rather than the quality of the goods themselves, may be used as a basis for limiting the trading rights of another country. [30]

The cases were brought against the implementation of the US Marine Mammal Protection Act that provides standards for dolphin protection in the harvest of yellowfin tuna. The standards were imposed on both domestic American and foreign fishing boats operating in that part of the Pacific Ocean. Failure of a country to meet the standards imposed by the US would result to a trade embargo on the importations of tuna from that country.

The GATT Panel ruled that: (a) PPMs cannot be used as a means of limiting the trading rights of another country, rather regulations may be applied on the quality or content of the imported tuna; and (b) the protection of animal health or exhaustible resources cannot be used as a justification by one country for taking trade action against another country to enforce the first country's domestic laws in the second country. [31] While the case was never legally adopted, it reflected the GATT Panel's concern that ruling otherwise could open the multilateral trade regime to "green" protectionism.[32]

b. The Agreement Establishing the World Trade Organization / GATT 1994

In the Uruguay Round of negotiations, the role of environmental protection and the need to promote sustainable development took on greater importance. In its Preamble, the Agreement Establishing the World Trade Organization (the "WTO Agreement") recognizes "that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the **optimal use of the world's resources** in accordance with the **objective of sustainable development**, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their

[30] Mexico etc versus US: 'tuna-dolphin,' WTO website; Hugo Cameron, The Evolution of the Trade and Environment Debate at the WTO, in Trade and Environment: A Resource Book, Adil Najam, eds., Mark Halle, Ricardo Melendez-Ortiz, ICTSD, IISD. 2007, 3.
[31] Mexico etc versus US: 'tuna-dolphin,' WTO website; Hugo Cameron, The Evolution of the Trade and Environment Debate at the WTO, in Trade and Environment: A Resource Book, Adil Najam, eds., Mark Halle, Ricardo Melendez-Ortiz, ICTSD, IISD. 2007, 3.
[32] Robert Howse, The Appellate Body Rulings in the Shrimp/Turtle Case: A New Legal Baseline for the Trade and Environment Debate, 27 Colum. J. Envtl. L. 491 (2002).

respective needs and concerns at different levels of economic development." (Bold italics ours).

In addition, the 1994 Marrakesh Ministerial Decision on Trade and Environment also established the Committee on Trade and Environment ("CTE"). The Ministerial Decision declared that "there should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other." To this end, the CTE was mandated to:

- identify the relationship between trade measures and environmental measures in order to promote sustainable development
- make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system. [33]

Following this mandate, the CTE's work programme since 1994 consists of 10 items, to wit:

Item	Topic
1	The relationship between trade rules and trade measures for environmental purposes
2	The relationship between trade rules and environmental policies with trade impacts
3	The relationship between trade rules and and environmental taxes and charges, and product standards
4	Trade rules on the transparency of trade measures used for environmental purposes and of environmental policies with trade impacts
5	The relationship between dispute settlement mechanisms of the WTO system and those under MEAs
6	Effects of environmental measures on market access, particularly on developing countries, and the environmental benefits of removing trade restrictions and distortions
7	Exports of domestically prohibited goods
8	The relationship between the environment and the TRIPS Agreement
9	The relationship between the environment and trade in services
10	WTO's relations with other organizations, both non-governmental and inter-governmental

Source: 1994 Ministerial Decision on Trade and Environment, WTO website, http://www.wto.org/english/tratop_e/envir_e/issu5_e.htm

[33] 1994 Marrakesh Ministerial Decision on Trade and Environment.

In the current Doha Development Round of negotiations,[34] State Parties agreed to negotiate on the following matters on trade and environment, which include some of the items covered by the CTE work programme above:

No.	Topic	Status
1	the relationship between WTO rules and multilateral environmental agreements (MEAs), applicable to both WTO members and signatories to the applicable MEAs;	No agreement yet; still at the stage of setting parameters for negotiations
2	information exchange between MEA Secretariats and the WTO;	• 1999 cooperation arrangement between WTO and UNEP Secretariats; • MEA information sessions in the CTE • technical cooperation activities with various MEA Secretariats • MEAs observership in the WTO • WTO observership in UNEP and MEAs
3	reduction or elimination of tariff and non-tariff barriers on environmental goods and services;"	Under negotiation: • identifying goods (product coverage) • determining treatment (modalities)
4	Clarify and improve WTO disciplines on fisheries subsidies.	• proposals on disciplining fisheries subsidies to prevent overfishing submitted by various delegations; still lack of convergence

Sources: Doha Ministerial Declaration; WTO website.

In addition the State Parties at the Doha Round also mandated the CTE to focus its work, and make recommendations, on the following matters:

- Effect of environmental measures on market access, particularly on developing countries, and where "the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;"
- The relevant provisions of the TRIPS Agreement;
- "labeling requirements for environmental purposes.35

Article XX. General Exceptions

GATT 1994 also adopted Article XX (General Exceptions) of GATT 1947. In relation to environmental protection, the article provides:

[34] WTO Ministerial 2001: Ministerial Declaration, adopted on 14 November 2001, WT/MIN(01)/DEC/1.

[35] Doha Ministerial, Item 32.

> "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
> . . .
> (b) necessary to protect human, animal or plant life or health;
> . . .
> (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;"

The US-Gasoline case, decided by the Appellate Body immediately after the effectivity of the WTO Agreement, laid down the process by which Article XX (the "General Exceptions Article") should be analyzed, taking into consideration the "purposes and objects of the General Agreement," the non-discrimination principles governing GATT 1994, and the exceptions embodied in the General Exceptions Article. In interpreting this provision, the Appellate Body followed a two-tiered analysis:

- Whether the environmental measure in question is **justified** under the relevant exceptions under Article XX, i. e., whether the measure is necessary to protect human, animal, or plant life or health, or it relates to the conservation of exhaustible natural resources;
- Whether the **application** of the measure would constitute: (i) arbitrary discrimination between countries where the same conditions prevail; (ii) unjustifiable discrimination between countries where the same conditions prevail, or (iii) a disguised restriction on international trade.[36]

Thus, WTO-consistent environmental measures must fall under either (b) or (g) of the General Exceptions Article, and must be applied in such a manner that is not arbitrary or unjustifiable discrimination between countries with similar conditions, or a disguised restriction on international trade.

In US-Shrimp, the Appellate Body extended this interpretation further as it notes that the language of the Preamble of the new WTO Agreement:

> "demonstrates a recognition by WTO negotiators that **optimal use of the world's resources** should be made in accordance with the **objective of sustainable development**. As this preambular language reflects the intentions of negotiators of the WTO Agreement, we believe it must add colour, texture and shading to our interpretation of the agreements annexed to the WTO Agreement, in this case, the GATT 1994. We have already observed that

[36] *United States – Standards for Reformulated and Conventional Gasoline*, adopted 20 May 1996, WT/DS2/9, pp. 17 - 24.

> **Article XX(g) of the GATT 1994 is appropriately read with the perspective embodied in the above preamble**." [37] (Bold italics ours)

The Appellate Body also noted the creation of the CTE and its mandate, as discussed above. Reading the General Exceptions Article in the context of the WTO Preamble and the creation and mandate of the CTE, it ruled that authorities must strike a balance between the right of a Member State to invoke the exceptions under Article XX (the right to protect the environment), and its duty to respect the treaty rights of the other members (their rights to market access and against discrimination).[38] In elucidating how to interpret and apply the provision, the Appellate Body states:

> "The task of interpreting and applying the chapeau is, hence, essentially the delicate one of locating and marking out a line of equilibrium between the right of a Member to invoke an exception under Article XX and the rights of the other Members under varying substantive provisions (e.g., Article XI) of the GATT 1994, so that neither of the competing rights will cancel out the other and thereby distort and nullify or impair the balance of rights and obligations constructed by the Members themselves in that Agreement. The location of the line of equilibrium, as expressed in the chapeau, is not fixed and unchanging; the line moves as the kind and the shape of the measures at stake vary and as the facts making up specific cases differ."[39]

Environment-Related WTO Agreements

In line with the growing recognition of the mutually enforcing roles of trade and environment to development, several WTO Agreements allow environmental considerations as a justification for derogating treaty obligations.

The Agreement on Technical Barriers to Trade (the "TBT Agreement") recognizes every Member State's right to adopt measures necessary "for the protection of human, animal or plant life or health" and "of the environment."[40] To this end, it allows the adoption of environmental TBT measures that pose barriers to trade but are justified under the following conditions:

- The measures are intended for the "protection of human health or safety, animal or plant life or health, or the environment;"[41]
- In assessing the risks, government bodies must consider, among others, available scientific and technical information, related processing technology or intended end-users of products.[42]
- Technical regulations adopted for this purpose are not intended or have the effect of creating unnecessary obstacles to international trade, i. e., these are trade-

[37] *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, adopted 12 October 1998, WT/DS58/AB/R, para. 153.
[38] *US-Shrimp*, para. 156.
[39] *US-Shrimp*, para. 159.
[40] TBT Agreement, Preamble, para. 6.
[41] TBT Agreement, Article 2.2.
[42] TBT Agreement, Article 2.2.

restrictive only to the extent necessary to fulfill a legitimate environmental objective;[43]

- International standards should be used as a basis for the regulations, unless not applicable under the circumstances.[44]
- Non-discriminatory treatment to like domestic and foreign products;[45]

The Agreement on Sanitary and Phytosanitary Measures ("SPS Agreement") maintains the right of each Member State to adopt and implement measures to protect human, animal, or plant life or health.[46] To encourage consistency and predictability, it promotes the use of harmonized international sanitary and phytosanitary measures as far as possible, but permits the adoption of stricter standards as determined appropriate by the Member State.[47]

The application of these measures is, however, limited by the proscription that it shall not "constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade.[48]

A Member State may apply SPS measures under the following conditions:

- the measure is necessary for the protection of human, animal or plant life or health;[49]
- it is applied only to the extent necessary to protect human, animal or plant life or health;[50]
- the measures do not arbitrarily or unjustifiably discriminate between Members under the same conditions or applied in a manner that constitutes a disguised restriction on international trade;[51]
- the measures must have undergone the appropriate risk assessment and based on sufficient scientific evidence, unless otherwise justified under the precautionary principle (the Appellate Body in EC-Hormones notes some aspects of the relationship between the precautionary principle and the SPS Agreement, as reflected in Art. 5.7, sixth par. of the Preamble and Art. 3.3, (par. 124), but

[43] TBT Agreement, Article 2.2.
[44] TBT Agreement, Article 2.4.
[45] TBT Agreement, Article 2.1: "*Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country."*
[46] SPS Agreement, Preamble, para. 1; See also SPS Agreement, Annex A. Definitions.
1. Sanitary or phytosanitary measures - Any measure applied:

(a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
(b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
(c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
(d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

[47] SPS Agreement, Preamble, paras. 4, 5 and 6.
[48] SPS Agreement, Preamble, para.1.
[49] SPS Agreement, Article 2.1.
[50] SPS Agreement, Article 2.2.
[51] SPS Agreement, Article 2.3.

deemed it prudent and unnecessary to take a position on whether the principle can be used to interpret the relevant provisions of the SPS Agreement.); [52]

- If the measures are based on international standards, guidelines or recommendations, these are deemed compliant with SPS Agreement;[53]
- More stringent measures than international standard, etc. may be adopted if: (a) supported by scientific evidence; and (b) based on risk assessment in accordance with Art. 5.[54]

The Agreement on Agriculture ("AoA"), while requiring reductions of domestic support in agricultural trade allows the adoption of "Green Box" domestic support measures, among others, as exception. Such measures must be part of "a clearly-defined government environmental or conservation programme and be dependent on the fulfillment of specific conditions under the government programme, including conditions related to production methods or inputs."[55] These must "be limited to the extra costs or loss of income involved in complying with the government programme."[56]

The Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPs Agreement") also allows the exclusion from patentability inventions that are necessary to protect human, animal or plant life or health or to avoid serious prejudice to the environment.[57]

The General Agreement on Trade in Services also contains a provision similar to Article XX (b) of GATT 1994, where measures that are "necessary to protect human, animal or plant life or health" may be adopted by Member States provided that these do not "constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services."[58]

C. Trade-Related Aspects of Multilateral Environmental Agreements

In the meantime, multilateral environmental agreements (MEAs) have also incorporated trade elements to enforce their mandate. The major MEAs with substantial trade components include two of the Rio agreements, the UN Convention on Biological Diversity ("UNCBD") and its Cartagena Protocol, the UN Framework Convention on Climate Change ("UNFCCC") and its Kyoto Protocol; conventions dealing with animal and plant species, particularly, the Convention on International Trade of Endangered Species ("CITES"), the International Plant Protection Convention ("IPPC"), the International Tropical Timber Agreement; conventions dealing with the trade of hazardous wastes and toxic materials, i. e., the Rotterdam Convention on the Prior

[52] EC - Measures Concerning Meat and Meat Products (US and Canada), adopted on 26 January and 28 July 1996, DS26 and DS 48, respectively.
[53] SPS Agreement, Articles 3.1 and 3.2.
[54] SPS Agreement, Article 3.3.
[55] AoA, Annex 2.12 (a).
[56] AoA, Annex 2.12 (b).
[57] TRIPs Agreement, Article 27.
[58] GATS, Article XIV (a).

Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the "Rotterdam Convention"), the Stockholm Convention on Persistent Organic Pollutants (POPS) (the "Stockholm Convention"), and the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal (the "Basel Convention"); and the Montreal Protocol on Substances that Deplete the Ozone Layer.

a. UN Convention on Biological Diversity

Ratified by the Philippines on 8 October 1993
Ratified by the European Union on 21 December 1993

i. General Description and Objectives

The UN Convention on Biological Diversity ("UNCBD") was designed to ensure the sustainability of the variability among living organisms through the identification and monitoring of biological diversity, and to maintain or create environmentally protected areas. The UNCBD is the first international treaty to address conservation of all biological diversity.[59] For the purpose of the UNCBD, "biological diversity" has been defined as the variability among living organisms from all sources and the ecological complexes of which the organisms are part; this includes diversity within species, and between species and ecosystems.[60] The UNCBD entered into force on 29 December 1993, and there are currently 193 parties to the Convention.

The objectives of the UNCBD are the conservation and "sustainable use"[61] of biological diversity and its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.[62] The UNCBD seeks to accomplish these objectives while at the same time recognizing the sovereign right of states to exploit their own resources pursuant to their own environmental policies, and without diminishing a state's own responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction.[63]

ii. Obligations of Parties

National policies, plans & programs

[59] G. Kristin Rosendal (1995), 'The Convention on Biological Diversity: A Viable Instrument for Conservation and Sustainable Use' , in Helge Ole Bergesen, Georg Parmann, and Øystein B. Thommessen (eds.), Green Globe Yearbook of International Co -operation on Environment and Development 1995 (Oxford: Oxford University Press), p. 69.
[60] Article 2, UNCBD.
[61] The UNCBD defines "sustainable use" as "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations." Article 2, UNCBD.
[62] Article 1, UNCBD.
[63] Article 3, UNCBD. .

Parties are required to develop national strategies or programs for the conservation and sustainable use of biological diversity, and to consider conservation and sustainable use when enacting domestic laws and policies.[64] Parties must adopt measures that avoid or minimize adverse impacts on biological diversity arising from the use of biological resources.[65]

Regulation of own areas

Parties are required to regulate within their geographic areas or in-situ, biological resources important for the conservation of biological diversity, to ensure their conservation and sustainable use.[66] Each party is required to rehabilitate and restore degraded ecosystems and promote the recovery of threatened species.[67] Parties are to prevent the introduction or cause the control or eradication of alien species which threaten ecosystems, habitats or species.[68]

Each Party should establish a system of protected areas where special measures need to be taken to conserve biological diversity.[69] For these protected areas, Parties are expected to develop their own guidelines for the selection, establishment and management of those areas.[70]

Public information

Parties are to promote and encourage the wider public understanding of the importance of measures required for the conservation of biological diversity.[71] Parties are also to facilitate the exchange of information derived from all publicly available sources relevant to the conservation and sustainable use of biological diversity. Such exchange of information includes the exchange of results of technical, scientific and socio-economic research.[72]

Access to genetic resources

The UNCBD establishes Party obligations relating to access to genetic resources while at the same time recognizing the sovereign rights of national governments to determine access to genetic resources. “Genetic resources” are defined as any material of plant, animal, microbial or other origin containing functional units of heredity that are of actual or potential value.[73] The Parties shall create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the

[64] Article 6(a), UNCBD.
[65] Article 10(b), UNCBD.
[66] Article 8(c), UNCBD.
[67] Article 8(f), UNCBD.
[68] Article 8(h), UNCBD.
[69] Article 8(a), UNCBD.
[70] Article 8(b), UNCBD.
[71] Article 13(a), UNCBD.
[72] Article 17, UNCBD.
[73] Article 2, UNCBD.

objectives of the UNCBD.[74] Access to genetic resources is subject to the prior informed consent of the Party providing access to such resources, unless otherwise waived by such Party.[75]

Assistance to developing countries

Developed country Parties, in particular, are required to provide financial resources to enable developing country Parties to meet the full incremental costs of fulfilling their obligations under the UNCBD.[76] Article 20(4) of the Convention acknowledges that the extent to which developing country Parties will effectively implement their commitments under the UNCBD depends on the effective implementation by developed country Parties of their commitments related to the provision of financial resources and the transfer of technologies.[77]

All parties shall establish and maintain programs for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.[78] Research activities that contribute to conservation and sustainable use of biological diversity are to be especially promoted and encouraged in developing countries.[79] The exchange of information to be facilitated among the Parties is also to take into account the special needs of developing countries.[80]

Indigenous knowledge and practices

The UNCBD requires Parties, subject to their own national legislation, to respect, preserve, and maintain knowledge and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. [81] Parties are to encourage the equitable sharing of the benefits arising from the utilization of such knowledge and practices of indigenous peoples and local communities.[82]

iii. Trade-Related Aspects

Technology transfer

The UNCBD establishes that access to and transfer of technology, including biotechnology, among the Parties, is essential for the attainment of the objectives of the CBD.[83] Each of the Parties are to provide access to each other to

[74] Article 15(2), UNCBD.
[75] Article 15(5), UNCBD.
[76] Article 20(2), UNCBD.
[77] Article 20(4), UNCBD.
[78] Article 17(1), UNCBD.
[79] Article 12, UNCBD.
[80] Article 17(1), UNCBD.
[81] Article 8(j), UNCBD.
[82] Article 8(j), UNCBD.
[83] Article 16(1), UNCBD.

technologies that help in the conservation or sustainable use of biological diversity, or technologies that make use of genetic resources without causing significant damage to the environment. Each Party is likewise to facilitate the transfer of such technologies to other Parties.[84]

Cartagena Protocol to Biosafety to the Convention on Biological Diversity

Ratified by the Philippines on 3 January 2007
Ratified by the European Union on 11 September 2003

i. General Description and Objectives

The Cartagena Protocol to Biosafety ("Cartagena Protocol") was adopted by the Parties to the UNCBD to provide for an international regulatory framework to reconcile the respective needs of trade and environmental protection with respect to the biotechnology industry.[85] The UNCBD required the execution of a subsequent protocol setting out appropriate procedures in relation to the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking into account risks to human health.[86]

The Protocol provides for an advance informed agreement procedure applicable to the transboundary movement[87] of any living modified organism[88] resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity.[89]

The Protocol came into force on 11 September 2003 and currently has 163 Parties.

ii. Obligations of Parties

Scope

The Protocol applies to the transboundary movement, transit, handling and use of all living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity, taking into account risks to human health.[90] The Protocol however does not apply to those living modified organisms which are also pharmaceuticals for humans, on the premise that those

[84] Article 16(1), UNCBD.
[85] Secretariat of the Convention on Biological Diversity (2000). Cartagena Protocol on Biosafety to the Convention on Biological Diversity: text and annexes. Montreal: Secretariat of the Convention on Biological Diversity, p. 1.
[86] Article 19(3), UNCBD.
[87] "Transboundary movements" under Article 3(k) of the Cartagena Protocol are defined as the movement of a living modified organism from one Party to another Party.
[88] A "living modified organism" is defined in the Article 3(g) of the Cartagena Protocol as any living organism (a biological entity capable of transferring or replicating genetic material) that possesses a novel combination of genetic material obtained through the use of modern biotechnology."
[89] Article 1, Cartagena Protocol.
[90] Article 4, Cartagena Protocol.

pharmaceuticals are addressed by other relevant international agreements and organizations.[91] Under the Protocol, the Parties are to ensure that the development, handling, transport, use, transfer and release of any living modified organisms are undertaken in a manner that prevents or reduces the risks to biological diversity.[92]

Biosafety Clearing-House

The Protocol establishes a Biosafety Clearing-House, which facilitates the exchange of scientific, technical, environmental and legal information on living modified organisms, and assists the Parties in implementing the Protocol.[93] The Biosafety Clearing-House serves as a means by which access is made available by the Parties to information that is relevant to the implementation of the Protocol.[94]

Advance informed agreement procedure

The Protocol establishes an advance informed agreement procedure to be complied with in the event of the first intentional transboundary movement of living modified organisms for intentional introduction into the environment of the Party of Import. The salient features of this procedure are:

1. A written notice is to be given to the competent national authority of the Party of Import of the impending intentional introduction of the organism into the environment of the Party of Import. The notice is to come from either (1) the Party from where the living modified organism is to be exported ("**Party of Export**") or (2) the private entity exporting the organism.[95]

2. In order to determine whether the importation should be permitted, the Party of Import shall conduct risk assessments, taking into account recognized risk assessment techniques, and in accordance with Annex III of the Protocol.[96]

3. The Party of Import should inform the notifier in writing whether the intended transboundary movement may proceed or not.[97]

The failure of the Party of Import to respond to the notice within the prescribed period shall not imply its consent to the intended transboundary movement.[98]

The Protocol allows the Party of Import, at any time, to review and change a decision regarding an intentional transboundary movement in light of new

[91] Article 5, Cartagena Protocol.
[92] Article 2(2), Cartagena Protocol.
[93] Article 20(1), Cartagena Protocol.
[94] Article 20(2), Cartagena Protocol.
[95] Article 8(1), Cartagena Protocol.
[96] Article 15(1), Cartagena Protocol.
[97] Article 10(3), Cartagena Protocol.
[98] Articles 9(4) and 10(5), Cartagena Protocol.

scientific information.[99] For its part, a Party of Export may request the importing Party to review a decision the latter had made where the Party of Export considers that there has been a change in circumstances that may influence the outcome of the original risk assessment on which the decision was based, or when additional relevant scientific or technical information is available.[100]

The advance informed agreement procedure does not apply to living modified organisms that have been identified in a decision[101] by the Parties as being not likely to have adverse effects on the conservation and sustainable use of biological diversity.[102] The advance informed agreement procedure also does not apply to living modified organisms in transit[103] or those destined for "contained use"[104] within the Party of Import. .[105]

Living modified organisms for direct use as food or feed, or for processing

The Cartagena Protocol imposes a different advance informed agreement procedure in cases where the living modified organism subject of the transboundary movement is one intended for direct use as food or feed, or for processing. Before any Party can import for the first time one such type of living modified organism for its domestic use as food or feed, or for processing, it must first notify the Parties through the Biosafety Clearing-House of its final decision on its domestic use of such organism.[106]

Safe packaging and transportation

The Parties are required to ensure that living modified organisms subject to intentional transboundary movement within the scope of the Protocol are handled, packaged, and transported under safe conditions, taking into consideration relevant international rules and standards.[107] Parties are to ensure that when transported, the living modified organism is accompanied by documentation identifying the nature and use of the organism, as well as the relevant contact information of the consignee.[108]

Transboundary movements involving non-Parties

[99] Article 12(1), Cartagena Protocol.
[100] Article 12(2), Cartagena Protocol.
[101] The decision having been adopted by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol pursuant to Article 29 of the Protocol.
[102] Article 7(4), Cartagena Protocol.
[103] Article 6(1), Cartagena Protocol.
[104] "Contained use" as defined in Article 2 of the Protocol means "any operation, undertaken within a facility, installation or other physical structure, which involves living modified organisms that are controlled by specific measures that effectively limit their contact with, and their impact on, the external environment;"
[105] Article 6(2), Cartagena Protocol.
[106] Articles 7(3) and 11(1), Cartagena Protocol.
[107] Article 18(1), Cartagena Protocol.
[108] Article 18(2), Cartagena Protocol.

Transboundary movements of living modified organisms between Parties and non-Parties are required to be consistent with the objective of the Protocol.[109]

Illegal or unintentional transboundary movements

Transboundary movements carried out in contravention of a Party's domestic measures to implement the Protocol are deemed as illegal transboundary movements. In the event of illegal transboundary movements, the affected Party may request the Party of origin to dispose, at its own expense, the living modified organism in question by repatriation or destruction.[110]

In the event of an occurrence that leads or may lead to an unintentional transboundary movement of a living modified organism that is likely to have significant adverse effects on the conservation and sustainable use of biological diversity, the Party under whose jurisdiction the occurrence happened is to take appropriate measures to notify affected or potentially affected States and the Biosafety Clearing-House as soon as the Party learns of the situation. Such Party is also to immediately consult affected or potentially affected States to enable them to determine appropriate responses and initiate the necessary actions, including emergency measures.[111]

Lateral agreements on transboundary movements of living modified organisms

The Protocol authorizes Parties to enter into bilateral, regional and multilateral agreements and arrangements on intentional transboundary movements of living modified organisms, consistent with the objective of the Protocol, provided that such agreements and arrangements do not result in a lower level of protection than that established by the Protocol.[112] The Protocol will not affect those intentional transboundary movements that take place pursuant to these agreements and arrangements as between the parties to such agreements and arrangements.[113]

The Preamble of the Protocol likewise qualifies that the Protocol should not be implied as a change in the rights and obligations of a Party under any existing international agreements, though such declaration is not intended to subordinate the Protocol to other international agreements.[114] In reaching a decision on import under the Protocol or under domestic measures implementing the Protocol, Parties may take into account socio-economic considerations arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities, but any resulting action must be consistent with the Party's international obligations.[115]

[109] Article 24, Cartagena Protocol.
[110] Article 25(2), Cartagena Protocol.
[111] Article 17(4), Cartagena Protocol.
[112] Article 14(1), Cartagena Protocol.
[113] Article 14(3), Cartagena Protocol.
[114] Paragraphs 11 and 12, Preamble, Cartagena Protocol.
[115] Article 26(1), Cartagena Protocol.

b. United Nations Framework Convention on Climate Change (including the Kyoto Protocol)

UNFCCC ratified by the Philippines on 2 August 1994
UNFCCC ratified by the European Union on 21 December 1993

Kyoto Protocol ratified by the Philippines on 20 November 2003
Kyoto Protocol ratified by the European Union on 31 May 2002

i. General Description and Objectives

The United Nations Framework Convention on Climate Change ("UNFCCC") was adopted following the UN Conference on Environment and Development in Rio de Janeiro in 1992. The UNFCC addresses the issue of climate change, and seeks to undertake precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. The UNFCCC recognizes that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, enhancing the natural greenhouse effect, and resulting in an additional warming of the Earth's surface and atmosphere, adversely affecting natural ecosystems and humankind.[116] It acknowledges that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, while at the same time acknowledging common but differentiated responsibilities among Parties, as well as each country's social and economic conditions.[117]

The UNFCCC authorized the adoption of protocols to the convention.[118] The Kyoto Protocol, which entered into force in 2005, was adopted to legally bind countries included in Annex I of the UNFCCC ("**Annex I Parties**") to specific emission reduction targets. Annex I Parties are composed of developed country Parties and countries that are undergoing the process of transition to a market economy.

