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# Environmental Impact Assessments and Trade Agreements: An Analysis of US, Canadian, and EU Practices

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## Abstract

With trade and the environment becoming increasingly interconnected, environmental impact assessments (EIAs) of trade negotiations help to integrate environmental considerations into trade-related treaty making by evaluating potential risks and opportunities, addressing public concerns, and facilitating the introduction of response measures. Despite international efforts, such ‘trade EIAs’ have not yet been universally adopted. At the domestic level, the United States, Canada, and the European Union have pioneered the use of EIAs through their institutionalized procedures for over 20 years. This article examines and compares the relevant practices of these three jurisdictions to identify major patterns and to discuss the pros and cons of existing differences in this area. It argues that the time-tested experience of these jurisdictions could provide benchmarks for consideration in promoting the widespread implementation of trade EIAs through global and regional trade regimes.

**Keywords:** Environmental impact assessment (EIA); Strategic environmental assessment (SEA); Espoo Convention; SEA Protocol; World Trade Organization (WTO); Free trade agreement (FTA); Trade and environment

## 1. Introduction

Environmental impact assessment (EIA) is an important tool used in many countries to ensure that proposed activities, measures, and policies incorporate environmental considerations and avoid substantial environmental damage. While rooted in domestic law, EIAs are also regulated by international law. According to the International Court of Justice, ‘it may now be considered a requirement under general international law’ to undertake an EIA where a proposed industrial activity has the potential to cause significant transboundary harm.<sup>1</sup> Such a customary obligation to conduct EIAs derives, *inter alia*, from the principle of prevention applicable to any proposed activities – whether industrial or not – that pose significant adverse risks for a

<sup>1</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 20 Apr. 2010, *ICJ Reports* (2010), pp. 14–107 (*Pulp Mills*), para. 204.

transboundary environment.<sup>2</sup> Some scholars suggest that this customary obligation may extend to the domestic environment outside the transboundary context.<sup>3</sup> However, unless specified in international rules, the scope and content of EIAs continue to be determined by domestic legislation and procedures.<sup>4</sup>

EIAs are closely connected with the right of states to regulate. Compliance with the EIA requirement under national law may be necessary, for example, for standards of investment treaty protection to apply.<sup>5</sup> Furthermore, the adoption of domestic regulations can be preceded by impact assessments, including those on the environment, that help in deciding how to regulate to better attain public policy goals.<sup>6</sup> Such regulatory impact assessments are part of good regulatory practices prescribed by various regional trade agreements (RTAs), signed by both developed and developing countries,<sup>7</sup> and can provide an evidential framework for examining the legality of measures for which such assessments were conducted.<sup>8</sup>

This article aims to analyze the use of EIAs in trade policies, with a particular focus on the *ex ante* assessments of trade agreements under negotiation. While not yet globally adopted,<sup>9</sup> such trade EIAs play an essential role in highlighting potential positive and negative environmental effects for consideration. With the ever-increasing significance of the trade–environment nexus and the extensive proliferation of RTAs,<sup>10</sup> the importance of trade EIAs will only continue to grow. As a recent example,

<sup>2</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, 16 Dec. 2015, ICJ Reports (2015), pp. 665–742, para. 104.

<sup>3</sup> See P.-M. Dupuy & J.E. Viñuales, *International Environmental Law* (Cambridge University Press, 2<sup>nd</sup> edn, 2018), p. 79.

<sup>4</sup> *Pulp Mills*, n. 1 above, para. 205.

<sup>5</sup> See, e.g., *Emilio Agustín Maffezini v. The Kingdom of Spain*, International Centre for Settlement of Investment Disputes (ICSID) Case No. ARB/97/7, Award, 13 Nov. 2000, paras 66, 69, 71.

<sup>6</sup> See Organisation for Economic Co-operation and Development (OECD), ‘Regulatory Impact Assessment’, OECD Best Practice Principles for Regulatory Policy, 25 Feb. 2020, available at: [https://www.oecd.org/en/publications/regulatory-impact-assessment\\_7a9638cb-en.html](https://www.oecd.org/en/publications/regulatory-impact-assessment_7a9638cb-en.html).

<sup>7</sup> See, e.g., Agreement between the United States of America, the United Mexican States, and Canada (USMCA), Mexico City (Mexico), 10 Dec. 2019, in force 1 July 2020, Ch. 28, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between-comprehensive-and-progressive-agreement-for-trans-pacific-partnership>, Santiago (Chile), 8 Mar. 2018, in force 30 Dec. 2018, Art. 25.5, available at: <https://www.dfat.gov.au/sites/default/files/tpp-11-treaty-text.pdf>; Pacific Alliance–Singapore Free Trade Agreement, Bahía Málaga–Buenaventura (Colombia), 26 Jan. 2022, Ch. 20, available at: <https://edit.wti.org/document/show/b2351442-4a42-4acc-a8c4-1f1e01609add>.

<sup>8</sup> See, e.g., *European Union and Certain Member States – Certain Measures concerning Palm Oil and Oil Palm Crop-Based Biofuels*, Panel Report, World Trade Organization (WTO) Doc. WT/DS600/R, 26 Apr. 2024, paras 7.537–7.542. For a legal analysis of this case see S. Shadikhodjaev, ‘Biofuel Restrictions and Indirect Land-Use Change: What Does the WTO Say?’ (2025) 34(2) *Review of European, Comparative & International Environmental Law*, available at: <https://doi.org/10.1111/reel.70012>.

<sup>9</sup> See, e.g., J.-A. Monteiro, ‘Typology of Environment-Related Provisions in Regional Trade Agreements’, WTO Working Paper ERSD-2016-13, 2016, p. 84.

<sup>10</sup> See S. Shadikhodjaev, *Energy and the Environment: Exploring the Nexus under International Economic Law* (Cambridge University Press, 2024); WTO, ‘Regional Trade Agreements Database’, available at: <https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>.

legal proceedings in the United Kingdom over the alleged failure of the government to properly assess the environmental impacts of the country's free trade agreement (FTA) with Australia underscore the crucial need for thorough trade EIAs.<sup>11</sup>

The United States (US), Canada, and the European Union (EU) are major trading economies that have been pioneers in systematically conducting trade EIAs for over 20 years. Their practical experience offers valuable insights for other countries seeking to establish or improve trade EIA procedures at home. Against this background, this article examines and compares the relevant practices of these three jurisdictions and concludes that their long-standing expertise could be utilized when making trade EIAs a standard procedure worldwide.

The remainder of this article is organized as follows. Section 2 reviews key international developments related to EIAs, both generally and in the context of trade. Section 3 discusses the US, Canadian, and EU practices, focusing on domestic legal frameworks, analytical and procedural aspects of trade EIAs, and an overall assessment. Section 4 concludes.

## 2. International Agenda on Environmental Assessments

The EIA tool, first introduced domestically by the US National Environmental Policy Act (1969), has been internationally recognized since the 1972 United Nations (UN) Conference on the Human Environment in Stockholm.<sup>12</sup> As part of this process, Principle 17 of the Rio Declaration on Environment and Development (Rio Declaration) provides that '[e]nvironmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority'.<sup>13</sup> International environmental law requires that public participation be incorporated into decision making on environmental issues, including EIAs.<sup>14</sup> As shown below, international rulemaking on EIAs focused initially on specific project activities and subsequently extended to plans, programmes, and policies, with international discussions on the development of EIAs for trade policies concentrated mainly in the 1990s and 2000s.

<sup>11</sup> See D. Grieve & S. Takhar, 'UK Government Sued Over Inadequate Assessment of Environmental Impacts of the UK–Australia Free Trade Agreement', Cadwalader Climate, 27 June 2023, available at: <https://www.cadwalader.com/cwt-climate/index.php?eid=281&nid=65>.

<sup>12</sup> P. Sands et al., *Principles of International Environmental Law* (Cambridge University Press, 4<sup>th</sup> edn, 2018), p. 657.

<sup>13</sup> Rio Declaration on Environment and Development, United Nations (UN) Conference on Environment and Development, Rio de Janeiro (Brazil), 3–14 June 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I, available at: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf).

<sup>14</sup> Rio Declaration, *ibid.*, Principle 10; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus (Denmark), 25 June 1998, in force 30 Oct. 2001, Art. 7, available at: [https://treaties.un.org/doc/Treaties/1998/06/19980625%2008-35%20AM/Ch\\_XXVII\\_13p.pdf](https://treaties.un.org/doc/Treaties/1998/06/19980625%2008-35%20AM/Ch_XXVII_13p.pdf); Agenda 21, UN Conference on Environment and Development, Rio de Janeiro (Brazil), 3–14 June 1992, para. 23.2, available at: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.

### 2.1. Project EIAs and Strategic Environmental Assessments (SEAs)

EIA provisions are scattered across several environmental treaties. For instance, the Convention on Biological Diversity urges parties to establish EIA procedures for proposed projects, programmes, and policies that have potentially significant adverse impacts on biodiversity.<sup>15</sup> Under the UN Framework Convention on Climate Change, all parties must ‘employ ... [national] impact assessments, with a view to minimizing adverse effects on ... public health and on the quality of the environment, of projects or measures [related to] climate change’.<sup>16</sup>

The 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)<sup>17</sup> requires the establishment of national EIA procedures for certain proposed economic activities that are ‘likely to cause significant adverse transboundary impact’.<sup>18</sup> Before a decision on a proposed activity is made, a contracting party concerned must notify and consult with an affected party regarding the potential transboundary impact, possible alternatives to the proposed activity, and mitigation measures.<sup>19</sup> The public must have an opportunity to participate in EIA procedures, with the public of the affected party being entitled to make comments or objections.<sup>20</sup> A final decision must take into account the outcomes of the EIA and consultations as well as the comments received.<sup>21</sup>

Under the Espoo Convention, EIAs apply to project-level activities but the parties ‘shall endeavour’ to extend the EIA principles to ‘policies, plans and programmes’.<sup>22</sup> This is further detailed in the 2003 Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (SEA Protocol).<sup>23</sup>

The SEA Protocol regulates the evaluation of anticipated environmental effects of public authorities’ plans and programmes in various sectors,<sup>24</sup> regardless of whether the effects are transboundary.<sup>25</sup> It covers those ‘plans and programmes’ that are required by domestic law and prepared/adopted by an authority or prepared by an authority for adoption by a parliament or a government.<sup>26</sup> The contracting parties ‘shall endeavour’ to ensure that environmental concerns are addressed ‘to the extent

<sup>15</sup> Convention on Biological Diversity, Rio de Janeiro (Brazil), 5 June 1992, in force 29 Dec. 1993, Art. 14, available at: <http://www.cbd.int/convention>.

<sup>16</sup> UN Framework Convention on Climate Change, New York, NY (US), 9 May 1992, in force 21 Mar. 1994, Art. 4.1(f), available at: <https://unfccc.int>.

<sup>17</sup> Espoo (Finland), 25 Feb. 1991, in force 10 Sept. 1997, available at: [https://treaties.un.org/doc/Treaties/1991/02/19910225%2008-29%20PM/Ch\\_XXVII\\_04p.pdf](https://treaties.un.org/doc/Treaties/1991/02/19910225%2008-29%20PM/Ch_XXVII_04p.pdf).

<sup>18</sup> Ibid., Art. 2.2 and Appendix I.

<sup>19</sup> Ibid., Arts 3 and 5 and Appendix II.

<sup>20</sup> Ibid., Arts 2.6 and 3.8.

<sup>21</sup> Ibid., Art. 6.

<sup>22</sup> Ibid., Art. 2.7.

