



High-Level Working Group  
on U.S.-Ecuador Relations

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Trade, Environmental  
Protection, and  
Sustainable  
Development



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## HIGH-LEVEL WORKING GROUP ON U.S.-ECUADOR RELATIONS

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## INTRODUCTION

The United States and Ecuador have long been connected. The two countries established diplomatic relations in the 1820s, not long after both countries had won independence from Europe. In subsequent decades, the United States and Ecuador deepened relations on the basis of values enshrined in the Inter-American System, such as democracy, the rule of law, and human rights. Whether culturally or economically, the threads that bind the countries together are many.

Economic ties in particular have contributed to shared prosperity for the people of the United States and Ecuador. Today, the United States is Ecuador's principal trading partner—making Ecuador one of only three countries in South America for which trade with the United States surpasses trade with China.<sup>1</sup> The United States' principal exports to Ecuador include petroleum, machinery, computers, fertilizer, and cereals and grains. In return, Ecuador sends crude oil, seafood, bananas, cocoa, and flowers to the United States.<sup>2</sup>

While Ecuador and the United States sought to deepen economic ties in the early 2000s, extensive negotiations ended amid political and social upheaval in 2006. The two governments did not resume discussions over trade and investment until the administration of President Lenín Moreno (2017-2021). His successor, President Guillermo Lasso, has emphasized the need for Ecuador to deepen trade relations with the United States, with a particular focus on labor rights, intellectual property, gender equality, and environmental sustainability. Indeed, recent developments in both countries—including the elections of new presidents in both countries—offer a unique opportunity to discuss how the two countries might work together to combat the COVID-19 pandemic, spark economic growth, and pursue other priorities.

On June 4, 2021, Global Americans announced the formation of a High-Level Working Group, comprised of seasoned current and former policymakers, foreign service professionals, business leaders, and scholars. In collaboration with Global Americans staff, the Working Group has produced a series of working papers, covering a diverse range of topics central to the United States-Ecuador relationship—and in particular, central to any discussion of deepening commercial and economic relations between the two countries. The High-Level Working Group has served as a forum for nonpartisan and transregional expert analysis, resulting in a series of recommendations regarding the future of United States-Ecuador relations.

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<sup>1</sup> *Joe Biden is Determined That China Should Not Displace America*, THE ECONOMIST (July 17, 2021), <https://www.economist.com/briefing/2021/07/17/joe-biden-is-determined-that-china-should-not-displace-america>.

<sup>2</sup> U.S. Relations with Ecuador: Bilateral Relations Fact Sheet, U.S. State Department, Bureau of Western Hemisphere Affairs (Jan 19, 2021), <https://www.state.gov/u-s-relations-with-ecuador>.

## EXECUTIVE SUMMARY

In the last three decades, trade agreements have grown to encompass not just economic issues, but also questions of Indigenous Peoples' rights, traditional knowledge, and environmental protection. As Chapter 1 explains, monitoring and enforcement are just as important as the initial decision to include an environmental provision in a trade agreement. Governments are responsible for enforcing the environmental provisions in the agreements that they sign. While governments exercise significant discretion in choosing whether and how to enforce these provisions, civil society pressure, public engagement, and independent enforcement mechanisms can increase the likelihood of enforcement.

Chapter 2 describes how the United States, Mexico, and Canada incorporated environmental concerns into the North American Free Trade Agreement (NAFTA) and the U.S.-Mexico-Canada Agreement (USMCA). While NAFTA, signed in 1994, contains a supplement dedicated to environmental protection, its successor agreement devotes an entire chapter to the topic. Many of the changes between NAFTA and the USMCA, signed in 2019, reflect the progress made over 25 years in international environmental law.

As Chapter 3 explains, the United States has also integrated environmental provisions into its bilateral trade agreements. This report details the provisions included in the U.S.-Chile FTA, the U.S.-Colombia Trade Promotion Agreement (USCTPA), and the U.S.-Korea (KORUS) FTA. Ecuador and the United States might draw on the provisions included in these agreements as a model for potential trade discussions.

