

REGIONAL ECONOMIC AGREEMENTS AND MARINE RESOURCE CONSERVATION

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INTRODUCTION

Given the proliferation of regional economic agreements (REAs) and the many threats facing the marine environment, it is fitting that REAs be explored as a means for advancing marine resource conservation. Using REAs to advance marine conservation can benefit member countries' economies by helping to preserve economically important resources, and it can help offset the increased exploitation and degradation of marine resources that often accompany increased trade.

To investigate the potential for REAs to advance marine resource conservation, the author selected two REAs operating in Latin America, the Asia-Pacific Economic Cooperation (APEC) and the North American Free Trade Agreement (NAFTA), and studied their environmental and marine aspects. Three types of sources were used in the study: 1) in-person interviews with 21 high-level government officials from Chile and Mexico; 2) literature review, including official APEC and NAFTA documents; and 3) attendance at selected APEC and NAFTA negotiation meetings on marine topics.

APEC is an economic forum based on voluntary cooperation and activities. Currently, APEC has 21 member economies around the Pacific Rim, which accounts for about 50% of the world's economy. APEC is advancing to become a legal free trade agreement for the year 2010 in the case of the developed member economies and for the year 2020 for the rest of the members. On the other hand, NAFTA is a legally binding agreement that entered into force in 1994 between the governments of Canada, Mexico, and the United States. To address environmental concerns (which were primarily raised by U.S. NGOs), the parties created a parallel environmental cooperation agreement that entered into force at the same time as NAFTA. The agreement created the North American Commission for Environmental Cooperation (CEC), which implements environmental initiatives and works at the regional level to help prevent potential trade and environmental conflicts and to promote the effective enforcement of environmental law.

SUMMARY OF FINDINGS

Both APEC and the CEC conduct multiple projects designed to facilitate the sharing of knowledge and experience between participants, and such projects are useful for helping countries advance conservation efforts that they are motivated to undertake. Thus, when countries are interested in taking environmental steps that they understand will benefit them—for instance, eliminating marine pests that are threatening coastal resources—REAs can help them access the knowledge and technology that will help them take such

steps effectively and can assist with their implementation. This “facilitator” role is one that both APEC and NAFTA/CEC play, and interviewees view it as beneficial.

The second role that REAs can play in marine resource conservation can be described as that of “enforcer.” Literature and interviewee responses indicate that solving today’s environmental problems (both within and beyond the marine environment) requires an ability to enforce compliance with existing environmental regulations, and literature also stresses the need to harmonize environmental policies upwards at the regional level. With its current structure, APEC cannot play this role, although it may do so in the future when it becomes a free trade agreement, and NAFTA/CEC plays it to an extent. To begin with, NAFTA parties were effectively obligated to sign the agreement that created the CEC to address North American environmental issues—and, thus, the participants in the free trade agreement were committed to undertaking a certain amount of conservation work simultaneously and in a parallel manner with their trade liberalization agenda. NAFTA and the CEC also possess some enforcement and dispute resolution power, and literature suggests that the CEC has used one element of this, the establishment of factual records, to encourage compliance with existing domestic environmental laws. In general, interviewees and literature deem NAFTA/CEC to have been more effective at advancing conservation than APEC has, and find the difference to be due primarily to enforcement capabilities.

NAFTA and the CEC are advancing trade liberalization and conservation simultaneously, but research suggests that they need to work more closely together on overlapping trade-environment issues and to improve their methods for resolving trade-environment disputes. This study suggests that dispute resolution mechanisms—for both NAFTA Chapter 11 disputes and CEC rulings on environmental law compliance—are of limited usefulness to members. An internal document notes that the CEC and the Free Trade Commission (FTC) have failed to fulfill their responsibilities of cooperating with each other on issues such as Chapter 11-related conflicts. Improved collaboration in these areas might help clarify some of the trade-environment issues on which disputes center, or the parties may find it more useful to revamp their dispute resolution mechanisms altogether.

As the experience of Mexico demonstrates, developing countries may set ambitious environmental agendas, but their abilities to advance conservation will depend largely on their capacities to implement conservation activities and enforce environmental regulations. Economic growth will generally improve implementation and enforcement capacities, but countries cannot wait until they prosper to begin addressing environmental concerns. Interviewees acknowledge that REAs (or at least those REAs acting as environmental enforcers) must be able to hold countries accountable for meeting certain environmental standards, but they are wary of the enforcement of such standards. They fear that developed countries may use environmental standards as a pretext for protectionist practices, and they resist the use of sanctions as enforcement tools.

Two policy recommendations arise from these observations. First, REAs seeking to act as environmental enforcers should design enforcement mechanisms that are sufficiently

strong to motivate compliance while neither inviting the use of protectionist practices under the guise of environmentalism nor threatening developing countries with economic setbacks that might hinder their technological advancement or overall economic growth. Models such as that of the Chile-Canada Free Trade Agreement, which directs fines for environmental noncompliance to the development of solutions to problems around which the violations occurred, offer promising alternatives. Second, mechanisms such as the CEC's establishment of factual records can provide an opportunity to involve the public in environmental issues while encouraging compliance with environmental laws. Since factual records carry no threat of sanctions or other punitive actions, they seem to be less contentious than other dispute resolution procedures; furthermore, they allow NGOs and citizens to augment the enforcement powers of their governments.

