

# Balancing Trade Growth and Environmental Protection in ASEAN

Environmental issues in  
Trade and Investment  
Policy Deliberations in  
the Mekong subregion

Jörn Dosch

2010

## Abstract

Achieving a balance between trade and investment liberalization and environmental protection is one of the key challenges confronting 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). All the 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 Agreement or other international factors. The expansion of trade and liberalization initiatives further pressurizes the environmental sustainability of this 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.

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 that is ongoing in all these countries. 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. Yet overall there is little evidence of the effectiveness of multilateral efforts—initiated by the Asian Development Bank–GMS program or the Mekong River Commission—of balancing economic interests and environmental concerns in the subregion. However, the picture looks better with regard to the legislative and policy initiatives of individual states.

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Published by the International Institute for Sustainable Development

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Series on Trade and the Environment in ASEAN – Policy Report 2

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

Jörn Dosch

June 2010

## About the Trade Knowledge Network

<http://www.tradeknowledgenetwork.net>

The Trade Knowledge Network is a global collaboration of research institutions across Africa, Asia, Europe and the Americas working on issues of trade and sustainable development. Coordinated by the International Institute for Sustainable Development (IISD), the TKN links network members, strengthens capacity and generates new research to assess and address the impact of trade and investment policies on sustainable development.

The overarching aim of the TKN is to help ensure that trade and investment contribute to sustainable development, with social development and the environment equitably addressed in trade and investment policies. The TKN furthers this aim by generating compelling research with clear policy recommendations and communicating those effectively to decision makers nationally, regionally and globally.

The TKN is hosted by the International Institute for Sustainable Development, a Canada-based not-for-profit organization promoting change towards sustainable development. As a policy research institute dedicated to the effective communication of its findings, the Institute engages decision-makers in government, business, NGOs and other sectors in the development and implementation of policies that are simultaneously beneficial to the global economy, the global environment and to social well-being.

This study is part of a larger TKN project that seeks to better environmental impacts of trade and investment policy in ASEAN, and specifically the Mekong subregion. It was made possible through the generous support of the Swedish Environment Secretariat for Asia (SENSA) which is part of the Swedish International Development Cooperation Agency (SIDA). The project outputs are available on the TKN website.

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## Foreword

The neoliberal economic paradigm that dominated the last quarter century has gone through a serious crisis in the past two years. The global recession that hit in 2008 has triggered a rethinking of both our economic model and the assumptions on which it is based. The old paradigm focused on economic growth and wealth generation. Under this model, a steadily improving living standard would lead the population increasingly to demand a clean environment, greater rule of law, and a level of equity that would eliminate the most extreme poverty and exclusion. As demand for these public goods grew, economies would have generated the funding necessary to address these issues.

This paradigm ruled with near-religious fervour and this fervour discouraged attempts to test the assumptions on which it was based. Where honest criticism prevailed, a number of worrying trends were detected. Firstly, if economic growth did indeed take place, the wealth generated tended to be concentrated within the commercial and financial sectors, such that the gaps between rich and poor, both within and among countries, grew wider rather than shrinking. Secondly, much of the economic expansion led to forms of wealth generation that reduced employment prospects rather than creating jobs. And by relegating environmental concerns to a lower level of political priority, it undermined the very basis on which economic prosperity is founded.

Even economically, the gains were often built on sand, as the bursting of one speculative bubble after another has demonstrated. Wealth creation became ever more divorced from the production of goods and services as banks and investment houses built complex pyramids of derivatives with little connection to reality. Ironically, it is the countries that shunned the orthodoxy of the neoliberal paradigm that have tended to escape the worst of the economic collapse.

If there is a lesson to be drawn from the trying experience of these last years, it is that there will be no acceptable future—no acceptable model for economic organization—that does not value the creation and defence of livelihoods, the maintenance of employment and the restoration of a healthy environment as being equally important as the dry statistics of economic growth and wealth creation.

This is one in a series of papers, made possible by the generous support of the Swedish Environment Secretariat in Asia (SENSA), that investigate the relationship between economic development and environmental sustainability. Making a new, sustainable economy a reality is a goal shared by SENSA and the Trade Knowledge Network (TKN). SENSA has long understood that without the policy, capacity and institutions to manage the environment, the rapid economic changes in Southeast Asia could devastate the foundation for prosperity and wellbeing. TKN is part of that enterprise—not only building the capacity to understand the linkages between economic development and sustainability, but ensuring that the solutions are crafted with full knowledge of local realities, local aspirations and local conditions. Nothing else will work.

Mark Halle  
Executive Director, IISD Europe



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## Abbreviations and acronyms

ACFTA	ASEAN–China Free Trade Agreement
ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
AANZFTA	ASEAN–Australia–New Zealand Free Trade Agreement
ASEAN-EIP	ASEAN Environmental Improvement Program
ASEAN-WEN	Association of Southeast Asian Nations Wildlife Enforcement Network
CEDAC	Cambodian Centre for Study and Development in Agriculture
CEO	chief executive officer
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EC	European Commission
EU	European Union
EUR	euro
FDI	foreign direct investment
GMS	Greater Mekong Subregion
IUU	illegal, unreported and unregulated
Lao PDR	Lao People’s Democratic Republic
MRC	Mekong River Commission
NGO	non-governmental organization
ODA	official development assistance
OECD	Organization for Economic Cooperation and Development
THB	Thai baht
UN	United Nations
UNDP	United Nations Development Program
U.S.	United States
USAID	United States Agency for International Development
USD	U.S. dollar
WTO	World Trade Organization

## Executive summary

Achieving a balance between trade and investment liberalization and environment 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, the Lao People's Democratic Republic [Lao PDR], Myanmar, Thailand and Vietnam). 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 Agreement or other international factors. However, traditionally environmental concerns have not been a primary policy focus of the subregion's governments. The expansion of trade and liberalization initiatives further pressurizes the environmental sustainability of this 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.

This study focuses on mainland Southeast Asia, or, more specifically, the Mekong region (as a subset of the ASEAN region). 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—a relevant fact for the trade–environment nexus, as 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 that is ongoing in the subregion. 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 subregion. Yet overall there is little evidence of the effectiveness of multilateral efforts—initiated by the Asian Development Bank (ADB)–GMS program or the Mekong River Commission—of balancing economic interests and environmental concerns in the subregion. However, 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.

In Vietnam, the current Socioeconomic Development Plan 2006–2010 is designed to pave the way for the country's achievement of middle income country status. The plan 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 the strengthening of the strategic, legislative, and institutional context for environmental protection and management.

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 revolves around unsustainable natural resource management policies, especially those affecting forests.

A test case for the seriousness of environmental considerations in national trade and investment deliberations is the ASEAN–China Free Trade Agreement (ACFTA). However, despite the considerable volume of intra-GMS trade in natural resources such as minerals, agricultural goods and wood, and in products derived from these resources, 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.

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, non-governmental organizations (NGOs) in other countries of the Mekong subregion mainly—and often only—get involved in the environment–trade agenda if the initiative is backed 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 but the EU (or, more precisely, official development assistance provided by the European Commission [EC]), the United States Agency for International Development (USAID) and other Organization for Economic Cooperation and Development donors, as well as the United Nations Development Program (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, e.g. in the case of organic export agricultural products. The oldest donor funded programs that linked the trade and environment agenda 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 the ASEAN Wildlife Enforcement Network. ASEAN can claim ownership of the 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. In a similar vein, it has taken a strong external input—in this case a new EU regulation—to address the growing problem of illegal, unreported and unregulated fishing.

The situation in ASEAN as a whole mirrors that of the Mekong subregion. Most ASEAN states have environmental clauses established as a constitutional principle and the extent of the respective legislation has increased significantly in the last decade. The Roadmap for an ASEAN Community 2009–2015 has a comprehensive pro-environment agenda. However, in the tradition of the so-called 'ASEAN Way', 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. 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 administrative and legal structures and capacities.

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’. 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 environmental issues (as well as those related to labour and intellectual property) from the trade talks. Controversies over the same issues have also contributed to the stalling of EU–ASEAN Free Trade Agreement negotiations.

Furthermore, references to the environment in the ASEAN Economic Community Blueprint are 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. Generally, transnational civil society lobbying has emerged as a new pro-environment push factor, but at the moment ASEAN policymakers view this with concern.

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 ASEAN member states, not at the level of ASEAN strategy and policymaking.