The European Union has been particularly active in environmental protection through trade, including in Latin America and the Caribbean. Chapter 4 covers the agreements that the EU has already implemented with the Andean Community, the Caribbean Forum, the Central America Group, Chile, and Mexico. The chapter also notes the EU's agreement with Mercosur, signed in 2019, which is pending ratification. The European Union is often a stricter trade partner when it comes to environmental regulations than the United States. For that reason, countries that have already signed agreements with the EU, such as Ecuador, may already meet the environmental standards requested by the United States during trade negotiations.

Chapter 5 concludes with three recommendations. First, any potential trade agreement between the U.S. and Ecuador should include a chapter on the environment, similar to the USMCA. Second, civil society and public engagement must play a key role in guaranteeing enforcement. Third, the United States and Ecuador should consider an independent enforcement mechanism to dissuade either party from violating environmental protections.



## **INDEX**

Introduction	4
Executive Summary	5
Index	6
1. Protecting The Environment Through Trade	7
2. Environmental Protection in NAFTA and the USMCA	9
3. Environmental Protection in U.S. Bilateral Agreements	11
4. Environmental Protection in EU Agreements	13
5. Recommendations	15



## 1. PROTECTING THE ENVIRONMENT THROUGH TRADE

Over the last three decades, a new generation of trade agreements have placed greater emphasis on Indigenous Peoples' rights, traditional knowledge, climate change, and other historically neglected themes. Environmental conservation and sustainability are chief among these. Given the centrality of environmentally sensitive industries—in particular, petroleum; gold, silver, and copper mining; fishing; and agriculture (especially bananas, palm oil, cut flowers, coffee, and cacao)—to the Ecuadorean economy, environmental concerns must be at the forefront of any future negotiations toward a U.S.-Ecuador trade agreement.

### Environmental Provisions in Trade Agreements

Many of the major trade agreements negotiated by the United States since the 1990s have incorporated environmental provisions. This report explains how two regional trade agreements—the North American Free Trade Agreement (NAFTA) and the U.S.-Mexico-Canada Agreement (USMCA)—have incorporated these clauses. Chapter 3 documents the provisions in bilateral agreements between the United States and Colombia, Chile, and South Korea.

The European Union has similarly addressed concerns over the environment through its trade agreements with Latin America and the Caribbean (see Chapter 4).

### Ensuring Compliance

While incorporating environmental protection provisions into a trade agreement is a necessary first step toward sustainability, real change requires enforcement.

In a bilateral or regional trade agreement, the signatory governments themselves are often the only parties capable of enforcing provisions, including those related to the environment.

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Before the U.S. government signs a trade agreement with another country, it is responsible for ensuring that the country's laws and regulations are in compliance with the agreement and that the country's government is capable of carrying out its commitments. After the United States signs an FTA and it enters into force, the U.S. Office of Trade Agreements Negotiation and Compliance (TANC) monitors implementation of the agreement and investigates potential failures to comply with its provisions.

Officials within the U.S. government and the partner government may be able to resolve minor compliance disputes at a low level. If a dispute is significant, senior diplomats, cabinet officials, or even heads of governments may have to negotiate with their foreign counterparts.

Because enforcing compliance with a trade agreement can be difficult and create tensions



between countries, U.S. leaders are likely to enforce foreign compliance with environmental provisions only when violations harm U.S. interests. For example, if a foreign trade partner relaxed its environmental regulations, in violation of a trade agreement with the United States, it may attract greater investment at the expense of the United States. Similarly, if a trade partner tightened its environmental regulations, resulting in fewer imports from the United States, the U.S. government might view the move as a disguised restriction on trade. Either decision might result in a dispute.

***U.S. leaders are likely to enforce foreign compliance with environmental provisions only when violations harm U.S. interests.***

If a trade partner's failure to comply with environmental provisions does not harm U.S. interests, the United States is less likely to object, even if the resulting negative effect on the environment is severe. For this reason, public opinion and civil society can be a strong force, pressuring the United States to enforce compliance with environmental protection provisions.