The ultimate objective of the UNFCCC and any related legal instruments (including the Kyoto Protocol) is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.[119] Developed country Parties are enjoined to take the lead in combating climate change and its adverse effects,[120] while the specific needs and special circumstances of developing country Parties, especially those

[116] Paragraph 2, Preamble, UNFCC.
[117] Paragraph 6, Preamble, UNFCC.
[118] Article 17(1), UNFCCC.
[119] Article 2, UNFCCC.
[120] Article 3(1), UNFCC.

particularly vulnerable to the adverse effect of climate change, should be given full consideration.[121]

ii. Obligations of Parties

Party commitments under UNFCCC

Under the UFCCC, all Parties are required to, among others, (1) formulate, implement, publish and regularly update national programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources, and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol;[122] (2) develop technologies, practices and processes to control or prevent such emissions in all relevant sectors such as energy, transport and industry;[123] (3) develop measures to facilitate adequate adaptation to climate change;[124] and (4) take climate change considerations into account in pursuing their relevant social, economic and environmental policies and actions.[125]

Annex I Parties are further required to take measures to limit their anthropogenic emissions of greenhouse gasses.[126] Such measures would demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the UNFCCC's objectives.[127]

The UNFCCC also identifies another set of Parties in Annex II composed of developed country Parties and the European Economic Community ("**Annex II Parties**"). Annex II Parties are required under the UNFCC to provide financial resources needed by developing country Parties to meet the full incremental costs of implementing measures covered by Article 4(1) of the Convention.[128] Annex II Parties are required to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adapting to such adverse effects.[129]

Emissions targets of Annex I Parties under Kyoto Protocol

Pursuant to the obligation imposed on Annex I Parties under the UNFCCC to limit their anthropogenic emissions of greenhouse gasses, the Kyoto Protocol required Annex I Parties to reduce their emission levels of greenhouse gasses to individual specific assigned targets listed in Annex B to the Protocol ("**Emissions Targets**").[130] These Emissions Targets are expressed in terms of a level of allowed emissions for each Annex I Party. The allowed amounts are divided into

[121] Article 3(1), UNFCC.
[122] Article 4(1)(b), UNFCCC.
[123] Article 4(1)d), UNFCCC.
[124] Article 4(1)(b), UNFCCC.
[125] Article 4(1)(f), UNFCCC.
[126] Article 4(2)(a), UNFCCC.
[127] Article 4(2)(a), UNFCCC.
[128] Article 4(3), UNFCCC.
[129] Article 4(4), UNFCCC.
[130] Article 3(1), Kyoto Protocol.

"assigned amount units".[131] The Emissions Targets were established for the purpose of reducing overall emissions of such gasses by Annex I Parties by at least 5% below their 1990 levels, for the years 2008 to 2012,[132] such period being considered as the "first quantified emission limitation and reduction commitment period."[133] Commitments for subsequent periods were to be established in the future by means of amendments to Annex B of the Protocol.[134] Annex I Parties may undertake their commitments to reduce emissions either individually, or jointly through an agreement or in the framework of a regional economic integration organization.

Emissions trading under Kyoto Protocol

The Kyoto Protocol recognizes that Annex I Parties may participate in emissions trading for the purpose of fulfilling their Emissions Targets, subject to rules and guidelines defined in the future by the Parties.[135] Emissions trading is supplemental to domestic actions taken by Annex I Parties to meet their Emissions Targets.

Joint Implementation mechanism

In order to meet their Emissions Targets, Annex I Parties are authorized to transfer to or acquire from each other emission reduction units ("**ERUs"**) resulting from projects aimed at reducing anthropogenic emissions by sources, subject to conditions enumerated in Article 6(1) of the Kyoto Protocol. An Annex I Party may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition of such ERUs.[136] The Protocol called for the establishment of further elaborate guidelines for the implementation of this authorized transfer or acquisition of ERUs.[137]

iii. Trade-Related Aspects

The Parties under the UNFCCC are enjoined to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, especially developing country Parties, in the belief that this system would enable them to better address the problems of climate change.[138] The UNFCC cautions that measures taken to combat climate change, including unilateral ones, should not constitute a disguised restriction on international trade.[139]

[131] See "United Nations Framework Convention on Climate Change: Emissions Trading", at http://unfccc.int/kyoto_protocol/mechanisms/emissions_trading/items/2731.php.
[132] Article 3(1), Kyoto Protocol.
[133] Article 3(7), Kyoto Protocol.
[134] Article 3(9), Kyoto Protocol.
[135] Article 17, Kyoto Protocol.
[136] Article 6(3), Kyoto Protocol.
[137] Article 6(2), Kyoto Protocol.
[138] Article 3(5), UNFCCC. .
[139] Article 3(5), UNFCCC.

Annex II Parties are required under the UNFCCC to "take all practicable steps" to promote the development and transfer of environmentally friendly technologies to developing country Parties, to enable the latter to implement the provisions of the Convention.[140]

In the course of limiting their greenhouse emissions as required under the Kyoto Protocol, Annex I countries are nonetheless required to implement such policies and measures in such a way as to minimize the adverse effects on international trade, and social, environmental and economic impacts on other countries, especially developing country Parties.[141]

Addressing non-compliance

The Parties are required to approve appropriate and effective procedures and mechanisms to determine and address cases of non-compliance with the provisions of the Kyoto Protocol. Towards that end, the Parties are required to develop an indicative list of consequences, taking into account the case, type, degree and frequency of non-compliance.[142]

Durban Platform for Enhanced Action

i. General Description and Objectives

During the conference of the Parties to the United Nations Framework Convention on Climate Change (**"UNFCCC"** or **"Convention"**), held in Durban, South Africa, from 28 November to 11 December 2011 (**"Durban Conference"**), the Parties to the UNFCCC decided to establish an Ad Hoc Working Group ("ADHWG") tasked with the drafting of a legal instrument or agreement that binds the parties to stronger measures to achieve the goal of reducing global greenhouse gas emissions. At present, the Kyoto Protocol adopted in 1997 by the Conference of the Parties enforces the UNFCCC's goal of stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The proposed agreement to be drafted by the ADHWG is intended to enhance or supplant the Kyoto Protocol.

The decision to establish the ADHWG is contained in a document known as Decision 1/CP.17 (**"Decision"**), entitled "Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action."

ii. Key Points

The need for a new protocol is premised on the recognition by the Conference of the Parties that the fulfillment of the ultimate objective of UNFCCC requires the

[140] Article 4(5), UNFCCC.
[141] Article 2(3), Kyoto Protocol.
[142] Article 18, Kyoto Protocol.

strengthening of the multilateral, rules-based regime under the Convention. The Decision notes that climate change represents an urgent and potentially irreversible threat to human societies and the planet that needs to be urgently addressed by all parties. The global nature of climate change calls for the widest possible cooperation by all parties and their participation in an effective and appropriate international response towards accelerating the reduction of global greenhouse gas emissions. There was a significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020, on one hand, and the aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2°C or 1.5°C above pre-industrial levels, on the other hand.[143]

The Decision requires the ADHWG to complete its work as early as possible, but no later than 2015, so that the protocol could be adopted at the 21st session of the Conference of the Parties,[144] which is expected to be held in 2015. The Decision states that the expected protocol is to be implemented from 2020.

The ADHWG was scheduled to start its work in the first half of 2012, and is to report to future sessions of the Conference of the Parties on the progress of its work.[145] During the said first half of 2012, the ADHWG is required to plan out its forthcoming work, involving mitigation, adaptation, finance, technology development and transfer, transparency of action and support, and capacity-building. It is to draw upon submissions of the Parties and relevant technical, social and economic information and expertise. [146]

c. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Ratified by the Philippines on 18 August 1981[147]

i. General Description and Objectives

The Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") regulates the international trade in plant and animal species, on the premise that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through such trade.[148] CITES acknowledges that wild fauna and flora are irreplaceable parts of the natural systems of the earth which must be protected for present and future generations, and that such wild fauna and flora have ever-growing value from

[143] Preamble, Decision 1/CP.17.
[144] Paragraph 3, Decision 1/CP.17.
[145] Paragraph 3, Decision 1/CP.17.
[146] Paragraph 4, Decision 1/CP.17.
[147] Although the European Union is not a signatory to CITES, the provisions of the Convention have been implemented within the European Community since 1982 through community-wide legislation. See http://ec.europa.eu/environment/cites/home_en.htm.
[148] Paragraph 4, Preamble, CITES.

aesthetic, scientific, cultural, recreational and economic points of view.[149] More than other species, those species threatened with extinction are subject to strict regulations, in order not to endanger further their survival.[150]

CITES entered into force on 1 July 1975, and there are currently 175 Parties to the Convention.

ii. Party Obligations

Categorization of species

CITES regulates the international trade of three categories of species, whether living or dead. The categories are distinguished from each other by the degree to which a species is threatened with extinction or over-exploitation. Each category is contained in a separate Appendix to CITES. The Parties may not trade in specimens of species included in the Appendices, except in accordance with the provisions of CITES.[151]

Species listed in Appendix I ("**Appendix I Species**") include all species threatened with extinction which are or may be affected by trade.[152] Species listed in Appendix II ("**Appendix II Species**") include all species which may become threatened with extinction unless trade in their specimens is made subject to strict regulation.[153] Species included in Appendix III ("**Appendix III Species**") are species which a Party has identified as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and requiring the cooperation of other Parties in the control of their trade.[154]

Amendments to the list of species included in Appendices I and II may be made by the Parties by means of a proposal by any Party which is adopted by a two-thirds majority of the Parties present and voting during one of their regular meetings.[155] Meanwhile, the inclusion of a species in Appendix III may be made solely upon the initiative of any Party without the need for any voting by the Parties.[156]

In the event of the adoption of an amendment to Appendices I and II, any Party may within 90 days from such adoption, make a reservation to the amendment.[157] Until such reservation is withdrawn, the Party making it shall be treated as a non-Party to CITES with respect to trade in the species that is the subject of the amendment. A similar reservation may be made by any Party with respect to any

[149] Paragraphs 1 and 2, Preamble, CITES.
[150] Article II(1), CITES.
[151] Article II(4), CITES
[152] Article II(1), CITES.
[153] Article II (2)(a), CITES.
[154] Article II(3), CITES.
[155] Article XV(1)(b), CITES.
[156] Article XVI (1), CITES.
[157] Article XV(3), CITES.

species included in Appendix III; such reservation can be made at any time after the species is included in the Annex.[158]

iii. Trade-Related Aspects

Regulation on trade of Specimens

CITES regulates the trade of any specimen listed in its appendices by requiring the Party of Export or the Party of Import to issue permits or certificates prior to allowing the export or import of a specimen out of or into their jurisdiction.[159] Prior to the issuance by a Party of any of these permits or certificates, a scientific authority and/or a management authority of the relevant Party must be satisfied that certain requisites are met. The types of approvals required from the scientific and/or management authorities depend upon which Appendix the specimen to be traded is listed under. The scientific authority must be satisfied that the export or import of the specimen will not be detrimental to the survival of the species and that its proposed recipient is suitably equipped to house or care for the specimen. On the other hand, the management authority must be satisfied that the specimen is not to be used for primarily commercial purposes, that it was not obtained in contravention of the laws of the trading Parties or the CITES, and that the living specimen will be safely transported and suitably cared for.

Regulation of trade with non-Parties

CITES allows trade by Parties with non-Parties under special circumstances found in Article X. Where trade of a regulated species is with a non-Party, any Party may accept comparable documentation issued by competent authorities of the non-Party in lieu of the permits and certificates required under the Convention.[160]

Penalties for illegal trade in Specimens

Parties are required to take appropriate measures to enforce the CITES and may only trade in specimens strictly in accordance with the Convention. The measures include the penalization of the trade in or possession of such specimens, and the confiscation or return to the exporting state of such specimens.[161]

Right to Parties to enact own regulations

The Parties to CITES are permitted to adopt stricter domestic measures or enter into any treaty, convention or international agreement providing for stricter measures in relation to the trade, taking, possession or transport of any species[162],

[158] Article XVI(2), CITES.
[159] Article III, CITES.
[160] Article X, CITES.
[161] Article VIII (1), CITES.
[162] Article XIV(2), CITES.

whether or not such species are included in the CITES Appendices.[163] In addition, CITES prescribes that its provisions are not to affect any obligations to any subsequent international agreement concluded between Parties creating a union or a regional trade agreement insofar as they may relate to trade among the contracting Parties.[164]

d. International Plant Protection Convention

Ratified by the Philippines on 3 December 1953
Ratified by the European Union on 6 October 2005

i. General Description and Objectives

The International Plant Protection Convention ("IPPC") requires Parties to undertake measures to prevent the introduction and spread of pests and diseases of plants and plant products ("Phytosanitary Measures"). It recognizes the necessity for international cooperation in controlling pests and diseases of plants and preventing the introduction and spread of such diseases across national boundaries.[165] Originally adopted in 1951, the IPPC was revised in 1997, and the current text of the IPPC entered into force on 2 October 2005.

ii. Party Obligations

Scope

The IPPC is concerned with preventing the introduction and spread to plant and plant products of "pests." The IPPC defines "plants" as "living plants and parts thereof, including seeds and germplasm," and "plant products" as "unmanufactured material of plant origin and those manufactured products that, by their nature or that of their processing, may create a risk for the introduction and spread of pests."[166] "Pests" are defined as "any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products."[167]

Apart from plants or plant products, the IPPC also regulates "storage place[s], packaging, conveyance, container[s], soil and any other organism, object or material capable of harboring or spreading pests, deemed to require Phytosanitary Measures, particularly where international transportation is involved."[168]

Parties are only allowed to implement Phytosanitary Measures that are (1) technically justified, (2) consistent with the pest risk involved, (3) represent the

[163] Article XIV(1), CITES.
[164] Article XIV(3), CITES.
[165] Preamble, IPPC.
[166] Article II(1), IPPC.
[167] Article II(1), IPPC.
[168] Article II(1), IPPC.

least restrictive measures available, and (4) result in the minimum impediment to the international movement of people, commodities and conveyances.[169]

National plant protection organization

Each Party must establish an official national plant protection organization ("**NPPO**") which will be tasked with ensuring a Party's domestic compliance with its obligations under the IPPC.[170] Prior to a Party's export of a plant or plant products to another Party, the exporting Party must obtain a certificate from its NPPO that the plants or plant products to be exported correspond to the Phytosanitary Measures of the importing party. A Party's NPPO is also responsible for the inspection of consigned plants or plant products moving in international traffic, and the disinfestation or disinfection of such consignments to meet phytosanitary requirements.[171]

Commission on Phytosanitary Measures

Parties must establish a Commission on Phytosanitary Measures ("**Commission**"), which shall adopt international standards for Phytosanitary Measures.[172] The Commission is tasked with reviewing the state of plant protection in the world and the need to control international spread of pests and their introduction in endangered areas.[173] Parties should take into account, as appropriate, these international standards adopted by the Commission when undertaking activities which are related to the IPPC.[174]

Phytosanitary requirements

Parties are required to publish and transmit any phytosanitary requirements, restrictions or prohibitions which they have adopted under their own domestic law to any Party which they believe may be directly affected by such measures.[175] A Party must make available to any requesting Party the rationale for the phytosanitary requirements, restrictions or prohibitions which it has adopted.[176]

Phytosanitary certification

Prior to the export of plants or plant products by one Party to another, the exporting party's NPPO must issue a certification addressed to the NPPO of the importing party stating that the former has inspected the plants or plant products

[169] Article VII(2)(g), IPPC.
[170] Article IV(1), IPPC.
[171] Article IV(2), IPPC.
[172] Article XI, IPPC.
[173] Article XI(2)(a), IPPC.
[174] Article X(4), IPPC.
[175] Article VII(2)(b), IPPC.
[176] Article VII(2)(c), IPPC.

intended for export and that such plants/plant products conform with the current phytosanitary requirements of the importing Party.[177]

Regulation of pests

Parties are authorized to adopt their own Phytosanitary Measures, in accordance with their own domestic laws, relating to the import or export of "quarantine pests"[178] and "regulated non-quarantine pests."[179] Parties, however, may not adopt Phytosanitary Measures for "non-regulated pests."[180]

Authority to regulate imports

The IPPC declares that Parties shall have the sovereign authority to regulate the entry of plants, plant products, and other regulated articles by adopting Phytosanitary Measures such as inspection, prohibition on importation, and treatment.[181] Similar Phytosanitary Measures may also be applied by Parties to pests that cause economic damage if they gained entry to the Party's territory.[182] The Parties may also apply Phytosanitary Measures to consignments in transit through their territories, if the Phytosanitary Measures are justified and necessary to prevent the introduction and spread of pests.[183] The IPPC likewise authorizes Parties to prohibit or restrict the movement of quarantine or regulated non-quarantine pests, biological control agents, and other organisms of phytosanitary concern.[184] It is required that these Phytosanitary Measures be implemented only if these are necessary by phytosanitary considerations and are technically justified.[185]

An importing Party may require consignments of particular plants or plant products to be imported only through specified points of entry, selected so as not to unnecessarily impede international trade.[186] The importing Party shall publish a list of such points of entry and communicate it to the Parties. Plants, plant products or other regulated articles entering through these specified points of entry must be accompanied by phytosanitary certificates and submitted to inspection or treatment.[187]

Regulations on export

[177] Article V(2), IPPC.
[178] A "quarantine pest" is defined by the IPPC as "a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled." Article II(1), IPPC.
[179] A "regulated non-quarantine pest" is defined as "a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contracting party." Article II(1), IPPC.
[180] Article VI, IPPC.
[181] Article VII(1), IPPC.
[182] Article VII(3), IPPC.
[183] Article VII(4), IPPC.
[184] Article VII(1)(d), IPPC.
[185] Article VII(2)(a), IPPC.
[186] Article VII(2)(d), IPPC.
[187] Article VII(2)(d) IPPC.

If a Party exporting the plants, plant products or other regulated articles is informed by an importing Party of a significant instance of non-compliance with the phytosanitary certification, the exporting Party shall investigate and report the result of its investigation to the importing Party.[188]

Modification of Phytosanitary Measures

Parties are to ensure the prompt modification or removal of Phytosanitary Measures if found to be unnecessary, as conditions change, and as new facts become available, ensure.[189]

International cooperation

Parties are to cooperate in the exchange of information on plant pests, particularly in reporting the occurrence, outbreak and spread of pests that may be of immediate and potential danger, and in providing technical and biological information necessary for pest risk analysis. They are to participate in special campaigns for combating pests that may seriously threaten crop production and need international action to meet the resulting emergency.

Parties are required to publish and transmit its Phytosanitary Measures upon their adoption to parties that they believe may be directly affected by such measures, and make available upon request of any Party the rationale for such Phytosanitary Measures.[190]

Non-Parties

Parties are to encourage non-Parties to apply Phytosanitary Measures consistent with the IPPC and the international standards adopted by the Commission.[191]

e. International Tropical Timber Agreement, 2006

Ratified by the Philippines on 8 July 2009

i. General Description and Objectives

The International Tropical Timber Agreement of 2006 ("**ITTA**") seeks to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests.[192] "Tropical timber", as defined in the ITTA, means "tropical wood for industrial uses, which grows or is produced in the countries situated between the Tropic of Cancer and the Tropic of

[188] Article VII(2)(f), IPPC.
[189] Article VII(2)(h), IPPC.
[190] Article VII(b) & (c), IPPC.
[191] Article XVIII, IPPC.
[192] Article 1, ITTA.

Capricorn.[193] The current version adopted in 2006 supersedes two similar agreements enacted in 1983 and 1994. The 2006 ITTA entered into force on 7 December 2011.

Article 2 of the ITTA establishes 19 different objectives ("**Objectives**") of the Agreement. Among the Objectives are the provision of an effective framework for consultation, international cooperation and policy development among all members with regard to all relevant aspects of the world timber economy[194] as well as a forum for consultation to promote non-discriminatory timber trade practices;[195] the enhancement of the capacity of members to implement strategies for achieving exports of tropical timber and timber products from sustainably managed sources;[196] the development of tropical timber reforestation as well as restoration of degraded forest land;[197] and the establishment of national policies aimed at sustainable utilization and conservation of timber producing forests and maintaining ecological balance, in the context of the tropical timber trade.[198]

ii. Party Obligations

International Tropical Timber Organization

The International Tropical Timber Organization ("**ITTO**") was originally established under the [now superseded] 1983 International Tropical Timber Agreement. The 2006 ITTA reiterates the mandate of the ITTO to administer the provisions and supervise the implementation of the ITTA.[199] The ITTO has its own legal personality and it may conclude agreements with countries as may be necessary for the proper functioning of the ITTA.[200]

Membership in the ITTO includes all governments which have consented to be bound by the ITTA, as well as the European Community ("**EC**") and intergovernmental organizations having comparable responsibilities as the EC in respect of the negotiation, conclusion and application of international commodity agreements.[201] There are two categories of members: (a) producer members ("**Producers**") listed in Annex A who are usually engaged in producing and exporting tropical timber resources[202]; and (b) consumer members ("**Consumers**") listed in Annex B which import tropical timber.[203] Producers and

[193] Article 2(1), ITTA.
[194] Article 1(a), ITTA.
[195] Article 1(b), ITTA.
[196] Article 1(d), ITTA.
[197] Article 1(i), ITTA.
[198] Article 1(m), ITTA.
[199] Article 3(1), ITTA.
[200] Article 17(1) & (3), ITTA.
[201] Article 5(1), ITTA.
[202] Article 2(4), ITTA.
[203] Article 2(5), ITTA.

Consumers are granted their own respective functions or privileges as members of the ITTO, such as with respect to voting rights.[204]

International Tropical Timber Council

The International Tropical Timber Council ("**ITTC**"), consisting of all members of the ITTO, is established as the highest authority of the ITTO.[205] It is the ITTC which has the power to adopt rules and regulations as are necessary to carry out the provisions of the ITTA, and make the necessary decisions to ensure the effective and efficient functioning of the ITTO.[206] Members must accept and carry out the decisions of the ITTC, and must refrain from implementing measures that would limit or run contrary to such decisions.[207]

The ITTC is tasked to review and assess the international timber situation every two years, as well as other factors, issues and developments considered relevant to achieving the Objectives of the ITTA.[208] The ITTC is likewise authorized to evaluate the implementation of the ITTA, including the Objectives, five (5) years after the ITTA's entry into force.[209]

Policy work and project activities

The ITTO is tasked with undertaking policy work and project activities to achieve the Objectives of the ITTO.[210] The ITTC shall establish on a regular basis an action plan to guide the ITTO's policy activities.[211] With respect to project activities, any member may submit pre-project and project proposals which contribute to the achievement of the objectives of the ITTA. The ITTC shall establish the criteria and procedure for approving projects and pre-projects.[212]

iii. Trade-Related Aspects

Non-authorization of trade ban

The ITTA qualifies that nothing in the ITTA authorizes the use of measures to restrict or ban international trade in, the import of, and the utilization of, timber and timber products.[213]

[204] See Article 10, ITTA.
[205] Article 6(1), ITTA.
[206] Article 7, ITTA.
[207] Article 29(2), ITTA.
[208] Article 28, ITTA.
[209] Article 33, ITTA.
[210] Article 24(1), ITTA.
[211] Article 24(3), ITTA.
[212] Article 24(2) & (3), ITTA.
[213] Article 34, ITTA.

Breach of obligations

The ITTC may conduct a special vote to exclude a member from the ITTA if it decides that any member is in breach of its obligations and that such breach significantly impairs the operation of the ITTA.[214]

Relief from obligations

The ITTC may relieve any member of an obligation under the ITTA if it is satisfied by an explanation from that member regarding the reasons why the obligation cannot be met.[215]

Developing countries that are Consumers who are adversely affected by measures taken under the ITTA may apply to the ITTC for appropriate differential and remedial measures. The ITTC shall consider taking such appropriate measures in accordance with the United Nations Conference on Trade and Development.[216]

Bali Partnership Fund

A fund for sustainable management of tropical timber producing forests, known as the Bali Partnership Fund ("**Bali Fund**"), was established by the ITTA to assist Producers in the Objective to enhance their capacity to implement strategies to export tropical timber and timber products from sustainably managed sources.[217] The ITTC shall establish the criteria and priorities for the use of the Bali Fund, with a view to helping members export tropical timber and timber products from sustainably managed sources, establishing conservation programs in timber-producing forests, and implementing sustainable forest management programs.[218]

Coordination with other organizations

The ITTC shall make arrangements as appropriate for consultations and cooperation with the United Nations, its organs and specialized agencies including the United Nations Conference of Trade and Development, in pursuing the Objectives of the Agreement.[219]

f. Rotterdam Convention on the Prior Informed Consent procedure for certain hazardous chemicals and pesticides in international trade

Ratified by the Philippines on 31 July 2006
Ratified by the European Union on 20 December 2002

[214] Article 42, ITTA.
[215] Article 30(1), ITTA.
[216] Article 32(1), ITTA.
[217] Article 21(1), ITTA.
[218] Article 21(4), ITTA.
[219] Article 15(1), ITTA.

i. General Description and Objectives

The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ("**Rotterdam Convention"**) was spurred by the dramatic growth in chemicals production and trade during the last three decades, raising concerns over the potential risks posed by hazardous chemicals and pesticides.[220] It was preceded by a 1989 Prior Informed Consent jointly implemented by the UN-Food and Agriculture Organization and the United Nations Environment Program to help ensure that governments have the information they need about hazardous chemicals for assessing risks and making informed decisions on chemical imports.[221] The perceived need for setting mandatory controls led to the adoption of the Rotterdam Convention as a legally binding instrument on the Prior Informed Consent procedure (**"PIC"**).[222] The Convention is essentially an information-sharing agreement, enabling governments to make informed decisions on the import of chemicals and pesticides.[223] The Convention entered into force on 24 February 2004 and there are to date 144 Parties to the Convention.

