

Balancing Trade Growth and Environmental Protection in ASEAN: Environmental issues in Trade and Investment Policy Deliberations in the Mekong subregion

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Achieving a balance between trade and investment liberalization and environmental protection is one of the key challenges facing the states of the Mekong subregion (defined here as the Southeast Asian part of the Greater Mekong Subregion [GMS] comprising Cambodia, Lao PDR, Myanmar, Thailand and Vietnam). The expansion of trade and liberalization initiatives further pressurizes the environmental sustainability of this region. The promising, but not uncontroversial, development of hydroelectric power and the setting up of regional power grids to support the regional power trade are cases in point. The sustainable utilization of water and natural resources in the Mekong basin is directly and inevitably linked to human survival in the region. Apart from formal trade and investment regimes, illegal trade, particularly of wildlife and timber products, is also undermining the sustainability of the region's environment. For example, illegal wildlife trade involves hundreds of millions of individual plants and animals and tens of thousands of species. The populations of many Southeast Asian wildlife species, including tigers, Asian elephants, pangolins, and freshwater turtles and tortoises, are declining sharply due to their high commercial value in the illegal wildlife trade.ⁱ As a UN Development Program (UNDP) study puts it:

The common challenge facing the GMS ... is to balance the three dimensions—economic, environmental and social—of sustainable development. The GMS countries cannot afford the 'grow now, clean up later' approach experienced in the more advanced economies in the region and elsewhere in the world.ⁱⁱ

All Mekong states have embarked on far reaching trade liberalization programs, driven by—or as a requirement of—World Trade Organization membership, membership of the Association of Southeast Asian Nations (ASEAN) Free Trade Area or other international factors. However, traditionally, environmental concerns have not been a primary policy focus of the subregion's governments. In the following discussion, particular emphasis is given to Thailand as the economically most advanced GMS country; Vietnam as the main receiver of development aid in East Asia in absolute terms; the fact that for the trade–environment nexus, linking trade/investment to environmental considerations is an increasingly important donor agenda; and Lao PDR as a least developed country.

While governments in most countries of the Mekong subregion have been gradually adopting laws to create a simple and transparent rules-based private sector environment in a market oriented system, the protection of the environment and the sustainable use of resources regularly take a backseat in the industrialization process. Economic growth and social development remain a priority in the fight against poverty. Yet the ecological footprint shows that, despite the fact that a significant part of the GMS population live in absolute poverty, the region is already living beyond its ecological carrying capacity.ⁱⁱⁱ The resulting dilemma is hard to ignore. While continued economic growth is needed to alleviate poverty, such growth will further place tremendous strains on the natural environment. It is true that environmental issues have received some attention from GMS leaders, who

have agreed in summit meetings to improve cooperation in addressing environmental challenges common to the region. For example, at a special meeting of the GMS ministers of the environment in Shanghai in May 2005, the GMS Core Environment Program (CEP) was launched to ensure stronger coordination in conserving natural systems and maintaining the quality of the environment. Under the CEP, a Biodiversity Conservation Corridors Initiative is being implemented to protect high value terrestrial biodiversity and protected areas by establishing sustainable management practices and restoring habitat connectivity in these areas.^{iv}

However, overall there is little evidence of the effectiveness of multilateral efforts—initiated by the GMS Program and funded in large part by the Asian Development Bank (ADB) or the Mekong River Commission—of balancing economic interests and environmental concerns in the subregion. But the picture looks better with regard to the legislative and policy initiatives of individual states.

In Thailand, concerns for and engagement with global environmental challenges—particularly global climate change and biodiversity loss—have intensified in recent years. Significantly, this is not only true for policy actors in the public and tertiary sectors, but also for business and industry. Firms have become increasingly aware of the business potential of environmentally sustainable products and practices. Thailand is the first GMS country where a court has given environmental concerns priority over economic interests. In September 2009 Thailand's Administrative Court issued a temporary injunction that could effectively halt all 76 major investment projects relating primarily to energy and petrochemicals worth THB 400 billion at the country's Map Ta Phut industrial estate and surrounding areas. The court concluded that the Map Ta Phut area has long suffered from pollution problems that are getting worse. It also said that Article 67 of the 2007 Thai Constitution protecting the rights of the people to live in a healthy environment must be strictly enforced by concerned government agencies.^v

In Vietnam the current Socioeconomic Development Plan 2006–2010 is designed to pave the way for Vietnam's achievement of middle income country status. It has four pillars: accelerating growth, promoting modern governance, strengthening the social sector and social inclusion, and better managing natural resources. It

emphasizes development results and the policy reforms needed to attain them. Most of the projects related to the environment are supported and financed by international donors. According to the ADB, the Vietnamese government has demonstrated a strong commitment to strengthening the strategic, legislative, and institutional context for environmental protection and management.^{vi}

