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국제학석사학위논문

The Environmental Disciplines of Regional Trade Agreements:

**An in-depth analysis on relevant RTA
environmental provisions**

지역무역협정에서의 환경규범:

RTA 에서의 환경조항 연구

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**The Environmental Disciplines of
Regional Trade Agreements:**

**An in-depth analysis on relevant RTA
environmental provisions**

A Thesis Presented by

Soojin Sim

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Abstract

The Environmental Disciplines of Regional Trade Agreements: An in-depth Analysis on relevant RTA Environmental Provisions

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Previously, measures or regulations for environmental protection were considered to have significant restrictions on free trade. However, the discussions on environment continue in the RTA negotiations, and its importance increases day by day. Over 85% of the RTAs that had been reported to the WTO and had come into force containing environmental provisions. Under these circumstances, this study will analyze and examine environmental provisions of the RTAs of developed countries and developing countries and suggest policy implications for the future RTA environment negotiations.

This paper will begin by briefly explaining the background of the rise of trade and environment issues at the multilateral level. Process of how advanced country and developing country have developed its environmental provisions in their RTAs so far and the core environmental provisions in each country's RTAs will be followed by. Moreover, this research attempts to compare two models, those of advanced countries-led RTAs with developing countries-led RTAs, and find out the implications among them. After all, this thesis introduces the USMCA's environment provisions as a future standard of environmental provisions. Recommendations to the multilateral trading system and recommendations to the Korean FTAs will be made in the last part.

By conducting this study, the aim is to show what role the environmental provisions in the RTAs can play in expanding environment-friendly trade negotiations and what direction should the discussion on trade and environment move forward in the RTAs and the multilateral trading system, examining the highly advanced environmental provisions of the most recent and comprehensive trade agreement, the USMCA. Furthermore, it is crucial to understand how a country and its trade partners can benefit from developing environmental provisions in their trade negotiations.

Keywords: RTA(s); Environment Chapter; Environmental Provision; Environmental Protection; Trade Liberalization; Trade Agreement

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Abbreviations

| | |
|----------|--|
| APEC | Asia Pacific Economic Cooperation |
| CTE | WTO Committee on Trade and Environment |
| CTESS | WTO Committee on Trade and Environment Special Session |
| DDA | Doha Development Agenda |
| EFG | Environmental Friends Group |
| EFTA | European Free Trade Agreement |
| EGA | Environmental Goods Agreement |
| EMIT | Environmental Measures and International Trade |
| EU | European Union |
| FTA | Free Trade Agreement |
| GATT | General Agreement on Tariffs and Trade |
| MEAs | Multilateral Environmental Agreements |
| MERCOSUR | Mercado Comun del Sur (Southern Common Market) |
| MTS | Multilateral Trade System |
| NAFTA | North American Free Trade Agreement |
| OECD | Organization for Economic Co-operation and Development |
| RTA | Regional Trade Agreement |
| TPP | Trans-Pacific Strategic Economic Partnership |
| TREND | Trade & Environment Database |
| UNCED | United Nations Conference on Environment and Development |
| USMCA | United States–Mexico–Canada Agreement |
| WTO | World Trade Organization |

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Introduction

Economic development and growth had previously been central to the nation's decision-making process. Accordingly, urbanization and industrialization have been rapid, resulting in environmental destruction problems affecting the quality of human life. In this context, the concept of "Environment Protection" and "Sustainable Development" has come to the attention of the international community.

Previously, measures or regulations for environmental protection were considered to have significant restrictions on free trade, and free movement of goods and services between countries and have also been considered to have detrimental effects on the environment, with the development of manufacturing.

Although the World Trade Organization (WTO) is not an organization for environmental purposes and the main objective of the WTO is to enlarge and expand trade by eliminating or mitigating various trade barriers and the discussions on 'environment' and 'trade' have been recognized as incompatible values for a long time, the WTO recognized the possibility of trade and environment compatibility by including the importance of sustainable development in the Preamble of 'Marrakesh Agreement Establishing the World Trade Organization', stating that "WTO seeks to expand the production of and

trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development¹.”

However, the multilateral trading negotiations on environmental issues are at a standstill and there seems to be little chance of reaching a consensus in the near future. Both environment measures and trade liberalization should be adjusted to the situation of each country, considering the differences between developed and developing countries. However, in the WTO system, different viewpoints of developing countries and developed countries are further intensified and are difficult to narrow down the gap.

Therefore, bilateral interpretation is necessary. The discussions on environment continue in the RTA negotiations, and its importance increases day by day. The North American Free Trade Agreement (NAFTA), which went into effect in 1994, is the first example of the RTA, including environmental provisions in its trade negotiation, and since then, advanced countries such as

¹ The Preamble of ‘Marrakesh Agreement Establishing the World Trade Organization

the EU, Canada and New Zealand have been active in including environmental provisions in their RTA.

Developing countries are also being active in negotiating the environment in the RTA, recently. Over 85% of the RTAs that had been reported to the WTO and had come into force containing environmental provisions. Under these circumstances, this study will analyze and examine environmental provisions of the RTAs of developed countries and developing countries and suggest policy implications for the future RTA environment negotiations.

1. Trade and Environment Discussion in the multilateral trading system

1.1 Trade and Environment in the GATT system

Both Multilateral Environmental Agreements (MEAs) and trade organizations have started to stress the linkage of trade and environment in the multilateral forums. The discussions on trade and environment in the multilateral trading system began with the Stockholm Conference on Human Environment in 1972. As for the preparation process of the conference, Environmental Measures and International Trade (EMIT) was installed in

November 1971. All the GATT Contracting Parties, wishing to participate in the EMIT could participate and the meeting shall be held only at the request of the Contracting Parties. However, it was never held until 1990, because there were no requests from States².

At the 1972 Stockholm Conference on the Human Environment, the GATT published a report called “Industrial Pollution Control and International Trade”, which opened international discussions on trade and environment³.

Meanwhile, in the Tokyo round, attention was paid to the fact that environmental measures could become trade barriers. In 1982, many developing countries expressed concerns about the products prohibited in developed countries continue to be exported to developing countries due to environmental hazards or the health and safety of humans, animals and plants and discussed these issues at the GATT Ministerial Conference. However, in 1989, the Working Group on the Export of Domestic Prohibited Goods and Other Hazardous Substances was established and the European Free Trade Agreement (EFTA) Member States have requested EMIT meetings in 1991, and

² Choi, Byung - Chul, "Environmental Trade Regulation Measures by Multilateral Negotiation", Journal of Social Sciences, University of Ulsan. 5, No. 1, 1995, p.3

³ World Trade Organization (WTO), 2004, “Trade and Environment at the WTO.”

the EMIT Group has agreed to start full-fledged discussions on the impact of environmental measures and regulations on trade⁴.

Furthermore, the 1987 report of the World Commission on Environment and Development, *Our Common Future* formed the recognition that environmental problems are transnational and they can only be resolved through international cooperation and actions. And this recognition reinforced through the Rio Earth Summit of 1992. The Rio Declaration agreed in its Principle 4 that “environmental protection shall constitute an integral part of the development process”, and it may be inferred that environment considerations should be reflected when promoting economic development including trade negotiations. The Rio Declaration agreed in its Principle 12 that “trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade”. Moreover, agenda 21 at the 1992 conference, declares that “the international economy should provide a supportive international climate for environment and development goals by; a) promoting sustainable development through trade liberalization, and (b) making trade and environment mutually supportive”.

⁴ WTO, *Trade and Environment* at WTO, op.cit. p. 4.

After the 1992 Rio conference, much of the effort on trade and environment focused on the action at the multilateral level, through the completion of Uruguay Round, the formation of the WTO and the launch of the Doha Round in 2001⁵.

1.2. Trade and Environment in the WTO system

Still, discussions on trade and environment were sporadic in the GATT negotiations until the completion of Uruguay Round in the early 1990s. The discussion of trade and environment developed into the content of sustainable development through the Uruguay Round in the 1990s, and the United States led the "Green Round" which links trade and environment, was raised as a future negotiating agenda.

The Preamble of Marrakesh Agreement Establishing the World Trade Organization⁶, signed in Marrakesh in 1994, included the importance of

⁵ George, Clive. "Environment and Regional Trade Agreements." OECD Trade and Environment Working Papers, February 2014, 7

⁶ The Preamble of Marrakesh Agreement Establishing the World Trade Organization states that

: "and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the

sustainable development which means the WTO system has provided a basis for initiating discussions on sustainable development and the link between trade and environment has been formulated at the WTO level⁷. Moreover, the WTO showed an effort to institutionally establishing a committee regarding trade and environment by launching WTO Committee on Trade and Environment (CTE).

1.3. Discussions addressed by WTO CTE

Accordingly, the CTE was established by the 1994 Marrakesh Ministerial Decision on Trade and Environment in order to “1) identify the relationship between trade measures and environmental measures in order to promote sustainable development and to 2) make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system.”⁸

objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,”

⁷ World Trade Organization (WTO), 2004, “Trade and Environment at the WTO.”

⁸ WTO CTE https://www.wto.org/english/tratop_e/envir_e/wrk_committee_e

After reviewing the following 10 agenda items, the recommendation on the necessity of amending the norms of the Multilateral Trade System (MTS) for environmental protection was agreed to be submitted to the Ministerial Conference in Singapore. In the course of discussions, and agenda items 1(Trade rules, environment agreements, and disputes), 3(How taxes and other environmental requirements fit in), 6(Environment and trade liberalization), and 8(Intellectual property) on the agenda were emphasized and discussed mainly in the conference.

< Table 1> 10 Agenda Items under Discussion at the WTO CTE⁹

| | |
|---------------------|---|
| Item 1 and 5 | Trade rules, environment agreements, and disputes |
| Item 2 | Environmental protection and the trading system |
| Item 3 | How taxes and other environmental requirements fit in |
| Item 4 | Transparency of environmental trade measures |
| Item 6 | Environment and trade liberalization |
| Item 7 | Domestically prohibited goods |
| Item 8 | Intellectual property |
| Item 9 | Services |
| Item 10 | The WTO and other organization |

Since then, the WTO CTE meeting has been held periodically and continuously, but progress in additional discussions on each agenda is absent as participants continue to adhere and maintain their existing positions on the main agendas.

Following the Doha Development Agenda (DDA) negotiations in November 2001, multilateral discussions on trade and environment began to take place as environmental and development agendas were included. For this

⁹ Ibid.

negotiation, the Ministerial Conference established the CTE Special Session (CTESS).

The agenda discussed at CTESS¹⁰ is as follows; “1) The relationship between WTO regulations and specific trade obligations as stipulated in multilateral environmental agreements, 2) Procedures for regular exchange of information between the Secretariat of the Multilateral Environmental Agreements and the relevant WTO committees, and 3) Mitigation or elimination of tariffs and non-tariffs on environmental goods and services.”

Following the Doha Declaration, the liberalization of environmental goods became a major trade issue, and the Environment Goods Agreement (EGA) was discussed through the Special Meeting of the WTO CTESS.