Recommendations are as follows:

- 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 developing a higher degree 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 urgently needs to be strengthened among donors, among ASEAN member states, between the ASEAN Secretariat and member states, and between donors and ASEAN. Current attempts at 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 coordination, as it is where all the threads of regional cooperation come together.

- The development toward 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.

# 1. Context and focus

## 1.1 General linkages between the environment and trade

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, the Lao People's Democratic Republic [Lao PDR], Myanmar, Thailand and Vietnam). The expansion of trade and liberalization initiatives puts further pressure on the environmental sustainability of this subregion. 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. All the Mekong states have embarked on far reaching trade liberalization programs, driven by—or as a requirement of—World Trade Organization (WTO) membership, membership of the Association of Southeast Asian Nations (ASEAN) Free Trade Agreement or other international factors. However, traditionally, environmental concerns have not been a primary policy focus of the subregion's governments. As a United Nations 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 (UNDP, 2007).

While it is often stated that the processes of economic liberalizing and international market integration reforms go along with more efficient resource use (including the use of environmental resources), there is no hard empirical evidence to suggest that trade liberalization leads to positive impacts on the environment or a stronger emphasis on environmental protection and sustainability in policymaking. According to a World Bank study (Mani & Jha, 2006), some of the most common concerns are as follows:

*Reducing barriers to trade may reinforce the tendency for countries to export commodities that make use of resource intensive production factors.* As a result of weak environmental policies, trade liberalization may result in shifts in the composition of production, exports and foreign direct investment (FDI) to more pollution- or resource-intensive sectors.

*Trade liberalization may directly affect environmental standards.* Intensified competition could lead to a 'race to the bottom' as governments lower standards in the hope of giving domestic firms a competitive edge in world markets or attracting FDI. However, competitiveness concerns over environmental policies seem to have been overstated, as a study by the Cambodian Development Research Institute shows:

Competitiveness is determined by factors including human capital, technology, business climate, quality of a country's institutions and so on. While environmental controls are likely to add costs to production, they do not seem to be significant in total production costs, having limited influence price and competitiveness compared to other factors (CDRI, 2009: 18).

*'Environmental tariffs' may be employed against trading partners deemed to have inadequate environmental standards.* The risk here is that these will be used as disguised protection for domestic firms.

At the same time, however, the World Bank (2000) and WTO (1999; 2004) propose that in practice more open trade improves growth and economic welfare. This in itself could then result in more

resources being made available for environmental protection. Increased real income, and with it the emergence of vocal urban middle classes and proactive civil society organizations, is also often associated with growing demand for environmental quality. Countries that are more open to trade seem to adopt cleaner technologies more quickly. Greater openness to trade is also said to encourage cleaner manufacturing, because protectionist economies tend to shelter pollution intensive heavy industries. Ultimately, though, it is empirically difficult to prove a strong correlation between trade liberalization and more environmentally sensitive legislation and policymaking. Both pressures on the environment and natural resources and strategies to respond to environmental challenges are more directly related to government policies and institutions than to trade openness per se.

Diverging views on causal links between trade and the environment are also reflected by the negotiating positions of Southeast and Northeast Asian members of the WTO Committee on Trade and Environment. Analysis by Yohei Harashima (2008: 33) shows that 'Asian countries' views on trade and environment differ on ... environmental goods, market access, effect of trade liberalization on the environment, intellectual property rights and environmental labelling. In some cases, they have opposing views'.

While it is true that the quantity of environmental policies and regulations in the Mekong subregion—as almost everywhere in the world—has increased due to the pressure and lobbying of both international and domestic stakeholders, 'environmental ministries or equivalent agencies in the region are often ill-equipped either to enforce existing regulations or to design, implement, monitor, inspect and enforce new effective environmental polices' (Zhang, 2008: 11). Furthermore, the protection of the environment is regarded as a niche area and assigned to often powerless ministries of the environment that usually find themselves in the lower ranks of the government hierarchy. Few countries effectively mobilize other line ministries to this challenging task.

It is also noteworthy that international economic integration does not necessarily generate the exogenous push factors that result in higher levels of environmental protection and more effective environmental regimes. Delphine Rabet (2010: 20–21) shows in a detailed study of the effects of Mexico's North American Free Trade Agreement membership on the country's environmental regimes that international trade integration can limit national autonomy and sovereignty in environmental legislation:

While the Mexican state has implemented new regulations and is in the process of framing a more adequate environmental framework, it is restrained in its efforts by the sur-imposition on this framework of a so-called free trade regime and its investment-related principles. More than a successful fusion between the environmental regime and the free trade regime, environmental governance in Mexico becomes subjugated to the interests of large foreign economic entities. This situation precludes Mexico from designing its own institutional framework with the autonomy it should have in order to build-up [sic] its environmental regulatory capacity.

Interestingly, in the growing body of literature on economic security, as a core component of human security or non-traditional security, environmental factors do not yet feature prominently as an intervening variable. According to a popular definition, economic security entails 'safeguarding the structural integrity and prosperity-generating capabilities and interests of a politico-economic entity in the context of various externalized risks and threats that confront it in the international economic system' (Dent, 2007: 210). However, risks and threats are usually confined to market access, access to finance and credit, access to technology, and other economic factors in a narrow sense.

### 1.2 Focus

The study focuses on mainland Southeast Asia, or, more specifically, the Mekong subregion as a subset of the ASEAN region. Particular emphasis is given to Thailand as the economically most advanced GMS country; Vietnam as the main receiver of the development aid in East Asia in absolute terms—a relevant fact for the trade–environment nexus, as linking trade/investment to environmental considerations is an increasingly important donor agenda; and Lao PDR as a least developed country. However, reference to other GMS countries, especially Cambodia, is also made in various parts of the report.

Document and primary research for this paper was mainly carried out between November 2009 and March 2010. However, the paper also draws on extensive research and some 100 interviews conducted with government stakeholders, ASEAN and GMS officials, civil society activists, and academics in Thailand, Lao PDR, Vietnam, Cambodia and at the ASEAN Secretariat during the second half of 2008 and throughout 2009.

### 1.3 Research questions and scope

The study focusses on the following three main questions:

1. To what extent are environmental considerations taken into account in trade and investment policymaking processes in the Mekong subregion?
2. What are the key emerging trends in Southeast Asia's trade and investment regimes that have the potential to undermine the environmental sustainability of the region?
3. Which key policy propositions are feasible to improve environmental considerations in trade/investment regimes in Southeast Asia?

The study discusses the above research questions with three points of focus in mind:

1. *Awareness of the links between trade/investment and environment in the policymaking process of individual GMS member states:*
  - Is the environment a crucial factor in the drafting and implementation of trade policies?
  - What is the role of civil society organizations in advancing the trade–environment policy discourse?
2. *The linkages between trade/investment and the environment in the GMS as a subregional cooperation scheme:*
  - What is the role of bilateral and multilateral donors in the mainstreaming of environmental conservation and sustainability in terms of trade facilitation?
  - How significant is illegal/informal cross border trade (particularly the illegal logging/timber trade) as a limiting factor in attempts at linking environmental considerations to the trade and investment agenda?
3. *The extent to which lessons learnt from the GMS case are relevant for ASEAN as a whole:*
  - Is the GMS case relevant for ASEAN as a whole?
  - What are the push and pull factors in any attempts to improve the role of environmental considerations in regional trade and investment regimes?



## 2. Context analysis: The environment and trade in the Mekong subregion

The Mekong River is the world's twelfth-largest river and Southeast Asia's longest waterway. It originates in Tibet and flows through the Chinese province of Yunnan before continuing southwards, touching the territories of six countries (China, Cambodia, Lao PDR, Myanmar, Thailand and Vietnam) and ending in the South China Sea. The GMS covers some 2.3 million square kilometres and contains a population of about 245 million people. In 1992, with the assistance of the Asian Development Bank (ADB), the six riparian states of the Mekong River (Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam) entered into a program of formalized subregional cooperation known as the GMS Program.

The GMS Program has the ultimate objective of promoting the development of GMS markets and the movement of goods and people across the common borders. Its key specific objectives include: (1) facilitating subregional trade and investment; (2) facilitating subregional development opportunities, particularly for energy and tourism; (3) facilitating the resolution of transborder issues such as contagious diseases and environmental degradation; and (4) meeting common resource or other needs.

