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The United States Jordan Free Trade Agreement, United States Chile Free Trade Agreement and the United States Singapore Free Trade Agreement: Advancement of Environmental Preservation

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NOTES

THE UNITED STATES JORDAN FREE TRADE AGREEMENT, UNITED STATES CHILE FREE TRADE AGREEMENT AND THE UNITED STATES SINGAPORE FREE TRADE AGREEMENT: ADVANCEMENT OF ENVIRONMENTAL PRESERVATION?

I. INTRODUCTION

Most countries agree, at least on some level, that the environment should be preserved.¹ However, the level of environmental protection that is adequate or attainable for a particular country depends on a host of factors and priorities.² A developing country may determine a particular production method is preferable because of its income earning potential despite its deleterious effect on the environment.³ Free trade agreements compound the dilemma of discerning how to adequately protect the environment while preserving sovereignty.⁴

The United States ("U.S.") has entered into a plethora of trade agreements that purport to preserve the environment. First, the North American Free Trade Agreement ("NAFTA")

1. There are numerous international environmental organizations that have created a forum to discuss and exchange information on environmental issues. See International Society for Environmental Preservation, at <http://www.isep.at/about/index.htm> (last visited Apr. 14, 2004); Trade & Environment.org, at <http://www.trade-environment.org/page/about.htm> (last visited Apr. 14, 2004); ICLEI, at <http://www3.iclei.org/member.htm> (last visited Apr. 14, 2004).

2. See generally Jack I. Garvey, *AFTA After NAFTA: Regional Trade Blocs and the Propagation of Environmental and Labor Standards*, 15 BERKELEY J. INT'L L. 245, 249–50 (1997) (explaining the relationship between environmental protection and a country's developmental stage).

3. See *id.*

4. See generally George William Mugwanya, *Global Free Trade Vis-à-vis Environmental Regulation and Sustainable Development: Reinvigorating Efforts Towards a More Integrated Approach*, 14 J. ENVTL. L. & LITIG. 401, 402 (1999).

claimed to protect the environment by placing environmental provisions in non-binding side agreements.⁵ Three of the agreements following NAFTA, the Jordan Free Trade Agreement ("JFTA"), the United States Chile Free Trade ("USCFTA") and the United States Singapore Free Trade Agreement ("USSFTA"), employed varied methods allegedly aimed at environmental preservation.⁶ This Note argues that JFTA, USCFTA and USSFTA do not possess the language or enforcement mechanisms necessary to truly protect the environment.

Part II of this Note explains the debate between free trade advocates and environmentalists regarding environmental provisions in free trade agreements. Part III provides background on JFTA, including its legislative history. Further, it analyzes the environmental provisions of JFTA and argues that JFTA will not safeguard the environment because the environmental provisions are ambiguous and are not subject to a binding dispute settlement process. Part IV briefly reviews the treatment of monetary sanctions regarding the environment in the USCFTA and USSFTA that differs from JFTA. It also argues that this mechanism does not advance environmental preservation because it fails to place the environment on the same level as trade. Lastly, in Part V, it provides suggestions for estab-

5. North American Agreement on Environmental Cooperation, *opened for signature* Sept. 8, 1993, U.S.-Can.-Mex., 32 I.L.M. 1480 [hereinafter NAAEC]. NAAEC is a side agreement under the North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 289 [hereinafter NAFTA]. NAFTA was met with criticism from environmental groups and agencies. Environmentalists feared NAFTA would promote environmentally insensitive growth, and others thought trade liberalization would be used as a means to preempt domestic environmental regulations. See Beatriz Bugeda, *Is NAFTA Living Up to its Green Expectations? Effective Law Enforcement Under The North American Agreement on Environmental Cooperation*, 32 U. RICH. L. REV. 1591, 1592 (1999). Environmentalists also feared that polluting industries would move from a country with stringent environmental regulations to countries with fewer environmental standards. *Id.* at 1592.

6. The free trade agreements are available on the website of the United States Trade Representative. Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, at <http://www.ustr.gov/regions/eu-med/middleeast/textagr.pdf> (last visited Apr. 14, 2004) [hereinafter JFTA]; U.S.-Chile Free Trade Agreement, at <http://www.ustr.gov/new/fta/Chile/final/> (last visited Apr. 14, 2004) [hereinafter USCFTA]; U.S.-Singapore Free Trade Agreement, at <http://www.ustr.gov/new/fta/Singapore/final/2004-01-15-final.pdf> (last visited Apr. 14, 2004) [hereinafter USSFTA].

lishing an environmental model for future free trade agreements that permit the U.S. and its trading partners to achieve an environmental regime that both advances environmental preservation and preserves sovereignty. While my proposal is not a perfect solution, it is an attempt to balance concerns of sovereignty and environmental degradation.

II. DEBATE BETWEEN FREE TRADE ADVOCATES AND ENVIRONMENTALISTS

The debate between advocates of free trade and environmentalists permeates free trade negotiations.⁷ It is highly probable that future trade agreements will have to withstand criticism from proponents and opponents of free trade.⁸ Therefore, an understanding of the divergent views of these two groups is essential. JFTA, USCFTA and USSFTA endured attacks by both environmentalists and free trade advocates.⁹

Inclusion of environmental provisions within free trade agreements remains controversial.¹⁰ Environmentalists believe that free trade agreements and environmental regulations are reconcilable and work in concert.¹¹ Environmentalists contend that free trade causes a "race to the bottom," in which companies move their operations to the trading partner with the low-

7. See Bugada, *supra* note 5, at 1591.

8. See Haixiao Huang & Walter C. Labys, *Environment and Trade: A Review of Issues and Methods* (2001) (surveying economic interactions between environmental and trade policies), at <http://www.rri.wvu.edu/pdf/files/labys2001-1.pdf> (last visited Apr. 14, 2004). See also Rene Vossenaar, Ulrich Hoffmann & Jha Veena, *Trade and Environment: Proposals and Their Possible Implications For Developing Countries* (1999) (discussing the role trade and the environment will play in future trade negotiations from the perspective of developing countries), at http://r0.unctad.org/trade_env/docs/te-prop.pdf (last visited Apr. 14, 2004).