<sup>23</sup> Kyiv (Ukraine), 21 May 2003, in force 11 July 2010, available at: [https://treaties.un.org/doc/Publication/CTC/Ch\\_XXVII\\_4\\_b.pdf](https://treaties.un.org/doc/Publication/CTC/Ch_XXVII_4_b.pdf).

<sup>24</sup> SEA Protocol, *ibid.*, Arts 2, 4.

<sup>25</sup> N. Craik, *The International Law of Environmental Impact Assessment: Process, Substance and Integration* (Cambridge University Press, 2008), p. 157.

<sup>26</sup> SEA Protocol, n. 23 above, Art. 2.5.

appropriate' in the drafting of their 'policies' and 'legislation' that are likely to have significant environmental effects.<sup>27</sup> This action is voluntary, and the SEA Protocol does not define the terms 'policies' and 'legislation', so national jurisdictions have discretion to apply their SEA rules to trade policies, including trade negotiations and agreements. There must be public participation opportunities, consultations with local environmental authorities, and transboundary consultations for potential cross-border effects.<sup>28</sup> An environmental report on assessment findings, along with the received comments, must be duly considered in the decision-making process.<sup>29</sup>

Although the Espoo Convention and the SEA Protocol apply to contracting parties, non-parties are free to design their domestic EIA/SEA procedures with the provisions of these treaties and related practices in mind.

The literature has generally been positive about the Espoo Convention and the SEA Protocol while also pointing to their limitations. In particular, the Espoo Convention is considered a source of inspiration for regional and bilateral EIA treaty making<sup>30</sup> and a contributor to the development of customary international law on transboundary EIAs.<sup>31</sup> At the same time, it is said to fall short of adequately addressing 'global environmental harms' such as greenhouse gas (GHG) emissions.<sup>32</sup> The SEA Protocol is praised as something 'we need'<sup>33</sup> for promoting 'good governance' in strategic planning.<sup>34</sup> However, it is also criticized for 'failing to go as far as it could' in, for instance, not requiring mandatory application to policies and legislation,<sup>35</sup> which represent a higher level of decision making than plans and programmes.

To conclude, EIAs relate to individual projects while SEAs pertain to public authority plans and programmes and may extend to relevant policies and legislation. Compared to EIAs, SEAs intervene much earlier in the decision-making process, applying to programmatic or policy development stages that set a framework for future projects subject to EIAs and for other actions with an impact on the environment.<sup>36</sup> EIAs under the Espoo Convention focus on transboundary

<sup>27</sup> Ibid., Art. 13.

<sup>28</sup> Ibid., Arts 8, 9, 10.

<sup>29</sup> Ibid., Arts 7, 11.

<sup>30</sup> C.M. Kersten, 'Rethinking Transboundary Environmental Impact Assessment' (2009) 34(1) *Yale Journal of International Law*, pp. 173–206, at 178–9.

<sup>31</sup> B. Mayer, 'Environmental Assessments in the Context of Climate Change: The Role of the UN Economic Commission for Europe' (2019) 28(1) *Review of European, Comparative & International Environmental Law*, pp. 82–93, at 85–6.

<sup>32</sup> Ibid., p. 87.

<sup>33</sup> J. Jendroska & S. Stec, 'The Kyiv Protocol on Strategic Environmental Assessment' (2003) 33(3–4) *Environmental Policy and Law*, pp. 105–10, at 110.

<sup>34</sup> J.D. Mulder, 'The Protocol on Strategic Environmental Assessment: A Matter of Good Governance' (2011) 20(3) *Review of European, Comparative & International Environmental Law*, pp. 232–47, at 232.

<sup>35</sup> S. Marsden & J.D. Mulder, 'Strategic Environmental Assessment and Sustainability in Europe: How Bright is the Future?' (2005) 14(1) *Review of European Community & International Environmental Law*, pp. 50–62, at 57 and n. 51.

<sup>36</sup> UN Economic Commission for Europe (UNECE), 'Protocol on Strategic Environmental Assessment: Facts and Benefits', 2016, pp. 6, 20, available at: [https://unece.org/DAM/env/eia/Publications/2016/Protocol\\_on\\_SEA/1609217\\_UNECE\\_HR.pdf](https://unece.org/DAM/env/eia/Publications/2016/Protocol_on_SEA/1609217_UNECE_HR.pdf).

environmental impacts, but SEAs under the SEA Protocol cover both in-country and transboundary effects. Aimed at providing quality information and evidence for consideration, neither EIAs nor SEAs dictate final binding decisions.<sup>37</sup> At present, most countries require EIAs under national law,<sup>38</sup> and an increasing number of developed and developing countries have SEA systems in place.<sup>39</sup> When EIAs and SEAs coexist within the same jurisdiction, they operate as self-standing and mutually non-substitutable regimes unless provided otherwise.<sup>40</sup>

National authorities are free to apply their SEA rules to their trade policies. As mentioned below, Canada has done so, while the US and the EU have not. However, even when trade EIAs are regulated separately from domestic SEA rules, they remain conceptually closer to SEAs than to project-level EIAs.

## 2.2. Trade EIAs

In 1993, the Organisation for Economic Co-operation and Development recommended that member governments assess how trade and environmental policies/agreements have an impact on each other early in their development and explore alternative policy options to address related concerns.<sup>41</sup> In 1994, the UN Commission on Sustainable Development recognized the importance of developing trade EIAs, taking into account sustainability and the special needs and conditions of developing countries.<sup>42</sup>

The 2001 Doha Ministerial Declaration of the World Trade Organization (WTO) took note of its members' efforts to voluntarily conduct domestic environmental assessments of trade policies and encouraged them to share their expertise and experience.<sup>43</sup> As a result, WTO members discussed the experiences of mainly the US, Canada, and the EU, which already had operational procedures for trade EIAs.<sup>44</sup> Some

<sup>37</sup> See A. Gillespie, 'Environmental Impact Assessments in International Law' (2008) 17(2) *Review of European Community & International Environmental Law*, pp. 221–33, at 226.

<sup>38</sup> See R. Nelson & L.M. Shirley, 'The Latent Potential of Cumulative Effects Concepts in National and International Environmental Impact Assessment Regimes' (2023) 12(1) *Transnational Environmental Law*, pp. 150–74, at 152.

<sup>39</sup> UN Environment, 'Assessing Environmental Impacts: A Global Review of Legislation', 3 Jan. 2018, pp. 84–111, available at: <https://www.unep.org/resources/assessment/assessing-environmental-impacts-global-review-legislation>.

<sup>40</sup> See, e.g., Case C-160/17, *Raoul Thybaut and Others v. Région Wallonne*, ECLI:EU:C:2018:401, para. 64; WTO Committee on Trade and Environment, Communication from Canada, 'Framework for Conducting Environmental Assessments of Trade Negotiations', WTO Doc. WT/CTE/W/183, 15 Mar. 2001, para. 20, available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx).

<sup>41</sup> OECD, 'Methodologies for Environmental and Trade Reviews', OCDE/GD(94)103, 1994, p. 5.

<sup>42</sup> Report of the Commission on Sustainable Development on Its Second Session, New York (US), 16–27 May 1994, UN Doc. E/1994/33, E/CN.17/1994/20, 12 July 1994, para. 33, available at: <https://www.un.org/esa/documents/ecosoc/cn17/1994/ecn171994-20.htm>.

<sup>43</sup> Ministerial Declaration, WTO Ministerial Conference, Doha (Qatar), 9–14 Nov. 2001, WTO Doc. WT/MIN(01)/DEC/1, 20 Nov. 2001, paras 6, 33, available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx).

<sup>44</sup> See, e.g., WTO Committee on Trade and Environment, Note by the Secretariat, 'List of Environmental Reviews', WTO Doc. WT/CTE/W/245, 4 June 2007, paras 6–8, available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx).

members pointed to the usefulness of the information exchange while others flagged concerns about the analytical part of assessments and constraints faced by developing countries.<sup>45</sup> These WTO discussions occurred primarily in or around the 2000s and have not progressed much since.<sup>46</sup>

### 3. US, Canadian, and EU Practices

The US, Canada, and the EU have used *ex ante* trade EIAs in addition to other applicable assessment instruments related to trade.<sup>47</sup> As at 1 February 2025, they have published final trade EIA reports for 13,<sup>48</sup> 12,<sup>49</sup> and 32<sup>50</sup> agreements, respectively. As discussed below, each of these jurisdictions has established special procedures for trade EIAs. Interestingly, Canada's trade EIA framework explicitly derives from its SEA rules and even makes references to 'Strategic Environmental Assessments of trade

<sup>45</sup> See, e.g., WTO Committee on Trade and Environment, 'Report to the 5th Session of the Ministerial Conference in Cancún', WTO Doc. WT/CTE/8, 11 July 2003, paras 56–60, available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx); Minutes of Meetings of the WTO Committee on Trade and Environment: WTO Docs WT/CTE/M/33, 21 May 2003, para. 95 and WT/CTE/M/41, 30 Nov. 2005, paras 15–9 (both available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx)); Minutes of the Meeting of the WTO Committee on Trade and Development, WTO Doc. WT/COMTD/M/41, 26 Sept. 2002, paras 109–13, available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx).

<sup>46</sup> See, e.g., WTO Committee on Trade and Environment, n. 44 above, paras 6–8.

<sup>47</sup> Such assessment instruments include economic impact assessments in the US and Canada; 'gender-based analysis plus' in Canada; 'impact assessment' at the preparation/exploration stage, 'economic assessment of the negotiated outcome' and 'ex post evaluation' in the EU. See US International Trade Commission, 'Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2021 Report', June 2021, available at: <https://www.usitc.gov/publications/332/pub5199.pdf>; Government of Canada, 'Economic Impact Assessments of Free Trade Agreements (EIAs)', available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/economic-impact-economique.aspx?lang=eng>; Government of Canada, 'Overview: Trade Policy and Gender-based Analysis Plus', available at: [https://www.international.gc.ca/trade-commerce/gender-equality-egalite\\_genres/gba\\_plus-acs\\_plus.aspx?lang=eng](https://www.international.gc.ca/trade-commerce/gender-equality-egalite_genres/gba_plus-acs_plus.aspx?lang=eng); European Commission, *Handbook for Trade Sustainability Impact Assessment* (EU, 2<sup>nd</sup> edn, 2016), pp. 7–8 (EU Handbook 2016).

<sup>48</sup> The US trade agreements with: Australia; Bahrain; Central America and the Dominican Republic; Chile; Colombia; Jordan; Korea; Morocco; Oman; Panama; Peru; Singapore; Mexico and Canada. For US trade EIAs see US Trade Representative (USTR), 'Environmental Reviews', available at: <https://ustr.gov/issue-areas/environment/environmental-reviews>.

<sup>49</sup> Canada's trade agreements with: the US and Mexico; Chile; Colombia; Peru; Trans-Pacific Partnership countries; the EU; Honduras; Israel; Jordan; Korea; Panama; Ukraine. For Canada's trade EIAs see Government of Canada, 'List of Environmental Assessments', available at: <https://www.international.gc.ca/trade-agreements-accords-commerciaux/env/EAliste-listeEE.aspx?lang=eng>.