The GMS Program has been directed at facilitating sustainable economic growth and improving the standard of living in general and the management of environmental and energy security in particular. As of the end of 2008 (currently the most recent data available), the ADB had extended loans totalling USD 3.8 billion and generated USD 4 billion in co-financing for 41 GMS projects with a total cost of USD 11 billion. Furthermore, the ADB had mobilized a total of USD 208 million of grant resources, of which USD 94.1 million have been provided by the ADB itself, to finance 179 technical assistance projects focusing on human resource development, tourism, the environment, trade and investment (ADB, n.d.a). The ADB claims that between 1990 and 2003 the proportion of people in the GMS living on less than USD 1 a day (purchasing power parity adjusted) fell from 46 percent to 33.8 percent in Cambodia, 33 per cent to 13.4 percent in China, 52.7 percent to 28.8 per cent in Lao PDR, 10.1 percent to less than 1 percent in Thailand, and 50.7 percent to 9.7 percent in Vietnam (ADB, 2007).

However, the ecological footprint shows that, despite the fact that a significant part of the GMS populations live in absolute poverty, the region is already living beyond its ecological carrying capacity. 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 (Zhang, 2008: 2).

Hydropower is an important focal point in this regard. The sustainable utilization of water and natural resources in the Mekong basin is directly and inevitably linked to human survival in the region. Energy security—and trade in energy—is mainly related to the promising but not uncontroversial issue of hydroelectric power. The development of hydropower has been among the main priorities of the GMS project and has resulted in the construction of two Lao PDR based power plants, the Theun Hinboun Hydropower Project, which started commercial operation in March 1998, and the Nam Leuk Hydropower Development, which was completed in May 2000.<sup>1</sup>

In general terms, all the GMS economies have been carrying out structural changes from substantially agricultural to modern industrial economies. In this context governments in some countries consider the following: (1) giving the private sector equal rights and reducing the market entry restrictions for private

<sup>1</sup> For a more detailed analysis, see Dosch (2010).

firms; (2) facilitating private sector development through a favourable policy environment that makes registration and licensing procedures for new firms more simple and transparent; (3) removing the existing biases in administrative procedures and regulations that favour state owned enterprises over domestic or foreign private firms; (4) strengthening market institutions, including those concerned with dispute resolution and contract enforcement; (5) guaranteeing equal treatment of domestic and foreign investors; (6) improving land rights and the use of land as a collateral; and (7) promoting and increasing exports and facilitating trade and regional integration (Chang & Kee, 2008: 325–41). However, while governments in most GMS countries 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 back seat in the ongoing industrialization process.

### **3. Awareness of the links between trade/investment and environment in the policymaking process of individual GMS member states**

#### **3.1 Is the environment a crucial factor in the drafting and implementation of trade policies?**

The political rhetoric is clear and straightforward:

In the GMS, which holds some of the most important natural forests and biodiversity in the world, protecting the subregion's wealth of natural resources is a major challenge in the face of efforts of GMS countries to achieve faster economic growth (ADB, n.d.b).

It is correct to say 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 was launched to ensure stronger coordination in conserving natural systems and maintaining the quality of the environment. Under the program 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. Measures for reducing poverty among communities living in or near the economic corridors, defining appropriate land use, and restoring the connectivity of ecosystems will be undertaken in six pilot sites (ADB, n.d.b).

Apart from the ADB funded GMS Program, the Mekong River Commission (MRC) has a role to play in the sustainable management of the subregion's resources. The MRC was founded in 1995 as a successor to the then waning Mekong Committee, which had been created in 1957. Membership of the MRC comprises Thailand, Lao PDR, Cambodia and Vietnam.

The foundation of the MRC was a departure from the economic rationale of the Mekong Committee. While the latter had planned grand water construction schemes, the MRC in the first decade of its existence was more cautious. Particularly under its second chief executive officer (CEO), Joern Kristensen, the MRC Secretariat focussed on environmental protection and viewed the construction of



dams for energy development and large scale irrigation in a critical light. However, it should also be noted that Kristensen rejected the views of NGOs who argued against the MRC's approach to developmental projects (Hensengerth, 2009: 329). As Oliver Hensengerth (2009: 329–30) explains in more detail:

The introduction of the Western concept of sustainable development came at a time when countries in the region were just emerging from the Third Indochina War and were therefore focused on economic reconstruction. Since then, successive MRC CEOs have focused on different aspects of river management. The first CEO, appointed in September 1995, was Yasunobu Matoba, an engineer from the construction department of the Kanto Regional Agricultural Administration Office in Japan's Ministry of Agriculture, Forestry and Fisheries. His successor, Joern Kristensen, focused primarily on environmental protection. While this made sense from the perspective of industrialized countries, it made less sense from the perspective of the riparian states, and disagreements ensued between the CEO and member countries. Olivier [Cogels] who succeeded Kristensen and served as CEO from 2004 to 2007, was an expert on river modelling and shifted the focus of the MRC to water construction projects. The current CEO, Jeremy Bird, took office in April 2008. While Bird is sympathetic to NGO concerns, his focus is on increasing regional investment, particularly in the hydropower sector. In this way, Bird will continue the path established by [Cogels] who sought to shift the focus of the MRC from river protection to economic viability.

A former senior MRC official is sceptical of the MRC's environmental agenda:

The MRC's budget for the environmental program was USD 20 million over a period of five years. But the program did not really look at the implications and environmental cost of dam building. The MRC has not prevented a single dam from being built. One has to keep in mind that the building of hydropower plants requires a huge energy input, significantly more energy than a plant will produce for many years to come, [and] maybe more energy than is generated during the dam's average lifetime of 20 years. The MRC's main problem is the lack of trust and transparency in relations among members.<sup>2</sup>

Overall, there is little evidence of the effectiveness of multilateral efforts at balancing economic interests and environmental concerns in the subregion. However, 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. In 2005 Thailand's Ministry of Industry prepared guidelines to help Thai industries conform with stringently enforced EU import standards, particularly in the area of consumer safety. The ministry strongly supports the strengthening of organic agriculture, which has been identified as an area where Thai companies might be able to develop a competitive edge over other exporters. Organic agriculture is seen as a very promising opportunity for Thai exports to the EU market. In sum, rather than restructuring an already well established and clearly formulated environmental policy agenda, Thai

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2 Interview, Phnom Penh, February 2010.

environmental policy actors have preferred to deepen existing climate change and biodiversity policy initiatives, on the one hand, and, on the other, mainstream global environmental concerns into existing environmental policy priorities.<sup>3</sup>

Furthermore, Thailand is the first GMS country where a court has given the power to prioritize environmental concerns 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 (USD 12.3 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 right of the people to live in a healthy environment must be strictly enforced by concerned government agencies. In particular, government agencies should pre-determine and reject projects that can harm the environment. However, in the court's view, government agencies had failed to do this, and therefore the approval of the projects was a problem that may infringe on the law (Thai Press Reports, 2009). While the court's decision was heavily criticised by the government and the Industrial Estate Authority of Thailand, it should rather have been applauded as a brave step towards achieving environmental sustainability.

In Vietnam, the current Socioeconomic Development Plan 2006–2010 is designed to pave the way for Vietnam's achievement of middle income country status by 2010 (i.e. by attaining an average per capita annual income of USD 1,050–1,100 per annum). The plan 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. From 2005 to 2007 donors committed USD 966.5 million in the environmental sector (including water supply and sanitation, and forestry). The environment represents 11 percent of the amount of total official development assistance (ODA) in the same period (USD 8.7 billion). Among the subsectors of the environment, that of water supply and sanitation is the principal beneficiary (EU Economic and Commercial Counsellors, 2008; EC, 2009b).<sup>4</sup> Vietnam is the main receiver of development aid in East Asia in absolute terms and receives around 3 percent of its GDP in grants and concessional loans (Bertelsmann Transformation Index 2010, 2010b).

According to the ADB, the Vietnamese government has demonstrated a strong commitment to the strengthening of the strategic, legislative, and institutional context for environmental protection and management. The strategic and policy framework has been enhanced through the development and adoption of a number of high level strategies, including the National Strategy for Environmental Protection to 2010 and Vision Toward 2020, which acknowledges the links between the environment and poverty, but does not mention any potential tension between trade expansion and attracting more FDI, on the one hand, and the environment, on the other (Vietnam NCSA Team, 2006). There is a lack of any clear hierarchy and priority among the various strategies, and the issues and objectives contained in documents are numerous and the targets (where available) are—overly?—ambitious (Vietnam, n.d). The government currently aims at allocating 1 percent of the overall state budget to environmental protection activities.<sup>5</sup>

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3 Interview with the Ministry of Industry's deputy permanent secretary, Bangkok, February 2009.

