

What's the Big Deal?

Understanding the
Trans-Pacific
Partnership

Bait-and-Switch

The Trans-Pacific Partnership's Promised
Environmental Protections do not Deliver

Jacqueline Wilson





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Bait-and-Switch

The Trans-Pacific Partnership's Promised Environmental Protections do not Deliver

Summary

The Trans-Pacific Partnership Agreement (TPP) negotiations concluded in October 2015. The 12 participating TPP countries, including Canada, signed the deal in February 2016.¹ Although the TPP's impact on Canada's trade performance is expected to be modest, or in some cases harmful, it is less well understood how the agreement will restrict government flexibility to regulate in many crucial policy areas, including environmental protection.

A few recent examples have brought to light how trade agreements constrain environmental policy. In February 2016, a World Trade Organization (WTO) dispute panel ruled that India's national solar program was illegal under the General Agreement on Tariffs and Trade (GATT 1994) because of its domestic technology quotas. Two years earlier, the local content requirements in Ontario's *Green Energy Act* were similarly found by the WTO to be illegal. In March 2015, a North American Free Trade Agreement (NAFTA) investment arbitration panel held that a company's rights were violated because the Canadian government adopted the decision of an independent environmental assessment panel not to approve a quarry project.

A close inspection of the text of the environment chapter (Chapter 20) reveals that the United States Trade Representative's (USTR) assurance that

it contains “the most robust enforceable environment commitments of any trade agreement in history” is a considerable overstatement.² The language in the chapter is generally weak and unenforceable. TPP parties are given discretion to decide whether and how to act on environmental issues. The chapter’s coverage of only central government laws is significant in federal states like Canada and Australia, where authority for environmental protection is divided between central and subnational governments.

The state-to-state dispute mechanisms in the TPP are unlikely to be enforced for environmental protection and provide little room for public participation. The citizen complaint mechanisms are very weak and there is no way for citizens to follow up on complaints after an initial response from the respondent TPP party.

Far from being a milestone for environmental protection, the TPP will not safeguard or promote effective environmental protection measures. The environment chapter is not nearly as enforceable as other rules in the agreement related to trade and investment, which, as other studies in this Canadian Centre for Policy Alternatives series explain, will impede governments’ right to regulate to protect the environment, public health, and cultural diversity.

Vague and discretionary requirements will not protect the environment

The primary reason why the TPP environment chapter will not sufficiently protect the environment is that the language is vague, leaving significant room for TPP member countries to exercise discretion about taking action to address environmental issues. No new environmental standards are set.

Article 20.3: General Commitments

Environmental protection measures vary widely between TPP member countries. Rather than encourage the adoption of high standards across the region, Article 20.3(2) of the environment chapter allows each party to determine “its own levels of domestic environmental protection and its own environmental priorities.”³ Article 20.3(5) provides states with further discretion to determine whether or how to investigate and prosecute violations of domestic environmental rules.

Investor–State Dispute Settlement

When the North American Free Trade Agreement (NAFTA) came into force in 1994, there was significant debate about its likely impact on jobs, energy, and sovereignty. The environmental movement of the day nearly scuttled the deal on fears that it would severely curtail the ability of governments to enact strong environmental protection and conservation policies. It was saved only by the last-minute inclusion of environmental and labour side-agreements, which have unfortunately proven extremely difficult to enforce.

Much less attention was paid at the time to an obscure investor–state dispute settlement (ISDS) provision in the NAFTA investment chapter. It established a process through which foreign investors could choose to settle disputes with government – related to policy, regulations, and other decisions – through binding private arbitration instead of national courts. ISDS grants investors guarantees of “minimum standards of treatment,” protection from direct and indirect expropriation resulting from government action and other broadly defined investor rights. The rights for foreign investors are broader than those provided to Canadian companies.

