

### The Integration of Trade and Environmental Policies in Free Trade Agreements in Southeast-Asia

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## Studie

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### ***The Integration of Trade and Environmental Policies in Free Trade Agreements in Southeast-Asia***

Astrid Fritz Carrapatoso

#### **Abstract**

The integration of trade and environmental policies is part of the international sustainable development agenda. How trade and environmental policies could be designed in a way which makes them mutually supportive is discussed not only on a multilateral but also on a regional and bilateral level in the context of free trade negotiations. While some Western countries such as the U.S. or New Zealand try to integrate environmental issues into their trade policies, Asian countries, for instance, are less willing to address these issues in trade negotiations. This article seeks to provide an overview of free trade negotiations between Southeast Asian countries and New Zealand in which environmental issues are addressed. Furthermore, it wants to work out the pros and cons of free trade with regard to the environment and seeks to identify some of the factors that influence the integration of trade and environmental policies in bi- and minilateral trade negotiations. (Manuscript received October 10, 2006; accepted for publication December 15, 2006)

*Key Words:* free trade, environmental policies, sustainable development, Southeast Asia, New Zealand, Thailand, Singapore, Malaysia, AFTA, WTO, ASEAN, U.S., NAFTA, Trans-Pacific SEP

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## Studie

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### **Die umweltpolitische Dimension internationaler Freihandelsabkommen am Beispiel Südostasien**

Astrid Fritz Carrapatoso

#### **Abstract**

Die Integration von ökologischen Aspekten in nationale und internationale Handelspolitik ist eines der Ziele nachhaltiger Entwicklung. So wird inzwischen sowohl auf nationaler als auch auf internationaler Ebene diskutiert, wie sich handels- und umweltpolitische Maßnahmen gegenseitig ergänzen können. Während manche Staaten wie beispielsweise die USA oder Neuseeland bemüht sind, umweltpolitische Themen in ihre Handelspolitik zu integrieren, treten asiatische Staaten diesem Ansatz eher skeptisch gegenüber und vermeiden Umweltthemen in Verhandlungen über Freihandelsabkommen. Dennoch wurde in manchen Verhandlungen, an denen asiatische Staaten beteiligt waren, dieser Aspekt auf die Agenda gesetzt und in konkrete umweltpolitische Maßnahmen umgesetzt. Im Folgenden werden die Verhandlungen über Freihandelsabkommen zwischen südostasiatischen Staaten und Neuseeland kurz dargestellt, in deren Rahmen umweltpolitische Maßnahmen diskutiert werden. Vor dem Hintergrund der theoretischen Debatte über positive oder negative Aspekte ökologischer Gesichtspunkte in Freihandelsabkommen werden anhand der Fallbeispiele Faktoren herausgearbeitet, die solch eine Politikintegration fördern bzw. behindern können. (Manuskript eingereicht am 10.10.2006; zur Veröffentlichung angenommen am 15.12.2006)

*Key Words:* Freihandelsabkommen, Umweltschutz, Südostasien, ASEAN

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## 1 Introduction: The Integration of Trade and Environmental Policies

Integrating trade and environmental policies and thus making free trade more sustainable is one of the challenges of the twenty-first century. The Rio Declaration of 1992 and its programme of action, the Agenda 21, emphasize that global trade is one of the important factors to realize sustainable development. The principles laid down in these documents are recognized in the preamble of the 1994 Marrakech Agreement Establishing the World Trade Organization (WTO). One of the major challenges for the multilateral trading system thus is to integrate the objective of sustainable development and to create so called “win-win-win” solutions, i.e. outcomes which are beneficial to the economy and the environment while at the same time meeting developmental goals. Today, the aspect of sustainable development is not only addressed in the context of WTO negotiations but also in bilateral and regional trade negotiations. The United States and New Zealand, for instance, pursue a comprehensive trade policy including environmental and labour issues. Examples include the New Zealand-Thailand Closer Economic Partnership (CEP), the Trans-Pacific Strategic Economic Partnership (SEP) between New Zealand, Chile, Singapore and Brunei or the U.S.-Singapore Free Trade Agreement (FTA). Environmental issues are also addressed in trade negotiations between New Zealand and Malaysia and are on the agenda in negotiations on an FTA between the Association of Southeast Asian Nations (ASEAN), Australia and New Zealand. This article seeks to give a brief outline of the trade and environmental debate in the context of FTA negotiations between New Zealand and Southeast Asian nations. Which factors facilitate or hinder the integration of environmental issues into bi- and minilateral trade agreements when Southeast Asian nations negotiate with Western countries and which are arguments against or in favour of the integration of trade and environmental policies in these negotiations will be the main questions to be addressed. First, a short overview of the theoretical debate on the pros and cons of free trade in terms of the environment will be given. This will be followed by an outline of the trade and environment debate in the international context, including the pioneering experiences made in negotiations on the North American Free Trade Agreement (NAFTA). Finally, the environmental policies in Southeast Asian countries will briefly be discussed. The New Zealand-Thailand CEP, the Trans-Pacific SEP as well as current negotiations on a New Zealand-Malaysia CEP

and an FTA between ASEAN and the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) will then be analyzed. The findings draw from the doctoral thesis of the author.

## **2 The Theoretical Debate: The Pros and Cons of Free Trade from an Environmental Perspective**

Controversy surrounds the discussion of the effects of free trade on the environment. Even though many advocates of trade liberalization respect environmental concerns about free trade, they always stress the negative effects of increased environmental regulations in international trade policy such as “green protectionism”. They fear that protectionist policies could reduce efficiency gains from world trade and that nations could use protectionism justified by environmentalism as a means to shield domestic markets from world competition (Cole 2000:21).