## 2. ENVIRONMENTAL PROTECTION IN NAFTA AND THE USMCA

The North American Free Trade Agreement (NAFTA), which created a free trade zone among Mexico, Canada, and the United States in 1994, was an innovative trade agreement when it comes to environmental protections. 25 years later, the U.S.-Mexico-Canada Agreement (USMCA) updated NAFTA's provisions, with greater emphasis on the environment.

### NAFTA

Entering into force in 1994, NAFTA marked the start of a long-term economic relationship that remains in place today under the USMCA. In addition to lowering barriers for goods and services, the agreement contained provisions to protect intellectual property (see the report "Trade, Intellectual Property, and Access to Medicine," by the Global Americans High-Level Working Group on U.S.-Ecuador Relations).<sup>3</sup> It also offered U.S., Mexican, and Canadian investors equal treatment across all three signatory states.

One of the NAFTA supplements, entitled "Agreements Relating to Labor and Environment," proposed a potential environmental cooperation commission to enhance trilateral coordination on issues related to the environment.

<sup>3</sup> See Trade, Intellectual Property, and Access to Medicine, Global Americans, Sept. 2021, <https://theglobalamericans.org/us-ecuador-relations/>.

<sup>4</sup> North American Free Trade Agreement, 32 I.L.M. 289 and 605 (1993), art. 2005.

The trade agreement specified that any dispute concerning a measure adopted by a Party to protect its "human, animal or plant life or health, or to protect its environment" and that raises issues concerning the environment, health, safety, or conservation, can be resolved only according to dispute settlement procedures.<sup>4</sup> The U.S. implementing act specifies that a panel of individuals with experience in environmental law and regulations will hear any challenge to a United States or State environmental law.<sup>5</sup>

*NAFTA marked the start of a long-term economic relationship that remains in place today under the USMCA.*

To further understand the provisions related to environmental protection within NAFTA, chapter 2 ("Standards: Related Measures"), section 471.a.1 and 471.a.2, are fundamental. These two clauses prohibit a federal agency from engaging in activity related to safety, the protection of human, animal, or plant life or health, the environment, or consumers. They highlight the importance of protecting environmental issues, but do not offer any information on how to settle a possible dispute.

### USMCA

The USMCA was signed in 2019 and entered into force in 2020, during the administration of U.S. President Donald Trump. The USMCA replaced NAFTA with the stated intention of "creating more balanced, reciprocal trade supporting high-paying jobs for Americans."<sup>6</sup> Despite the

<sup>5</sup> North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057 (1993); 19 U.S.C. 3301, section 106.b.

<sup>6</sup> United States-Mexico-Canada Agreement, Office of the U.S. Trade Representative, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>.

emphasis on employment, the USMCA also boasts significant advancements with respect to environmental law.

While NAFTA dedicated a supplement to the environment, the USMCA has an entire chapter devoted to environmental impacts.<sup>7</sup> For example, in Article 24, the United States, Mexico, and Canada acknowledge a healthy environment as an essential element of sustainable development. Moreover, the countries recognize that better cooperation to protect and conserve the environment and the sustainable use of natural resources creates benefits that can strengthen their environmental governance. The countries also recognize that the environment “plays an important role in the economic, social, and cultural well-being of Indigenous Peoples and local communities, and acknowledge the importance of engaging with these groups in the long-term conservation of the environment.”<sup>8</sup>

The agreement states that it is inappropriate to establish or use their environmental laws “in a manner which would constitute a disguised restriction on trade or investment between the Parties.”<sup>9</sup> This provision is an important one, but in practice, it is often difficult to distinguish disguised restrictions on trade from genuine environmental regulations. If the parties to the USMCA are too timid in their enforcement of this provision, then governments can use environmental protection as a justification to unfairly penalize foreign firms and protect domestic companies. If the parties are overzealous in their enforcement, however, then they may discourage earnest environmental regulations.