9. See Mary Tiemann, Library of Cong., Cong. Research Serv. Report, *U.S.-Jordan Free Trade Agreement: Analysis of Environmental Provisions* (Updated Oct. 16, 2001); Heather Corbin, Note, *The Proposed United States - Chile Free Trade Agreement: Reconciling Free Trade and Environmental Protection*, 14 *COLO. J. INT'L ENVTL. L. & POL'Y* 119, 129-34 (2003); National Wildlife Federation, *Promoting Greener Trade with Chile and Singapore*, ENVIROaction, Nov. 20, 2002, available at <http://www.nwf.org/enviroaction/index.cfm?articleID=123&issueId=18>.

10. See Tiemann, *supra* note 9.

11. See Hillary French, *Trade vs. the Environment?*, DEFENDERS (Winter 1999/2000).

est environmental standards.¹² They argue that companies gain a competitive advantage by producing goods in nations with less rigorous environmental standards.¹³ Further, environmentalists argue that trade measures remain the most viable and effective mechanisms available to nations to protect themselves against costs resulting from environmental degradation in other nations, and that they are often the only effective measures available to establish and enforce international conventions on the environment.¹⁴

On the other side of the debate are free trade advocates opposed to attaching environmental standards to trade deals. They fear that environmental regulation is being used as an illegitimate means for unfairly protecting domestic industry against foreign corporations.¹⁵ Their fear is premised on the philosophy of protectionism.¹⁶ Protectionism favors one group at the expense of the general public.¹⁷

Protectionists are interested in constructing barriers to trade in an attempt to "protect" domestic industry and jobs.¹⁸ Free trade advocates contend that the inclusion of environmental provisions in trade agreements is a barrier to trade.¹⁹ This barrier, they argue does not improve environmental protection. They reason that a country cannot afford to protect its environment if it does not have the necessary financial resources.²⁰ Free trade advocates argue that free trade ensures economic growth which will create the financial means to protect the en-

12. Corbin, *supra* note 9, at 121. *See also* Bugada, *supra* note 5, at 1591.

13. Corbin, *supra* note 9, at 121.

14. *Id.*

15. Mugwanya, *supra* note 4, at 424.

16. *See* Robert W. McGee, *An Economic Analysis of Protectionism in the United States with Implications For International Trade in Europe*, 26 GEO. WASH. J. INT'L L. & ECON. 539, 540-43 (1993) (explaining the philosophy of protectionism) [hereinafter McGee].

17. *Id.* at 539.

18. Charles T. Haag, Comment, *Legitimizing "Environmental" Legislation under the GATT in Light of the Caf  Panel Report: More Fuel for Protectionists?*, 57 U. PITT. L. REV. 79, 81. *See also* McGee, *supra* note 16, at 540.

19. *See* Tiemann, *supra* note 9.

20. *See* Thomas J. Schoenbaum, Article: Trade and Environment: Free International Trade and Protection of the Environment: Irreconcilable Conflict?, 86 A.J.I.L. 700, n.7 (1992).

vironment.²¹ Thus, the best way to encourage higher standards of environmental protection is through free trade, and the growth it creates.²² The current U.S. President, George W. Bush, promotes the view of free trade advocates.²³

President Bush urges that attaching environmental standards to trade deals “represents a new kind of protectionism” that hampers free trade.²⁴ He contends that including environmental provisions in trade agreements amounts to protectionism and alienates potential trading partners.²⁵ Therefore, he argues that trade and the environment should not be linked.²⁶

21. *Id.* But see Chantal Thomas, *Poverty Reduction, Trade and Rights*, 18 AM. U. INT’L L. REV. 1399 (2003) (arguing that trade does not necessarily lead to a decrease in poverty).

22. Corbin, *supra* note 9, at 123.

23. President George W. Bush, Remarks at a Meeting with the Business Roundtable (June 20, 2001). Speaking before a business roundtable, President George W. Bush made his views on the perils of linking trade with environmental provisions quite clear. President Bush made the following statements:

Now, there are some who are legitimately concerned about the environment and labor, but I remind them that if you believe in trade, you believe that prosperity will spread. If you believe in trading with a country, it will help that country grow economically and a country that is more prosperous is one more likely to be able to take care of their environment. And a one more prosperous is one more likely to take care of their workforce. And if you believe in improving the environment, in helping the labor conditions in countries, don’t wall off those countries. Don’t create- don’t enhance poverty by refusing to allow there to be trade. Now there are some who want to put codicils on the trade protection authority for one reason: they don’t like free trade. They’re protectionist, and they’re isolationists. And we must reject that kind of thought here in America.

Id.

24. Steve Holland, *Bush Warns of New Kind of Protectionism*, Reuters, May 7, 2001, available at <http://www.globalexchange.org/campaigns/ftaa/news2001/reuters050701.html> (last visited Apr. 14, 2004). President Bush stated that

by failing to make the case for trade we’ve allowed a new kind of protectionism to appear in this country. It talks of workers while it opposes a major source of new jobs. It talks of the environment, while opposing the wealth-creating policies that will pay for clean air and water in developing nations.

Id.

25. *Id.*

26. See Holland, *supra* note 24.

The President's outlook on this issue is significant in light of the Trade Promotion Authority ("TPA") power granted to him by Congress.²⁷ TPA enables the President and his advisors to negotiate trade agreements with foreign nations, while curtailing Congress' power.²⁸ Congress can vote to approve or reject the entire agreement, but it cannot amend the text of the agreement.²⁹ Therefore, TPA provides U.S. trade representatives with slight input on the progress of trade negotiations.³⁰ Environmentalists fear that this lack of influence in future free trade negotiations will result in less attention paid to the environment.³¹

III. JFTA

Apart from the tension between environmentalists and free trade advocates, political forces also influence the final text of free trade agreements.³² JFTA was successfully implemented

27. See Globalization.org, *U.S. Congress Grants President Trade Promotion Authority*, Sept. 19, 2002, available at http://www.globalization101.org/news.asp?NEWS_ID=37. In August 2002, Congress granted the President Trade Promotion Authority. *Id.* "The President holds this power until June 1, 2005, with a two-year extension automatically enacted unless Congress adopts a resolution of disapproval." *Id.*

28. *Id.*

29. *Id.*

30. *See id.*

31. See Jonathan S. Blum, Comment, *The FTAA and the Fast Track to Forgetting the Environment: A Comparison of the NAFTA and the MERCOSUR Environmental Models as Examples for the Hemisphere*, 35 TEX. INT'L L.J. 435, 436 (2000).