1.3.1 Environmental Goods and Services

In 1992, through United Nations Conference on Environment and Development (UNCED)’s Rio Declaration on Environment and Development,

¹⁰ WTO, Trade and Environment at WTO, op.cit. p. 9.

trade measures for environmental objective was approved with international consent, establishing a basic direction for linkage between trade and environmental problem. Since 1998, the Organization for Economic Co-operation and Development (OECD) has been working to create a basic framework for trade liberalization in environmental goods and services.

The discussion of the WTO on the environmental goods and services was referred to in Para 31(iii) of the WTO DDA Ministerial Declaration in 2001, mentioning its objectives of “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.”

In 2012, Asia Pacific Economic Cooperation (APEC)’s tariff reduction target for environmental goods has followed by. APEC member economies have agreed to cut the total of 54 environmental products (based on the HS Code 6 units) to 5% of the executive tariff rate by 2015 (see Table 2).

<Table 2> APEC Tariff Reduction Target Environmental Goods

| Product Category | Main Products |
|--|--|
| Environment-friendly Products | 441872 |
| Air Management Sector | 840420, 840490, 841960, 841989, 842139, 902610 |
| Waste, Hazardous Waste and Recycling | 840290, 840410, 841780, 841790, 847420, 847982, 847989, 847990, 851410, 851420, 851430, 851490 |
| Renewable Energy Sector | 840690, 841182, 841919, 841990, 841199, 841290, 850490, 850164, 850231, 850239, 850300, 854140, 903289 |
| Wastewater Management and Portable Water Treatment | 842121, 841939, 842129, 842199, 854390 |
| Natural Hazards Management | 901580 |
| Environmental Monitoring Analysis and Evaluation Equipment | 902620, 902680, 902690, 902710, 902720, 902730, 902750, 902780, 902790, 903149, 903180, 903190, 903290, 903300, 901380, 901390 |

Source: Korea Environment Industry Institute

At the WTO level, the WTO CTE is continuing to develop discussions

on environmental goods. In particular, the fourth WTO ministerial meeting held in Doha, Qatar, focused on matters related to the reduction and elimination of tariffs and non-tariff barriers at an appropriate level for environmental goods and services, with the adoption of environmental measures. Accordingly, the Environmental Goods Agreement (EGA) negotiation was launched in November, 2014. By December 2016, the Environmental Friends Group (EFG)¹¹ has been promoting a multi-country trade agreement that seeks to reduce tariffs on 153 environmental goods (see Table 3).

¹¹ (Environmental Friends Group) Korea, the United States, the European Union, Japan, Australia, Canada, New Zealand, Norway and Switzerland

<Table 3> Ten WTO Environment Products Agreement Major Products

| Sector | Main Products |
|--|---|
| Air pollution Management | Filter / Purifier, Activated Carbon, Chromatograph, Gas / Soot Analyzer, Gas Leak Detector, etc. |
| Waste Treatment | Waste incinerator, distillation / rectifier, crusher / crusher, sorting / sorting / washing machine, conveyor belt, etc. |
| Wastewater Treatment | Upstream sewer, tap, cock, valve, liquid pump, water filtration and purifier, nonwoven fabric, water-free urinal, sludge dryer, etc. |
| Environment Restoring and Purification | Bridge, electric soil heating, land surveying equipment, soil recovery system, anti-erosion mat, foot etc. |
| Noise and Vibration Elimination | Industrial silencer, Agglomerated cork, Soundproofing mineral material / product, Glass insulation unit, Noise meter etc. |
| Renewable Energy | Geothermal pumps, wind turbines, gearboxes, hydroelectric turbines, steam and gas turbines, solar cells, modules and panels, heat exchangers, alternators, etc. |
| Energy Efficiency | LED lighting, electric hybrid, hydrogen fuel car, lithium ion battery, fuel cell, switch for smart grid, converter, insulation etc. |
| Environmental Monitoring | Electron microscope, thermometer, pyrometer, flow rate and liquid level gauge, pressure gauge, gas / soot |

| | |
|-----------------------|---|
| | analyzer, spectrometer, automatic thermostat etc. |
| Resource Efficiency | Recyclable materials (plastic, rubber waste / scrap, Waste paper, etc.) and biofuel extraction equipment, biodiesel, etc. |
| Eco-friendly Products | Bicycle & Parts, Motorcycle, Solar Stove, Vegetable textile fibers, etc. |

Source: Changes in the trade environment due to climate change issues (Chang, 2016)

However, there is currently no consensus among member countries on the exact definition of environmental products and the scope of their selection. In particular, it is difficult to clearly distinguish environmental products because the differences in position between developed and developing countries are extensive and the criteria for judging industrial and environmental benefits among countries are also ambiguous.

The action to promote and facilitate trade in environmental goods and services has been materialized, especially in the WTO DDA environmental negotiations. The reason why DDA is having a hard time determining the scope of environmental products is that there is no clear definition of environmental products, and there is a big difference in the definition of environmental products that developed and developing countries comprehend. Developing

countries continue to raise the issue of general usage of environmental goods and adhere to the basic stance of minimizing the scope of environmental goods. This is also due to the burden of opening up to all member countries from the perspective of developing countries.

In particular, China has been defensive in the APEC trade and environment debate and the WTO Environmental Goods Agreement. China, for instance, opposed the collective cap on the list of APEC environmental products in 2012. In addition, the WTO EGA, which was aimed at reaching a conclusion by the end of 2016, failed to reach an agreement on a list of eco-friendly products in December 2016 because China presented unsavory products at the last minute, according to Turkey's Nihat Jay Bekhez, Minister of the Economy. Jake Corbin, vice president of the U.S. Trade Association, also criticized China for losing opportunities for environmental products¹².

However, China, which has been uncooperative in trade and environmental discussions in the multilateral system, is now showing

¹² Newsis, Cha, Eui Young, 46 countries including US and EU, failed to agree on WTO environment friendly product list. Date of search: 2018.11.10

[http://www.newsis.com/view.html?ar_id=NISX20161205_0014559452&cID=10101&pID=10100#imadnews]

ambivalent and contradictory views to actively develop environmental products and resolve environmental pollution issues through RTAs.

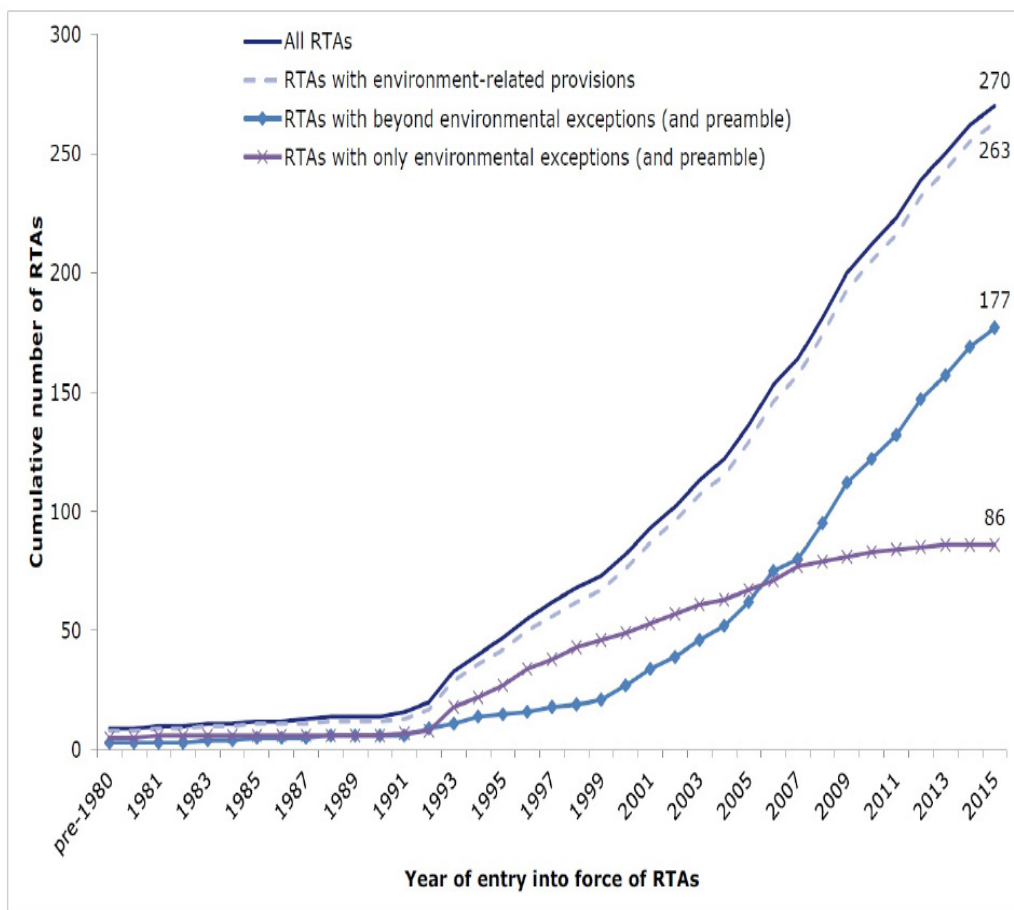
In short, after the launch of the WTO, there has been a steady stream of discussions on trade and environment, but there has not been a visible agreement in the international community. The progress of discussions and actions taken on trade and environment was somehow limited in the multilateral forums, as the WTO Doha negotiations progressed slowly. Particularly, different position in trade and environment discussion between advanced and developing countries have become major stumbling blocks. Developed countries such as the U.S. and the EU have raised concerns about the environmental problems and people's quality of life and kept continuously appeal to the rest of the world that the trade regulations for environmental protection should be introduced. They also supported the development of the "Green Round" to link trade measures with the environment protection. On the other hand, developing countries like China have maintained their position, recognizing environment as part of a strong protectionist non-tariff barrier disguised largely by developed countries and as a contradiction to the WTO objective.

2. The background of trade and environmental discussions in RTAs

On the other hand, the RTA has benefits of resolving environmental issues faster and more efficiently than multilateral agreements. Environmental Provisions in the RTAs go beyond the WTO mandate and the RTAs can provide useful models and experiences for dealing with environmental issues¹³. In consequences, the incorporation of environmental provisions in RTAs has assumed increasing importance in the global effort to achieve sustainable development. A number of RTAs are now started to include environmental provisions and these provisions made a number of countries to negotiate environmental engagements that go beyond what has been discussed multilaterally.