The government of Lao PDR has started to put in place a legal framework for environmental protection and natural resources conservation. The Environmental Protection Law of 1999 is the principal environmental legislation in the country. It includes measures for the protection and restoration of the environment, as well as guidelines for environmental management and monitoring. While Lao PDR is affected by a range of environmental issues, the most pressing of these revolve around unsustainable natural resource management policies, especially those affecting forests.^{vii}

A test case for the seriousness with which environmental considerations are taken in national trade and investment deliberations is the ASEAN–China Free Trade Agreement (ACFTA). Despite the considerable volume of intra-GMS trade in natural resources such as minerals, agricultural goods and wood, as well as an expected increase in the trade of products that fall into the most polluting sectors, the ACFTA does not contain provisions for cooperation on environmental problems that may arise as a result of trade liberalization. Such provisions, however, are specified in the Plan of Action to Implement the Joint Declaration on ASEAN–China Strategic Partnership for Peace and Prosperity (2004). The declaration is a comprehensive master plan that covers all facets of cooperation and has several significant references to taking environmental aspects into account, including in the specific section on Mekong River basin development cooperation. Yet there is no hard evidence of what measures were undertaken in compliance with the stated intentions.^{viii}

One reason for the low level of intergovernmental commitment to environmental protection and sustainability with regard to trade and investment matters is a lack of societal lobbying and pressuring. With the exception of Thailand and its vibrant civil society, NGOs in other countries of the Mekong subregion mainly—and often only—get involved in the environment–trade agenda if the

initiative is backed up by donor interests and funding. This is particularly the case for projects that focus on organic agricultural produce destined for the European market.

Overall, it was not the ADB as the main donor of the GMS, but the European Union (EU)—or, more precisely, official development assistance provided by the European Commission (EC)—the U.S. Agency for International Development (USAID), other Organization for Economic Cooperation and Development donors, and UNDP that have effectively contributed to the strengthening of the nexus between environment and trade/investment. This has been particularly successful in instances when national pro-environment legislation, policymaking and private sector initiatives could be directly linked to trade facilitation and export promotion. Organic export agriculture is a case in point. Firms have become increasingly aware of the business potential of environmentally sustainable products (e.g. shrimp and vegetables, which already have a large market share in the European market) and practices. Cambodia provides a good example. In collaboration with the Cambodian Centre for Study and Development in Agriculture, an NGO working in the area of rural development, the German donor organization German Development Service has supported farmers to produce high quality rice.^{ix}

The oldest donor funded programs that tried to reconcile the trade and environment agendas were USAID's ASEAN Environmental Improvement Program and the UNDP Program on Trade and Environment in ASEAN, both established in 1992. However, these programs did not operate within any existing national policy frameworks and strategies for the achievement of cleaner production and were unable to establish such frameworks/strategies. It is indeed a common problem—not just for interventions in the environment sector—that donor funded regional programs for ASEAN are not always well linked to and synchronized with national initiatives and often do not respond well to the actual needs of member countries.

At the same time, coordinated intergovernmental action against illegal and informal cross border trade (mainly timber and wildlife trade) could not be carried out without major foreign donor support. The prime example in this regard is ASEAN's Wildlife Enforcement Network. ASEAN can claim ownership of this initiative, but the

network would neither exist nor be able to operate without the substantial financial support of USAID and the U.S. State Department.

The situation in ASEAN as a whole mirrors that of the Mekong subregion. Most ASEAN states have environmental clauses established as constitutional principles and the extent of respective legislation has increased significantly in the last decade. The Roadmap for an ASEAN Community 2009–2015^x has a comprehensive pro-environment agenda (in part D). However, no matter how specific the action points of the Roadmap are, the 'strategic objective' opens the door for immediate member states' veto and exit options and represents a hurdle in the process of implementing the pro-environment agenda:

Effectively address global environmental issues *without impinging on* competitiveness, or social and economic development based on the principle of equity, flexibility, effectiveness and common but differentiated responsibility, respective capabilities as well as reflecting on different social and economic conditions (emphasis added).

This clause effectively works as a *carte blanche* for ASEAN politicians and officials to evade responsibility for and commitment to environmental protection by stressing conflicting priorities. In other words, the Roadmap does not reconcile trade and the environment, but potentially prevents the creation of policy linkages between the two areas if individual member states object.

