

RICARDO MELENDEZ-ORTIZ

12 July 2016 | Tokyo, Japan

TPP and sustainable development

Ricardo MELENDEZ-ORTIZ, *Chief Executive, ICTSD*

TPP parties include...

5 of the world's 17 “mega-diverse” countries

8 of the world's top 20 fishing nations... responsible for **25** percent of global marine catch and seafood export

4 of the largest greenhouse gas emitters

TPP parties are also home to a number of migratory workers, many of which face significant labour rights challenges. For example, the majority of Malaysia's **4 million** migrant workers – around **40 percent of the workforce** – are engaged in forced labour.

TPP ancestry

90 percent of the TPP's environmental provisions

can be found in previous US trade deals, according to some estimates.

70 percent of RTAs entering into force in 2012 had

substantive environmental provisions, according to the OECD.

Focus and form of labour and environment provisions in RTAs concluded by parties prior to the TPP do, however, vary. For example, **no Japanese RTAs had included separate environment or labour chapter prior to the TPP.**

WTO-plus/WTO-extra overview

Specialised literature discusses **WTO-plus and WTO-extra provisions** (See Horn, Mavroidis and Sapir, 2009). The former relate to policy areas already existing in some form in WTO agreements, while the latter refer to RTA obligations not substantively regulated by the global trade body. The TPP includes a mix of both WTO-plus and WTO-extra provisions. Some examples...

On environmental issues:

- New disciplines on fisheries subsidies can be categorised as WTO-extra. While there is a mandate to negotiate fisheries subsidies disciplines in the WTO, talks have so far not yielded results. Commitments to implement MEAs to which each TPP is a party are also WTO-extra and go beyond many other RTAs.
- Efforts to boost trade in environmental goods and services represents a mix between WTO-plus and WTO-extra. Ongoing negotiations within WTO – now pursued at a plurilateral level through an Environmental Goods Agreement – not yet concluded.
- Pledges that voluntary measures used to promote product environmental qualities are truthful and based on scientific information complements WTO Technical Barriers to Trade Agreement (TBT) Article 4 (WTO-plus).

On labour issues:

- Largely categorised as WTO-extra. The WTO does not have disciplines related to labour rights.

Fisheries subsidies, ground-breaking TPP disciplines

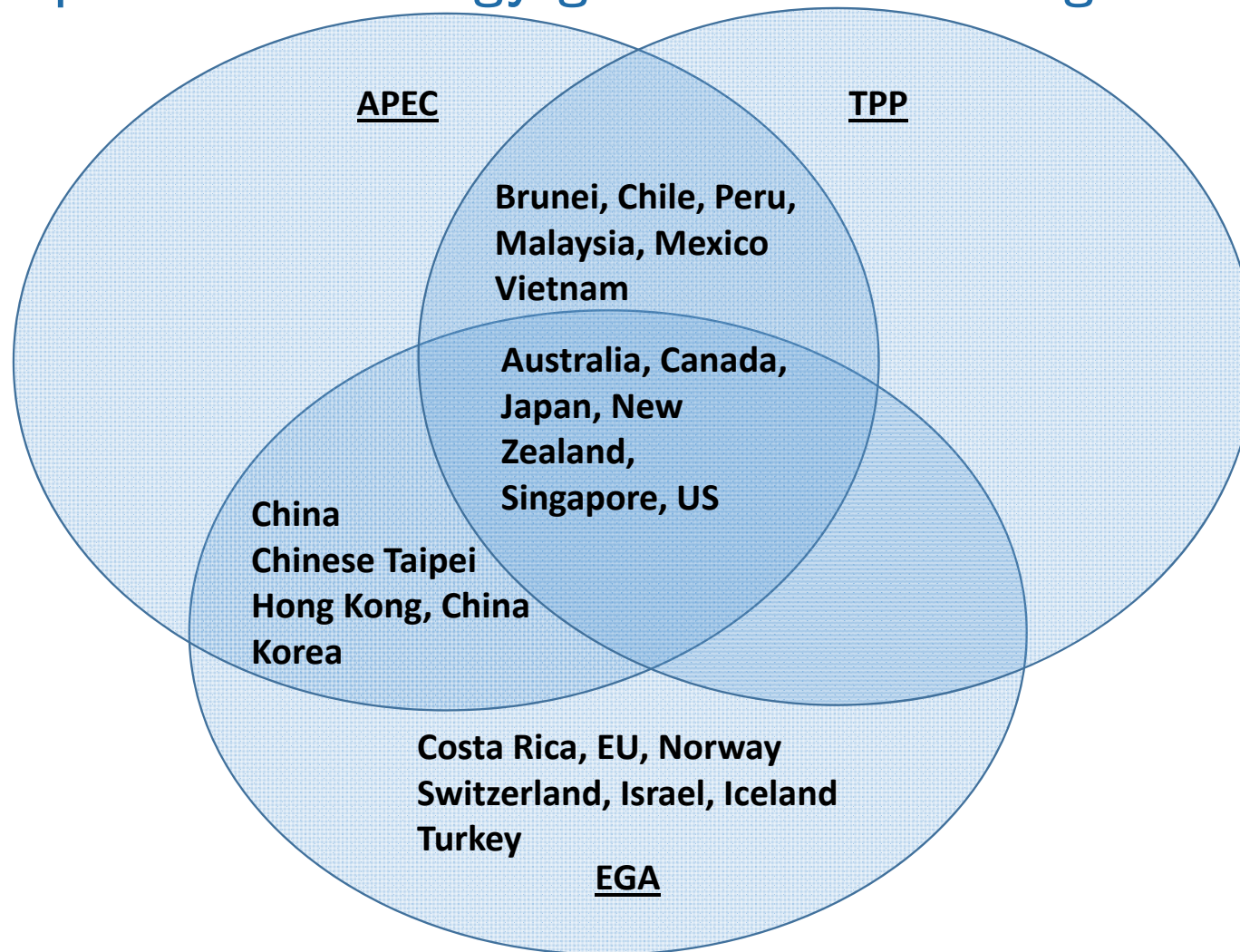
Article 20.16.5 states that no party shall grant or maintain subsidies for fishing that negatively affect fish stocks that are in an **overfished condition** and subsidies provided to any fishing vessel engaged in **illegal, unreported, and unregulated (IUU) fishing**.