<sup>50</sup> The EU trade agreements (covered by both final sustainability impact assessment reports and related position papers of the European Commission) with: India (counted as two agreements due to two assessment cycles); Eastern and Southern Africa countries; Angola (accession to the trade agreement between the EU and the South African Development Community); Australia; New Zealand; Mercosur (counted as two agreements due to two assessment cycles); Chile; Indonesia; Mexico; the Trade in Services Agreement parties; the US; Japan; the Environmental Goods Agreement parties; Egypt; Jordan; Morocco; Tunisia; Armenia; Georgia; Moldova; Canada; the Andean Community; Central American countries; the Association of Southeast Asian Nations; China; Korea; Ukraine; Mediterranean partner countries; Africa, Caribbean and Pacific countries; Arab States of the Gulf. For EU trade EIAs, see European Commission, 'Sustainability Impact Assessments', available at: [https://policy.trade.ec.europa.eu/analysis-and-assessment/sustainability-impact-assessments\\_en](https://policy.trade.ec.europa.eu/analysis-and-assessment/sustainability-impact-assessments_en).



negotiations'.<sup>51</sup> This exemplifies the proposition above that SEA rules can extend to trade policies in principle if envisaged in national laws. By contrast, this link to SEAs is not discernible under the EU and US regimes.<sup>52</sup>

### 3.1. Domestic Legal Framework

In the US, trade EIAs were initially conducted on an ad hoc basis with respect to the North American Free Trade Agreement (NAFTA)<sup>53</sup> in 1991–92 and 1993,<sup>54</sup> the Uruguay Round agreements in 1994,<sup>55</sup> and the proposed Accelerated Tariff Liberalization initiative on forest products in 1999.<sup>56</sup> Based on this experience, Executive Order 13141 on Environmental Review of Trade Agreements (1999) and the Guidelines for Implementation of Executive Order 13141 (2000) formalized the trade EIA process,<sup>57</sup> obligating the US government to 'factor environmental considerations into the development of its trade negotiating objectives' through relevant assessments.<sup>58</sup>

Like the US, Canadian practice started with the NAFTA and the Uruguay Round. Its Framework for Conducting Environmental Assessments of Trade Negotiations (2001), revised in 2020, built on the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals (1999) and the implementation

<sup>51</sup> See Department of Foreign Affairs and International Trade (Canada), 'Framework for Conducting Environmental Assessments of Trade Negotiations', 2001, pp. 1–3; WTO Committee on Trade and Environment, n. 40 above, paras 1, 12, 20.

<sup>52</sup> The EU SEA Directive applies to 'plans and programmes' but does not specifically address policies and legislation, including those on trade. Similarly, the US National Environmental Policy Act requires environmental assessment of major federal actions – such as relevant programmes, plans, and policies, among others – but not trade agreements as such. See EU Directive 2001/42/EC on the Assessment of the Effects of Certain Plans and Programmes on the Environment [2001] OJ L197/30; National Environmental Policy Act Implementing Regulations, 40 CFR § 1508.1; J. Salzman, 'Executive Order 13,141 and the Environmental Review of Trade Agreements' (2001) 95(2) *American Journal of International Law*, pp. 366–80, at 368 (n. 9).

<sup>53</sup> Washington, DC (US)/Ottawa (Canada)/Mexico City (Mexico), 17 Dec. 1992, in force 1 Jan. 1994, terminated 1 July 2020, available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/index.aspx?lang=eng>.

<sup>54</sup> Environmental reviews of the NAFTA were necessitated by strong public and Congressional interest and environmental issues at the US–Mexico border; see J. Montgomery, 'Lessons from Past Environmental Reviews in the United States', in OECD, *Assessing the Environmental Effects of Trade Liberalisation Agreements: Methodologies* (OECD, 2000), pp. 49–55, at 49.

<sup>55</sup> Marrakesh Agreement Establishing the World Trade Organization (and its Annexes), Marrakesh (Morocco), 15 Apr. 1994, in force 1 Jan. 1995, available at: [https://www.wto.org/english/docs\\_e/legale/legal\\_e.htm](https://www.wto.org/english/docs_e/legale/legal_e.htm).

<sup>56</sup> USTR and Council on Environmental Quality, 'Guidelines for Implementation of Executive Order 13141: Environmental Review of Trade Agreements', 65 *Federal Register* 79442, 19 Dec. 2000 (US Guidelines for Implementation of Executive Order 13141), Section A.

<sup>57</sup> US Executive Order 13141 of 16 Nov. 1999, 64 *Federal Register* 63169, 18 Nov. 1999 (US Executive Order 13141); US Guidelines for Implementation of Executive Order 13141, *ibid*.

<sup>58</sup> US Executive Order 13141, *ibid.*, Section 1.



guidelines.<sup>59</sup> The government also prepared a handbook for conducting trade EIAs.<sup>60</sup>

The EU has carried out ‘sustainability impact assessments’ for all of its ‘major trade negotiations’ since 1999, beginning with the proposed new WTO round of multilateral negotiations.<sup>61</sup> Trade sustainability impact assessments are guided by the European Commission’s dedicated handbook, first issued in 2006 and revised in 2016.<sup>62</sup> These assessments can be linked to Article 21 of the Treaty on European Union (TEU),<sup>63</sup> which, as read together with Article 207 of the Treaty on the Functioning of the European Union,<sup>64</sup> is applicable to EU trade policy. Article 21 TEU obliges the EU to act on the international scene under the guidance of the principles of democracy, the rule of law, and the universality of human rights, and to cooperate to ‘preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development’. Sustainability impact assessments in trade are considered as ‘one of the Commission’s most important tools to ensure that the principles set out in Article 21 TEU are respected in trade agreements’.<sup>65</sup>

The institutionalization of trade EIAs in the US, Canada, and the EU was a response to growing environmental concerns in the 1990s, which, along with other issues, culminated in the massive anti-globalization protests during the 1999 WTO Ministerial Conference in Seattle (US).<sup>66</sup> Following the systematic utilization of this assessment instrument in these jurisdictions since then, the academic literature has focused mostly on estimating trade-related environmental impacts rather than

<sup>59</sup> See Government of Canada, ‘Environmental Assessments’, 21 Jan. 2021, available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/env-ea.aspx?lang=eng>; Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals (replaced by the Cabinet Directive on Strategic Environmental and Economic Assessment as of 1 Apr. 2024), available at: <https://www.canada.ca/en/services/environment/conservation/sustainability/strategic-environmental-economic-assessment/cabinet-directive.html>; Guidelines for Implementing the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals.

<sup>60</sup> Government of Canada, ‘Handbook for Conducting Environmental Assessments of Trade Negotiations’, Mar. 2008, available at: <https://www.international.gc.ca/trade-agreements-accords-commerciaux/env/handbook-guide.aspx?lang=eng> (Canada Handbook).

<sup>61</sup> European Commission, n. 50 above.

<sup>62</sup> European Commission, *Handbook for Trade Sustainability Impact Assessment* (EU, 2006) (EU Handbook 2006); EU Handbook 2016, n. 47 above.

<sup>63</sup> Maastricht (The Netherlands), 7 Feb. 1992, in force 1 Nov. 1993 (as amended by the Treaty of Lisbon, Lisbon (Portugal), 13 Dec. 2007, in force 1 Dec. 2009), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT>.

<sup>64</sup> Lisbon (Portugal), 13 Dec. 2007, in force 1 Dec. 2009, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT>.

<sup>65</sup> European Ombudsman, Decision in Case 1026/2020/MAS concerning the Failure by the European Commission to Finalise an Updated ‘Sustainability Impact Assessment’ before concluding the EU–Mercosur Trade Negotiations, 17 Mar. 2021, para. 39, available at: <https://www.ombudsman.europa.eu/en/decision/en/139418>.

<sup>66</sup> See, e.g., Salzman, n. 52 above, p. 366; WTO Committee on Trade and Environment, Submission by European Communities, ‘Sustainability Impact Assessment of Trade Agreements: Making Trade Sustainable?’, WTO Doc. WT/CTE/W/224, 21 Feb. 2003, p. 6, available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx).

comparing different regimes of trade EIAs.<sup>67</sup> Overall, while proponents underscore the importance of trade EIAs in informing the decision-making process,<sup>68</sup> critics point out shortcomings such as their ineffectiveness in influencing trade negotiations.<sup>69</sup>

Akin to essential elements of the SEA process,<sup>70</sup> trade EIAs under the above legal frameworks aim to integrate environmental considerations into trade-related treaty making by assessing risks and opportunities, addressing stakeholder concerns, and facilitating the adoption of appropriate responses.<sup>71</sup> These steps involve analytical and participatory processes ensuring that trade policymaking is evidence-based, transparent, and accountable to the public.<sup>72</sup>

### 3.2. Trade EIA as Analytical Work

#### Scope

Trade EIAs examine mainly multilateral, plurilateral, and FTAs under negotiation,<sup>73</sup> but not agreements negotiated to resolve trade disputes.<sup>74</sup> In addition, the US also reviews ‘major new trade liberalization agreements in natural resource sectors’ and may potentially review any other trade agreements not covered by its EIA rules, if this is warranted because of ‘the significance of reasonably foreseeable environmental impacts’.<sup>75</sup>

EIAs serve to verify that trade agreements contribute to sustainable development.<sup>76</sup> While US and Canadian trade EIAs focus on environmental aspects of sustainable development, the EU cumulatively assesses environmental, economic, and social

<sup>67</sup> L. Bui et al., ‘Environmental Impact Assessments of Trade Agreements’, UNU-CRIS Research Report No. 1, 2024, p. 11.

<sup>68</sup> See, e.g., F.D. Simões, ‘Assessing the Impact of Trade and Investment Policies: Toward an Era of “Enlightened” Policymaking?’ (2018) 86(4) *University of Cincinnati Law Review*, pp. 1211–50, at 1250.

<sup>69</sup> See, e.g., P. Ekins & T. Voituriez, ‘Overview and General Introduction’, in P. Ekins & T. Voituriez (eds), *Trade, Globalization and Sustainability Impact Assessment: A Critical Look at Methods and Outcomes* (Routledge, 2009), pp. 1–16, at 2, 9.

<sup>70</sup> See, e.g., SEA Protocol, n. 23 above, Arts 5, 6, 7, 8, 9, 11, 13.

<sup>71</sup> See US Executive Order 13141, n. 57 above, Section 2; US Guidelines for Implementation of Executive Order 13141, n. 56 above, Sections III:A, VI and Appendix B; EU Handbook 2006, n. 62 above, p. 7; EU Handbook 2016, n. 47 above, pp. 5–6, 9; Department of Foreign Affairs and International Trade (Canada), n. 51 above, p. 4, superseded by the 2020 revised version at Government of Canada, ‘Environmental Assessments of Trade Agreements: Process and Revised Framework’, available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/environ-assessments-evaluations-environnementale.aspx?lang=eng>.

<sup>72</sup> See EU Handbook 2016, n. 47 above, p. 6; US Guidelines for Implementation of Executive Order 13141, n. 56 above, Sections V.A and VI; Government of Canada, n. 71 above, ‘Guiding Principles’.

<sup>73</sup> See US Executive Order 13141, n. 57 above, Section 4(a); US Guidelines for Implementation of Executive Order 13141, n. 56 above, Section I.2; Government of Canada, n. 71 above, n. 2; EU Handbook 2016, n. 47 above, p. 8; EU Handbook 2006, n. 62 above, p. 8.

<sup>74</sup> See US Executive Order 13141, n. 57 above, Section 4(b); Department of Foreign Affairs and International Trade (Canada), n. 51 above, p. 1; European Commission, n. 50 above.

<sup>75</sup> US Executive Order 13141, n. 57 above, Sections 4(a)(iii) and 4(c); US Guidelines for Implementation of Executive Order 13141, n. 56 above, Section II.4.