¹³ Monteiro, José-Antonio (2016) : Typology of environment-related provisions in regional trade agreements, WTO Staff Working Paper, No. ERSD-2016-13, World Trade Organization (WTO), Geneva

<Figure 1> Evolution of RTAs with provisions explicitly mentioning environment



Source: Monteiro (2016)¹⁴

¹⁴ Monteiro, José-António (2016) : Typology of environment-related provisions in regional trade agreements, WTO Staff Working Paper, No. ERSD-2016-13, World Trade Organization (WTO), Geneva

The RTAs accelerated since the 1990s, along with the establishment of WTO, have also begun to reflect this trend to link trade and environment. Environmental provisions in RTAs reveal an upward global trend. The number of RTAs containing provisions go beyond environmental exceptions has shown steady increase since 2005. The OECD (2007a) working paper identifies four primary reasons for governments to deal with environmental issues in RTAs, “1) to contribute to the overarching goal of sustainable development, 2) to ensure a level playing field among Parties to the agreement, 3) to enhance cooperation in environmental matters of shared interest, and 4) to pursue an international environmental agenda.”¹⁵

Discussions on the environment are continuing in RTA negotiations, and the frequency of inclusion of environmental problems is increasing and its contents are also getting more intense.

¹⁵ Organization for Economic Cooperation and Development (OECD), 2007. “Environment and Regional Trade Agreement,” OECD Publishing.

<Table 4> Trends in RTAs including Environmental Measures

| Year | Number of FTAs analyzed | Frequency | Average frequency |
|-------------|--------------------------------|------------------|--------------------------|
| By 2007 | 9 | 28 | 3.1 |
| 2008 | 14 | 61 | 4.4 |
| 2009 | 18 | 86 | 4.8 |
| 2010 | 15 | 59 | 3.9 |
| 2011 | 11 | 71 | 6.5 |
| 2012 | 10 | 78 | 7.8 |
| In total | 77 | 383 | 5.0 |

Source: OECD (2014)¹⁶

It is easy to conclude that all 77 FTAs in effect by 2012 include environmental measures and that various forms of environmental measures have appeared on average 5.0 times.¹⁷

There are many reasons to include environmental regulations in regional trade agreements; contributing to sustainable development, providing a

¹⁶ Organization for Economic Cooperation and Development (OECD), 2014. "Environment and Regional Trade Agreement," OECD Publishing.

¹⁷ Jung, Bok-Young, and Keun-Yeob Oh. "Environmental Issues and Negotiation Strategies in Korea's Foreign Trade Agreements." Korea Trade Review 40, no. 4 (2015): 311-30.

level playing field, strengthening environmental cooperation on joint interests between the parties, and the benefits of resolving environmental issues faster and more efficiently than multilateral agreements.¹⁸

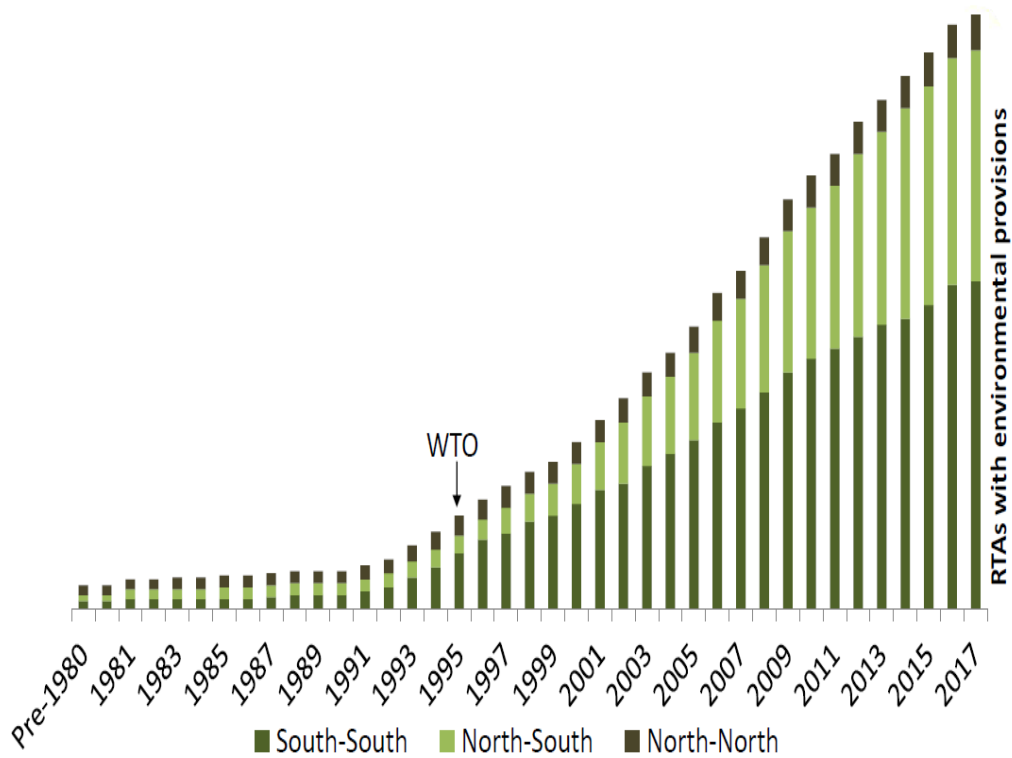
The North American Free Trade Agreement (NAFTA), which entered into force in 1994, is a representative example of an FTA, including environmental provisions. Developed countries such as the EU, Canada, and New Zealand have been active in including environmental provisions in their FTAs.

In developing countries, they tend to be very passive in linking the trade environment in multilateral negotiations, while they actively include environmental provisions in bilateral or regional RTAs. This is presumably because developing countries are under pressure to open up to all member states in multilateral negotiations, but because RTAs are bilateral, there are more opportunities to discuss other issues besides industrial ones. Furthermore, they are also active in FTA environmental agreements because they are more useful in solving common regional environmental problems. 284 RTAs in force

¹⁸ Organization for Economic Cooperation and Development (OECD), 2007. "Environment and Regional Trade Agreement," OECD Publishing.

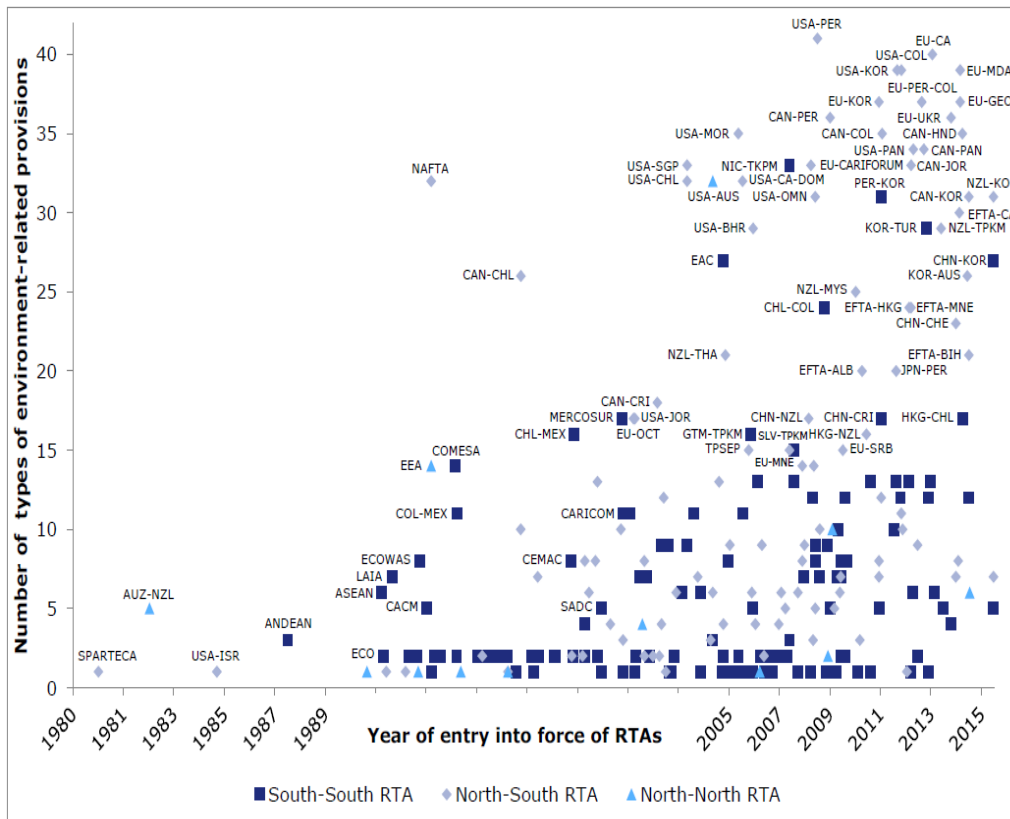
notified to GATT/WTO and 278 RTAs (98%) include environment related provisions. (See Figure 2)

<Figure 2> Evolution of RTAs' Environmental Provisions



Source: OECD Workshop on RTA in Chile

<Figure 3> Evolution of the number of types of environment-related provisions in RTAs



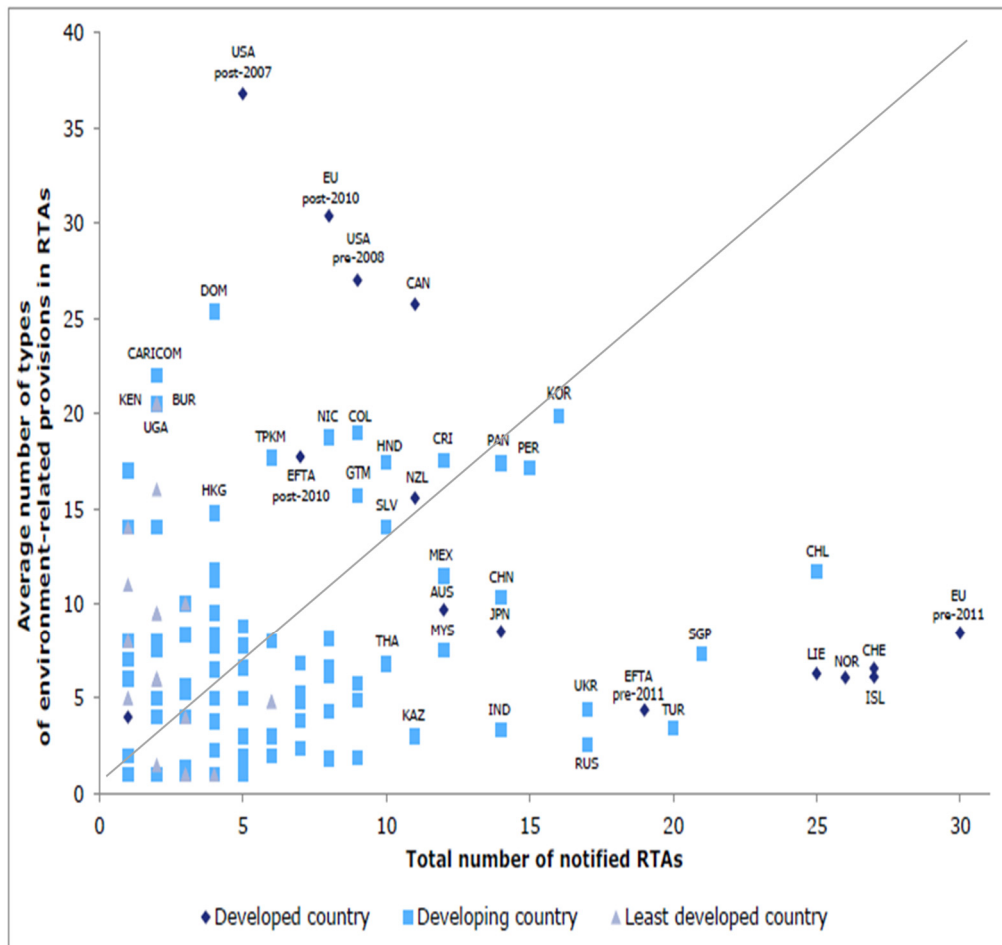
Source: Monteiro (2016)¹⁹

¹⁹ Monteiro, José-Antonio (2016) : Typology of environment-related provisions in regional trade agreements, WTO Staff Working Paper, No. ERSD-2016-13, World Trade Organization (WTO), Geneva

The position on whether or not to include environmental provisions can change over time and depends on the counterpart countries. There are only 9 RTAs between advanced countries and developing countries that have environmental provisions. The RTAs between advanced countries and developing countries which contains environmental provisions accounts for 53% and the RTAs between developing countries takes up 42%.