Free traders highlight the benefits of free trade for the environment. One of the benefits is that nations and individuals specialize in fields where they have a comparative advantage (Ricardo 1973:81). In terms of the environment, this implies that natural resources, for example, could be used more efficiently and associated waste could be further reduced. A study by the Organization for Economic Cooperation and Development (OECD) found that this could lead to a better allocation of economic activity in accordance with the environmental capacities and conditions of different countries (OECD 1994; Grossman and Krueger 1993). Environmentalists, in contrast, see opposite effects if the scales of production could be raised. This would have a negative effect on the quality of the environment as the amount of resources used can cause more pollution because some countries specialize in pollution-intensive goods (Rauscher 1997:1). Free trade may also damage the environment not only through the unsustainable use of natural resources but also through an increase of the production and consumption of environmentally unfriendly goods and services, and pollution emissions which threaten the earth’s assimilative capacity (Ratnayake 1999). However, environmentalists admit that there might be positive effects if clean industries were to expand and dirty industries to decrease. The effects of scale could thus be neutralized. In addition, trade may also increase the access to cleaner technologies (World Bank 2004:57).

Another common argument in favour of free trade is that it leads to increases in financial resources, enabling nations and individuals to spend more on environmental protection (Voigt 1993; Ratnayake and Townsend 2000). Dasgupta et al.

(2001) found empirical evidence that the environmental regulatory performance correlates with income per capita, i.e. once annual income reaches a certain point people begin to care about the environment and become intolerant of pollution. In addition, public institutions in developed economies are generally highly-developed and thus more able to set up and enforce environmental regulations (Mani and Wheeler 1997:5). Yet, critics of free trade argue that this relatively good environmental performance is partly a result of the “outsourcing” of pollution-intensive industries, i.e. so-called “pollution havens” in countries with less environmental standards established (Grossman and Krueger 1993; Pearson 1997; Rauscher 1997). Countries operating low environmental standards may have a competitive advantage over those countries with higher standards, thus creating pressure on them to lower their standards. Lower environmental standards could thus be an incentive to specialize in pollution-intensive goods. This hypothesis cannot be convincingly supported by empirical studies (Tobey 1990; Xu 1999; Wilson et al. 2001). One analysis on the environmental impacts of NAFTA, for instance, revealed that lax environmental regulations do not create a comparative advantage (Eskeland and Harrison 2003). Other empirical data on the U.S. lead to mixed results (Levinson 1996; Henderson 2000). Mani and Wheeler (1997), for instance, came to the conclusion that pollution-intensive industries such as iron and steel, pulp and paper or industrial chemicals have been reduced in OECD countries and the establishment of these industries has risen in the developing world. Nevertheless, Mani and Wheeler could not fully support the tendency towards a formation of pollution havens. They argued that the development of the dirty sector, for example, was mostly domestic in its nature and that economic growth nurtured countervailing pressures towards more regulation in addition to the development of “clean sector” production (Mani and Wheeler 1997:20). The correlation between economic growth and higher income per capita and the better environmental performance is criticized by Esty (2001) based on findings by Grossman and Krueger (1993), Lopez (1994) and Antweiler, Copeland and Taylor (1998). He argues that expanded trade and economic growth can be divided into three effects. The technique and composition effects are positive as they lead to cleaner production processes and a shift in preferences towards cleaner goods. The scale effects, however, cause an increase in pollution and greater consumption. A certain level of income per capita just means that the technique and composition effects outweigh scale effects. Again, empirical evidence on this aspect is limited.

The aspect of environmental regulation is heavily debated between free traders and opponents. While supporters of free trade mostly argue that free trade would not have any negative impact on domestic and international environmental regulation and that environmental issues should not enter the realm of free trade negotiations, environmentalists take a different perspective. They argue that trade liberalization limits the ability of states to protect the environment not only on the unilateral but also on the multilateral level. By setting up Multilateral Environmental Agreements (MEAs), nations try to tackle global externalities. MEAs such as the Montreal Protocol (1987), the Basel Convention (1989) and the Convention on International Trade in Endangered Species (CITES; 1973) contain trade-based enforcement mechanisms to safeguard the effectiveness of the agreements.<sup>1</sup> Trade disputes have however shown the difficult relationship between WTO rules and trade-related MEAs.<sup>2</sup> Free traders often think that MEAs foster “green protectionism”. It is very difficult to draw the line between environmental protection and environmental protectionism because green arguments can easily be abused to justify trade restrictions. In contrast, the WTO disputes have demonstrated that it is very hard for countries to carry through true environmental concerns. The General Agreement on Tariffs and Trade (GATT) has always been sceptical about using trade restrictions as means of environmental protection. A further problem can be identified in the case of product and process standards. The GATT allows for trade restrictions when the imported good or its utilization causes environmental damage in the importing country. Yet, imported products which were produced in a way that does not comply with the environmental process standards of the importing country are excluded from trade restrictions. They must be treated as like-products if the product itself does not cause any environmental damage to the importing country (Sorsa 1992a; Sorsa 1992b; Rauscher 1997).

Environmentalists argue that environmental regulation can have a positive effect and turn out to be a comparative advantage. Environmental regulations and standards might stimulate further innovation of environmentally friendly technologies. The future benefits of innovation may thus offset the initial

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<sup>1</sup> For further information on these documents see <http://www.undp.org/seed/eap/montreal/montreal.htm> (15.08.06); <http://www.basel.int> (15.08.06); <http://www.cites.org> (15.08.06).