4 Also based on interviews with Vietnamese government officials and other stakeholders, Hanoi, March 2009.

5 According to Nguyen Van Duc, vice minister, Ministry of Natural Resources and Environment; see GMS ECO (2008: 5).

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 country's principal environmental legislation. It includes measures for the protection and restoration of the environment, as well as guidelines for environmental management and monitoring. The government has set aside 17 National Biodiversity Conservation Areas comprising just over 10 percent of the national territory, and has logging controls in place. Enforcement of such controls is sporadic at best, however. Major mining and hydroelectric projects undertake environmental impact studies, but largely because of international pressure, as the Lao PDR government does not require such studies for the investment projects it approves. The government expresses most concern over slash-and-burn agriculture traditionally practised by ethnic minorities and has pursued a policy of resettling such minorities at locations where agriculture is sustainable. A recent development of some environmental concern has been the long term leasing of large areas for plantation agriculture.

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. Clearing of lowland areas for agriculture and unsustainable logging have reduced forest by nearly half over the last 50 years. Loss of rural livelihoods and loss of biodiversity are two direct consequences of this (EC, 2009a).<sup>6</sup>

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). While most reports and academic papers on the ACFTA and its Early Harvest Program have not elaborated on environmental implications (e.g. Hing & Nou, 2006), a recent study by the Cambodian Development Research Institute discusses the environmental impact of regional free trade in detail (CDRI, 2009).

According to the study, the ACFTA has been a significant driver of the rapid expansion of trade between the GMS5 countries (Cambodia, Lao PDR, Myanmar, Thailand and Vietnam) and China, especially for products that do not have to comply with extensive health and food safety standards. Trade between the GMS5 countries and China mainly comprises a small number of product groups such as machinery and electrical appliances, base metals, mineral products, chemicals, textiles and apparel, and rubber and vegetable products. Two thirds of the trade volume is in products that fall into the least polluting sectors (i.e. those sectors that emit total toxic pollution of less than 500 pounds per USD 1 million of production), while a third is in products that fall into the most polluting sectors (i.e. emitting more than 1,500 pounds of pollutants per USD 1 million of production). Pollution generated by the latter sectors is large, and the growth path in these sectors is likely to generate even greater pollution in the near term. Furthermore, within the GMS there is considerable trade in natural resources such as minerals, agricultural goods and wood, and in products derived from these resources. Trade in natural resource based products raises concerns over resource depletion. In countries without effective regulatory regimes, trade driven natural resource exploitation can lead to illegal logging and inappropriate forest cutting (CDRI, 2009).

While the ACFTA does not contain any provisions for cooperation on environmental problems that may arise as a result of trade liberalization, the Plan of Action to Implement the Joint Declaration on ASEAN–China Strategic Partnership for Peace and Prosperity (2004) does.<sup>7</sup> The declaration is a comprehensive master plan that covers all facets of cooperation and has several significant references to

6 Also based on interviews with Lao PDR government officials and other stakeholders, October 2009.

7 <<http://www.aseansec.org/16805.htm>>.

taking environmental issues into account, including in the specific section on Mekong River basin development cooperation. However, there is no hard empirical evidence of what measures were undertaken in compliance with the stated intentions.

### 3.2 What is the role of civil society organizations in advancing the trade–environment policy discourse?

Generally speaking, environmental pressure groups in the Mekong subregion, often allied with interested academics, have grown in size and influence over the last two decades. Businesses, especially those dependent on customers in developing countries, have also emerged as agents for change. Many European and North American multinationals are now required by their shareholders to meet quality standards similar to those in their home countries (Kennett & Steenblik, 2005).

Among the three countries covered in this report, *Thai* civil society is the most influential and has been rapidly evolving over the past decades. Business associations, given their connections with political parties and bureaucrats, have been especially effective in influencing government policy; workers' unions, traditionally repressed, have been far less successful. NGOs have existed continuously in Thailand since 1980, working on a host of issues ranging from slums to farmers' problems, the environment, health and democracy. Many NGOs have formed alliances with members of parliament, senators and even bureaucrats. Since the late 1980s the government has expressed its desire for greater cooperation with NGOs (Bertelsmann Transformation Index 2010, 2010a). It is no coincidence that the proposed framework for an ASEAN–Civil Society Dialogue on Environment, a joint effort of the 2nd ASEAN Peoples' Forum and the 5th ASEAN Civil Society Conference—and so far the most visible civil society attempt at lobbying Southeast Asian governments on the environment—originated at a conference in Thailand<sup>8</sup> with a strong participation of Thai NGOs, including Chulalongkorn University Social Research Institute, the Thai NGO Coordinating Committee on Development and the Thai Volunteer Service (2nd ASEAN Peoples' Forum & 5th ASEAN Civil Society Conference, 2009).

For the other countries of the Mekong subregion it can generally be concluded that NGOs 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. *Cambodia* provides a good example of this. In collaboration with the Cambodian Centre for Study and Development in Agriculture (CEDAC), an NGO working in the area of rural development, the German donor organization Deutscher Entwicklungsdienst/German Development Service has supported farmers to produce high quality rice. Applying a method called 'systematic rice intensification', the project has enabled farmers in the country to produce their rice without agrochemicals. The project is focussed on quality improvement and the support of farmers and their associations in the marketing and certification of the rice. While CEDAC first concentrated on supplying rice to the Cambodian market, the first shipment of certified organic rice was exported to the EU in early 2010.<sup>9</sup>

In *Vietnam*, fully state independent NGOs in the Western understanding of the concept of civil society do not exist yet. Although coopted by the state, various grassroots groups have emerged in recent years and have started to play a crucial role in the economic reform process and generally with regard to

8 Held in Cha-am, Phetchaburi Province in October 2009.

9 Interview with the country director of the Deutscher Entwicklungsdienst/German Development Service, Phnom Penh, January 2010.

socioeconomic reform agendas. Important results concerning trade and environment at a micro level could be achieved with relatively small amounts of donor funding, e.g. from the Small Project Facility of the European Commission (EC). The director of the Centre for Marinelife Conservation and Community Development (a beneficiary of the Small Project Facility project on empowering women, improving lives and conserving the environment through community based ecobusiness in coastal Vietnam) gives the following example:

What we primarily need is funding for projects that provide education and training to better the livelihoods of people, such as fisherwomen in our case, who do not get a lot of attention from the government. If fisherwomen want to engage in the ecoshrimp business, for instance, they need to know about the standards and regulations that apply to ecoshrimp—and agricultural products in general—so that these products can then be successfully exported to the EU and other markets. Without the appropriate funding for training, these fisherwomen are likely to fall back into poverty.<sup>10</sup>

In *Lao PDR*, participatory governance has been encouraged through mass organizations that were invited as witnesses of the Governance Reform Program and the preparation of the National Socioeconomic Development Plan. Writing about Lao PDR civil society in 2001, the ADB stated, ‘No major increase in scope is likely’. This, with hindsight, has proven to be too pessimistic. Voluntary associations and professional organizations are playing an increasing role, and it appears that the Communist Party realizes that it cannot manage change without some support from such groups (ADB, 2001: 24). While there is no evidence of any civil society involvement in advancing the trade–environment policy discourse, as in other GMS countries, donors encourage the production of organic agricultural products for export. However, unlike in Thailand, Cambodia and Vietnam, partners are Lao PDR government organizations (Integrated Framework for Trade-related Technical Assistance, n.d.).

## 4. The linkages between trade/investment and the environment in the GMS as a subregional cooperation scheme

### 4.1 What is the role of bilateral and multilateral donors in the mainstreaming of environmental conservation and sustainability in terms of trade facilitation?

As already outlined above, the ADB GMS Program has an explicit environmental agenda, and projects in this sector have received substantial funding. ‘Protect the environment and promote sustainable use of the subregion’s shared natural resources’ is one of the five core goals of the GMS Strategic Framework (ADB, 2010). However, environmental issues are not mainstreamed into trade facilitation, which forms another core area of activity. The need to link trade facilitation with environmental considerations is particularly urgent with regard to the growing energy trade.