The number of ISDS cases has expanded exponentially since 2000, with high-profile examples including corporate challenges to anti-smoking legislation in Australia and Uruguay, a ban on hydraulic fracturing in Quebec, a government environmental assessment process in Nova Scotia, and, recently, the U.S. government’s decision to block the controversial Keystone XL pipeline. Foreign investors have targeted a broad range of government measures in North America, especially in the areas of environmental protection and natural resource management, that allegedly impaired their investments. Canada has faced 39 ISDS claims, more than any other developed country in the world. Since 2005, Canada has been hit by 70% of all NAFTA investor lawsuits.

Despite this bruising experience, the federal government insists on expanding ISDS in pending international trade agreements, including treaties with the European Union (CETA) and the U.S.-led Trans-Pacific Partnership (TPP). Critics of ISDS, whose ranks are growing, wonder why the government continues to give private, for-profit arbitrators the power to determine the legitimacy of public policy when we have one of the strongest legal systems in the world, protecting all investors regardless of nationality.

Source: Canadian Centre for Policy Alternatives

In other words, state sovereignty is treated as inviolable with regard to setting minimum levels of environment protection, while strong environmental measures that might interfere with trade and investment are exposed to challenge under the TPP’s investment chapter (Chapter 9).

Article 20.4: Multilateral Environmental Agreements

The TPP’s reliance on the current state of environmental law in each member country is also reflected in Article 20.4(1), which “affirms [the country’s]

commitment to implement the multilateral environmental agreements to which it is already a party.” There is no requirement for TPP parties to adopt any additional multilateral environmental agreements or uphold the standards in particular agreements to which it is not a party.

Article 20.5: Protection of the Ozone Layer

Article 20.5(1) leaves significant discretion to TPP member countries over the strength and breadth of any measures to address protection of the ozone layer by only committing parties to “take measures to control the production and consumption of, and trade in, [ozone depleting] substances,” rather than setting a particular environmental standard to be met.⁴ It is also doubtful that Article 20.5(2), which recognizes the importance of public participation in accordance with the law or policy of the TPP party, will in any way improve public participation in environmental decision-making.⁵

Article 20.6: Protection of the Marine Environment from Ship Pollution

The language in Article 20.6 is similarly problematic because each party commits to “take measures to prevent the pollution of the marine environment from ships,” but there is no commitment to adopt, maintain, or implement laws to meet a particular standard that would truly address the problem. Article 20.6(2) again only recognizes “the importance of public participation and consultation in accordance with [each TPP party’s] law or policy,” which will not require improved public participation.

Article 20.10: Corporate Social Responsibility

There is a significant equity issue raised by the radical difference between the strong, enforceable rights for investors in the investor-state dispute settlement (ISDS) scheme compared to the weak, unenforceable obligations imposed on investors in Article 20.10. The article on corporate social responsibility is essentially meaningless and imposes absolutely no mandatory requirements on corporations acting in other TPP countries. Article 20.10 asks each party to “*encourage* enterprises...to adopt *voluntarily*, into their policies and practices, principles of corporate social responsibility that are related to the environment” (emphasis added).⁶

Article 20.13: Trade and Biodiversity

The weak language of Article 20.13 is similar to Articles 20.5 and 20.6 and is unlikely to require any further action from a TPP party to protect biodiversity: each party “shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy.”⁷ Article 20.13(3) recognizes the importance of Indigenous and local community knowledge and practice in maintaining biodiversity, and Article 20.13(5) recognizes the importance of public participation, but again only in accordance with the party’s existing law and policy.

Article 20.14: Invasive Alien Species

Article 20.14 is vague and likely unenforceable. The parties “recognize that the movement of terrestrial and aquatic invasive species across borders through trade-related pathways can adversely affect the environment.”⁸ A TPP Environment Committee, to be established once the agreement comes into force, is to work with the TPP Committee on Sanitary and Phytosanitary Measures to identify cooperative opportunities to share information.⁹

Article 20.15: Transition to a Low Emissions and Resilient Economy

This article includes some of the weakest language in the environment chapter. It does not even promote or encourage action on climate change, let alone require it. The words “climate change” do not appear in the environment chapter and it is not explicit that “low emissions” refers to the greenhouse gas emissions listed in the United Nations Framework Convention on Climate Change. Instead, this article recognizes that “each Party’s actions to transition to a low emissions economy should reflect domestic circumstances and capabilities,” and states that the TPP countries shall cooperate to address matters of joint or common interest.¹⁰