<sup>2</sup> See WTO disputes; an overview with further links is available under [http://www.wto.org/english/tratop\\_e/envir\\_e/edis00\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/edis00_e.htm) (03.07.06).

compliance cost and firms may not see any benefits in a “race to the bottom” (Porter and Van der Linde 1995). Free traders argue that trade liberalization could also increase the exchange of so-called environmental goods and services, i.e. environmentally clean products, services and technologies. In 1998, the OECD valued the global environmental market at USD 484 billion, comprising equipment, services and resources. Trade could foster a further expansion of this fast growing market and enable countries to have better access to cleaner products and resource efficient production methods while at the same time ensuring that the nations’ own production will be more resource efficient and environmentally friendly (OECD 2000). Businesses could expect a competitive edge in international markets (Rauscher 1997:5). This phenomenon has been termed variously the Porter hypothesis (Porter 1991:96) or technique effect, the latter being also due to growing incomes. Once basic needs are met, people start to demand a cleaner environment. Governments have to meet these demands by improving environmental legislation (Cole 2000:26). The aspect of innovation and environmental goods and services is one that could reconcile trade and environmental objectives of both supporters and opponents of free trade.

Another benefit for the environment could arise through the removal of many trade-distorting policy measures such as export subsidies, which harm the environment because resources are not allocated efficiently. This means that both the location and intensity of technology, production and consumption are distorted (Cole 2000:27). Indirect subsidies could also arise from a lowering of environmental standards. Whether trade liberalization forces environmental standards downwards, however, is still questioned. It is argued that a “race to the bottom” is not in a country’s interest. Rather, it would be better for a large country to tax its exports rather than subsidize them by lowering standards. A taxation of exports would raise export prices and turn the terms of trade in the nation’s favour. The reason why exports are often subsidized lies in the lobbying activities of producer interest groups (Nordhaus 1995).

While it is acknowledged by both opponents and advocates of free trade that trade liberalization can have a positive effect on the environment, further negative effects arise from increased international transportation and the intensive use of resources by highly indebted countries. These insights are gained through various studies on international transportation and resources (Dolzer and Buß 2000; Rauscher 1997; Holtz-Eakin and Selden 1993; Birdsall and Wheeler 1992). Furthermore, economic theories contend that worldwide trade raises



global output and consumption, which goes hand in hand with an increased waste-management problem (Dolzer and Buß 2000).

The main objective of advocates of free trade is to separate trade policy from environmental policy while critics of free trade argue in favour of an integration of these policies. While trade-related measures in order to reach favourable environmental outcomes should be used carefully and not as a means of protectionism, the integration of trade and environmental policies should be seen as “good economic policy-making” and understood as “a political necessity for free traders” (Esty 2001:116). Even though some economists consider income growth as the solution to the problematic nature of the linkage between trade and environment, it does not justify the pursuit of economic growth and trade liberalization in an unsustainable way, especially in developing countries, and to make the same mistakes as the industrial states have done. The ecological footprint, i.e. the extent of human demand on ecosystems, has significantly increased since the 1960s. Consequently, it seems that the “Earth’s regenerative capacity can no longer keep up with demand” (WWF 2006: online). It would be unreasonable to promote extensive economic growth in developing countries without trying to manage it in a sustainable way but instead tackling the negative effects on the environment afterwards. As most of the world’s nations are at least rhetorically dedicated to the principle of sustainable development, they should seek to integrate economic, social and environmental policies, which would include an integration of trade and environmental policies. As the integration of concrete environmental standards into trade agreements might hinder the promotion of trade and thus economic growth because they are difficult to negotiate, side agreements or cooperative frameworks could help to deal with environmental aspects linked to economic activities. Bilateral solutions to environmental problems arising from extensive trade could be found and benchmarks for making trade more sustainable could be developed and finally transferred to the multilateral level. The necessity for such policy integration was highlighted in the 1970s but it took 20 years to seriously put environmental issues on the trade agenda. Today, the WTO, the OECD and also the Asia-Pacific Cooperation (APEC) set the trade and environment issue on their agendas and try to discuss and negotiate solutions to make trade and environmental policies mutually supportive. Progress in these institutions is slow so that policy integration has been and is pursued on the bilateral and mini-lateral level in order to better address the problematic linkage between trade and environmental issues.

The most prominent example here is the North American Free Trade Agreement (NAFTA) which established the North American Agreement on Environmental Cooperation (NAAEC) alongside the original trade agreement.

### **3 The Trade and Environment Debate in the Institutional Context**

The debate on trade and environment began at the United Nations (UN) Conference on the Human Environment in Stockholm in 1972 and has since been continued particularly within the GATT and its succeeding organization, the WTO. The WTO Committee on Trade and Environment (CTE) primarily deals with the integration of trade and environmental policies, but some issues such as fisheries, non-agricultural market access or investment are addressed in other committees and working groups (Cole 2000; Puth 2003; Schimmelpfennig 2005). In addition, attention to trade and environmental issues is also paid by other multilateral forums such as APEC and the OECD (OECD 2001, 2003; APEC Leaders' Declaration 1994).

The Rio Declaration and the Agenda 21 consider global trade as one of the important factors to realize sustainable development. The Principle 12 of the Rio Declaration states that

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

This principle was translated in the Agenda 21 to achieve the objective of making trade and environmental policies mutually supportive (Agenda 21: Chapter 2).

Environmental issues have not only entered the sphere of multilateral negotiations but are now integrated in bilateral and regional negotiations as well. The United States in particular pursues a comprehensive trade policy including

environmental and labor issues. The Trade Act 2002 includes the executive requirement to negotiate environmental issues in free trade agreements. This was a significant achievement, given that the former “fast track” included only inconsiderable references to the environment (Audley 2002:1). The integration of environmental issues into U.S. trade policy can be traced back to domestic pressure during NAFTA negotiations. One function of the North American Agreement on Environmental Cooperation (NAAEC), for instance, was to provide political cover for the Democrats to support NAFTA. It should also be prevented that Democrats incurred the anger of environmental NGOs. This implies that institutional provisions can force the U.S. Government to make compromises such as the integration of environmental issues into trade agreements (Cameron and Tomlin 2000; Audley 2002; Gilbreath and Ferretti 2004; Hufbauer, Clyde and Goodrich 2004; Lovett, Eckes and Brinkman 2004). A survey conducted by the Programme on International Policy Attitudes (PIPA) revealed that a solid majority of U.S. citizens were in favor of the integration of trade and environmental policies. They think that policymakers pay too little attention to the environment when making trade policy (Americans and the World: online).