The uncoordinated construction of power plants and irrigation systems by the upper Mekong countries—particularly China, which plans to build more than a dozen power plants on both the

<sup>10</sup> Interview, Hanoi, March 2009.



Mekong's tributaries and the main stream—poses a serious challenge to the subregion's ecosystem. The construction could result in a potentially explosive competition between the upper and lower Mekong states for water resources. Politicians and senior officials from the lower Mekong states, mainly Thailand, Vietnam and Cambodia, have regularly expressed concerns about China's proposed dam building activities, albeit more indirectly and in private than openly and in official intergovernmental meetings. Some perceive China's ambitious hydropower plans as a zero-sum game in which China's economic gains would be paid for by the lower Mekong states' environmental costs, such as rising salinity levels in Vietnam's agriculturally indispensable Mekong delta.

The energy trade has been growing. Since September 2006 China has been supplying electricity to Vietnam through a cross border 220 kV power transmission line to ease Vietnam's chronic power shortage problems. Further transmission lines are under construction or being planned. China (through the state owned company China Southern Power Grid) is also involved in the building of electricity generation facilities in Vietnam, Lao PDRT and Myanmar, enabling the Southeast Asian GMS members to deliver electricity to China's western provinces when it will be much needed in only a few years' time to further fuel rapid industrialization. The electric power trade between China's Yunnan Province and Vietnam reached some USD 100 million in 2007. In February 2009 the Chinese Guangdong Nuclear Power Group announced its interest to help Vietnam build its first nuclear power plant, comprising two 1,000 MW reactors to be located in the southern coastal province of Ninh Thuan (*SinoCast China Business Daily News*, 2007; Grieder, 2009; Dosch & Vuving, 2008).

So far the GMS Working Group on Environment has not directly addressed the potential environmental impact of increasing energy trade in the subregion. While the 14th Working Group on Environment Meeting (held in Luang Prabang in July 2008) made a verbal commitment 'to actively and appropriately respond to the urgent challenges of the current food crisis and climate change', stressed the need for 'strengthening and harmonizing cross sectoral linkages between relevant sectors of the national and subregional development plans' and highlighted the risk of unsustainable natural resource use to rural livelihoods, health and welfare, few—if any—concrete policy actions have followed (ADB, 2008). Similar findings apply to the GMS environment ministers' meetings. The second meeting in January 2008 in Vientiane addressed 'sustainable natural resource use for economic competitiveness', but—with regard to trade—did not go beyond the general notion of the necessity of 'mainstreaming environment to core economic sectors investments such as transport, energy, tourism and trade sector'. It is telling for the relative political importance of environmental concerns that, except for Cambodia, none of the member states was represented by its respective minister of the environment (or equivalent); senior officials attended instead (GMS EOC, 2008).

Overall, it was not the ADB but the EU (or more precisely ODA provided by the EC), the United States Agency for International Development (USAID), other Organization for Economic Cooperation and Development (OECD) donors, and the United Nations Development Program (UNDP) who 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, as already shown above in the case of organic export agriculture.

For example, the EC's environmental interventions in *Thailand* have successfully operationalized global environmental objectives in terms of national and local environmental policy priorities at the programmatic and institutional levels. Not only have EC-sponsored programs and projects produced outputs and impacts relevant to local and national environmental needs, they have also provided Thai

government stakeholders with the organizational and institutional capacity to address global environmental issues more effectively. The EC's environmental policy interventions in Thailand have successfully addressed the global environmental concerns—most notably climate change—of the Thai environmental agenda. In terms of programmatic priorities, the aims and impacts of EC-sponsored environmental projects helped Thai policymakers to grapple with environmental policy issues concerning the sustainable use of natural resources, e.g. fisheries, forests or energy. In terms of institutional priorities, bilateral projects (e.g. Coastal Habitats and Resources Management) and regional projects (e.g. EC–ASEAN COGEN<sup>11</sup>), European interventions have generated a range of institutional capacities for local co-management of environmental issues. This has resulted in improvements to institutional capabilities for the effective co-management of resources, as well as new knowledge relevant to the implementation of environmental policy.

Significantly, this is not only true for policy actors, but also for business and industry. Firms have become increasingly aware of the business potential of environmentally sustainable products (e.g. organic shrimp and vegetables, which already have a large market share of the European market) and practices. The EC Delegation in Bangkok, in collaboration with the Royal Thai Government, the Board of Trade of Thailand and the Federation of Thai Industries, has been particularly active in informing Thai firms about EU legislation on environmental standards that impact on Thai exports to the European market; EU food labelling requirements; new regulations on corporate social responsibility; the food traceability requirement; requirements on supply chain security; regulations on pesticide residues, the Registration, Evaluation and Authorisation of Chemicals Regulation; regulations on organic products; the Health and Nutrition Claims Regulation; sanitary requirements for fruit and vegetables; and the Thailand–EC Cooperation Facility. These extensive information campaigns have resulted in adjustments to EC regulations (EC, 2008).<sup>12</sup>

In *Lao PDR*, the EU is one of the most active donors of development, humanitarian and trade assistance. There are 25 ongoing EC projects amounting to a total of EUR 61 million. Rural development makes up two thirds of the EC project portfolio. The Forestry Conservation and Rural Development Project in Phongsaly has had an important impact on environment issues through the protection of forest resources. The EU also recognizes the importance of aquatic resources and has implemented a wetlands protection project in the Siphandone wetlands. These bilateral initiatives are supplemented by a number of projects funded under the EC's regional programs, such as Asia Pro-Eco and Asia Urbs, that aim to promote sustainable urban environments in Vientiane and Luang Prabang; assess the potential and the feasibility of renewable energy; and foster the adoption of policies, technologies and practices that promote cleaner, more resource efficient solutions to environmental problems (EC, 2009a).<sup>13</sup>

In *Vietnam*, the EU funded Multilateral Trade Assistance Project has contributed to some progress on the development of a socially and environmentally sustainable trade and economic integration strategy as part of the country's economic policy reform process, inter alia through enhanced local institutional and human capacity in trade issues, as well as legal advice and training. For example, several studies and workshops have helped Vietnamese government stakeholders to build capacity on trade–environment-related commitments and obligations, laws, and regulations and identified inconsistencies between

11 This project involves combined heat and power generation from biomass, coal and gas using the latest energy friendly technology; see <<http://www.cogen3.net/index.html>>.

12 Also based on interviews with Thai government stakeholders, Bangkok, February 2009.

13 Also based on interviews with Lao PDR government officials and other stakeholders, Vientiane, October 2008.

current laws/regulations and commitments under multilateral economic agreements and WTO obligations. The project also focussed on economic implications of environment–trade-related compliance and identified key export industries to which environment-related trade measures are most relevant. Furthermore, it provided an overview of the current and anticipated future problems in the area of environment-related trade measures (EU & Socialist Republic of Vietnam, 2004; 2008).

One of the oldest donor funded programs that linked the trade and environment agendas was USAID's ASEAN Environmental Improvement Program (ASEAN-EIP), which was established in 1992 with an initial four years of funding of USD 15 million. However, only one of the six participating states, Thailand, was a GMS member; the other five were Indonesia, Malaysia, Singapore, Brunei and the Philippines. The program was designed to address rising urban and industrial pollution in the then six ASEAN countries and to provide a region wide programmatic framework to introduce cleaner industrial production and environmental management. Program tasks included analysis of the effectiveness and efficiency of existing environmental laws, regulations and institutions in each ASEAN country; the introduction of market based incentives to foster improved environmental management; the encouragement of regional policies to prevent industrial pollution and raise the level of environmental awareness and concern in the region; and the establishment of technical research and development centres, as well as region-wide certification programs for testing laboratories. However, the program did not operate within any existing national policy frameworks and strategies for the achievement of cleaner production and was unable to establish such frameworks and strategies (Stevenson, 2004). It is indeed a common problem—not just for interventions targeted at the environment—that donor funded regional programs for ASEAN are not always well linked and synchronized with national initiatives and often do not respond well to the actual needs of member countries. In early 1995 ASEAN-EIP was absorbed into the larger U.S.–Asia Environmental Partnership program, a USAID sponsored, USD 100 million public–private partnership designed to encourage the transfer of U.S. environmental management and technology skills to over 30 Asian countries.<sup>14</sup>

Also in the first years of the 1990s (under the UNDP Fifth Programming Cycle 1992–1996), UNDP provided support to the ASEAN Secretariat at a time when the ASEAN member states made their first important moves towards an ASEAN Free Trade Area and an ASEAN Investment Area, with the intention of developing a well integrated 'outward looking' regional economy that could attract significant inflows of FDI. A Subprogram on Trade and Environment was launched with the objective of laying the foundation for reconciling the trade and environment sectors, developing an information base for the external use of trade measures for environmental purposes and a set of regional guidelines and recommendations on trade and environment, and implementing the major recommendations. The allocation made for the subprogram was USD 514,000. The subsequent ASEAN–UNDP Partnership Facility (covering the period 2003–05) was directed at the promotion of a common policy environment through the harmonization of national laws, rules and standards affecting trade and investment, e.g. fair trade rules, environmental standards, product standards, competition policy, etc., with particular emphasis on Cambodia, Lao PDR, Myanmar and Vietnam (UNDP, 2003). Smaller UNDP programs, such as the Regional Environmental Governance Program for Asia Pacific Region (covering 2004–05), have focussed on environmental governance in Southeast Asia by promoting sustainable approaches to natural resources and environmental management at the local level and enhancing the opportunities for public participation in decision making that affects natural resources use and livelihoods (UNDP, 2004).