Generally—in the tradition of the 'ASEAN Way' of consensus-based and non-binding decision making—all existing agreements are embedded in soft law and hardly enforceable, partly due to the lack of a sanctions mechanism. The majority of ASEAN states struggle in the field of effective administration, which affects the enforcement of national laws and the fulfilment of international obligations alike. The 2002 ASEAN Agreement on Transboundary Haze Pollution is a case in point for the existence of ground-breaking regional treaties in response to mounting environmental challenges that are related to economic activity combined with a lack of political will and capacity to fully implement and enforce them. Although the current process of strengthening ASEAN (based on the ASEAN Charter and

in view of the implementation of the Southeast Asian Community) might be helpful in respect to a more effective environmental policy in the region, success in the fight against illegal logging, forest fires, overfishing, etc. depends to a great extent on an overall improvement in the region's administrative, legal structures and capacities.^{xi}

If there is anything to learn from the case of the Mekong subregion for ASEAN as a whole, it is the fact that national and regional legislative and policy initiatives toward environmental protection and sustainability in general, and the forging of links between trade/investment and the environment in particular, are more often than not driven by foreign donors. There is no shortage of regional policy initiatives and visions for stronger environmental considerations in trade and investment deliberations, most prominently in the *Fourth ASEAN state of the environment report 2009*, which promotes the idea of a 'Green ASEAN'.^{xii} However, beyond the political rhetoric, ASEAN's environmental commitment in the context of trade and investment is low. For example, negotiations for the ASEAN–Australia–New Zealand Free Trade Agreement suffered from ASEAN's insistence on dropping the issue of the environment (as well as those of labour and intellectual property) from the trade talks.^{xiii} Controversies over the same issues have also contributed to the stalling of EU–ASEAN Free Trade Agreement negotiations. Furthermore, the reference to the environment in the ASEAN Economic Community Blueprint is very weak.

Civil society groups have recently proposed the establishment of a fourth pillar of cooperation and foundation of the Southeast Asian Community, the ASEAN Environmental Pillar.^{xiv} At the core of this initiative is the proposed framework for an ASEAN–Civil Society Dialogue on the Environment that asks government officials to 'prepare a blueprint that commits the member states to place international best practices on environmental sustainability at the center of decision-making'.^{xv} Generally, transnational civil society lobbying has emerged as a new pro-environment push factor but, at the moment, ASEAN policymakers view this with concern, particularly as it might give other advocacy groups new ideas about the creation of yet other new pillars of cooperation.

Until recently, the civil society impact on ASEAN policymaking was very limited due to the lack of institutionalized mechanisms to facilitate relations between the ASEAN Secretariat and transnational civil society organisations/networks. The recent establishment of the Public Outreach and Civil Society Division within the ASEAN Secretariat is a step in the right direction and provides suitable channels of communication between state and non-state actors. However, there is no specific proposal yet as to how the new unit could play an effective role to facilitate interactions between concerned ASEAN bodies and civil society on trade and environmental issues, and particularly the reconciliation of these two stakeholders.

Central ASEAN initiatives—at the level of the Secretariat—toward the mainstreaming of environmental issues into trade that are strongly supported by transnational NGOs and foreign donors are regularly blocked by individual member states. What is true for Southeast Asian integration in general also applies to the environment–trade nexus: major bottlenecks to breakthrough ASEAN reforms lie in numerous country level political stumbling blocks. In other words, the main bottleneck to giving the environment more prominent consideration in regional trade matters is at the level of implementation in the ASEAN member states, not at the level of ASEAN strategy and policymaking.

Recommendations

- The involvement of foreign donors is not a bad thing per se, and is essential in terms of providing the necessary funding for crucial pro-environment initiatives, but more emphasis should be given to the strengthening of the region's own institutional mechanisms and a higher level of regional ownership of the trade–environment agenda.
- Foreign donors such as the EC, USAID and UN organizations should intensify efforts already under way to improve the coordination of the pillars of support—bilateral projects and technical assistance, country-based ASEAN projects, and support to the ASEAN Secretariat—to ensure that synergies are achieved.

- Coordination among donors, among ASEAN member states, between the ASEAN Secretariat and member states, and between donors and ASEAN urgently need to be strengthened. Current attempts of strengthening the pro-environment focus in the trade and investment sector currently resemble a patchwork of often uncoordinated initiatives. The Secretariat would be in the best position to facilitate such coordination, as it the place where all the threads of regional cooperation come together.
- The development towards a ‘networked ASEAN Secretariat’ that reaches out to and engages with civil society has been very positive and fruitful. This existing mechanism should be more prominently used for state–civil society interchanges on environmental challenges in the economic integration process. The new Public Outreach and Civil Society Division within the ASEAN Secretariat should be invested with a direct mandate to address and facilitate cooperation between state and non-state actors on environmental matters.

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- iii Zhang, 2008: 2.
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- vii Interviews with Lao government officials and other stakeholders, October 2009; EC, 2009.
- viii See, for example, Hing & Nou, 2006; CDRI, 2009.
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