The NAFTA experience, for example, also showed that the conclusion of environmental side agreements can be beneficial for future cooperation in environmental policies. NAFTA helped to set the issue of environmental protection and natural resource allocation on the national and later international trade agenda. It also created more transparency and thus more accountability of the member states in general and Mexico in particular. Since NAFTA came into force, Mexican environmental policy has significantly improved. This was also a result of increased public participation, which was facilitated through NAFTA and the whole negotiation process (Gilbreath and Ferretti 2004:93-95).

These aspects, *inter alia*, led to the integration of environmental issues into the Trade Act 2002. President Bush is now the first president in almost 10 years who received a trade promotion authority (TPA). This TPA legislation, however, includes the requirement to pursue environmental policy priorities when negotiating trade agreements. This is new to U.S. trade policy and for the first time, Congress has set binding negotiating objectives with regard to the environment. U.S. trade negotiators are now obliged

- to make sure that trading partners do not gain unfair advantage because they do not enforce their domestic environmental laws;
- to promote the sale of environmental goods and services;

- to abolish or reduce unsustainable policies or government practices;
- to support trading partners in developing and implementing environment protection standards;
- to conduct environmental reviews;
- to address the relationship between Multilateral Environmental Agreements (MEAs) and trade agreements (Audley 2002).

These objectives can be found in FTAs which the U.S. concluded in recent years. The U.S.-Singapore FTA or the U.S.-Chile FTA include environmental provisions in the actual trade agreement. While the U.S. now integrates environmental issues into the FTA and no longer pursues comprehensive side agreements such as NAAEC, other countries like New Zealand negotiate environmental side agreements, which basically address the same issues as the U.S. in its Trade Act. The New Zealand government set up a Framework for Integrating Trade and Environment in 2001 and made it an intrinsic element of its trade policy (Ministry of Foreign Affairs and Trade 2001: online). The New Zealand-Thailand Closer Economic Partnership (CEP) includes a non-binding side agreement on environmental cooperation. The Trans-Pacific Strategic Economic Partnership (SEP) between New Zealand, Singapore, Chile and Brunei goes a step further. The negotiating parties agreed on a binding environment cooperation framework, which was mainly fostered by New Zealand and Chile.

The Southeast Asian position on the integration of trade and environmental policies is different. They are generally reluctant to negotiate environmental issues in the context of free trade negotiations. This can partly be explained by their attitude towards environmental policies, their developing countries' perspective on the integration of trade and environmental policies, their cooperation principles and the role of civil society in Southeast Asia.

#### **4 Environmental Policy in Southeast Asia**

Southeast Asian nations, at least rhetorically, also affirm their commitment to sustainable development, which should automatically include the integration of trade and environmental policies. At the launch of the ASEAN Environment Year 2003 in Siem Reap, Cambodia's Prime Minister Hun Sen said that ASEAN nations had

to work more closely to ensure synergies, better resource mobilization, improved coordination and cooperation in order to protect [their] environment and at the same time enhance economic and social development

for [their] people (ASEAN Secretariat 2003: online).

He also asserted that environmental sustainability was

a challenge linked with globalization and a responsible multilateral trading system [...]. An enabling environment with opportunities for fairer trade, equitable partnership and good governance are key factors toward ownership, self-sustainability and long-term development for [their] countries (ASEAN Secretariat 2003: online).

Thailand, too, emphasizes its dedication to the principle of sustainable development. The kingdom developed an environmental policy framework to improve conservation work and prevent pollution, pursue environmental policy objectives on the domestic level, including setting up sound environmental policy frameworks to improve conservation work and prevent pollution. An example would be Thailand's Natural Environmental Quality Act, which was enacted in 1992 (Office of Natural Resources and Environmental Policy and Planning: online). However, the Thai Ministry of Natural Resources and Environment (MONRE) admits that

problems and issues surrounding environmental conservation do not generate as much public interest as those that are associated with poverty, standards of living and livelihood opportunities. This is true in spite of the fact that natural resources and environmental problems bear greater impact, both direct and indirect, on the economy, the people's quality of life and the future of the global community (Office of Natural Resources and Environmental Policy and Planning 2005: online).

This lack of public interest in and understanding of the interrelationship between economic and environmental policies impacts on the integration of environmental issues into trade agreements as well. Negotiations on NAFTA, for instance, showed that poorer countries in particular normally do not show great interest in addressing social or environmental issues before they are sufficiently developed. This makes it sometimes difficult for developed countries to negotiate trade and environment policies because it often seems that solutions can only be envisaged once the level of development enables a country "to afford" to deal with environmental and social problems (Hufbauer, Clyde and Goodrich 2004:46). This would support the findings of Dasgupta et al. and others conducting research in this area. In the Southeast Asian region, each country is actively engaged in the development process. It is particularly in the developmental arena

where economic and environmental contradictions tend to be played

out most forcefully [. . .] Development as a national goal, in the sense of ‘catching up’, has been applied overtly and often aggressively by national leaders seeking to emulate East Asian patterns of growth and industrialisation (Hirsch and Warren 1998:4).

Widespread deforestation, polluted waterways, degraded agricultural land, urban pollution and declining fish stocks are just examples of environmental consequences of aggressively pursued economic growth (Hirsch and Warren 1998:5). These developments underline the concerns raised by environmentalists who fear scale effects including unsustainable use of natural resources and more pollution, which can be further promoted by unregulated free trade not taking the negative environmental effects seriously into account.

