



The May 2007 Bipartisan Trade Deal (BTD) reflected bold ideas favorable to the environment and its animals, such as a commitment to adopt, implement and effectively enforce laws and regulations under a number of multilateral environmental agreements (MEAs). The recently ratified U.S.-Peru Trade Promotion Agreement (TPA) built upon the BTD, and included unprecedented provisions on biodiversity conservation and the link between illegal logging and illegal wildlife trade. HSI applauds the U.S. Congress, the USTR, and other agencies on these achievements. As the path forward is crafted, there is great momentum from these accomplishments that must be utilized to ensure a better and brighter future for our environment and the humans and animals that call it home. Our recommendations follow.

## **HSI'S RECOMMENDATIONS**

### ***1. Starting Point for Negotiations***

As an initial matter, we believe it is imperative that the BTD environmental provisions be a minimum starting point for negotiations on environmental issues. We understand that there is an Environmental Cooperation Agreement (ECA) that is already part of the existing TPP. While the ECA can be used as a building block, we strongly urge the U.S. to use this opportunity to press for strengthened environmental provisions. This negotiating position will be complementary to provisions in existing U.S. trade agreements and will facilitate greater uniformity of environmental protection policies across existing and future TPP Members.

HSI is cognizant of the fact that TPP countries are at varying levels of economic development and that each have unique environmental issues and concerns. A one-size-fits-all approach will not be viable, and it is likely that the approach taken to deal with environmental protection issues in a bilateral agreement will need to be modified to take account of these circumstances. HSI believes, however, that certain threshold issues can apply across the board (with the possibility of phase-in periods where appropriate), such as the requirement that all countries bring their national laws into compliance with listed MEAs, and make commitments to biodiversity conservation. Country or issue-specific objectives could thereafter be identified by TPP members and implemented through environmental cooperation programs or set forth in annexes to the agreement.

### ***2. Inclusion of an Environment Chapter***

A threshold negotiating objective should be inclusion of an environment chapter in the agreement itself that requires parties to effectively enforce their environmental laws, with failure to do so subject to dispute settlement.

### ***3. Compliance with MEAs***

There must be a requirement that parties adopt, implement, and effectively enforce their obligations under relevant MEAs, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which is in force in all eight countries. For this requirement to have meaning however, it is absolutely critical that parties be required to bring their laws into conformity with the listed MEAs prior to entry into force of the TPP. This cannot be a criterion that is taken lightly and must be fully satisfied. In some cases, this may even mean that parties to the TPP need to become parties to a particular MEA if they have not done so already.

HSI recommends that the seven listed MEAs in the BTD be a starting point, but others should be investigated for possible inclusion in the agreement due to the diverse geographic areas and issues represented. For example, the United States is a party to the UN Fish Stocks Agreement, which is focused on conservation and management of fish stocks.<sup>1</sup> The broad reach of this agreement and its framework for cooperation among its members could complement a future TPP.

#### **4. Dispute Settlement**

HSI also strongly urges the U.S. to advocate that all environmental provisions be subject to dispute settlement, including a party's failure to enforce their national laws implementing one or more of the listed MEAs. Further, in the event it is determined that a party is failing to effectively enforce its environmental laws, HSI believes that the penalty should be a monetary assessment (without a cap) that is then used to correct the problem leading to the violation. In many cases in the developing world in particular, environmental violations are a direct result of lack of enforcement due to lack of resources and political will to prioritize environmental objectives over other much-needed programs. It is precisely for this reason that sanctions or monetary penalties that do not channel money towards fixing the problem will likely only exacerbate environmental harm.

It is also important that the agreement explicitly provide for the selection of panelists with experience in environmental matters when forming dispute settlement panels.

#### **5. Wildlife Protection**

Illegal wildlife trade is a grave threat to species all over the world. Demand for illegal wildlife is driven by numerous factors depending on geographic region, such as human consumption, wealth status, use in traditional medicines, luxury fashion, and exotic pets.<sup>2</sup> According to Interpol, illegal wildlife crime could be as much as \$20 billion per year, second only to arms and narcotics trafficking.<sup>3</sup> A recent CRS Report on illegal wildlife trade explained the importance of wildlife smuggling to Congress:

International wildlife smuggling may be of interest to Congress as it presents several potential environmental and national security threats to the United States. Threats to the environment include the potential loss of biodiversity, introduction of invasive species into U.S. ecosystems, and transmission of disease through illegal wildlife trade, including through illegal bushmeat trade. National security threats include links between wildlife trafficking and organized crime and drug trafficking. Some terrorist groups may also be seeking to finance their activities through illegal wildlife trade, according to some experts. Wildlife source and transit countries may be especially prone to exploitation if known to have

---

<sup>1</sup> See [http://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_fish\\_stocks.htm](http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm).

<sup>2</sup> See CRS Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at CRS-3 (March 3, 2008) (Order Code: RL34395).