Accordingly, the RTAs which have the most diverse number of types of environmental provisions are agreements negotiated between developed and developing countries. RTAs signed between developing economies contain fewer types of environmental provisions. Developing countries have also been including environmental provisions into their trade agreements negotiated with other developing countries with acceleration. Therefore, this study will mainly focus on the RTAs between advanced countries and developing countries, and the RTAs between developing countries.

<Figure 4> Average number of types of environment-related provisions in RTAs by country



Source: Monteiro (2016)²⁰

²⁰ Ibid.

More and more advanced countries are actively incorporating environmental provisions in their RTAs (See Figure 4). In general, agreements containing environmental provisions are mostly signed by the US, EU and Canada. The US, EU, Canada, and New Zealand are the promoters of the integration of environment and sustainable development provisions into RTAs, with most their signed RTAs including environmental provisions²¹.

²¹ US

: 2002 Trade Act

EU

: 2006 EU Sustainable Development Strategy

Canada

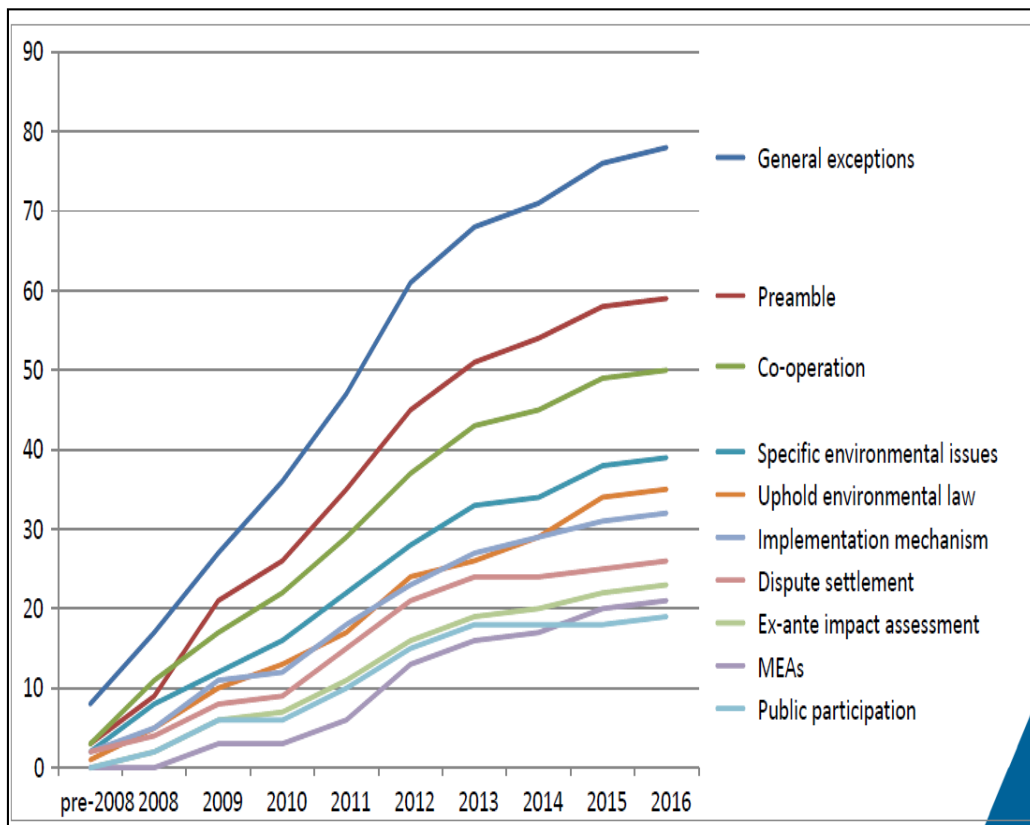
: 2001 Environmental Assessment Framework for Trade Negotiations

New Zealand

: The 2001 Framework for Integrating Environment Standards and Trade Agreements

3. Main contents of environmental agreement in the RTA system

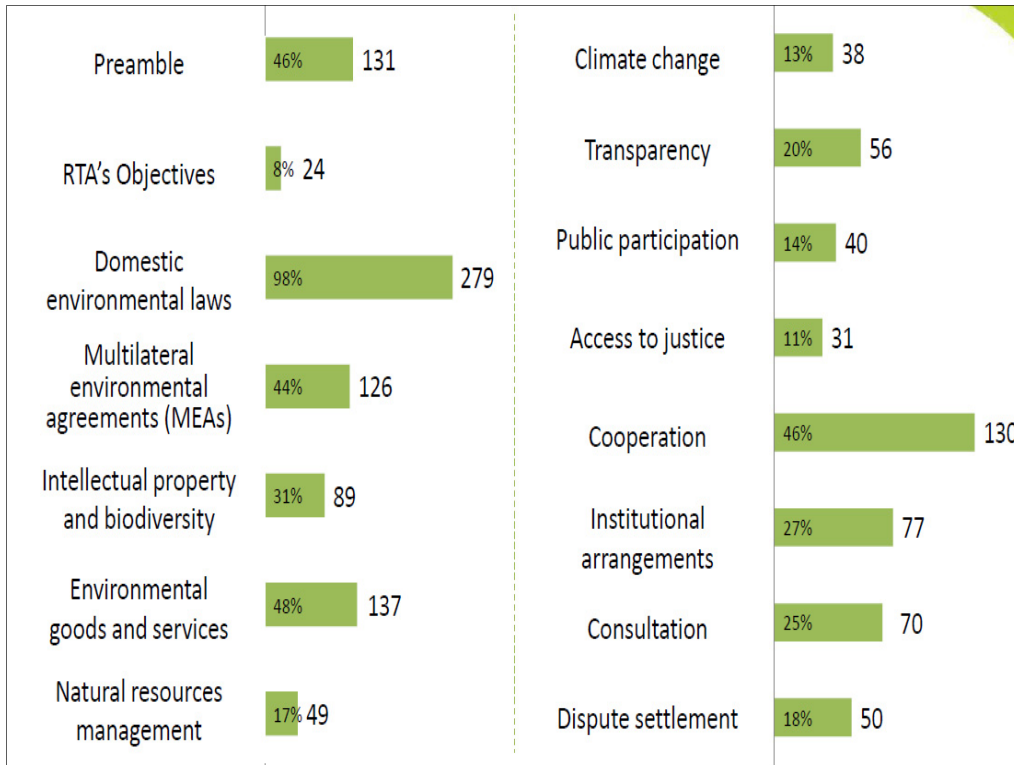
<Figure 5> Evolution of environmental provisions in RTAs



Source: OECD based on George (2014a; 2014b)²²

²² George, Clive. 2014. "Environment and Regional Trade Agreements." OECD Trade and Environment Working Papers.

<Figure 6> Types of environment-related provisions



Source: Monteiro (2016)²³

Figure 5 and 6 shows the types of environmental provisions that are frequently used. In order to find out the implication of environmental provisions in the RTAs, 12 environmental measures were extracted by referring to the environmental measures presented in the 11 environmental measures proposed

²³ Monteiro, José-Antonio (2016) : Typology of environment-related provisions in regional trade agreements, WTO Staff Working Paper, No. ERSD-2016-13, World Trade Organization (WTO), Geneva

by the OECD²⁴ and the WTO²⁵ working papers.

- ① A reference in Preamble
- ② Environmental Cooperation
- ③ MEA
- ④ Institutional Arrangement
- ⑤ Environment goods and services
- ⑥ Coverage of specific environmental issues
- ⑦ Environmental impact review
- ⑧ Effective enforcement of environmental laws, regulations, and measures
- ⑨ Public participation
- ⑩ Public submission
- ⑪ Consultation
- ⑫ Dispute settlement

²⁴ George, Clive. 2014. “Environment and Regional Trade Agreements.” OECD Trade and Environment Working Papers.

General and specific exceptions based on GATT, A reference in Preamble, Environmental cooperation, More substantive environmental provisions, Coverage of specific environmental issues, A commitment to uphold environmental law, Implementation Mechanism, Dispute Settlement, Associated ex-ante impact assessment, Public participation and Specific provisions on MEAs

²⁵ Monteiro, José-Antonio (2016) : Typology of environment-related provisions in regional trade agreements, WTO Staff Working Paper, No. ERSD-2016-13, World Trade Organization (WTO), Geneva

And this study used the Trade & Environment Database (TREND), which examines almost 300 different categories of environmental provisions in approximately 700 trade agreements signed since 1947²⁶. And this study tried to extract 12 environmental provisions with its sub-items in order to find out tendency of environmental provisions in RTAs.