The stated objective of the Rotterdam Convention is the promotion of shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm, and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export, and by disseminating these decisions to Parties.[224]

ii. Obligations of Parties

Chemicals and formulations covered under Convention

The Rotterdam Convention applies to banned or severely restricted chemicals, and severely hazardous pesticide formulations.[225] A chemical is classified as banned or severely restricted if they have been banned or severely restricted by a final domestic regulatory action of a Party.[226] Severely hazardous chemicals are however distinguished from banned chemicals in that they remain allowed by a Party for limited specific uses.[227] Severely hazardous pesticide formulations are

[220] UNEP (2011). Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade: Text and Annexes. p. 1.
[221] Ibid.
[222] Ibid.
[223] A. Cosbey, S. Aguilar, M. Ashton & S. Ponte. (2010). Environmental Goods and Services Negotiations at the WTO: Lessons from multilateral environmental agreements and ecolabels for breaking the impasse. International Institute for Sustainable Development. p. 22.
[224] Article 1, Rotterdam Convention.
[225] Article 3(1), Rotterdam Convention.
[226] Article 2(b), (c) and (e), Rotterdam Convention.
[227] Article 2(c), Rotterdam Convention.

chemicals formulated for pesticide use which produce severe health or environmental effects.[228]

The Rotterdam Convention does not apply to narcotic drugs and psychotropic substances, radioactive materials, wastes, chemical weapons, pharmaceuticals, chemicals used as food additives, food, and chemicals in quantities not likely to affect human health or the environment that are imported for research purposes or by an individual for personal use.[229]

Procedure for subjecting a chemical to PIC procedure

Banned or severely restricted chemicals are listed in Annex III of the Rotterdam Convention and are made subject to the PIC procedure prescribed in the Convention. The Rotterdam Convention also establishes a Conference of the Parties and its subsidiary body, the Chemical Review Committee. The Conference of the Parties, which is to meet at regular intervals, renders the decision to list a chemical in Annex III, acting on a recommendation for listing and a draft decision guidance document prepared by the Chemical Review Committee.[230]

The listing of a chemical under Annex III is initiated by the adoption by a Party of a final regulatory action that bans or severely restricts the use of a chemical. In the case of banned or severely restricted chemicals, Parties are required to notify the Secretariat of the Convention of such final regulatory action no later than 90 days from the time such action is taken.[231] When the Secretariat has received at least one notification from each of two Prior Informed Consent regions[232] regarding a particular chemical, and after it has been verified that the notifications contain all the information required in Annex I of the Convention, the notifications are forwarded to the Chemical Review Committee.[233] The Chemical Review Committee is empowered to recommend to the Conference of the Parties whether the chemical should be made subject to the PIC procedure and listed in Annex III.[234] The criteria used by the Chemical Review Committee are science-based and related to the objectives of the Convention.[235] For each chemical that the Chemical Review Committee recommends for listing in Annex III, it prepares a draft decision guidance document.

A similar procedure obtains in the case of severely hazardous pesticide formulations, which may be listed under Annex III upon a proposal submitted to the Secretariat by any Party that is a developing country or a country with an

[228] Article 2(d), Rotterdam Convention.
[229] Article 3(2), Rotterdam Convention.
[230] Article 7, Rotterdam Convention.
[231] Article 5(1), Rotterdam Convention.
[232] There are currently 7 Prior Informed Consent regions, as decided upon by the Conference of the Parties to the Rotterdam Convention. The list of countries which comprise each of the regions is found at http://www.pic.int/Countries/PICRegions/tabid/1070/language/en-US/Default.aspx
[233] Article 5(5), Rotterdam Convention.
[234] Article 5(6), Rotterdam Convention.
[235] A. Cosbey, S. Aguilar, M. Ashton & S. Ponte, supra note 106, at 4.

economy in transition that is experiencing problems caused by such formulation.[236]

Response to Listing Under Annex III

Once a chemical is listed in Annex III, Parties are obliged to submit a response (**"Response"**) to the Secretariat concerning the future import of the chemical concerned[237] and in turn, the Secretariat must inform all Parties of the Responses it has received.[238] A Party, through the Response, may either allow or prohibit the importation of the chemical concerned, or to submit a qualified consent subject to specified conditions.[239] The Response may also consist of an interim response, as defined under Article 10(4)(b) of the Convention. Each Party is required to make its Responses available to those concerned within its jurisdiction, in accordance with its own legislative or administrative measures.[240]

Parties are required to take appropriate legislative or administrative measures to ensure that exporters within its jurisdiction comply with the decisions in each Response no later than 6 months from the date the Secretariat informs the Parties of such Response.[241] Each Party is also required to provide further information, if requested, to importing Parties in order to help the latter decide on the Response required and on how to safely manage those chemicals if imported.[242]

Export ban on Annex III chemicals

The Rotterdam Convention generally requires that a chemical listed in Annex III is not exported by a Party to any Party that has failed to transmit the Response, or has transmitted an interim response that does not contain an interim decision.[243] Exceptions are made if (a) at the time of import, the chemical is registered as a chemical in the importing Party; (b) there is existing evidence that the chemical has previously been used in, or imported into, the importing Party and in relation to which no regulatory action to prohibit its use has been taken; or (c) explicit consent to the import has been sought and received by the exporter through a designated national authority of the importing Party.

Export notification for certain non-Annex III chemicals

The Convention imposes a notification requirement covering the export of chemicals which may have been banned or severely restricted by an exporting Party but which have not yet been included in Annex III. When such a chemical that is banned or severely restricted by a Party is exported from its territory, the

[236] Article 6(1), Rotterdam Convention.
[237] Article 10(2), Rotterdam Convention.
[238] Article 10(10), Rotterdam Convention.
[239] Article 10(4), Rotterdam Convention.
[240] Article 10(8), Rotterdam Convention.
[241] Article 11(1)(b), Rotterdam Convention.
[242] Article 11(1)(c), Rotterdam Convention.
[243] Article 11(2), Rotterdam Convention.

exporting Party is required to provide an export notification to the importing Party, containing such information set forth in Annex V of the Convention.[244] Such information includes the name of the chemical, a summary of the information on the chemical that had been provided to the Secretariat, information on precautionary measures to reduce exposure to and emission of the chemical, and the name and address of the importer.[245] The requirement to notify before export may be waived by the designated national authority of the importing Party.[246] Once the chemical has been listed in Annex III, the obligation to provide an export notification ceases.[247] The export notification requirement also ceases once the importing Party has provided a Response for the chemical to the Secretariat in accordance with Article 10, or if the Secretariat has already distributed the Response to the Parties in accordance with the same Article.[248]

Effect of import ban on Annex III chemicals

The PIC procedure allows a Party to make an informed decision on whether or not to ban the importation of a chemical listed in Annex III. If a Party decides not to allow the importation of a chemical or to qualify its consent to import under specific conditions, it is obliged to simultaneously prohibit or make subject to the same conditions (1) the import of the chemical from any source and (2) the domestic production of the chemical for domestic use.[249]

Labeling requirement

Article 13(2) of the Convention states that each Party shall require that chemicals listed in Annex III, and chemicals banned or severely restricted in its territory, are subject to labeling requirements when exported, to ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards. Each Party may also require that chemicals subject to environmental or health labeling requirements in its territory are, when exported, subject to labeling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.[250] The information on the label must be given in one or more of the official languages of the importing Party.[251]

Information exchange and technical assistance

Parties are required to promote the exchange of scientific, technical, economic and legal information concerning the covered chemicals, including toxicological

[244] Article 12(1), Rotterdam Convention.
[245] Annex V, Rotterdam Convention.
[246] Article 12(2), Rotterdam Convention.
[247] Article 12(5), Rotterdam Convention.
[248] Article 12(5), Rotterdam Convention.
[249] Article 10(9), Rotterdam Convention
[250] Article 13(3), Rotterdam Convention.
[251] Article 13(5), Rotterdam Convention.

and safety information.[252] Parties are to cooperate in promoting technical assistance for the development of the infrastructure and the capacity necessary to manage chemicals to enable implementation of the Rotterdam Convention.[253]

Compliance mechanisms

The Rotterdam Convention requires the Parties to develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention, and for treatment of Parties found to be in non-compliance. [254]

g. Stockholm Convention on Persistent Organic Pollutants (POPs)

Ratified by the Philippines on 27 February 2004
Ratified by the European Community on 23 May 2001[255]

i. General Description and Objectives

The Stockholm Convention on Persistent Organic Pollutants ("**Stockholm Convention**") seeks to eliminate or reduce the production and use of persistent organic pollutants ("**POPs**"). The Convention recognizes that POPs possess toxic properties, resist degradation, bioaccumulate, and are transported across international boundaries and deposited far from their place of release, hence the need for their regulation.[256] The Convention entered into force on 17 May 2004 and currently has 173 Parties.

The stated objective of the Stockholm Convention is to protect human health and the environment from persistent organic pollutants.[257] Such objective takes into account Principle 15 of the 1992 Rio Declaration on Environment and Development, which urges States to widely apply a precautionary or preemptive approach in order to protect the environment. [258]

ii. Obligations of the Parties

The Stockholm Convention classifies POPs into three categories. The POPs listed in Annex A ("**Annex A POPs**") are targeted for elimination. The POPs in Annex B ("**Annex B POPs**") are singled out for restriction, while the POPs in Annex C ("**Annex C POPs**") are to be minimized.[259] Any Party may submit a proposal for listing a chemical under any of the Annexes, which proposal will be examined by

[252] Article 14, Rotterdam Convention.
[253] Article 16, Rotterdam Convention.
[254] Article 17, Rotterdam Convention.
[255] The European Union itself is not yet a signatory to the Stockholm Convention. However, most member-states of the European Union have ratified the Convention. In addition, the European Union has enacted legislation for the purpose of implementing the provisions of the Stockholm Convention. See http://ec.europa.eu/environment/pops/pdf/leaflet_pop.pdf.
[256] Paragraph 1, Preamble, Stockholm Convention.
[257] Article 1, Stockholm Convention.
[258] Article 1, Stockholm Convention
[259] Article 3, Stockholm Convention.

a Persistent Organic Pollutants Review Committee ("**Committee**").[260] It is the Committee that recommends to the Conference of the Parties whether the proposed chemical should be listed in any of the Annexes.

The Stockholm Convention requires each Party to prohibit and/or take legal and administrative measures necessary to eliminate the production and use, as well as the import and export of Annex A POPs.[261] Each Party is to also restrict its production and use of Annex B POP.[262] These restrictions however do not apply to quantities of a chemical to be used for laboratory-scale research or as a reference standard.[263] Meanwhile, for Annex C POPs, each Party is to develop an action plan designed to identify, characterize and address its release, promote the application of measures than can achieve a realistic level of release reduction or source elimination, and promote development or require the use of substitute or modified materials, products and processes to prevent their formation and release.[264]

Each Party must develop a plan for the implementation of its obligations under the Stockholm Convention ("**Implementation Plan")**, which plan must be submitted to the Conference of the Parties within 2 years from the time the Convention enters into force for each Party.[265]

Specific exemptions

The Stockholm Convention permits the limited use by a Party of any of the POPs listed in Annexes A or B for as long as such use falls under any of the "specific exemptions" enumerated in such Annexes. The specific exemptions, which relate to a specific limited use of certain POPs, such as for agricultural operations or as a termiticide, may be availed of by a Party after it notifies in writing the Secretariat of the Convention of its intention to avail of a listed special exemption for a particular POP.[266] The Secretariat shall maintain a list, known as the Register, which identifies the Parties who have availed of specific exemptions.[267]

All specific exemptions for any POP shall expire five years after such POP is included in the Annexes of the Convention.[268] The Conference of the Parties may extend the expiry date of a specific exemption for a period of five years, upon request of a concerned Party, and taking into account the special circumstances of developing country Parties and Parties with economies in transition.[269]

Management of Stockpiles and Wastes

[260] Article 8(2), Stockholm Convention.
[261] Article 3(1), Stockholm Convention.
[262] Article 3(1)(ii), Stockholm Convention.
[263] Article 3(5), Stockholm Convention.
[264] Article 5(1), Stockholm Convention.
[265] Article 7, Stockholm Convention.
[266] Article 4(3), Stockholm Convention.
[267] Article 4(1) and (2), Stockholm Convention.
[268] Article 4(4), Stockholm Convention.
[269] Article 4(7), Stockholm Convention.

The Stockholm Convention seeks to ensure that stockpiles containing chemicals listed in Annexes A or B ("**Stockpiles"**), as well as wastes containing chemicals listed in Annexes A, B, or C ("**Wastes**"), are managed in a manner protective of human health and the environment.[270] Stockpiles of Annex A or B chemicals, as soon as they are no longer allowed to be used according to any specific exemption or acceptable purpose specified in Annex A or B, are to be deemed as Wastes.[271] Wastes are to be handled, collected, transported and stored in an environmentally sound manner, and disposed of in such a way that the POP content is destroyed or irreversibly transformed.[272]

Pesticides or industrial chemicals

Annex D of the Stockholm Convention prescribes a screening criteria for chemicals that are regulated under the Convention. The same criteria is to be taken into consideration by a Party when it assesses domestic regulatory action with respect to pesticides or industrial chemicals. [273]

Non-compliance

The Stockholm Convention mandates the Conference of the Parties to develop and approve procedures and institutional mechanism for determining non-compliance with the Convention and for the treatment of Parties found to be in non-compliance.[274]

ii. Trade-Related Aspects

Limits on export/import of Annex A or B POPs

The importation by a Party of Annex A or Annex B POPs is authorized only for the purpose of environmentally sound disposal, or for a use or purpose which is permitted for that importing Party under Annex A.[275]

The export of Annex A or Annex B POPs is only authorized also for environmentally sound disposal, or to a Party which is permitted to use that chemical under Annex A or B, or to a non-Party which has provided an annual certification to the exporting Party.[276] The certification issued by a non-Party should state that the importing State is committed to protect human health and the environment by taking necessary measures to minimize and prevent releases, and

[270] Article 6(1), Stockholm Convention.
[271] Article 6(1)(c), Stockholm Convention.
[272] Article 6(1)(c) & (d), Stockholm Convention.
[273] Article 3(3) & (4), Stockholm Convention.
[274] Article 17, Stockholm Convention.
[275] Article 3(2)(a), Stockholm Convention.
[276] Article 3(2)(b), Stockholm Convention.

to undertake measures to reduce or eliminate releases from stockpiles and wastes as intended by the Stockholm Convention.[277]

Assistance to developing country Parties

Developed country Parties must establish arrangements for providing financial resources and technical assistance and promoting the transfer of technology to developing country Parties and Parties with economies in transition relating to the implementation of the Stockholm Convention.[278] The Stockholm Convention recognizes that the extent to which developing country Parties can implement their commitments under the Convention depends on the effective implementation by developed country Parties of their commitments relating to financial resources, technical assistance and technology transfer.[279]

h. Basel Convention on the Control of Transboundary Movement of Hazardous Waste and Their Disposal

Ratified by the Philippines on 21 October 1993
Ratified by the European Union on 2 July 1994

i. General Description and Objectives

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal ("**Basel Convention**") seeks to limit the transboundary movement of hazardous and other wastes by strict controls, considering the adverse effects that may result from the generation and management of such wastes.[280] It declares that transboundary movements of such wastes should be permitted only when conducted under conditions that do not endanger human health and the environment, and under conditions provided under the Basel Convention.[281] The Basel Convention entered into force on 5 May 1992, and it currently has 175 Parties to the Convention.

ii. General Obligations of Parties-States

The Basel Convention defines "wastes" as substances or objects which are disposed of are intended to be disposed of or are required to be disposed of by provisions of national law.[282] The Basel Convention places special focus on hazardous wastes ("**Hazardous Wastes**"). Annex I of the Convention identifies several categories of wastes to be controlled, while Annex III of the Convention provides a list of hazardous characteristics pertaining to dangers to human health and the environment. All wastes belonging to any category listed under Annex I

[277] Article 3(2)(b)(iii), Stockholm Convention.
[278] Article 12(4), Stockholm Convention.
[279] Article 13(4), Stockholm Convention.
[280] Paragraph 24, Preamble, Basel Convention.
[281] Id.
[282] Article 2(1), Basel Convention.

are deemed as Hazardous Wastes, unless they do not possess any of the characteristics contained in Annex III.[283] Moreover, wastes that are not covered under Annex I but which are nonetheless considered hazardous wastes by the domestic legislation of the Party of export, import or transit, are also deemed as Hazardous Wastes.[284] Radioactive wastes are excluded from the scope of the Basel Convention as they are subject to other international control systems.[285]

Annex II of the Basel Convention identifies categories of wastes requiring special consideration and are considered by the Convention as other wastes ("**Other Wastes**").

The Convention requires each Party to take appropriate measures to ensure that (1) the generation of Hazardous Wastes and Other Wastes (collectively, "**Wastes**") within its national jurisdiction is reduced to a minimum; (2) adequate disposal facilities for the environmentally sound management of Wastes are available; and (3) persons involved in the management of Wastes take the necessary steps to prevent pollution arising from such management.[286]

Regulation of transboundary movements

The Convention establishes strict guidelines for the transboundary movements of Wastes ("**Transboundary Movement**"). Parties are required to take appropriate measures to ensure that Transboundary Movement is only allowed if (a) the exporting Party does not have the technical capacity and necessary facilities or suitable disposal sites in order to dispose of Wastes in an environmentally sound and efficient manner; (b) the Wastes in question are required as raw material for recycling or recovery industries; and (c) Transboundary Movement is in accordance with other criteria to be decided by the Parties.[287]

The Basel Convention prescribes a specific procedure to be observed by the Parties in the event of any Transboundary Movements of Wastes. The procedure requires the prior informed consent among the States concerned - namely, the state of export, the state of import and the state of transit[288] - prior to the commencement of the Transboundary Movement.

Exchange of information

The Basel Convention allows for the exchange of information among parties through the Secretariat. In particular, Parties are required to provide information regarding changes in their national definition of Hazardous Wastes, decisions

[283] Article 1(1)(a), Basel Convention.
[284] Article 1(1)(b), Basel Convention. Under Article 3, a Party is to inform the Secretariat of the Convention of other wastes other than those listed in the Annexes that are considered as hazardous wastes under its national legislation.
[285] Article 1(3), Basel Convention.
[286] Article 4(2)(a), (b) and (c), Basel Convention.
[287] Article 4(9), Basel Convention.
[288] This refers to the state through which a movement of Wastes is planned or takes place, but which is not the state of export or the state of import. See Article 2(1), Basel Convention.

made by a Party relating to the import of Wastes for disposal within the area under their national jurisdiction, and decisions taken by them to limit the export of Wastes.[289] Parties are also obliged to submit to the Secretariat an annual report detailing their own efforts in implementing the Basel Convention.[290]

When any Party learns of an accident occurring during the Transboundary Movement of Wastes which are likely to present risks to human health and the environment in other States, it is required to immediately inform the States concerned.[291]

Banned Exports and Imports

The Convention prohibits a Party from allowing Wastes to be exported to or imported from a non-Party.[292] Parties are also not to allow the export of Wastes to Parties, particularly developing countries, which have prohibited by their legislation all imports of Wastes, or if it has reason to believe that the Wastes in question will not be managed in an environmentally sound manner.[293] The export of Hazardous Wastes for disposal within the area 60° South latitude[294] is prohibited, whether or not such wastes are subject to Transboundary Movement.[295]

A Party shall ban the import of Wastes if it has reason to believe that the Wastes in question will not be managed in an environmentally sound manner.[296]

Under the Basel Convention, the illegal traffic in Wastes should be considered by the Parties as criminal under their domestic laws. [297]

Packaging and labeling

In every Transboundary Movement, the subject Wastes shall be packaged, labeled and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labeling and transport.[298] Such Wastes shall be accompanied by a movement document from the point at which Transboundary Movement commences up to the point of disposal.[299]

Non-compliance

[289] Article 13(2), Basel Convention.
[290] Article 13(3), Basel Convention.
[291] Article 13(1), Basel Convention.
[292] Article 4(5), Basel Convention.
[293] Article 4(2)(e), Basel Convention.
[294] 60° South latitude marks the beginning of the Southern Ocean, a large circumpolar body of water totally encircling the continent of Antarctica. Central Intelligence Agency. The CIA World Factbook 2012 (2012). Skyhorse Publishing: United States of America.
[295] Article 4(6), Basel Convention.
[296] Article 4(2)(g), Basel Convention.
[297] Article 4(3), Basel Convention.
[298] Article 4(7)(b), Basel Convention.
[299] Article 4(7)(c), Basel Convention.

Any Party may inform the Secretariat if another Party is in breach of its obligations under the Basel Convention.[300] Parties shall settle their disputes arising from non-compliance through peaceful means such as negotiations, or, if they fail to reach common agreement, may agree to submit the dispute to the International Court of Justice or through arbitration.[301]

Lateral Agreements

The Basel Convention allows Parties to enter into bilateral, multilateral or regional agreements governing transboundary movement of Hazardous Wastes as long as such agreements do not derogate from the environmentally sound management of Hazardous Wastes as prescribed under the Convention.[302]

i. Montreal Protocol on Substances that Deplete the Ozone Layer

Ratified by the Philippines on 17 July 1991
Ratified by the European Union on 16 December 1988

i. General Description and Objectives

The Montreal Protocol on Substances that Deplete the Ozone Layer (**"Montreal Protocol**") is an international agreement for the protection of the stratospheric ozone layer through the reduction and prevention of the production of substances that are responsible for the destruction of the ozone layer. The Protocol was adopted by the Conference of Plenipotentiaries on the Protocol on Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer ("**Vienna Convention**"), held in Montreal in September, 1987. There are currently 197 Parties to the Protocol.

The Montreal Protocol recognizes that world-wide emissions of certain substances can significantly deplete and modify the ozone layer in a manner likely to result in adverse effects on human health and the environment.[303] It establishes as a goal the protection of the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of the elimination of such substances.[304] At the same time, the special needs of developing countries are to be taken into account in the accomplishment of these objectives, with the recognition that such countries require additional financial resources and access to relevant technologies.[305]

ii. Party Obligations

[300] Article 19, Basel Convention.
[301] Articles 20(1) and (2), Basel Convention.
[302] Article 11(1), Basel Convention.
[303] Paragraph 3, Preamble, Montreal Protocol.
[304] Paragraph 7, Preamble, Montreal Protocol.
[305] Paragraph 8, Preamble, Montreal Protocol.

The Montreal Protocol identifies several categories of substances with ozone-depleting potential ("**Controlled Substances**"). These Controlled Substances, as identified in Article 2, are different types of Chlorofluorocarbons ("**CFCs"**),[306] Halons,[307] other fully-halogenated CFCs,[308] Carbon Tetrachloride,[309] Trichlorethane (methyl chloroform),[310] Hydrochlorofluorocarbons,[311] Hydrobromofluorocarbons,[312] Methyl Bromide,[313] and Bromochloromethane.[314] A specific identification of these Controlled Substances is contained in Annexes A and B to the Protocol.

Control measures

The Parties are required to enact measures for each Controlled Substance ("**Control Measures")** as prescribed under Article 2 of the Protocol. The Control Measures are in the form of specific limits in the level of production ("**Production**")[315] or consumption ("**Consumption**")[316] of Controlled Substances by each Party. For each Controlled Substance, the Parties are obliged to ensure that its calculated level of Consumption or Production does not exceed the levels specified under Article 2 of the Protocol. Defined compliance periods with predefined start and end dates are prescribed for each Controlled Substance ("**Control Period**"). For each Control Period for each Controlled Substance, the Protocol imposes specific limits to the level of Consumption or Production by Parties. Article 3 of the Montreal Protocol specifies the formula by which a Party is to determine its calculated levels of Production and Consumption.

For each Controlled Substance, the Montreal Protocol prescribes a target phase-out date by which each Party is to ensure that its calculated level of Production for that Controlled Substance does not exceed zero.[317]

Transfer of production and consumption

As an additional means for assuring compliance with their specified target levels of Production and Consumption of each Controlled Substance, the Montreal Protocol provides for a mechanism by which a Party may transfer portions of its allotted level of Production or Consumption to any other Party.

[306] Article 2A, Montreal Protocol.
[307] Article 2B, Montreal Protocol.
[308] Article 2C, Montreal Protocol.
[309] Article 2D, Montreal Protocol.
[310] Article 2E, Montreal Protocol.
[311] Article 2F, Montreal Protocol.
[312] Article 2G, Montreal Protocol.
[313] Article 2H, Montreal Protocol.
[314] Article 2I, Montreal Protocol.
[315] Production" is defined as the amount of Controlled Substance produced, minus the amount destroyed by technologies to be approved by the Parties, and minus the amount entirely used as feedstock in the manufacture of other chemicals. See Article 1(5), Montreal Protocol.
[316] "Consumption" is defined as "production plus imports minus exports of the Controlled Substance. See Article 1(6), Montreal Protocol.
[317] See Articles 2A(8), 2B(4), 2C(5), 2D(2), 2E(3), 2F(6), 2G, 2H(5), & 2I, Montreal Protocol.

The Montreal Protocol allows any Party to transfer to another Party any portion of its allotted level of Production for any Controlled Substance for one or more Control Periods,[318] for as long as the Parties' total combined calculated levels of Production of the Controlled Substance does not exceed the Production limits for the Controlled Substance as set out in Article 2 of the Protocol.[319] The concerned Parties must notify the Secretariat of the Vienna Convention ("**Secretariat**") regarding such transfer of Production.

A Party which has not opted to transfer any portion of its allotted level of Production of a Controlled Substance to another Party has the option to transfer to another Party any portion of its allotted level of Consumption of Hydrochlorofluorocarbons, subject to the conditions set forth in Article 2(5) of the Montreal Protocol.

Review and adjustments to Control Measures

At least every 4 years, the Parties must assess their Control Measures on the basis of available scientific, environmental, technical and economic information.[320] Based on such assessments, the Parties - by consensus or a decision of two-thirds of the majority - may decide to make adjustments to the list of Controlled Substances,[321]or to the prescribed levels of Production or Consumption of the Controlled Substances.[322]

Joint fulfillment of obligations respecting consumption

Parties which are members of a regional economic integration organization may agree that they shall jointly fulfill their obligations respecting Consumption, provided that their total combined calculated level of consumption does not exceed the levels required by Article 2 of the Montreal Protocol.[323] Such agreement will become operative only if all the member states of the organization concerned are Parties to the Protocol, and have notified the Secretariat of their manner of implementation.

iii. Trade-Related Aspects

Limits on trade with non-Parties

Article 4 of the Montreal Protocol imposes controls on trade of Controlled Substances between Parties and non-Parties to the Protocol. Each Party is required to ban the import from or export to non-Parties of particular Controlled

[318] With the exception of Hydrobromofluorocarbons. See Article 2(5), Montreal Protocol.
[319] Article 2(5), Montreal Protocol.
[320] Article 6, Montreal Protocol.
[321] Article 2(10), Montreal Protocol.
[322] Article 2(9), Montreal Protocol.
[323] Article 2(8), Montreal Protocol.

Substances as identified in Article 4 of the Protocol.[324] The Parties are likewise authorized to adopt a similar ban in the import from or export to non-Parties of particular products which contain Controlled Substances as identified in Article 4 of the Protocol.

Each Party must discourage the export to a non-Party of technology for producing and utilizing Controlled Substances.[325] Each Party should also refrain from providing new subsidies, aid, credits, guarantees or insurance programs for the export to a non-Party of products, equipments, plants or technology that would facilitate the production of Controlled Substances.[326]

Qualified export ban on controlled substance

In cases where a Party is unable to comply with its obligation to cease production of a Controlled Substance for domestic consumption despite the lapse of the phase-out date for such substance, that Party shall ban the export of used, recycled and reclaimed quantities of such Controlled Substance, other than for the purpose of destruction.[327]

Non-compliance

The Montreal Protocol directs the Parties to approve procedures and institutional mechanisms for determining non-compliance with the provisions of the Protocol and for the treatment of Parties found to be in non-compliance.[328]

Special situation of developing countries

The Montreal Protocol provides for special entitlements for any Party that is a developing country and whose annual calculated level of Consumption of Controlled Substances listed in Annex A is less than 0.3 kilograms per capita at any time between the date of entry into force of the Protocol until 1 January 1999 ("**Developing Country-Party**"). A Developing Country-Party is entitled to delay their compliance with the Control Measures for 10 years.[329] The Convention also prescribes additional considerations in the implementation of the Control Measures by a Developing Country-Party.

