

Empty Promises and Missed Opportunities: An Assessment of the Environmental Chapter of the Trans-Pacific Partnership

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He was appointed to the National Advisory Committee to provide the Environmental Protection Agency with advice on environmental cooperation among the three North American governments. He continues to provide legal and technical advice to small island developing states in the climate change negotiations and to numerous nongovernmental organizations on issues concerning the World Trade Organization, regional free trade agreements, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on Biological Diversity, and the Convention on Migratory Species, among other treaties and international institutions. He is the author of the law school textbook, *Trade and the Environment: Law and Policy* (2d. ed. 2011) and numerous articles exploring the relationship between trade and the environment.

I. Introduction

At the adoption of the Trans-Pacific Partnership (TPP)¹ the Office of the United States Trade Representative (USTR) championed the agreement as “the most robust enforceable environment commitments of any trade agreement in history.”² The USTR hailed the Environment Chapter as an “historic opportunity to advance conservation and environmental protection across the Asia-Pacific”³ and claimed that the TPP “establish[es] pioneering new commitments,” including commitments to prohibit harmful fisheries subsidies and to take

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¹ Trans-Pacific Partnership, signed October 4, 2015, available at <https://ustr.gov/tpp/>.

² USTR, The Trans-Pacific Partnership, Preserving the Environment, 1 (undated) available at <https://ustr.gov/sites/default/files/TPP-Preserving-the-Environment-Fact-Sheet.pdf>.

³ *Id.* at 2.

“enhanced actions” to combat wildlife trafficking.⁴ Environmental groups have challenged those statements, describing the TPP’s Environment Chapter as “toothless,”⁵ “largely unenforceable,”⁶ and “weak and fails to provide the necessary requirements and stronger penalties desperately needed to better fight poaching, protect wildlife habitat and shut down the illegal wildlife trade.”⁷

A good faith interpretation of the TPP’s Environment Chapter based on the ordinary meaning of the words and provisions used in the chapter,⁸ indicates that the TPP’s environmental provisions are, indeed, weak and unlikely to address the problems of illegal wildlife trade, overfishing, and other environmental concerns described, but not meaningfully addressed, in the TPP. Moreover, the history of previous regional free trade agreements, in which similar issues have been addressed and not enforced, further suggests that the Environment Chapter may be full of empty promises. With weak and largely unenforceable provisions, the TPP also represents a missed opportunity to address some of the region’s significant environmental problems.

This article assesses five of the main substantive issues of the TPP’s Environment Chapter on which environmental groups have commented: the provisions relating to multilateral environmental agreements; illegal, unreported, and unregulated fishing; illegal trade in wildlife; protection of marine animals such as sharks and whales; and climate change. It also analyzes the provisions for enforcement because the USTR has frequently noted the enforceable nature of the substantive provisions.

II. Multilateral Environmental Agreements

The provisions relating to environmental law generally and multilateral environmental agreements (MEAs) specifically are weak in several respects. Generally, the “Parties recognize the need to enhance the mutual supportiveness between trade and environmental law and policies.”⁹ This provision merely restates public discourse concerning trade and environment issues from the previous 20 years. Indeed, the *Rio Declaration on Environment and Development* from 1992 already calls for States to “cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all

⁴ USTR, Environment (Nov. 5, 2015), available at <https://medium.com/the-trans-pacific-partnership/environment-a7f25cd180cb#.olc9466pz>.

⁵ Sierra Club, TPP Text is “Concrete Evidence” of Toxic Deal, at 1 (Nov. 5, 2015), available at <http://content.sierraclub.org/press-releases/2015/11/sierra-club-tpp-text-concrete-evidence-toxic-deal>; Rodrigo Estrada Patiño, Greenpeace Response to the Trans-Pacific Partnership Text (undated), available at <http://www.greenpeace.org/usa/news/greenpeace-response-to-the-trans-pacific-partnership-text/>.

⁶ Friends of the Earth, Press Release, (Nov. 5, 2015), available at <http://www.foe.org/news/news-releases/2015-11-trans-pacific-partnership-text-exposes-threat-to-environment>.

⁷ Defenders of Wildlife, Press Release, Trans-Pacific Partnership Falls Short for Wildlife (Nov. 5, 2015), available at <https://www.defenders.org/press-release/trans-pacific-partnership-falls-short-wildlife>.

⁸ The Vienna Convention on the Law of Treaties (Vienna Convention) provides the fundamental rules of treaty interpretation. Vienna Convention on the Law of Treaties, May 23, 1969, U.N. Doc. A/CONF. 39/27. 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980). The most fundamental of all rules of treaty interpretation is the principle that a treaty must be “interpreted in good faith in accordance with the ordinary meaning to be given the terms of the treaty in their context and in light of its object and purpose.” *Id.* at art. 31(1).

⁹ TPP, *supra* note 1, at art. 20.4(2).

countries, to better address the problems of environmental degradation.”¹⁰ *Agenda 21*, also adopted in 1992, states that governments “should continue to strive ... to promote and support policies, domestic and international, that make economic growth and environmental protection mutually supportive.”¹¹

More specifically, the TPP Parties “affirm” their commitment to implement their MEA obligations.¹² In other provisions, the Parties state that they “shall” take measures to implement measures with respect to specific MEAs; the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),¹³ the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol),¹⁴ and MARPOL.¹⁵ MEAs, however, already include legally binding international commitments that Parties to those MEAs must adopt and implement.¹⁶ Thus, affirming a commitment to implement those obligations or even obligating Parties to implement those MEAs adds nothing to the quality or nature of those obligations.

Provisions that require TPP Parties to adopt and implement their MEA obligations could be meaningful if supported by meaningful dispute settlement when the relevant MEA does not have its own compliance mechanism or that compliance mechanism is weak. As described in Section VI, however, while the TPP includes dispute settlement provisions, these are highly unlikely to be used; they have never been used in any of the other regional free trade agreements to which the United States is a Party.

¹⁰ Rio Declaration on Environment and Development, UN DOC A/CONF.151/5/Rev. 1, Principle 12, June 13, 1992, available at <http://www.unep.org/Documents/Multilingual/Default.asp?documentid=78&articleid=1163>.

¹¹ U.N. GAOR, 46th Sess., Agenda Item 21, UN Doc A/Conf.151/26, Chapter 2, para. 9(d) (1992).

¹² TPP, *supra* note 1, at art. 20.4(1).

¹³ *Id.* at art. 20.17(2) (stating that “each Party shall adopt, maintain and implement laws, regulations and any other measures to fulfill its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.”). For the provisions of CITES, see Convention on International Trade in Endangered Species of Flora and Fauna, Mar. 3, 1973, 27 U.S.T. 1087; 993 U.N.T.S. 243 (entered into force on July 1, 1975) [hereinafter CITES], available at www.cites.org.

¹⁴ TPP, *supra* note 1, at art. 20.5(1) (stating that “each Party shall take measures to control the production and consumption of, and trade in, [ozone depleting] substances” covered by the Montreal Protocol on Substances that Deplete the Ozone Layer. For the provisions of the Montreal Protocol, see Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 1522 U.N.T.S. 3, S. TREATY DOC. NO. 10, 100th Cong. 1st Sess. (1987), (entered into force Jan. 1, 1989) [hereinafter Montreal Protocol], available at <http://ozone.unep.org/en/treaties-and-decisions>.

¹⁵ TPP, *supra* note 1, at art. 20.6(1) (stating that “each Party shall take measures to prevent the pollution of the marine environment from ships” as regulated by the agreements collectively referred to as MARPOL). Notably, the TPP omits a commitment to “adopt, maintain, and implement” laws and regulations to reference to four MEAs referenced in prior free trade agreements: the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention), the Convention on the Conservation of Antarctic Living Marine Resources, the International Convention for the Regulation of Whaling, and the Convention for the Establishment of an Inter-American Tropical Tuna Commission. See, e.g. Trade Promotion Agreement, U.S.-Peru, art. 18.2, Annex 18.2, Apr. 12, 2006, available at http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file953_9541.pdf [hereinafter U.S.-Peru FTA]. Presumably these MEAs have been omitted because one or more Parties have not become a Party to the MEA. For example, Brunei Darussalam and Singapore are not Parties to the Ramsar Convention. Ramsar, Country Profiles, available at <http://www.ramsar.org/country-profiles>.

¹⁶ See, e.g., Frederic Kirgis, *Treaties as Binding International Obligation*, ASIL INSIGHTS (May 14, 1997) (explaining why “[t]reaties, including the United Nations Charter, are binding instruments under international law, subject to limited grounds much like those in domestic contract law for invalidating or terminating them.”), available at <https://www.asil.org/insights/volume/2/issue/4/treaties-binding-international-obligation>.