The final version of this article is much weaker than the version released by Wikileaks in November 2013.¹¹ In the leaked version of the text, the article was titled “Trade and Climate Change.”¹² The parties were to acknowledge “climate change as a global concern that requires collective action” and recognize the importance of implementing their respective commitments under the United Nations Framework Convention on Climate Change.¹³

This earlier version of the chapter also had the parties:

- Recognize that trade and climate change policies should be mutually supportive;¹⁴
- Note efforts in a range of international fora to “increase energy efficiency; develop low-carbon technologies and alternative and renewable energy sources; promote sustainable transport and sustainable urban infrastructure development; address deforestation and forest degradation; reduce emissions in international maritime shipping and air transport; improve monitoring, reporting, and verification of greenhouse gas emissions; and develop adaptation actions for climate change”;¹⁵
- Agree to discuss best practices “in designing, implementing, and operating mechanisms to reduce carbon emissions, including market and non-market measures”;¹⁶ and
- Recognize their “respective commitment in APEC to rationalize and phase out, over the medium term, inefficient fossil fuel subsidies that encourage wasteful consumption, while recognizing the importance of providing those in need with essential energy services.”¹⁷

None of these provisions appear in the final text of the TPP.

Article 20.16: Marine Capture Fisheries

Article 20.16 provides more guidance for TPP parties than other articles in the environment chapter. However, other than the mandatory requirement to reduce specific subsidies, the parties are given broad discretion to address these serious environmental issues.

The scope of Article 20.16 is similar to Articles 20.5, 20.6, and 20.13, in that TPP member countries agree to “recognize the importance of taking measures aimed at the conservation and the sustainable management of fisheries.”¹⁸ Each party “shall seek to operate a fisheries management system” that regulates marine wild capture fishing.¹⁹

TPP countries also only commit to “promote the long-term conservation of sharks, marine turtles, seabirds, and marine mammals, through implementation and effective enforcement of conservation and management measures.” A list of suggested measures for parties to take is included, such as a prohibition on finning, but only “as appropriate.”²⁰

Article 20.16(5) does provide a mandatory requirement to control, reduce, and eventually eliminate all subsidies that contribute to overfishing

and overcapacity if the fishing negatively affects fish stocks “that are in an overfished condition,”²¹ or the subsidies are to fishing vessels that are listed by the flag state or a relevant Regional Fisheries Management Organization (RFMO) or Arrangement for illegal, unreported, and unregulated (IUU) fishing.²² For all other subsidies that contribute to overfishing or overcapacity, the parties are only required to make “best efforts” to refrain from introducing new, or extending or enhancing existing, subsidies.²³

The parties have three years to eliminate subsidies for overfishing and overcapacity that negatively impact fish stocks already in an overfished condition. Vietnam has negotiated an additional two-year period to eliminate these subsidy programs.²⁴ There is no time period for eliminating subsidies relating to fishing vessels listed by the flag state or relevant RFMO pursuant to paragraph 5(b) of this article.

Each party shall notify the other parties of subsidies covered by Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures²⁵ and shall, “to the extent possible,” inform the parties about other subsidies not covered by this agreement, including fuel subsidies.²⁶

Each party also commits to several actions to combat IUU fishing, including to “support monitoring, control, surveillance, compliance and enforcement systems,” to “implement port State measures,” and to strive to act consistently with RFMO standards, even if it is not a member.²⁷

Article 20.17: Conservation and Trade

Article 20.17(2) provides that each TPP member country shall “adopt, maintain and implement laws, regulations and any other measures to fulfil its obligations under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES).” However, the rest of the article is vague and discretionary. For example, Article 20.17(3) does not set an environmental standard and instead requires the parties “to promote conservation and to combat the illegal take of, and illegal trade in, wild fauna and flora.” Parties shall undertake several actions, including “joint activities on conservation issues of mutual interest,” but only “as appropriate,” and the parties only “endeavour to implement, as appropriate, CITES resolutions.”²⁸

Article 20.17(5) requires parties to “take measures to combat...the trade of wild fauna and flora that...were taken or traded in violation of that Party’s law or another applicable law.”²⁹ The enforceability of Article 20.17(5) is weakened by the following paragraph, which highlights each party’s “right to exercise administrative, investigatory and enforcement discretion” and to

“make decisions regarding the allocation of administrative, investigatory and enforcement resources.”³⁰ Footnote 25 provides that each party retains the right to determine what constitutes “credible evidence.”