<sup>76</sup> See US Executive Order 13141, n. 57 above, Section 2; EU Handbook 2016, n. 47 above, p. 4; Government of Canada, n. 71 above.

aspects as well as human rights, which enables identifying trade-offs across these dimensions to attain more balanced negotiating outcomes.<sup>77</sup> In examining the contents of EU assessments, this article will centre mainly on their environment-related parts.

Trade EIAs must be proportionate to the significance of anticipated environmental impacts and thus, as with SEAs,<sup>78</sup> give a thorough examination only to *significant* environmental effects.<sup>79</sup> The significance here can be determined by considering various features of the impacts, such as their frequency, duration, geographical scope, magnitude, risk level, irreversibility, and cumulativeness.<sup>80</sup>

Geographically, trade EIAs commonly cover impacts on the domestic environment of the assessing jurisdiction as well as global and transboundary impacts affecting that jurisdiction. Under US law, global and transboundary impacts are reviewed if this is deemed to be ‘appropriate and prudent’.<sup>81</sup> In reality, this was the case for all US trade EIAs that, for this purpose, took into account the distance between the parties, shared borders (if any), public comments, and other pertinent factors.<sup>82</sup> Unlike the US and Canada, the EU additionally considers impacts on the negotiating partner country and relevant third countries, including Türkiye (as a part of the EU–Türkiye customs union) and least developed countries (in line with the EU’s ‘Trade for All’ strategy).<sup>83</sup> The EU approach ensures that trade impacts that could be felt even more strongly in a partner or third country than in the EU are not overlooked. This helps EU negotiators to be well informed about sustainability issues not only within but also beyond Europe, securing alignment with European ‘collective preferences’.<sup>84</sup> For example, the assessment of the EU–Mercosur trade agreement concluded that this agreement was unlikely to exacerbate deforestation in the Mercosur region, provided that existing national forest-preservation policies were reinforced along with the implementation of other recommended measures.<sup>85</sup> However, despite this conclusion, the EU–Mercosur deal agreed in principle in 2019 was not adopted largely as a result of renewed

<sup>77</sup> See also Minutes of the Meeting of the WTO Committee on Trade and Environment, WTO Doc. WT/CTE/M/30, 11 Sept. 2002, para. 123, available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx).

<sup>78</sup> See SEA Protocol, n. 23 above, Preamble and Art. 13.1.

<sup>79</sup> See US Guidelines for Implementation of Executive Order 13141, n. 56 above, Sections II.6, IV.A.1, IV.B.1 and IV.C.1; EU Handbook 2016, n. 47 above, pp. 6, 14; Government of Canada, n. 71 above, ‘The Phases of the Assessment’.

<sup>80</sup> See Department of Foreign Affairs and International Trade (Canada), n. 51 above, p. 14; Canada Handbook, n. 60 above, Section 4.6.1; US Guidelines for Implementation of Executive Order 13141, n. 56 above, Section II.4. See also SEA Protocol, n. 23 above, Annex III.

<sup>81</sup> US Executive Order 13141, n. 57 above, Section 5(b).

<sup>82</sup> See, e.g., USTR, ‘Final Environmental Review of the United States–Bahrain Free Trade Agreement’, Sept. 2004 (Final EIA on the US–Bahrain FTA), p. 13; USTR, ‘Final Environmental Review of the U.S.–Chile Free Trade Agreement’, June 2003 (Final EIA on the US–Chile FTA), p. 16; USTR, ‘Final Environmental Review of the Agreement on the Establishment of a Free Trade Area Between the Government of the United States and the Government of the Hashemite Kingdom of Jordan’, 2000 (Final EIA on the US–Jordan FTA), p. 18.

<sup>83</sup> See EU Handbook 2016, n. 47 above, pp. 5, 15–7.

<sup>84</sup> See WTO Committee on Trade and Environment, n. 66 above, p. 7.

<sup>85</sup> European Commission, ‘European Commission Services’ Position Paper on the Sustainability Impact Assessment in Support of Negotiations for the Trade Part of the European Union–Mercosur Association Agreement’, Aug. 2022, pp. 5–6, 13–4.

European concerns over escalating Amazon deforestation following policy changes in Brazil, a Mercosur country, after the trade negotiations.<sup>86</sup>

### *Assessing environmental effects*

Trade EIAs employ both quantitative methods (like economic modelling) and qualitative methods (like case studies). These methods are evolving, and each has its own strengths and weaknesses.<sup>87</sup> Assessments often begin with how environmental media and resources are likely to be affected by the economic effects of a trade agreement, such as changes in: the overall extent of trade and production (scale effects), the sectoral composition of production (composition or structural effects), the state of technological diffusion (technology effects), and the use of specific goods and services (product effects).<sup>88</sup> An analysis here normally entails comparisons of projected impacts of the proposed agreement against a baseline scenario, which estimates the conditions that would exist without that agreement.<sup>89</sup> While providing valuable insights, impact quantifications have inherent limits to their accuracy as they depend heavily on data quality, methodological rigour, and assumptions, and are exposed to uncertainties surrounding trade negotiations.

In addition, EIAs also examine the regulatory effects of an agreement – its implications for domestic policymaking and international obligations with regard to environmental matters. These can include impacts on the state's ability to control pollution, regulate hazardous wastes and materials, protect wildlife and endangered species, and set standards relating to the environment or health, among other things.<sup>90</sup>

Compiled from information in final trade EIA reports, Table 1 shows variations in environmental coverage. These differences stem from the weight given to an individual environmental factor, resulting, *inter alia*, from the screening and scoping process that identifies *significant* issues for EIAs to address.<sup>91</sup> Reaching absolute consistency across trade EIAs seems unlikely as the relevance and importance of environmental factors depend on each specific trade context.

At least two key comparative trends emerge from Table 1. Firstly, biodiversity appeared in all EU reports and was considered far more frequently in the EU and US reports than in those of Canada. Secondly, climate change and water pollution (or use)

<sup>86</sup> See G. Grieger, 'Amazon Deforestation and EU–Mercosur Deal', European Parliamentary Research Service, *EPRS At a Glance*, PE 659.311, Oct. 2020 (updated in PE 751.415, July 2023). It should be noted that, in December 2024, the EU and Mercosur reached a political agreement on an updated EU–Mercosur Partnership Agreement.

<sup>87</sup> For a review of the existing methods see, e.g., E. Moišé & S. Rubínová, 'Sustainability Impact Assessments of Free Trade Agreements: A Critical Review', OECD Trade Policy Paper No. 255, Nov. 2021, available at: <https://doi.org/10.1787/65b1a07e-en>.

<sup>88</sup> EU Handbook 2016, n. 47 above, p. 23; Government of Canada, n. 71 above, 'The Quantitative and Qualitative Assessment'; Canada Handbook, n. 60 above, Section 4.3; US Guidelines for Implementation of Executive Order 13141, n. 56 above, Appendix C.II.

<sup>89</sup> See, e.g., US Guidelines for Implementation of Executive Order 13141, n. 56 above, Section V.C.3 and Appendix C.

<sup>90</sup> See, e.g., US Guidelines for Implementation of Executive Order 13141, n. 56 above, Section V.B; Department of Foreign Affairs and International Trade (Canada), n. 51 above, p. 13.

<sup>91</sup> See Section 3.3 of this article.

**Table 1.** Frequency of Considering Environmental Factors in Trade EIAs (as at 1 February 2025)

EIA Jurisdiction	Air pollution	Water pollution/ use	Land use/ pollution/ degradation	Forests (deforestation, illegal logging, forest degradation, etc.)	Biodiversity (invasive species, etc.)	Wild flora and fauna (endangered species, migration, etc.)	Climate change (GHG emissions, etc.)	Energy use	Waste generation/management	Others
US (13)	38%	46%	23%	46%	54%	92%	0%	15%	23%	100%
Canada (12)	33%	67%	42%	25%	25%	8%	67%	42%	25%	58%
EU (32)	75%	88%	78%	39%	100%	10%	97%	39%	84%	52%

*Source:* Author's compilation from final trade EIA reports.  
*Notes:* The numbers in the 'EIA Jurisdiction' column indicate the total number of trade agreements covered by final EIA reports (and the European Commission's position papers for EU agreements). The frequency rates indicate the share of final EIA reports per jurisdiction that considered each environmental factor.

were among the most frequently reviewed environmental factors in EU and Canadian EIA reports. By contrast, US reports prioritized the protection of wildlife, but they did not examine climate change, which demonstrates the country's reluctance in the past to address this issue through trade agreements, even when some stakeholders were critical of this stance.<sup>92</sup>

Some environmental topics are quite unique to the assessing jurisdiction. For instance, the issue of the incidental killing of turtles during shrimp fishing and dolphins during tuna fishing appeared in several US EIAs.<sup>93</sup> This is not surprising given the long history in the US of addressing this marine conservation problem, which was also brought to light in some previous high-profile trade disputes.<sup>94</sup> Other examples of individualized issues include, *inter alia*, environment-related interests of Indigenous peoples as important stakeholders in the Canadian EIA process and animal welfare as part of EU trade-related treaty making.<sup>95</sup>

Interestingly, none of the final trade EIA reports reviewed in this article found any potential *serious* environmental impacts on the assessing jurisdiction.<sup>96</sup> Overall, the following were among the contributing factors. With regard to economically driven effects, import tariffs in the US, Canada, and the EU were already low in general, so the trade agreement, even in removing them, was not expected to bring about any considerable changes in domestic economic activities. This is because in such circumstances it can reasonably be assumed that the agreement is unlikely to intensify imports significantly (and related production operations) there, as it provides only a limited reduction in trade costs and consequently little incentive to import more.<sup>97</sup> In addition, export production in the three jurisdictions was typically estimated not to substantially increase (and thus not to put heavy pressure on the domestic environment)

<sup>92</sup> See USTR, 'Final Environmental Review of the United States–Mexico–Canada Agreement (USMCA)', 2019 (Final EIA on the USMCA), p. 26; Report of the Trade and Environment Policy Advisory Committee, 'North American Free Trade Agreement 2018', 27 Sept. 2018, pp. 10–1, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/advisory-committee>.

<sup>93</sup> See, e.g., USTR, 'Final Environmental Review of the Dominican Republic–Central America–United States Free Trade Agreement', Feb. 2005 (Final EIA on the DR–CA–US FTA), pp. 24–5; USTR, 'Final Environmental Review: United States–Panama Trade Promotion Agreement', Sept. 2011 (Final EIA on the US–Panama TPA), pp. 16–7.

<sup>94</sup> See WTO, 'Environmental Disputes in GATT/WTO', available at: [https://www.wto.org/english/tratop\\_e/envir\\_e/edis00\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/edis00_e.htm).

<sup>95</sup> See, e.g., Government of Canada, 'Final Environmental Assessment of the Canada–United States–Mexico Agreement (CUSMA)', 16 July 2020 (Final EIA on the CUSMA), pp. 26–7; European Commission, 'Sustainability Impact Assessment (SIA) in Support of the Negotiations for the Modernisation of the Trade Part of the Global Agreement with Mexico', Final Report, 17 Sept. 2019, pp. 125–6.

<sup>96</sup> By comparison, one report identified potentially 'significant' trade-related environmental impacts outside the assessing jurisdiction (the EU), such as deforestation and biodiversity loss in Andean countries. However, the European Commission disagreed and downplayed their significance. See Development Solutions, CEPR and Manchester 1824, 'EU–Andean Trade Sustainability Impact Assessment: Final Report', Oct. 2009, pp. 123–4; European Commission, 'Commission Services' Position Paper on the Trade Sustainability Impact Assessment (SIA) of the Multiparty Trade Agreement with the Andean Countries', 2010, p. 5.