In addition, the TPP's standards for bringing a claim for not implementing MEA obligations are weaker than those found in CITES, the Montreal Protocol, and perhaps in MARPOL. For example, to establish a violation of a TPP Party's obligation to "adopt, maintain, and implement" laws relating to CITES,¹⁷ the challenging Party "must demonstrate" that the failure to adopt, maintain, or implement such laws "affect[s] trade or investment between the Parties."¹⁸ Moreover, the TPP limits the dispute settlement procedure to violations of the obligations of CITES, leaving out the failure to comply with resolutions and other recommendations directed to the Parties.¹⁹

In contrast, the CITES Parties have developed mechanisms for imposing trade sanctions on Parties for failure to implement the provisions of the treaty itself,²⁰ but also failure to adequate national implementing legislation,²¹ failure to comply with recommendations of the Standing Committee,²² or for other reasons;²³ resort to the compliance procedures does not require a demonstration of an impact on trade or investment. In March 2015, for example, the CITES Standing Committee recommended that the Parties suspend trade in CITES-listed species with the Lao People's Democratic Republic because it had failed to develop a national ivory action plan.²⁴ Significantly, the Standing Committee took this action even though the requirement to develop such an action plan is not found in the text of CITES itself; it was based on a recommendation of the Standing Committee.²⁵ No demonstration of a trade impact was required. Clearly, the TPP's provisions to enforce CITES are considerably weaker than those of CITES itself.

Similarly, the TPP requires the Parties to take measures, consistent with the Montreal Protocol, to control the production and consumption of ozone depleting substances (ODSs).²⁶ A footnote then provides that a TPP Party will be in compliance with this requirement if

¹⁷ TPP, *supra* note 1, at art. 20.17(2)

¹⁸ *Id.* at art. 20.17(2), fn. 23.

¹⁹ Footnote 23 stipulates that a violation must relate to a failure to adopt, maintain or implement laws or other measures to fulfill an *obligation* of CITES. Article 20.17(3)(a) then provides that TPP Parties "shall endeavor to implement, as appropriate, CITES resolutions."

²⁰ CITES, *supra* note 13, at art. XIII (establishing a compliance procedure when "the provisions of the present Convention are not being effectively implemented" by a Party).

²¹ CITES, *National Laws for Implementation of the Convention*, Resolution Conf. 8.4 (Rev. CoP15) ("Instruct[ing] the Standing Committee to determine which Parties have not adopted appropriate measures for effective implementation of the Convention and to consider appropriate compliance measures, which may include recommendations to suspend trade, in accordance with Resolution Conf. 14.3.").

²² CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, Resolution Conf. 12.8 (Rev. CoP13) (stating that, "when the Secretariat, having consulted with the Chairman of the Animals or Plants Committee, is not satisfied that a range State has implemented the recommendations made by the Animals or Plants Committee in accordance with paragraph n) or o), it should recommend to the Standing Committee appropriate action, which may include, as a last resort, a suspension of trade in the affected species with that State. On the basis of the report of the Secretariat, the Standing Committee shall decide on appropriate action and make recommendations to the State concerned, or to all Parties.").

²³ See generally, CITES, *CITES Compliance Procedures*, Resolution Conf. 14.3 (establishing procedures for assessing compliance with the Convention and for recommending trade sanctions for non-compliance).

²⁴ CITES, Notification to the Parties No. 2015/013, *Recommendation to Suspend Trade* (Mar. 19, 2015).

²⁵ CITES Standing Committee, *Elephants*, SC65 Com. 7, at 1 (2014).

²⁶ TPP, *supra* note 1, at art. 20.5(1).

“maintains” its current implementing measures listed in an Annex.²⁷ The use of “maintain” is concerning because it suggests that the TPP Parties do not actually need to implement those measures. In contrast, the TPP text relating to CITES requires Parties to “adopt, maintain, and implement” laws relating to CITES.²⁸ Treaty interpreters are directed to assume that drafters intended differences in meaning when different terms are used.²⁹ Since “implement” is used with respect to CITES but not with respect to the Montreal Protocol, one must assume that the drafters did not intend to make failure to implement the obligations of the Montreal Protocol subject to dispute settlement under the TPP.

A second footnote further weakens dispute settlement with respect to the Montreal Protocol. That footnote provides that a violation of this obligation only occurs when a Party has not “maintain[ed]” its measures identified in Annex; in addition, another Party “must demonstrate” that the other Party has failed to take measures to control the production and consumption of, and trade in, ODSs “in a manner that is likely to result in adverse effects on human health and the environment, in a manner affecting trade or investment between the Parties.”³⁰ In other words, to violate the TPP’s requirement to implement the Montreal Protocol, a Party must not simply be in violation of its obligations under the Montreal Protocol; the violation must *likely* affect human health and the environment *and* affect trade or investment among the Parties. In contrast, Parties to the Montreal Protocol may become the subject of a non-compliance proceeding under the Montreal Protocol simply for failing to comply with one of its obligations,³¹ including obligations relating to reporting of data³² that may not have any impact on human health and the environment and are certainly not going to have any impact on trade and investment. Thus, a violation of the TPP relating to the Montreal Protocol will occur long after a party is subject to the Montreal Protocol’s non-compliance procedure.

The TPP Parties also agreed to take measures to prevent pollution from ships consistent with MARPOL.³³ As with the TPP’s provisions relating to the Montreal Protocol, a Party is

²⁷ *Id.* at art. 20.5(1), fn. 4, Annex 20–A.

²⁸ *Id.* at art. 20.17(2).

²⁹ See, e.g., Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R (adopted May 20, 1996) (using the “ordinary language” rule of interpretation to overturn previous rulings that interpreted the phrase “relating to” as equivalent to “necessary”); Appellate Body Report, *United States—Continued Suspension of Obligations in the EC—Hormones Dispute*, ¶ 528, WT/DS320/AB/R (adopted Nov. 14, 2008) (concluding that “based on” and “conform to” have distinct meanings).

³⁰ TPP, *supra* note 1, at art. 20.5(1), fn. 5.

³¹ Montreal Protocol, Non-compliance Procedure of the Montreal Protocol, Decision IV/5, as amended by Decision X/10, available at <http://ozone.unep.org/en/handbook-montreal-protocol-substances-deplete-ozone-layer/1555>. The full text can be found at Montreal Protocol, Non-compliance Procedure (1998), available at <http://ozone.unep.org/en/handbook-montreal-protocol-substances-deplete-ozone-layer/2117>.

³² At its most recent meeting, the Parties requested the Implementation Committee to review the failure to provide data on consumption and production of ODSs from Democratic Republic of Congo, Dominica, Somalia and Yemen. Decision XXVII/9: Data and information provided by the parties in accordance with Article 7 of the Montreal Protocol, *in Advance*, unedited compilation of the decisions adopted by the Twenty-Seventh Meeting of the Parties to the Montreal Protocol, 9 (Nov. 10, 2015), available at <http://ozone.unep.org/en/focus>.

³³ TPP, *supra* note 1, at art. 20.6(1). Footnote 6 clarifies that

this provision pertains to pollution regulated by *the International Convention for the Prevention of Pollution from Ships*, done at London, 2 November 1973, as modified by the *Protocol of 1978*

considered in compliance with this provision if it “maintains” its current implementing measures identified in an Annex.³⁴ Consequently, the TPP Parties appear to have exempted failures to implement those measures from the TPP’s dispute settlement provisions.³⁵ Also like the provisions relating to the Montreal Protocol, the TPP sets a high bar for alleging a violation of the duty to “maintain[]” measures to control and prevent vessel pollution. To establish a violation of this obligation, a Party “must demonstrate that the other Party has failed to take measures to prevent the pollution of the marine environment from ships in a manner affecting trade or investment between the Parties.”³⁶ But MARPOL already requires a number of compliance strategies, such as the International Air Pollution Prevention Certificate³⁷ and the International Oil Pollution Prevention (IOPP) Certificate.³⁸ Moreover, several TPP Parties already have rigorous provisions for ensuring compliance with MARPOL, including the United States.³⁹ The threshold for investigating and bringing an action are significantly lower than the TPP’s standards. For example, the United States may inspect and take enforcement action against ships to determine compliance with Annex VI of MARPOL, which addresses air pollution from ocean-going ships,⁴⁰ as well as Annexes I and IV.⁴¹ The provisions of U.S. law do not require a showing of harm to trade or investment.

Moreover, unlike prior bilateral and regional trade agreements the TPP does not carve out an exception for environmental measures adopted pursuant to MEAs. For example, the U.S.–Peru Free Trade Agreement,⁴² the U.S.–Colombia Free Trade Agreement,⁴³ and others⁴⁴

relating to the International Convention for the Prevention of Pollution from Ships, done at London, 17 February 1978, and the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973 as Modified by the Protocol of 1978 relating thereto, done at London, 26 September 1997 (MARPOL), including any future amendments thereto, as applicable to it.

³⁴ *Id.* at art. 20.6(1), fn. 7, Annex 20–B.

³⁵ See *supra* notes 28–29 and accompanying text.

³⁶ TPP, *supra* note 1, at art. 20.6(1), fn. 8.

³⁷ Ships larger than 400 gross tons must obtain an International Air Pollution Prevention Certificate (IAPP Certificate), which verifies compliance with vessel air pollution standards. See Det Norske Veritas, MARPOL 73/78 ANNEX VI: REGULATIONS FOR THE PREVENTION OF AIR POLLUTION FROM SHIPS 4 (2009).

