References to Trade Agreements

in International Environmental Agreements

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Cooperation with trade-related institutions

* Includes provisions that compel or encourage the Parties to cooperate with international organizations.
* Includes provisions that mention the possibility for the institution created to cooperate with other international institutions.
* Includes provisions identifying international institutions as a service provider (e.g. secretariat, etc.) for the agreement.
* Includes provisions on the participation of other institutions in the meetings/projects of the institution created, or allowing representatives from other institutions on a board/committee of the institution created, except when such an organization (e.g. EC/EU) replaces its member states or acts on their behalf (see also 10.01, 12).
* Cooperation with another international institution can be temporary.
* Reporting or communicating information to an organization is insufficient to establish cooperation (see 14.07) but the exchange of comments with another organization is considered cooperation.
* Excludes provisions on the fact that IOs can become member of the agreement (see 10.01 and/or 14.07).
* Excludes provisions on cooperation through/within (rather than with) an organization.
* Using data or standards from an organization is not sufficient to establish cooperation.
* Excludes cooperation with an international tribunal for dispute settlement.
* Excludes provisions merely asking other international institutions (not the ones created in the treaty) to cooperate.
* Excludes provisions dealing with membership/participation of integrated regional economic organizations (i.e. EU, EEC) in the institutions created

14.01.02.01 Cooperation with GATT-WTO

* General Agreement on Tariffs and Trade, World Trade Organization.

1994 International Tropical Timber Agreement, art. 14(1): “The Council shall make arrangements as appropriate for consultations and cooperation with [...] intergovernmental organizations, including the General Agreement on Tariffs and Trade (GATT) [...]”

14.01.02.02 Cooperation with UNCTAD

* UN Conference on Trade and Development.

2006 International Tropical Timber Agreement, art 15(1): “[...] the Council shall make arrangements as appropriate for consultations and cooperation with the United Nations [...] and specialized agencies, including the United Nations Conference on Trade and Development (UNCTAD)“

14.01.02.03 Cooperation with PTAs

* Preferential trade agreements or preferential trade areas.
* e.g. EEC, NAFTA, Mercosur.

1993 North American Agreement on environmental cooperation, art 10(6): “6. The Council shall cooperate with the NAFTA Free Trade Commission”

14.01.02.04 Cooperation with other trade institutions

* e.g. UN Economic Commissions.

2002 Framework Agreement on the Sava River Basin, art 5: “In realization of this Agreement, the Parties shall especially cooperate with: (…) The United Nations Economic Commission for Europe (UN-ECE).”

14.02.02 Implementation of trade-related agreements

* Includes provisions that incorporate the obligations of cited agreement.
* Includes commitments to implement the complete agreement or only some of its substantive obligations.
* Includes wordings such as “reaffirm their commitment to implement X”, “reconfirm their obligations under X”, “reiterate their commitments as established by X”, “recognize that the implementation of X is critical or important”, “ensure that their laws and practices are in harmony with X”, “should be guided by the obligations of X”, “should adopt laws in line with X”, “have the intention to fulfill its obligation under X”, “shall adopt laws to fulfill its obligations under X”, “reaffirm their rights and obligations under X”.
* “Recalling”, “recognizing” or “considering” the obligations of agreement, “affirming the importance of an agreement” or “acknowledging the adoption of an agreement” is not sufficient to be considered as a commitment to implement (see 14.07).
* Referring only to definitions found in an agreement or referring only to the objectives of an agreement is not sufficient, as they are not “substantive obligations”.
* Excludes obligation or commitment to accede, join or ratify a specific agreement (see 14.05).
* Excluded if implementation of political declaration or domestic decrees (not “international agreements”).
* Excludes provisions on respecting EU law (Community law) (excluded when in a context where it is equivalent to national law).
* Excludes, when an agreement is amending another agreement (or when considering such an eventuality), mere references to amendment clauses in the original agreement - amending an agreement involves “applying” the rules on how to amend the agreement, but not “implementing” the substance of the agreement itself (see 14.07 and/or 9.07).
* Excludes provisions inviting Parties (or ships, or companies, or whatever) to apply decisions / norms / standards / regulations decided by international bodies / agencies / commissions, as these are not “agreements” being implemented (see 14.07).
* Excludes procedural aspects (e.g. entry into force, notification) of amendment resolutions adopted by international bodies / commissions to amend an agreement (e.g. MARPOL and CITES amendments) (see 14.07).
* Excludes provisions merely extending in time the application of an agreement, or renewing it (see 8.04).
* Excludes provisions referring to rules of procedure in another agreement for application within a newly created organization (see 14.07).
* 2001 Convention of the African Energy Commission, preamble: “Reaffirming the provisions of the Treaty Establishing the African Economic Community.”