32. Congress did not undertake any large-scale initiatives in assisting the Jordanian economy until Jordan and Israel achieved substantive progress on their bilateral track for peace. Mary Jane Bolle, Library of Cong., Cong. Research Serv. Report, *U.S.-Jordan Free Trade Agreement* (Dec. 13, 2001) [hereinafter Bolle I]. U.S. foreign assistance to Jordan was limited because of U.S. concern over Jordan's refusal to join the U.S.-led coalition against Iraq during the 1990-1991 Gulf war. *Id.* However, on July 25, 1991, Jordan and Israel signed the Washington Declaration that terminated the state of belligerency between Jordan and Israel and brought forth a peace treaty on October 26, 1991. *Id.* As a result of Jordan's peacekeeping progress, Congress and the Clinton Administration took a number of initiatives intended to benefit Jordan's economy. *Id.* In fact, Congress' primary motivation behind attempting to improve Jordan's economy has been to provide Jordan with a "peace dividend." *Id.* U.S. assistance seeks to specifically provide Jordan with an economic reward designed to demonstrate the benefits of peace to a Jordanian

after the September 11, 2001, attack on the World Trade Center.³³ An understanding of the legislative background and political backdrop in which JFTA was negotiated and ultimately signed is necessary to appreciate its structure and possible application to future trade agreements.

A. Environmental Provisions Debated in Congress

The conflict between proponents of absolute free trade and environmentalists was apparent during JFTA negotiations. Significant congressional debate ensued regarding JFTA's inclusion of environmental provisions.³⁴ JFTA is the first trade agreement directly including provisions on environmental regulation in the agreement's main text which are subject to the agreement's dispute settlement process.³⁵

The Senate Finance committee held a mark-up session for JFTA's implementation bill, during which Republican Senator Phil Gramm offered an amendment that would have restricted the scope of JFTA's dispute resolution mechanism when dealing with environmental issues.³⁶ The amendment was rejected.³⁷ During the Senate debate, Senator Gramm warned that he would oppose any effort to turn JFTA into a model for how future trade agreements should deal with worker's rights and environmental protection issues.³⁸ He argued that "including labor and environmental provisions in all trade agreements would lead to a loss of sovereignty by the U.S. and subject the country to penalties for pursuing its economic self interest."³⁹ Senator Gramm urged environmental protection should be left to each

population, which has at times ridiculed and protested its government's pace and depth of normalizing relations with Israel. *Id.*

33. Emily Harwood, Note, *The Jordan Free Trade Agreement: Free Trade and the Environment*, 27 WM. & MARY ENVTL. L. & POL'Y REV. 509, 529 (2002) [hereinafter Harwood].

34. *Id.* at 525-30.

35. JFTA, *supra* note 6, arts. 5, 17. JFTA's predecessor, NAFTA, in contrast, only includes environmental provisions in non-binding side agreements. See NAAEC, *supra* note 5.

36. Mary Jane Bolle, Library of Cong., Cong. Research Serv. Report, *Jordan-U.S. Free Trade Agreement (FTA) (Sept. 25, 2001)* [hereinafter Bolle II].

37. *Id.*

38. Bolle I, *supra* note 32, at 6.

39. Harwood, *supra* note 33, at 525.

individual country and should not be a part of trade deals.⁴⁰ Others argued that developing nations have resisted pressure to tighten their environmental laws, which in light of JFTA, could eliminate their ability to negotiate agreements with the U.S.⁴¹

On the other hand, Senate Finance Committee Chairman Max Baucus indicated he hoped JFTA would set a precedent for how future trade agreements would address issues like labor and the environment.⁴² Senator Baucus argued JFTA's inclusion of environmental provisions was a positive development.⁴³ He also disagreed with Senator Gramm's statement that the provisions would undermine U.S. sovereignty or prevent lawmakers from enacting and enforcing U.S. environmental laws.⁴⁴ It is fair to say that Senator Gramm concurs with free trade advocates who oppose the inclusion of environmental provisions in trade agreements.⁴⁵ Senator Baucus' views coincide with environmentalists.⁴⁶

The almost year-long combat over the implementation of JFTA came to a halt after the September 11, 2001, attack on the World Trade Center.⁴⁷ Many commentators, as well as the International Trade Commission, deemed the implementation of JFTA a political rather than economic decision for the U.S.⁴⁸

40. *Id.* at 526.

41. Corbin, *supra* note 9, at 129.

42. *Id.*

43. Harwood, *supra* note 33, at 527.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* at 529.

48. See U.S. International Trade Commission, News Release: A U.S.- Jordan Free Trade Agreement Would Have No Measurable Impact on U.S. Production or U.S. Employment, Says ITC 2000, at <http://www.usitc.gov/er/nl2000/ER0926X1.HTM> (last visited Apr. 15, 2004). The International Trade Commission ("ITC"), an independent, nonpartisan, fact-finding agency completed a report for the United States Trade Representative. *Id.* In the report, the ITC provided an overview of Jordan's economy, data on Jordan's trade patterns with the U.S. and other major trade partners, a description of the tariff and investment relationship between the U.S. and other major trade partners, and an analysis of any sector for which there are significant economic impacts from a U.S.-Jordan Free Trade Agreement. *Id.* The ITC concluded that JFTA would have no measurable impacts on total U.S. exports, total U.S. imports, U.S. production, or U.S. employment. *Id.* See also

Even President George W. Bush said, “the agreement demonstrates Jordan’s strong commitment to economic reform and sends a strong signal to Jordan, as well as other countries in the region, that support for peace and economic reform yields concrete benefits.”⁴⁹

After the September 11, 2001 attack, Senator Gramm dropped his effort to block the implementation of JFTA.⁵⁰ “Senator Gramm explained that he decided not to oppose the agreement because it was important that the U.S. send a signal of friendship to Jordan, an ally that could be instrumental in building Middle East support for military and other action against the terrorists.”⁵¹ Arguably, if the September 11, 2001, attack on the World Trade Center did not occur, the proposed JFTA would not have been implemented.⁵²

B. Environmental Provisions

Several provisions were included within JFTA that were intended to promote environmental preservation. JFTA’s inclusion of environmental provisions that are subject to JFTA’s dispute settlement provisions is controversial.⁵³ While JFTA is unprecedented in this respect, JFTA fails to provide the powerful and unequivocal language that compels environmental preservation.⁵⁴

1. Preamble

JFTA’s preamble appears to demonstrate concern for environmental protection.⁵⁵ It contains the stipulations agreed to by

CNN.com, U.S., Jordan Link Trade and Peace With New Agreement, Oct. 24, 2000, available at <http://www.cnn.com/2000/US/10/24/jordan.us.trade.02/index.html> (last visited Apr. 15, 2004).