³⁸ MARPOL, Annex I–Regulations for the Prevention of Pollution by Oil, Regulation 7, available at http://www.marpoltraining.com/MMSKOREAN/MARPOL/Annex_I/r7.htm.

³⁹ Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901–1912. Section 1907(f) authorizes the U.S. Coast Guard to inspect ships to determine compliance with Annex VI of MARPOL.

⁴⁰ *Id.* (proving that “[t]he Secretary may inspect a ship to which this chapter applies as provided under section 1902(a)(5) of this title, to verify whether the ship is in compliance with Annex VI to the Convention and this chapter.”).

⁴¹ *Id.* at §1907(c).

⁴² The U.S.–Peru Free Trade Agreement provides as follows:

In the event of any inconsistency between a Party’s obligations under this Agreement and a covered agreement, the Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade

U.S.–Peru FTA, *supra* note 15, at art. 18.13(4).

⁴³ Trade Promotion Agreement, U.S.–Colom., arts. 18.13(4), Nov. 22, 2006, available at http://www.ustr.gov/sites/default/files/uploads/agreements/fta/colombia/asset_upload_file644_10192.pdf [hereinafter U.S.–Colombia FTA].

specifically provide that in the event of an inconsistency between a Party's implementation of its trade obligations and its obligations under seven specified MEAs,⁴⁵ the Party is not precluded from complying with its MEA obligation provided the intent is not to impose a disguised restriction on trade.⁴⁶ Without a similar provision in the TPP, a TPP Party has greater leeway to challenge another TPP Party for trade restrictions adopted to implement the provisions of an MEA. Such an outcome is inconsistent with the TPP's call to "enhance the mutual supportiveness between trade and environmental law and policies."⁴⁷

The TPP's MEA provisions would have been stronger, and worthy of being called historic, if they had done two things. First, they could have included a binding commitment to implement resolutions adopted by the Parties. Resolutions are the "soft law" of conventions and are considered non-binding. Nonetheless, Parties frequently adopt key definitions, develop new implementation mechanisms, or establish terms of reference for subsidiary bodies necessary for the effective implementation of an MEA. For example, the CITES Parties have defined the phrase "personal and household effects" to harmonize implementation of an important exception to the rules for trade in protected species.⁴⁸ They have also developed rules for issuing permits for trade in specimens taken on the high seas.⁴⁹ The Montreal Protocol Parties have established criteria and a procedure for requesting and considering requests to use an ozone depleting substance for an "essential use."⁵⁰ By harmonizing the rules relating to these and other issues, the Parties create a predictable and accountable regime for trade—the very predictability that the TPP seeks to achieve.⁵¹ Parties are expected to implement these resolutions. Rather than bind the TPP Parties to implement these and other important resolutions, the TPP directs the Parties to "*endeavor to implement, as appropriate, CITES resolutions that aim to protect and conserve*

⁴⁴ See, e.g., Trade Promotion Agreement, U.S.–Pan., arts. 17.13(4), June 28, 2007, *available at* http://www.ustr.gov/sites/default/files/uploads/agreements/fta/panama/asset_upload_file314_10400.pdf [hereinafter U.S.–Panama FTA].

⁴⁵ The specified MEAs, described as "covered agreements," are the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, the Convention on the Conservation of Antarctic Marine Living Resources, the International Convention for the Regulation of Whaling, and the Convention for the Establishment of an Inter-American Tropical Tuna Commission. U.S.–Peru FTA, *supra* note 31, at Annex 18.2.

⁴⁶ U.S.–Peru, *supra* note 15, at art. 18.13(4).

⁴⁷ *Id.* at art. 20.4(2).

⁴⁸ CITES, *Control of Trade in Personal and Household Effects*, Resolution Conf. 13.7 (Rev. CoP16), *available at* <https://cites.org/eng/res/13/13-07R16.php>.

⁴⁹ CITES, *Introduction from the Sea*, Resolution Conf. 14.6 (Rev. CoP16), *available at* <https://cites.org/eng/res/14/14-06R16.php>.

⁵⁰ Montreal Protocol, *Essential Uses*, Decision IV/25, *available at* <http://ozone.unep.org/en/handbook-montreal-protocol-substances-deplete-ozone-layer/1166>.

⁵¹ The TPP's preamble states that one goal of the TPP is to "establish a predictable legal and commercial framework for trade and investment through mutually advantageous rules. TPP, *supra* note 1, at preamble, para. 7. Similarly, the Understanding on Dispute Settlement of the World Trade Organization, for example, provides that "[t]he dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. . . . [I]t serves to preserve the rights and obligations of Members under the covered agreements." Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, art. 3.2, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS, 354 (1999), 1869 U.N.T.S. 401.

species whose survival is threatened by international trade.”⁵² As weak as this commitment is, it is stronger than for other MEAs; the TPP is silent with respect to implementing decisions of the Montreal Protocol or other MEAs.

Second, the TPP could have engaged in a review of the adequacy of implementing legislation and then used the results of these analyses to focus capacity-building efforts and, as a last resort, sanction a non-complying Party that does not improve its inadequate legislation. The CITES national legislation project provides an excellent example of how to direct capacity-building support to specific Parties to improve implementation of an MEA and help conserve public resources.⁵³ When a Party’s legislation has been found inadequate, the Secretariat provides legislative drafting assistance or other capacity-building support. In this way, Parties are able to receive exactly the kind of support they need.

III. IUU Fishing

As noted in the introduction, USTR has praised the TPP’s “pioneering commitments” to combat illegal fishing and prohibit some of the most harmful fisheries subsidies, such as those given to fishermen engaged in illegal, unreported, and unregulated (IUU) fishing.⁵⁴ Like the provisions relating to MEAs, however, these provisions are weak; they are also inadequate to meet the challenges of IUU fishing.

For example, the TPP prohibits fisheries subsidies to any fishing vessel listed by the flag State or an RFMO for engaging in IUU fishing.⁵⁵ Many RFMOs, however, already implicitly require the elimination of such subsidies or impose stricter requirements vis-à-vis IUU vessels. The Western and Central Pacific Fisheries Commission, the Inter-American Tropical Tuna Commission, and the Indian Ocean Tropical Tuna Commission, three RFMOs managing and conserving tuna and other fish stocks,⁵⁶ require their members to “take all the necessary measures to eliminate IUU fishing activities, including, if necessary, the withdrawal of the registration or the fishing licenses of these vessels.”⁵⁷ They must also, among other things, refuse to allow such vessels to fly their flags, prohibit these vessels from engaging in commercial transactions, and prohibit these vessels from importing, landing, and transshipping of species.⁵⁸

⁵² TPP, *supra* note 1, at art. 20.17(3)(c) (emphasis added).

⁵³ See Resolution Conf. 8.4 (Rev. CoP15), *supra* note 21.

⁵⁴ The Trans-Pacific Partnership, *supra* note 2, at 2; USTR, Environment, *supra* note 4.

⁵⁵ TPP, *supra* note 1, at art. 20.16(5)(b).

⁵⁶ Australia, Canada, Japan, Mexico, New Zealand, United States, and Vietnam are members or cooperating non-members of the WCPFC. See WCPFC, About WCPFC, at <https://www.wcpfc.int/about-wcpfc>. Canada, Japan, Mexico, Peru, and the United States are members of the IATTC. See IATTC, Inter-American Tropical Tuna Commission, at <http://www.iattc.org/HomeENG.htm>. Australia and Malaysia are members of the IOTC. See

⁵⁷ WCPFC, Conservation and Management Measure to Establish a List of Vessels Presumed to Have Carried Out Illegal, Unreported, and Unregulated Fishing Activities in the WCPO, Conservation and Management Measure 2010-06 ¶ 21(b) (2010); Inter-American Tropical Tuna Commission, Amendment to Resolution C-05-07 on Establishing a List of Vessels Presumed to have Carried Out Illegal, Unreported and Unregulated Activities in the Eastern Pacific Ocean, Resolution C-15-01, ¶ 15 (2015); Indian Ocean Tropical Tuna Commission, Resolution 11/03 on Establishing a List of Vessels Presumed to have Carried Out Illegal, Unreported and Unregulated Fishing in the IOTC Area of Competence, ¶ 15 (2011).

⁵⁸ WCPFC, CMM 2010-06, *supra* note 16, at ¶ 22; IATTC Resolution C-15-01, *supra* note 16, at ¶ 16; IOTC Resolution 11/03, *supra* note 44, at ¶ 16.

While these provisions do not expressly call for the removal of subsidies, it is highly unlikely that a member of an RFMO would provide subsidies to a vessel it does not flag (unless the subsidy is carried in the below-market cost of fuel or is otherwise generally available to all fishing vessels, in which case the subsidy may not be covered by the TPP because it would not be considered “specific” within the meaning of the WTO’s Subsidies and Countervailing Measures Agreement).⁵⁹

These RFMO measures also show how members of relevant RFMOs already cooperate with respect to IUU fishing. Thus, the TPP’s call for TPP Parties to “endeavor” to improve cooperation to address IUU fishing⁶⁰ has, in many respects, already been accomplished, particularly since the TPP does not direct the TPP Parties to cooperate through the TPP’s Environment Committee to address IUU fishing. As a consequence, the TPP Parties will endeavour to improve cooperation through competent international organizations,⁶¹ such as the WCPFC, IATTC, and IOTC.