## **5 Environmental Issues in Bilateral and Regional Trade Agreements**

When looking at the bilateral or regional free trade agreements exclusively signed between Southeast Asian countries, the reality gap between what is said and what is done becomes ostensible. Trade agreements signed between Southeast Asian countries are completely lacking provisions on the environment. It could be argued that Southeast Asian countries prefer multilateral negotiations on the integration of trade and environmental policies and consider these negotiations more beneficial. Consequently, an integration of these policies on the bilateral and regional level is not pursued. But their unwillingness to address these issues permeates all levels of trade negotiations, including multilateral negotiations. Many Asian countries in general and developing countries in particular are very sceptical with regard to the integration of trade and environmental policies. They fear “green protectionism” that is pursued by Western countries through the integration of environmental standards in trade agreements (Rao 2000; WWF International 1994). Another reason for developing countries’ reluctance to discuss environmental issues in trade negotiations is that poor countries mostly have neither the ability nor the aspiration to seriously address social and environmental issues before they are satisfactorily developed. Once a country reaches a level of development at which it can afford to deal with social and environmental problems, i.e. once a certain income per capita is reached, these issues can be discussed and solutions envisaged (Hufbauer, Clyde and Goodrich 2004:46). This raises the question why environmental issues are addressed in FTAs where Western countries such as the U.S. or New Zealand are involved

but not in FTAs between Southeast Asian nations only. The integration of environmental issues into the New Zealand-Thailand CEP, Trans-Pacific SEP and the U.S.-Singapore FTA support the idea of Western countries being the driving forces of such an integration. Current trade negotiations between New Zealand and Malaysia will also include discussions on environmental issues. However, the Thailand-Australia FTA (TAFTA) and current ASEAN-CER negotiations show opposite developments. An analysis of the New Zealand-Thailand CEP and the Trans-Pacific SEP will clarify whether New Zealand as a Western country was the driving force of an integration of environmental issues into these trade agreements or whether other factors influence the integration of trade and environmental policies. Negotiations on an FTA between Malaysia and New Zealand and between ASEAN, Australia and New Zealand will briefly be addressed.

### 5.1 The New Zealand-Thailand CEP

New Zealand Prime Minister Helen Clark and Thai counterpart Thaksin Shinawatra agreed at the APEC Leaders' Meeting in Bangkok in 2003 to undertake a joint CEP study in order to develop areas of cooperation under a possible bilateral CEP. The New Zealand-Thailand CEP came into force in January 2005. This FTA provoked controversies among domestic groups in both countries, including the environmental movement.

Thailand was reluctant to discuss environmental issues and to integrate these into a FTA with New Zealand. Nevertheless, both parties eventually agreed on a non-binding environmental side agreement. The objective of this side agreement is to conserve and enhance environmental quality through dialogue and cooperation. One of the main objectives of this cooperation should be

to ensure that their labor and environmental laws, regulations, policies and practices are in harmony with relevant international obligations [and] not seek to gain trade or investment advantage by weakening or derogating from their labor or environmental laws and regulations [or] use their labor or environment laws, regulations, policies and practices for trade protectionist purposes (Ministry of Foreign Affairs and Trade 2004: online).

Several aspects might have been responsible for Thailand's initial reluctance to negotiate environmental issues in context of the FTA negotiations. The first aspect to mention here is the fear of "green protectionism". Second, Thailand's focus, particularly under the Thaksin Government, on unrestricted economic

growth rather than the environment might be another explanation, i.e. first gaining enough money out of trade, then dealing with environmental problems. Third, the role of civil society in trade negotiations, i.e. that countervailing pressures could stimulate a better environmental performance also with regard to trade, is debatable. Finally, the Southeast Asian way of diplomacy might explain both the reluctance to integrate trade and environmental policies in FTAs with Western countries and the exclusion of environmental issues in FTAs between Southeast Asian countries.

With regard to civil society, environmental groups and social advocacy groups within and outside Thailand heavily criticized the FTA between New Zealand and Thailand. For instance, the New Zealand Green Party considered the integration of environmental provisions insufficient and “not worth the paper they’re written on, as they are totally non-binding and unenforceable” (Rod Donald 2005: online). The Green Party also attacked the Thaksin Government by saying that “threats to the environment have increased with the election of pro-free trade Prime Minister Thaksin Shinawatra in 2001” (Rod Donald 2004: online). The cull of protected wild birds in 2004 which were made responsible for the spreading of bird flu rather than unhealthy battery farming practices or the construction and operation of environmentally damaging energy projects were just a few examples of unsustainable policy-making (Rod Donald 2004: online). Likewise, the Political Ecology Movement in Thailand opposed the Thai free trade policy. They argued that this policy did not reflect people’s interests and that interest groups belonging to the elite class had more impact on the Government’s policy than the people (Boonchai 2005: online). Yet, the environmental movement in Thailand as part of civil society is not strong enough to put pressure on the Government to change its policies (see also Lee 2004). In addition, while environmental NGOs in New Zealand were at least consulted by the New Zealand Government, it can be assumed that Thai NGOs were not involved in the negotiation process or had the chance to officially present their views to the Government. Given that Thailand does not consider itself as a developing country anymore, it could be assumed that Thailand has enough economic gains also from trade activities to address further soft policy issues and allow civil society to participate in the policy-making process. Trade policy is clearly an area where this participation is not guaranteed.