28.8 percent of fish stocks estimated as overfished in 2011,
according to the UN Food and Agriculture Organization (FAO).

The value of landings from IUU fishing is estimated at **US\$10-24 billion**

per annum, undermining national and regional efforts to manage fisheries sustainably, and in some instances threatening food supply.

Membership in clean energy goods tariff cutting initiatives



Voluntary measures to boost environmental performance

Under **Article 20.11 of environment chapter TPP parties commit to encouraging the use of flexible and voluntary mechanisms**, including market-based incentives, to enhance environmental performance. TPP parties should also encourage private sector entities and non-governmental organisation (NGOs) developing **voluntary mechanisms for the promotion of products based on their environmental qualities** to ensure those mechanisms are truthful and based on scientific information; based on relevant international standards or guidelines; promote competition and innovation and do not discriminate between products on the basis of origin.

This **complements WTO members' obligation in Article 4 of the TBT Agreement** to ensure that non-governmental standardising bodies follow the TBT Code of Good Practice related to standard-setting, which outlines similar principles regarding the use of international standards and non-discrimination.

The use of voluntary measures to improve environmental performance is likely to continue to increase in the future. At the climate-trade nexus, a concern may be the ways in which “lower-carbon products” are identified and presented. TPP Article 20.11 could be seen as an effort to **minimise risks that these are misleading, trade distorting**, or intentionally or unintentionally discriminate against some producers and countries.

Labour rights and trade, a non-exhaustive timeline

1974 US Trade Act suggests that the US can impose unilateral trade sanctions in relation to violations of 1) the right to association 2) the right to organise and bargain effectively 3) a prohibition on the use of any form of forced or compulsory labour 4) minimum age of employment of children 5) acceptable conditions of work with respect to minimum wages, occupational safety, and health.

1992 North American Free Trade Agreement (NAFTA) includes a side agreement on labour cooperation. Signals a more comprehensive approach on these matters in the context of reciprocal trade agreements between two or more partners.

1998 After WTO members decide to drop labour from further WTO negotiations in 1996, the International Labour Organization (ILO) formulates a *Declaration on Fundamental Principles and Rights at Work and its Follow-up*.

2007 A US bi-partisan congressional-executive deal – known as the “May 10th Agreement” – requires fundamental international labour principles and certain environmental commitments to be included in certain pending trade deals.