1 Preamble refers to the environment

2-1 Environment Cooperation_ joint scientific coop

2-2 Environment Cooperation_ Exchange of Information

2-3 Environment Cooperation_ Negotiations of environmental agreements

2-4 Environment Cooperation_ Technical Assistance and transfer

3 MEA

4 Institutional Arrangements

5 EGS

6-1 Specific Environmental Issues_ Fisheries

6-2 Specific Environmental Issues_ Forestry

6-3 Specific Environmental Issues_ Energy

6-4 Specific Environmental Issues_ Climate Change

7 Environmental impact assessment of the agreement

8-1 Enforcement_ Binding obligations

8-2 Enforcement_ Non-binding obligations

9-1 Public Participation_ adoption of environmental measures and in environmental impact assessment

9-2 Public Participation_ implementation

²⁶ TREND Analytics, <https://klimalog.diegdi.de/trend>

10 Public Submissions

11 State-State_ Consultations

12-1 State-State DS

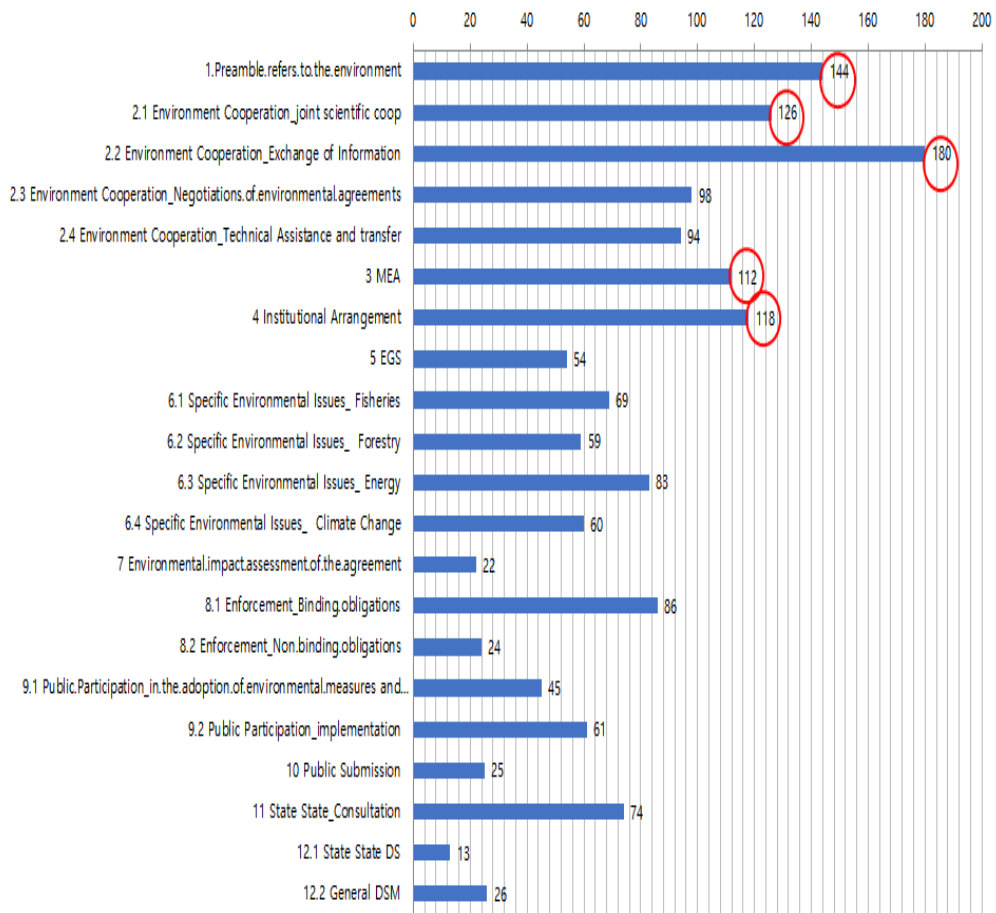
12-2 General DSM

3.1 Characteristics of Environmental Sector in Recent RTA Implementation

An increasing number of countries have legalized the environmental promotion. It enables predictable and consistent RTAs. The U.S. Trade Act 2002 and Europe's sustainable development strategy are legitimate examples of FTA enforcement.

Countries are expanding the field of environmental cooperation. The U.S.-Panama FTA has a separate Environment Cooperation Agreement, and the U.S.-Peru FTA has an Environmental Cooperation Committee. In the process of RTA negotiations, democratic procedures such as guaranteeing public participation are emphasized. Many countries use voices of civic groups as their bargaining strategy. South Korea also reflected these public participation rules in the environment provision of the Korea-U.S. FTA. Moreover, recent RTAs in advanced countries include new environmental issues such as fisheries subsidies and forestry issues.

<Figure 7> Types of environmental provisions frequently used in RTAs



Source: Computation based on TREND analytics

Figure 7 shows that the environmental cooperation has been most frequent, and the inclusion of environmental protection and sustainable development in its preamble and provisions regarding multilateral environment agreements (MEA) are followed by. And the dispute settlement procedures provisions are rarely used.

4. Comparative analysis by country

And this paper extracted 10 developing countries' RTAs and divided them into two parts; one with the RTAs with advanced countries and with the RTAs with developing countries and attempted to analyze its tendency and frequency of the use of environmental provisions.

<Table 5> Comparative Analysis by Country

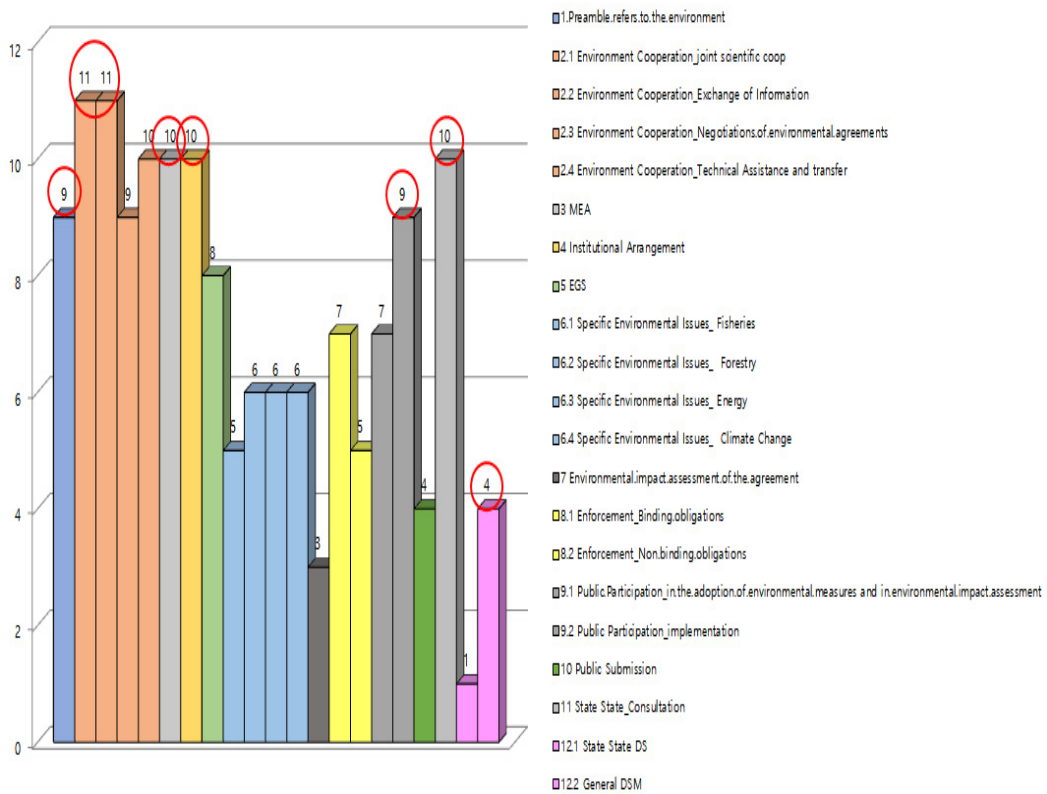
| | Developing Country | Type of Partner Country | Partner Country |
|-----------|------------------------|-------------------------|---------------------------|
| 1 | Vietnam | Advanced | EC |
| | | Developing | Korea |
| 2 | Georgia | Advanced | EC |
| | | Developing | Turkey |
| 3 | Peru | Advanced | US |
| | | Developing | MERCOSUR |
| 4 | Honduras | Advanced | Canada |
| | | Developing | Peru |
| 5 | Central America | Advanced | EFTA |
| | | Developing | Mexico |
| 6 | Ukraine | Advanced | Canada |
| | | Developing | Montenegro |
| 7 | Malaysia | Advanced | New Zealand |
| | | Developing | Pakistan |
| 8 | ASEAN | Advanced | Australia and New Zealand |
| | | Developing | India |
| 9 | China | Advanced | Switzerland |
| | | Developing | Singapore |
| 10 | Columbia | Advanced | US |
| | | Developing | Costa Rica |

<Figure 8> 10 developing countries' environmental provisions in RTAs

| TradeAgreement | Year | 1 | 2.1 | 2.2 | 2.3 | 2.4 | 3 | 4 | 5 | 6.1 | 6.2 | 6.3 | 6.4 | 7 | 8.1 | 8.2 | 9.1 | 9.2 | 10 | 11 | 12.1 | 12.2 | sum |
|--|------|---|-----|-----|-----|-----|---|---|---|-----|-----|-----|-----|---|-----|-----|-----|-----|----|----|------|------|-----|
| Vietnam 877_EC Vietnam_2016 | 2016 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 0 | 1 | 19 |
| TPP 899_Transpacific Partnership_2016 | 2016 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 18 |
| Georgia 866_EC Georgia_2014 | 2014 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 17 |
| Peru 645_Peru US_2006 | 2006 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 1 | 0 | 1 | 1 | 0 | 1 | 1 | 1 | 1 | 0 | 1 | 17 |
| Honduras797_Canada Honduras_2013 | 2013 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 16 |
| Central America 864_Central America EFTA_2013 | 2013 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 15 |
| Ukraine 855_Canada Ukraine_2016 | 2016 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 14 |
| Malaysia 598_Malaysia New Zealand_2009 | 2009 | 1 | 1 | 1 | 1 | 0 | 1 | 1 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 11 |
| ASEAN 66_Association of Southeast Asian Nations Australia New Zealand FTA (AANZFTA)_2009 | 2009 | 0 | 1 | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 9 |
| China 862_China Switzerland_2013 | 2013 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 8 |
| Colombia 967_Colombia US_Environment | 2013 | 0 | 1 | 1 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 7 |
| Colombia 805_Colombia Costa Rica_2013 | 2013 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 |
| Central America 949_Central America Mexico_2011 | 2011 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 4 |
| Honduras 919_Honduras Peru_2015 | 2015 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| ASEAN 70_Association of Southeast Asian Nations India_2009 | 2009 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| China 228_China Singapore_2008 | 2008 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| Peru 606_MERCOSUR Peru_2005 | 2005 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Vietnam 913_Korea Vietnam_2015 | 2015 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Malaysia 599_Malaysia Pakistan_2007 | 2007 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia 456_Georgia Turkey_2007 | 2007 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ukraine 833_Montenegro Ukraine_2011 | 2011 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24 |