The Southeast Asian principles of diplomacy, the “ASEAN Way” (Rüland 1995; 1996), did not facilitate negotiations on environmental issues either. The



negotiating process between New Zealand and Thailand was difficult, which can in part be explained by three of the major principles that make up the ASEAN Way: the principle of non-intervention, the process of consensual decision-making (Capie 2003:90-91) and a “preference for informality and the avoidance of excessive institutionalization” (Acharya 1997:3). These principles are further entrenched by the non-binding nature of Thai environmental law, particularly with regard to dispute settlement. Non-litigious means of settlement have long been preferred in Thai culture and environmental disputes are therefore settled through mediation efforts rather than through legally enforceable dispute settlement mechanisms (Tan 2002: online). This implies that the Thai Government is generally suspicious of binding and thus legally enforceable provisions with regard to environmental policy. If the Thai Government or powerful Thai domestic groups are not willing to integrate environmental issues into trade agreements, the negotiating counterpart will have to marshal all its tactical finesse to overcome such resistance. The “ASEAN Way” might also be an explanation for the fact that environmental issues have not entered trade negotiations within Southeast Asia. Environmental regulations alongside FTAs would mean interference into domestic policies of the other countries, which is not acceptable for Southeast Asian countries.

Nevertheless, in contrast to the Thailand-Australia Free Trade Agreement (TAFTA), environmental issues were integrated in the negotiations of a FTA between New Zealand and Thailand. It can thus be assumed that the development of an environmental cooperation arrangement alongside the main agreement was promoted by the New Zealand Government. Given that the Thai negotiators did not want to address environmental issues in these trade negotiations, the integration of environmental aspects can be interpreted as a successful usage of tactics by the New Zealand negotiators. New Zealand did not have any means such as economic weight or military strength to enforce its position on the environment. Thus, the only way to fulfil the executive requirement of integrating trade and environmental policies was to convince the Thai negotiating partners that the integration of environmental issues and the establishment of an environment cooperation framework would neither be threatening, i.e. that it would oblige Thailand to adapt certain standards or procedures, nor affect Thailand’s competitive advantage. Whether New Zealand negotiators argued that it would support the WTO process in order to make MEAs and trade rules mutually supportive or that a good environmental performance could

be a competitive advantage or that waste management problems could better be addressed could not be worked out. Finally, Thailand agreed on a non-binding cooperation framework and New Zealand did not have to offer major concessions.<sup>3</sup>

## 5.2 The Trans-Pacific Strategic Economic Partnership

Singapore's initial scepticism towards the integration of environmental issues into the Trans-Pacific Strategic Economic Partnership (SEP) might have been similar to Thailand's concerns. It stems from Singapore's understanding of the Southeast Asian culture of cooperation and its fear of "green protectionism". However, compared to developing countries in the Southeast Asian region, Singapore has a high standard of living and seriously addresses environmental issues through sound environmental policies (Ministry for the Environment and Water Resources 2005: online). It also pursues multilateral, regional and bilateral solutions to environmental problems such as the Indonesia-Singapore Joint Committee on the Environment (ISJCE: online). Furthermore, given that Singapore had already agreed on environmental provisions in its free trade agreement with the U.S., its initially sceptical attitude towards the integration of environmental issues in the Trans-Pacific SEP came unexpectedly (USFTA: online). However, one must not forget that the U.S. is an economic heavyweight and thus its negotiating power is very high. A trade deal with the U.S., which includes environmental provisions, is better than no deal at all. Yet, Singapore might have its doubts concerning the integration of environmental issues into trade agreements for similar reasons as Thailand, i.e. the fear of "green protectionism" and the establishment of new trade barriers. It could thus be assumed that Singapore tries to keep environmental issues out of trade negotiations whenever possible. Why Singapore finally agreed on a binding side agreement alongside the Trans-Pacific SEP could be found in the special geo-strategic and also economic value of this agreement to Singapore.<sup>4</sup> For the parties involved, the Trans-Pacific SEP has the potential to facilitate access into the Southeast Asian, Australasian and Latin American markets.

Even though the outcome of this side agreement was a compromise that was a result of the incremental steps of the negotiations,<sup>5</sup> it is fair to say that without

<sup>3</sup> Personal interview, Wellington, 16 March 2006.

<sup>4</sup> Personal correspondence, 12 July 2006.

New Zealand's and Chile's strong commitment to the integration of environmental aspects in the Trans-Pacific SEP, the other two countries, Singapore and Brunei, would have not pushed for it. Brunei probably accepted the side agreement because it wanted to become one of the founding members of the Trans-Pacific SEP even though it entered negotiations very late. The Trans-Pacific SEP seemed to be of great significance to Brunei for presumably the same reasons as Singapore. Furthermore, Brunei has only recently started to negotiate FTAs and is thus rather inexperienced in this respect so that the Trans-Pacific SEP was a good testing ground. In addition, deepened cooperation on environmental issues could be beneficial for Brunei, given that its environmental policies, particularly on the international level, seems to be in its early stages (Brunei Darussalam Environmental Policies: [online](#); Brunei Darussalam's Status of International Agreements on the Environment: [online](#); Ecology Asia: [online](#)). A cooperative framework could help to develop effective environmental institutions which could assist in signing and implementing more MEAs and in making the Government and civil society more sensitive for environmental issues. Furthermore, cooperation on environmental technologies, services and knowledge in environment-related areas could help to realize Brunei's objective of sustainable development.

The side agreement on environment cooperation was eventually made binding but cannot be legally enforced. This is a compromise which is not specific to negotiations with Asian countries but typical for environmental agreements in general. Whereas trade agreements include specific rules, which are often legally enforceable, environmental agreements are more designed to provide guidelines rather than binding rules for future cooperation. It can be argued that the Environment Cooperation Agreement to the Trans-Pacific SEP merely sought to symbolize political commitment. Nevertheless, it does make existing environmental cooperation between the negotiating parties more visible and it might give incentives for intensifying cooperation in environmental issues between the parties to the agreement. One must not forget that the negotiating parties agreed to make the side agreement binding, which is a significant achievement, taking into account that these countries have different histories, cultures, geography and positions in the world and do not entirely share the same values and objectives.