49. United States of America Embassy, *Text: Bush Welcomes Passage of U.S.-Jordan Free Trade Agreement*, at <http://www.usembassy-israel.org.il/publish/peace/archives/2001/september/092512a.html> (last visited Apr. 15, 2004).

50. Harwood, *supra* note 33, at 529.

51. *Id.* at 529–30.

52. *See generally* Harwood, *supra* note 33, at 529.

53. Bolle II, *supra* note 36.

54. *Id.*

55. JFTA, *supra* note 6, preamble.

the U.S. and Jordan.⁵⁶ The preamble also sets the context for interpretation of the environmental provisions contained within the agreement.⁵⁷

At first glance, the preamble appears to reinforce the importance of environmental preservation. Closer examination of the preamble uncovers that it is loosely worded and susceptible of interpretations that do little to protect the environment. The preamble commits the U.S. and Jordan to recognize the objective of sustainable development while 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.⁵⁸

The phrase "sustainable development" is not defined by JFTA. This phrase is ambiguous and has garnered multiple meanings.⁵⁹ The World Commission on the Environment and Development ("World Commission"), a commission established by the United Nations to promote the study and protection of the environment, defined sustainable development as development which "meets the needs of the present without compromising the ability of future generations to meet their own needs."⁶⁰ As one commentator noted, this definition does not provide a fixed target that can be set, pursued and definitively obtained.⁶¹ Further, this definition relies on the projection of future needs that are not discernible.⁶² Arguably, if the definition promul-

The Government of the U.S. and the Government of Jordan, . . . Recognizing the objective of sustainable development, and 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. . . . Wishing to promote effective enforcement of their respective environmental and labor law

Id.

56. *Id.*

57. JFTA, *supra* note 6, preamble.

58. *Id.*

59. Paulette L. Stenzel, *Can NAFTA'S Environmental Provisions Promote Sustainable Development?*, 59 ALB. L. REV. 423, 431 (1995). *See also* Martin S. High, *Sustainable Development: How Far Does U.S. Industry have to go to Meet World Guidelines?*, 14 ALB. L. J. SCI. & TECH. 131, 137 (2003).

60. Stenzel, *supra* note 59, at 431.

61. *Id.*

62. *See id.* at 433.

gated by the World Commission is used by a party to interpret JFTA's preamble, a party could interpret the preamble as condoning minimal environmental preservation provided it is not compromising the needs of future generations—a determination that is made solely by the party. Unfortunately, JFTA does not provide measures for evaluating a party's balancing of sovereign concerns and environmental concerns. Therefore, it is near impossible to discern if a party is truly balancing sovereign concerns, or just ignoring environmental concerns.

Under the preamble, both parties are required to promote effective enforcement of their respective environmental laws.⁶³ Even though the preamble sets this lofty requirement for the U.S. and Jordan, measures are not provided within JFTA for ensuring that the parties actually promote effective enforcement of their environmental laws.⁶⁴ The preamble, similar to a majority of the provisions within Article V, relies on voluntary compliance by the parties.⁶⁵

2. Article V: Environment

It is notable that JFTA's environmental provisions are in the body of the agreement (primarily in Article V). However, even environmentalists are skeptical as to whether JFTA embodies the provisions that are necessary to encourage protection of the environment.⁶⁶

First, Article V, section one supposes that both the U.S. and Jordan recognize that it is inappropriate to encourage trade by relaxing domestic environmental laws.⁶⁷ Therefore, it is ex-

63. JFTA, *supra* note 6, preamble.

64. JFTA, *supra* note 6.

65. See Batir Wardam, Researcher at the Jordanian Environmental Water Program, Jordanian Environmental Watch Program 14 (Mar. 2001), available at <http://www.ujrc-jordan.org/English/JEWP/Publications.htm#1>.

66. See *Hearing on U.S.–Jordan Free Trade Agreement Before the Senate Finance Comm.*, 107th Cong. (2001) (statement of Rodger Schlickeisen, President of Defenders).

67. JFTA, *supra* note 6, art. 5(1).

The Parties recognize that it is inappropriate to encourage trade by relaxing domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.

pected that the U.S. and Jordan will strive to ensure that they do not waive or otherwise derogate from, or offer to waive or otherwise derogate from, their domestic environmental laws as an encouragement for trade with the country.⁶⁸ The reasoning of this section is flawed. Even assuming *arguendo*, that a party “recognizes” it is improper to encourage trade while sacrificing the environment, this recognition does not ensure that the party will not derogate from its environmental laws. The former does not guarantee the latter. For example, a party could recognize that it should not detract from its environmental laws, but choose to ignore environmental laws for economic gain.

Secondly, JFTA does not provide a vehicle for enforcing compliance with Article V, section one. Enforcement of this provision will require perpetual monitoring and voluntary compliance by the parties.⁶⁹ Third, Article V, section one only mentions trade as the economic activity not to be encouraged by relaxing domestic laws.⁷⁰ As one commentator noted, since investments are not included, JFTA leaves open the possibility of environmentally damaging investments that do not comply with environmental standards.⁷¹

Article V, section two recognizes the right of each party to establish its own level of domestic environmental protection and development policies.⁷² It further provides that each party shall “strive to” ensure that its laws provide for high levels of environmental protection and shall “strive to” improve its environmental laws.⁷³ While this portion of Article V provides the parties with unlimited discretion to monitor their environmental

Id.

68. *Id.*

69. *See* Batir, *supra* note 65, at 14.

70. *Id.*

71. *Id.*

72. JFTA, *supra* note 6, art. 5(2).

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws, each Party shall strive to ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws.

Id.