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In addition to these statements, the chapter directly assesses the impacts of the USMCA on the environment. The agreement specifically states that each country shall maintain “appropriate procedures” for evaluating the environmental impacts of proposals that may cause significant effects on the environment.<sup>10</sup> While this provision is somewhat vague, the USMCA does contain a separate clause that binds the parties to adopt, maintain, and implement the laws and regulations of seven international environmental agreements that are already in place.<sup>11</sup>

Notably missing from these treaties is a recognition of relevant, modern environmental protection accords signed within the last three decades. The most recent multilateral agreement recognized in the agreement is the Montreal Protocol, signed in 1987. This legal vacuum largely reflects the foreign policy agenda of former President Trump, who also led the United States’ withdrawal from the Paris Agreement (within the United Nations Framework Convention on Climate Change, UNFCCC).

Lastly, the USMCA addresses a series of environmental issues related to the sea, air quality, pollution, invasive species, fisheries management, and environmental conservation and trade.<sup>12</sup>

<sup>7</sup> The United States-Mexico-Canada Agreement, U.S.-Mex.-Can., ch. 24, agreed to Oct. 1, 2018.

<sup>8</sup> Id., art. 24.2.

<sup>9</sup> Id.

<sup>10</sup> Id., art. 24.7.

<sup>11</sup> Id., art. 24.8.

<sup>12</sup> Id., ch. 24.

### 3. ENVIRONMENTAL PROTECTION IN U.S. BILATERAL AGREEMENTS

In addition to incorporating language regarding environmental protection into regional agreements with Canada and Mexico, the United States has included environmental clauses in trade agreements with bilateral partners. Three agreements—the U.S.-Chile FTA, the U.S.-Colombia Trade Promotion Agreement (USCTPA), and the U.S.-Korea (KORUS) FTA—stand out. Taken together, they offer possibilities for environmental protection under a potential U.S.-Ecuador trade agreement.

#### U.S.-Chile FTA

The U.S.-Chile Free Trade Agreement (USCFTA) entered into force in 2004, removing all tariffs and barriers to trade between the two countries.<sup>13</sup> Both Chile and the United States put in place extremely strong protections for labor and the environment.<sup>14</sup> They defined and implemented a groundbreaking enforcement mechanism, including monetary penalties.<sup>15</sup> The two parties also specified cooperative projects to protect wildlife, decrease the use of dangerous chemicals such as methyl bromide, and contain environmental hazards from mining.<sup>16</sup>

#### U.S.-Colombia TPA

Signed in 2009, the U.S.-Colombia Trade Promotion Agreement (USCTPA) removed all tariffs and barriers on trade in goods and services

between the two countries.<sup>17</sup> The accord contains an entire chapter on the environment, reflecting both parties' interest in the topic.<sup>18</sup> Under the agreement, both parties committed to enforcing their domestic environmental laws and to adopting, maintaining, and implementing laws and regulations necessary to fulfill obligations under environmental agreements.<sup>19</sup>

*Taken together, [the U.S. Chile FTA, the U.S. Colombia Trade Promotion Agreement, and the U.S.-Korea FTA] offer possibilities for environmental protection under a potential U.S.-Ecuador trade agreement.*

Under the USCTPA, environmental provisions and commercial obligations are granted equal priority, so the environmental obligations are subject to the same dispute settlement and enforcement mechanisms as commercial obligations.<sup>20</sup>

The USCTPA chapter on the environment includes specific commitments that both parties must follow. The first section of the chapter states that each party “must strive” to guarantee that its environmental laws provide and stimulate “high levels of environmental protection.”<sup>21</sup> Each country also committed “not to waive or derogate from its environmental laws to weaken the levels of environmental protection in a manner affecting trade or investment between the Parties.”<sup>22</sup> However, the agreement does not define what these “high levels” are, nor is the phrase “must strive” a legally binding definition. The Vienna

<sup>13</sup> Free Trade Agreement, U.S.-Chile, June 6, 2003.

<sup>14</sup> Id., ch. 18-19.

<sup>15</sup> Id., art. 19.7-19.8.

<sup>16</sup> Id., annex 19.3.

<sup>17</sup> Trade Promotion Agreement, U.S.-Colombia, Nov. 22, 2006.

<sup>18</sup> Id., ch. 18.