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<sup>5</sup> Personal correspondence, 12 September 2005.

### 5.3 Negotiations on a New Zealand-Malaysia Closer Economic Partnership and an AFTA-CER Linkage

Observations made on current trade negotiations between New Zealand and Malaysia and between New Zealand, Australia and ASEAN show similar features as negotiations on the New Zealand-Thailand Closer Economic Partnership (CEP) and also the Trans-Pacific SEP. Even though FTAs could provide “an opportunity to demonstrate a country’s commitment to developing and applying sound sustainable development policy, which [...] will create a stable and attractive climate for foreign investment” (Ministry of Foreign Affairs and Trade 2005: online), Malaysia and also other ASEAN countries are not particularly interested in integrating environmental issues into trade agreements.

In March 2005, New Zealand and Malaysia agreed to negotiate an FTA. Both countries view sustainable development as a core national objective and cooperation on sustainable development matters already exists in the context of international organizations such as the UN (Ministry of Foreign Affairs and Trade 2005: online). Environmental issues are on the negotiating agenda and are discussed throughout the negotiations. Specificities such as main objectives, areas of cooperation, institutions or dispute settlement, however, are normally dealt with in the final rounds of negotiations. Given that Malaysia is a Southeast Asian country and thus negotiations with New Zealand are comparable to negotiations on the New Zealand-Thailand CEP, it can be expected that Malaysia is sceptical towards binding rules on environmental cooperation. Because New Zealand negotiators will push hard to fulfil their executive requirement to integrate environmental aspects into this agreement, it is likely that Malaysia and New Zealand will finally agree on a non-binding side agreement.

A dialogue on a cooperation and potential linkage between the ASEAN Free Trade Area (AFTA) and the Closer Economic Relations Agreement (CER) was formally inaugurated in 1995. The AFTA-CER linkage dialogue was not initialized with the intention of merging the two free trade areas but “to find practical ways of assisting businesses and to expand inter-regional trade and investment” (Okamoto 2001:2). Although frameworks for consultations were agreed on and areas of cooperation clarified, the cooperation process was slow because “ASEAN could only move at a pace acceptable to the most negative members” and because of a lack of resources, i.e. time and personnel (Okamoto 2001:5). The boom of bilateral and regional FTAs in the Asia-Pacific region (Dent

2006) helped, *inter alia*, to eventually get negotiations on an AFTA-CER FTA back on track. In addition, Thailand and Singapore supported a linkage between these two free trade areas. Their relations to both Australia and New Zealand are well-established and were further strengthened through their bilateral FTAs.

The history of the AFTA-CER dialogue implies that negotiations on economic issues were complicated enough so that issues like labour and environment seemed to be of minor concern. Thus, the AFTA-CER linkage dialogue did not include discussions on intensifying cooperation in environmental policy and did not seek to integrate trade and environmental policies. The AFTA-CER FTA negotiations might be different even though New Zealand seems to be the only country which is interested in discussing the relationship between trade and environment at this stage.

It was assumed earlier that Western countries generated negotiations on environmental issues in the context of free trade agreements. However, the ASEAN-CER negotiations demonstrate that Australia as a Western country does not show any interest in integrating environmental issues into trade agreements. This might be explained by a combination of the strongly neo-liberal and thus business-friendly policy of the Howard government and a lack of NGO pressure. Business groups traditionally take the position that environmental issues should be treated elsewhere such as at the UN or MEAs and should not be integrated into trade agreements because they could create new and unnecessary trade barriers.<sup>6</sup> It can thus not be considered as a general ethos of the government to integrate trade and environmental policies. This had already been reflected in the Thailand-Australia FTA, which neither addressed environmental issues in the main agreement (except for sanitary and phytosanitary provisions) nor established an environmental side agreement. The reluctance of Southeast Asian countries to integrate trade and environmental policies combined with Australia's disinterest in negotiating environmental issues in FTA negotiations makes it very difficult for New Zealand to pursue environmental issues. However, as previously stated, New Zealand's policy framework on trade and environment requires the integration of these two policy fields in both bilateral and multilateral negotiations so that New Zealand negotiators have worked hard to set environmental issues on the agenda.<sup>7</sup>

<sup>6</sup> Personal interviews, Wellington, 25 June 2004; 06 July 2004; 16 July 2004.

<sup>7</sup> Personal correspondence, 15 August 2006.

Taking into account that ASEAN countries follow the principles of non-interference, consensus decision-making, informality and prevention of strong institutionalization, the integration of environmental provisions in the main agreement seems to be unrealistic. Except for New Zealand, the negotiating parties including Australia are not interested in challenging this trade agreement for the sake of environmental protection measures being integrated in this agreement. However, negotiations on the New Zealand-Thailand CEP have shown that a non-binding environment cooperation framework alongside an ASEAN-CER FTA might be possible. It remains to be seen whether the already established cooperation frameworks between New Zealand and Thailand and among parties to the Trans-Pacific SEP in addition to bilateral FTAs between the U.S. and Southeast Asian countries will help to incorporate environmental issues in a potential free trade agreement between ASEAN, Australia and New Zealand.

## 6 Conclusions

Factors that facilitate or hinder the integration of environmental issues into bilateral and regional trade agreements are manifold. The level of development seems to be an important factor that impacts on the integration of trade and environmental policies and supports the hypothesis made by Dasgupta and others. Generally, poorer or less developed countries do not often show great interest in addressing social or environmental issues before they are sufficiently developed. This makes it sometimes difficult for developed countries to negotiate trade and environmental policies without giving too many trade-offs.