<sup>97</sup> For a similar view, see Moisé & Rubínová, n. 87 above, p. 56.

following market openings in counterpart countries. Indeed, markets of many developing-country counterparts were not large enough to exert such an increasing effect in the US, Canada, and the EU. This echoes an early argument in the literature regarding the correlation between economic impacts of a trade agreement and the size of its signatory parties.<sup>98</sup> Moreover, the applied tariffs of developed-country counterparts were already generally low, so their elimination under trade agreements also was unlikely to cause this increasing effect.

As for regulatory effects, US, Canadian, and EU trade agreements with developed-country counterparts using similar environmental standards were not likely to bring about major changes to existing laws and regulations. Furthermore, the three jurisdictions in question had sufficient bargaining power over their developing-country counterparts to negotiate trade agreements that aligned with their own environmental policies. This reflects the academic theory that large economies with significant market size can effectively exert pressure to obtain concessions in trade negotiations when their smaller counterparts seek access to their lucrative markets.<sup>99</sup> Specifically, because the US, Canada, and the EU have set at the domestic level environmental mandates for their respective trade agreements,<sup>100</sup> they, as large economies, will strive to include environmental provisions that meet their mandates as part of trade concessions sought from their partners.

### 3.3. Trade EIA as Participatory Decision-Making Process

#### *EIA procedures*

Environmental analyses in the US and Canada are carried out by the trade authorities themselves (US Trade Representative, through the Trade Policy Staff Committee, and Global Affairs Canada, respectively) in consultation with other government entities.<sup>101</sup> By contrast, sustainability impact assessments in the EU are outsourced by the European Commission, the executive branch of the EU, to qualified external consultants, who are selected through a competitive tendering procedure. Here, an interservice steering group, composed of representatives of interested EU executive services, facilitates coordination between the consultants and the European Commission.<sup>102</sup> Each of these procedures has its own advantage: the possibility of smoother integration of in-house assessments into decision making in the US and Canada and greater independence of outside assessments from trade officials in the EU.<sup>103</sup>

<sup>98</sup> Ibid., p. 7.

<sup>99</sup> See, e.g., Y. Stiller, 'Bargaining Power in a Globalized World: The Effect of Global Value Chains in Trade Negotiations' (2023) 25(2) *Business and Politics*, pp. 173–94, at 173–4, 190.

<sup>100</sup> See, e.g., C. George, 'Environment and Regional Trade Agreements: Emerging Trends and Policy Drivers', OECD Trade and Environment Working Paper No. 2014/02, 25 July 2014, pp. 9–10, 15–6, 18–9, available at: <https://doi.org/10.1787/5jz0v4q45g6h-en>.

<sup>101</sup> See US Guidelines for Implementation of Executive Order 13141, n. 56 above, Sections II and III and n. 1; Government of Canada, n. 71 above, 'The Key Players'.

<sup>102</sup> EU Handbook 2016, n. 47 above, p. 11.

<sup>103</sup> See also Section 3.5 of this article.



An EIA process generally commences during the exploratory phase of initiating trade negotiations (for Canadian and US EIAs) or soon after the negotiations have been launched (for EU sustainability impact assessments).<sup>104</sup> The purpose is to inform negotiators early enough to help them to shape agreements accordingly. While the domestic procedures are not too rigid about timing because of the unpredictability of negotiations,<sup>105</sup> unreasonable delays may undermine the purpose of EIAs, raising doubts about their relevance and effectiveness. In 2021, for example, the European Ombudsman found that the European Commission's failure to ensure the finalization of a sustainability impact assessment before the end of the EU–Mercosur trade negotiations constituted 'maladministration'.<sup>106</sup> Echoing the Ombudsman's conclusion, the European Parliament criticized the Commission's tardiness and underlined the necessity to assess thoroughly the environmental and social impacts of trade agreements before concluding the negotiations.<sup>107</sup>

EIAs typically produce preliminary and final findings. Similar to the SEA process, the preliminary assessment stage selects environmentally significant issues for review in order to optimize the allocation of time and resources. This exercise consists of 'screening', which identifies issues with potentially significant environmental impacts, and 'scoping', which subsequently determines the specific elements of those issues to be analyzed.<sup>108</sup> In establishing the EIA scope, evaluators take into account the coverage and nature of the agreement under negotiation, the expected magnitude of environmental impacts, the relevance and importance of selected issues to stakeholders, and other pertinent factors.<sup>109</sup>

Public release of preliminary findings during ongoing negotiations is required in all three jurisdictions as a principle, but the US rules permit the bypassing of this step in the case of a compressed negotiating schedule.<sup>110</sup> Unlike the US and Canada, where only one type of interim report is issued, the EU publishes inception reports on the assessment methodology and scope as well as interim reports on preliminary findings.<sup>111</sup>

<sup>104</sup> See Government of Canada, n. 71 above, 'Phase 1: Initial EA Analysis and Reporting'; US Guidelines for Implementation of Executive Order 13141, n. 56 above, Section III.B.1; EU Handbook 2016, n. 47 above, p. 11.

<sup>105</sup> See, e.g., US Executive Order 13141, n. 57 above, Section 5(iii) (stating that environmental reviews 'shall not be a condition for the timely tabling of particular negotiating proposals').

<sup>106</sup> European Ombudsman, n. 65 above, para. 40.

<sup>107</sup> European Parliament Resolution of 16 Feb. 2022 on the Annual Report on the Activities of the European Ombudsman in 2020, 2021/2167(INI), para. 19.

<sup>108</sup> EU Handbook 2016, n. 47 above, pp. 16–7; EU Handbook 2006, n. 62 above, pp. 17–8. See also US Guidelines for Implementation of Executive Order 13141, n. 56 above, Section IV.B.1; Government of Canada, n. 71 above, 'Phase 1: Initial EA Analysis and Reporting'.

<sup>109</sup> See US Guidelines for Implementation of Executive Order 13141, n. 56 above, Sections IV.B.3 and IV.B.4; EU Handbook 2016, n. 47 above, p. 17.

<sup>110</sup> US Guidelines for Implementation of Executive Order 13141, n. 56 above, Section VII.B.3.

<sup>111</sup> See *ibid.*, Section VII.B and Appendix D; Government of Canada, n. 71 above, 'The Phases of the Assessment' (it is worth noting that Canada's original system – comprising initial, draft, and final environmental assessments – was later modified to include only initial and final assessments); EU Handbook 2016, n. 47 above, pp. 11–2.

In the final stage, trade EIAs complete and refine preliminary assessments, reflecting feedback from stakeholders and detailing economy-wide and sector-specific findings. Final reports in the US and Canada discuss the outcomes of completed negotiations, highlighting the main contents of the concluded agreement in connection with the environmental issues raised in the preliminary stage. By contrast, final reports in the EU are to be produced before the conclusion of negotiations. This allows the European Commission to issue a position paper that presents its views on the identified impacts and proposed measures and explains how the EIA has or will be used in decision making.

### *Engagement with stakeholders*

Trade EIAs in all three jurisdictions include stakeholder engagement with state and non-state actors through interagency mechanisms and involvement with civil society and the general public. The US and Canadian systems also require consultation with specialized advisory bodies consisting of external participants.<sup>112</sup>

As crucial as the actual analysis of environmental effects, interaction with stakeholders not only keeps them informed but also enables them to provide input during assessments and trade negotiations. To give just one recent example of how active public consultations can be, the Canadian government engaged with over 1,300 stakeholders through almost 1,100 interactions between 2017 and 2019 over the modernization of the NAFTA.<sup>113</sup>

In the US, public views are sought upon public notification of review steps as well as during regular consultations with Congress, advisory committees, and the interested public.<sup>114</sup> In Canada, consultations involve provincial and territorial governments, Indigenous peoples, the general public, and the Environmental Assessment Advisory Group consisting of expert volunteers from the business sector, academia, and non-governmental organizations (NGOs).<sup>115</sup> In the EU, consultants preparing sustainability impact assessments must interact with NGOs, businesses, social partners, academia, and national administrations through dedicated websites and other digital channels, interviews, meetings, workshops, surveys, and questionnaires.<sup>116</sup> Unlike the Canadian and US practices, public outreach to the counterpart country's stakeholders is commonplace in the EU EIA process,<sup>117</sup> reflecting its approach to also review external impacts. While US officials did hold occasional meetings with environmental civil society in some of its trading partners,<sup>118</sup> this is not mandated by the US EIA guidelines.

<sup>112</sup> See US Guidelines for Implementation of Executive Order 13141, n. 56 above, Sections IV.A.4 and IV.B.2(2); Government of Canada, n. 71 above, 'The Key Players'.

<sup>113</sup> Final EIA on the CUSMA, n. 95 above, Section IV.A, p. 13.

<sup>114</sup> US Guidelines for Implementation of Executive Order 13141, n. 56 above, Section VI and Appendix B.

<sup>115</sup> See Government of Canada, n. 71 above, 'The Key Players'.

<sup>116</sup> See EU Handbook 2016, n. 47 above, pp. 26–30.

<sup>117</sup> *Ibid.*, pp. 26, 30.

<sup>118</sup> See USTR, 'Final Environmental Review: United States–Peru Trade Promotion Agreement' (Final EIA on the US–Peru TPA), p. 17; USTR, 'Final Environmental Review: United States–Colombia Trade Promotion Agreement', Sept. 2011 (Final EIA on the US–Colombia TPA), p. 15; USTR, 'Interim

The process of addressing external comments is as important as collecting them. Responding to them in EIA reports enhances transparency. In general, one can distinguish three noticeable patterns of handling stakeholder input in EIA records.

The first pattern is found in several US reports and one Canadian report, which explain how exactly the received input was taken into account in the analysis and trade negotiations. The reports here typically identify and discuss key concerns and comments related to specific environmental issues, assess the relevance of these issues to the subject agreement where applicable, and illuminate how the agreement or its particular elements can address them.<sup>119</sup> This pattern is most responsive to stakeholder opinions as it allows one to trace their actual connection with both EIAs and negotiations.

Another pattern – especially observable from Canadian practice – is when records indicate that public comments were indeed addressed in trade EIAs and/or negotiations, but without clarifying how.<sup>120</sup> Such a lack of specifics regarding how the comments – often specified or summarized in the records – are factored in diminishes the perceived attentiveness of the consultation process in the eyes of the public.

The third pattern – discernible in many EU EIAs – focuses on providing extensive details on particular engagement activities (meetings, surveys, interviews, and the like) but does not sufficiently articulate in final reports (and corresponding position papers of the European Commission) how exactly the received comments on environmental matters were (will be) actually taken into consideration.<sup>121</sup> This approach appears to put more emphasis on documenting the participatory aspect of the EIA process itself rather than real impacts of stakeholder engagement. The fact that position papers in the EU tend not to elaborate on addressing comments can be explained by the confidentiality of negotiations, which prompts the European Commission to avoid revealing its specific negotiating positions publicly prior to the conclusion of an

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Environmental Review: U.S.–Andean Free Trade Agreement’, Feb. 2005, p. 20; USTR, ‘Final Environmental Review: United States–Korea Free Trade Agreement’, Sept. 2011 (Final EIA on the US–Korea FTA), p. 14; Final EIA on the US–Jordan FTA, n. 82 above, p. 16.

<sup>119</sup> See, e.g., USTR, ‘Final Environmental Review of the U.S.–Singapore Free Trade Agreement’, June 2003 (Final EIA on the US–Singapore FTA), pp. 13–4, 19–22; Final EIA on the US–Peru TPA, n. 118 above, pp. 15–7, 21, 24, 26; Final EIA on the US–Chile FTA, n. 82 above, pp. 14–5, 19–20, 22, 24–6; Final EIA on the CUSMA, n. 95 above, pp. 15–7, 22–3, 26–7.