Other activities relating to IUU fishing simply do not go far enough and will be difficult, if not impossible, to enforce. To combat IUU fishing and deter trade in products from species harvested from IUU fishing, for example, the TPP Parties must “strive” to act consistently with the rules of RFMOs of which it is not a member.⁶² They must also “endeavor” not to undermine catch or trade documentation schemes operated by RFMOs, as well as intergovernmental organizations whose scope includes the management of shared fisheries resources.⁶³ At a time when some countries such as Palau and Indonesia are burning or sinking vessels of TPP Parties such as Vietnam and Malaysia for engaging in IUU fishing,⁶⁴ obligations to “strive” for and “endeavor” to undertake certain activities are inadequate to meet the challenges of IUU fishing. In addition, obligations qualified by words such as “strive” and “endeavour” are likely impossible to enforce. The plain language of such words only requires the Parties to exert some

⁵⁹ The WTO’s Agreement on Subsidies and Countervailing Measures limits its applicability by distinguishing subsidies of general applicability from those that are “specific.” Subsidies that are generally available to the public, such as public education and fire protection, are not subject to trade discipline and cannot be countervailed. Specific subsidies, however, are covered. To be “specific,” the subsidy must be conferred on an identifiable enterprise or group of enterprises. More concretely, Article 2.1(c) of the SCM Agreement provides that a subsidy may be specific if “there are reasons to believe that the subsidy may in fact be specific.” *De facto* specificity may be found where: 1) the actual recipients are limited in number; 2) an enterprise or industry is a predominant user of the subsidy; 3) certain enterprises receive a disproportionately large amount of the subsidy; and 4) the manner in which the granting authority exercises discretion to grant a subsidy indicates that an enterprise or industry is “favored over others.” Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS, 231 (1999), 1869 U.N.T.S. 14

⁶⁰ TPP, *supra* note 1, at art. 20.16(13).

⁶¹ *Id.* The TPP Parties have a duty to cooperate with each other concerning IUU fishing but only to “identify needs and to build capacity to support implementation” of efforts to combat IUU fishing. *Id.* at art. 20.16(14).

⁶² *Id.* at art. 20.16(14)(d).

⁶³ *Id.* at art. 20.16(14)(e).

⁶⁴ Associated Press, *Moving to Preserve Fisheries, Palau Burns Vietnamese Boats Caught Fishing Illegally*, (June 11, 2015) (noting that Palau burned four Vietnamese fishing vessels fishing illegally in Palau’s waters and that Indonesia blew up and sank 41 foreign fishing vessels from China, Malaysia, the Philippines, Thailand and Vietnam), available at <http://www.foxnews.com/world/2015/06/11/moving-to-preserve-fisheries-palau-burns-vietnamese-boats-caught-fishing/>.

energy.⁶⁵ In legal terms, obligations qualified by such terms only require a Party to “act diligently in order to achieve the object of the obligation.”⁶⁶

The only unqualified obligation relating to IUU fishing is the obligation to implement port State measures.⁶⁷ Even here, however, the obligation is inadequately framed. Unlike other TPP provisions that frame obligations in terms of specified MEAs, the requirement to implement port State measures does not do so, even though a relevant MEA exists—the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement). The FAO adopted the Port State Measures Agreement in 2009.⁶⁸ Although it has yet to enter into force, FAO has produced a number of guides to support implementation of port State measures.⁶⁹ Nonetheless, the TPP does not reference the Port State Measures Agreement or any of these implementation documents with respect to the duty to implement port State measures.⁷⁰ As such, the reference to “port State measures” is not tied to any specific legal or technical document, and the Parties have no specific commitments to implement specific port State measures.

IV. Conservation and Trade in Wildlife

The USTR has also hailed the provisions relating to wildlife trade as “pioneering”⁷¹ and “enforceable.”⁷² Here, too, USTR overstates the TPP’s provisions, which fall short of what is necessary to meet the challenges of illegal wildlife trade.

In the TPP, the Parties acknowledge that poaching and illegal trade in wildlife undermine efforts to conserve and manage those resources.⁷³ To that end, they commit to taking “appropriate measures” to protect and conserve wildlife it has identified as “at risk” within its

⁶⁵ “Endeavour” means “to attempt by exertion of effort.” Merriam-Webster Dictionary Online, at <http://www.merriam-webster.com/dictionary/endeavor>. “Strive” means “to devote serious effort or energy.” *Id.* at <http://www.merriam-webster.com/dictionary/strive>.

⁶⁶ RENÉ LEFEBER, TRANSBOUNDARY ENVIRONMENTAL INTERFERENCE AND THE ORIGIN OF STATE LIABILITY 71 (1996).

⁶⁷ TPP, *supra* note 1, at art. 20.16(14)(c).

⁶⁸ FAO Conference Resolution 12/2009 approving the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. For more on the Port State Measures Agreement, see FAO, Port State Measures Agreement, available at <http://www.fao.org/fishery/psm/agreement/en>.

⁶⁹ See, e.g., *Implementation of Port State Measures Volume 1: Technical Guide to Port Inspection of Fishing Vessels* (FAO, 2013), available at <http://www.fao.org/3/13a91774-6816-5262-92e1-654e2b8b9740/i3508e.pdf>; Steve Dunn et al., *Implementation of Port State Measures Volume 3: Port Inspections—Guide to Activities and Tasks* (FAO, 2013), available at <http://www.fao.org/3/3b45c6e9-52e1-50ed-8b7e-bf184108c9e3/i3510e.pdf>.

⁷⁰ The TPP does reference the Port State Measures Agreement in Article 20.16(13), in which the “Parties recognize the importance of concerted international action to address IUU fishing as reflected in regional and international instruments.” Regional and international instruments include the Port State Measures Agreement. TPP, *supra* note 1, at 20.16(13), fn. 20.

⁷¹ The Trans-Pacific Partnership, *supra* note 2, at 2.

⁷² USTR, Environment, *supra* note 4.

⁷³ TPP, *supra* note 1, at art. 20.17(1).

territory.⁷⁴ Because each TPP Party already has domestic wildlife legislation—either as CITES implementing legislation⁷⁵ or other legislation⁷⁶—it is not clear what this adds.

Similarly, each Party commits to “maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management” and wildlife conservation.⁷⁷ By definition, an obligation to “maintain” does not require improvements, and some TPP Parties clearly need to improve their capacity to manage forests sustainably and conserve wildlife. Vietnam, for example has been at the center of the illegal rhino horn trade. In fact, TRAFFIC, a non-governmental organization that assesses wildlife trade,⁷⁸ has stated that Vietnam is believed to be driving the “rapacious illegal trade in rhino horn”⁷⁹ with Vietnamese nationals at the center of the illegal trade.

Peru continues to struggle to stop the flow of illegally harvested timber from indigenous lands and national parks, and yet the TPP and Peru itself have turned a blind eye to these problems. Prior to the U.S.–Peru FTA, the World Bank estimated that 80% of Peruvian timber exports stem from illegal logging.⁸⁰ As a consequence, the U.S.–Peru FTA specifically requires Peru to take certain steps to control the illegal harvesting and illegal trade in timber.⁸¹ For example, the U.S.–Peru FTA requires Peru to increase the number and effectiveness of personnel dedicated to enforcement of laws relating to harvest of and trade in timber products,⁸² conduct comprehensive inventories of tree species listed by CITES,⁸³ establish an export quota for bigleaf mahogany,⁸⁴ and conduct period audits of timber producers,⁸⁵ among many other things.

⁷⁴ *Id.* at art. 20.17(4)(a).

⁷⁵ See, e.g., CITES Standing Committee, *National Laws*, SC65 Doc. 22, at Annex, p. 1, 6 (stating that Australia, Brunei, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States have legislation that adequately implements CITES (“Category 1”), with Chile having legislation that partially implements CITES (“Category 2”)).

⁷⁶ See, e.g., Environment Protection and Biodiversity Conservation Act 1999 (Australia), available at <https://www.environment.gov.au/epbc>; Wild Animals and Birds Act (Singapore), Cap. 351, 2000 Rev. Ed. Sing., available at <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3Af0719c63-6c52-4222-b991-3804d749ea36%20%20Status%3Ainforce%20Depth%3A0;rec=0>; Wildlife Act 1953 (New Zealand), available at <http://www.legislation.govt.nz/act/public/1953/0031/latest/DLM276814.html>; Wildlife Conservation Act of 2010 (Malaysia), Act 716, available at <http://www.gunungganang.com.my/pdf/Malaysian-Legislation/National/Wildlife%20Conservation%20Act%202010.pdf>; Endangered Species Act (United States), 16 U.S.C. §§1531–1544; Law 20.380, Protección de los Animales (Chile), available at <https://www.globalanimallaw.org/database/national/chile/>.

⁷⁷ TPP, *supra* note 1, at art. 20.17(4)(b).

⁷⁸ TRAFFIC, <http://www.traffic.org/overview>.