Coverage of the environment chapter is narrow

While the language of many TPP environment chapter articles is vague and discretionary, its scope is also narrowed by the definition of “environmental law” in Article 20.1, which is limited to any “statute or regulation” of the central government of each TPP party.³¹ There appears to have been no effort to expand the scope of protections or include subnational governments in the negotiations of the environment chapter.

Under the General Commitments section, Article 20.3(4) provides that “no Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.” A TPP party wishing to raise issues regarding another party’s subnational laws can only “request a dialogue” pursuant to Article 20.12(9).

For Canada, environmental law is defined as “an Act of the Parliament of Canada or regulation made under an Act of the Parliament of Canada that is enforceable by action of the central level of government.”³² This definition is restrictive because the federal government is not solely responsible for the protection of the environment in Canada; environmental protection is not a specifically assigned power and relevant powers are divided in sections 91 and 92 of the *Constitution Act, 1867*.³³

The scope of this definition has varying importance depending on the division of power in each TPP country. For instance, the inclusion of only central government laws in Australia is significant because, as in Canada, environmental laws are made and enforced by both national and subnational authorities.³⁴ In contrast, most environmental regulation in Peru should be covered by a definition that includes central government laws.³⁵

Environment chapter only concerns environmentally detrimental actions that impact trade

A further weakness of the TPP environment chapter is that it does not regulate a TPP party’s environmentally detrimental actions in general; rather,

it seeks to prevent such action only if it can be demonstrated to affect trade between the parties.

The general commitment in Article 20.3(4) is that a party shall not “fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.” Article 20.12(9) similarly provides for a dialogue regarding a sustained or recurring course of action or inaction by a subnational level of government only if it affects trade or investment between the parties. This threshold for compliance is weaker than the requirement in Article 22(1) of the North American Agreement on Environmental Cooperation (NAAEC), the environmental side-agreement of the NAFTA, which allows a party to challenge actions that show a “persistent pattern of failure by that other Party to effectively enforce its environmental law,” but does not require that the complaint show how those actions affect North American trade or investment flows.³⁶

The TPP’s restriction on enforcement is repeated in several specific provisions in Chapter 20. Article 20.5: *Protection of the Ozone Layer* provides that a party shall be deemed in compliance with this provision if it “maintains the measure or measures listed in Annex 20-A implementing its obligations under the Montreal Protocol.” However, footnote 5 provides that a violation of Article 20.5 is not established unless the challenging party can also show that “the other Party has failed to take measures to control the production and consumption of, and trade in, certain substances that can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment, *in a manner affecting trade or investment between the Parties*” (emphasis added).

Similarly, a footnote to Article 20.6: *Protection of the Marine Environment from Ship Pollution* requires that a challenging party show “the other Party has failed to take measures to prevent the pollution of the marine environment from ships in a manner affecting trade or investment between the Parties.”

Article 20.9: *Public Submissions* suggests that submissions from a person in a TPP country about that country’s implementation of the chapter should “explain how, and to what extent, the issue raised affects trade or investment between the Parties.”³⁷ Footnote 23 to Article 20.17: *Conservation and Trade* requires the complaining country to demonstrate how another party to the TPP has failed to “fulfil its obligations under *CITES* in a manner affecting trade or investment between the Parties.”

Notably, this language requiring that a violation of the chapter affect trade or investment between the parties is not reproduced in Article 20.16: *Marine Capture Fisheries*. As discussed above, this article imposes more stringent requirements on the TPP parties than other articles in the environment chapter. The restriction for enforcement is also not reproduced for Article 20.13: *Trade and Biodiversity* or Article 20.14: *Invasive Alien Species*, but these articles are vague and likely unenforceable in any event.