73. *Id.*

laws, it omits a method for determining what is considered “high levels of environmental protection.” Further, a binding commitment to environmental excellence is not included within this provision.⁷⁴ Thus, a mechanism is not provided within JFTA’s text for measuring whether a party’s environmental laws provide adequate environmental protection. This neglect provides the parties with unchecked discretion that could result in environmental degradation. For example, if a party’s environmental law condoned the pouring of contaminants directly into the soil, it appears that JFTA would validate this law, albeit environmentally damaging, because it falls within the purview of the party’s discretion to establish its own level of domestic protection.

Further, as one commentator noted, the words “shall strive to” in Article V, section two provides a complacent frame for applying and upgrading environmental compliance and enforcement.⁷⁵ JFTA only requires that the parties “strive to” ensure that their laws provide for high levels of environmental protection and “strive to” continue to improve their laws.⁷⁶ Since the parties are only required to “strive to” perform these duties, an inference can be made that JFTA does not compel actual performance. JFTA could have mandated a firmer obligation on the parties by removing the words “strive to” from this section.

Article V, section three, Subsection (b) condones a party’s course of action or inaction as long as the “action or inaction reflects a reasonable exercise of discretion, or results from a *bona fide* decision regarding the allocation of resources.”⁷⁷ This

74. Batir, *supra* note 65, at 15.

75. *Id.*

76. JFTA, *supra* note 6, art. 5(2).

77. JFTA, *supra* note 6, art. 5(3)(b). “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 between the Parties, after the date of entry into force of this Agreement.” *Id.* art. 5(3)(a).

The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of

section provides the parties with significant discretion and flexibility in prioritizing their environmental needs and allocation of resources.⁷⁸ Further, this portion of JFTA provides the parties with the right to exercise discretion with respect to investigatory, prosecutorial, regulatory and compliance matters, and to make decisions regarding the allocation of resources to other environmental matters.⁷⁹ This section of JFTA subjects the compliance and enforcement components of JFTA to the availability of technical and financial resources.⁸⁰ One commentator noted, Article V, section three is subject to so many caveats that, "in reality, it is hard to imagine any circumstance egregious enough to constitute a violation of the rule."⁸¹

3. Joint Statement on Environmental Technical Cooperation

The U.S. and Jordan issued a Joint Statement on Environmental Technical Cooperation.⁸² It established a Joint Forum on Environmental Technical Cooperation, which works to advance environmental protection in Jordan by developing environmental technical cooperation initiatives. These initiatives take into account environmental priorities, which are agreed to by the U.S. and Jordan, and are consistent with the U.S. country strategic plan for Jordan, and complementary to U.S.—Jordanian policy initiatives.⁸³

4. Dispute Settlement Procedures

The most notable characteristic of JFTA is that the environmental provisions are subject to the dispute settlement procedures of JFTA. JFTA uses a multi-step process for dispute settlement.⁸⁴

Under JFTA, the parties must first make every attempt to arrive at a mutually agreeable resolution through consultations

such discretion, or results from a *bona fide* decision regarding the allocation of resources.

Id. art. 5(3)(b).

78. JFTA, *supra* note 6, art. 5(3)(b).

79. *Id.*

80. Batir, *supra* note 65, at 15.

81. Schlickeisen, *supra* note 66.

82. Harwood, *supra* note 33, at 532.

83. *Id.*

84. *Id.* at 13.

whenever a dispute arises concerning interpretation of the agreement, a party considers that the other party has failed to carry out its obligations under the agreement, or a party considers that measures taken by the other party severely distort the balance of trade benefits accorded by the agreement or substantially undermine fundamental objectives of the agreement.⁸⁵

If the parties fail to resolve their dispute through consultations within sixty days, either party may refer the matter to the Joint Committee, which tries to resolve the dispute.⁸⁶ The Joint Committee is an ongoing body that was established to supervise the proper implementation of JFTA.⁸⁷ If the Joint Committee does not resolve the matter within either ninety days or another period that they have agreed upon, either party can refer the matter to the dispute settlement panel.⁸⁸

In order to resolve the dispute, the dispute settlement panel prepares *non-binding recommendations* in a report.⁸⁹ Within ninety days, the dispute settlement panel has to present a report to the parties containing findings of fact and its determination as to whether either party has failed to carry out its obligations under JFTA, whether a measure taken by either party severely distorts the balance of trade benefits accorded by JFTA or substantially undermines the fundamental objectives of JFTA.⁹⁰ Regrettably, since the report is not binding, JFTA's dispute settlement system really just acts as a mediator between the parties.⁹¹

85. JFTA, *supra* note 6, art. 17(1)(a).

86. JFTA, *supra* note 6, art. 17(1)(b).

87. *See* JFTA, *supra* note 6, art. 15(1). The committee is comprised of representatives of the U.S. and Jordan, and is headed by the USTR and Jordan's Minister primarily responsible for international trade, or their designees. *Id.* art 15(3)(a).

88. JFTA, *supra* note 6, art. 17(1)(c). "Unless otherwise agreed by the parties, the panel shall be composed of three members: each Party shall appoint one member, and the two appointees shall choose a third who will serve as the chairman." *Id.*

89. JFTA, *supra* note 6, art. 17(1)(d). *See also* Mohammad Nsour, *Article-fundamental Facets of the United States-Jordan Free Trade Agreement: E-Commerce, Dispute Resolution, and Beyond*, 27 WASH. U. J.L. & POL'Y 742, 780 (2004).

90. JFTA, *supra* note 6, art. 17(1)(d).

91. Nsour, *supra* note 89, at 780. "Once the parties know the dispute resolution process does not provide the teeth to enforce its own rulings, it will become impossible to resolve disputes through consensus, as neither party

After the dispute settlement panel compiles its report, the Joint Committee then endeavors to resolve the dispute, taking the report into account.⁹² If the Joint Committee does not resolve the dispute within thirty days after receiving the panel report, the affected party “shall be entitled to take any appropriate and commensurate measure.”⁹³ This provision appears to permit the use of trade sanctions as an enforcement mechanism.⁹⁴

5. Side Letters

Side letters exchanged by Jordan and the U.S. weaken any environmental protection provided by JFTA. There was opposition in the House of Representatives (“House”) regarding the language in Article 17 of JFTA that entitles a party “to take any appropriate and commensurate measure” to resolve a dispute.⁹⁵ Members of the House argued that this provision allowed the parties to impose trade sanctions in response to environmental disputes.⁹⁶ In response to this concern, the U.S. and Jordan exchanged letters.⁹⁷ These letters are included within the congressional record of the House.⁹⁸

The letters indicate that both governments “did not expect or intend to apply the agreement in a manner that results in blocking trade.”⁹⁹ The letters further stated that each government considers that appropriate measures for resolving any differences that may arise regarding the Agreement would be bilateral consultations and other procedures, particularly alter-

would compromise, knowing that there would be no serious consequences.” *Id.* at 783.