⁷⁹ TOM MILLIKEN & JO SHAW, THE SOUTH AFRICA–VIET NAM RHINO HORN TRADE NEXUS: A DEADLY COMBINATION OF INSTITUTIONALIZED LAPSES, CORRUPT WILDLIFE INDUSTRY PROFESSIONALS AND ASIAN CRIME SYNDICATES 14 (TRAFFIC, 2012), available at http://static1.1.sqspcdn.com/static/f/157301/19987722/1345739024283/traffic_species_mammals66.pdf?token=YpfXekwfyCSD8VGrtQBez2jQMZw%3D.

⁸⁰ MARILYNE PEREIRA GONCALVES ET AL., JUSTICE FOR FORESTS: IMPROVING CRIMINAL JUSTICE EFFORTS TO COMBAT ILLEGAL LOGGING, 3, fn. 10 (World Bank, 2012) (citing estimates from 2006), available at <http://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-8978-2>.

⁸¹ U.S.–Peru FTA, *supra* note 15, at Annex 18.3.4.

⁸² *Id.* at Annex 18.3.4, ¶ 3(a).

⁸³ *Id.* at Annex 18.3.4, ¶ 3(d).

⁸⁴ *Id.* at Annex 18.3.4, ¶ 3(f).

⁸⁵ *Id.* at Annex 18.3.4, ¶ 6(a).

Nonetheless, the situation appears much the same; Peru's governmental agency to help oversee the timber industry, OSINFOR,⁸⁶ found in 2014 that 78% of the wood inspected at 115 concessions was illegally harvested but nonetheless transported with documents.⁸⁷ Remarkably, Peru brought no prosecutions against anyone, imposed no significant penalties, and returned the confiscated timber to the companies that illegally harvested and transported the timber.⁸⁸ These provisions of the U.S.–Peru FTA are significantly more precise and better targeted towards specific problems than anything found in the TPP. Yet, because the United States has not sought to enforce these provisions, many of them have gone unimplemented.⁸⁹

Notably, the TPP's bilateral understanding between Peru and the United States does not address concerns relating to illegal harvest and illegal trade in timber from Peru. Instead, the two Parties “recognize” 1) that Peru's Forest and Wildlife Law requires proof of legal origin for wild fauna and flora, and failure to provide such proof is subject to penalties in accordance with that law and 2) that Peru has established procedures and legal requirements for wild fauna and flora produced and exported from Peru.⁹⁰

The Parties also “commit ... to combat the illegal take of, and illegal trade in, wild fauna and flora.”⁹¹ Rather than identify specific cooperative efforts the Parties will take to fulfill this obligation, the TPP directs the Parties to exchange information and experiences, undertake, as appropriate, joint conservation activities, and endeavor to implement, as appropriate, CITES resolutions.⁹² These are not the type of provisions likely to change enforcement and prosecution of wildlife crimes.

The most interesting, but perhaps also the most ambiguous, provision relating to wildlife conservation is the duty of each Party to take measures “to combat, and cooperate to prevent,” the trade in wildlife that was taken or traded in violation of “that Party's law or another applicable law.”⁹³ A footnote explains that the phrase “another applicable law” means “a law of the jurisdiction where the take or trade occurred.”⁹⁴ Presumably this phrase means “the law of another State” and cannot be interpreted as subnational law.⁹⁵ If so, then this provision has the

⁸⁶ Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre, at <http://www.osinfor.gob.pe/osinfor/>.

⁸⁷ Bob Abeshouse & Luis Del Valle, *Peru's Rotten Wood*, AL JAZEERA (Aug. 12, 2015), available at <http://www.aljazeera.com/programmes/peopleandpower/2015/08/peru-rotten-wood-150812105020949.html>.

⁸⁸ *Id.*

⁸⁹ Environmental Investigation Agency, *Implementation and Enforcement Failures in the US--Peru Free Trade Agreement (FTA) Allows Illegal Logging Crisis to Continue* (June 2015), available at [http://eia-global.org/images/uploads/Implementation_and_Enforcement_Failures_in_the_US-Peru_Free_Trade_Agreement_\(FTA\)_Allows_Illegal_Logging_Crisis_to_Continue.pdf](http://eia-global.org/images/uploads/Implementation_and_Enforcement_Failures_in_the_US-Peru_Free_Trade_Agreement_(FTA)_Allows_Illegal_Logging_Crisis_to_Continue.pdf).

⁹⁰ Bilateral Understanding between the U.S. and Peru on Conservation and Trade, available at <https://ustr.gov/sites/default/files/TPP-Final-Text-US-PE-Understanding-regarding-Conservation-and-Trade.pdf>. The provision appears more likely to assist U.S. officials seize illegal shipments of timber from Peru under the U.S. Lacey Act, 16 U.S.C. §§ 3371–3378.

⁹¹ TPP, *supra* note 1, at art. 20.17(3).

⁹² *Id.* at art. 20.17(3)(a)–(c).

⁹³ *Id.* at art. 20.17(5).

⁹⁴ *Id.* at art. 20.17(5), fn. 26.

⁹⁵ The TPP defines “Party” to mean “any State or separate customs territory for which this Agreement is in force.” *Id.* at art. 1.3. Typically a reference to “State” or “party” includes subnational levels of government. Moreover,

potential to helpfully combat illegal wildlife trade by allowing a TPP Party to prosecute under its own laws violations of another State's laws. The United States has had great success with the Lacey Act,⁹⁶ which makes it unlawful to import, export, sell, acquire, or purchase fish, wildlife, or plants taken possessed or sold in violation of State or foreign law.⁹⁷

As written, however, the provision depends on the individual implementation by the TPP Parties. This is because the measures for combatting such trade “include sanctions, penalties, *or* other effective measures.” It is rather inexplicable why such measures do not “include sanctions, penalties, *and* other effective measures.” As a consequence, TPP members could opt to return the illegally traded specimens to the country of origin, sell the confiscated specimens, or take other measures that do not sanction or penalize such trade.

Moreover, the TPP establishes broad discretion in the ways that Parties implement the duty to combat and prevent illegal wildlife trade. The TPP recognizes that each Party “retains the right to exercise administrative, investigatory and enforcement discretion” in its implementation of this obligation.⁹⁸ They also retain “the right to make decisions regarding the allocation of administrative, investigatory and enforcement resources.”⁹⁹ While agencies and law enforcement personnel traditionally have broad discretion to choose which cases to investigate and prosecute, Parties to other free trade agreements have used similar language to excuse broad failures to enforce environmental law. For example, the United States has never enforced the Migratory Bird Treaty Act, which prohibits the taking of migratory birds,¹⁰⁰ against loggers. When submitters challenged that failure under the North American Agreement on Environmental Cooperation,¹⁰¹ NAFTA's “side agreement,” the United States claimed that it used its enforcement discretion to investigate and enforce activities involving pollution or energy production facilities.¹⁰² It also stated that it had *bona fide* reasons for allocating enforcement resources to investigating other matters, but then referred to a range of initiatives completely unrelated to enforcement, such as monitoring the population status of migratory birds, public outreach, and implementing a permit program for hunting.¹⁰³ Yet, the Agreement's secretariat concluded that the United States had failed to describe why its enforcement choices were reasonable; for example, the United States did not provide information on the number of birds killed through intentional activities such as hunting versus incidental activities such as logging.¹⁰⁴ In addition, the secretariat found the U.S. response lacking because it did not, for example, describe why monitoring a hunting program might be easier than monitoring a logging

other parts of the TPP specifically refer to “the central, regional or local governments or authorities of that Party,” indicating that where Party is used, it refers to all levels of government. *See, e.g., id.* at art. 9.2(2).

⁹⁶ 16 U.S.C. §§ 3371–3378.

⁹⁷ *Id.* at § 3372(a)(2).

⁹⁸ TPP, *supra* note 1, at art. 20.17(6).

⁹⁹ *Id.*

¹⁰⁰ 16 U.S.C. §§ 703–712, § 703.

¹⁰¹ North American Agreement on Environmental Cooperation, art. 14.1, U.S.-Can.-Mex., Sept. 14, 1993, *available at* <http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=567> [hereinafter NAAEC].

¹⁰² Response of the United States, Migratory Birds, A14/SEM/99-002/05/RSP, 14 (Nov. 19, 1999) (SEM 99-002), *available at* http://www.cec.org/Page.asp?PageID=2001&ContentID=2370&SiteNodeID=548&BL_ExpandID=502.

¹⁰³ *Id.* at 15–21.

¹⁰⁴ Article 15(1) Notification to Council that Development of a Factual Record is Warranted, Migratory Birds, A14/SEM/99-002/05/ADV, 19 (Dec. 15, 2000) (SEM 99-002), *available at* http://www.cec.org/Page.asp?PageID=2001&ContentID=2370&SiteNodeID=548&BL_ExpandID=502.

operation, as claimed.¹⁰⁵ Overall, the United States failed to “provide a careful identification of the reasons why it chose to follow one course rather than another.”¹⁰⁶ The TPP, however, does not have any secretariat to assess the claims of a Party to determine whether it provided the careful identification of the reasons for choosing one enforcement strategy over another.¹⁰⁷ Without that independent arbiter, claims of enforcement discretion will go unchallenged.