The long path to state-to-state dispute resolution

Enforcement of the environment chapter will ultimately require political will by TPP party governments. Similar approaches to state-to-state dispute settlement involving environmental protections in other trade agreements have not worked in the past and there is no reason to believe that this chapter will be better enforced.

For example, several U.S. environmental groups have documented the reluctance of the U.S. government to use the enforcement mechanism under its other free trade agreements. In the case of Peru, the United States has failed to enforce environmental protections despite very clear evidence of illegal logging contrary to the terms of the U.S.-Peru Free Trade Agreement.³⁸

The Environment Committee established by Chapter 20 of the TPP consists of senior government representatives or their designees from each party and is therefore not at all independent.³⁹ The committee's role includes providing reports on implementation of the chapter, discussing cooperative activities under the chapter, and resolving matters referred to it under Article 20.21: *Senior Representative Consultations*.⁴⁰

Consultations

There is a significant focus on consultations to resolve disputes between parties to the TPP. The state-to-state dispute settlement mechanism in the environment chapter provides for three levels of consultation between disputing parties before a matter can be forwarded to an arbitration panel.

Article 20.20(2) states that “a Party may request consultations with any other Party...regarding any matter arising under this Chapter.” If the consultation under Article 20.20 does not resolve the matter, a consulting party may request a further consultation with the TPP party's Environment Committee representative.⁴¹ Finally, a party may request a third consultation

between ministers.⁴² All consultations are confidential and without prejudice to the rights of any party in future proceedings.⁴³ There is no requirement for the public to be notified that these consultations are taking place.

Once these three stages of consultation are completed, Article 20.23 allows parties to request more consultation under Article 28.5, or seek the establishment of a panel under Article 28.7 in Chapter 28: *Dispute Settlement*.⁴⁴ However, before the matter can be sent to a dispute panel, Articles 20.23(3) and (4) create an additional barrier to adjudication by requiring a party, for a matter arising under articles 20.3(4) or 20.3(6), to “consider whether it maintains environmental laws that are substantially equivalent in scope to the environmental laws that would be subject to the dispute.” If a responding party considers that the requesting party does not maintain equivalent environmental laws, the parties shall discuss the issue during consultations.⁴⁵

Dispute Settlement in Chapter 28

If a TPP member country that has completed the three levels of consultation decides to forward the matter to arbitration, there are significant issues with the rules outlined in the dispute settlement chapter (Chapter 28).

Article 28.9(5) provides that in disputes related to the environment chapter (Chapter 20), the two panelists, but not the chair of the panel, must have expertise or experience in environmental law or practice.

Public participation in arbitration is not assured because the panel is only required to “consider requests” from non-governmental entities to participate. Public participation is also limited to non-governmental entities in the territory of one of the disputing parties, and must take the form of a written submission only.⁴⁶

Public participation is further limited by disclosure requirements that only require a party to the TPP to “make its best efforts” to release its written submissions and oral statements as soon as possible after the documents are filed.⁴⁷ The article contemplates some documents not being released to the public until just before the final report of the panel is issued.⁴⁸

When the panel ultimately provides a final report to the disputing parties, it is to be released to the public, subject to the protection of confidential information. However, there is also a requirement that the panel is not allowed to disclose “which panellists are associated with majority and minority opinions.”⁴⁹

Articles 28.19 and 28.20 govern implementation of the final report. Compensation and suspension of equivalent benefits to remedy non-compliance

are temporary measures; full implementation of the agreements through elimination of the non-conformity is preferred.⁵⁰ Although this remedy appears fairly stringent, its utility is limited by the unwillingness of countries to use these state-to-state dispute resolution mechanisms to address environmental protections in trade agreements. On the other hand, governments have challenged environmental policy in other countries before WTO dispute resolution panels on many occasions, claiming such measures violate trade and investment protections.