<sup>120</sup> See, e.g., Government of Canada, ‘Canada–Israel Free Trade Agreement Modernization Negotiations’, Final Environmental Assessment Report, Jan. 2016 (Final EIA on the Canada–Israel FTA Modernization), Section 4; Government of Canada, ‘Canada–Korea Free Trade Agreement Final EA Report’, 2014 (Final EIA on the Canada–Korea FTA), Section IV.

<sup>121</sup> See, e.g., European Commission, ‘Trade Sustainability Impact Assessment of the Free Trade Agreement between the European Union and Japan’, Final Report, 2016 (Final EIA on the EU–Japan FTA), pp. 32–47; European Commission, ‘Sustainability Impact Assessment (SIA) in Support of Free Trade Agreement (FTA) Negotiations between the European Union and the Republic of Indonesia’, Final Report, Aug. 2019 (Final EIA on the EU–Indonesia FTA), pp. 214–30; European Commission, ‘Trade Sustainability Impact Assessment in Support of FTA Negotiations between the European Union and New Zealand’, Final Report, Mar. 2020 (Final EIA on the EU–New Zealand FTA), pp. 163–4.

agreement.<sup>122</sup> Pursuant to some previous empirical studies, public consultations in the EU seem to influence mainly the design of assessments rather than negotiations on the agreement under review, but they are likely to influence the conduct of subsequent assessments and negotiations.<sup>123</sup> This points to both the possible immediate limitations and the potential efficacy of outreach actions.

Based on the above patterns, one can single out three components that must be present in EIA records in order to increase the openness and responsiveness of public consultations. The records must provide sufficient information on (i) engagement activities, (ii) the substance of comments, and (iii) how they have been addressed. If elucidation of the third element – which is comparable to that mandated by the SEA Protocol<sup>124</sup> – is difficult because of the confidentiality of ongoing negotiations, this could be carried out after concluding the negotiations. Such documentation on the three components can help to ease civil society scepticism<sup>125</sup> about the effectiveness of the trade EIA process, contributing to what some<sup>126</sup> have coined the ‘transparent incorporation of participant input’.

Despite efforts, the outreach process is not always productive and may result in passive or no responses.<sup>127</sup> Stakeholders’ reluctance to comment or participate in public consultations can be attributed to the lack of their expertise, fatigue with multiple rounds of engagements, complexity of surveys and questionnaires, the general perception of the country under review as being environmentally friendly (thus raising no public concerns), the existence of parallel consultations on other agreements, and so on.<sup>128</sup>

<sup>122</sup> See also C. Kirkpatrick & C. George, ‘Methodological Issues in the Impact Assessment of Trade Policy: Experience from the European Commission’s Sustainability Impact Assessment (SIA) Programme’ (2006) 24(4) *Impact Assessment and Project Appraisal*, pp. 325–34, at 331–2 (discussing tension between transparency in the trade EIA process and the confidentiality of the EU negotiation strategy).

<sup>123</sup> See B. Hoekman & H. Rojas-Romagosa, ‘EU Trade Sustainability Impact Assessments: Revisiting the Consultation Process’ (2022) 25(1) *Journal of International Economic Law*, pp. 45–60, at 48; T. Dauphin & M. Dupré, ‘The European Commission’s Trade Sustainability Impact Assessments: A Critical Review’, Veblen Institute for Economic Reforms and Greenpeace e.V., 11 May 2022, pp. 42–3.

<sup>124</sup> See SEA Protocol, n. 23 above, Art. 11.2 (which requires issuing ‘a statement summarizing ... how the comments received [from the public, among others] ... have been taken into account’).

<sup>125</sup> C. George & C. Kirkpatrick, ‘Have Sustainability Impact Assessments of Trade Agreements Delivered on Development Issues? A Reflexive Analysis of the Emergence and Main Contributions of Trade SIAs’, in Ekins & Voituriez (eds), n. 69 above, pp. 63–87, at 64–5.

<sup>126</sup> I. von Homeyer, M. Collins & W. Ingwersen, ‘Improving Public Participation in Sustainability Impact Assessments of Trade Agreements’, in Ekins & Voituriez, n. 69 above, pp. 189–207, at 204.

<sup>127</sup> See, e.g., Government of Canada, ‘Final Environmental Assessment of the Canada–Panama Free Trade Agreement (FTA) Negotiations’, 2017, ‘Results of the Consultations Process’; PricewaterhouseCoopers and Centre for European Policy Studies, ‘Sustainability Impact Assessment (SIA) of the Negotiations of the Trade Agreement between the European Community and the Countries of the Cooperation Council for the Arab States of the Gulf (GCC)’, Final Report, 10 May 2004, p. 36; USTR, ‘Final Environmental Review of the United States–Oman Free Trade Agreement’, 2006 (Final EIA on the US–Oman FTA), p. 7, Section IV.A.

<sup>128</sup> See, e.g., European Commission, ‘Sustainability Impact Assessment in Support of the Negotiations for the Modernisation of the Trade Part of the Association Agreement with Chile’, Final Report, 7 May 2019, pp. 324–5; Development Solutions, ‘A Trade SIA relating to the Negotiation of a Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada’, Final Report, 2011 (Final EIA on the EU–Canada CETA), p. 34; Final EIA on the EU–Japan FTA, n. 121 above, p. 38.

Assessing EU practice, some authors suggest that consultations should limit non-trade issues to priority ones, ensuring greater specificity and accountability.<sup>129</sup>

### 3.4. Addressing Trade EIA Findings

Because agreement on the covered issues requires the participation of all negotiating parties and because these issues often go beyond their national boundaries, the EIA-conducting party cannot maintain full control over trade negotiations. As a result, trade EIAs may have practical limits in influencing the negotiation process.

In response to EIA findings, the authorities typically highlighted market openings for environmental goods and services and the inclusion of environment-related provisions in the respective agreement. In particular, liberalization of ‘green’ trade was portrayed as a way of achieving environmental benefits by stimulating the international dissemination of environmentally sound technologies and sustainable practices.<sup>130</sup> Environmental chapters in US and Canadian trade agreements as well as trade and sustainable development chapters in EU trade agreements were indicated to be necessary to address environmental risks and regulatory effects while promoting mutual supportiveness of trade and environmental policies.<sup>131</sup> Specific mention was also made, *inter alia*, of the inclusion of environmental exceptions, environment-related provisions concerning government procurement, services, energy, and raw materials, as well as monitoring mechanisms for the implementation of the agreement and its environmental impacts.<sup>132</sup> Such claims are not baseless in principle. Indeed, given that RTAs must comply with the WTO requirement to liberalize substantially all intraregional trade<sup>133</sup> and to the extent that main environment-related goods and

<sup>129</sup> Hoekman & Rojas-Romagosa, n. 123 above, p. 59.

<sup>130</sup> See, e.g., Final EIA on the US–Chile FTA, n. 82 above, pp. 22–3; Final EIA on the CUSMA, n. 95 above, pp. 24–5, 37; European Commission, ‘European Commission Services’ Position Paper on the Sustainability Impact Assessment in Support of Negotiations for a Free Trade Agreement between the European Union and Australia’, 16 July 2021 (Position Paper on the EU–Australia FTA), p. 14.

<sup>131</sup> See, e.g., Final EIA on the US–Korea FTA, n. 118 above, pp. 10–1; Government of Canada, ‘Final Environmental Assessment of the Canada–European Union Comprehensive Economic and Trade Agreement’, 2017 (Final EIA on the Canada–EU CETA), Section VIII; European Commission, ‘European Commission Services’ Position Paper on the Sustainability Impact Assessment in Support of Negotiations for the Modernisation of the Trade Part of the EU–Chile Association Agreement’, June 2020, p. 18.

<sup>132</sup> See, e.g., Final EIA on the CUSMA, n. 95 above, pp. 17, 20, 21, 24; Position Paper on the EU–Australia FTA, n. 130 above, p. 14; European Commission, ‘European Commission Services’ Position Paper on the Trade Sustainability Impact Assessment in Support of Negotiations of a Deep and Comprehensive Free Trade Agreement between the European Union and Morocco’, Apr. 2015, p. 8; European Commission, ‘Commission Services Position Paper on the Trade Sustainability Impact Assessment in Support of Negotiations of a Deep and Comprehensive Free Trade Area between the European Union and the Republic of Armenia’, June 2014, p. 6; European Commission, ‘Trade Sustainability Impact Assessment of the Negotiations on a Free Trade Area between the EU and Ukraine: Position Paper’, Apr. 2009, p. 15.

<sup>133</sup> See S. Shadikhodjaev, ‘Keeping Regionalism under “Control” of the Multilateral Trading System: State of Play and Prospects’ (2013) 19(3) *Law and Business Review of the Americas*, pp. 327–55, at 333–4; S. Shadikhodjaev, ‘Trade Integration in the CIS Region: A Thorny Path Towards a Customs Union’ (2009) 12(3) *Journal of International Economic Law*, pp. 555–78, at 570.

services are not excluded from free trade, it is reasonable to expect that these agreements will boost green trade. According to empirical literature, environmental provisions in RTAs can reduce ‘dirty’ exports and increase ‘clean’ exports, promote domestic environmental legislation, and limit pollution.<sup>134</sup>

Final EIA reports in the EU should contain proposals for so-called flanking measures, that is ‘[p]olicy measures proposed . . . to mitigate potential negative impacts or enhance positive ones’.<sup>135</sup> Such supplementary mitigation or enhancement measures, which are often outside the trade agreement itself, ‘are not restricted to trade policy but can encompass cooperation, social, environmental or development policies’.<sup>136</sup> Proposed flanking measures addressed, for example, the greening of production, encouragement of civil society engagement, provision of capacity-building assistance for sustainable practices and environmental management, promotion of information exchange on effective policymaking concerning water resources, and so on.<sup>137</sup>

Inspired by the EU approach, Canada’s framework for trade EIAs also adopted the concept of establishing mitigation and enhancement measures for consideration.<sup>138</sup> Compared to the diversity of flanking measures recommended in EU assessment reports by a differing pool of the commissioned bodies, Canada’s government-prepared reports presented flanking measures in a quite uniform manner, typically concluding in a generic way that the existing domestic policies and programmes were good enough to mitigate or enhance the anticipated environmental impacts of the agreement concerned.<sup>139</sup>

As for the US, ‘[w]here *significant* regulatory and/or economically driven environmental impacts have been identified’, the US guidelines instruct trade EIAs to analyze mitigation or enhancement options implementable through changes to negotiating positions and environmental policy responses outside the trade agreement.<sup>140</sup> Thus, unlike the position in the EU and Canada, the US rules require scrutinizing flanking measures only in ecologically remarkable cases. Indeed, as no

<sup>134</sup> See C. Brandi et al., ‘Do Environmental Provisions in Trade Agreements Make Exports from Developing Countries Greener?’ (2020) 129 *World Development*, article 104899; C. Brandi, D. Blümer & J.-F. Morin, ‘When Do International Treaties Matter for Domestic Environmental Legislation?’ (2019) 19(4) *Global Environmental Politics*, pp. 14–44; L. Baghdadi, I. Martinez-Zarzoso & H. Zitouna, ‘Are RTA Agreements with Environmental Provisions Reducing Emissions?’ (2013) 90(2) *Journal of International Economics*, pp. 378–90.

<sup>135</sup> EU Handbook 2016, n. 47 above, p. 13.