A stronger provision would have prohibited the trade in illegally taken or previously illegally traded plants and animals, except for *bona fide* scientific, enforcement purposes, or related, non-commercial purposes. Otherwise, illegally obtained and illegally traded specimens will enter the market, feed demand, and continue the decline of species. The example of illegal timber from Peru highlights this; by returning the illegally-taken specimens to the very companies involved in the illegal trade, it is very likely that those companies will profit from the return of the timber rather than be deterred by prosecutions and stiff penalties.

V. Protection of Marine Animals

The provisions relating to the protection of marine animals, including fish, are long on aspiration but short on obligation. While the Parties “acknowledge” that “the fate of marine capture fisheries is an urgent concern”¹⁰⁸ and that inadequate fisheries management contributes to the problem, the Parties are only required to “seek” to operate their fisheries management systems to prevent overfishing and overcapacity.¹⁰⁹

The provisions also single out sharks, marine turtles, seabirds, and marine mammals.¹¹⁰ That attention is well deserved, particularly the attention given to sharks, because populations of many shark species are declining due to shark-finning for shark fin soup. In fact, roughly 100 million sharks are killed each year, with the shark fin trade a primary reason.¹¹¹ An analysis of the conservation status of 1,041 shark, ray, and closely related species by the International Union of the Conservation of Nature (IUCN) shows that 25% are threatened with extinction and only 23% are of “least concern.”¹¹² Because sharks grow slowly and have low reproductive rates, they are “highly susceptible to extinction, and it is difficult for many shark species to replenish their populations as quickly as they are being diminished. Many species of sharks are currently in danger due to shark finning.”¹¹³ Even as trade in shark fins has declined “slightly” since the early 2000s, trade in shark meat has increased 42%.¹¹⁴

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 18.

¹⁰⁷ See *infra* Section VII.A (describing the TPP’s citizen submission process).

¹⁰⁸ TPP, *supra* note 1, at art. 20.16(1).

¹⁰⁹ *Id.* at art. 20.16(3).

¹¹⁰ *Id.* at art. 20.16(4).

¹¹¹ Katy Fairclough, Shark Finning: Sharks Turned Prey, Smithsonian Institute, Museum of Natural History, available at <http://ocean.si.edu/ocean-news/shark-finning-sharks-turned-prey>.

¹¹² IUCN, A Quarter of Sharks and Rays Threatened with Extinction (Jan. 21, 2014), available at <http://www.iucn.org/?14311/A-quarter-sharks-and-rays-threatened-with-extinction>.

¹¹³ Fairclough, *supra* note 111.

¹¹⁴ FELIX DENT & SHELLEY CLARKE, STATE OF THE GLOBAL MARKET FOR SHARK PRODUCTS 3 (FAO Fisheries and Aquaculture Technical Paper No. 590, 2015), available at <http://www.fao.org/3/a-i4795e.pdf>.

To combat this trade and the practice of shark finning, 25 states and countries now have laws that ban the possession, sale, and trade of shark fins.¹¹⁵ TPP Parties Japan, Malaysia, Singapore, and Vietnam are not among those that have banned shark finning or banned possession, sale, or trade in shark fins. Rather, those States in addition to other TPP Parties are among the main exporters, importers, and consumers of shark fins and other shark products. For example, Mexico and Malaysia are among the ten States responsible for more than 25% of global shark catches between 2002 and 2011.¹¹⁶ Meanwhile, Singapore was the fourth largest exporter of shark fins between 2000 and 2009; it reported imports and exports of approximately 20,000 tonnes of meat and 10,000 tonnes of fins.¹¹⁷ Peru and Chile are also significant exporters of various shark products.¹¹⁸ Singapore, Malaysia, and Vietnam are among the six nations consuming the “vast majority” of shark fins.¹¹⁹ Nonetheless, the TPP does not ask Parties to take any specific measures to conserve sharks, although Parties should, “as appropriate,” collect data or impose catch limits, mitigation measures, or ban finning.¹²⁰

More positively, the TPP prohibits fisheries subsidies that “negatively affect fish stocks that are in an overfished condition.”¹²¹ Even this provision, however, is limited in its effectiveness because the subsidies must “negatively affect fish stocks” that are already “overfished.” With 28.8% of fish stocks fished at a biologically unsustainable level, the provision will have some impact,¹²² but it does not apply to the 61.3% of fish stocks that are fully fished with “no room for further expansion in catch.”¹²³ Subsidies, however, frequently cause overfishing and overcapacity.¹²⁴ In 2006, a global study of the period from 1995-2005 estimated fisheries subsidies at \$30–34 billion.¹²⁵ In 2010, the United Nations Environment Program valued fisheries subsidies at \$27 billion, with “only around \$8 billion . . . classed as ‘good’ with the rest classed as ‘bad’ and ‘ugly’ as they contribute to over-exploitation of

¹¹⁵ S. WHITCRAFT ET AL., EVIDENCE OF DECLINES IN SHARK FIN DEMAND: CHINA, 14–16, Tbl. 3 (WildAid, 2014), available at http://wildaid.org/sites/default/files/resources/SharkReport_Evidence%20of%20Declines%20in%20Shark%20Fin%20Demand_China.pdf.

¹¹⁶ VICTORIA MUNDY-TAYLOR & VICKI CROOK, INTO THE DEEP: IMPLEMENTING CITES MEASURES FOR COMMERCIALY-VALUABLE SHARKS AND MANTA RAYS 3 (TRAFFIC, 2013), available at http://static1.1.sqspcdn.com/static/f/157301/23202911/1375133237910/traffic_pub_fisheries15.pdf?token=kW21ajdN%2FrWycJaflegAVvoIsWY%3D. India and Indonesia are responsible for 20% of the global catch, while Argentina, Mexico, Malaysia, Pakistan, Brazil, Thailand, Nigeria, Iran, Sri Lanka, and Yemen are responsible for 20%. *Id.*

¹¹⁷ *Id.* at 5.

¹¹⁸ *Id.* at 5.

¹¹⁹ DENT & CLARKE, *supra* note 114, at 3.

¹²⁰ TPP, *supra* note 1, at art. 20.16(4)(a).

¹²¹ *Id.* at art. 20.16(5)(a).

¹²² FAO, THE STATE OF WORLD FISHERIES AND AQUACULTURE 7 (2014).

¹²³ *Id.*

¹²⁴ See, e.g., Peter Manning, *World Inventory of Fisheries: Subsidies in Fisheries: Issues Fact Sheets*, in FAO FISHERIES AND AQUACULTURE DEPARTMENT (updated May 27, 2005) (stating that “it is accepted that these subsidies speed up the development of overcapacity and consequently threaten the continued well being of wild fish stocks, in the absence of effective fisheries management.”), available at <http://www.fao.org/fishery/topic/13333/en>.

¹²⁵ CATCHING MORE BAIT: A BOTTOM-UP RE-ESTIMATION OF GLOBAL FISHERIES SUBSIDIES, Fisheries Centre Research Reports, Vol.14 No. 6, 2 (eds. Ussif Rashid Sumaila & Daniel Pauly, 2d vers. 2007), available at <http://www.fisheries.ubc.ca/node/3786>.

stocks.”¹²⁶ By not eliminating fisheries subsidies that contribute to overexploitation and overcapacity, the TPP has missed an extraordinary opportunity. As a consequence, the TPP’s provision on fisheries subsidies must be viewed as inadequate to meet the challenges of fisheries management, particularly since Parties have three years to bring non-existing, non-complying subsidies into conformity with this prohibition.¹²⁷

The United States also states that the TPP provides “specific protections for ecologically critical and iconic marine species, such as whales,”¹²⁸ but the Environment Chapter includes no concrete obligations relating to whales and other marine mammals. The one provision relating to conservation of marine mammals vaguely directs Parties to adopt measures, which “should include, as appropriate . . . conservation and relevant management measures, prohibitions, and other measures in accordance with relevant international agreements, to which the Party is a party.”¹²⁹ As Japan has indicated that it will defy¹³⁰ an order of the International Court of Justice to prohibit the issuance of permits to conduct whaling in the Southern Ocean,¹³¹ the statement of the United States is both wrong and another missed opportunity to improve conservation outcomes.

VI. Climate Change

The TPP contains some odd language that presumably refers to climate change while avoiding any mention of climate change or even carbon dioxide. In the TPP, the Parties

¹²⁶ UNEP, Press Release, Turning the Tide on Falling Fish Stocks—UNEP-Led Green Economy Charts Sustainable Investment Path, 2 (May 17, 2010). The estimates of fisheries subsidies vary largely due to differing definitions of “subsidy.” As the FAO notes,

there is no universally accepted definition of exactly what government actions (or inaction) are to be considered as subsidies. The term subsidies can be broadly applied to a wide range of government interventions, or to the absence of correcting interventions, that reduce costs and/or increase revenues of producing and marketing of fish and fish products in the short-, medium- or long-terms. “Government interventions” include financial transfers or the provision of goods or services at a cost below market prices. “The absence of correcting interventions” includes failure by government to impose measures that correct for external costs (externalities) associated with fishing.