Another laudable aspect of NAFTA is the way it considers certain multilateral environmental agreements (MEAs) within its legal structure and its conservation agenda. The rules of the Montreal Protocol, the Basel Convention, and CITES (three MEAs to which all member countries are signatories) take precedence over NAFTA rules should a dispute arise, and CEC project activities complement these MEAs and others (such as the Stockholm Treaty) by helping countries improve monitoring and enforcement of substances and species considered by these MEAs. Interviewee responses regarding the incorporation of MEAs into APEC and NAFTA/CEC suggest that further research may be necessary before strengthening the link between MEAs and REAs, and some APEC documents stress the need to give greater consideration to the relationship between APEC and ocean governance tools, including MEAs. Literature's focus on the lack of resolution surrounding potential conflict between trade-related MEA provisions and WTO rules reveals a need to resolve these questions on a global scale. Taking steps to incorporate MEAs into REAs could actually help to resolve this dispute by providing models of how the process works on a regional scale.

Whether acting as facilitators or as enforcers, REAs working to advance marine resource conservation will benefit from having strong institutional structures and mechanisms to encourage cooperation. The structures should ensure that high-level attention is devoted to marine issues (for instance, by specifying that environmental agendas be set by leaders and that ministers oversee their implementation), because such attention will lead to stronger commitments from countries and improve the chances of such commitments being fulfilled. Devoting a working group or similar structure to marine conservation issues, as APEC does, will also help ensure that an REA will have permanent technical capacity and institutional leadership on marine issues; otherwise, more sizable and immediate issues, such as terrestrial concerns, may overshadow marine ones, as they initially did in the CEC. Mechanisms for gathering information and making it easily accessible to participants—for instance, establishing databases or developing manuals—can also encourage cooperation and improve the capacity of countries to address environmental issues.

Interviewee comments and official documents from both APEC and the CEC also suggest that the agreements need to conduct more assessments in order to evaluate their conservation work and improve its effectiveness. Mechanisms such as the APEC's Study

Centre Consortium, which focuses academic attention on APEC issues, may provide a pool of expertise that can assist with assessment tasks. Some kind of formalized procedure for soliciting and considering these expert opinions will likely also be necessary. In addition, actors at the domestic, regional, and global levels should consider how they can make economic indicators better reflect environmental costs and values.

Both APEC and NAFTA/CEC have established agendas for addressing environmental issues, but their methods for implementing these agendas vary. Most importantly, the CEC approach to launching and funding environmental projects—delineating four programmatic areas and funding multiple ongoing projects within each one—represents a more comprehensive approach. By contrast, APEC, which considers project proposals from sponsoring countries on an annual basis, relies on the leadership and interest of member economy institutions to ensure that all agenda areas are addressed and that projects achieve continuity. This process does allow more room for innovation by providing countries with opportunities to launch marine conservation projects that are of particular interest to them, and interviewees seem to appreciate this aspect; however, changing procedures to allow for multi-year projects (perhaps within more permanent programmatic structures), and to launch important initiatives that no institution has championed, would likely improve the effectiveness of the APEC marine-related working groups.

Leadership is important in REAs acting as facilitators or as enforcers to advance marine resource conservation. In APEC, leadership from individual countries has been essential, particularly in the case of the ocean agenda advanced by Australia, Canada, South Korea, and the United States. If APEC had more comprehensive procedures for implementing its marine agenda and a staff dedicated to carrying out its marine program work, it would not need to rely so heavily on leadership from individual countries. At the same time, it is likely that REAs taking a purely facilitator approach to marine conservation (as APEC does) will, by definition, rely to great extent on such leadership, since their aim is to facilitate the transfer of resources and knowledge between countries. For REAs taking an enforcer approach (whether alone or in combination with a facilitator approach, as in the case of NAFTA/CEC), leadership should take the form of environmentally advanced countries setting environmental policy and enforcement standards that less advanced countries can emulate.

One theme that emerged from the interviews was that the benefit a country derives from its participation in the marine conservation work of an REA depends on the quantity and quality of resources they devote to that participation. Several interviewees express a desire for their governments to devote more resources—in areas including funding, staff time, planning, and institutional involvement—to the marine resource conservation elements of APEC and NAFTA/CEC. One clear recommendation for governments is that they adequately staff and fund the agencies responsible for environmental work related to REAs. Another is that they ensure that these agencies are working closely with the agencies responsible for REA economic work, so that their countries will have well-established positions and commitments to bring to REA negotiations on trade-environment topics. Forming alliances with wealthier countries, as Chile and Peru are

doing to sponsor APEC working group projects, can also help developing countries leverage relatively small investments. Some also note that developing competitive advantages, such as a public sector that responds efficiently to private investors, can help countries to benefit from their comparative advantages in different sectors or thematic areas and become more competitive within their regions.

Literature highlighting the importance of strong domestic institutions for translating capacity-building assistance into environmental progress supports the idea that countries must invest in their own institutions in order to reap the benefits of marine work undertaken by REAs. Other literature, including a CEC report, recommends that governments engaging in trade liberalization implement environmental policies—particularly those that restrict free-riding and require end-of-pipe pollution controls—to combat environmental problems that can be exacerbated by trade growth.

CONCLUSION

From fisheries depletion to invasive pests, there are many marine environmental problems that are exacerbated by trade and that, in turn, have economic implications. Given the transboundary nature of most of these problems, it is particularly appropriate for regional economic agreements to address them. The current explosion in regional economic agreements in Latin America and around the globe makes this an ideal time to shape new and existing REAs into tools for marine resource conservation. Doing so will require that the REAs adopt appropriate structures and mechanisms, such as those outlined in this report; that they determine how best to take regional action that complements global environmental governance; and that the REA member countries devote the necessary resources to their participation in REA marine conservation work. By taking such steps, REAs can help ensure that trade growth leads to marine environmental preservation rather than destruction and that ocean and coastal resources continue to provide economic and social benefits to member countries.

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