<sup>136</sup> EU Handbook 2006, n. 62 above, p. 42.

<sup>137</sup> See, e.g., ECORYS et al., ‘Trade Sustainability Impact Assessment of the FTA between the EU and ASEAN’, Final Report, Vol. I, 2009, pp. xxi–ii; Final EIA on the EU–Indonesia FTA, n. 121 above, pp. 13–4; Final EIA on the EU–New Zealand FTA, n. 121 above, p. 169; European Commission, ‘Trade Sustainability Impact Assessment in Support of FTA Negotiations between the European Union and Australia’, Final Report, Mar. 2020 (Final EIA on the EU–Australia FTA), p. 104.

<sup>138</sup> Department of Foreign Affairs and International Trade (Canada), n. 51 above, p. 21. See also Government of Canada, n. 71 above, ‘Existing Environmental Legislation, Policies and Actions’.

<sup>139</sup> See, e.g., Final EIA on the Canada–EU CETA, n. 131 above, Sections VI and IX; Government of Canada, ‘Canada–Ukraine Free Trade Negotiations’, Final Environmental Assessment Report, Jan. 2016, Sections 6 and 7; Final EIA on the Canada–Israel FTA Modernization, n. 120 above, Sections 6 and 7; Final EIA on the Canada–Korea FTA, n. 120 above, Sections VIII and X.

<sup>140</sup> US Guidelines for Implementation of Executive Order 13141, n. 56 above, Section V.D.2 (emphasis added).

significant negative environmental impacts were found in practice, no mitigation options were in issue. By contrast, the final US reports explored how to enhance positive impacts (like effective enforcement of environmental laws and promotion of green trade), even if they were not characterized as significant, and mentioned the parallel conclusion of intergovernmental side arrangements on environmental cooperation as a typical enhancement measure.<sup>141</sup> This tactic of highlighting measures that enhance the expected positive impacts while avoiding mention of mitigation options – where an appraisal of enhancement/mitigation aspects was not required by law in the absence of significant effects – seems to have been employed to underscore the perceived desirability of a trade deal under negotiation.

Mitigation-oriented flanking measures correspond to ‘measures to prevent, reduce or mitigate the adverse effects identified in the environmental report’ in the SEA process.<sup>142</sup> At the same time, by being complementary in nature, flanking measures are distinct from ‘alternatives’ that are considered in SEAs alongside the measure under review.<sup>143</sup> It is not typical for trade EIAs to document whether and how alternatives to a proposed initiative under negotiation have been considered before finalizing the decision-making process. In general, trade EIAs appear to proceed on the premise that there is no policy alternative to the trade agreement being negotiated, as assessments continue in parallel with ongoing negotiations. However, EIAs can still weigh alternative negotiating approaches and options,<sup>144</sup> including various trade liberalization scenarios,<sup>145</sup> in examining how to attain trade objectives in an environmentally sustainable manner.<sup>146</sup> This is largely consistent with the SEA practice of allowing for alternatives *within* the assessed plan, programme, policy or legislation (such as exploring different means of its execution), rather than viewing alternatives solely as substitutes for it.<sup>147</sup> The SEA Protocol does not define ‘alternatives’, leaving some room for flexible interpretation and implementation.

### 3.5. Overall Assessment and Outlook

Conceptually close to SEAs that countries may apply voluntarily to trade policies, *ex ante* trade EIAs can play an important role in enhancing environmentally sound decision making by providing analysis-based and publicly engaged input. However,

<sup>141</sup> See Final EIA on the US–Bahrain FTA, n. 82 above, pp. 1–2, 14–5; Final EIA on the DR–CA–US FTA, n. 93 above, pp. 2–3, 21–2, 29; Final EIA on the US–Colombia TPA, n. 118 above, pp. i–ii, 15–6, 23; USTR, ‘Final Environmental Review of the United States–Morocco Free Trade Agreement’, July 2004, pp. 1–2, 16; Final EIA on the US–Oman FTA, n. 127 above, pp. ii, 10–1; Final EIA on the US–Panama TPA, n. 93 above, pp. i–ii, 14, 17; Final EIA on the US–Peru TPA, n. 118 above, pp. ii–iii, 19–20, 28; Final EIA on the USMCA, n. 92 above, pp. 43–4.

<sup>142</sup> See SEA Protocol, n. 23 above, Arts 10.3, 11.1, 13.2, and Annex IV:7.

<sup>143</sup> See *ibid.*, Arts 7.2, 11.2, 13.2, and Annex IV:8.

<sup>144</sup> See, e.g., Final EIA on the US–Singapore FTA, n. 119 above, p. 15.

<sup>145</sup> See, e.g., Final EIA on the EU–Australia FTA, n. 137 above, p. 11; Final EIA on the EU–Canada CETA, n. 128 above, pp. 30–1.

<sup>146</sup> See, e.g., US Guidelines for Implementation of Executive Order 13141, n. 56 above, Sections IV.B.3.a(2) and IV.B.3.c(1); EU Handbook 2006, n. 62 above, p. 38.

<sup>147</sup> See, e.g., A. González et al., *Developing and Assessing Alternatives in Strategic Environmental Assessment*, EPA Research Report No. 157 (Environmental Protection Agency (Ireland), 2015), pp. 3–4.



they are not without limitations attributable to challenges in making accurate assessments, ensuring transparency in the process while preserving the confidentiality of negotiations and adequately responding to public concerns. Additionally, trade EIAs often face constraints in driving trade negotiations towards a particular outcome as they, like SEAs in general, are not intended to dictate final decisions or impose mandatory outcomes. They also cannot always keep up with all developments surrounding negotiations, which are by nature unpredictable and beyond the control of any single party.

Based on the preceding analysis, one can distinguish between the US/Canadian and EU models of trade EIAs. With over two decades of history, these models can offer practical lessons for many interested countries. Yet, like any other evaluation system, none of them are ideal in terms of procedural features or the substance of assessments. They cannot be mechanically copied without being tailored to the specific circumstances of a country contemplating or reforming an EIA process. Interestingly, one study favours the EU model for what it claims are its more rigorous methodology, better identification of impacts and opportunities, and greater influence on trade negotiations. However, focusing on only three EIA-covered agreements, this study, as it says, ‘does not address legitimate criticisms that can be directed at [sustainability impact assessments] in general’, acknowledging that the EU methodology is ‘not a panacea’.<sup>148</sup> From a broader perspective, the two models in question, in fact, have both pros and cons in at least three respects.

Firstly, the EU way of contracting EIAs to external experts, unaffiliated with trade authorities, enhances independence and objectivity in assessments while enabling better technical expertise. However, it can prolong the process and disconnect from actual negotiations when negotiating positions are not fully shared with the experts on grounds of confidentiality, for instance.<sup>149</sup> Here, EIA findings should be made available at the right time, before the agreement is concluded, to ensure that they are relevant and can realistically be factored into negotiations. By contrast, the conduct of EIAs by the trade authorities themselves, as in the US and Canada, enables a more direct integration of in-house findings into decision making, avoids many constraints of sharing sensitive information with outside participants, does not require commission payments to external reviewers, and fosters structural and substantive consistency across assessment reports. However, this mode may lead to post-hoc rationalizations of decisions already taken.<sup>150</sup> Perhaps to avoid possible criticism in this respect, US (and to some extent Canadian) EIAs generally tend to be, as observed above, more specific than EU EIAs in documenting their response to stakeholder comments.

Secondly, EU assessments holistically review multiple effects in support of the interconnectedness of various sustainability factors to seek the most desirable societal outcomes. This integrated approach allows for trade-offs when, say, negative

<sup>148</sup> P. Reynaud, ‘Sustainable Development and Regional Trade Agreements: Toward Better Practices in Impact Assessments’ (2013) 8(2) *McGill International Journal of Sustainable Development Law and Policy*, pp. 205–44, at 205, 241–2.

<sup>149</sup> See Moisé & Rubínová, n. 87 above, p. 27.

<sup>150</sup> Salzman, n. 52 above, p. 373.

environmental impacts are outweighed by positive economic and social effects. By contrast, such a trade-off is not needed under the US/Canadian model, which focuses on environmental aspects and consequently ends up with less voluminous and less resource-intensive analyses.

Thirdly, the examination of domestic effects within a counterpart and relevant third country is required under the procedures of the EU but not the US and Canada. On the one hand, assessing such impacts, despite some challenges with data availability and measurements, is helpful for those covered countries that are unable to make these assessments on their own. Assessments here may also explore how the trade agreement can assist them in improving their environmental management capacity. On the other hand, these countries may be highly sensitive to being scrutinized by outside officials or experts, as such scrutiny can be perceived as undermining their sovereignty.<sup>151</sup>

While project-related EIAs are applied nearly universally and the ‘trend towards broader application of SEAs is continuing globally’,<sup>152</sup> trade EIAs are still far from being widely used on a systematic basis even though roughly 97% of RTAs today contain environmental provisions<sup>153</sup> and are thus mindful of environmental concerns. Many developing countries lack the expertise in conducting trade EIAs, which necessitates amplified international efforts for spreading the know-how and providing technical support.<sup>154</sup> In this respect, trade agreements can, and some indeed do, contribute to rectifying this status quo. For example, RTAs (and where applicable, associated environmental side agreements) concluded by each of the US, Canada, and the EU have promoted trade EIAs (and project EIAs or SEAs)<sup>155</sup> through prescribed

<sup>151</sup> See, e.g., EU Handbook 2006, n. 62 above, p. 24; Department of Foreign Affairs and International Trade (Canada), n. 51 above, p. 21.

<sup>152</sup> UN Environment, n. 39 above, p. 110.

<sup>153</sup> Monteiro, n. 9 above, p. 6.

<sup>154</sup> S. Shadikhodjaev, *Industrial Policy and the World Trade Organization: Between Legal Constraints and Flexibilities* (Cambridge University Press, 2018), p. 232.

<sup>155</sup> See, e.g., USMCA, n. 7 above, Art. 24.7; Memorandum of Understanding on Environmental Cooperation between the Government of the United States of America and the Government of the Kingdom of Bahrain, Washington, DC (US), 14 Sept. 2004, in force 14 Sept. 2004, Annex, available at: [https://ustr.gov/sites/default/files/uploads/agreements/fta/bahrain/asset\\_upload\\_file117\\_6318.pdf](https://ustr.gov/sites/default/files/uploads/agreements/fta/bahrain/asset_upload_file117_6318.pdf); United States–Morocco Joint Statement on Environmental Cooperation, Rabat (Morocco), 28 June 2004, in force 28 June 2004, Annex, available at: <https://2001-2009.state.gov/oes/env/tr/2004/34004.htm>; Memorandum of Understanding on Environmental Cooperation between the Government of the United States of America and the Government of the Sultanate of Oman, Muscat (Oman), 26 Feb. 2006, in force 26 Feb. 2006, Annex, available at: [https://ustr.gov/sites/default/files/uploads/agreements/fta/oman/asset\\_upload\\_file622\\_8819.pdf](https://ustr.gov/sites/default/files/uploads/agreements/fta/oman/asset_upload_file622_8819.pdf); Free Trade Agreement between Canada and Ukraine, Ottawa (Canada), 22 Sept. 2023, in force 1 July 2024, Art. 13.8, available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ukraine/text-texte/2023/toc-tdm.aspx?lang=eng>; Free Trade Agreement between the Hashemite Kingdom of Jordan and Canada, Amman (Jordan), 28 June 2009, in force 1 Oct. 2012, Art. 10-2, available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/jordan-jordanie/fta-ale/index.aspx?lang=eng>; Agreement on Environmental Cooperation between the Government of Canada and the Government of the Republic of Chile (Canada–Chile Agreement on Environmental Cooperation), Ottawa (Canada), 6 Feb. 1997, in force 5 July 1997, Art. 2.1(e), available at: <https://faolex.fao.org/docs/pdf/bi-145036.pdf>; Agreement on the Environment between Canada and the Republic of Colombia, Lima (Peru), 21 Nov. 2008, in force 15 Aug. 2011, Art. 2.5, available at: <https://www.canada.ca/en/environment-climate-change/corporate/international-affairs/partnerships-countries-regions/latin-america-caribbean/colombia/>

bilateral cooperation or knowledge-sharing procedures. Even where the relevant provisions address *ex post* trade EIAs, they can indirectly enhance *ex ante* assessment skills as well.