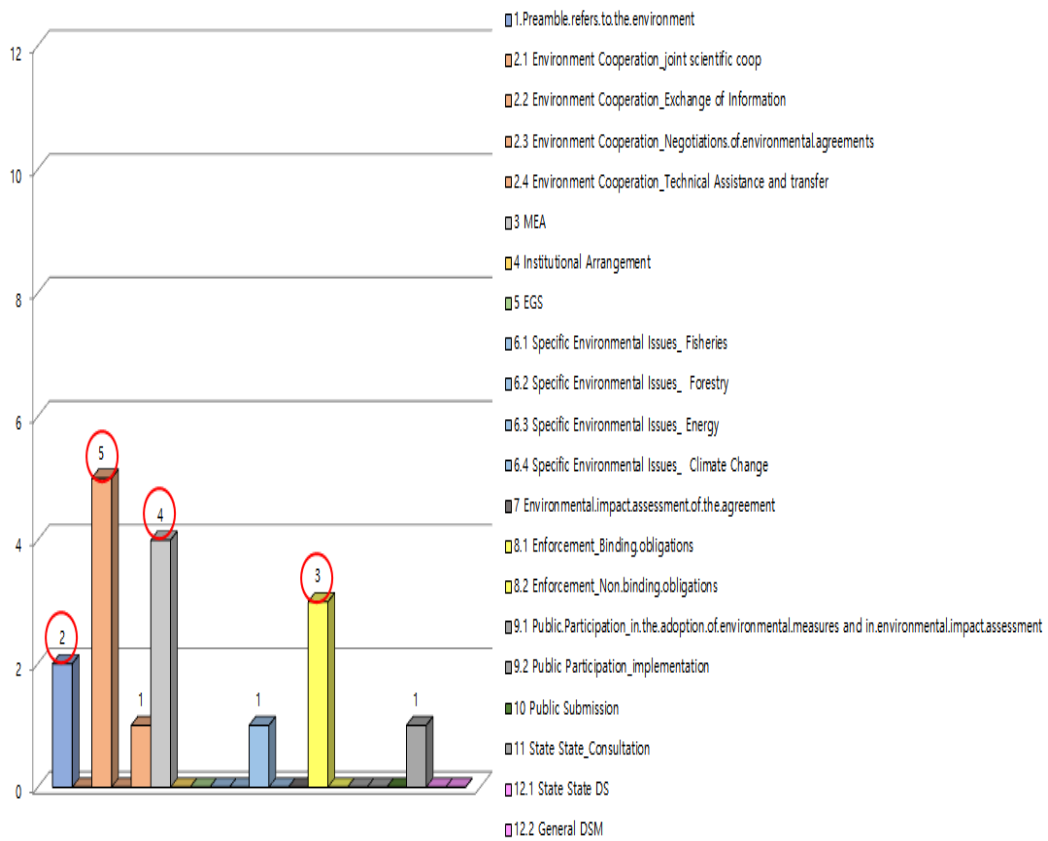
Source: Computation based on TREND analytics

<Figure 9> Advanced – Developing (AD) Model



Source: Computation based on TREND analytics

<Figure 10> Developing – Developing (DD) Model



Source: Computation based on TREND analytics

<Table 6> Inclusion of RTAs' environmental provisions

| RTAs-Environment Provisions | | | | | | | | | | | | | |
|-----------------------------|------|---|---|---|---|---|---|---|---|---|----|----|----|
| RTAs | Year | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Vietnam-Korea | 2015 | X | X | X | X | X | X | X | X | X | X | X | X |
| Vietnam-EC | 2016 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ukraine-Montenegro | 2011 | X | X | X | X | X | X | X | X | X | X | X | X |
| Ukraine-Canada | 2016 | 0 | 0 | 0 | 0 | X | X | X | 0 | 0 | 0 | 0 | 0 |
| Honduras-Peru | 2015 | X | 0 | 0 | X | X | X | X | 0 | X | X | X | X |
| Honduras-Canada | 2013 | 0 | 0 | 0 | 0 | 0 | 0 | X | 0 | 0 | 0 | 0 | 0 |
| Columbia-Costa Rica | 2013 | 0 | 0 | 0 | X | X | X | X | 0 | X | X | X | X |
| Columbia-US | 2013 | X | 0 | X | 0 | 0 | 0 | X | X | 0 | X | X | X |
| Central America-Mexico | 2011 | 0 | 0 | X | X | X | X | X | 0 | X | X | 0 | X |
| Central America-EFTA | 2013 | 0 | 0 | 0 | 0 | 0 | 0 | X | 0 | X | X | 0 | X |

27

| RTAs-Environment Provisions | | | | | | | | | | | | | |
|-----------------------------|------|---|---|---|---|---|---|---|---|---|----|----|----|
| RTAs | Year | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| China-Switzerland | 2013 | 0 | 0 | 0 | X | 0 | X | X | X | X | X | 0 | X |
| China-Singapore | 2008 | X | 0 | X | X | X | 0 | X | X | X | X | X | X |
| Georgia-EC | 2014 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | X | 0 | X |
| Georgia-Turkey | 2007 | X | X | X | X | X | X | X | X | X | X | X | X |
| Malaysia-New Zealand | 2009 | 0 | 0 | 0 | 0 | X | 0 | X | X | 0 | X | 0 | X |
| Malaysia-Pakistan | 2007 | X | X | X | X | X | X | X | X | X | X | X | X |
| ASEAN-Australia & NZ | 2009 | X | 0 | 0 | 0 | X | 0 | X | X | 0 | X | 0 | X |
| ASEAN-India | 2009 | X | 0 | 0 | X | X | X | X | X | X | X | X | X |
| Peru-US | 2006 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Peru-MERCOSUR | 2005 | X | X | 0 | X | X | X | X | X | X | X | X | X |

28

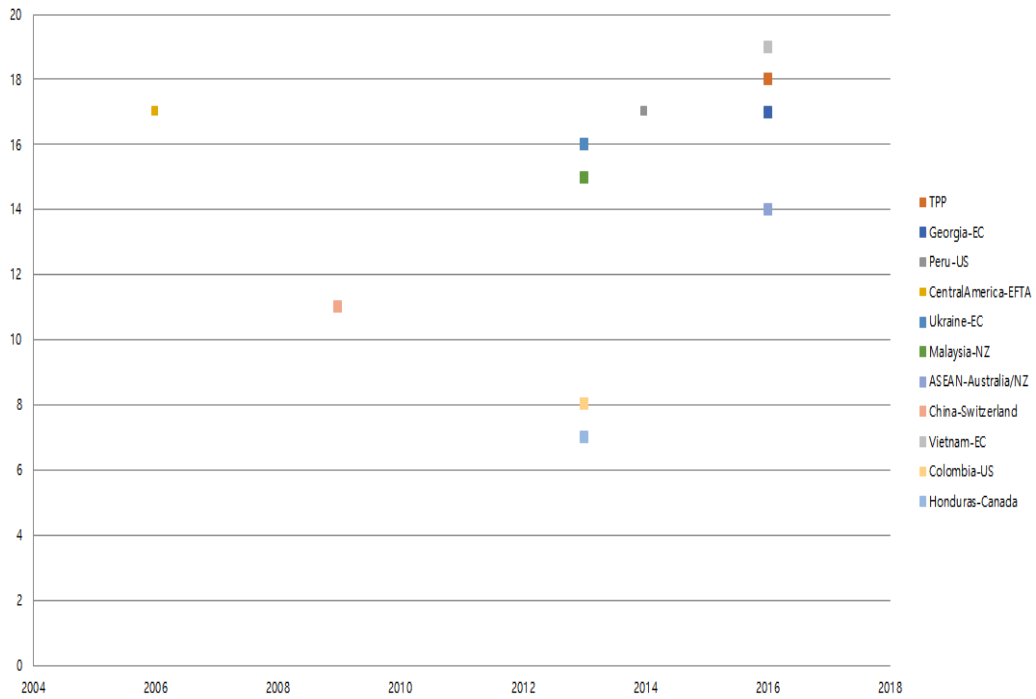
The most common environmental provision in both RTA models (AD/DD) is environmental cooperation, inclusion of environmental protection and sustainable development in its preamble and multilateral environmental agreement (MEA) (See Figure 9 and Figure 10).

While RTAs between advanced countries and developing countries are covering various environmental issues, it is hard to find provisions on specific environmental issues in the RTAs between developing countries.

Moreover, the RTAs between advanced countries and developing countries have strong public participation and public submission provisions.

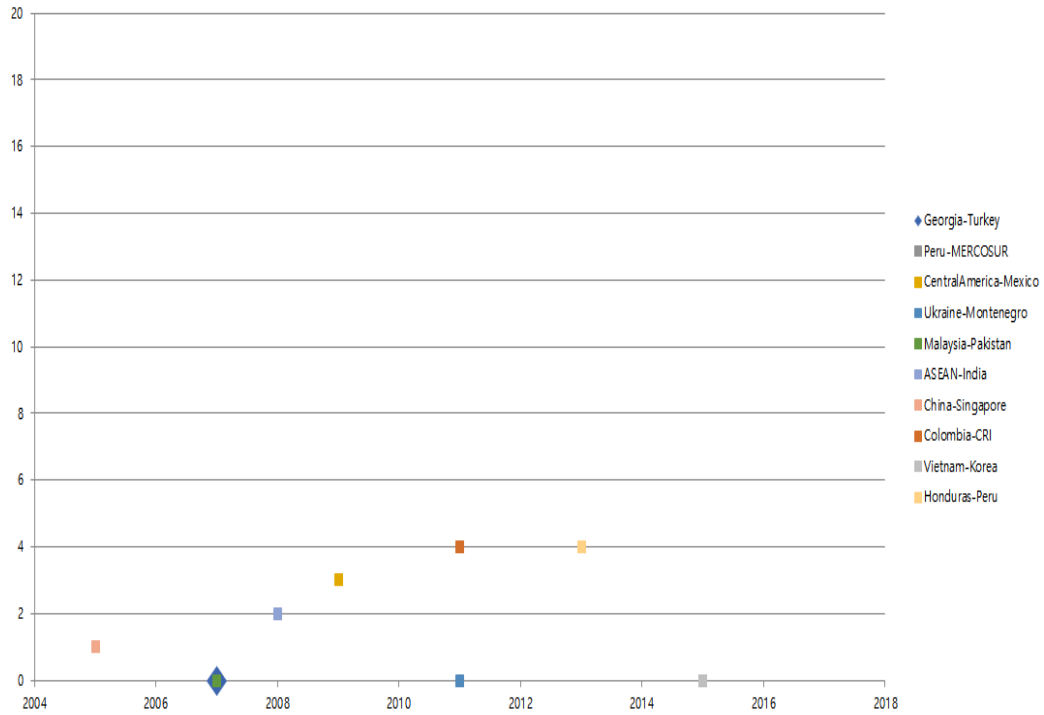
And only a few numbers of the RTAs has dispute settlement procedures. And there's almost no environmental provisions regarding dispute settlement procedures in the RTAs between developing countries.