Citizen complaint provisions are ineffective

The citizen complaint provisions in the environment chapter provide little detail and are unlikely to be an effective way to enforce the requirements of the TPP. For example, Article 20.8 only requires each party to “make use of existing, or establish new, consultative mechanisms, for example national advisory committees, to seek views on matters related to the implementation of this Chapter.”⁵¹

A person of a party may only challenge its own government’s implementation of the chapter and may only make written submissions.⁵² “Person of a Party” is defined in Article 1.3: *Initial Provisions and General Definitions* as a “national or an enterprise of a Party.” The TPP party is required to respond “in a timely manner” to a submission, although that time frame is not defined, and to “make...its responses available to the public.”⁵³

There are few other details about the citizen complaint process in the environment chapter. Article 20.9(2) requires each party to “make its procedures for the receipt and consideration of written submissions readily accessible and publicly available.” There are also broad guidelines for considering eligible submissions, including that they “explain how, and to what extent, the issue raised affects trade or investment between the Parties,” and that the submission “not raise issues that are the subject of ongoing judicial or administrative proceedings.”⁵⁴

If the person from a party does make a written submission under Article 20.9(1), there is no opportunity to follow up on or enforce the complaint. Article 20.9(4) only provides that another TPP party⁵⁵ may request that the Environment Committee “discuss the submission and written response.” Escalation of an environmental issue is limited to state-to-state consultations.

This process is weaker than the citizen suit provisions under the NAAEC, which has itself been strongly criticized as too difficult to enforce. Despite

its failings, the NAAEC process at least produces a factual record in certain circumstances, which is not contemplated in the TPP.⁵⁶

Conclusion

The TPP environment chapter will not protect the environment. The requirements of the parties with respect to protection of the environment are vague and discretionary, frequently only requiring governments to *take measures* to address environmental problems. The scope of the environment chapter is also restricted by its limited application to the laws of the central government of each TPP country.

The mechanisms to enforce the environment chapter are also flawed. Where state-to-state dispute mechanisms exist in other trade agreements, governments have been reluctant to take other countries to arbitration on matters of environmental protection. If the provisions are used, the complaining TPP party must generally show that the respondent party's environmentally detrimental actions affect trade or investment, which triggers a slow consultation process leading up to potential state-to-state dispute settlement. The citizen suit provisions are also minimal and unlikely to be effective in enforcing the protections in the environment chapter.

There is little evidence that the TPP "includes the most comprehensive environmental commitments...ever negotiated in a trade agreement," as expressed by the USTR. At best, the TPP represents the status quo for environmental protection, and will not offer any safeguard against environmentally destructive provisions found elsewhere in the agreement.

Notes

1 The twelve parties to the TPP are Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States of America, and Vietnam. Canada already has free trade agreements in place with four of these countries (Chile, Mexico, Peru, and the United States).

2 See USTR website for the TPP: <https://ustr.gov/tpp/#preserving-the-environment>

3 Article 20.3(2): General Commitments. All references to the text of the TPP use the version of the text published on the website of the New Zealand Ministry of Foreign Affairs and Trade, which is available at: <https://www.mfat.govt.nz/en/about-us/who-we-are/treaty-making-process/trans-pacific-partnership-tpp/text-of-the-trans-pacific-partnership/>

4 Article 20.5(1): Protection of the Ozone Layer

5 Article 20.5(2): Protection of the Ozone Layer

6 Article 20.10: Corporate Social Responsibility

7 Article 20.13(2): Trade and Biodiversity

8 Article 20.14(1): Invasive Alien Species

9 Article 20.14(2): Invasive Alien Species

10 Article 20.15(2): Transition to a Low Emissions and Resilient Economy

11 “Secret TPP Treaty: Environment Chapter for all 12 Nations.” Wikileaks. January 15, 2014. Citing: Trans-Pacific Partnership Environment Working Group Chairs. “Environment Chapter Consolidated Text.” Trans-Pacific Partnership Agreement negotiations. November 24, 2013. Available at: <https://wikileaks.org/tpp2/static/pdf/tpp-treaty-environment-chapter.pdf>.