<sup>19</sup> Id., art. 18.3.

<sup>20</sup> Id., art. 18.12.

<sup>21</sup> Id., art. 18.1.

<sup>22</sup> Id., art. 18.3.

Convention often helps parties interpret the meaning of vague language in a treaty, but it clarifies little in this case.

Finally, the chapter acknowledges that all parties recognize the existence of multilateral environmental agreements (MEAs).<sup>23</sup>

### U.S.-Korea (KORUS) FTA

The U.S.-Korea (KORUS) Free Trade Agreement was signed in 2007 but did not enter into force until 2012. The agreement regulates import and export tariffs between the U.S. and South Korea, the United States' sixth largest trading partner and a key diplomatic ally.<sup>24</sup>

Like the United States' agreements with Chile and Colombia, KORUS dedicates a chapter to the environment.<sup>25</sup> The two signatories to the KORUS Agreement agree that it is inappropriate to incentivize trade or investment by weakening the protections provided in their environmental laws.<sup>26</sup> Therefore, KORUS seems to encourage both signatory countries to prioritize environmental protection over economic gain.

The trade agreement encourages the United States and South Korea to provide incentives to conserve, restore, and protect natural resources and the environment.<sup>27</sup> Such incentives could include public recognition for environmentally conscious firms, public-private partnerships, and a system to issue and trade permits to achieve environmental goals.<sup>28</sup>

Under KORUS, both the United States and South Korea recognize the importance of global multilateral agreements on the environment and agree to share information on their environmental progress.<sup>29</sup> Both countries also commit to create an environmental council to supervise their work and facilitate public participation.<sup>30</sup> Finally, the two countries agree to "cooperative environmental activities pursuant to the Agreement between the Government of the United States of America and the Government of the Republic of Korea on Environmental Cooperation (ECA)."<sup>31</sup>

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<sup>23</sup> Id., art. 18.13.

<sup>24</sup> South Korea, Office of the U.S. Trade Representative, <https://ustr.gov/countries-regions/japan-korea-apek/korea>

<sup>25</sup> Free Trade Agreement, U.S.-Korea, June 30, 2007, ch. 20.

<sup>26</sup> Id., art. 20.3.

<sup>27</sup> Id., art. 20.5.

<sup>28</sup> Id.

<sup>29</sup> Id., art. 20.10.

<sup>30</sup> Id., art. 20.6.

<sup>31</sup> Id., art. 20.8.

## 4. ENVIRONMENTAL PROTECTION IN EU AGREEMENTS

The European Union (EU) has been a key supporter of environmental protection, including in its relationship with Latin America and the Caribbean. In many cases, the EU has paired its environmental goals with its commercial agenda in the Western Hemisphere, incorporating environmental provisions into trade agreements.

### Existing Agreements Between the EU and Latin America and the Caribbean

Since the 1990s, the EU has brokered trade agreements with individual countries in Latin America and the Caribbean, as well as regional blocs in the Western Hemisphere. As of today, the EU has negotiated six such agreements, with:

- The Andean Community<sup>32</sup>;
- The Caribbean Forum (Cariforum)<sup>33</sup>;

<sup>32</sup> This comprehensive trade agreement has applied to Peru since March 2013, to Colombia since August 2013, and to Ecuador since January 2017. Bolivia may join in the future; Andean Community, European Commission, <https://ec.europa.eu/trade/policy/countries-and-regions/regions/andean-community/>.

<sup>33</sup> The CARIFORUM-EU Economic Partnership Agreement has applied to Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Lucia, St. Kitts and the Grenadines, St. Kitts and Nevis, Suriname, Trinidad and Tobago, and the Dominican Republic since Oct. 2008. Haiti signed in Dec. 2009 but has not yet ratified the agreement; Caribbean, European Commission, <https://ec.europa.eu/trade/policy/countries-and-regions/regions/caribbean/>.

<sup>34</sup> Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama signed the EU-Central America Association Agreement in June 2012. Central America, European Commission,

- The Central America Group<sup>34</sup>;
- Chile<sup>35</sup>;
- Mercosur (not yet ratified)<sup>36</sup>; and
- Mexico<sup>37</sup>.