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<sup>14</sup> <<http://www.louisberger.com/berger/services2/16asia.php>>.



## 4.2 How significant is illegal/informal cross border trade (particularly illegal logging/timber trade) as a limiting factor in attempts at linking environmental considerations to the trade and investment agenda?

Since the 1950s the vast tropical forests of Southeast Asia have been steadily depleted by the growing demand for wood in Japan, the U.S., Europe and, increasingly, China. In the summer of 1998 China imposed a sweeping internal ban on logging after the worst flooding in almost half a century. The excessive tree felling in the upper reaches of the Yangtze and other river systems had contributed to floods that killed more than 4,000 people and forced more than 18 million from their homes. The ban slowed the destruction of China's forests, but it also forced China's industry to turn to imports to meet the burgeoning demand for timber. 'That's how a flood in China became a disaster for the forests of Southeast Asia' (Lague & Hiebert, 2003: 26).

China imports forest products from Malaysia, Singapore, Thailand, Myanmar, Lao PDR, Cambodia, Papua New Guinea and the Philippines, and in some of these countries governments do little to effectively prohibit illegal logging and trading. However, it would be too simplistic to exclusively blame China for the existing problem, as the situation is much more complex. Thailand also imposed a logging ban following severe flooding in several areas in 1989, resulting in imports of wood from elsewhere thereafter. And Vietnam's demand for Lao PDR's natural forest wood products has a strong influence on how Lao PDR's forests are managed and how forest revenues are controlled and distributed. This has significant implications for over 80 percent of Lao PDR's population who are poor and who rely on forest resources for their livelihoods. Despite the Lao PDR government's official commitment to the sustainable management of the nation's forest ecosystems and the forest communities that are dependent upon them, many concerns remain regarding the country's forest management and governance situation. Furthermore, Lao PDR timber is often bartered in exchange for official Vietnamese development support or for official debt repayment purposes (Forest Trends & DFID, 2010).

Despite the excellent efforts of NGOs to document the problem, the warnings of forestry experts, and the discussions among senior officials in a number of countries, there is nothing currently under way that seems likely to halt the destruction of the remaining tropical natural forests of Southeast Asia. International organizations have been set up to support sustainable forestry, particularly the International Tropical Timber Organization, which was supposed to develop and monitor good practices in sustainable forestry. However, it seems that this organization, based in Japan, has had little impact apart from its monitoring function.

The unpleasant but nearly unavoidable conclusion is that most of the policies which have been proposed do not have much impact on continuing deforestation in developing countries in the region. Monitoring by highly committed NGOs willing to take risks to publicize illegal logging has produced extraordinary data and reports on illegal extraction and on smuggling and laundering of wood in the process of exporting it to the most profitable destinations, and such has led to greater pressures on the countries which export, trans-ship, or import illegally harvested wood products. But 'illegal' is always defined by national rather than international or global standards, and the definition of what is tolerable is subject to pressures from elites and local employment-oriented constituencies, most of which favour intensive exploitation even if it is clearly unsustainable (Lang & Chan, 2006: 28).

Indonesia might be setting a good example in the region if recent government pledges materialize. From 1950 to the mid-1990s the forest cover in Indonesia declined by about 40 percent, from an estimated

162 million hectares to 98 million. Greenpeace is optimistic that ‘the Indonesian government can start greenhouse cutting gas emission by imposing a moratorium on all logging activity in 2010’. At the G20 summit in Pittsburgh in October 2009, Indonesian President Susilo Bambang Yudhoyono pledged to cut emissions by 26 percent by 2020 using the state budget and by 41 percent if developed nations gave the financial support to do so. Indonesia’s chief climate change negotiator, Rachmat Witoelar, announced that Indonesia would cut 700 megatons of greenhouse gas emissions, equal to 700 million metric tons of carbon dioxide, by 2020 (Antara, 2010).

An equally pressing subregional and regional issue is the illegal wildlife trade, which involves hundreds of millions of individual plants and animals and tens of thousands of species. Smuggling ranges from live animals and plants to supply the pet and horticulture trades, to wildlife meats for ‘luxury’ foods for the wealthy and traditional Asian medicine, and wildlife derivatives such as ivory, pelts, and bones to make clothing and medicines. Rich in biodiversity, both the Mekong subregion and Southeast Asia as a whole are a source, transit and destination region for the illegal wildlife trade that is devastating the region’s biodiversity. 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. The pangolin is the most heavily traded mammal, while big cats and their body parts are still regularly found in trade (Wildlife Alliance, 2009).

While coordinated intergovernmental action against illegal wildlife trade is absent from the official cooperation agenda in the Mekong subregion, it is addressed in the broader context of ASEAN. A core initiative has been the ASEAN Regional Action Plan on Trade in Wild Fauna and Flora 2005–2010, which addresses common issues of enhanced law enforcement networking, interagency cooperation, strengthened national legislation and increasing the availability of scientific information to guide wildlife trade management by Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) authorities. The plan also prioritizes engagement with civil society to raise awareness of issues of legality and sustainability with industry groups, traders and local communities involved in wildlife trade.<sup>15</sup> In December 2005 the ASEAN Wildlife Enforcement Network (ASEAN-WEN) was launched as the task force of the Regional Action Plan.<sup>16</sup>

ASEAN-WEN is yet another example of how large regional initiatives could not be carried out without major donor support. ASEAN-WEN is the ‘world’s largest wildlife law enforcement network’ and involves police, customs and environment agencies of all ten ASEAN countries. According to the ASEAN-WEN Program Coordination Unit, some 7,785 live animals were rescued by Southeast Asian authorities from illegal trade in 35 major wildlife law enforcement actions across the region between 1 July and 30 September 2009, according to reports received by the unit. This number surpasses the 5,296 animals reported rescued during the previous quarter. During the same period 23 suspects were arrested in connection with major seizures of protected wildlife and more than 1,622 dead animals, animal parts and derivatives, including several large shipments of ivory reported to be of African origin, were recovered (ASEAN-WEN, n.d.).

ASEAN can claim ownership of the initiative, which began in October 2004 with Thailand proposing the creation of a regional wildlife law enforcement network at the 13th Conference of the Parties to CITES. However, the network would neither exist nor be able to operate without the substantial financial support of USAID and the U.S. State Department.

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<sup>15</sup> <<http://www.aseansec.org/17753.pdf>>.

<sup>16</sup> <<http://www.aseansec.org/17933.htm>>.

In a similar vein, it has taken a strong external input to address the growing problem of illegal, unreported and unregulated (IUU) fishing, which is now also being addressed under the ASEAN Political-Security Community Blueprint.<sup>17</sup> IUU fishing contributes to the depletion of fish stocks and jeopardizes protection and recovery measures put in place to ensure the viability of resources. It represents unfair competition for those who exploit fish resources legally. The impact of IUU fishing also threatens the very survival of coastal communities. Thailand and Vietnam were the first Southeast Asian countries to announce measures taking account of a new EU regulation against IUU that entered into force on 1 January 2010.<sup>18</sup> The regulation could provide important European tools in the global fight against illegal fishing. However, although the IUU regulation will have an impact on third countries that are trading in fisheries products with the EU, it is unclear whether it will fulfil its potential.