12 Article SS.15, p 15, “Secret TPP Treaty: Environment Chapter for all 12 Nations”

13 Article SS.15 (1), p 15, “Secret TPP Treaty: Environment Chapter for all 12 Nations”

14 Article SS.15 (2), p 15, “Secret TPP Treaty: Environment Chapter for all 12 Nations”

- 15** Article SS.15 (3), p 16, “Secret TPP Treaty: Environment Chapter for all 12 Nations”
- 16** Article SS.15 (4), p 16, “Secret TPP Treaty: Environment Chapter for all 12 Nations”
- 17** Article SS.15 (6), p 16, “Secret TPP Treaty: Environment Chapter for all 12 Nations”
- 18** Article 20.16(1): Marine Capture Fisheries
- 19** Article 20.16(3): Marine Capture Fisheries
- 20** Article 20.16(4): Marine Capture Fisheries
- 21** Article 20.16(5)(a): Marine Capture Fisheries
- 22** Article 20.16(5)(b): Marine Capture Fisheries
- 23** Article 20.16(7): Marine Capture Fisheries
- 24** Article 20.16(6): Marine Capture Fisheries and footnote 18
- 25** *Agreement on Subsidies and Countervailing Measures*. World Trade Organization. Available at: https://www.wto.org/english/docs_e/legal_e/24-scm.pdf.
- 26** Article 20.16(11): Marine Capture Fisheries
- 27** Article 20.16(14): Marine Capture Fisheries.
- 28** Article 20.17(3): Conservation and Trade
- 29** Another applicable law is defined in footnote 26 as the law of the jurisdiction where the take or trade occurred and is only relevant to whether the take or trade was illegal.
- 30** Article 20.17(6): Conservation and Trade
- 31** Article 20.1: Definitions.
- 32** Article 20.1: Definitions
- 33** *The Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5, ss 91, 92.
- 34** Article 20.1: Definitions; Jon Carson and Robyn Glindemann. “Environmental Law and Practice in Australia: Overview.” *Global Guide 2015/2016: Environment*. Thomson Reuters. Available at: <http://global.practicallaw.com/1-502-8908>.
- 35** Alberto Delgado, Alberto Ventura and Sandra Lock. “Environmental Law and Practice in Peru: Overview.” *Global Guide 2015/2016: Environment*. Thomson Reuters. Available at: <http://global.practicallaw.com/8-602-1506>.
- 36** *North American Agreement on Economic Co-operation*. Article 22(1). Commission for Environmental Cooperation. Available at: <http://www.cec.org/about-us/NAAEC>.
- 37** Article 20.9(2)(d): Public Submissions
- 38** “The Trans-Pacific Partnership and the Environment: An Assessment of Commitments and Trade Agreement Enforcement.” Center for International Environmental Law. November 2015. At pp 4–5. Available at: <http://www.ciel.org/wp-content/uploads/2015/11/TPP-Enforcement-Analysis-Nov2015.pdf>.
- 39** Article 20.19(2): Environment Committee and Contact Points
- 40** Article 20.19(3): Environment Committee and Contact Points
- 41** Article 20.21(1), (2): Senior Representative Consultations
- 42** Article 20.22: Ministerial Consultations

- 43** Article 20.22(3): Ministerial Consultations
- 44** Article 20.23(1): Dispute Resolution
- 45** Article 20.23(4): Dispute Resolution
- 46** Article 28.13(e): Rules of Procedure for Panels
- 47** Article 28.13(d)(i): Rules of Procedure for Panels
- 48** Article 28.13(d)(ii): Rules of Procedure for Panels
- 49** Article 28.18: Final Report
- 50** Article 28.19: Non-Implementation – Compensation and Suspension of Benefits and Article 28.20: Compliance Review
- 51** Article 20.8(2): Opportunities for Public Participation
- 52** Article 20.9(1): Public Submissions
- 53** Article 20.9(1): Public Submissions
- 54** Article 20.9(2)(d) and (e): Public Submissions
- 55** A Party is defined as any State or separate customs territory for which this Agreement is in force in Chapter 1, Article 1.3 of the TPP.
- 56** *North American Agreement on Economic Cooperation*. Article 15. Commission for Environmental Cooperation. Available at: <http://www.cec.org/about-us/NAAEC>.



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