<Figure 11> Environmental provisions in trade agreement over time and by the level of development: AD Model



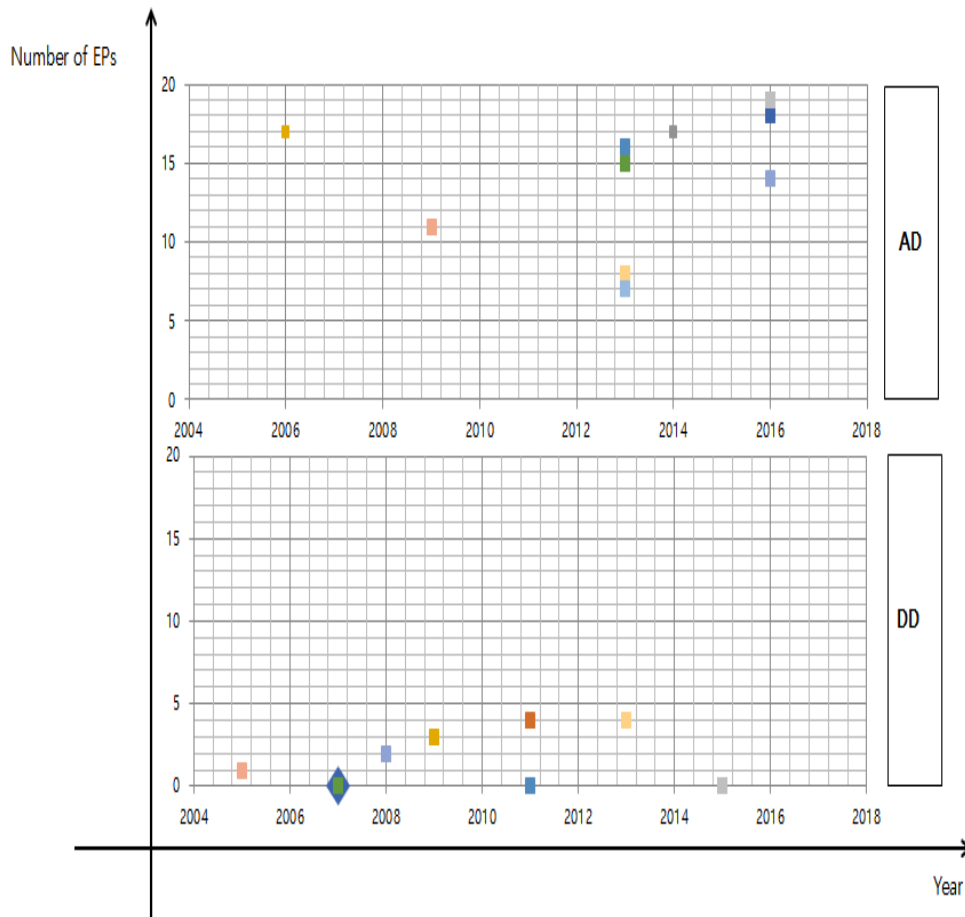
Source: Computation based on TREND analytics

<Figure 12> Environmental provisions in trade agreement over time and by the level of development: DD Model



Source: Computation based on TREND analytics

<Figure 13> Environmental provisions in trade agreement over time and by the level of development: AD/DD Model



Source: Computation based on TREND analytics

Figure 13 shows that environmental provisions changes by the level of development and the time, and the RTAs concluded by developed countries have more environmental provisions than developing countries.

The share of the environment in RTAs tends to be proportional to the economic level of each partner (GDP per capita). In particular, the proportion of the environment is relatively low in RTAs in which developing countries participate.

5. The United States–Mexico–Canada Agreement (USMCA)

The USMCA is the new trade deal between the US, Canada, and Mexico, formally known as NAFTA. The USMCA has the highest level of environmental provisions in the RTAs between advanced countries (Us, Canada) and developing country (Mexico) and has the most comprehensive set of enforceable environmental obligations of any previous agreements.

<Table 7> Environment Provisions in the USMCA

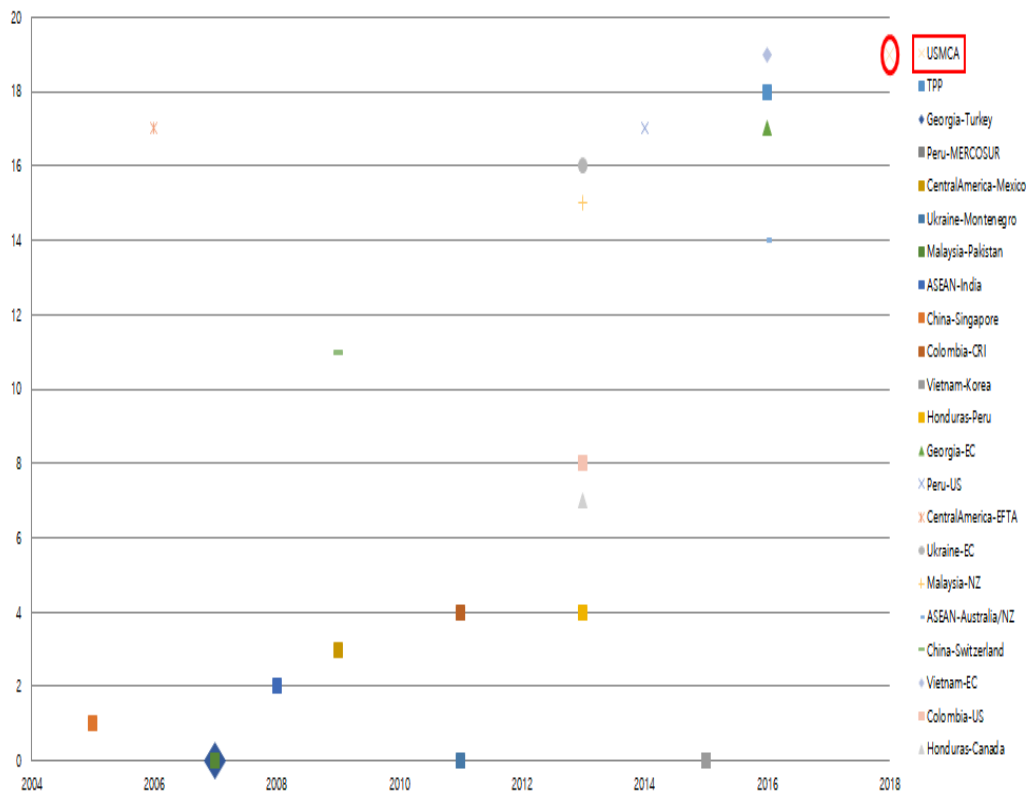
| RTAs-Environment Provisions | | | | | | | | | | | | | | |
|-----------------------------|------|----------------------------------|---|---|---|---|---|---|---|---|---|----|----|----|
| RTAs | Year | Separate Chapter | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| USMCA | 2018 | Independent Chapter (Chapter 24) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Trans-Pacific Strategic Economic Partnership (TPP) jumped up to the USMCA and the USMCA strengthens and modernizes environmental provisions by integrating clauses into an ambitious, comprehensive and enforceable environment chapter. It is most likely that the USMCA will be future standards for environmental provisions in the RTA system.

<Table 8> Environment Provisions in the NAFTA and the USMCA

| Trade Agreement | Year | 1 | 2.1 | 2.2 | 2.3 | 2.4 | 3 | 4 | 5 | 6.1 | 6.2 | 6.3 | 6.4 | 7 | 8.1 | 8.2 | 9.1 | 9.2 | 10 | 11 | 12.1 | 12.2 | sum | |
|-----------------|------|---|-----|-----|-----|-----|---|---|---|-----|-----|-----|-----|---|-----|-----|-----|-----|----|----|------|------|-----|----|
| NAFTA | 1992 | 1 | 1 | 1 | 0 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 15 |
| USMCA | 2018 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 19 |

<Figure 14> Environmental provisions in trade agreement over time and by the level of development (USMCA included)



This paper will look over 5 main environmental provisions of the USMCA to analyze its advanced and comprehensive environmental provisions; MEA, Environmental Goods and Services, Specific Environmental Issues, Public Participation and Submission, and the Consultation and Dispute Settlement System.

5.1 Multilateral Environment Agreement

<TPP²⁷>

1. The Parties recognize that multilateral environmental agreements to which they are party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.
2. The Parties emphasize the need to enhance the mutual supportiveness between trade and environmental law and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly with respect to the negotiation and implementation of relevant multilateral environmental agreements and trade agreements.

<USMCA²⁸>

1. The Parties recognize the important role that multilateral environmental agreements can play in protecting the environment and as a

²⁷ USTR. Trans-Pacific Partnership (TPP) [DB/OL]. <http://www.ustr.gov/tpp>.

²⁸ USTR. United States-Mexico-Canada Agreement (USMCA) [DB/OL].
<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-states-mexico>

response of the international community to global or regional environmental problems.

2. Each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.
3. The Parties commit to **consult** and cooperate as appropriate with respect to environmental issues of mutual interest, in particular trade-related issues, pertaining to relevant multilateral environmental agreements. This includes, inter alia, **exchanging information on the implementation of multilateral environmental agreements to which a Party is party; ongoing negotiations of new multilateral environmental agreements; and each Party's respective views on becoming a party to additional multilateral environmental agreements.**

In terms of MEA, the Parties not only cooperate but also can consult with respect to environmental issues of mutual interest, pertaining to relevant MEA.

5.2 Environmental Goods and Services

<TPP²⁹>

1. The Parties recognize the importance of trade and investment in environmental goods and services as a means of improving environmental and economic performance and addressing global environmental challenges.
2. The Parties further recognize the importance of this Agreement to promoting trade and investment in environmental goods and services in the free trade area.
3. Accordingly, the Committee shall consider issues identified by a Party or Parties related to trade in environmental goods and services, including issues identified as potential non-tariff barriers to that trade. The Parties shall endeavor to address any potential barriers to trade in environmental goods and services that may be identified by a Party, including by working through the Committee and in conjunction with other relevant committees established under this Agreement, as appropriate.
4. The Parties may develop bilateral and plurilateral cooperative projects on environmental goods and services to address current and future global trade-related environmental challenges.

²⁹ USTR. Trans-Pacific Partnership (TPP) [DB/OL]. <http://www.ustr.gov/tpp>.

<USMCA³⁰>

1. The Parties recognize the importance of trade and investment in environmental goods and services, including clean technologies, as a means of improving environmental and economic performance, contributing to green growth and jobs, and encouraging sustainable development, while addressing global environmental challenges.

2. Accordingly, the Parties shall strive to facilitate and promote trade and investment in environmental goods and services.

3. The Environmental Committee shall consider issues identified by a Party related to trade in environmental goods and services, including issues identified as potential non-tariff barriers to that trade. The Parties shall endeavor to address any potential barriers to trade in environmental goods and services that may be identified by a Party, including by working through the Environment Committee and in conjunction with other relevant committees established under this Agreement, as appropriate.

4. The Parties shall cooperate in international for a on ways to further facilitate and liberalize global trade in environmental goods and services, and **may develop cooperative projects on environmental goods and services to address current and future global environmental challenges.**

³⁰ USTR. United States-Mexico-Canada Agreement (USMCA) [DB/OL].

<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-states-mexico>

By addressing phrases like ‘developing cooperative projects on environmental goods and services’, the USMCA strengthens and modernizes environmental provisions of TPP.

5.3 Specific Environmental Issues

<Table 9> Specific Environmental Issues in the TPP and the USMCA

| TPP | USMCA |
|--|--|
| <ul style="list-style-type: none"> • Protection of the Ozone Layer • Protection of the Marine Environment from Ship Pollution • Trade and Biodiversity • Invasive Alien Species • Transition to a Low Emissions and Resilient Economy • Marine Capture Fisheries • Conservation and Trade | <ul style="list-style-type: none"> • Protection of the Ozone Layer • Protection of the Marine Environment from Ship Pollution • Trade and Biodiversity • Invasive Alien Species • Marine Wild Capture Fisheries • Sustainable Fisheries Management • Conservation of Marine Species • Conservation and Trade • Air Quality • Marine Litter • Fisheries Subsidies • Illegal, Unreported, and Unregulated (IUU) Fishing • Sustainable Forest Management and Trade |

The USMCA identifies a broad and ambitious range of environmental topics to be addressed including ‘Tackling illegal trade in forest products, Combating marine plastic litter, Reducing alien invasive species, and Combatting illegal wildlife trade, but it failed to address climate change issues because of the US’s withdrawal of the Paris Accord.