Manning, *supra* note 121. They also vary due to the “difficulties in measuring the magnitude and effects of fisheries subsidies given the lack of available data, information and empirical studies on its use and effects.” *Id.*

¹²⁷ TPP, *supra* note 1, at art. 20.16(6). Vietnam has five years to bring its subsidies into conformity. *Id.* at art. 20.16(6), fn. 18. The Parties must make “best efforts” to refrain from introducing new, or existing or enhancing existing, subsidies that contribute to overfishing or overcapacity. *Id.* at art. 20.16(7). They have an ongoing duty to review subsidies that contribute to overfishing and overcapacity “with a view to achieving the objective of eliminating” them. *Id.* at art. 20.16(8).

¹²⁸ USTR, Environment, *supra* note 4.

¹²⁹ TPP, *supra* note 1, at art. 20.16(4)(b).

¹³⁰ *Japan Plans Unilateral Restart to Antarctic Whaling in 2015, Says Official*, THE GUARDIAN (June 20, 2015), available at <http://www.theguardian.com/environment/2015/jun/20/japan-plans-unilateral-restart-to-antarctic-whaling-in-2015-says-official>.

¹³¹ Whaling in the Antarctic (Australia v. Japan: New Zealand Intervening), 2014 I.C.J. Rep. __, ¶ 245 (Mar. 31, 2014).

acknowledge that a “transition to a low emissions economy requires collective action,”¹³² but it does not identify the kind of emissions economy that requires collective action. A subsequent provision asks the Parties to cooperate to address areas of joint or common interest that “may include” energy efficiency, clean and renewable energy sources, and other issues¹³³ that indicate the Parties are, in fact discussing climate change. In light of the ongoing negotiations to reach agreement on a new climate change regime in Paris at the end of 2015, the Parties may have been understandably hesitant to include mitigation and adaptation commitments in the TPP. Nonetheless, they could have used the TPP to create more specific cooperative frameworks for addressing the transition to a low *greenhouse gas* emissions economy. They could have agreed to a timetable for reducing and eliminating fossil fuel subsidies.

Neither of these ideas would have affected the Parties negotiating positions in Paris. A concrete, binding strategy for eliminating fossil fuel subsidies would have been consistent with the pledges made by members of the G–20 and the Asia–Pacific Economic Cooperation (APEC) forum, which includes all TPP Parties.¹³⁴ Both the G–20 and APEC have called for eliminating fossil fuel subsidies.¹³⁵ And for good reason: the International Energy Agency (IEA) estimated fossil fuel consumption subsidies at \$548 billion in 2013.¹³⁶ Fossil fuel production subsidies are estimated to be *at least* \$100 billion.¹³⁷

Fossil fuel subsidies increase consumption of fossil-fuel, increase emissions of carbon dioxide, and thus undermine global efforts to mitigate climate change. Assessing the removal of fossil fuel subsidies in just 8 non-OECD countries, the IEA predicted that global energy consumption would drop 3.5%, global carbon dioxide emissions would decline 4.6%, and GDP would increase by an average of 0.73% in the eight countries.¹³⁸ Focusing solely on coal

¹³² TPP, *supra* note 1, art. 20.15(1).

¹³³ *Id.* at art. 20.15(2).

¹³⁴ APEC comprises the following member economies: Australia, Brunei Darussalam, Canada, Chile, People’s Republic of China, Hong Kong (China), Chinese Taipei, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Singapore, Thailand, United States, and Vietnam. See *Member Economies*, APEC, <http://www.apec.org/About-Us/About-APEC/Member-Economies.aspx>.

¹³⁵ The G–20 agreed to “rationalize and phase out over the medium term inefficient fossil fuel subsidies that encourage wasteful consumption.” 3rd G-20 Summit Meeting, Pittsburgh, U.S., Sept. 24–25, 2009, *The Pittsburgh Summit Declaration*, ¶ 24, available at <http://www.g20.org/images/stories/docs/eng/pittsburgh.pdf>. APEC did the same. 17th APEC Economic Leaders’ Meeting, Sing., Nov. 14–15, 2009, *Singapore Declaration- Sustaining Growth, Connecting The Region*, APEC Doc. No. 2009/AELM/DEC (stating “We also commit to rationalise and phase out over the medium term fossil fuel subsidies that encourage wasteful consumption, while recognising the importance of providing those in need with essential energy services.”); see also 9th APEC Energy Ministers Meeting, Fukui, Japan, June 18–20, 2010, *Fukui Declaration on Low Carbon Paths to Energy Security: Cooperative Energy Solutions for a Sustainable APEC*, ¶ 11, APEC Doc. No. 2010/EMM9/002 (June 19, 2010) (“We remain committed to the 2009 Leaders’ Declaration to rationalize and phase out over the medium term fossil fuel subsidies that encourage wasteful consumption, while recognizing the importance of providing those in need with essential energy services.”).

¹³⁶ International Energy Agency, *World Energy Outlook, Energy Subsidies*, available at <http://www.worldenergyoutlook.org/resources/energysubsidies/>.

¹³⁷ See Global Subsidies Initiative-U.N. Environment Programme Conference, Oct. 14–15, 2010, Geneva, Switz., *GSI-UNEP Conference Report, Increasing the Momentum of Fossil Fuel Subsidy Reform: Development and Opportunities*, at 14-15, available at www.globalsubsidies.org/files/assets/ffs_conference.pdf.

¹³⁸ INTERNATIONAL ENERGY AGENCY, *WORLD ENERGY OUTLOOK 1999, LOOKING AT ENERGY SUBSIDIES: GETTING THE PRICES RIGHT* 10, 64 tbl. 6 (1999). The eight countries studied were China, India, Indonesia, Iran, Kazakhstan, Russia, South Africa, and Venezuela.

subsidies, others concluded that removing all coal subsidies would reduce global carbon dioxide emissions by 8% from the business-as-usual baseline.¹³⁹ Fossil fuel subsidies also aggravate local pollution problems by increasing emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x), and particulate matter, pollutants that cause respiratory and other human health problems.¹⁴⁰ With so many climate gains to be made, the failure to reduce fossil fuel subsidies as part of the TPP is another missed opportunity.

VII. Enforcement

Regional free trade agreements involving the United States beginning with NAFTA have typically included two types of enforcement mechanisms for environmental matters: citizen submissions and State-to-State dispute settlement provisions.¹⁴¹ The TPP is no different, except that its enforcement mechanisms are likely to be even more ineffectual than those of prior agreements.

A. The Citizen Submission Process

The citizen submission processes of NAFTA, incorporated into the NAAEC,¹⁴² U.S.–CAFTA,¹⁴³ and others¹⁴⁴ allow citizens to allege that a Party “is failing to effectively enforce its environmental law.” The NAAEC Parties, acting through the agreement’s Commission for Environmental Cooperation, have shown little interest in implementing that process effectively. For example, the United States has never attempted to enforce the provisions of the Migratory Bird Treaty Act (MBTA), despite the CEC’s Secretariat finding that the allegations of the submitters were consistent with a failure to enforce the MBTA.¹⁴⁵ Moreover, the Parties have narrowed the scope of factual records¹⁴⁶ from that requested by submitters¹⁴⁷ and beyond that

¹³⁹ Kym Anderson & Warwick J. McKibbin, *Reducing Coal Subsidies and Trade Barriers: Their Contribution to Greenhouse Gas Abatement*, 5 ENV'T. & DEVELOPMENT ECON. 457, 477 (2000).

¹⁴⁰ 4th G-20 Summit Meeting, Toronto, Can., June 26–27, 2010, *Analysis of the Scope of Energy Subsidies and Suggestions for the G-20 Initiative*, at 25 (June 16, 2010), available at http://www.iea.org/weo/docs/G20_Subsidy_Joint_Report.pdf.

¹⁴¹ The TPP also includes provisions for investor-state dispute settlement. TPP, *supra* note 1, at Chapter 9, available at <https://medium.com/the-trans-pacific-partnership/investment-c76dbd892f3a#.vewtvh5ns>.

¹⁴² NAAEC, *supra* note 101, at art. 14.1.

¹⁴³ Dominican Republic–Central America–United States Free Trade Agreement, art. 17.7, Aug. 5, 2004, available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text> [hereinafter DR–CAFTA].

¹⁴⁴ U.S.–Peru, *supra* note 15, at art. 18.8; U.S.–Panama, *supra* note 44, at art. 17.8; U.S.–Colombia, *supra* note 43, at art. 18.8.

¹⁴⁵ Final Factual Record, Migratory Birds, 63 (CEC Apr. 24, 2003) (SEM-99-002), available at http://www.cec.org/Page.asp?PageID=2001&ContentID=2370&SiteNodeID=250&BL_ExpandID=.