92. JFTA, *supra* note 6, art. 17(2)(a).

93. *Id.* art. 17(2)(b).

94. Nsour, *supra* note 89, at 778. Nsour also argues that the use of trade sanctions may be called retaliations. *Id.* He defines retaliation as a means of exercising pressure on the offending government to implement the panel or Appellate Body ruling, and in this sense is indirectly beneficial to business. *Id.*

95. 147 CONG. REC. H4871 (2001).

96. *Id.*

97. *See id.*

98. *Id.* *See also* 147 CONG. REC. S9679 (2001).

99. *Id.*

native mechanisms, that will help to secure compliance without recourse to traditional trade sanctions.¹⁰⁰

It is too early to forecast whether these letters will affect the actions of the U.S. or Jordan if a dispute arises. It is likely that the effect of these letters will hinge on the severity of the environmental violation. However, these letters appear to undermine the best attribute of JFTA—the possibility that a party could be subjected to trade sanctions for not complying with the environmental provisions of the agreement.

C. Author's Analysis: Does JFTA advance environmental preservation?

It appears that JFTA with its sweeping and vague language does not contain the ammunition necessary to safeguard the environment.¹⁰¹ JFTA's preoccupation with the preservation of sovereignty overwhelms the text of the agreement. This obsession created numerous loopholes that the parties can easily navigate to avoid their environmental responsibilities.¹⁰²

In fact, it appears that the debate surrounding JFTA's inclusion of environmental provisions subject to the dispute settlement process was overrated. JFTA does not mandate that the parties do anything differently than what they have been doing. Therefore, it is unlikely that there will be many, if any, environmental violations that are subjected to the dispute settlement process. Arguably, this means that if a party pre-JFTA was damaging the environment, it can continue doing so post-JFTA, provided the degradation does not increase. Some commentators have opined that JFTA was an attempt to find a middle ground.¹⁰³ "It commits both countries not to weaken or to fail to uphold their own existing environmental standards, but does not impose any new standards on them."¹⁰⁴ This is not acceptable because environmental degradation transcends na-

100. *Id.*

101. *See supra* Part III.B.

102. *See supra* Part III.B.

103. *See* Richard W. Stevenson, *A Nation Challenged: Trade; Senate Approves Bill to Lift Barriers to Trade with Jordan*, N.Y. TIMES, Sept. 25, 2001, at C1.

104. *Id.*

tional boundaries.¹⁰⁵ While countries should be provided with discretion in deciding how to implement their environmental laws, without an agreed upon standard or measure, countries are likely to keep the status quo. If a country determines that its environment is adequately protected (by its own self-serving standards), it is unlikely to expend any monies towards environmental preservation.

Further, in light of the side letters exchanged between the parties, it is unlikely that either country will impose trade sanctions for violations of JFTA's environmental provisions.¹⁰⁶ Therefore, any environmental disputes would fall under the auspice of the *non-binding* dispute settlement mechanism. In essence, the reports prepared by the dispute settlement panel are advisory. Therefore, it is not mandated that the parties adhere to their recommendations. As one commentator noted, once "parties are aware that the dispute resolution process does not provide the teeth to enforce its own rulings, it will become impossible to resolve disputes through consensus, as neither party would compromise, knowing there would be no serious consequences."¹⁰⁷

IV. UNITED STATES CHILE FREE TRADE AGREEMENT AND UNITED STATES SINGAPORE FREE TRADE AGREEMENT

USCFTA and USSFTA, "as the first free trade agreements negotiated by the Bush administration under TPA, could potentially serve as templates for future free trade agreements."¹⁰⁸ Therefore, they set the mark as to what will probably be a long

105. See generally U.S. Environmental Protection Agency, International Affairs, Environment, Trade and Investment, at <http://www.epa.gov/international/trade/geninfo.html> (last visited Apr. 15, 2004) [hereinafter U.S. Environmental Protection Agency].

106. See *supra* Part III.B.5.

107. Nsour, *supra* note 89, at 783.

108. *The Significance of the Singapore and Chile Free Trade Agreements: Hearing Before the Subcomm. on Commerce, Trade, and Consumer Protection on Trade in Services and E-Commerce*, 108th Cong. (2003) (testimony of Thea M. Lee, Chief International Economist American Federation of Labor and Congress of Industrial Organizations). See also International Trade Reporter, *Bilateral Agreements: U.S., Singapore Complete FTA 'Substance,' USTR Says; Capital Controls Still Unresolved*, Nov. 21, 2002, available at <http://www.bna.com/itr/arch172.htm>.

war between free trade advocates and environmentalists.¹⁰⁹ USCFTA is the first comprehensive trade agreement between the U.S. and a South American country.¹¹⁰ Similarly, the USSFTA is the first trade agreement with an Asian country.¹¹¹ Both agreements were attacked by free trade advocates and environmentalists.¹¹² Some commentators argued that any expressive progress made in JFTA towards environmental protection was negated by USCFTA and USSFTA.¹¹³ Several environmental organizations sent letters to Congress in opposition to the agreements.¹¹⁴

However, on September 3, 2003, President George W. Bush signed bills for both agreements.¹¹⁵ Many of the environmental provisions of USCFTA and USSFTA mirror JFTA.¹¹⁶ A notable

109. Corbin, *supra* note 9, at 119.

110. See USCFTA, *supra* note 6.

111. The White House, Remarks by the President in Signing Ceremony for Chile and Singapore Free Trade Agreements The East Room, *available at* <http://www.whitehouse.gov/news/releases/2003/09/20030903-3.html> (last visited Apr. 15, 2004).