14.03.02 Prevalence of trade agreements

* Refers to the prevalence of an agreement (or only some of its obligations) over the environmental agreement (or only some of its obligations) in case of conflict or inconsistency.
* The prevalence can be conditional.
* Is considered as prevalence of agreements: “In the event of any inconsistency between a Party’s obligations under this Agreement and X other agreement, the Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the other agreement”.
* Is considered as prevalence: “nothing in this agreement shall be constructed to affect the existing rights and obligations of the Parties under the other agreement X” (this guides the interpretation of the current agreement but not the interpretation of the other agreement = asymmetric interpretation).
* A statement that is symmetric, claiming that two treaties are compatible, are not in conflict or that do not prevent the implementation of each other is not a statement on the prevalence.
* Excluded if implementation of political declaration or domestic decrees (not “international agreements”).
* Ignore statements on the absence of hierarchy between agreements, as there can nevertheless be an interpretive prevalence.
* 1994 Energy Charter Treaty, art 4: “Nothing in this Treaty shall derogate, as between particular Contracting Parties which are parties to the GATT, from the provisions of the GATT and Related Instruments as they are applied between those Contracting Parties.”

14.05.02 Accession or ratification to trade agreements

* Includes obligation or commitment to accede, join or ratify a specific agreement.
* Includes the obligation to be a Party of another agreement when a state wants to be a Party of an agreement.
* Includes if being a Party to this ‘other agreement’ is just one of several ways to qualify for becoming a Party to the agreement.
* Includes provisions stating that only Parties to the main agreement can become Party to a protocol.
* Includes provisions stating that Parties withdrawing from another agreement will be presumed having withdrawn from this agreement (or vice versa) (e.g. main agreement / protocol).
* Excludes provisions merely stating that any member of a universal organization (e.g. UN, FAO, ICJ, IAEA, UNESCO) or Party to a universal treaty (e.g. UN Charter, ICJ Statute) can become Party to the agreement (see 10.01, 14.07, etc.).
* Excludes provisions stating that only states from a particular region / grouping / organization can become parties to this agreement, if it does not involve being Party to some specific other agreement (see 10.01, 14.07).
* Excludes provisions creating exceptions from restrictive membership rules (e.g. ‘states that are not parties to agreement X can also become parties if Y’).
* To be distinguished from obligation / commitment to negotiate other / future agreements (see 9.11).
* 1977 Treaty on microorganisms patent procedure, art. 15(1): “Any State member of the International (Paris) Union for the Protection of Industrial Property may become party to this Treaty [...]”

14.06.02 Trade organizations as depositary or for registration

* Includes provisions selecting an organization as “depository” for the agreement, or instructing states to send ratifications / accessions / amendments / reservations to the said organization.
* Includes provisions defining the tasks / responsibilities of the depository, e.g. sending documents or copies of the agreement to member states and/or other organizations.
* Includes provisions regarding the registration of the agreement with organizations (e.g. regional organizations, FAO, UN).
* 1977 Treaty on microorganism patent procedure, art 19(1): “The original of this Treaty [...] shall be deposited with the Director General [of WIPO].”

14.07 Other references to trade institutions

* Excludes calls for cooperation, ratification, implementation and prevalence (see 14.01, 14.02, 14.03, 14.04, 14.05).
* A simple reference is the minimal requirement, including “Recalling X” in preamble.

14.07.02.01 Reference to GATT-WTO

* Includes GATT and WTO agreements, e.g. SPS and TBT agreements.
* Includes trade negotiation rounds, e.g. Uruguay Round.

1994 Energy Charter Treaty, preamble: “Having regard to the objective of progressive liberalization of international trade [...] as enunciated in the General Agreement on Tariffs and Trade and its Related Instruments”

14.07.02.02 Reference to UNCTAD

1983 International Tropical Timber Agreement, preamble: “Recalling resolutions 93(IV) and 124(V) on the Integrated Programme for Commodities adopted by the UN Conference on Trade and Development at its fourth and fifth sessions”

14.07.02.03 Reference to a preferential trade agreement

* PTAs include European Union (and other references to EEC, EEA, etc.), EFTA, NAFTA, CARICOM, Mercosur, Lomé and Cotonou Conventions, etc.
* “Regional economic integration organizations” are also considered as PTAs.
* Excludes agreements on commercial cooperation or investments

1979 EC-Senegal Fishing Agreement, preamble: “In the spirit of cooperation resulting from the Lomé Convention [...]”

14.07.02.04 Reference to other trade institutions

* Includes references to commercial bilateral agreements between Parties that are not free trade agreements or PTAs, for example treaties on investments or intellectual property.
* e.g. WIPO, UNCITRAL.
* 2004 Russia-Canada Agreement on cooperation for the destruction of chemical weapons, art XII(1): “The term "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, which was signed in Stockholm on July 14, 1967.”