¹⁴⁶ The Council has narrowed the factual record of other submissions. See Final Factual Record at 23, BC Logging, (CEC Aug. 11, 2003) (SEM-00-04), available at http://www.cec.org/files/pdf/sem/00-4-FFR_en.pdf (excluding information regarding Canada’s enforcement of the *Fisheries Act* against logging operations). See also Final Factual Record at 18-19, (CEC Aug. 12, 2003) (SEM-98-004), available at http://www.cec.org/files/pdf/sem/98-4-FFR_en.pdf (excluding information regarding the lack of enforcement of the *Fisheries Act* in regards to mining operations in British Columbia); Final Factual Record at 17-18, (CEC Aug. 11, 2003) (SEM-97-006), available at http://www.cec.org/files/pdf/sem/97-6-FFR_en.pdf (excluding prosecutions as a tool for enforcement of the *Fisheries Act* and the basis for Canada’s assertion that voluntary compliance of the *Fisheries Act* represents legitimate use of discretion of enforcement powers).

recommended by the CEC's Secretariat.¹⁴⁸ More recently, the Parties rejected a request to prepare a factual record under questionable circumstances.¹⁴⁹

Much has been written about the ineffectiveness of the NAAEC's submission process¹⁵⁰ and yet the TPP submission process is weaker. The process begins on a positive note by allowing written submissions "regarding [a Party's] implementation of this Chapter."¹⁵¹ The range of claims is thus broader than found in the NAAEC, U.S.–CAFTA, and other free trade agreements,¹⁵² which limit submissions to those alleging a failure to enforce environmental law effectively. However, unlike the NAAEC and U.S.–CAFTA, submissions do not go to an independent commission. Instead, they will first go to the Party whose implementation of the Environment Chapter is being challenged.¹⁵³ The lack of an independent third party to assess the allegations and a Party's response is an obvious hindrance to effective implementation of the submission process. Moreover, in establishing the process, the Party may require that a submitter "explain how, and to what extent, the issue raised affects trade or investment between the Parties."¹⁵⁴ If a Party avails itself of that provision, the submission process will be difficult to invoke because assessing whether a particular policy has specific impacts on trade or investment is challenging. In fact, due to the challenges of linking a policy or measure to trade impacts, WTO dispute settlement panels have refused to impose such a duty on WTO Members as a condition of showing a violation of the General Agreement on Tariffs and Trade.¹⁵⁵

For those submissions asserting a Party's failure to enforce environmental law effectively, another Party must request that the TPP's Committee on Environment discuss the

¹⁴⁷ See e.g., Alliance for the Wild Rockies, et al., Submission to the Commission on Environmental Cooperation Pursuant to Article 14 of the North American Agreement on Environmental Cooperation, Migratory Birds, A14/SEM-99-002/01/SUB (Nov. 17, 1999) (SEM 99-002).

¹⁴⁸ See e.g., Migratory Birds, Article 15(1) Notification, *supra* note 104, at 27.

¹⁴⁹ Article 15(1) Notification to Council that Development of a Factual Record is Warranted, BC Salmon Farms, A14/SEM/12-001/62/ADV (May 12, 2014) (stating that the Secretariat believes the preparation of a factual record is warranted); Council Resolution 14–09, Instruction to the Secretariat of the Commission for Environmental Cooperation with regard to submission SEM-12-001 (*British Columbia (BC) Salmon Farms*) asserting that Canada is failing to effectively enforce the *Fisheries Act* (Dec. 9, 2014) (rejecting the Secretariat's recommendation to prepare a factual record); Statement of the United States of America Explaining its Position and the Reasons for its Vote Regarding Submission SEM-12-001 (*British Columbia (BC) Salmon Farms*) (Dec. 9, 2014) (explaining that the United States disagrees with the reasons for rejecting the Secretariat's recommendation to prepare a factual record.). All documents relating to this submission can be found at http://www.cec.org/Page.asp?PageID=2001&ContentID=25165&SiteNodeID=1088&BL_ExpandID=.

¹⁵⁰ See e.g., John H. Knox & David L. Markell, *Evaluating Citizen Petition Procedures: Lessons from an Analysis of the NAFTA Environmental Commission*; 47 TEXAS INT'L L. J. 505 (2012), available at <http://www.tilj.org/content/journal/47/num3/Knox-Markell505.pdf>; Chris Wold et al., *The Inadequacy of the Citizen Submission Process of Articles 14 & 15 of the North American Agreement on Environmental Cooperation*, 26 LOY. L.A. INT'L & COMP. L. REV. 415 (2004), available at <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1572&context=ilr>.

¹⁵¹ TPP, *supra* note 1, at art. 20.9(1).

¹⁵² NAAEC, *supra* note 101, at art. 14; DR–CAFTA *supra* note 143, at art. 17.7; U.S.–Peru, *supra* note 15, at art. 18.8; U.S.–Panama, *supra* note 44, at art. 17.8; U.S.–Colombia, *supra* note 43, at art. 18.8.

¹⁵³ *Id.* at art. 20.9(1).

¹⁵⁴ *Id.* at art. 20.9(4).

¹⁵⁵ See, e.g., United States–Sections 301–310 of the Trade Act of 1974, Panel Report, WT/DS/152/R, ¶¶ 7.83–7.85 (adopted Jan. 27, 2000).

submission and any written response.¹⁵⁶ In other words, submitters have no authority to bring even these types of submissions to an independent third party. The process, unlike the NAAEC and U.S.–CAFTA, is entirely in the hands of the Parties and does not even result in the preparation of a factual record, as under the NAAEC,¹⁵⁷ DR–CAFTA,¹⁵⁸ and other free trade agreements.¹⁵⁹ For those watching the transformation of the citizen submission process over time, this weakening of the process is not surprising; it is, in fact, totally expected. Nonetheless, it is a missed opportunity to shine a light on the enforcement practices of Parties that struggle to enforce their environmental laws.

B. State-to-State Dispute Settlement

The TPP’s provisions for State-to-State dispute settlement compound the problem of vague and weak obligations by establishing a multi-step process that makes resort to actual dispute settlement highly unlikely. First, a Party may request consultations with any other Party on “any matter arising under this Chapter.”¹⁶⁰ If the consulting Parties are unable to reach a “mutually satisfactory resolution,”¹⁶¹ one of the Parties may then move to the second step: requesting the Environment Committee to help resolve the matter.¹⁶² If the consulting Parties have failed to resolve the matter through the Environment Committee, then a consulting Party may move to step three: Ministerial consultations.¹⁶³ Finally we reach step 4: Barring resolution through Ministerial consultations, a consulting Party may seek dispute settlement.¹⁶⁴ Given this multi-step process, it is difficult to conceive a dispute actually reaching dispute settlement. This conclusion is supported by the fact that no dispute under an environment chapter of any free trade agreement involving the United States has ever reached binding dispute settlement. This includes more than 20 years of the NAAEC, which includes a much less intensive process for binding dispute settlement than the TPP.¹⁶⁵ As indicated by the *Migratory Birds* submission and the failure of Peru to implement the obligations relating to timber harvesting and trade, opportunities to use these mechanisms exist. Governments simply choose not to use them regardless of whether they are included in a “side agreement,” as with the NAAEC, or the trade agreement’s core dispute settlement provisions, as with the U.S.–Peru Free Trade Agreement¹⁶⁶ and others.¹⁶⁷

¹⁵⁶ TPP, *supra* note 1, at art. 20.9(4).

¹⁵⁷ NAAEC, *supra* note 139, at art. 15.

¹⁵⁸ DR–CAFTA, *supra* note 143, at art. 17.8.

¹⁵⁹ U.S.–Peru, *supra* note 15, at art. 18.9; U.S.–Panama, *supra* note 44, at art. 17.9; U.S.–Colombia, *supra* note 43, at 18.9.

¹⁶⁰ TPP, *supra* note 1, at art. 20.20(2).

¹⁶¹ *Id.* at art. 20.20(5).

¹⁶² *Id.* at art. 20.21.

¹⁶³ *Id.* at art. 20.22.

¹⁶⁴ *Id.* at art. 20.23.

¹⁶⁵ NAAEC, *supra* note 101, at arts. 22–36.

¹⁶⁶ U.S.–Peru FTA, *supra* note 15, at art. 18.12(6).

¹⁶⁷ DR–CAFTA, *supra* note 143, at art. 17.10(6); U.S.–Panama, *supra* note 44, at art. 17.11(6); U.S.–Colombia, *supra* note 43, at 18.12(6).

VIII. Conclusion

Despite the statements of USTR, the TPP's Environment Chapter is neither pioneering nor an historic opportunity to advance conservation and environmental protection across the Asia-Pacific region. It is, in fact, a document filled with vague and empty promises. It includes obligations that are highly qualified with phrases such as "strive", "endeavour," or "promote." Parties may implement other obligations "as appropriate." It diminishes a potentially vital citizen submission process and it makes State-to-State dispute settlement so cumbersome and the obstacles to bringing a claim so high in some circumstances as to be illusory.

As a consequence, the TPP's Environment Chapter is a missed opportunity to tackle some of the region's most serious environmental issues through concrete domestic legal obligations and international cooperative action. Significantly, many of these environmental issues have trade as a central component, making them ideal for addressing as part of a trade agreement. Trade in shark fins and other shark products is decimating shark populations all over the world, with several TPP Parties at the center of that trade. Plants and animals illegally taken are frequently illegally trade. The failure of the Environment Chapter to benefit these efforts seems quite clear.