The Montreal Protocol directs Parties to establish a mechanism for the purpose of providing financial and technical cooperation, including the transfer of technologies, to Developing Country-Parties.[330] Such mechanism shall include a multilateral fund to be used by Developing Country-Parties to meet the costs of

[324] Article 4(1) & (2), Montreal Protocol.
[325] Article 4(5), Montreal Protocol. Excepting those Controlled Substances listed in Annex D to the Protocol.
[326] Article 4(6), Montreal Protocol. Excepting those Controlled Substances listed in Annex D to the Protocol.
[327] Article 4A, Montreal Protocol.
[328] Article 8, Montreal Protocol.
[329] Article 5(1), Montreal Protocol.
[330] Article 10(1), Montreal Protocol.

complying with their Control Measures ("**Multilateral Fund**").[331] The Multilateral Fund shall also finance clearing-house functions to assist Developing Country- Parties through country specific studies and other forms of technical cooperation, to identify their needs for cooperation and facilitate technical cooperation to meet these identified needs.[332] The Multilateral Fund shall be financed by contributions from Parties which are not Developing Country-Parties.[333]

[331] Article 10(3)(a), Montreal Protocol.
[332] Article 10(3)(b), Montreal Protocol.
[333] Article 10(6), Montreal Protocol.

PART II. REVIEW OF PHILIPPINE APPROACH TO ENVIRONMENT–RELATED TRADE MEASURES

A. Localization of Sustainable Development Principles

In the Philippines, the principles of sustainable development were concretized in the creation of a multi-stakeholder body in 1992 known as the Philippine Council for Sustainable Development (PCSD). The PCSD was created as a coordination and monitoring mechanism among government, civil society, and business/private groups to discuss strategies and policies to fulfill the commitments in UNCED and later in WSSD. It has four committees reflecting the four components of Agenda 21 namely: 1) Committee on Social and Economic Development (CSED); 2) Committee on the Conservation and Management of Resources for Development (CCMRD); 3) Committee for Strengthening the Role of Major Groups (CSRMG); and 4) Committee on Means of Implementation (CMI).

Four years after the PCSD's establishment, the Philippine Agenda 21 was released and was considered as the blueprint of sustainable development in the Philippines. The document was the localized version of the Rio Summit's Global Agenda 21 or simply known as the Agenda 21. It has three major components such as the Principles of unity, action agenda, and implementation strategies. Among the specific activities it espouses to address the SD issues in the country are as follows: 1) development of a comprehensive monitoring, evaluation and reporting system to assess the level of integration of PA 21 elements and guide all stakeholders to meaningfully participate in the process of operationalizing sustainable development; 2) the localization of the PA 21 which will mainstream sustainable development concerns into local planning and implementation of programs and projects; and 3) the translation of PA 21 into local dialects, as well as the formulation and implementation of a communication plan through improved information and communication systems and networking in order to hasten the people's acceptance and internalization of PA 21 principles. The document was later updated in 2004, to include issues on globalization, civil society needs, and integration of SD principles in all government departments.

B. Multilateral Environmental Agreements with Trade-Related Aspects to Which the Philippines and EU are Parties

The imminent negotiation of the Philippines with the European Union to enter into a free trade agreement (EU-FTA) entails a review of the past efforts of the country in implementing trade-related multilateral environmental agreements (MEAs). Among the areas that will be revisited include the institutional structure, compliance mechanism, enabling policies and laws, and the implications of that particular MEAs on trade. Below is a discussion of how the country is implementing some of the trade-related MEAs that we have entered into including some issues related to its implementation.

a. UN Convention on Biological Diversity (UNCBD) and the Cartagena Protocol to Biosafety

The UN Convention on Biological Diversity was established to promote conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from the use of genetic resources. Parties to the Convention are required to prepare national strategies, plan or programmes for the conservation and sustainable use of biological diversity. This includes in-situ and ex-situ conservation measures of species, especially those that require urgent conservation actions and offer the greatest potential for sustainable use. Parties are likewise expected to develop and provide economically and socially sound incentives, and educate the public on the importance of, and the measures required for, the conservation of biological diversity. The Philippines became a party to this convention last June 12, 1992 and ratified the convention into law last October 8, 1993. The Protected Areas and Wildlife Bureau (PAWB) of the DENR serves as its implementing agency in the country.

Among the national policies that are relevant to the implementation of the UNBCD in the country are: 1) Republic Act No. 9147, or the Wildlife Resources Conservation and Protection Act of 2001; 2) Republic Act No. 8371 or the Indigenous Peoples Rights Act (IPRA) of 1997; 3) Republic Act 7586 or the National Integrated Protected Areas System (NIPAS)) of 1992; 4) Executive Order 247 series of 1995 prescribing the guidelines and establishing a regulatory framework for the prospecting of biological and genetic resources in the country; and 5) Memorandum Order No. 289 issued last July 5, 1995, directing the integration of the Philippines' strategy for biological diversity conservation in the sectoral plans, programmes and projects of the national government agencies. Various national action plans were also prepared and the foremost of which is the National Biodiversity Strategy and Action Plan (1997), which is currently being updated by PAWB.

While the Convention has no specific trade-related provision, Article 15 of the convention text encourages parties to create conditions to protect their genetic resources through regulating the access of and sharing the benefits from research, utilization, or commercialization of their genetic resources (Smagadita, 2005). This concern is addressed in detailed in the Cartagena Protocol for Biosafety. The said Cartagena Protocol deals with the regulation of transboundary movement of any living modified organism (LMOs) resulting from modern biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity and on human health.

Parties to the Cartega protocol have to ensure that the development, handling, transport, use, transfer and release of any LMOs would not be detrimental to human health and to other biological diversity. The Philippines signed into the protocol on May 24, 2000 and ratified it last October 5, 2006 with DA[334], DOST[335], DOH[336] and DENR[337] as competent national authorities. The Philippine government created the National Biosafety Framework by virtue of EO514 issued last March 17, 2006 to provide an outline of the prescribed guidelines for

[334] DA – for biosafety decisions concerning plants, animals, fisheries and other aquatic resources derived from modern biotechnology;
[335] DOST – for biosafety decisions concerning research and development
336 DOH – for biosafety decisions concerning pharmaceuticals for humans that are not explicitly addressed by other relevant international agreements or organizations
[337] DENR – for biosafety decisions concerning regulated organisms for bioremediation, improvement of genetic resources that includes wildlife genetic resources, and modern biotechnology application with potential impact on the conservation and sustainable use of biodiversity

implementation of the Cartagena Protocol, and strengthened the National Committee on Biosafety of the Philippines. The DA Admin Order 8 series of 2002, on the other hand, provides the rules and regulations for the importation and release into the environment of plants and plant products derived from the use of modern biotechnology;

Likewise, parties to the Cartagena Protocol on Biosafety have to adopt the Advance Informed Agreement (AIA) as its regulatory mechanism. This mechanism basically requires an importing country to conduct a scientific assessment of all possible risk of introducing a living modified organism (LMO) in its territory before making a decision whether or not to accept the notification of the exporting country. It should be taken note however, that this measure sets the minimum requirements for regulating a biosafety. A country may pass a more stringent rules and procedures other than what is stipulated in the protocol. An AIA is however not applicable to 1) transit countries; or 2) countries which will handle the LMO in a contained facility and will not be released in the external environment (Article 6 of convention text). These provisions do not restrain countries of transit or countries of import to exercise its rights from other international laws or to apply stricter regulations based from domestic policies. Decision of parties should likewise be published at their respective Biosafety Clearing House Mechanism (CHM) for information of other parties.

The Cartagena Protocol is also being implemented in the country through the Executive Order 247 (issued last 18 May 1995) which prescribes the guidelines and establishment of regulatory framework for prospecting biological and genetic resources. According to said EO, a research agreement with the government had to be made before any further study of our biological resources (also known as bioprospecting). There are two types of research agreements that are being sought to: the Academic Research Agreements (ARA) and the Commercial Research Agreement (CRA). The former is an agreement between the government and duly recognized Philippine universities and academic institutions, including local or international government entities that intend to conduct a bioprospecting activity purely for academic related purpose. The latter, on the other hand, is an agreement between the government and any individual or private entity, local or international that intends to conduct a bioprospecting activity either indirectly or directly for commercial purpose. Both agreements need to seek first a Prior Informed Consent (PIC) from local communities in the area and from the indigenous groups.

The implementation of EO 247 gained negative responses from commercial industries especially pharmaceutical industries (Smagadi, 2005). Many perceived the process as long and tedious and an impediment rather than a tool to advance the biological research in the country. Thus, the government through DENR-PAWB issued the Joint DENR-DA-DILG-PCSD Administrative Order No.1 (2005) to streamline, standardize and simplify the IRR of EO247. First, the JAO exempts all scientific researches with no commercial interests to secure an ARA - unless the applicant will use the result of his/her research for commercial purposes. Second, the revised guideline simplifies the procedures for acquiring a PIC from a local community or FPIC from indigenous group, streamlining the process for 30 days which is almost half of the waiting period from EO347. And third, the revised guideline encourages local research through reducing the bioprospecting fee for local researches and participation of a local collaborator for any foreign biosprospecting activity.

Despite the efforts for streamlining, Smagadi (2005, p. 69) remarked that "the Philippines regulatory framework sets higher performance standards for industry and research institutions. This means that the Philippines are at a competitive disadvantage vis-à-vis neighbouring countries because users will prefer to invest in less 'complicated' countries with biologically similar environments". This could imply that the command and control policy approach need to be strengthened and complemented by other instruments such as incentives, IEC, and voluntary regulations.

b. The United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol

The main aim of the UNFCCC is to stabilize greenhouse gases in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Parties to the UNFCC are categorized as Annex I, Annex II and Non-Annex parties. Annex I parties are those industrialized countries that were members of the OECD (Organisation for Economic Co-operation and Development) in 1992, including countries with economies in transition (the EIT Parties). Annex II parties on the other hand, consist of the OECD members of Annex I, but not the EIT Parties. Non-annex I parties for which the Philippines is included, are mostly developing countries which are recognized by the Convention as being especially vulnerable to the adverse impacts of climate change, including countries with low-lying coastal areas and those prone to desertification and drought. The Philippines became a signatory to the Protocol last June 1992 and ratified it last August 2, 1994.

The government has created the Climate Change Commission (CCC) by virtue of the Republic Act 9729 consisting of different government agencies aimed at addressing climate change in an integrated manner and holistic manner. This has effectively replaced the Interagency Committee on Climate Change under the DENR-EMB as created by Administrative Order 220 series of 1991. Among the general obligation of the Philippines as a Non-annex party are as follows: (1) submit national communications that contain inventories of GHG sources and sinks and a description of steps to implement the Convention based upon differentiate commitments; (2) promote development and transfer of technologies and practices; (3) cooperate in sustainable management, conservation and enhancement of GHG sinks and reservoirs (i.e. forests and oceans); and (4) take climate change consideration into account in social, economic, and environmental policies. To meet these obligations and enable the country to access financial assistance from international financing mechanisms, the following documents were prepared: (1) National Action Plan on Climate Change 1997; (2) National framework Strategy on Climate Change 2010-2022; (3) Strategy on Climate Change Adaptation 2010-2022; and (4) Philippine National REDD+ Strategy 2010-2020. These documents also outlined the general priorities and strategies of the country to address the challenges of mitigation and adaptation.

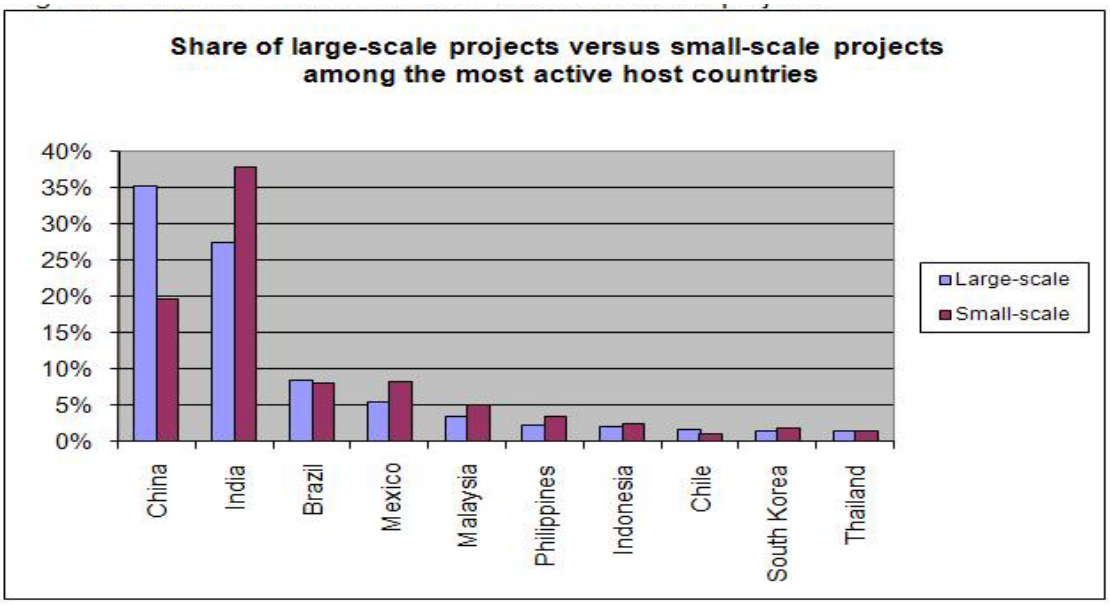
The difference of the Kyoto Protocol with the UNFCCC is that "while the Convention **encouraged** industrialised countries to stabilize GHG emissions, the Protocol **commits** them to do so" (UNFCCC, 2011)). The Kyoto Protocol sets the target for Annex 1 countries to reduce their overall emissions of greenhouse gasses by at least 5.2% below 1990 levels

within the commitment period of 2008-2012. The Protocol allows Parties to choose among the six major greenhouse gases to be prioritized in their national emissions reduction strategy that include: (1) carbon dioxide (CO2), (2) methane (CH4), (3) nitrous oxide (N_2O), (4) hydroflourocarbons (HFCs), (5) Perflourocarbons (PFCs), and (6) sulphur hexafluoride (SF_6).

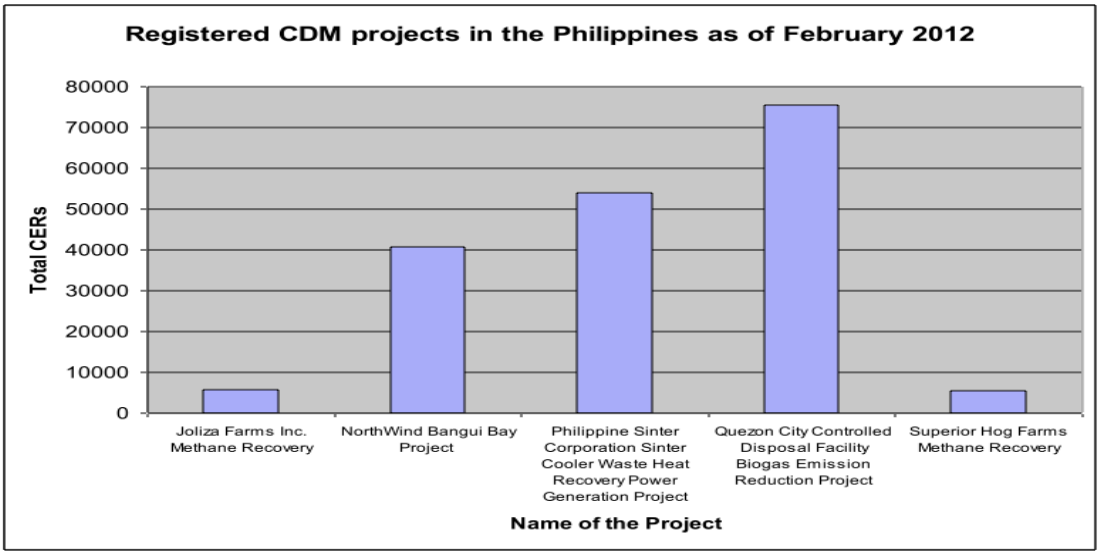
While the Philippines is not obliged to reduce its greenhouse gases as a Non-Annex party (i.e. developing states), it is nonetheless encourage to participate under the principle of "common but differentiated responsibilities". The Philippines became a signatory to the Kyoto Protocol last April 15, 1998 and ratified it last November 30, 2003. As a party the Philippine government is obliged to: (1) improve the quality of its local emission factors, activity data and/or models that reflect the country's socio-economic conditions; (2) implement and facilitate opportunities for climate change mitigation and adaptation; (3) support dissemination and promotion of appropriate technology transfer or best practices on climate change; (4) cooperate in scientific research including capacity building programmes and activities; and (5) submit national communication report of all climate change initiatives and greenhouse gas inventory to the UNFCCC secretariat. The focal point agency (FPA) for the Kyoto Protocol in the Philippines is the DENR-EMB.

There are three cooperative mechanisms that assist Annex 1 parties to meet their targets under the Kyoto Protocol. These are: (1) International Emission Trading permits; (2) Joint Implementation; and (3) Clean Development Mechanism (CDM). The emissions trading scheme allows an Annex 1 party to transfer or trade parts of their assigned amount unit (AAU) to another Annex 1 party/country. The Joint Implementation, on the other hand, is a project based mechanism that allows Annex 1 party to gain emission reduction units (ERU) by investing in projects that reduce emission or enhance sequestration in another Annex 1 country. And lastly, the CDM which is also regarded as 'flexibility mechanism', allows Annex 1 countries to finance sustainable development projects in developing countries that would enable them to generate "certified emission reductions" (CERs) that could be valued at for trade. These three mechanisms have pushed the global platform for the international carbon trading.

As one of the host countries of CDM, the Philippine government issued the Executive Order 320 series of 2004 designating the DENR as the country's Designated National Authority (DNA) for the CDM, with the DOE as lead agency in evaluating CDM-energy related projects. Unlike India and China, most CDM projects in the Philippines are small scales (see Figure 1) (Carbon Finance Online, 2012). As of February 2012, there are 25 CDM projects in the Philippines - 19 are for validation, 1 with pending letter of approval from the CDM secretariat, and 5 are registered with issued Certified Emission Reductions (CERs) (see Figure 2) (UNFCCC, 2012). Most of these projects are methane recovery from biogas systems and electricity generation. Details of the guidelines and criteria for national approval of proposed projects for CDM projects in the Philippines are stipulated in DENR AO 2005-17.



(Source: Carbon finance online. (2012). Why CDM projects are small? Accessed from http://www.carbonfinanceonline.com/index.cfm?section=cdmjianalysis&action=view&id=11262 last May 25, 2012).



The current environmental policies and institutional structure in the Philippines has created a huge potential for the country to host CDM projects. National policies on air[338], water[339], solid waste management[340], biofuels[341], renewable energy[342] including the Environmental Impact Assessment (EIA) system[343] have created favourable conditions for Annex 1 countries to meet their emission reduction targets in the country. Other implementing partner

[338] Clean Air Act of 1999
[339] Philippine Clean Water Act of 2004
[340] Solid Waste Management Act of 2000
[341] Biofuels Act of 2006
[342] Renewable Energy Act of 2008
[343] Presidential Decree 1586 of 1978

such as the DOE had already initiated to establish and publish data on National Grid Emission Factor (NGEF) as a baseline reference to evaluate CDM-energy related projects (DOE Order 2011-08-009). Concomitant to this end are the strong Private-Public-Partnership (PPP) in the country and the wide network of NGO participation that are all pursuing for sustainable development projects in the country.

According to IISD-UNEP (undated, p. 17) "although neither the UNFCCC nor the Kyoto Protocol includes trade-related provisions, it is highly likely that the parties, in fulfilling their Kyoto obligations, will adopt domestic policies and measures with significant trade implications". Article 2 of the Kyoto Protocol, for example, provides parties with a list of non-binding and non-trade measures to help meet their targets that includes: (1) promotion of energy efficiency; (2) promotion of sinks and reservoirs of GHG as well as of sustainable forestry; (3) research and other activities on renewable forms of energy; (4) carbon dioxide sequestration and environmentally sound technologies; (5) 'green' liberalisation and usage of market instruments; (6) furthering of reforms promoting limitation/reduction of GHG-emissions; (7) measures aiming for a transport sector that limits/reduces GHG-emissions; and (8) measures to address methane emissions in waste management and in the energy sector. However, national responses to these measures may affect or influence the trading system as triggered by the possible adoption of the following policies: (1) labelling on the energy efficiency of products; (2) removal of energy subsidies directed to fossil fuels; (3) subsidies to firms that invest in renewable energy production; and (4) market instruments, like the carbon tax on carbon dioxide emissions (National Board on Trade, 2004).

In the Philippines, the energy efficiency labelling system is already being introduced by the Department of Energy (DOE) in electrical appliances including in several energy efficient government offices. The DOE is likewise promoting energy efficient lightings through the use of compact fluorescent lightings (CFLs). CFLs had been proven to be effective in reducing the cost of electricity. These current efforts have started as UNDP-GEF projects and will thus require understanding and immense political will to make them sustainable.

Another policy response is the passage of the Biofuels Act in 2006 which is a response to the pressing issue of air pollution from fossil fuels. The said act requires oil companies in the country to blend a minimum of 5% bioethanol fuel in their total volume of gasoline fuel per annum. This will be increased to 10% in the years to come. This looks promising for the bioethanol industries in the country. However, since the demand for bioethanol far exceeds the supply in the country, and also considering the economies of scale, locally produced bioethanols are much more expensive than those imported from other countries such as China. The San Carlos Bioenergy, Inc., which is the first of its kind in country and in Southeast Asia, is already experiencing the implication of these policy gaps.

Another current trade-related discourse in implementing the Kyoto Protocol in the country is the implication of the feed-in tariff (FiT) system under the Renewable Energy Act of 2006. The said system provides lucrative incentives for RE developers to develop and invest on our renewable energy resources particularly wind, solar, ocean, run-of-river hydropower and biomass power plants. However, sectors are now discussing the implications of the feed-in-tariff system especially to consumers. Some groups feared that the cost of these RE

investments including the FiT would be partly shouldered by the consumers. It is also noteworthy to consider that foreign technologies to harness these energies are still quite expensive.

While, the government provides good policy incentive to boost investments on RE and alternative fuels that contributes to global reduction of greenhouse gas emissions, it should likewise consider supporting local technologies and researches that would veer the country away from depending too much on foreign investments. With the current experience from Malampaya natural gas station, the government should realize the current trade offs between quantitative growth and qualitative progress. Free trade agreements without any regard for local technologies, local producers, and local capacities would only provide physical growth in terms of GDP and GNP but will not emancipate the Filipinos from the current quality of life.

c. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

CITES is an international agreement among countries that aims to ensure that the existing international trade of endangered species flora and fauna will not threaten their survival. CITES provides a regulatory framework of permit and certificate-based system that allows responsible and controlled trade of wildlife species among member countries. This was a response to the growing cases of illegal trading of species that has become one of the major factors for species loss and extinction.

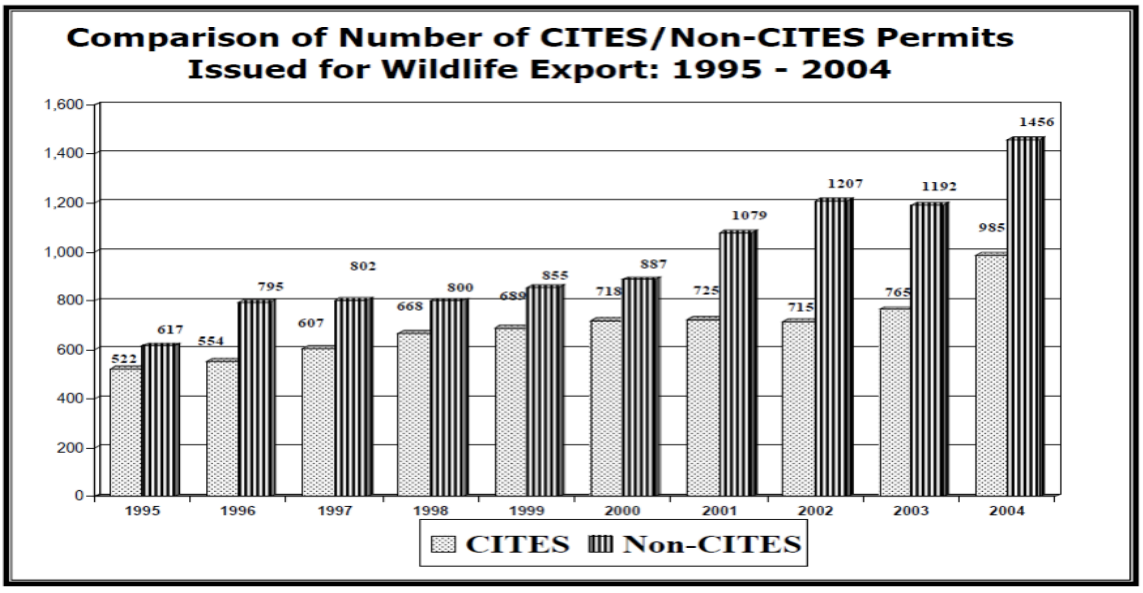
The regulatory framework of this convention is anchored on the species listing of CITIES on flora and fauna categorized into 3 types. Appendix 1 includes all species threatened with extinction, which may or may not be affected by trade, but for which trade is allowed only in exceptional conditions. This includes mammals such as Crocodylus mindorensis, Acerodon jubatus, and Bubalus mindorensis. Appendix 2 includes all species which are not necessarily threatened with extinction but may become so unless strict regulations on trade are imposed. Examples are Tarsius syrichta, Gallicolumba luzonica, and Aceros waldeni. While Appendix III includes all species that are being protected in one country or by member party but requires assistance of other countries or member parties to prevent or impose similar trade restrictions. Examples are Cerberus rynchops, Corallium elatius, and Corallium konjoi. These listings may be amended to cater the changing status and protection requirements of certain species. The convention states that Appendices I and II may be amended if two-thirds of the Parties are present and have voted during a meeting of the COP, while Appendix III species "may be submitted and withdrawn by Parties unilaterally at any time" (UNEP, 2007, p.12).