To start with the US, environmental cooperation provisions of most FTAs mandate that the contracting parties, as appropriate, share information about their experiences in assessing and considering environmental effects of trade agreements and policies.<sup>156</sup> The US–Jordan FTA specifically instructs its joint committee to discuss the review performed by each party of the environmental effects of this agreement,<sup>157</sup> which is

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[full-text.html](#); Agreement on Environmental Cooperation between Canada and the Republic of Honduras, Ottawa (Canada), 5 Nov. 2013, in force 1 Oct. 2014, Art. 6, available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/honduras/fta-ale/env.aspx?lang=eng>; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, Luxembourg, 16 June 2008, in force 1 June 2015, Art. 108, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:22015A0630\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:22015A0630(01)); Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Brussels (Belgium), 27 June 2014, in force 1 July 2016, Art. 302.1(a), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:22014A0830\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:22014A0830(02)); Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, Brussels (Belgium), 27 June 2014, in force 1 July 2016, Art. 87(a), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:22014A0830\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:22014A0830(01)); Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, Brussels (Belgium) and London (United Kingdom), 30 Dec. 2020, in force 1 Jan. 2021, Art. 393.2, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22021A0430\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22021A0430(01)).

<sup>156</sup> See Free Trade Agreement between the United States of America and the Republic of Korea, Washington, DC (US), 30 June 2007, in force 15 Mar. 2012, Art. 20.8.5, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text>; Free Trade Agreement between the Government of the United States of America and the Government of Australia, Washington, DC (US), 18 May 2004, in force 1 Jan. 2005, Art. 19.6.3, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/australian-fta/final-text>; Agreement between the Government of the United States of America and the Government of the Kingdom of Bahrain on the Establishment of a Free Trade Area, Washington, DC (US), 14 Sept. 2004, in force 1 Aug. 2006, Art. 16.7.4, available at: <https://www.ustr.gov/trade-agreements/free-trade-agreements/bahrain-fta/final-text>; United States–Chile Free Trade Agreement, Miami (US), 6 June 2003, in force 1 Jan. 2004, Art. 19.5.2, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text>; Trade Promotion Agreement between the United States of America and the Republic of Colombia, Washington, DC (US), 22 Nov. 2006, in force 15 May 2012, Art. 18.10.5, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/colombia-tpa/final-text>; Agreement between the United States of America and the Kingdom of Morocco on the Establishment of a Free Trade Area, Washington, DC (US), 15 June 2004, in force 1 Jan. 2006, Art. 17.3.6, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/morocco-fta/final-text>; Agreement between the Government of the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area, Washington, DC (US), 19 Jan. 2006, in force 1 Jan. 2009, Art. 17.7.4, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/oman-fta/final-text>; Trade Promotion Agreement between the United States of America and the Republic of Peru, Washington, DC (US), 12 Apr. 2006, in force 1 Feb. 2009, Art. 18.10.5, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text>; United States–Singapore Free Trade Agreement, Washington, DC (US), 6 May 2003, in force 1 Jan. 2004, Art. 18.6.3, available at: <https://www.ustr.gov/trade-agreements/free-trade-agreements/singapore-fta/final-text>.

<sup>157</sup> Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, Washington, DC (US), 24 Oct. 2000, in force 17 Dec. 2001, Art. 15.2(f), available at: <https://www.ustr.gov/trade-agreements/free-trade-agreements/jordan-fta/final-text>.

likely to alleviate the concerns of some commenters raised during the US EIA process about the adequacy of Jordan's environmental review (which was prepared with US technical assistance).<sup>158</sup> In addition, certain side agreements on environmental cooperation, supplementing FTAs, provide for strengthening the US counterpart's capacity to conduct trade EIAs.<sup>159</sup>

Under the EU's trade agreements concerned, the parties committed to exchanging views and information on the sustainability impacts of the respective trade agreement (based on individual or joint assessments)<sup>160</sup> or trade EIA methodologies and indicators;<sup>161</sup> or individually or jointly reviewing, monitoring, and assessing the impacts of the implementation of the respective agreement on sustainable development or the environment.<sup>162</sup>

Unlike the US and EU cases, only a few agreements concluded by Canada provide for trade EIAs. In essence, they focus on bilateral cooperation over environmental effects and EIAs of the trade agreement concerned.<sup>163</sup>

<sup>158</sup> See Final EIA on the US–Jordan FTA, n. 82 above, Annex III and p. 14.

<sup>159</sup> See, e.g., United States–Peru Environmental Cooperation Agreement, Lima (Peru), 24 July 2006, in force 23 Aug. 2009, Art. IV.2(i), available at: <https://www.state.gov/wp-content/uploads/2019/02/09-823-Pe ru-Environmental-Cooperation.pdf>; Environmental Cooperation Agreement between the Government of the United States of America and the Government of the Republic of Colombia, Washington, DC (US), 19 Apr. 2013, in force 28 June 2013, Art. IV.2(j), available at: <https://www.state.gov/wp-content/uploads/2019/02/13-628-Colombia-Environmental-Cooperation.pdf>.

<sup>160</sup> See, e.g., Free Trade Agreement between the European Union and the Republic of Singapore, Brussels (Belgium), 19 Oct. 2018, in force 21 Nov. 2019, Art. 12.10(a), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.294.01.0003.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.294.01.0003.01.ENG).

<sup>161</sup> See, e.g., Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, Hanoi (Vietnam), 30 June 2019, in force 1 Aug. 2020, Art. 13.14.1(b), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2020.186.01.0003.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.186.01.0003.01.ENG); Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part (EU–Armenia Comprehensive and Enhanced Partnership Agreement), Brussels (Belgium), 24 Nov. 2017, in force 1 June 2018, Art. 284.1(b), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22018A0126\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22018A0126(01)).

<sup>162</sup> See, e.g., EU–Armenia Comprehensive and Enhanced Partnership Agreement, n. 161 above, Art. 283; Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, Bridgetown (Barbados), 15 Oct. 2008, in force 29 Dec. 2008, Art. 230.3(vi), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22008A1030\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22008A1030(01)); Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, Brussels (Belgium), 26 June 2012, in force 1 Mar. 2013, Arts 279 and 280.6(d), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22012A1221\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22012A1221(01)); Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, Brussels (Belgium), 6 Oct. 2010, in force 1 July 2011, Art. 13.10, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22011A0514\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22011A0514(01)); Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, Kasane (Botswana), 10 June 2016, in force 10 Oct. 2016, Art. 103.7(b)(v), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.250.01.0003.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.250.01.0003.01.ENG).

<sup>163</sup> See Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part, Brussels (Belgium), 30 Oct. 2016, in force 21 Sept. 2017, Arts 22.4.1 and 24.12.1 (paras (a) and (d)), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2017.011.01.0023.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.011.01.0023.01.ENG); Canada–Chile Agreement on Environmental Cooperation, n. 155 above, Art. 10.7(d).

Last but not least, ongoing developments in international trade governance regarding greening efforts can and should be leveraged to revive previously stalled WTO discussions on trade EIAs with the aim of promoting the dissemination of trade EIA practices and providing related technical assistance to countries in need. Firstly, momentum can be generated by the recent significant intensification of WTO discussions on trade-related environmental issues, both under existing deliberative proceedings and through newly launched environmental initiatives on trade and environmental sustainability, plastics pollution, and fossil fuel subsidies.<sup>164</sup> It is noteworthy that as part of this WTO process, the African Group of 40-plus countries has proposed a number of principles to guide trade–environment discussions in a pro-development manner, including the principle that would require *ex ante* EIAs for ‘measures with a major global trade impact’.<sup>165</sup> Secondly, since the late 2000s (that is approximately after the period of in-depth WTO discussions on trade EIAs), environmental provisions in RTAs, including those between or among developing countries, have become more diverse, extending beyond mere environmental exceptions.<sup>166</sup> This may indicate a heightened global environmental awareness, arguably making states more prepared today to engage actively in trade EIAs than before. Overall, the resumption of the discussions in the WTO will enhance the role of this organization in both spreading best greening policymaking practices and addressing RTA issues within the multilateral trade framework.

The WTO could also explore the possibility of arranging EIAs for its trade negotiations, particularly with regard to their global and transboundary effects.<sup>167</sup> Unlike some previous *domestic* EIAs of certain WTO negotiations,<sup>168</sup> the idea here is to contemplate *international* assessments. In evaluating the impacts on the shared environment, such assessments would apply a transnational perspective to the subject matter and fill the gap for those participating members who lack the capability to conduct EIAs for WTO issues independently. Such an international approach, focusing on global and transboundary impacts, could also help to avoid or minimize potential criticism of intrusion into domestic environmental affairs.

#### 4. Conclusion

Trade EIAs are not just an analytical tool but also a crucial process involving multilayer interactions within the government, between the government and external stakeholders, and, where relevant, between negotiating parties. They provide assurance to policymakers and the public that proposed trade agreements will align

<sup>164</sup> See Shadikhodjaev, n. 10 above, pp. 34–7, 143–4.

<sup>165</sup> Communication from the African Group, ‘Principles Guiding the Development and Implementation of Trade-Related Environmental Measures’, WTO General Council et al., WTO Docs WT/GC/W/894, WT/CTE/W/255, G/C/W/830, IP/C/W/703, G/AG/W/239, 13 July 2023, para. 3.7, available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx).

<sup>166</sup> See Monteiro, n. 9 above, pp. 6–8.

<sup>167</sup> Shadikhodjaev, n. 10 above, p. 30.

<sup>168</sup> E.g., for domestic EIAs of the WTO Environmental Goods Agreement, see Government of Canada, n. 49 above; European Commission, n. 50 above. See also Section 3.1 of this article.

with environmental priorities. At the same time, they may be limited in making precise assessments, balancing transparency and confidentiality, fully addressing public concerns, and effectively influencing decision making.

Remarkably, none of the agreements that underwent a full assessment cycle in the US, Canada, and the EU was found to pose *serious* ecological risks to these assessing jurisdictions, whether from economically driven or regulatory factors, although this does not mean that the agreements had no environmental impact on them. Furthermore, the prospect of expanding green trade made the reviewed trade agreements even necessary for meeting environmental goals. While this underscores the general environmental supportiveness of trade, it does not eliminate the need for future EIAs, as each agreement is unique.

As environmental protection and climate change responses gain importance, trade EIAs must become a routine procedure everywhere, akin to the economic assessments many countries conduct for trade agreements. In this respect, the time-tested experience of the US, Canada, and the EU can provide useful benchmarks for governmental or commissioned assessments of environmental or broader sustainability impacts on the domestic environment and beyond. Global and regional trade regimes should play a greater role as platforms for disseminating expertise and fostering cooperation in this field. With these efforts, wider adoption of trade EIAs and expanded knowledge exchange may further refine and enhance their effectiveness.

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