



CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW (CIEL)

**Separate Comments of TEPAC Members on the Environment Chapter of the U.S.-
Australia Free Trade Agreement**

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Regarding the environment chapter of the U.S.-Australia FTA, we note that it departs in a significant way from other FTAs recently negotiated by USTR, in particular the recent Chile, Singapore, and CAFTA agreements. The changes are not to enhance or refine the terms of the environment chapter, however, but to delete or weaken important elements in regards to opportunities for public participation, for cooperation, or for securing remedies in cases of environmental harm. These negative developments do not meet the negotiating objectives defined by Congress in TPA.

1. Regarding the Opportunities for Public Participation, the mechanisms established in the Australia-U.S. FTA are weaker than those included in the FTA concluded with Chile. In particular, no references are made to best efforts to respond favorably to requests for consultations. The obligations to share information with the public (19.6.2.) and to take into account public comments (19.6.3) are qualified with the “as appropriate” formula, which deprives the obligations from meaningful content. Further, unlike the Chile-U.S. FTA which requires each Party to promptly make available to its public all communications it receives, and to review and respond to them, the U.S.-Australia qualifies the loosely worded obligation of disclosure to the public with the “as appropriate” formula, thereby compromising the provision’s effectiveness.

2. The absence of a citizens’ submission process again highlights the deficiencies in the mechanisms established to ensure compliance with environmental laws.

3. The FTA fails to establish a dedicated Environment Affairs Council composed by environmental cabinet-level members. Rather the FTA grants the general Joint Committee created under the Institutional Arrangements and Dispute Settlement Chapter the discretionary power to establish a subcommittee (19.5.1). This subcommittee would also be created in case one of the Parties requests consultations regarding matters arising under the environment chapter. (19.7.3)

4. The Procedural Guarantees and Public Awareness provisions of the Environment Chapter suffer from severe deficiencies. Significantly, the chapter fails to identify with precision the remedies or sanctions that would lead secure redress in cases of violation of environmental laws. Instead, the chapter uses vague and open-ended language, stating that, “The Parties recognize a variety of activities can contribute to enforcement of environmental laws” (19.3.3). Such language is clearly deficient as compared with the US-Chile FTA, which outlines clear criteria for sanctions and remedies, and identifies specific legal tools to secure redress.