### Negotiating with a Trade Bloc

While each trade agreement is subject to negotiation between both parties and consequently has unique provisions, the EU has specific environmental policies that apply to any agreement signed by the bloc.

*Given that Ecuador has already forged an agreement with the EU that includes environmental provisions, negotiations with the United States will likely demand fewer changes to domestic regulations than Ecuador's previous trade agreements have required.*

Over the five decades, the EU has adopted more than two hundred pieces of secondary legislation

<https://ec.europa.eu/trade/policy/countries-and-regions/regions/central-america/>.

<sup>35</sup> The EU-Chile Association Agreement has been in force since Feb. 2003; Chile, European Commission, <https://ec.europa.eu/trade/policy/countries-and-regions/countries/chile/>.

<sup>36</sup> Argentina, Brazil, Paraguay, and Uruguay concluded an association agreement with the EU in June 2019. The agreement is now pending ratification. In Focus: EU-Mercosur, European Commission, <https://ec.europa.eu/trade/policy/in-focus/eu-mercocor-association-agreement/>

<sup>37</sup> The EU-Mexico Global Agreement has been in force since 2000. Both parties are engaged in negotiations to modernize the agreement. EU and Mexico conclude negotiations for new trade agreement, European Commission, April 28, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_756](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_756).



regarding the environment.<sup>38</sup> The EU has also adopted over 40 multilateral environmental agreements.<sup>39</sup> The Lisbon Treaty—signed in 2009—reaffirmed the European Union’s commitment to environmental protection and sustainable development.<sup>40</sup> All of the agreements between the EU and the Latin American and Caribbean region now link economic benefits to environmental standards.

In some cases, a country will negotiate a trade agreement with the United States, agreeing to a certain level of environmental protection. If that country seeks a later agreement with the EU, it may have to agree to a higher standard of environmental regulations.

On the other hand, if a country already adheres to an agreement with the European Union that sets a high bar for environmental protection, then subsequent negotiations with the United States may not require any changes to the country’s environmental laws. Given that Ecuador has already forged an agreement with the EU that includes environmental provisions, negotiations with the United States will likely demand fewer changes to domestic regulations than Ecuador’s previous trade agreements have required.

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<sup>38</sup> See Emanuela Orlando, THE EVOLUTION OF EU POLICY AND LAW IN THE ENVIRONMENTAL FIELD: ACHIEVEMENTS AND CURRENT CHALLENGES 2 (Transworld Working Paper 21, April 2013) [http://www.iai.it/sites/default/files/TW\\_WP\\_21.pdf](http://www.iai.it/sites/default/files/TW_WP_21.pdf).

<sup>39</sup> Id.

<sup>40</sup> Id., 13.



## 5. RECOMMENDATIONS

Events in the last three decades—the growing corpus of international environmental law; the increasing emphasis placed on the environment in recent trade agreements; and the urgency of climate change—underscore the importance of addressing environmental issues during potential trade negotiations between the United States and Ecuador. This report offers three recommendations to policymakers to incorporate these concerns into discussions:

1. **Any potential trade agreement between the United States and Ecuador should include an environmental chapter.** Recent trade agreements involving the European Union offer a model for clear, enforceable provisions to protect the environment
2. **Civil society and the public must hold leaders accountable for enforcing environmental provisions.** Governments are responsible for enforcing their own trade agreements, ensuring that their economic partners implement the clauses that they have agreed to. Absent public pressure, however, governments may not always voice concern about a trade partner's violation of an environmental provision.
3. **The United States and Ecuador should consider an independent monitoring and enforcement mechanism.** Since governments must monitor and enforce the trade agreements that they sign, leaders often have to choose whether and how to address violations on a case-by-case basis. This is an inherently political calculation, and it can lead to an unpredictable relationship between trade partners. An independent monitoring and enforcement mechanism would encourage both parties to abide by a potential trade agreement and make the consequences of violating a trade agreement more predictable. Indeed, many recent trade agreements already include these mechanisms for certain provisions.