## 5. To what extent are lessons learnt from the GMS case relevant for ASEAN as a whole?

### 5.1 Is the GMS case relevant for ASEAN as a whole?

The situation in ASEAN as a whole mirrors that of the Mekong subregion: Southeast Asia is a region extremely rich in natural heritage. However, rising populations, economic development and other factors pose significant dangers to the environment of the region. Most ASEAN states have environmental clauses established as a constitutional principle and the extent of the respective legislation has increased significantly in the last decade. Most ASEAN states are members of the main global environmental treaties, such as the UN Framework Convention on Climate Change, the Kyoto Protocol to the UN Framework Convention on Climate Change, the UN Convention on Biological Diversity and the UN Convention to Combat Desertification. Furthermore, at least on paper, Southeast Asian governments have increased regional cooperation within the ASEAN framework. The ASEAN Agreement on Transboundary Haze Pollution, the common efforts to enforce CITES, the 1995 Mekong Agreement (involving Thailand, Vietnam, Lao PDR and Cambodia),<sup>19</sup> and the 2007 ASEAN Declaration on Sustainable Environment<sup>20</sup> are examples of regionally coordinated efforts in the protection of the environment. However, in the tradition of the so-called ‘ASEAN Way’, 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. Whereas Singapore is the only state in the region that has enforcement capacity comparable to (or even better than) average Western developed countries, Cambodia, for example, at the other end of the spectrum, suffers from deeply rooted dysfunctions in the country’s administrative and judicial structures. 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 terms of 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 administrative systems, legal structures and capacities of the countries of the subregion (Menzel, 2007).

17 Under the section entitled ‘Non-traditional security issues’: ‘Strengthen close cooperation among ASEAN Member States, to combat IUU fishing in the region and where applicable, through the implementation of the IPOA–IUU fishing and work towards the establishment of ASEAN Fisheries Consultative Forum (AFCF)’, B.4.1 xiv, <<http://www.aseansec.org/22337.pdf>>.

18 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:286:0001:0032:EN:PDF>>.

19 The full name is Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin.

20 <[http://app.mfa.gov.sg/pr/read\\_content.asp?View,8917](http://app.mfa.gov.sg/pr/read_content.asp?View,8917)>.

The 2002 ASEAN Agreement on Transboundary Haze Pollution is a case in point for the existence of decisive regional treaties in response to mounting environmental challenges that are related to economic activity, but a lack of political will to fully implement and enforce them. In 1997 and 1998 smog from land clearing forest fires in Sumatra and Borneo islands was the worst in history. The agreement was the first in the world that binds a group of contiguous states to tackle haze pollution resulting from land and forest fires. The agreement calls for the signatories to undertake legislative and administrative measures to prevent and control activities related to land and forest fires that may result in transboundary haze pollution, and national as well as joint actions to intensify regional and international cooperation to prevent, assess and monitor transboundary haze pollution arising from land and forest fires. One of its centrepieces is the establishment of an ASEAN Coordinating Centre for Transboundary Haze Pollution Control to facilitate cooperation and coordination in managing the impact of land and forest fires, and haze pollution in particular. However, the Indonesian House of Representatives has still not ratified the agreement, because leading legislators want to use the ratification trump card as a diplomatic tool to get Malaysia and Singapore to the negotiating table for a more comprehensive agreement on the environment. They would like to see the agreement extended in order to address other regional environmental issues that affect Indonesia, such as the impact of the past sale of sand to Singapore or Malaysian businessmen profiting from timber logged illegally in Indonesia (Ghani, 2007). The Agreement on Transboundary Haze Pollution is one of various interlinked disputes in Indonesia–Singapore relations over water, land reclamation, sand exports, satellite concessions, corporate takeovers, the flight patterns of the Singaporean Air Force and negotiations for an extradition agreement.

If there is anything to learn from the case of the Mekong subregion for ASEAN as a whole, it is 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.

### **5.2 What are the push and pull factors in any attempts to improve environmental considerations in regional trade and investment regimes?**

Foreign donors' interests and interventions are clearly the push factors. The EC alone contributed more than EUR 60 million to projects with a direct or indirect environmental focus between 1997 and 2007. Environmental sustainability is a key domain in the EU's strategy in Asia in general and Southeast Asia in particular, as Table 1 indicates.

**Table 1: EC–ASEAN projects with direct or indirect environmental focus, 1997–2007**

Project	Start–end	EC contribution to budget amount (EUR)	Objectives
EU–ASEAN COGEN Program (COGEN I, II, and III) <sup>a</sup>	Since 1991	14,400,00	Accelerate through pilot projects implementation of European co-generation technologies within industrial sectors in the ASEAN region
EC–ASEAN Energy Facility	March 2002–February 2007	21,500,000	Stimulate regional energy projects and initiatives proposed by energy industry from ASEAN and the EU
ASEAN Regional Centre for Biodiversity Conservation	1999–2004	9,424,000 between EU and Asia and within ASEAN	Promote the establishment of a regional network
ASEAN Centre for Biodiversity	2006–09	6,000,000	Encourage and enable ASEAN member states to achieve a significant reduction of biodiversity loss by 2010
ASEAN Program for Regional Integration Support (APRIS 1)	February 2003–September 2006	4,500,000	Strengthen EU–ASEAN relations as a whole and complement ongoing EC–ASEAN dialogue/institution building at the ASEAN Secretariat
APRIS 2	November 2006–November 2009	6,200,000	Same as APRIS 1; subsumes standards and support to regional integration under TREATI <sup>b</sup> and READI <sup>c</sup> as well as activities to raise EU visibility. Components: <ul style="list-style-type: none"> <li>• standards and sanitary and phytosanitary measures</li> <li>• customs and trade facilitation</li> <li>• investment</li> <li>• capacity building <ul style="list-style-type: none"> <li>– improved legal capacity at ASEAN Secretariat</li> <li>– training of ASEAN Secretariat and ASEAN member country officials on working groups/committees</li> </ul> </li> </ul>

a For details, see sec. 4.1, footnote 11, above.

b Transregional EU–ASEAN Trade Initiative.

c Regional EU–ASEAN Dialogue Instrument.

Source: EC (2009c: 11)

Among other OECD donors, Canada has had the clearest pro-environment approach. Over the years it has extended development cooperation to ASEAN in the areas of forestry, human resources development, fisheries, energy, agriculture, transportation and communication, as well as science and technology and the environment.

The main shortcoming of donor driven initiatives and projects is that they regularly overestimate the receiving states' implementing capabilities. Regional integration and harmonization in the field of tariffs, standards, intellectual property, foreign investment regimes and, not least, environmental regimes have been advancing slowly. The basic conditions for creating common regimes or even for harmonizing national legislative frameworks and enforcement practices among ASEAN countries are not yet in place, given considerable disparities in technical and institutional capacities, economic development and political priorities. Therefore, until the level of infrastructure in the areas mentioned above in all ASEAN countries is more or less equalized, national capacity building must be considered as a basic condition for extending regional cooperation. As one ASEC officer put it, 'the member states are the bottleneck'.<sup>21</sup> While the donor commitment to ASEAN is certainly appreciated in the region, it also poses question of ownership and coherence. A high ranking official asked, 'How can we coordinate all these activities? In reality, it's difficult to establish regional ownership. We simply try to follow what the donors do'.<sup>22</sup>

21 Interview, Jakarta, October 2008.

22 Interview, ASEAN region, October 2008.



At the same time there is no shortage of regional policy initiatives and visions for stronger environmental considerations in trade and investment deliberations. ASEAN has established a network of intergovernmental meetings on the environment, including the ASEAN Ministerial Meeting on the Environment, the Meeting of the Conference of Parties to the ASEAN Agreement on Transboundary Haze Pollution and the ASEAN Plus Three Environment Ministers Meeting.<sup>23</sup> In 2006 ASEAN environment ministers adopted the Cebu Resolution on Sustainable Development<sup>24</sup> to further enhance regional cooperation to protect the environment, promote biodiversity, and deal with cross border problems such as forest fire haze and the illegal trade in wildlife (Sino-Cruz, 2006).

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 (AANZFTA) 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. As Ramon Vicente Kabigting, a director with the Philippines' Department of Trade and Industry, explained at the time:

... some ASEAN members do not have the infrastructure and laws to tackle the three issues. They do not wish to have the issues in an agreement .... We are not offering any discussions. It is the preference of ASEAN not to discuss labor, environment and intellectual property (cited in *AFX Asia*, 2006).