112. See Grocery Manufacturers of America, Comments Submitted: Re: Comments Regarding Proposed United States-Chile Free Trade Agreement, *at* <http://www.gmabrand.com/publicpolicy/docs/comment.cfm?DocID=789> (last visited Apr. 16, 2004); Center for International Environmental Law, Re: Chile and Singapore Free Trade Agreements are Wrong Models for the Environment, *at* http://www.ciel.org/Tae/Chile_Singapore_10Jul03.html (last visited Apr. 16, 2004).

113. See Citizens Trade Campaign, Letter to Representative regarding U.S.-Singapore Free Trade Agreement May 22, 2003, *at* http://www.citizenstrade.org/pdf/ctc_sing_letter.pdf (last visited Apr. 15, 2004) [hereinafter Citizens Letter].

114. *Id.* See also Citizens Trade Campaign, Letter to Congress Regarding U.S.-Chile and U.S.-Singapore Free Trade Agreements are Bad Policy as they Stand, July 22, 2003, *available at* http://www.citizenstrade.org/pdf/ctc_chile_sing_ltr.pdf (last visited Apr. 15, 2003).

115. Press Release, The White House, President Bush Signs Chile, Singapore Free Trade Agreement Bills (Sept. 2, 2003), *at* <http://www.whitehouse.gov/news/releases/2003/09/20030903-3.html> (last visited Apr. 15, 2004).

116. See, e.g., USCFTA, *supra* note 6, art. 19.1.

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws, each Party shall ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws.

Id.

addition to USCFTA and USSFTA is the unique treatment of monetary sanctions and the environment.

A. Monetary Sanctions and the Environment

Unfortunately, USCFTA and USSFTA do not place environmental concerns on par with trade.¹¹⁷ One commentator noted that JFTA provided comparable enforcement through dispute resolution for all environmental provisions, however, only one environmental provision of USCFTA and USSFTA is subject to the dispute settlement process.¹¹⁸ This provision is the obligation that a party enforce its own environmental laws.¹¹⁹

If a country does not enforce its environmental obligations and a financial assessment results, the maximum amount it can be assessed is fifteen million dollars annually.¹²⁰ In commercial trade disputes, the assessment is calculated solely on trade effects.¹²¹ "Whereas monetary remedies provided for commercial violations are uncapped, the remedies for environmental violations are capped at fifteen million dollars regardless of the harm caused."¹²² The USTR reasoned that since the quantifiable trade effect of an environmental violation is likely to be very small, USCFTA and USSFTA include other criteria for the panel to use in determining the assessment.¹²³ Since violations of environmental obligations do not result in trade sanctions, it is possible that a country could perform a cost-benefit analysis and determine that it is economically more sound to pay the financial assessment than fulfill its environmental obligations under the agreement.

117. See Citizens Letter, *supra* note 113.

118. *Id.* See also USSFTA, *supra* note 6, art. 18.7(5); USCFTA, *supra* note 6, art. 19.6(8).

119. USCFTA, *supra* note 6, art. 19.2(1)(a); USSFTA, *supra* note 6, art. 18.2(1)(a).

120. USCFTA, *supra* note 6, art. 22.16(2)(a); USSFTA, *supra* note 6, art. 20.7(2)(f).

121. U.S. Embassy in Tokyo, *USTR on Labor, Environment in Singapore, Chile FTAs*, May 5, 2003, available at <http://japan.usembassy.gov/e/p/tp-20030509a7.html> (last visited Apr. 15, 2004) [hereinafter Embassy Article].

122. Citizens Letter, *supra* note 113.

123. Embassy Article, *supra* note 121.

B. Author's Analysis: Does the monetary remedy in USCFTA and USSFTA advance environmental preservation?

The current U.S. President, George W. Bush, stated that USSFTA obligates the countries to enforce their environmental laws and makes clear that environmental protection will not be reduced in order to encourage trade or investment.¹²⁴ USSFTA and USCFTA have also been characterized as containing an innovative enforcement mechanism that includes monetary assessments to enforce environmental obligations.¹²⁵ However, a monetary penalty is assessed only if a party does not effectively enforce its own laws. This provision effects only a small universe of situations that could potentially cause environmental degradation.

Further, the assessment cap provides the parties with a figure to perform a cost-benefit analysis. This leaves open the possibility that a party could perform a cost-benefit analysis and determine that it is economically more sound to pay the financial assessment than fulfill its environmental obligations under the agreement.

V. SUGGESTIONS FOR FUTURE FREE TRADE AGREEMENTS

A. Placement of Environmental Provisions Within the Text of Trade Agreements

Environmental provisions must be placed within the text of future trade agreements and not in binding side agreements. Environmental provisions that are placed in side agreements that do not have a legal link to the main agreement, do not assure compliance with the side agreement.¹²⁶ Since the parties are not subjected to trade sanctions for violating side agree-

124. President's Message to Congress Transmitting Legislation and Supporting Documents to implement United States-Chile Free Trade Agreement, available at <http://www.whitehouse.gov/news/releases/2003/07/20030715-7.html> (last visited Apr. 15, 2004).

125. Press Release, Office of the United States Trade Representative, (Dec. 11, 2002), at <http://www.ustr.gov/releases/2002/12/02-114.htm>.

126. See Linda DuPuis, Note: *The Environmental Side Agreement Between Mexico and the United States—An Effective Compromise?*, 8 FLA. J. INT'L L. 471, 488 (1993) (discussing environmentalists' criticism of NAFTA's side agreement).

ments, it is easier for the parties to make a cost-benefit analysis that endangers the environment.¹²⁷

B. Negotiation of an Environmental Standard

JFTA, USCFTA and USSFTA went to great lengths to defend sovereignty. However, an extreme position on preserving sovereignty is not compatible with environmental protection. Parties must agree to relinquish even a diminutive amount of sovereignty for true global environmental protection.¹²⁸ Arguably, by entering into a free trade agreement the parties have relinquished some sovereignty.