The Philippines became a signatory to the CITES convention last July 1995 and ratified it into law last August 18, 1981. The main implementing policy instrument to implement the Convention is the Wildlife Act 2001 or the RA9147. The Protected Areas and Wildlife Bureau (PAWB) under the Department of Environment and Natural Resources (DENR) serve as the management authority for Terrestrial Species; the Bureau of Fisheries and Agricultural Resources (BFAR) under the Department of Agriculture (DA-BFAR) serve as

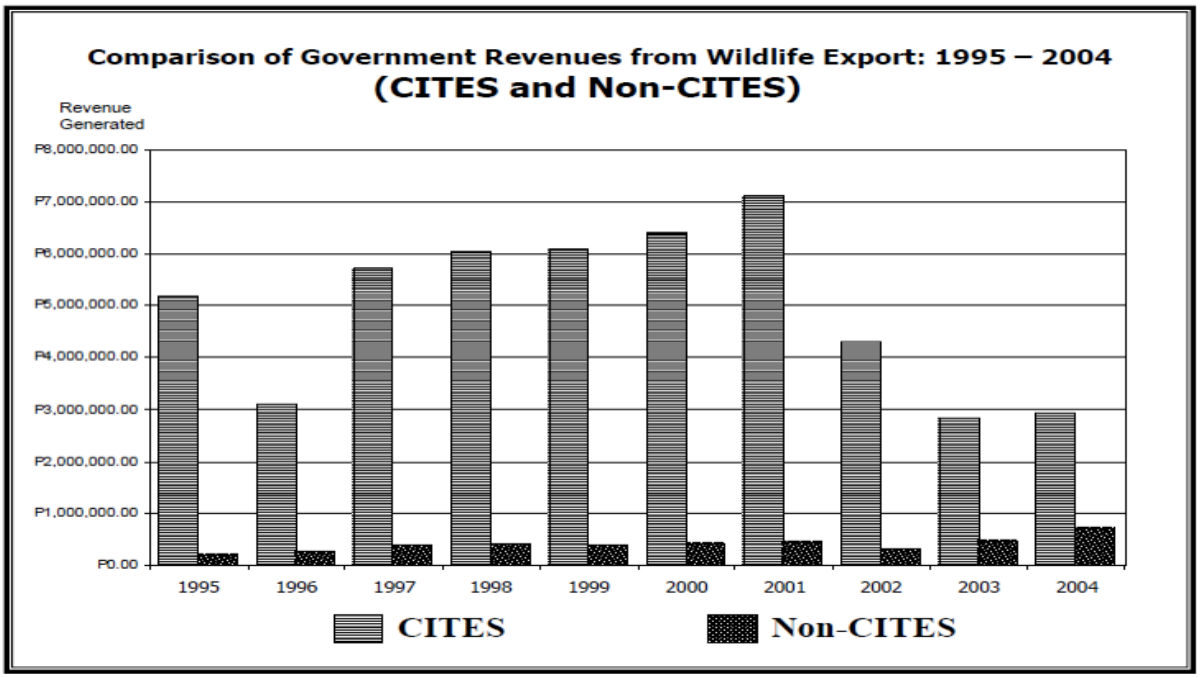
the management authority for the aquatic/marine species; and the Palawan Council for Sustainable Development (PCSD) serve as the management authority in Palawan.

As party to the convention, the Philippines is required to designate ports of entry and exit for presentation and clearance of specimens for export or import. The government has to ensure that the living specimens to be transported are properly taken cared of during transit, holding or shipment so as to minimize or avoid the risk of harming or injuring the health of the specimens. In cases, where a specimen or species was confiscated due to unlawful or unauthorized trade practices, the Management Authority of the member country has an option to surrender it to a rescue center or return the specimen to the State of origin at their expense.

The government as a member party also maintains records of trade related activities of species under Appendix I, Appendix II and Appendix III. This is being complied by the country under the Management Information System of the Planning department of PAWB. According to their 2004 data, there trend for permit issuance from 1995 to 2004 has been increasing (see Figure 1). In 2004, the income generated from CITES permits and non-CITES permit was Php3, 655, 699.51. Eighty percent (80%) of which is generated from CITES permits. In 2003, the revenue from CITES and non-CITES permits totalled to Php3, 323, 357.97. Eighty-six (86%) of this income was from CITIES. Indeed, the permitting / regulating system introduced by CITIES in the country has provided benefits not only in terms of protecting our species but also financially as it provides income to the government (DENR-PAWB, 2004). Figure below shows the trend of the number of permits issued for CITES and non-CITES species being legally transported to other countries:



(Source: DENR-PAWB, (2004). Statistics on Philippines Protected Areas and Wildlife Resources. Quezon City: Author)



(Source: PAWB\. (2004). Statistics on Philippines Protected Areas and Wildlife Resources. Quezon City: Author)

Commercial trade of species belonging to the list of Appendix I is prohibited except if the exporting and importing party has established that the trade of these species would not endanger their survival. Issuance of export permit to endangered species under Appendix I is allowed only if the following conditions are satisfied: a) the expert body (or Scientific Authority) of the exporting country has advised that the export will not be detrimental to the survival of the species; b) the Management Authority of the exporting country is satisfied that the species has been legally acquired; c) the Management Authority of the exporting country is satisfied that the method of shipment for the specimens will minimize risks of injury, damage to health, and cruel treatment; and d) the Management Authority of the exporting country is satisfied that an import permit has been granted for the specimen (DENR-FASPO, 2009).

The recipient country in turn, needs to seek an import permit for Appendix I species. The issuance of the import permit is granted upon satisfying the following conditions: a) the expert body (or Scientific Authority) of the country of import has advised that the import will be for purposes which will not be detrimental to the survival of species involved; b) the expert body (or Scientific Authority) of the country of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and c) the Management Authority of the country of import is satisfied that the specimen will not be used for primarily commercial purpose.

On the other hand, trading of species listed under Appendix II and III no longer requires an import permit but will both need an export permit following the above conditions with the exclusion of the first condition for Appendix III species. In addition, re-exporting of these

species is allowed as long as the exporting party has satisfied the conditions of the exporting permit. Exceptions to this stringent rules and regulations are as follows: 1) species under the custody of the Customs control; 2) specimen or species acquired before the present Convention; 3) specimen that are personal or household effects and/or are bred in captivity or artificially propagated; 4) herbarium specimens, or other preserved, dried or embedded museum specimens, and live plant material that are subject of non-commercial loan, donation or exchange between scientists of scientific institutions; and 5) specimens or species that are part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition subject to certain conditions. In view of this, DAO 2004-60 was issued requiring the registration of endemic and exotic species in possession of private individuals, rescue centers, pet shops and zoological gardens.

To ensure effective compliance monitoring, all permits and certificates should follow the standardized format as provided in the annex of Resolution Conf. 12.3 (Rev. COP14). At the minimum the permit or certificate must contain the full name and logo of the convention; an identifying stamp and address of the national Management Authority issuing the permit; details of the species or specimens being permitted; and the control number issued by the national Management Authority. To avoid exploitation of the permit system, the Management Authority has the right to limit the issuances of permits and certificates in a year.

Oliva (2007) remarked that the challenges that hinder the effective implementation of RA9147 in the country are due to lack of information, lack of facilities and lack of resources for enforcement. According to Oliva (2007), there is no comprehensive information materials that would guide enforcers on which particular species are banned for trading. He remarked that most Wildlife Enforcement Officers either from the DENR or from the LGUs lack the technical expertise to identify the wildlife species to be apprehended. There are also very few wildlife rescue centers around the country which leaves confiscated species in overstocking condition at PAWB's wildlife center. There is also very few wildlife traffic monitoring units and these are located in Davao, Zamboanga, Cebu and Subic airports with one wildlife monitoring unit at the sea port of Manila. With regard to resources there is no separate budget allocation in the General Appropriations Act (GAA) for wildlife protection, even protection or incentives for those civilians who report conspicuous trading of wildlife species. Similarly, there is no international enforcement mechanism to sanction member countries that are illegally trading species as listed in CITES.

d. The International Plant Protection Convention (IPPC)

The IPPC is an international agreement in 1952 that aims to protect cultivated and wild plants from pests either introduced or caused by a natural outbreak. Among the basic obligation of parties to this convention is the creation of the National Plant Protection Organization (NPPO) which would be responsible for the inspection of transferred plants or plant products moving in and out of a country, and disinfestation or disinfection of plant shipments to meet the phytosanitary requirements. The Philippines became a member to the IPPC last December 3, 1953 with the Bureau of Plant Industry (BPI) under the Department of Agriculture (DA) as the NPPO.

The IPPC convention text also provides for the establishment of the Commission on Phytosanitary Measures (CPM) as the governing body of the IPPC. Among its mandate is to develop and adopt international standards for phytosanitary measures. Parties to the convention are therefore required to take into account these international standards as adopted by the Commission. In the Philippines, this is being handled by the Bureau of Agriculture and Fisheries Product Standards (BAFDS), for agricultural crops and fisheries, and by the Pest Quarantine Services of the Bureau of the Plant Industries (BPI) for plants and plant products. These agencies are both under the jurisdiction of the DA.

Parties to the IPPO are also required to publish and transmit their phytosanitary requirements, restrictions or prohibitions which they have adopted under their own domestic law to any Party which they believe may be directly affected by such measures. The DA-BPI has an electronic database of all Philippine laws and related issuances pertaining to plant health at http://sps_issuances.da.gov.ph. Their department issuances are basically guided by the Presidential Decree No. 1433 which is known as the Plant Quarantine Decree of 1978. Some of these issuances are as follows:

- BPI Quarantine Admin Order No. 3 series of 2005 - this order amended the guidelines for regulating wood packaging material involved in the international trade (i.e. BPI Quarantine Administrative Order No. 1 series of 2004). This is in response to the International Standards for Phytosanitary Measures No. 15 (ISPM 15) developed by the IPPC to address the introduction and spread of pests and diseases from wood materials that is being transported from one country to another.
- BPI Quarantine Admin Order No. 1 series of 2005 – this order have amended the term "Permit to Import" term into to "Plant Quarantine Clearance" to reflect its real meaning.
- BPI Special Quarantine Order No. 2 series of 2005 - provides for measures or detailed guidelines to prevent the introduction and spread of Chlorotic Ringspot Virus of Oil palm to the Philippines
- BPI Quarantine Administrative Order No. 2005 – provides for the rules and regulations for the importation, exportation, and domestic movement of irradiated plants and plant products. This includes facility accreditation requirements and procedures.

The DA-BPI as a party to the IPPC is likewise required to issue a certification addressed to the NPPO of the importing party stating that the former has inspected the plants or plant products intended for export and that such plants/plant products conform to the current phytosanitary requirements of the importing Party prior to the export of the said commodity. This is being handled by the Policy Research Service (PRS) of the Department of Agriculture which serves as the SPS Notification Authority and Enquiry Point of the country. This is per Special Order 116 series of 2012 which reconstitutes the DA Sanitary and Phytosanitary Focal Group. One of its basic functions is to receive and disseminate SPS notifications and answers queries about SPS procedures in the country (Lustre, 2004).[344]

[344] Lustre, 2004. Management of SPS measures in the Philippines. Paper presented for the Specialists meeting for Asia on the challenges and opportunities of sanitary and phytosanitary standards costs and benefits of strategies of compliance at Beijing China, November 20, 2004.

With regard to the regulations of imports, the Pest Quarantine Services of the DA-BPI is the lead authority in regulating the entry of plant, plant products and similar commodities. Their task is now being facilitated by the automated DA SPS import clearance donated by the Center for the Advancement of Trade Integration and Facilitation (CATIF) to the Philippine government in collaboration with the Inter Commerce Network Services Inc. (INS). This electronic processing of the application and issuance of Sanitary and Phytosanitary Import Clearance was adopted through the DA Memorandum Circular No. 1 Series of 2010. It was launched during the anniversary of the DA last June 2010. It has the following features: 24/7 online application and payment; importer accreditation; including online processing and approval.

Before the entry of the any plant or plant products, a Pest Risk Analysis (PRA) should be conducted by the importing country as basis for the issuance of the Import Permit (SPS Certificate) by the exporting country[345]. This is in response to the international standard ISPM 11 (2004) of the IPPC requiring "pest risk analysis for quarantine pests including analysis of environmental risks and living modified organisms"[346]. The said procedure assesses the risk of entry of insect pests, plant diseases, and other plant-associated organisms that could possibly carried by the imported plant or plant products.

A Plant Quarantine Clearance (PQC) is being issued by the DA-BPI for imported plant or plants products that have been proven incapable of harboring pests and diseases. The importer should ensure an importer accreditation to DA-BPI before seeking for a PQC. Likewise, a Certificate of Exemption for PQC could be sought by the accredited importer for plant based products that are vacuum-sealed, canned, bottled, etc. In general, the Certificate of Exemption for PQC is being granted for those plant-based imports that have undergone stringent processing eliminating or reducing the possibility of entry of quarantine pests. This is in response to ISPM 32 of the IPPC.

Regulations at the port of entries are also present in the Philippines. Upon the arrival of the commodities, the importer shall file an Application for Inspection (BPI Q Form No.4) to the Pest and Quarantine Services (PQS) of DA-BPI within 24 hours upon the arrival of the consignment. The importer shall provide complete documentation that include: 1) the Phytosanitary certificate, permit to import, bill of lading/airway bill; and inword cargo manifest and Bureau of Customs (BOC) entry declaration (photocopy)[347]. Samples will also be collected for laboratory analyses.

For export procedures, the Pest Quarantine Services of the DA-BPI shall require the exporter to submit an import permit from the country of destination. Upon completion of the required documents, the Pest Quarantine Services of DA-BPI shall issue the Phytosanitary certificate. For cases of non-compliance as notified by the importing country, the exporting country is required to investigate and report the result of its investigation to the importing Party.

[345] http://pqs.da.gov.ph/index.php/procedures/import-accreditation

[346] http://www.ippc.int/index.php?id=186208

[347] http://aboutphilippines.ph/filer/toledo-cebu/Plant%20Quarantine%20Law.pdf

Likewise the Philippines is actively involved in the international cooperation in the exchange of information on plant pests, particularly in reporting the occurrence, outbreak and spread of pests that may be of immediate and potential danger. It also provides technical and biological information necessary for pest risk analysis. The country is also participating in special campaigns for combating pests that may seriously threaten crop production and need international action to meet the resulting emergency.

Among other, manuals and guidelines on the following are available:

- procedural manual for seed import and export
- quarantine pest list for seeds (rice, maize, potato, cucumber, egpplant, cabbage, cauliflower, hot pepper, watermelon and sunflower)
- guidelines for the processes involved in the approval of importation of genetically engineered materials (DA Admin Order. 2003-08 - Rules and regulations for the release into the environment of plants and plant products derive from the use of modern biotechnology)

Challenges in implementation

Almost all of the obligations of parties to the IPPC have been complied by the country. Nevertheless there areas and existing issues that needs to be addressed to improve our compliance such as follows:

- very few entry/exit ports – because of the archipelagic nature of the country, it would be very costly to put numerous entry/exit ports nationwide. Several cases of smuggled plant/ plant products has been reported. In 2011, local onion growers were very anxious of the smuggled onions from China and India. Cheaper than the locally produced onions, these smuggled onions posed the risk of carrying pests since shipments of smuggled goods were neither declared nor subjected to quarantine rules[348].
- lack of internal audit systems to improve systems and procedure (e.g., EMS and ISO certification) – the government should consider internal audit systems to its certification and approval procedures. Although there are guidelines from the International Standards for Pythosanitary Measure (ISPM), the government should considered them as the " floor and the not ceiling" and aim for better quality and credibility on its phytosanitary/quarantine measures. China has just recently enforced stricter phytosanitary measures and has accused of Philippine banana imports as bug-infested[349]. Although this could be a form of "blackmailing" because of the recent territorial disputes, the government should do its best to consider improving its current system.
- Weak collaboration/monitoring – there has been some cases where seeds have known to be sent via parcels/couriers even without any clearance or permit. Guidelines on shipping small quantities of plant or plant products shou

[348] Benaning, M. (2011). Philippines fortifies plant quarantine system. Manila Bulletin. Accessed from http://www.mb.com.ph/node/331889/philippine last August 2, 2012

[349] GMA News. (2012). Price haggling mushes Philippines search for new banana markets. Accessed from http://www.gmanetwork.com/news/story/264321/economy/agricultureandmining/price-haggling-mushes-phl-search-for-new-banana-markets last August 3, 2012

- Poor information drive – countries with strong phytosanitary measures have very strong international and local campaign on the existing policies and procedures on pythosanitary measures (e.g. New Zealand). The Philippines however, have not mainstreamed the information drive to the local government units who are on the ground implementation of the principles of IPPC. Also the author have visited the Philippine Embassy website and it does not have any detailed information on what a visiting foreigner would do should he/she plan to bring a plant or plant products (http://www.philembassy.nl/default.asp?iId=KGLEI). This requires strong collaboration of DA-BPI with the LGU and the Philippine embassy for information dissemination.
- Lenient systems on GMO importation – this has been issue of NGOs particularly Greenpeace since 2001. Just recently, the Supreme Court banned the field testing of the Bt eggplant in the Philippines – although some of them has already been planted in 2010[350]. The lack of strict monitoring and assessment of DA-BPI on GM plant products has led NGOs and POs to bring the case to the Supreme Court. This is the first case that the NGOs have won in their battle to ban a GMO plant/plant product in the Philippines since the introduction of the GMO products in the market. DA Admin. Order. 2002-08 must therefore, be reviewed and strictly enforced.
- Labelling systems - GM products if certified and accepted by DA should be labelled for consumer protection.
- Lack of infrastructure and technology – in the light of the increasing volume and complexity of the trade on plants and plant products, technologies for diagnosis, inspections and treatments should be improved in the Plant Quarantine stations. A database of quarantined cases should also be kept by the agency as future inputs to strategy and policy making.
- Continuous capacity building for the field personnel - technical personnel in Plant Quarantine stations should be provided with continuous trainings and capacity buildings on plant pathogens and entomology especially those that did finish undergraduate courses related to these fields.

e. The International Tropical Timber Agreement (ITTA)

The International Tropical Timber Agreement (ITTA) was first opened for accession in 1983. The ITTA aims to "promote the expansion and diversification of the international trade in tropical timber from sustainably managed and legally harvested forests and to promote the sustainable management of tropical timber producing forests" (ITTA, 1983). The agreement created the International Tropical Timber Organization (ITTO) in 1983 as a consultation mechanism among its members to discuss international cooperation and policy development regarding the world timber economy. The ITTA 1983 was later replaced by the ITTA 1994 and was superseded by the ITTA 2006.

As a commodity organization, the ITTO has two member categories – the producers and the consumers group. The Philippines is one of the pioneer producer members of the ITTO with the FMB as the focal point agency.

[350] Cinco, M. (2012). SC urged: stop genetic "talong" tests. Accessed from http://www.bic.searca.org/news/2012/jun/phi/16.html last August 3, 2012

The evolution of ITTA's objectives from 1983 to 2006 and the Philippine response to the ITTA 2006 objectives could be found in Table below:

Table 1. The evolution of ITTA's objectives from 1983 to 2006 and the Philippine response to each objective

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
Objectives	To provide an effective framework for cooperation and consultation between tropical timber producing and consuming members with regard to all relevant aspects of the tropical timber economy	To provide an effective framework for consultation, international cooperation and policy development among all members with regard to all relevant aspects of the world timber economy	Providing an effective framework for consultation, international cooperation and policy development among all members with regard to all relevant aspects of the world timber economy	Membership to the ITTO
		To provide a forum for consultation to promote non-discriminatory timber trade practices	Providing a forum for consultation to promote non-discriminatory timber trade practices	Membership to the ITTO

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
		To contribute to the process of sustainable development	Contributing to sustainable development and to poverty alleviation	Implementation of the following tenurial instruments: I. Community-based forest management agreements (CBFMAs) – 25-year leases for communities, renewable for another 25 years over forest areas of a maximum of 5000 hectares each. II. Industrial forest management agreements (IFMAs)– 25-year production-sharing agreements for private companies, renewable for another 25 years, mainly comprising industrial plantations. III. Socialized industrial forest management agreements (SIFMAs) – 25-year leases for communities, renewable for another 25 years, mainly comprising community-based plantations; IV. Certificates of ancestral domain title, which are titles or certificates to ancestral land

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
		To enhance the capacity of members to implement a strategy for achieving exports of tropical timber and timber products from sustainably managed sources by the year 2000	Enhancing the capacity of members to implement strategies for achieving exports of tropical timber and timber products from sustainably managed sources	N/A- applies to consumers category
	To promote the expansion and diversification of international trade in tropical timber and the improvement of structural conditions in the tropical timber market, by taking into account, on the one hand, a long-term increase in consumption and continuity of supplies, and, on the other, prices which are remunerative to producers and equitable for consumers, and the improvement of market access	To promote the expansion and diversification of international trade in tropical timber from sustainable sources by improving the structural conditions in international markets, by taking into account, on the one hand, a long-term increase in consumption and continuity of supplies, and, on the other, prices which reflect the costs of sustainable forest management and which are remunerative and equitable for members, and the improvement of market access;	Promoting improved understanding of the structural conditions in international markets, including long-term trends in consumption and production, factors affecting market access, consumer preferences and prices, and conditions leading to prices which reflect the costs of sustainable forest management	

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
	To promote and support research and development with a view to improving forest management and wood utilization	To promote and support research and development with a view to improving forest management and efficiency of wood utilization as well as increasing the capacity to conserve and enhance other forest values in timber producing tropical forests	Promoting and supporting research and development with a view to improving forest management and efficiency of wood utilization and the competitiveness of wood products relative to other materials, as well as increasing the capacity to conserve and enhance other forest values in timber producing tropical forests	N/A - More of ITTO's mandate/programme
		To develop and contribute towards mechanisms for the provision of new and additional financial resources and expertise needed to enhance the capacity of producing members to attain the objectives of this Agreement	Developing and contributing towards mechanisms for the provision of new and additional financial resources with a view to promoting the adequacy and predictability of funding and expertise needed to enhance the capacity of producer members to attain the objectives of this Agreement	N/A - More of ITTO's mandate/programme

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
	To improve market intelligence with a view to ensuring greater transparency in the international tropical timber market	To improve market intelligence with a view to ensuring greater transparency in the international timber market, including the gathering, compilation, and dissemination of trade related data, including data related to species being traded	Improving market intelligence and encouraging information sharing on the international timber market with a view to ensuring greater transparency and better information on markets and market trends, including the gathering, compilation and dissemination of trade related data, including data related to species being traded;	Implementation of market studies supported by ITTO such as follows: I. Timber and Timber Products Trade Flow Study in the Philippines (2003-2006) - the project aims to contribute to the attainment of a better timber and timber products trading situation in the Philippines by providing market information to producers, processors, wood importers and policy makers. This is through analyzing the flow and market of local and imported timber and timber products in the market by grade, by species grouping, by forest source, and by type of processor and identify problems and solutions affecting such flow (FMB, 2004)

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
	To encourage increased and further processing of tropical timber in producing member countries with a view to promoting their industrialization and thereby increasing their export earnings	To promote increased and further processing of tropical timber from sustainable sources in producing member countries with a view to promoting their industrialization and thereby increasing their employment opportunities and export earnings	Promoting increased and further processing of tropical timber from sustainable sources in producer member countries, with a view to promoting their industrialization and thereby increasing their employment opportunities and export earnings	N/A – ITTO's mandate

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
	To encourage members to support and develop industrial tropical timber reforestation and forest management activities	To encourage members to support and develop industrial tropical timber reforestation and forest management activities as well as rehabilitation of degraded forest land, with due regard for the interests of local communities dependent on forest resources	Encouraging members to support and develop tropical timber reforestation, as well as rehabilitation and restoration of degraded forest land, with due regard for the interests of local communities dependent on forest resources	The National Clonal Forestry Program is designed to naturally enmesh itself into existing programs of the DENR that require quality clonal seedlings. A clone seedling is the exact copy of the original individual tree. Such programs, example, as the Watershed Resources Development Project (WRDP), Community Base Forest Management (CBFM),IFMP, NIPAS, Coastal Mangrove Rehabilitation and Urban Forestry will all benefit from the quality clones that will be the direct output of the clonal program together with the ensuing practice of clonal forestry (FMB, 2004). Sustainable Utilization and Marketing of Selected Non-Timber Forest Products to Support the Handicraft Industry and the Development of Rural Communities (ITTO document)

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
	To improve marketing and distribution of tropical timber exports of producing members	To improve marketing and distribution of tropical timber exports from sustainably managed sources	Improving marketing and distribution of tropical timber and timber product exports from sustainably managed and legally harvested sources and which are legally traded, including promoting consumer awareness	N/A

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
			Strengthening the capacity of members for the collection, processing and dissemination of statistics on their trade in timber and information on the sustainable management of their tropical forests;	I. Through the assistance of ITTO in 2002-2004, the FMB has enhanced it current Forestry Statistics Information System (FSIS). The FMB has since then been publishing a yearly Philippine Forestry Statistics through its website consisting data on: • forest resources • forest activities • forest resources utilization • foreign trade • prices • foreign revenue • other forestry related statistics (Blaser, et.al, 2011 The Philippine government also received a support from the ITTO in 2004-2007 to adopt and implement the Criteria and Indicators (C&I) for sustainable forest management. The C&I serves as a guide for the government to assess changes and trends in forest conditions and forest management systems in the country. The

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
	To encourage the development of national policies aimed at sustainable utilization and conservation of tropical forests and their genetic resources, and at maintaining the ecological balance in the regions concerned	To encourage members to develop national policies aimed at sustainable utilization and conservation of timber producing forests and their genetic resources and at maintaining the ecological balance in the regions concerned, in the context of tropical timber trade;	Encouraging members to develop national policies aimed at sustainable utilization and conservation of timber producing forests, and maintaining ecological balance, in the context of the tropical timber trade	The foundation of forest policy is Presidential Decree 705 (1975), as amended; it is known as the Revised Forestry Code of the Philippines. According to this Code (Section 2), the components of forest policy are the multiple-use of forests, the systemization of land classification, the establishment of wood-processing plants and the protection, development and rehabilitation of forestlands. A major law on a National Integrated Protected Area System (NIPAS), the NIPAS Act, was enacted in 1992 and the Indigenous Peoples' Rights Act was enacted in 1997; both provide overarching directions for forest management. Other relevant laws include the Local Government Code, enacted in 1991, and the Wildlife Conservation and Protection Act, enacted in 2001. Executive Order 318, otherwise

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
			Strengthening the capacity of members to improve forest law enforcement and governance,and address illegal logging and related trade in tropical timber;	Also through an ITTO-funded project, the FMB has been developing an integrated chain-of-custody and timber-tracking system, particularly to assist in identifying and quantifying illegal timber and other forest products. The project assessed the impacts of the existing Log Control Monitoring System and the Forest Stock Management System, as pilot-tested in selected regions in the Philippines, to determine gaps in the system and to expand it to include a chainof-custody module. The resultant Philippine Timber Tracking System includes improved field procedures in data-gathering at the seven nodes identified for chain of custody and timber-tracking, software for data entry and report generation, and a database for timber-tracking. The system has been piloted in one Integrated Forest Management Agreement (IFMA) operation and DENR plans to implement the system

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
		To encourage information-sharing on the international timber market	Encouraging information sharing for a better understanding of voluntary mechanisms such as, inter alia, certification, to promote sustainable management of tropical forests, and assisting member s with their efforts in this area	With support from ITTO, DENR is developing a forest information system to promote SFM and aid policy formulation and decision-making through improved data collection and information processing. In 2008 the FMB computerized its forms for certificates of timber origin and certificates of lumber origin. These are management tools for monitoring and tracking the movement and legality of origin of locally produced forest products that are transported and traded within the country. (Blaser, et.al, 2011

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
		To promote the access to, and transfer of, technologies and technical cooperation to implement the objectives of this Agreement, including on concessional and preferential terms and conditions, as mutually agreed	Promoting access to, and transfer of, technologies and technical cooperation to implement the objectives of this Agreement, including on concessional and preferential terms and conditions, as mutually agreed	ITTO offers fellowships through the Freezailah Fellowship Fund to promote human resource development and to strengthen professional expertise in member countries in tropical forestry and related disciplines. The goal is to promote the sustainable management of tropical forests, the efficient use and processing of tropical timber, and better economic information about the international trade in tropical timber (ITTO website) Demonstration and Application of Production and Utilization Technologies for Rattan Sustainable Development in the ASEAN Member Countries (ITTO document)

	ITTA 1983	ITTA 1994	ITTA 2006	Philippine response
			Promoting better understanding of the contribution of non-timber forest products and environmental services to the sustainable management of tropical forests with the aim of enhancing the capacity of members to develop strategies to strengthen such contributions in the context of sustainable forest management, and cooperating with relevant institutions and processes to this end	NA- more of ITTO's mandate
			Encouraging members to recognize the role of forest - dependent indigenous and local communities in achieving sustainable forest management and develop strategies to enhance the capacity of these communities to sustainably manage tropical timber producing forests	NA- more of ITTO's mandate
			Identifying and addressing relevant new and emerging issues	NA- more of ITTO's mandate

Source: Author's compilation

f. Rotterdam Convention on the Prior Informed Consent for Certain Hazardous Chemicals and Pesticides in International Trade

The Green revolution, which heightened the use of pesticides to increase crop production, had exposed many countries especially developing countries on ecological and health hazards from the use of hazardous chemicals. The Rotterdam Convention on the Prior Informed Consent (PIC) therefore promotes shared responsibility and cooperative efforts among Parties in international trading of certain hazardous chemicals to protect the human health and the environment. Through the PIC mechanism, the convention encourages information exchange among parties on the nature and the environmentally sound use of hazardous chemicals, specifically ban or severely restricted chemicals and severely hazardous pesticides. The said convention has 14 toxic substances on its list that cannot be exported from one country to another unless with the permission of the government of the importing state.