5.4 Public Participation and Public Submission

(d) appears to be aimed at promoting enforcement rather than at **harassing industry**, and

(e) indicates whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any.

3. If the Secretariat determines that a submission meets the criteria set out in paragraph 2, the Secretariat shall determine within 30 days of receipt of the submission whether the submission merits requesting a response from the Party.

(a) the submission alleges harm to the person making the submission;

(b) the submission, alone or in combination with other submissions, raises matters about which further study in this process would advance the goals of this Chapter;

A. **private remedies** available under the Party's law have been pursued; and

B. the submission is not drawn exclusively from **mass media reports**.³¹

³¹ USTR. United States-Mexico-Canada Agreement (USMCA) [DB/OL].

<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-states-mexico>

The USMCA integrates the public submissions on enforcement matters process. It updates and improves the citizen submission process including the ill-defined scope of work of the secretariat on preparing the factual report.

5.5 Consultation and Dispute Settlement

Article 24.32: Dispute Resolution

1. If the consulting **Parties have failed to resolve the matter** under Article 24.29 (Environment Consultations), Article 24.30 (Senior Representative Consultations) and Article 24.31 (Ministerial Consultations) within 60 days after the date of receipt of a request under Article 24.29.2 (Environment Consultations), or any other period as the consulting Parties may agree, the requesting *Party may request consultations under Article 31.5 (Dispute Settlement – Consultations) or request the establishment of a panel under Article 31.7 (Dispute Settlement – Establishment of a Panel).*³²

³² USTR. United States-Mexico-Canada Agreement (USMCA) [DB/OL].

<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-states-mexico>

The USMCA establishes a binding and enforceable dispute resolution process to address any questions regarding compliance and can recourse to the broader dispute settlement mechanism if countries are not able to resolve the matter through consultation and cooperation.

The USMCA has the most advanced, most comprehensive, and the highest-standard chapter on the environment of any trade agreement. The environment chapter of USMCA brings all environmental provisions into the core of the agreement and makes them enforceable.

The US is likely to impose environmental regulations in USMCA to the WTO, the multilateral trade regime and to RTAs with other countries. Despite the US's withdrawal from the Paris Convention and does not address climate change issues, the level of the USMCA's environmental provisions is high. It can be inferred that the details of environment-related provisions in RTAs is likely to keep advancing and become increasingly more delicate. And the role of environmental regulation will increase in the future trading system.

6. Conclusion

During an OECD meeting of Environment Ministers, one Minister noted that “his country, along with most others, had committed itself at the 1992 Earth Summit in Rio to the pursuit of sustainable development. However, whenever he tries to promote the behavioral and technological changes necessary to move in that direction, i.e., when he attempts to internalize the costs of environmental pollution and resource degradation, he is branded a 'green protectionist' outside his country, and a destroyer of national competitiveness at home.”³³

However, trade and environmental issues that seemed incompatible have been linked in many ways in the bilateral trade system. Recently negotiated RTAs are increasingly recognizing the importance of environmental protection, declaring sustainable development and integrating consideration of trade and environment as the main objectives of the RTAs, and are including and supporting various substantive and procedural environmental regulations.

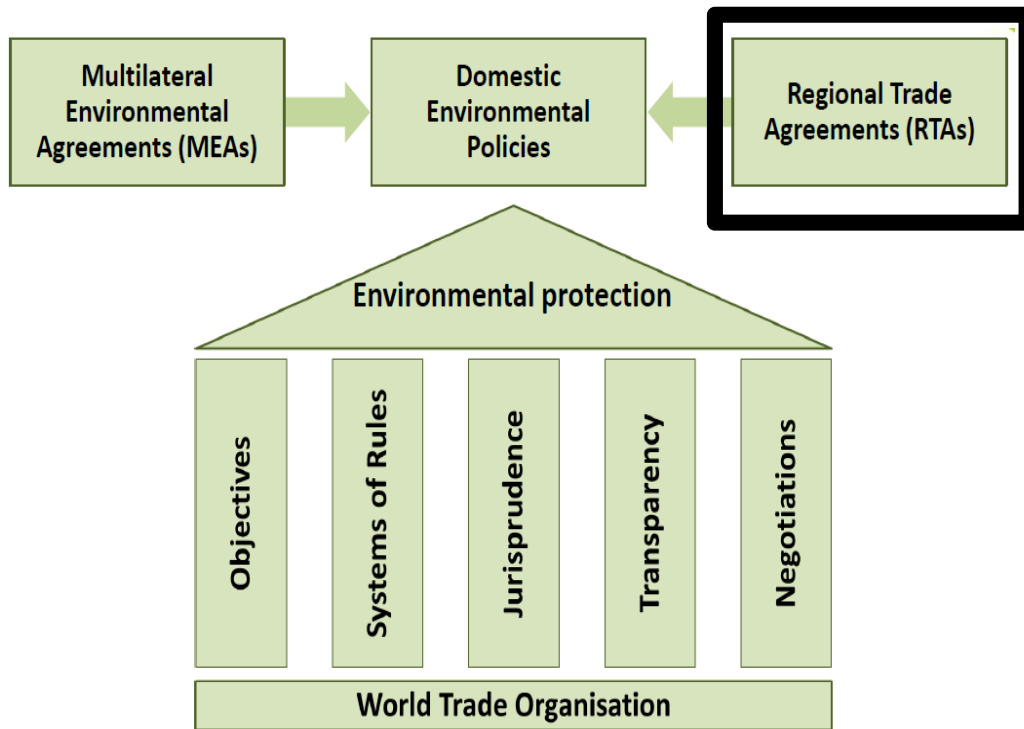
³³ WTO Report, “The need for environment Cooperation”. 1999.
https://www.wto.org/english/tratop_e/envir_e/stud99_e.htm

Not only advanced countries but developing countries have also been increasingly incorporating environmental provisions into their trade agreements with developing countries. However, the scope and level of commitments of environment provisions are less comprehensive and meticulous than those in RTAs negotiated between advanced and developing countries and somewhat declamatory and less substantive.

Nonetheless, the language and forms of environment-related provisions in RTAs are advancing and progressing. And properly implementing environmental provisions will ensure that RTAs can serve not only commercial but also environmental purposes.

6.1 Implication to the Multilateral Trading System

<Figure 15> The Multilateralization of RTAs



Environmental provisions in RTAs should be multilateralized in order to ensure a uniform application of environmental provisions by enforcing the provisions as one enforcement mechanism. The USMCA's environment provisions can provide a standard for multilateralization of environmental provisions of other RTAs especially for those RTAs between developing countries.

6.2 Suggestions to the Korea's trading system

Korea has separately addressed environmental issues by placing independent environment chapters in Korea-US (Chapter 20) and in the EU (Chapter 13) RTA. Both RTAs with these two countries promote the participation of the broader public, build a civil dialogue mechanism and establish 'Domestic Advisory Group' to carry out the mechanism, thereby enhancing the transparency of environmental policies and emphasizing the importance of environmental cooperation.

The Korea-EU RTA, for the first time, has an independent chapter covering environmental issues. According to the OECD report³⁴, the Korea-EU RTA environmental regulation is said to be the first of a 'new generation' of EU RTAs that tackle issues of trade and sustainable development in more depth than previously. It is remarkable that the insertion of environment regulation has been increasing after this RTA negotiation.

However, if looking closely at the Korean RTAs with countries other than the US and the EU, they generally refer to environmental protection or

³⁴ Organization for Economic Cooperation and Development (OECD), 2013. "Environment and Regional Trade Agreement," OECD Publishing.

sustainable development in its Preamble, and this agreement stays at a level that defines environmental exemptions in the areas of environmental cooperation.

The provisions set forth in the RTA with the US and the EU were made in accordance with the requirements of the two advanced countries. Therefore, the most important task of Korea's RTA environmental agreement is to establish basic position on how to deal with environment in RTAs. In particular, since the environmental provisions of the United States–Mexico–Canada Agreement (USMCA) will be future standards, it is important to have a thorough understanding of the environmental clauses of the above-mentioned agreements, and to establish Korea's stance and negotiation logic.

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Vietnam – EC FTA

Vietnam – Korea FTA

Georgia – EC FTA

Georgia – Turkey FTA

Peru – US FTA

Peru – MERCOSUR FTA

Honduras – Canada FTA

Honduras – Peru FTA

Central America – EFTA FTA

Central America – Mexico FTA

Ukraine – Canada FTA

Ukraine – Montenegro FTA

Malaysia – New Zealand FTA

Malaysia – Pakistan FTA

ASEAN – Australia and New Zealand FTA

ASEAN – India FTA

China – Switzerland FTA

China – Singapore FTA

Colombia – US FTA

Colombia – Costa Rica FTA

국문초록

지역무역협정에서의 환경규범:

RTA에서의 환경조항 연구

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심수진

이전에는 환경 보호를 위한 조치나 규정은 자유 무역에 상당한 제약이 있는 것으로 간주되었으나 RTA(지역무역협정) 협상에서 환경에 대한 논의는 지속적으로 대두되고 있으며, 그 중요성은 날로 증가하고 있다. 현재, WTO 에 보고된 85% 이상의 RTA 는 환경조항을 포함하고 있다. 이러한 상황에서 본 연구는 선진국과 개발도상국의 RTA 상의 환경 조항을 분석 및 조사하고 향후 RTA 환경 협상에 대한 정책적 시사점을 제시하고자 한다.

본 논문은 다자 차원에서 무역과 환경 논의의 증가에 대한 배경을 간략하게 설명하고 지금까지 선진국과 개도국이 RTA 에서 환경 조항을 어떻게 발전 시켰는지를 살펴보았다. 본 연구는 선진국이 주도하는 RTA 개도국이 주도하는 RTA 모델들을 비교하여 그 두 모델들의 환경조항들을 비교 분석하였다. 본 연구는 USMCA 의 환경조항을 향후 RTA 상의 환경조항의 표준으로 도입할 것을 제안하고 다자간 무역 시스템 및 한국의 FTA 에 대한 정책 제언을 제시하였다.

본 연구를 수행함으로써 RTA 의 환경 보호 조항이 환경 친화적인 무역 협상을 확대하는 데 어떤 역할을 할 수 있는지 살펴봄으로써 RTA 와 다자간 무역 체제에서 무역과 환경에 관한 논의의 나아갈 방향을 모색할 것이다. 또한 가장 포괄적인 무역 협정인 USMCA 의 발전된 환경 조항을 검토함으로써 해당 협정으로부터 시사점을 모색해보고자 한다.

주제어: 지역무역협정, 환경챗터, 환경조항, 환경보호, 무역 자유화, 무역협정

학번: 2016-23121