Instead of providing each party with unlimited discretion to adjust its environmental laws, parties should be required to meet an agreed upon environmental standard ("Standard") within a prescribed time frame. This Standard cannot and should not be boilerplate. The Standard should be negotiated to reflect the economic, environmental and political condition of the respective country. The Standard and time frame to reach the agreed upon standard should also reflect the unique concerns of each country.¹²⁹ This reflection allows the parties to tailor the Standard to sovereign concerns. While the Standard does require some relinquishment of sovereignty, it allows the parties to negotiate their own path. Also, if the Standard, an agreed upon action plan to meet the standard ("Action Plan") and the time frame within which to meet the Standard are negotiated, fears of protectionism should subside because the parties are addressing actual environmental concerns.¹³⁰

127. See Jack I. Garvey, *Article: A New Evolution for Fast-Tracking Trade Agreements: Managing Environmental and Labor Standards Through Extraterritorial Regulation*, 5 *UCLA J. INT'L L. & FOR. AFF.* 1, 12 (2000) (arguing that the side agreements to NAFTA were designed not to secure sanctions) [hereinafter Garvey New Evolution].

128. Garvey New Revolution, *supra* note 127, at 35 (arguing that when trade benefits and profits are at issue, governments demonstrate less concern about abstractions like sovereignty).

129. See Garvey New Revolution, *supra* note 127, at 18–23 (discussing the downfall of supranational standards in trade agreements).

130. See Garvey New Revolution, *supra* note 127, at 14 (explaining that imposition of a supranational structure would challenge Mexico's sovereignty and the importance of focusing on enforcement of national law in NAFTA context; the problematic imposition of common legal standards of regulation

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I suggest four categories for determining the period of time each country has to meet the agreed upon Standard, categories A-D (“Category”). Countries falling within Category A are closer to the negotiated Standard than countries falling within Category D. Therefore, countries falling within Category D require a longer period of time to meet the negotiated Standard. During the year or years the country is provided to reach the Standard, the country should not be subject to trade sanctions, provided it is following the Action Plan.

Category	Time Frame in Years						
	0-2	2-5	5-8	8-10	10-12	12-15	15-20
A							
B							
C							
D							

C. Compliance and Enforcement

Provisions within trade agreements that provide for environmental protection are worthless if the parties ignore them. Providing countries with the opportunity to negotiate the Standard should help lay the foundation for voluntary compliance.¹³¹ If countries provide input on determining the Category in which they fall, the Action Plan and the applicable Standard, it is

for the contrasting cultures, legal systems and stages of economic development in relation to Canada and Mexico).

131. See generally Harold Hongju Koh, *Why Do Nations Obey International Law*, 106 YALE L.J. 2599, 2642 (1997) (discussing Professor Thomas Franck’s theory that the key to compliance is fairness of international rules). “If nations internally perceive a rule to be fair, they are more likely to obey it.” *Id.* at 2645.

more likely that they will be inclined to follow the agreed upon plan.¹³² Further, the Action Plan should be tailored to specifically meet each country's political, economical and environmental needs.

A mechanism that allows citizens or environmental groups to submit complaints should be included within trade agreements.¹³³ NAFTA's environmental side agreement, the North American Agreement on Environmental Cooperation ("NAAEC"), established the Commission for Environmental Cooperation ("CEC").¹³⁴ The NAAEC permits groups or individuals alleging that a party to the agreement is failing to enforce its environmental laws, to file a submission with the CEC.¹³⁵ Based on the success of the CEC to assess the impacts of NAFTA on the environment, a similar citizens' mechanism should be included in all future trade agreements to allow groups or individuals to allege that a specific trade or investment measure has an adverse impact on the environment.¹³⁶

Countries should be subjected to the same ramifications as trade violations if they do not follow the Action Plan, or satisfy the Standard within the allotted time frame. Applying the same ramifications provides countries with an impetus to comply with the provisions of the trade agreement.¹³⁷ Trade sanctions are a cost-effective means of securing compliance with otherwise difficult to enforce standards and agreements.¹³⁸

An organization similar to the bureaucracy provided in the NAAEC should be utilized.¹³⁹ This organization would monitor

132. *Id.*

133. See Greg Block, Trade and Environment in the Western Hemisphere: Expanding the North American Agreement on Environmental Cooperation into the Americas, 33 ENVTL. L. 501, 504 (2003) (explaining that environmental provisions in the Free Trade Area of the Americas should include a citizen submission mechanism similar to the NAAEC).

134. *Id.* at 508. The CEC is comprised of a Council, Secretariat and Joint Public Advisory Committee. *Id.* The Council is governing body of the CEC. *Id.* The Secretariat acts as the operational arm of the Council, and the JPAC advises the governments on any matter within the scope of the NAAEC. *Id.*

135. *Id.*

136. *Id.* at 504.

137. Garvey, *supra* note 2, at 254.

138. *Id.*

139. See *supra* note 134. See also National Wildlife Federation, *Promoting Greener Trade with Chile, Singapore*, Nov. 2002, available at <http://www.nwf.org/enviroaction/index.cfm?articleId=123&issueId=18>. "Trade

compliance with the negotiated action plan and make sure that each country is on track to reach the negotiated Standard within the prescribed time frame. However, the organization should be given a structure that is easily utilized by the parties to the trade agreement. Some trade agreements may require four governing bodies. Other agreements may require two governing bodies.

VI. CONCLUSION

The U.S., one of the most powerful and influential nations, must lead in attaching standards for safeguarding the environment in trade agreements.¹⁴⁰ It is undisputable that causes of environmental degradation are inextricably tied to trade.¹⁴¹ Further, as the U.S. Environmental Protection Agency explained, the environment and trade are fundamentally linked because the environment provides many basic inputs of economic activity (minerals, forests, etc.), as well as the energy used to process materials.¹⁴² The environment is limited and must be safeguarded for the economic viability of all countries.

agreements should be accompanied by efforts to assess and improve international environmental performance through cooperation, capacity-building assistance and technology transfer." *Id.*

140. James Salzman, *Seattle's Legal Legacy and Environmental Reviews of Trade Agreements*, ENVTL. L. 501, 504 (2001).

141. See, e.g., Elia V. Pirozzi, *Resolution of Environmental Disputes in the United States-Mexico Border Region and the Departure from the Status Quo*, 12 J. ENVTL. L. & LITIG. 371 (1997) (discussing damage to the border of the U.S. and Mexico caused by NAFTA).

142. U.S. Environmental Protection Agency, *supra* note 105.

The two agreements after JFTA demonstrate that the pendulum has shifted back to a position where the environment is not as important as trade. However, it is imperative that the President of the U.S. considers both the environment and trade when he utilizes TPA. Fast track authority should not be used to bypass environmental concerns and just push bills through.

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