Parties under Article 10 of the convention have to notify their position to the Convention Secretariat regarding the future import of chemicals as listed in Annex III of the Rotterdam Convention. The import decision could be final or an interim response. An import decision is final if the government has firmly decided whether they will consent the import of the certain chemical substance or not. An interim response on the other hand is a provisional decision of the member party with regard to the import of the certain chemical. A Party that does not consent to the import of a chemical or that only consents under specified conditions must ensure that the import of the chemical from any source and the domestic production of the chemical for domestic use are made subject to the same conditions. All import decisions of parties will be published every June and December of the PIC Circular. Any changes to the import decision previously submitted should be notified to the Secretariat immediately (Rotterdam convention website)

The Philippines became a party to this convention last September 11, 1998 and ratified the convention into law last July 31, 2006. The DENR-EMB serves as the designated national authority (DNA) for industrial chemicals while the Fertilizer and Pesticides Authority (FPA) serves as the DNA for pesticides. Most implementing policies and mechanisms being applied by the Philippine government to the Rotterdam Convention are similar to the Stockholm Convention. Among the relevant laws include the RA 9003 or the Solid Waste Management Act 2000 and the RA 6969 Toxic and Hazardous and Nuclear Control Act 1990. Similarly, an Interim Importation Clearance has to be sought from the DENR-EMB (under Republic Act 6969) for any chemicals that is under the Priority Chemical List and those issued with Chemical Control Orders (CCO).

According to Ross (1999, p.517) “many developing nations lack the financial and human resources to gather information and implement decisions. Most developing nations lack the resources to allow their DNAs to adequately process import decisions. Without financial and technical support from developed countries, the PIC system is virtually meaningless for developing nations because it does not guarantee an ability to respond to consent requests”. This is true for the Philippines. Despite the country’s comprehensive list of chemicals banned for importation, inadequate facilities or technologies and lack of technical staff to regulate

these chemicals in the market bring minute progress to realize the principles of the convention. Strict regulation and guidelines on advertisements and proper usage of pesticides alone is very poor in the country exposing the health of our farmers to the dire effects of pesticides. Moreover, illegally transported chemicals at our 'backdoors' could no longer be traced since there are no regional facilities (e.g. check point centers) that would inspect these chemicals during the course of its transport. This boils down to the need for a more stringent enforcement mechanism at the international level against illicit trafficking of these chemicals and to prevent their entry to country parties with weaker enforcement capacity.

g. Stockholm Convention on Persistent Organic Pollutants (POPs)

The widespread use of chemicals, as prompted by the era of Green Revolution, has increased the presence of persistent organic pollutants (POPs) in the environment. As such, several countries agreed to protect the human health and the environment from the POPs through signifying their commitment to adopt the provisions of the Stockholm Convention. Parties to the Stockholm Convention are obliged to set up systems to regulate and monitor the import, export, production, and use of POPs[351]. in their respective countries. As a signatory to this Convention last May 23, 2001, the Philippines ratified the Stockholm Convention last February 27, 2004. The Republic Act 6969 and the National Implementation Plan (NIP) for the Stockholm Conventions in 2006 are the main governing instruments to implement the Stockholm Convention in the Philippines.

Article 3 of the Stockholm Convention prohibits the intentional production and use of chemicals listed in Annex A and restricts the production and use of the chemicals listed in Annex B. It likewise bans the export and import of chemicals listed in Annex A and B of the convention text - except for cases when the importation and exportation is for the purpose of environmentally sound disposal as set forth in paragraph 1(d) of Article 6 of the convention text. It states that international rules, standards and guidelines have to be taken into account when importing and exporting, and only to a party which is permitted to use that particular chemical under Annex A or Annex B of the convention text. Chemicals with specific exemptions are allowed to be exported to non-party members provided that there is a certification of compliance by the importing party (Stockholm Convention Text).

The first Priority Chemical List of the DENR under DAO 1998-58 contains a list of POPs for strict regulation namely Polychlorinated Biphenyls (PCBs), Mirex and Hexachlorobenzene. This means that any intended use, production or import of these chemicals are not allowed except when registered to and approved by DENR. Manufacturers and importers of these POPs need to undergo the reporting process that includes Pre-Manufacturing and Pre-Importation notification and assessment procedures.

The PCB is further subjected to a Chemical Control Order which means that production, importation, exportation and sale of all PCBs is prohibited in the Philippines. The convention requires parties to eliminate the use of PCBs in equipment by 2025 and phase out all existing

[351] The Convention initially focuses on phasing-out the 'dirty dozen' that could be found in pesticides, industrial chemicals and unintended by-products. This includes aldrin, chlordane, Dichlorodiphenyltrichloroethane (DDT), dieldrin, endrin, heptachlor, mirex, toxaphene, hexachlorobenzene (HCB), Polychlorinated biphenyls (PCBs), dioxins, and furans. The list is being expanded to include other POPs such as endosulfan.

PCB-containing equipment and PCB liquids by 2028. Users or generators of PCBs are therefore required to submit a Hazardous Waste Registration Form and Biennial Report to the EMB (DENR, 2006). However, since the PCBs entered the country as part of the electrical transformers, an importation clearance is also being required by the government to importers of new transformers and capacitators.

Under RA 6969 the DENR-EMB is also required to prepare the Philippine Inventory of Chemicals and Chemical substances (PICCS). The PICCS serves as a guide for manufacturers and importers of existing chemicals and chemical substances that are being used, sold, distributed, imported, processed, manufactured, stored, exported, treated or transported in the country. Manufacturers or importers of chemicals or chemical substances that are listed in the PICCS, or have passed the PICCS Certification, no longer need to secure clearance from the DENR - unless the chemicals that they are producing or manufacturing are included in the Priority Chemical List or are subject to Chemical Control Order. Manufacturers or importers of chemicals or chemical substances that are not listed in the inventory should comply with the Pre-Manufacturing and Pre-importation Notification testing and assessment process of the DENR. This is to ensure that no harmful substances detrimental to health and the environment, whether new or existing, could easily enter the Philippine trade (DENR, 2006).

With regard to the pesticides containing POPs, this is being handled by the Fertilizer and the Pesticide Authority (FPA) created by virtue of Presidential Decree 1144. In 1983, the FPA banned the use of the following POP pesticides in the country namely: Aldrin, Dieldrin, Endrin, Heptachlor, Toxaphene, and Chlordane. It also banned the use of the DDT as pesticide but restricted its use for health-related purpose such as eradication of malaria-vector mosquitoes in case of serious malaria outbreak (DENR, 2006).

With regard to unintended releases of by-products such as furans and dioxins, Article 5 of the Convention text require parties to take measures to reduce or eliminate releases from the unintentional production of POPs, and develop national action plans to identify, characterize and address the release of these chemicals. It likewise urged countries to use available, feasible and practical measures that can significantly reduce the release of chemicals and eliminate its source including development and use of substitute or modified materials, products and processes to prevent the formation and release of these unintended by-products. The Republic Act 9003 (Ecological Solid Waste Management Act of 2000) and the Republic Act 8749 (Philippine Clean Air Act of 1990) are main implementing laws in the Philippines that deal with reducing dioxin and furan releases to the air – the former through prohibiting the open burning and incineration of waste, and the latter through addressing gas emissions from industries and motor vehicles.

The Stockholm Convention also requires parties to take measures to reduce or eliminate POP releases from stockpiles and wastes (Article 6). This requires parties to develop strategies for identifying stockpiles with POPs, identifying products, articles or wastes contaminated or containing POPs including contaminated sites. Stockpiles which are already deemed as waste should be handled, collected, transported and stored in an environmentally sound manner. Disposal and destruction of these chemicals including equipment containing these chemicals

are allowed, as long as it would no longer persist in any other form of POPs. Exporting of stockpiles and wastes are restricted by international rules, standards and guidelines (Stockholm Convention Text).

h. Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal

The main objective of the Basel Convention is to minimize the threat of hazardous wastes by addressing its point or source of generation, transboundary movement, and disposal management. It espouses a set of regulatory framework or measures regarding the import and export of hazardous wastes from one member party to another in the absence of environmentally sound alternative technologies to dispose those wastes. Among the general obligation of parties to this convention is to: (1) reduce the generation of hazardous wastes; (2) ensure availability of adequate disposal facilities for environmentally sound management of hazardous wastes and other wastes; (3) prevent the pollution from the management of hazardous wastes; (4) minimize the transboundary movement of hazardous wastes; (5) prohibit the import and export of hazardous wastes or other wastes to other parties if the wastes in question could not be managed in an environmentally sound manner; and (6) establish cooperation with other parties and promote information, education and communication campaign (IEC) regarding the transboundary movements of hazardous substances in order to prevent illegal dumping. The Convention did not cover radioactive wastes as these are being addressed in other international control systems or instruments.

Article 6 of the Convention states that a member party may export its wastes to another party if it follows the conditions of the prior informed consent of importing hazardous wastes to countries and countries of transit. The State of export is not allowed to begin a transboundary movement of wastes until it has received the confirmation response from the state of import and the transit party. Exceptions are if the state of import and the transit party no longer requires to be notified and if the requesting party did not receive a written confirmation from the transit party within 60 days after the receipt of the notification for transboundary movement of waste along its territory.

The Philippines became a party to the Basel Convention last March 22, 1989 and is ratified into law last October 21, 1993. The Republic Act 6969 or Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 and the Republic Act 9003 or the Ecological Waste Management Act of 2000 are the principal laws that deal with waste and waste management in the country. These laws are being implemented by the DENR-EMB as the implementing agency.

As already mentioned above, regulatory framework or mechanism in the country for transporting, treating, importing and exporting hazardous wastes, or chemicals and toxic substances are being dealt through issuance of Chemical Control Order, PICCS certification, registration of importers and transported distributors of chemicals, procedures for prior informed consent, and notification procedures. DENR AO No. 29 series of 1992 restricts the import of all hazardous wastes and other wastes for recovery. While the DENR AO No.28 Series of 1994 allows recyclable materials containing hazardous substance to be imported

subject to conditions upon obtaining permit from Department of Environment & Natural Resources. DENR AO 2004-36 on the other hand, provides a revised Procedural Manual on Hazardous Waste Management restricting the importing of recyclable materials containing hazardous substances.

However, the government failed to anticipate the tons of electronic waste that is now being generated from the booming industry of Information and Communications Technology (ICT) in the country. In 2006 alone, electronic and electronic equipment is one of the country's largest imports representing 40% of the total imports. This was valued at Php57.7 billion (USD1.2 billion) with a total import volume of 70.8million kg. Likewise, government issuance of import clearances for "recyclable EEEs' (i.e. secondhand electrical and electronic equipment, but also eventual electronic scrap) are steadily increasing. In 2007, the 30 import clearances alone weighed as 98,823 metric tones of imported recyclable electronics in the country, mostly from Korea and Japan (Alegre and Borcena, 2010).

According to Krueger (2001), developing countries do not have yet 'cleaner production methods' to process hazardous wastes due to lack of information about a technology, high capital costs, lack of trained personnel, and technological limitations in regard to 'cleaning' a given industrial process. The lack of advanced and proper technology in the Philippines to process e-wastes, have turned the options to environmentally destructive means such as the dumping on landfills, backyard recycling, and incineration. These processes did not only cause contamination to nearby water sources due to acid wash draining, but likewise causes air pollution because of burning. This leads the informal labourers and waste pickers, depressed communities and their environment susceptible to toxic heavy metals such as lead, cadmium, mercury, chromium, halogenated substances including brominated flame retardants, and polyvinyl chloride (PVC) found in e-wastes. (Alegre and Borcena, 2010).

Unfortunately, existing laws in the Philippines on waste and toxic substances do not have comprehensive framework yet to address e-wastes. In addition, the country has not yet signed into the Basel Ban Amendment in 1995 which covered the prohibition of exporting recyclable wastes to developing countries. Instead the country has entered into the controversial JPEPA (Japan-Philippine Economic Partnership Agreement) in 2008 which allowed the importation of Japanese chemical, hospital, and municipal wastes to the Philippines with zero-tariff provision. Similar agreements on trade with implication on waste importation should be studied more closely especially that the recycling industries in the country do not have yet the capacity and technology to process hazardous materials in environmentally sustainable manner (Alegre and Borcena, 2010).

i. Montreal Protocol on Substances that deplete the ozone layer

Considered as the most successful MEA in the world today, (Eckersley, 2004), the main aim of the Montreal Protocol is to eliminate ozone depleting substances (ODS) in the atmosphere by controlling consumption and production of these substances that consequently affects human health and environment. Among the general obligations of parties to this Convention is to establish controls on the national production and consumption of ozone depleting substances, and to establish and implement a system for licensing the import and export of

controlled substance for regulation and monitoring purposes. The Philippines became a party to this convention in September 1, 1988 and ratified it into law last July 17, 1991. The Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR) (DENR-EMB) serves as the country's main implementing agency.

The main policy for implementing the provisions of the Montreal Protocol in the Philippines is the Republic Act 6969, or the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990. The implementing rules and regulations (IRR) of the said law (i.e. DENR Administrative Order 1992-29) mandates the DENR-EMB to prepare a Priority Chemical List that consists of chemicals that should be regulated and monitored by the government. The first Priority Chemical List was prepared in 1998 by virtue of DENR AO 1998-58 and was revised in 2005 by DAO 2005-27. The said policy banned the importation and consumption of the ODS, such as CFCs and halons, for the production of new equipment effective January 1, 1999. This is in compliance with the Article 4 of Montreal protocol that requires parties to ban the export and import of controlled substances to and from any country that is not a party to the protocol.

The Philippine Ozone Desk (POD) under the DENR-EMB was created to facilitate the coordination and implementation of the Montreal Protocol in the Philippines. The POD prepares and monitors the phase-out plans on ODS (e.g. Methyl Bromide Phase-out Strategy and National CFC Phase-out Plan) and ensures compliance and monitoring of ODS consumption in the country. It likewise strengthens procedures to restrict ODS imports, and maintains a database of the chemicals being imported, manufactured, or used. Moreover, the POD is created to monitor chemical substances and mixtures that are being handled, processed, stored, transported, distributed, sold or disposed in the country. More importantly, the POD conducts various IEC activities to increase public awareness on the hazards and risks of ODS.

The DENR-EMB also collaborated with the other government agencies to facilitate implementation of the Montreal protocol. The DENR fostered a Memorandum of Understanding (MOU) with the BoC in 2002 which created the DENR-BoC liaison committee that implements trade-related aspects of the RA6969. The DENR also jointly implemented the National CFC-Phase Out Plan (NCPP) with the DOTC in 2006 which gradually phased out the use of CFCs in Mobile Air Conditioners (MAC). This is through the Joint Administrative Order DENR-DOTC 2006-03 which prohibits the CFC-based MAC and was mainstreamed in the renewal and registration process of motor vehicles. These collaborative and cooperation works are considered as best practice by UNEP (2005) which stressed the importance of coordination and cooperation among agencies especially between the National Ozone Unit (NOU) and the customs of the implementing parties of the Montreal Protocol.

The DENR-EMB has also provided the detailed phase out schedules and importation controls for ODS including licensing regulations for importers, sellers, dealers, and retailers of ODS by virtue of DENR AO 2000-18, and as revised by DAO 2004-08. This is in compliance to Article 4B of the Montreal Protocol which obliged countries to institute a licensing mechanism by January 1, 2000 to regulate the import and export of new, used, recycled and

reclaimed controlled substances as included in the Annex A, B, C, and E of the convention text (Montreal Protocol text). Among the regulatory instruments being implemented in this regard include: permit to transport, importation clearance, and Certification of Registration. The latter is an accreditation scheme for sellers, dealers and retailers to ensure their institutional and technical capacities of handling ODS.

Member parties of the Montreal Protocol are likewise strictly prohibited to export used, recycled, and reclaimed quantities of ODS other than for the purpose of their destruction (i.e. Article 4A of the Montreal Protocol). In the Philippines, importation of materials containing hazardous substances for purposes of recovery, recycling and reprocessing, are allowed only subject to stringent conditions stipulated under DENR Admin Order 1994-28. Details of this issue are covered in the discussion under the Basel Convention for Transboundary Movements of Hazardous Chemicals.

According to World Bank (2011), there has been a considerable decrease of ODS consumption levels in the Philippines by 55% between 1995 and 2000. While this is true, insurmountable challenges still remain. First, despite the mechanisms to regulate the import and export of the ODS in the Philippines through the permit system, there are no mechanisms yet to regulate technologies or equipment with ODS content that are being imported in the Philippines (Ella Deocadiz, Personal communication). Also since the cost of substitutes or alternative substances are much expensive than ODS, smuggling of ODS in transit ports still remains a challenge in the country (UNEP, 2007b).

Conclusion and analysis

The above discussion deals with eight (8) trade-related MEAs that the country has entered into. The author focused on discussing existing policy instruments, initiatives as well as the challenges that the Philippine government has experienced in complying with these conventions. Based from the above discussions, the following strengths and weaknesses were taken noted:

Strengths

- **adequate polices -** although not all of our environmental laws were passed as a direct response to implement the MEAs ratified by the Senate, the Philippine government has adequate set of policies to ensure that the relevant provisions in the MEAs are addressed. As it currently stands, the Philippines is one of the strong performers, ranking 42nd among the countries for Environmental Performance Index (EPI) (Yale University, 2012). This means that our environmental policies are responding to the global environmental issues being addressed in these MEAs. It is worthwhile to consider that while the presence of adequate policies does not necessarily correlate to effective implementation of MEAs, it nonetheless provides the government the leverage to impose fines and sanctions to violators.

- **strong institutional framework** - Each focal point agency for MEAs has institutional mandate that are intrinsically linked with our MEA obligations. Most of which are under DENR and DA which handle almost all the MEAs discussed above. As these agencies

fulfil our MEA obligations, they are likewise fulfilling their own mandates and vice-versa. One of the instruments to make this possible is through the national action plans and strategies that these agencies have been preparing. These statutory documents provide more than just direction to implement the MEAs in the country but they also serve as instruments to access funds from international funding mechanism that support our MEA implementation. It should also be taken noted that these statutory documents are not separated from the regular programmes of these agencies. Rather, these documents help these agencies set out their priorities and directions amidst their enormous tasks and mandate.

- **strong collaboration**– the implementation of the above MEAs is quite enormous given the inherent transboundary nature of thematic problems being addressed. As such collaborative initiatives with DOE, DOTC and Bureau of Customs (BOC), is a major milestone to consider especially with regard to monitoring activities for which DA and DENR both lack the capacity. Although there is still a need to strengthen the capacities of this partner agencies most especially BOC.

Weaknesses

- **Lack of safeguard measures/policies to protect local manufacturing industries or companies in compliance to MEAs –** MEAs with trade related aspects have a tendency to place our export products in stricter international and environmental standards. For example, countries are now considering environment friendly products that have low carbon footprint, forest products taken from sustainably-managed forests, energy efficient appliances, agriculture products from certified organic farms, and many others. Without adequate assistance from the government, our local exporters would not be able to compete with neighbouring countries that have certification and labelling mechanisms in place such as Malaysia.

  Moreover, trade-related MEAs put additional pressure to our local manufacturing industries to produce quality but cheap products to make them more competitive at the domestic market. Example given above is the bioethanol industry which is being threatened by cheaper bioethanol being imported by China. With the desire to open the trade for alternative and environment friendly biofuels, the government failed to protect its own existing biofuel manufacturing industry.

- **Lack of human and financial resources to monitoring convention-related activities** – when considering trade in fulfilling our obligations to MEAs, monitoring and inspection activities should be given outmost priority. The lack of financial resources to support facilities and enforcers to monitor the entry and exit of prohibited chemicals or species under a particular convention will more likely worsen the cases of illegal trafficking. While it is important that we have adequate policies, it is equally important to consider that there should be facilities and personnel to implement these policies nationwide.

- **Lack of adequate technologies –** the Philippines is considered to have one of the most booming ICTs in Asia. However, it is very ironic that the permitting system is still manually

done and in paper-based system considering the prevalent use of internet and various programming languages in the country. This gives an impression that the system is slow and ineffective and is a tedious requirement rather than a housekeeping practice.

With regard to monitoring, the lack of knowledge or expertise of enforcers to identify chemicals or species to be apprehended under certain convention should not be regarded as a major concern nowadays. Technological innovations such as i-pad notebooks with databases and photos of species could be provided to enforcers deployed in the monitoring stations. Moreover, recognized research institutions and academes in the country could be utilized to develop crude technologies for identifying presence of toxic chemicals.

PART III. EU POLICIES ON TRADE, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

A. EU Trade, Environment, and Sustainable Development, in general

a. EU International Trade Policies

Part of the common commercial policy of the European Union is the contribution to the "harmonious development of world trade, the progressive abolition of restrictions on international trade and foreign direct investment, and the lowering of customs and other barriers."[352]

To this end, it actively supports the work of the multilateral trade system and, through the WTO, seeks to:

- Ensure new markets for European companies to promote their global competitiveness;
- Observe trade rules and ensure that others do so;
- Promote sustainable development in trade.[353]

At the Doha Development Round of negotiations, to further its interest and principles, the EU aims to:

- Increase market access and trade flows by cutting tariffs and harmonizing trade regulatory systems in the industrial goods sector in both developed and emerging economies.[354] In relation to environmental goods and services, the EU proposed an Environmental Goods and Services Agreement that "aims to liberalize trade in at least 43 key climate-friendly technologies identified by the World Bank such as solar panels and wind turbines." It is also pushing for further liberalization of goods and services related to sustainable energy use, pollution management and environmental protection;[355]
- Clarify and improve WTO rules on trade distorting subsidies in the production of industrial goods;
- Reform farm subsidies, where the EU offered to cut farm tariffs by 60%, reduce trade distorting farm subsidies by 80% and completely eliminate farm export subsidies;
- Promote access to trade in services while respecting public interest concerns;
- Agree on a package of development measures; and
- Improve trade remedy rules, update rules on trade facilitation, and improve protection of geographical indications.[356]

[352] TFEU, Part V, Title II, Art. 206 (ex Article 131 TEC).
[353] EU & WTO: Why does the EU participate in the WTO?, EC website, accessed 18 June 2012, available at http://ec.europa.eu/trade/creating-opportunities/eu-and-wto/.
[354] EU & WTO: The Doha Round, EC website, accessed 18 June 2012, available at http://ec.europa.eu/trade/creating-opportunities/eu-and-wto/doha/.
[355] Environment: Climate change, EC website, accessed 18 June 2012, available at http://ec.europa.eu/trade/wider-agenda/environment/climate-change.
[356] EU & WTO: The Doha Round, EC website, accessed 18 June 2012, available at http://ec.europa.eu/trade/creating-opportunities/eu-and-wto/doha/.

Mindful of the challenges and opportunities brought about by globalization, EU has adopted, in 2006, an industrial and trade policy (the "2006 Growth and Jobs Strategy") that seeks to promote its competitive advantage in high technology products, innovation, research and development in the fast evolving global knowledge economy.[357] In particular, it seeks to maximize its first-mover advantage in eco-innovations, "including clean technologies and environmentally friendly goods and services."[358]

To this end, it seeks to: (a) promote trade openness and discourage protectionism among its members; (b) enhance its competitiveness in the global market by continuously innovating and moving up the value chain; (c) ensure better protection of its intellectual property rights (IPR) in third country markets, particularly, in China, ASEAN and Korea; (d) promote genuine market opening of its trade partners and the transparent application of international rules; and (e) secure meaningful commitments from the most advanced fast-growing and competitive emerging economies, such as China, Brazil, Russia, and India, which combine high growth with high entry barriers against EU exports.[359]

Securing meaningful commitments would entail addressing: (a) non-tariff barriers, such as restrictive government procurement rules, unregulated anti-competitive practices, excessive sanitary and phytosanitary requirements, customs rules, non-transparent, discriminatory, non-proportionate regulations to protect human health and the environment, and capacity constraints, among others; (b) export taxes and restrictions on access to resources; (c) restrictions on the permanent establishment of EU firms in emerging economies; (d) enforcement of rules for violating IPR rights.[360]

EU Approach to International Trade and Global Integration

While promoting its trade and commercial interests in its relations to third countries, the EU is committed to strengthening the multilateral rules-based system under the WTO. It believes that the multilateral system is the most effective means of expanding trade. However, with the stalled negotiations under the Doha Development Round, and to keep up with its main competitors, the United States and Japan, in securing market access in third countries, EU has entered into or is negotiating bilateral free trade agreements with various countries. With its commitment to the multilateral system, the EU approaches these negotiations as a means to build and promote multilateral liberalization. [361] Thus, in its bilateral trade negotiations it generally adopts WTO rules where applicable, reserves its right to provide for a high degree of protection in the area of human, animal, and plant life or health and and the environment (as allowed under the WTO system), and pushes for further liberalization in areas that are not yet ready for multilateral negotiations.