A senior ASEAN official echoed these sentiments: 'We want to focus on trade, investment and services' (cited in *AFX Asia*, 2006). Australia and New Zealand gave in and the AANZFTA entered into force on 1 January 2010 for eight of the 12 countries that signed the agreement in February 2009. Controversies over the same issues have contributed to the stalling of EU–ASEAN Free Trade Agreement negotiations.

While the Roadmap for an ASEAN Community 2009–2015<sup>25</sup> is very detailed in outlining the significance of environmental issues (in part D) and lists dozens of action points, the document lacks explicit strategies for reconciling trade and environment. The Roadmap's 'mission statement' on the environment at least hints at this link:

ASEAN shall work towards achieving sustainable development as well as promoting clean and green environment by protecting the natural resource base for economic and social development including the sustainable management and conservation of soil, water, mineral, energy, biodiversity, forest, coastal and marine resources as well as the improvement in water and air quality for the ASEAN region. ASEAN will actively participate in global efforts towards addressing global environmental challenges, including climate change and the ozone layer protection, as well as developing and adapting environmentally sound technology for development needs and environmental sustainability.

However, no matter how specific the related action points are (the most elaborated and most easily implementable actions deal with pro-environment education, capacity building for various stakeholder groups, ASEAN outreach to the public and intra-ASEAN network building on environmental matters), the following general strategic objective opens the door for immediate member states' veto and exit

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23 For these and other institutional arrangements, see ASEAN Secretariat (2009: chap. 9); Apichai Sunchindah (1998).

24 Cebu Resolution on Sustainable Development, <<http://www.aseansec.org/18915.htm>>.

25 <<http://www.aseansec.org/publications/RoadmapASEANCommunity.pdf>>.

options and represents a hurdle in the process of implementing the pro-environment agenda (emphasis added):

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.

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 instead potentially prevents the creation of policy linkages between the two areas if individual member states object to any particular policy/plan of action.

Not surprisingly, therefore, the reference to the environment in the ASEAN Economic Community Blueprint is very weak. The only mention is under Article 56 ('Mining cooperation') where the intention to 'Promote environmentally and socially sustainable mineral development' is expressed. While strongly promoting the idea of 'Green ASEAN' (which was also the motto of the ASEAN Day 2009), the *Fourth ASEAN state of the environment report 2009* (ASEAN Secretariat, 2009)—prepared with the support of the Japanese government and the German Hanns Seidel Foundation—confirms that a truly balanced approach to the three dimensions of sustainable development—economic, social and environmental—is not yet in reach within ASEAN:

The greening of the ASEAN economy requires ASEAN to increasingly pursue market based approaches. The potential for trade in environmental goods and services are huge, and is certainly sustainable in the longer term, compared to the conventional exploitative use of ecosystem resources. However, as developing nations, with about 185 million people in ASEAN still earning less than US\$2 a day, *economic growth and social development shall remain a priority* (ASEAN Secretariat, 2009: 2; see also p. 152; emphasis added).

Still, this report is the most detailed and comprehensive ASEAN document to date that addresses environmental challenges. The growing emphasis on the environment is not least the result of increasing lobbying on the part of civil society groups who have recently proposed the establishment of a fourth pillar of cooperation and foundation for the Southeast Asian Community, the ASEAN Environmental Pillar.<sup>26</sup> At the core of this initiative is the 'Proposed framework for an ASEAN–Civil Society Dialogue on Environment' which 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' (2nd ASEAN Peoples' Forum & 5th ASEAN Civil Society Conference, 2009: 1). Transnational civil society lobbying has emerged as 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.

At the same time, ASEAN has encouraged civil society involvement in shaping the regional environmental agenda. The ASEAN Senior Officials on the Environment Meeting held in August 2005 in Penang, Malaysia, agreed to support a consultative forum during which environmental NGOs from ASEAN member countries could explore mechanisms for more formal and regular interactions and

26 <<http://www.aseansec.org/21083.pdf>>.

consultation with ASEAN intergovernmental bodies to promote environmental protection and sustainable development. Mainly funded by USAID and the Hanns Seidel Foundation, the first ever civil society forum on the environment (Civil Society Organizations Consultative Forum on Environmental Protection and Sustainable Development) was held in Kuala Lumpur in May 2007. The conference participants agreed to establish an NGO network called the South East Asia Civil Society Environmental Alliance<sup>27</sup> and presented an impressive work plan, leading to USAID's conclusion that 'the Forum exceeded expectations' (ASEAN–U.S. Technical Assistance & Training Facility, 2007). Since then, however, not much information on the organization's activities has become publicly available. Until recently, the civil society impact on ASEAN policymaking has been very limited due to the lack of institutionalized mechanisms in relations between the ASEAN Secretariat and transnational civil society organizations/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 in facilitating interactions and, particularly, reconciliation between concerned ASEAN bodies and civil society on trade and environmental issues.

## 6. Conclusions and recommendations

### 6.1 Conclusions

*The nexus between trade/investment and environment:* There is little evidence of any substantial initiatives to mainstream environmental issues into trade/investment policymaking in terms of initiatives of domestic national actors or at the subregional or regional level that go beyond official government rhetoric and—often unenforceable—legislative frameworks. The policy nexus between the environment and trade/investment is gradually gaining prominence, but this process is not driven by the subregion's own organizations such as the GMS and MRC due to mistrust and lack of transparency among their members, and is almost entirely steered by foreign donors.

*The role of donors:* Environmental concerns have played and are likely to continue to play both a direct and indirect role in donors' strategies for the GMS and ASEAN, with the EC and EU member states spearheading the approach. The mainstreaming of environmental issues into trade (and to a lesser extent investment) has been particularly successful in cases when donors could offer clear incentives, e.g. as part of the EC's Forest Law, Enforcement, Governance and Trade program and the COGEN energy–environment project in several ASEAN member states. However, there is often a lack of coordination between regional and national projects.

*The primacy of trade and the limits to donor driven mainstreaming:* Trade is driven by global economic forces and national economic imperatives. Multiple agents—bilateral agencies, the WTO, international financial institutions, private firms, national policymakers and NGOs—pursue their separate policy agendas. There is a significant lack of coordination among foreign donors and other agencies in the promotion of a pro-environment agenda in trade.

*The role of civil society:* Of the three countries selected as case studies, civil society in Thailand is the most active and influential in the process of designing trade policy. While civil society has developed rapidly in Vietnam, it has never really taken on an autonomous or watchdog role. Civil society in these

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27 <<http://www.gecnet.info/index.cfm?&menuid=64>>.



countries has been increasingly active, largely through informal channels, in policy formulation. Yet some of the ‘natural’ issues for NGO involvement have not given rise to much activity. The few national NGOs that speak on environmental issues have little influence. While NGOs play some useful role in the social sectors in rural and remote areas, they have little impact on national policy. In Lao PDR, civil society is in its infancy and there is no evidence on any impact on policymaking. At the same time, the role and impact of transnational civil society groupings and initiatives have been growing. A case in point is the new proposal from civil society to establish a fourth pillar of cooperation, the ASEAN Environmental Pillar. ASEAN policymakers view this development with concern, however.

*The role of illegal trade and uncontrolled investment:* There can be little doubt that illegal and uncontrolled economic activities and corruption have a serious negative impact on any official attempts to respond to environmental challenges. The ASEAN Agreement on Transboundary Haze Pollution is a case in point. Signed in 2002, it is still not ratified and implemented, mainly because of Indonesian opposition linked to ‘vested interests’ in the economy of Sumatra and Borneo. If put into force, the agreement would be the first legally binding ASEAN regional environmental accord and also the first in the world that binds a group of contiguous states to tackle haze pollution resulting from land and forest fires.

*ASEAN and the nexus between environment and trade:* 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’. The Roadmap for an ASEAN Community 2009–2015 has a comprehensive pro-environment agenda. However, a comprehensive and explicit agenda for reconciling trade and the environment does not exist. The reference to the environment in the ASEAN Economic Community Blueprint is very weak. Central ASEAN initiatives—at the level of the Secretariat—for the mainstreaming of environmental issues into trade that are strongly supported by 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 are to be found 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 individual ASEAN member states, not at the level of ASEAN strategy and policymaking.

## 6.2 Recommendations based on these conclusions

- 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 needs to be strengthened. Current attempts at 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 coordination as it the place where all the threads of regional cooperation come together.

- The development toward 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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