Both Southeast Asian and Western countries regularly reaffirm their commitment to further global trade liberalization and the principle of sustainable development. Yet, the integration of trade and environmental policies as part of the sustainable development agenda proves to be difficult in bilateral and regional trade negotiations when a developing country is involved. Many Asian countries, particularly developing countries, are reluctant to negotiate environmental issues in trade agreements because they are afraid of “green protectionism”, new trade barriers and of losing their competitive advantages. Examples for their competitive advantage arising from low environmental standards might be the forestry and agricultural sectors. However, developing countries’ competitive advantage does not only come from low environmental standards but also from cheap labor costs.

Southeast Asian countries with their principle of non-interference do not want

other countries to make decisions for them. The integration of environmental aspects into trade agreements with Southeast Asian countries is only realistic if the trade deal is of an important economic value, geo-strategic importance or negotiations serve as a testing ground for future trade negotiations. This makes these countries more willing to accept environmental aspects such as agreements with the United States or with New Zealand have shown. Such policy integration might also be successful if the arguments in favor of environmental aspects in trade agreements are convincing and beneficial to these countries. Trade in clean technologies, for example, could be facilitated but also cooperation on cross-regional environmental problems such as pollution, waste management, resource management, loss of natural habitats and biodiversity. Because of the relatively non-threatening and often non-binding nature of side agreements, this might be the future model for the integration of trade and environmental policy when developing countries are involved in negotiations. However, in order to overcome the often symbolic nature of such side agreements, the participating countries should put more efforts into the implementation and coordination of policy fields. Here, the involvement of civil society could be helpful and would make trade agreements and additional provisions such as environmental cooperation frameworks more transparent and convincing.

The role of civil society in trade negotiations and their implementation is another factor that can help or hinder the integration of environmental issues into trade agreements. While most Western countries have pluralist societies in which interest groups are involved in the policymaking process, the participation of civil society in Southeast Asian countries is limited. Especially when it comes to FTA negotiations and the complex issue of trade and environment, the influence of NGOs in Southeast Asia, for instance, is marginal. Thus, hardly any domestic pressure to integrate environmental issues in FTAs exists on the side of the Southeast Asian negotiators and the concerns raised by few Thai NGOs, for example, are not taken seriously by Thai negotiators. Whether an increase in income per capita will change this situation is debatable. It seems that in Southeast Asian countries, many other factors impact on the role of civil society in the policymaking process, including institutional aspects. In contrast, in most Western countries like New Zealand, for instance, consultations take place on a regular basis even though few domestic environmental NGOs are involved in the negotiating process. The U.S. is certainly the most prominent example where NGO pressure led to the integration of environmental issues into trade policy.

However, in Australia, the business lobby seems to have more influence on trade policy and NGOs' anxieties are often not reflected in trade negotiations due to a highly neo-liberal government and maybe also because of a lack of NGO pressure.

The environmental side agreements between Southeast-Asian countries and Western countries such as the New Zealand-Thailand CEP might assist in creating more transparency and accountability in Southeast-Asian countries in general and developing countries in particular. Cooperation on environmental issues in the context of free trade could also increase public participation and create more understanding for the complex nature of sustainable development. The example of the negotiation process of the New Zealand-Thailand CEP illustrated that civil society could be more involved not only in designing these cooperation frameworks but also in their implementation. In addition to an increased exchange in science, technology and knowledge between the signing states, this might help to enhance Southeast-Asian environmental policies and to gain more public legitimization for both trade and environmental policy-making.

Cooperation on trade-related environmental issues could furthermore help to meet international obligations under MEAs and to make these agreements and trade rules mutually supportive instead of designing them in a contradictory way. This could set an example for multilateral negotiations in this area and might be beneficial for WTO negotiations on trade and environment in particular. The current negotiation process is very slow and the integration of these two issues seems to be very difficult. Positive examples such as environmental cooperation frameworks alongside bilateral FTAs in Southeast Asia, for instance, might help to establish such a framework within the WTO, which might be binding and finally legally enforceable. However, these cooperation frameworks are often weak in design and will probably be so in the WTO context because none of the signing states would accept any intrusive surveillance of domestic environmental policies or would be ready to provide large-scale funding for necessary infrastructure to address environmental problems. This was the case with regard to NAFTA and seems to be similar in the context of the New Zealand-Thailand CEP and the Trans-Pacific SEP.

To sum up, the integration of trade and environmental policies both on the multilateral, regional and bilateral level depends on the level of development, the role of civil society, international developments and circumstances and finally culture and values. The fear of many Southeast Asian countries of "green protec-



tionism” could be met by highlighting the benefits of environmental cooperation such as resource management or the promotion of clean technologies. Many of joint environmental initiatives can also be economically beneficial such as the development of the eco-tourism sector, which is often related to better conservation work, the support of the energy sector through exchange of knowledge in renewable energies or new market opportunities through sustainable forestry. The integration of trade and environmental policies requires a learning process not only on the government but also on the civil society level. Southeast Asian countries should not be bullied by Western countries for their reluctance to address these issues but instead be convinced of the benefits of setting up cooperative frameworks alongside trade agreements, which requires both governments and civil society to constructively work together. Establishing side-agreements alongside the New Zealand-Thailand CEP and the Trans-Pacific SEP can thus be seen as a first step towards a more comprehensive and sustainable FTA policy. Criticism is always necessary to raise awareness of the issue and the integration of trade and environmental policies is certainly subject to improvements. But considering the many influences on and the difficult nature of these FTA negotiations, the outcome of these negotiations should be evaluated positively. However, it remains to be seen whether the environment will become an integrative part in most of the world’s FTA negotiations and whether bilateral solutions can help to achieve better outcomes on the multilateral level.

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