[357] See Global Europe: Competing in the World, A Contribution to the EU's Growth and Jobs Strategy, SEC (2006) 1230, Brussels, 4 October 2006.
[358] Global Europe, 6.
[359] Global Europe, 6-7.
[360] Global Europe, 8-10.
[361] Global Europe, 15-16.

Its key economic criteria for choosing trade partners are: (a) their market potential as reflected in their economic size and growth; and (b) the level of protection against EU export interests. Using this criteria, EU has determined ASEAN, Korea and Mercosur as priorities for bilateral free trade agreements.[362] The EU has already signed a Free Trade Agreement with Korea, which became effective on July 01, 2011.[363]

In 2007, the European Council issued a negotiating directive for negotiations on a free trade agreement with ASEAN.[364] However, negotiations were stalled due, among others, to EU's reluctance to negotiate with Myanmar, and the ASEAN's internal requirement that all regional decisions should be arrived at through consensus. (See ASEAN Charter).

EU, however, remained engaged in the region and decided to pursue bilateral negotiations with ASEAN states. It has already launched negotiations with Singapore and Malaysia in 2010,[365] entered into Partnership and Cooperation Agreements with Indonesia and the Philippines, and is preparing for bilateral trade negotiations with the Philippines.

Impact of the Global Financial Crisis

The onset of the 2007-2008 global financial crisis and the consequent currency crisis that has been plaguing EU to this day precipitated a rethinking of its long-term development strategy. In 2010, the European Commission issued a Communication entitled, "Europe 2020: A strategy for smart, sustainable and inclusive growth."[366]

The Communication recognized that: (a) the crisis has eroded recent economic progress of the EU; (b) the EU's structural weaknesses were exposed; and (c) global challenges, in the form of competition from emerging economies, defects in the global financial markets, and climate change and resource constraints, are intensifying.[367]

To address these challenges, EU identified three key priorities to its strategy, to wit:

(a) smart growth - developing an economy based on knowledge and innovation;
(b) sustainable growth - promoting a more resource efficient, greener and more competitive economy

[362] Global Europe, 16.
[363] See Kelly Olsen, South Korea-EU free trade agreement takes effect, Associated Press, 01 July 2011, accessed 24 June 2012, available from http://news.yahoo.com/south-korea-eu-free-trade-agreement-takes-effect-010216569.html; See also European Commission, International affairs: Free Trade Agreements, accessed 24 June 2012, available from http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/index_en.htm
[364] Draft EU-ASEAN FTA negotiating directive (2007), accessed 24 June 2012, available from http://www.bilaterals.org/spip.php?article8211
[365] European Commission, International affairs: Free Trade Agreements, accessed 24 June 2012, available from http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/index_en.htm
[366] COM (2010) 2020, Brussels, 3.3.2010.
[367] Europe 2020, 5-6.

(c) inclusive growth - fostering a high-employment economy delivering economic, social and territorial cohesion.[368]

These strategies are interlinked and build on each other. In particular and in relation to sustainable development, the focus on building a knowledge economy driven by research and innovation necessarily promotes the goals of sustainable growth as EU seeks to retain its competitiveness in green technologies. In combating climate change and promoting the use of clean and efficient energy, EU can maximize global market opportunities as it builds green industries and technologies.[369]

While Europe 2020 reiterates to a certain degree the strategies set out in its 2006 Growth and Jobs Strategy, the narrower focus on innovation and green technologies will impact its priorities in its bilateral trade negotiations with its trade partners, such as the Philippines. This is already reflected in its advocacy in the Doha Development Round for liberalization of environmental goods and services and its strong push for intellectual property rights protection and enforcement, among others.

b. EU Environmental and Sustainable Development Policies

The general parameters of the environmental and sustainable development policies of the European Union can be found in its constitutional documents.

The environmental policy of the European Union is enshrined in Article 191 (ex Article 174 TEC) of the Treaty on the Functioning of the European Union (TFEU). Its objectives are: (a) preserving, protecting and improving the quality of the environment; (b) protecting human health; (c) prudent and rational utilisation of natural resources; and (d) promoting measures at the international level to deal with regional or worldwide environmental problems, and in particular combating climate change.[370] The TFEU also mandates that Union environmental policies must aim for a high level of protection depending on the varying levels of capacity of its members.[371]

At the same time, in its internal policies and actions the European Union commits to promote an integrated approach to development following the principle of sustainable development where economic integration is accompanied by a high level of protection and improvement of the quality of the environment.[372] In adopting

[368] Europe 2020, 8.
[369] Europe 2020, 12-13, 15.
[370] TFEU, Art. 191.1.
[371] TFEU, Art. 191.2: "*Union policy on the environment shall aim at a **high level of protection** taking into account the diversity of situations in the various regions of the Union. . . . .*"
[372] *See* Treaty of the European Union, par. 9 of the Preamble: *"DETERMINED to promote economic and social progress for their peoples, taking into account the **principle of sustainable development** and within the context of the accomplishment of the internal market and of reinforced cohesion and **environmental protection**, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields;"* and Art. 3.3: *"The Union shall establish an internal market. It shall work for the **sustainable development** of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a **high level of protection and improvement of the quality of the environment**. . . .:" See also* Treaty on the Functioning of the European Union, Art. 11: *" **Environmental protection** requirements must be **integrated into the definition and implementation of the Union's policies and activities**, in particular with a view to **promoting sustainable development**."*

measures to establish and ensure the functioning of the internal market, particularly in relation to matters concerning health, and environmental protection, among others, the European Commission, Parliament and Council, within their respective powers, are mandated to take as a base a high level of protection considering new developments based on scientific facts.[373] The same high level of protection is mandated under the Charter of Fundamental Rights of the European Union.[374]

The European Union also commits to promote sustainable development in its external relations. In relation to developing countries, the promotion of sustainable development is primarily intended to eradicate poverty.[375]

Energy

Mindful of the need to preserve and improve the environment, EU policy on energy includes the promotion of "energy efficiency and energy saving and the development of new and renewable forms of energy."[376]

Within these general parameters, the European Union adopted underlying principles that inform and characterize their environmental and sustainable development measures and policies.

i. General underlying environmental principles

These principles may be classified as follows:

- Precautionary Principle

  The concept of the precautionary principle grew primarily in the context of environmental policy. It was incorporated in several international instruments, such as the Ministerial Declaration of the Second International Conference on the Protection of the North Sea (1987),[377] and the Ministerial Declaration of the Third International Conference on the Protection of the

[373] *See* Treaty on the Functioning of the European Union, Art. 114.3: "*The Commission, in its proposals envisaged in paragraph 1 concerning health, safety,* ***environmental protection*** *and consumer protection, will take as a base a* ***high level of protection*** *taking account in particular of any new development based on scientific facts."*

[374] *See* Charter of Fundamental Rights of the European Union, Art. 37 (Environmental Protection): "*A* ***high level of environmental protection and the improvement of the quality of the environment*** *must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.*"

[375] *See* Treaty of the European Union, Art. 3.5: *"In* ***relations to the wider world****, the Union shall* ***uphold and promote its values and interests and contribute to*** *the protection of its citizens. It shall contribute to peace, security,* ***the sustainable development of the Earth*** *. . .;"* Art. 21.2: "*The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: (d) foster the* ***sustainable*** *economic, social and* ***environmental development*** *of developing countries with the primary aim of eradicating poverty; . . . (f) help develop international measures to* ***preserve and improve the quality of the environment*** *and the* ***sustainable management of global natural resources,*** *in order to ensure* ***sustainable development.***"

[376] TFEU, Art. 194.1 (c).

[377] "*in order to protect the North Sea from possibly damaging effects of the most dangerous substances, a precautionary approach is necessary which may require action to control inputs of such substances even before a causal link has been established by absolutely clear scientific evidence*."

North Sea (1990),[378] and slowly became part of international environmental law, as it was consistently adopted and applied in various international environmental agreements. Among significant agreements embodying the principle are the Rio Declaration (1992),[379] Convention on Biological Diversity (1992), [380] United Nations Framework Convention on Climate Change (1992),[381] Paris Convention on the protection of the marine environment of the north-east Atlantic (September 1992),[382] and the Protocol on Biosafety concerning the safe transfer, handling and use of living modified organisms resulting from modern biotechnology (2000).[383]

Application Within the European Union

At the European Union level, the precautionary principle is specifically referred to in the Treaty on the Functioning of the European Union, Art. 191.2 and Art. 191.3 (ex Art. 174 TEC). It provides that Union policy on the environment shall be based on the precautionary principle where the following are taken into consideration: (a) available scientific and technical data; and (b) the potential benefits and costs of action or lack of action.[384]

The European Commission provides guidelines for the application of the precautionary principle within the European Union through the Communication from the Commission on the precautionary principle ("Precautionary Principle Guidelines" or "Guidelines").[385] While not binding on the Member States, it provides guidelines to EU policymakers on the application of the principle in the analysis of risk, particularly in risk management on environment, human, animal or plant health.

[378] "*participants will continued to apply the precautionary principle, that is to take action to avoid potentially damaging impacts of substances that are persistent, toxic and liable to bioaccummulate even where there is no scientific evidence to prove a causal link between emissions and effects*."

[379] Principle 15, "*In order to protect the environment, the precautionary approach should be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation*."

[380] Preamble, (. . .) *Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat* (. . .)

[381] Article 3. (. . .) The Parties should take *precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits as the lowest possible cost.* To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

[382] Defined the precautionary principles as, "by virtue of which preventive measures are to be taken when there are reasonable grounds for concern that substances or energy introduced, directly or indirectly, into the marine environment may bring about hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea, even when *there is no conclusive evidence of a causal relationship between the input and the effects*."

[383] Article 10, par. 6. *"Lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of a living modified organism on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of living modified organism in question as referred to in paragraph 3 above, in order to avoid or minimize such potential adverse effects".*

[384] TFEU, Art. 191.2: ". . . . *It shall be based on the precautionary principle* . . . ."

[385] Commission of the European Communities, COM (2000) 1 final, Brussels, 2.2.2000.

Within the EU context, the precautionary principle is applied in cases where a phenomenon, product or process has potentially dangerous effects but cannot be determined with sufficient certainty through appropriate scientific evaluation.

The Precautionary Principle Guidelines outlines the conditions that would trigger the application of the principle, to wit:

- Identification of potentially negative effects. The potentially adverse effects of a phenomenon, product or process is identified through the evaluation of scientific data.

- Scientific evaluation of available data. An assessment of the possibility of the risk to the environment, human, animal and plant life occurring is then undertaken through the evaluation of reliable scientific data and logical reasoning. While a comprehensive assessment may not be possible, the Guidelines suggests that all efforts should be made to evaluate the available scientific information. This would include, where possible, a report indicating an assessment of existing knowledge and available information, the views of scientists on the reliability of the assessment and the remaining uncertainties. The report should also contain topics identified for further scientific research.

- Existence of scientific uncertainty. The scientific evaluation of the potential risk to the environment, human, animal and plant life was inconclusive due to insufficiency of data. This makes it impossible to determine the potential occurrence of the identified risk with sufficient certainty.

Once the above conditions exist, EU policymakers will assess the level of risk and make the political decision on whether to act or not to act. Once they decide to act, they are enjoined by the Guidelines to apply the precautionary principle. Such application shall be guided by the following general principles:

- Proportionality. Measures adopted should be proportional to the desired level of protections

- Non-discrimination. Measures should apply equally to comparable situations and different situations should be treated differently, unless there are objective grounds for doing so.

- Consistency. Measures should be consistent with the measures already adopted in similar circumstances or using similar approaches.

- Examination of the benefits and costs of action or lack of action. The measures adopted presuppose examination of the benefits and costs of action and lack of action. This examination should include an economic cost/benefit analysis when this is appropriate and feasible. However, other analysis methods, such as those concerning efficacy and the socio-economic impact of the various options, may also be relevant. Besides the decision-maker may, in certain circumstances, be guided by non-economic considerations such as the protection of health.

- Examination of scientific developments. The measures, although provisional, shall be maintained as long as the scientific data remain incomplete, imprecise or inconclusive and as long as the risk is considered too high to be imposed on society.

  Maintenance of the measures depends on the development of scientific knowledge, in the light of which they should be reevaluated. This means that scientific research shall be continued with a view to obtaining more complete data.

  Measures based on the precautionary principle shall be reexamined and if necessary modified depending on the results of the scientific research and the follow up of their impact. (Guidelines quoted practically verbatim from the text)

The Guidelines are meant to provide concrete guidance to the application by the EU of the precautionary principle domestically and at the international level. They are also meant to be the starting point for a broader study of the conditions in which risks should be assessed, appraised, managed and communicated.

In relation to environmental protection, once the precautionary principle is determined to apply, domestically at least, measures applied by the EU shall aim at achieving a high level of protection while taking into account the diversity of the conditions of the various Member States.[386]

➢ Polluter-Pays Principle

Environmental policy of the European Union as embodied in the Treaty on the Functioning of the European Union also mandates that environmental damage be rectified at source and the polluter should pay for such damage.[387]

To this end, the European Parliament and the European Council adopted the Environmental Liability Directive (ELD) of 2004,[388] as amended.[389] The

[386] *See* TFEU, Arts. 191.2 and 191.3 (*ex* Art. 174 of TEC); TFEU, Art. 11 (*ex* Art. 6 of TEC); TFEU, Art. 114.3 (*ex* Art. 95.3 of TEC); Charter of Fundamental Rights of the European Union, Art. 37.
[387] TFEU, Art. 191.2.

ELD mandates that persons engaged in occupational activities that present risks for human health or the environment are liable to pay for the reasonable costs of prevention or damage.[390] This includes activities resulting to the release of toxic and dangerous materials into the air or water, waste management operations, installations that produce dangerous chemicals,[391] waste management from extractive industries,[392] and carbon capture and storage activities.[393]

Other occupational activities that do not present such risks but cause damage to protected species and natural habitats due to the fault and negligence of the operators will also be subject to liability.[394]

The ELD, however, applies only where there are one or more identifiable polluters, the damage is concrete and quantifiable and a causal link is established between the damage and the identified polluter(s).[395]

c. EU External Actions in Relation to Trade, Environment and Sustainable Development

In relation to trade, environment and sustainable development, the European Union's external actions are guided by the following objectives:

- Foster the sustainable economic, social and environmental development of developing countries with the primary aim of eradicating poverty;[396]
- Encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;[397]
- Help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;[398]
- Assist populations, countries and regions confronting natural or man-made disasters;[399] and
- Promote an international system based on stronger multilateral cooperation and good global governance.[400]

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[388] Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, L i4 3/56, 30.4.2004.
[389] Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC; and Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC/ 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No. 1013/2006.
[390] ELD 2004, Whereas clause (8).
[391] ELD, 2004, Annex III.
[392] *See* Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC
[393] Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC/ 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No. 1013/2006.
[394] ELD 2004, Whereas clause (9); *See* Annex III.
[395] ELD 2004, Whereas clause (13).
[396] Treaty of the European Union, Title V, Chapter I, Article 21.2 (d).
[397] Treaty of the European Union, Title V, Chapter I, Article 21.2 (e).
[398] Treaty of the European Union, Title V, Chapter I, Article 21.2 (f).
[399] Treaty of the European Union, Title V, Chapter I, Article 21.2 (g).

In pursuing these external objectives, the Treaty of the European Union mandates that the EU should "ensure consistency between the different areas of its external action and between these and its other policies."[401]

d. A Look at Some EU Environmental Regional Initiatives in Asia

EU Action Plan for Forest Law Enforcement, Governance and Trade

The EU Action Plan for Forest Law Enforcement, Governance and Trade (**"FLEGT**") was adopted by the Commission of the European Communities in 2003. It sets out a proposed process and a package of measures through which the European Commission (**"EC"**) would address the growing problem of illegal logging and related trade therein.

Background

Illegal logging is defined as the harvesting of timber in violation of national laws.[402] The FLEGT notes that the illegal exploitation of natural resources, including forests, is closely associated with corruption and organized crime. Illegal logging is estimated to cost timber-producing countries between €10-15 billion per year in lost revenues.[403] Illegal logging is cited as causing enormous environmental damage and loss of biodiversity, undermining the competitiveness of legitimate forest industry operations, and undermining many essential elements of the EC's development objectives.[404]

The FLEGT notes that regional initiatives had been previously established to improve forest law enforcement and governance around the world. The first such regional initiative was the Asia Forest Law Enforcement and Governance process. The FLEGT is differentiated from previous regional initiatives because it seeks to address wider and more complex problems concerning the sustainability of forest exploitation, instead of just being limited to the legality of logging activities. The FLEGT is part of the overall efforts of the EC to achieve sustainable forest management, both within and outside the EU.[405]

EU Action Plan

The FLEGT consists of support for timber-producing countries, efforts to develop multilateral collaboration to combat the trade in illegally harvested timber, voluntary measures to support governments that want to ensure that illegally harvested timber from their territory is not admitted to the EU market, public procurement policy, private sector initiatives, measures to avoid investment in activities which encourage illegal logging,

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[400] Treaty of the European Union, Title V, Chapter I, Article 21.2 (h).
[401] Treaty of the European Union, Title V, Chapter I, Article 21.3, last para.
[402] Communication from the Commission to the Council and the European Parliament: Forest Law Enforcement, Governance and Trade (FLEGT) Proposal for an EU Action Plan, p. 4.
[403] Id., at 4; citing World Bank, Revised Forest Strategy (2002).
[404] Id., at 4. .
[405] Id., at 5.

and efforts to address the trade of timber by armed groups to fund armed conflicts, also known as "conflict timber."[406]

Development Cooperation

The FLEGT recognizes that the highest levels of illegal logging are found in developing and emerging market countries, and that development cooperation has an important role to play in building a country's capacity to tackle the illegal logging problem. To those ends, the EC commits under the FLEGT to use funds and resources already earmarked for FLEGT-related activities under existing Regional and Country Programmes, or available under the Tropical Forest Budget Line made available by the European Parliament and the EC on the basis of the previously enacted Regulation (EC) No. 2494/2000. The EC shall integrate further support for FLEGT issues into its future programs, including those programs that it develops for countries where illegal logging is a national priority.

Development of Multilateral Framework and International Collaboration

The FLEGT recognizes that it is necessary to engage other major timber consumers to explore ways of working together to develop a more comprehensive framework that restricts the entry into their markets of illegally harvested timber. Towards that goal, the EC commits under the FLEGT to build consensus among importing and exporting countries on the best way to tackle the problem, to explore collaboration on the issue with countries in the European Free Trade Area, and to engage in dialogue with other countries in appropriate international meetings such as under the International Tropical Timber Organization.[407]

Voluntary Licensing of Exports

The FLEGT acknowledges that efforts to tackle illegal logging are hampered by the fact that once shipped abroad, illegally harvested timber cannot be easily prevented from entering the supply chain and providing profits for those involved. The EC proposes that a voluntary licensing scheme could ensure that only legal timber is imported from parties which participate in the scheme. Under the proposed scheme, exports of timber from participating countries to the EU would be accompanied by an export permit that is granted if the timber had been harvested in conformity with national laws. The scheme would be implemented through individual partnership agreements between the exporting countries and the EU. Timber that originates from a partner-country and arrives at an EU point of import would not be released for free circulation within the EU without such a permit. The FLEGT commits the EC to propose a Regulation to implement the scheme.[408]

To achieve the voluntary licensing of exports, the FLEGT commits the EC to enter into discussions with interested countries and regional organizations on the elements of

[406] Id., at 6.
[407] Id., at 11.
[408] Id., at 11-12.

proposed FLEGT partnership agreements, to request authorization from the European Council to enter into negotiations on FLEGT partnership agreements with timber producing countries, and to eventually conclude FLEGT partnership agreements with interested countries.[409]

Additional Legislative Options of the EC

The FLEGT notes that there is no legislation in the EU that prohibits the import and marketing of illegally harvested timber or timber products. It is feared that multilateral progress in the regulation of illegal timber may be insufficient, and to address that gap, it may be necessary for the EU to adopt appropriate legislation to control imports of illegally harvested timber into the EU. The FLEGT commits the EC to analyze the options for and the impact of further legislative measures to address illegal timber trade into the EU, and to consult with forest sector stakeholders regarding the options and impact of such further legislative controls.[410]

Public procurement

The FLEGT recognizes that current and future EC legislation on public procurement offers a number of possibilities for taking into account environmental considerations in public procurement procedures. The EC commits to develop and use a Handbook of Green Procurement that establishes the viability of adopting environmental aspects of sustainable forest management and the use of only legally harvested timber and products into consideration in public procurement. [411]

Private Sector Initiatives

The FLEGT acknowledges that based on principles of corporate social responsibility, the private sector has a key role to play in combating illegal logging and can exert a direct and positive influence through a network of business relationships extending from the forest to the marketplace. The EC commits to apply lessons from corporate social responsibility initiatives to the forest sector, to promote private sector initiatives such as the establishment of coordinating bodies, to support developing countries as they try to initiate private sector initiatives in areas such as forest monitoring, and to encourage private sector participation through means such as providing technical and financial assistance for ensuring that only legal timber passes through the supply chain.[412]

Improved Due Diligence

The FLEGT recognizes that large-scale capital investments in the forest sector are placed at high risk if they do not have clearly defined legal and sustainable supplies of timber over the long term. Banks and financial institutions investing in forest sector operations should be encouraged to assess the risk attached to social factors (such as conflict over

[409] Id., at 14.
[410] Id., at 15.
[411] Id, at 15-16.
[412] Id., at 18.

land and access to forest resources) and environmental factors (such as the lack of a long-term supply of legal and sustainable timber), as these may ultimately have bearing on their investments.[413]

In order to improve due diligence, the EC shall encourage banks and financial institutions to take into account environmental and social factors when conducting due diligence on their investments in the forest sector, develop specific procedures for environmental and social due diligence through its agencies that operate with public money such as export credit agencies, and identify ways to assist public lending bodies to obtain better information about forest sector investments and the associated risks.[414]

Money Laundering

The FLEGT notes that the criminalization of the laundering of the proceeds from illegal logging depends on whether such activity is deemed by each EU Member State a serious offense under their own internal law. At the time of the adoption of the FLEGT, only a small number of EU Member States designated crimes relating to illegal logging under money laundering legislation. The FLEGT mandates the EC to encourage EU Member States to designate illegal logging as a crime for the purposes of money laundering, identify which EU Member States have money laundering legislation applicable to forest sector crimes and to disseminate this information to banks, financial institutions and other financial sector agencies within the EU, to encourage information sharing between the financial crimes units of the EU Member States on forest-related crimes, and to provide appropriate development cooperation assistance that strengthens a developing country's capacity to deal with forest-related money-laundering issues.[415]

CITES

The FLEGT states that the CITES, to which all EC Member States are parties, has an important role to play in controlling trade in endangered tree species. In relation to the CITES, the EC shall promote research on endangered timber species to justify their inclusion in Appendices I and II of CITES, to address weaknesses in the permit system that regulates trade in species listed in the Appendices of CITES, and to encourage third world countries to manage CITES-listed species sustainably.[416]

Conflict Timber

The FLEGT takes note of the problem surrounding "conflict timber," which is loosely defined as timber traded by armed groups, the proceeds of which are used to fund armed conflicts, and which may fall within the definition of "legal timber" if authorized by the government from where such timber is exported. The EC commits to support work to define conflict timber at an international level, recognize and address in its development cooperation programs the role forests play in the context of conflicts, and initiate

[413] Ibid.
[414] Id., at 18-19.
[415] Id., at 19.
[416] Id., at 20.

discussion with Member States, other donors, and forested countries on the role of forests in conflict situations and how this can be taken into account in forest law enforcement and governance.[417]

Coordination and Programming

The FLEGT requires the Commission to establish a coordination mechanism that acts as a central focal point for the FLEGT initiative and facilitate the implementation of the FLEGT action plan. The coordination mechanism shall likewise provide technical inputs for the development of partnership agreements with major wood-producing countries, develop a detailed and coordinated FLEGT work plan with EU Member states, provide a process for consulting with major forest sector stakeholders, assist development of a strategy to expand the focus of the initiative to include other major wood-consuming markets, and ensure that technical inputs and expertise required to implement the FLEGT are made available.[418]

East Asia - FLEG

FLEG, which stands for Forest Law and Environmental Governance, is an overarching framework of countries to combat illegal logging. Several regional initiatives on FLEG have already been established and among them is the East Asia FLEG (EA-FLEG). EA-FLEG was recognized by the ASEAN cooperation and has been incorporated into its strategic plan and regional program of action (DENR, FAO and ITTO, 2007). [419] The Philippines is an active member of the EA-FLEG. As a result, the Philippines has established cooperation with Indonesia and has released a joint statement regarding strengthening of the forest law enforcement and governance process in 2005.

With regard to the actual happenings on the ground, De Claro (2010)[420] assess the level of compliance of the Philippines to FLEG using the following thematic elements: (1) enabling conditions (i.e., policies, processes and coordination mechanism); (2) prevention (i.e, IEC and decentralization of functions); (3) detection (i.e., certification schemes); (4) suppression (i.e., sanctions and incentives); (5) investigation (i.e, preparation of pertinent data for filing offenses); (6) prosecution (i.e., litigation procedures); (7) recovery (i.e., seizures and confiscations); (8) forest governance (i.e., accountability, transparency, and customary rights). In his assessment, the following issues were raised:

- DENR has all the implementing rules and regulations (IRR) and guidelines for all transactions on forest products ranging from cutting or harvesting up to transporting and marketing, however there is a need to harmonize some of these policies and streamline some processes to reduce bureaucracy;

[417] Id., at 21.
[418] Id., pp. 22-23.
[419] DENR, FAO, and ITTO. (2007). Improving forest law compliance and governance in Southeast Asia: taking stock and moving forward. Report on the outcomes and recommendations from a Regional Workshop held last September 11-13, 2007 at Manila, Philipines
[420] De Claro, M., (2010). Forest law enforcement and governance in the Philppines. In M. Pescott, P. Durst, & r. Leslie (Eds.), Forest law and governance progress in Asia and the Pacific (pp. 155-___). Bangkok, Thailand: FAO

- The Forest Stocks Motoring system (FSMS) adopted in 1996, which aims to track down timber from the cutting area to the primary wood-processing plants and to provide data on the remaining forest stands, is still paper-based and does not provide real-time data;
- Insufficient number of legal officers and lawyers in the field that hampered prosecution of forest crimes;
- Judges and prosecutors in the field have low level of knowledge on forestry laws and regulators;
- Need to establish alliances with law enforcement groups, media, and other stakeholders;
- Lack of policies to persecute corrupt government officials. Money generated from illicit timber-trading or associated activities is not included as one of crimes under the Anti-Money Laundering Act of 2001; and
- Lack of human resources for protecting vast tracts of forestry lands.

The above issues is consistent with the FLEG-related challenges in Asia and the Pacific identified by Pescott and Durst (2010)[421] to wit: (1) the need to enhance existing systems on information and data collection – this means strengthening the monitoring system on the ground that includes timber reports on harvesting and supply chain; (2) the need for new technologies and improvements in infrastructure; and (3) the need to improve reporting and dissemination of findings to interested stakeholders including senior government officials, policy-makers, enforcement agencies, field crews and the media.

Despite the broad spectrum of issues, there have been some perceptions that the FLEG processes have been mainly addressing only the illegality and lack of law enforcement aspects in the timber producing countries (Federal Ministry for Economic Cooperation and Development (2007)[422]. Mr. William Magrath of World Bank, even finds EA-FLEG more focused on the political aspects (i.e. Ministerial level meetings) rather than technical work at the field level. He added that the mechanism had become very regional or international in its discussion that it had overlooked the ground works at the national and at the local level. [423]

[Highlighted portions may be incorporated in the EU-FLEGT discussion above]

EU-FLEGT

To include trade in FLEG (i.e., FLEG-T) is very strategic as it ensures clear and shared responsibility between the timber-producing and timber consuming countries. While it promotes sustainable forest management with partner countries, it concurrently addresses the three pillars of sustainable development namely social, economic and environmental

[421] Pescott, M. and Durst, P., (2010). Reviewing FLEG processes in Asia and the Pacific. In M. Pescott, P. Durst, & r. Leslie (Eds.), Forest law and governance progress in Asia and the Pacific (pp. 1-16). Bangkok, Thailand: FAO
[422] Federal Ministry for Economic Cooperation and Development, 2007. FLEGT- Combating illegal logging as a contribution towards sustainable development. Bonn, Germany: Author
[423] DENR, FAO, and ITTO. (2007). Improving forest law compliance and governance in Southeast Asia: taking stock and moving forward. Report on the outcomes and recommendations from a Regional Workshop held last September 11-13, 2007 at Manila, Philipines.

aspects. The European Union (EU) is one of the pioneer organizations that implements the FLEGT.

The EU has prepared a FLEGT Action Plan that details the measures to support timber producing and timber consuming countries. Of particular importance is the implementation of the licensing system (i.e. Legality Assurance System) with partner countries to ensure that imported wood products, specifically logs and semi finished goods such as roundwood and sawnwood, veneer and plywood products, came from sustainably managed forest. This will be expanded to cover other wood-based products.[424] On the other hand, illegally imported or unlicensed wood products would be denied to enter EU (Frip, 2004)[425]. This will be implemented under a Voluntary Partnership Agreement (VPA) with a partner country. Among the countries included in the action plan, with which the EU is highly interested to forge partnership, are those that are located in the following regions: Central Africa, Russia, Tropical South America and Southeast Asia. It is said that these regions are the source of almost 60% of the world's forest (Federal Ministry for Economic Cooperation and Development, 2007).

EU's FLEGT action plan is supporting both sides of the producer and the consumer side. Aside from the VPAs, it also aims to supports the development-led processes such as governance support, timber licensing and forest legislation of the timber producing countries. For the consumer countries or 'demand' side the action plan aims to support green procurement policies, due diligence legislation, trade promotion, and strengthening the role of public and private sector.

There are already a number of countries currently negotiating with EU for FLEGT VPA. This includes six countries developing the systems agreed under a VPA and six countries that are negotiating with the EU. Furthermore, there are around 15 countries from Africa, Asia and Central and South America that have expressed interest in VPAs[426]. They also have EU FLEGT Asia Regional Support Programme with regular missions to Cambodia, Laos, Myanmar, Vietnam and Thailand. Criteria for partnership implementation of FLEG-T include:

- Widespread illegal logging with potential use of the funds to armed conflict
- Poor countries with forest destruction as a result of illegal logging
- Pressure on importations due to trade policies that encourage illegal logging

EU currently works with FAO to implement a four-year FLEGT support programme in the African, Carribean and Pacific (ACP) regions. Among the aims of the programme is to:

- help forest governance by providing technical assistance
- strengthen the ability of stakeholder groups – government, civil society and private sector – to put priority elements of the FLEGT Action Plan into place

[424] Federal Ministry for Economic Cooperation and Development, 2007. FLEGT- Combating illegal logging as a contribution towards sustainable development. Bonn, Germany: Author
[425] Frip. (2004). FLEG and trade – what will the impacts be?. London: Sustainable Development Programme.
[426] www.euflegt.efi.int.com

- support pilot projects that add value to or bridge critical gaps in processes to improve forest law enforcement, forest governance and the legal timber trade
- make information and knowledge on forest law enforcement, forest governance and the timber trade available to stakeholder groups.[427]

Opportunities in FLEG-T

There are indeed more opportunities in the EU-FLEGT than the EA-FLEG. Many timber producing parties will be interested because of the assistance that the EU will provide. However, there are some points to be considered should this agreement be included in the EU-Philippines FTA agreements. This include:

- requirements for legality (i.e. what do they mean by "sustainably managed" forests?)
  - Since the scientific community in the Philippines is discouraging the planning of exotic and invasive species such as the mahogany, how do we ensure that this agreement would not provide perverse incentives to those planting exotic species? In the ecologist perspective, a tropical forest with invasive species is at peril because of the tropical forest ecosystem is fragile.
  - The country has some serious issues on illegal settlers in the forests and watersheds. If these issues are present how do we ensure that the EU will not consider this as deterrents to sustainable management of the forests?
  - With the absence of the national land use policy, the Philippines is still using the old definition for the forest which is geographically defined rather than physical definition. How can we manage a certain area if do not know the scope of what we are going to manage? Thus forest definition should politically and technically be corrected.
  - Timber License Agreements (TLAs) in the Philippines will be expiring soon because of the Total Logging Policy Ban. Trees cut from community-based tenurial areas such as CBFMAs, IFMAs, SIFMAs, etc. might not suffice the demand for timber. Will we push for non-quota restrictions?
  - The implementation of total logging policy ban actually already disqualifies us from 'sustainably managing' our forest both in economic and ecological perspective. Forest economist will teach us that the mature wood species would rather be processed than let it decayed in the forest. While forest ecologist would say that if we do not thin our forest, some species would find it hard to regenerate. If we would consider lifting the ban just to fulfil the requirements at FLEGT, we should be ready to push for the SFM bill.

- Green procurement policies
  - if we are to push for green procurement policies, certifying bodies should also be created. As for now, we do not have a certification scheme in place that would prove that the wood or wood products were cut from sustainably managed forest.

- Corruption

[427] ACP FLEG-T support programme brochure.

- How do we ensure that officials would not be bribed by countries who would attempt to import to EU through us (this is in the context that we are already in partnership agreement with EU) as there are no provisions that indirect importation is a violation.
- Considering that Anti-money laudering act does not prosecute officials who are behind illegal logging in the country. Are we ready to put teeth on this policy to prosecute big politicians who are behind illegal logging?

B. Sustainable Development Provisions Relating to the Environment in Selected EU FTAs

Sustainable development forms a significant part of EU FTAs with other countries and regional groupings. However, there is no one template for environment-related sustainable development provisions in EU FTAs. To illustrate the varying approaches of EU FTAs to sustainable development, we will examine a few significant FTAs below.

a. South Korea-EU Free Trade Agreement

The Free Trade Agreement between the European Union and its Member States and the Republic of Korea ("South Korea-EU FTA")[428] was provisionally applied between the parties since 01 July 2011.[429] The Preamble of the South Korea-EU FTA emphasizes promoting international trade and investment between the parties with a view to enhancing their competitiveness in the global market, improving general welfare, and promoting sustainable development. [430]

The South Korea-EU FTA recognizes sustainable development as the overarching objective of the parties' trade relations. To this end, the parties commit to integrate the objectives of sustainable development into all levels of their partnership. [431] They also commit to encourage foreign direct investment without lowering environmental standards and the enforcement of related environmental laws.[432]

The South Korea-EU FTA provides a whole chapter for Trade and Sustainable Development.[433] In relation to environment, the chapter reiterates the parties' commitment to integrating sustainable development in every level of their trade relationship.[434] Pursuant to such objective, the parties commit to:

- Honor their commitments under multilateral environmental agreements to which they are parties, and to consult and cooperate with each other in negotiations under these agreements on trade-related environmental issues of mutual interest to them;[435]
- Facilitate and promote trade and investment in environmental goods and services;[436]

[428] Official Journal of the European Union, L 127.14.5.2011.
[429] European Commission website <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/korea/>,
[430] *See* South Korea-EU FTA, Preamble, paras. 2, 3, 5, 8, 9, 10, 12.
[431] South Korea-EU FTA, Chapter 1, Article, 1.1.2 (g).
[432] South Korea-EU FTA, Chapter 1, Article, 1.1.2 (f).
[433] South Korea-EU FTA, Chapter 13.
[434] South Korea-EU FTA, Article 13.1.1.
[435] South Korea-EU FTA, Article 13.5.

- Effectively enforce their environmental laws affecting trade and investment, and uphold levels of protection without weakening and reducing them to encourage trade and investment;[437]
- When implementing environmental measures consider scientific and technical information, relevant international standards, guidelines or recommendations;[438]
- Transparency;[439]
- Review sustainability impacts of the implementation of the FTA;[440]
- Cooperative action in trade-related environmental policies;[441]
- Establish the Committee on Trade and Sustainable Development for the purpose of implementing the chapter on Trade and Sustainable Development;[442]
- Establish a civil society dialogue mechanism;[443]
- Settle disputes through government consultations, the Committee on Trade and Sustainable Development and a panel of experts, successively.[444]

b. CARIFORUM-EU Economic Partnership Agreement

The Economic Partnership Agreement between the CARIFORUM[445] States and the EU, ("CARIFORUM-EU EPA")[446] was provisionally implemented since 29 December 2008.[447] In its Preamble it considers sustainable development as a necessary ingredient to the economic and social progress of the CARIFORUM states and their regional integration.[448] It aims to reduce and eventually eradicate poverty through the establishment of a trade partnership between the two regional groupings that is consistent with sustainable development.[449] To this end, the parties commit to apply and integrate the objectives of sustainable development at every level of the CARIFORUM-EU EPA, mindful of the "human, cultural, economic, social, health and environmental best interests of their respective population and of future generations," and the principles of ownership, participation and dialogue. It also places the human person at the center of development.[450]

While environment-related provisions on sustainable development appear in various portions of the text, such as in fisheries, agriculture and tourism, a separate set of

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[436] South Korea-EU FTA, Article 13.6.
[437] South Korea-EU FTA, Article 13.7.
[438] South Korea-EU FTA, Article 13.8.
[439] South Korea-EU FTA, Article 13.9.
[440] South Korea-EU FTA, Article 13.10.
[441] South Korea-EU FTA, Article 13.11.
[442] South Korea-EU FTA, Article 13.12
[443] South Korea-EU FTA, Article 13.13.
[444] South Korea-EU FTA, Article 13.16 in relation to Articles 13.14 and 13.15.
[445] Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago.
[446] Official Journal of the European Union, L 289. 30.10.2008.
[447] NEPAIU, UKAID <http://nepaiu.gov.gd/index.php?option=com_content&view=article&id=124&itemid=194>.
[448] CARIFORUM-EU FTA, Preamble, para. 6. CONSIDERING the need to promote economic and social progress for their people in a manner consistent with sustainable development by . . . protecting the environment in line with the 2002 Johannesburg Declaration; Preamble, para. 15. REAFFIRMING their commitment to support the regional integration process among CARIFORUM States, and in particulare to foster regional economic integration as a key instrument to facilitate their integration into the world economy and help them face the challenges of globalization and achieve the economic growth and social progress compatible with sustainable development to which they aim.
[449] CARIFORUM-EU FTA, Article 1.a.
[450] CARIFORUM-EU FTA, Article 3.

provisions on the Environment[451] provide the framework for incorporating environmental concerns in what essentially is a trade agreement.

The Environment provisions of the CARIFORUM-EU FTA essentially cover the following:

i. The parties aim to:
- Integrate the sustainable management of natural resources and the environment into all levels of the partnership;
- Adopt the principles of ownership, participation, dialogue and differentiation;
- Conserve, protect and improve the environment through multilateral and regional environmental agreements;
- Develop international trade consistent with the sound and sustainable management of the environment having due regard to each party's level of development; and
- Facilitate the trade of environmentally beneficial goods and services.[452]

ii. The parties adopt the following principles and practices:
- Encourage high levels of protection for the environment and public health;[453]
- Adopt international standards, guidelines or recommendations where practical and appropriate;[454]
- Take account of scientific and technical information, the precautionary principle, and relevant international standards, guidelines or recommendations;[455]
- Transparency;[456]
- Uphold levels of protection and not to gain competitive advantage by lowering such levels, or derogating or failing to apply protective legislation;[457]
- Consultation and monitoring;[458] and
- Cooperative action.[459]

c. Mexico-EU Economic Partnership Agreement

The Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and the United Mexican States ("Mexico-EU EPA")[460] entered into force in October 2000.[461] In its Preamble, both parties acknowledge the importance they attach to the principles of sustainable development. The goal of the Mexico-EU EPA is to strengthen existing relations between the parties through the institutionalization of political dialogue, strengthening of commercial and economic relations through trade liberalization and broadening cooperation between them.[462]

[451] CARIFORUM-EU FTA, Chapter 4.
[452] CARIFORUM-EU FTA, Article 183.
[453] CARIFORUM-EU FTA, Article 184.
[454] CARIFORUM-EU FTA, Article 185.
[455] CARIFORUM-EU FTA, Article 186.
[456] CARIFORUM-EU FTA, Article 187.
[457] CARIFORUM-EU FTA, Article 188.
[458] CARIFORUM-EU FTA, Article 189.
[459] CARIFORUM-EU FTA, Article 190.
[460] Official Journal of the European Communities. L 276. 28.10.2000.
[461] European Union website <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/mexico/>.
[462] Mexico-EU EPA, Article 2.

Unlike the South Korea-EU FTA and the CARIFORUM-EU EPA, the Mexico-EU EPA does not contain a significant amount of concrete commitments from both parties. In the area of sustainable development, in particular, commitments are limited to cooperation activities between the parties in such areas as agriculture and the rural sector, mining, energy, tourism, and environment and natural resources. These activities include exchanges of information, experts and technology, training of human resources, joint research, and mutual access to relevant programs, among others.[463]

Analysis and Recommendation

The environment and sustainable development provisions of the later free trade agreements, the South Korea-EU FTA and the CARIFORUM-EU EPA mirror the EU internal environmental policies and principles. These include, integrating sustainable development principles into all levels of the trade partnership between the parties, encouraging high levels of environmental protection and ensuring that these are not derogated to gain competitive advantage in trade, and consideration of available scientific and technical information, and international standards in formulating and implementing environmental policies.

Note that the later agreements also contain more concrete commitments from both parties. Reflecting the socio-economic conditions of the CARIFORUM states, the primary goal of the CARIFORUM-EU EPA is to eradicate or reduce poverty while upholding the principles of sustainable development. The South Korea-EU FTA, on the other hand, emphasizes more focus on maximizing trade and investment opportunities between the parties, while harmonizing trade and environmental goals in the formulation and implementation of the parties' respective related policies.

Similar to other EU cooperation agreements, where the parties are essentially laying the framework for building and strengthening relations between them, the Mexico-EPA did not contain significant commitments in the area of sustainable development.

In negotiating with the EU, the task of Philippine negotiators then is to assess whether the Philippines is ready to make concrete and specific commitments to the EU in the area of sustainable development. They should also assess areas where technical assistance and support from the EU will be best maximized, what the Philippines will be prepared to give in exchange and the potential costs to the economy, both in the short-term and the long-term.

C. EU Negotiating Mandate and Strategy in Relation to the Philippines

The Draft EU-ASEAN FTA negotiating directive 2007 (the "Negotiating Directive") lays down the EU parameters for negotiating with ASEAN and by extension, the individual member states of ASEAN. Following the drive for global competitiveness set out in the EU 2006 Growth and Jobs Strategy, the Negotiating Directive mandates that FTAs with

[463] See Mexico-EU EPA, Articles 21, 22, 23, 25, and 34.

ASEAN must be "comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation . . . incorporating provisions on trade-related aspects of sustainable development." It, however, "stresses the need to ensure that" the parties "share similar ambitions" at the outset "to avoid negotiations later stalling due to mismatch of expectations."

The Negotiating Directive mandates that any free trade agreement must "provide for cooperation on trade and sustainable development, including its environmental and social dimensions." Such agreements while going beyond existing WTO commitments, must be compliant with WTO provisions, particularly, on regional trade agreements.

a. Proposed Provisions in Relation to Environmental Protection and Sustainable Development [464]

Preamble and General Principles

The Preamble and General Principles of the agreement should refer to:

- "The commitment of the parties to sustainable development and the contribution of international trade to sustainable development in its economic, social and environmental dimensions, including economic development, poverty reduction, full and productive employment and decent work for all, as well as the protection and sustainable use of eco-systems and natural resources;
- The commitment of the parties to an FTA in full compliance with their rights and obligations arising out of the WTO;"

Objectives

The objectives of the agreement should indicate that "The Agreement will recognise that sustainable development is an overarching objective of the parties and will aim at ensuring and facilitating respect of international environmental and social agreements and standards. The Agreement will recognise that the parties shall not encourage foreign direct investment by lowering domestic environmental, labour or occupational health and safety legislation and standards, or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity."

For this purpose, the Negotiating Directive mandates that the agreement's economic, social and environmental impacts must be assessed through an independent Sustainability Impact Assessment to be undertaken by the European Commission.

A Trade Sustainability Impact Assessment of the FTA between EU and ASEAN was conducted and issued in 2009.

Trade and Sustainable Development

[464] Draft EU-ASEAN Negotiating Directive 2007, accessed 24 June 2012, available from http://www.bilaterals.org/spip.php?article8211

The Negotiating Directive proposes a separate provision for trade and development, which should contain "*commitments by both sides in terms of the social and environmental aspects of trade and sustainable development. The Agreement will include provisions to promote adherence to and effective implementation of internationally agreed standards in the social and environmental domain as a necessary condition for sustainable development. . . Consideration will also be given to measures to facilitate and promote trade in environmental goods, services and technology. The Agreement will foresee the monitoring of the implementation of these commitments, and of the social and environmental impacts of the Agreement, through inter alia review and public scrutiny, as well as instruments of encouragement and trade-related co-operation activities, including with relevant international fora*."[465]

a. PH-EU Partnership and Cooperation Agreement

The Framework Agreement on Partnership and Cooperation between the European Union and its Member States of the One Part, and the Republic of the Philippines, of the Other Part (the "PH-EU PCA") provides the framework that will guide the economic, social, political, security and cultural relationship between the Philippines and the EU (collectively referred to as the "Parties").

The Parties in the PH-EU PCA expressed their commitment to promote "sustainable development, including environmental protection and effective cooperation to combat climate change."[466] At the same time, they also acknowledge the importance of the "principles and rules which govern international trade as contained in particular in the Agreement establishing the World Trade Organization (WTO) and to the need to apply them in a transparent and non-discriminatory manner."[467]

The Parties' commitment to sustainable development is further reiterated in Article 1 (General Principles) of the PH-EU PCA, to wit: "The Parties confirm their commitment to promoting sustainable development, cooperating to address the challenges of climate change and to contributing to the internationally agreed development goals, including those contained in the Millenium Development Goals."

With respect to environment-related trade measures, particularly, sanitary and phytosanitary measures (SPS), and technical barriers to trade (TBT), the PH-EU PCA work within the framework of the the WTO Agreement on Sanitary and Phytsanitary Measures, the International Plant Protection Convention (IPPC), the World Organization for Animal Health (OIE) and the Codex Alimentarius Commission (Codex) in the case of SPS[468] and the WTO Agreement on Technical Barriers to Trade in the case of the TBTs, with provisions for technical assistance and capacity-building programs.[469]

[465] Draft EU-ASEAN Negotiating Directive 2007, accessed 24 June 2012, available from http://www.bilaterals.org/spip.php?article8211
[466] PH-EU PCA, Preamble, para. 16.
[467] PH-EU PCA, Preamble, para. 20.
[468] PH-EU PCA, Article 13.
[469] PH-EU PCA, Article 14.

Cooperation activities relating to the environment with potential impact on trade flows between the Parties include:

- Disaster risk management focusing on, among others, knowledge management, innovation, research and education to build a culture of safety and resilience at all levels,[470] and climate change adaptation and mitigation;[471]

- Energy, particularly, in creating a level playing field for investments in renewable energy technology and its integration in relevant policy areas;[472] developing energy standards especially for biofuels and other alternative fuels, related facilities and practices;[473] and promoting energy efficiency and conservation.[474]

  The Parties underscore the need to address the links between affordable access to energy services and sustainable development.[475] In addition, in accordance with the Parties' commitments under the UN Framework Convention on Climate Change, the Parties agreed "to promote technical cooperation and private-partnerships in sustainable and renewable energy, fuel-switch and energy efficiency projects through flexible market-based mechanisms such as the carbon market mechanism.[476]

- Environment and Natural Resources where the "Parties agree to cooperate with a view to enhancing the mutual supportiveness of trade and environment policies, and the integration of environmental considerations into all sectors of cooperation."[477]

  In relation to trade, the Parties agree to cooperate in regional environmental programmes relating to: (a) capacity building on climate change adaptation and mitigation and energy efficiency;[478] (b) promoting environment friendly technologies, products and services, including through the use of regulatory and market-based instruments;[479] (c) improve natural resource including forest governance and combating illegal logging and associated trade;[480] (d) prevention of illegal transboundary movement of solid waste and hazardous wastes and other forms of wastes.[481]

- Agriculture, Fisheries and Rural Development where dialogue and cooperation is encouraged in the following trade-related areas: (a) agricultural policy and international agricultural outlook in general;[482] (b) the possibilities for facilitating trade in plants, animals, aquatic animals and their products taking into account relevant international conventions such as IPPC and OIE, among others, to which

[470] PH-EU PCA, Article 32 (b).
[471] PH-EU PCA, Article 32 (h).
[472] PH-EU PCA, Article 33.1 (a) and (b).
[473] PH-EU PCA, Article 33.1 (c).
[474] PH-EU PCA, Article 33.1 (d).
[475] PH-EU PCA, Article 33.2.
[476] PH-EU PCA, Article 33.3.
[477] PH-EU PCA, Article 34.3.
[478] PH-EU PCA, Article 34.4 (b).
[479] PH-EU PCA, Article 34.4 (d).
[480] PH-EU PCA, Article 34.4 (e).
[481] PH-EU PCA, Article 34.4 (g).
[482] PH-EU PCA, Article 35.1 (a).

they are parties;[483] (c) quality policy for plants, animals and aquatic products, and in particular Geographical Indications;[484] (d) the development of sustainable and environmentally-friendly agriculture, agro-industry, biofuels, and the transfer of biotechnology;[485] and (e) promoting efforts to prevent and combat illegal, unreported and unregulated fishing practices and associated trade.[486]

[483] PH-EU PCA, Article 35.1 (b).
[484] PH-EU PCA, Article 35.1 (e).
[485] PH-EU PCA, Article 35.1 (f).
[486] PH-EU PCA, Article 35.1 (k).

PART IV. CONCLUSIONS AND RECOMMENDATIONS

A. Sustainable Development Principles

The discussions above indicate that the EU, while actively pursuing regional and bilateral agreements with different states, remains a multilateralist. This means that it will most likely push for more harmonization of the FTA provisions with WTO rules. However, on the sustainable development front, the EU has much more developed set of policies and programs within the Union and is one of most aggressive regional groupings working at including sustainable development principles into all levels and in cross-cutting policy areas. The Philippines can thus expect the EU to come with a strong position on sustainable development, expecting the Philippines to make concrete commitments to principles of sustainable development. The South Korea-EU FTA can provide guidance on the extent of commitments the EU could push for in this area.

On the part of the Philippines, policy-wise, its sustainable development goals are not inconsistent with the EU. However, given the wide disparity in the Philippines' and EU's capacity to effectively implement sustainable development policies at the local level and the differences in economic development between the two economies, the Philippines would be best served to emphasize poverty reduction and financial and technical support from its EU partners.

B. Analysis of Philippines' Defensive Interests

In a PH-EU FTA negotiations, the EU would most likely seek the following concessions, which the Philippines may consider and respond to as follows:

No.	EU	Philippines
1	Those that they cannot get in multilateral negotiations, such as, influence the Philippines on its position in Durban climate change negotiations and get it to accept mitigation commitments	Resist this and demand consistency with multilateral agreements, except where beneficial for Philippines On the climate change negotiations front, the Philippines can only commit whatever it has identified as mitigation actions in National Climate Change Action Plan. It should leverage the FTA negotiations for more support for climate change adaptation and disaster risk reduction.
2	Push for preferential treatment and market access to their green technology and products based on innovation, including environmental goods and services	Open to green technology and products subject to (1) applicability to Philippines (domestic technology/conditions), including safety issues, (2) analysis of what sectors in Philippines will be affected, and (3) transition of affected sectors
3	Allow EU subsidies on green technologies	Acknowledge that subsidies exist (use as a

	/products/goods/services/agriculture which could have a negative impact on competing and emerging products in the Philippines.	negotiating tool for Philippines), analysis of its impacts, exploring how Philippines can also provide similar subsidies, in a way compliant with WTO rules. The challenge to the Philippines, however, is in establishing a set of objective standards in determining which areas to subsidize, as the EU will likely demand such standards.
4	Impose its stringent SPS requirements	The challenge to the Philippines is its limited capacity to meet such stringent requirements, particularly, as these require objective scientific basis.
5	Commit to closing opportunities to engage in waste disposal	Philippines must assess its economic interests in this area
6	Push for greater enforcement against illegal trade of timber and endangered species, including imposing certification and licensing requirements that may be onerous to the Philippines	Leverage to get support for enforcement. Also, assess the potential social and economic costs and benefits to the Philippines. Reject where certification and licensing requirements are too burdensome to the Philippines, or offer alternative mechanisms that will produce the same benefits.
7	Push for energy efficiency and renewable energy, especially as it benefits EU industries	Leverage this for support, as this is also important to the Philippines. Also, assess the long-term interest of the Philippines in building its own renewable energy sector and ensure that future opportunities to grow will not be curtailed by commitments under the FTA
8	Push for acceptance of stringent anti-GMO rules for import and labeling, including food and animal feeds	Argue for application of Cartagena Protocol
9	Push for access to Philippines' genetic resources	Agree in accordance with multilateral rules on access to genetic resources to the extent that it is socially and economically beneficial

C. Analysis of Philippines' Offensive Interests

The Philippines should also have a clear understanding of the social and economic costs to pushing for concessions from the EU. Among the concessions it may consider from a sustainable development perspective are:

- It should try to get concessions from EU matters that it cannot get at the multilateral level.
- Push for more support for sustainable development, including for enforcement, policy development, implementation and investments.

- Push for more technology transfer, including certain exceptions from IPR and preferential treatment on IPR
- Exchange of information and support for innovations in areas like ICT, biotechnology, renewable energy, climate adaptation
- Capacity building programs, including educational scholarships, exposure trainings, work exchange, educational partnership and accreditation scheme, etc.
- Support for research and development programs.

Finally, in crafting our positions on environmental issues related to the FTA, it is important to include in the discussions the following agencies – the Departments of Environment and Natural Resources, Agriculture and Foreign Affairs. It goes without saying that the Departments of Finance and Trade and Industry and the National Economic Development Authority would also have something to contribute to the crafting of such positions.