<sup>3</sup> See *Wildlife Trafficking is a Serious Problem, Lucrative Business* (June 16, 2008), available at <http://www.america.gov/st/env-english/2008/June/20080616142333mlenuhret0.8286859.html>.

weak state capacity, poor law enforcement, corrupt governments, and porous borders.<sup>4</sup>

The black market trade in wildlife and wildlife products is global. Countries like the U.S. are considered significant destinations for illegal wildlife, while countries and regions rich in biodiversity like Southeast Asia are major suppliers.<sup>5</sup> The regions covered by the TPP include primary trading routes for illegal trade in wildlife, such as between the U.S. and Asia and among Chile and Peru. For example:

- Vietnam is a major international hub for legal and illegal wildlife trade, with the largest volume of illegal trade flowing across the Vietnam-China border.<sup>6</sup> Vietnam is a major consumer of illegal wildlife and wildlife products, with “live tiger cubs, tiger skeletons, raw materials and processed medicinal products ...brought {in} from Cambodia, Laos and as far as Malaysia to supply the Vietnamese market.”<sup>7</sup> Vietnam is also a significant supplier of illegal wildlife with species “sourced from Vietnam’s national parks and neighboring Laos and Cambodia, to be consumed in Vietnam, China, South Korea, Taiwan and Japan.”<sup>8</sup> Vietnam is also a transport link for illegal wildlife trade from Indonesia, Malaysia and Burma to China, the U.S. and Europe.<sup>9</sup>
- Singapore is involved in a significant amount of legal wildlife trade; however, due to the fact that it is “strategically located in a region that is rich in biodiversity” it has recently been labeled a hub for illegal wildlife trade as well.<sup>10</sup> Star tortoises, turtle eggs, snakes, and iguanas are the most common wildlife and wildlife products that are seized by officials in raids.<sup>11</sup>
- Due to its relative wealth in the region, wildlife is smuggled into Chile for luxury markets, such as skins and exotic pets. For example, on January 13, 2009, the Chilean army captured a Peruvian vessel carrying over 400 exotic wildlife species, such as

---

<sup>4</sup> See CRS Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at Summary-1, and CRS-11-15 (March 3, 2008) (Order Code: RL34395).

<sup>5</sup> CRS Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at CRS-2 – 5; USAID Asia, ASEAN Wildlife Enforcement Network Fact Sheet, available at [http://usaid.eco-asia.org/files/fact\\_sheets/ASEAN\\_WEN.pdf](http://usaid.eco-asia.org/files/fact_sheets/ASEAN_WEN.pdf).

<sup>6</sup> See AFP, *Vietnam Illegal Wildlife Trade Eats Away at Biodiversity* (August 3, 2008), available at <http://afp.google.com/article/ALeqM5iJ-ADoBrECuVvzEzXSr-vDbkb9IA>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See VOANews.Com, *Thailand Calls for Wildlife Trade Enforcement* (March 9, 2009), available at <http://www.voanews.com/english/2009-03-09-voa34.cfm>.

<sup>10</sup> See Acres News, *S'pore labelled a hub for illegal wildlife trade: strategic position may be attracting organized crime* (January 28, 2005) available at [http://www.acres.org.sg/news/news\\_today-28jan05.htm](http://www.acres.org.sg/news/news_today-28jan05.htm).

<sup>11</sup> See Acres News, *S'pore labelled a hub for illegal wildlife trade: strategic position may be attracting organized crime* (January 28, 2005) available at [http://www.acres.org.sg/news/news\\_today-28jan05.htm](http://www.acres.org.sg/news/news_today-28jan05.htm).

camans, turtles and toucans.<sup>12</sup> There is also evidence that Chilean abalones, which have been classified as an endangered species since 1998, are being smuggled into Peru.<sup>13</sup>

Ensuring that the laws on the books implementing CITES are strong and that human and financial resources are brought to bear to enforce CITES are some of the most pressing obstacles to cracking down on illegal wildlife trade. For example, while Vietnam has made strides to strengthen its national laws implementing CITES, it still has significant enforcement problems along its borders and a population that participates in wildlife trade both as middlemen and consumers.

The only way to combat this crime is through a concerted, multi-country effort encompassing government personnel, the private sector, and civil society, with the following primary aims:

- raising public awareness;
- sharing information;
- increasing enforcement and penalties;
- training authorities to differentiate between legal and illegal products;
- training authorities to properly handle and confiscate seized animals;
- establishing and supporting rescue centers for confiscated animal; and,
- supporting the creation of alternative income sources to poaching and illegal wildlife trade, such as ecotourism.

Achieving these goals is particularly critical if the TPP is to expand to other countries, such as Malaysia, Indonesia or China, where illegal wildlife trade is a grave threat to hundreds of species. An article from March 10, 2009, for example, explains that if wildlife trafficking continues, “anywhere between 13% and 42% of Southeast Asia’s animal and plant species could be wiped out within this century.”<sup>14</sup>

The TPP is a critical tool that can be used to require parties to strengthen and enforce their laws implementing CITES. Not only should CITES be a listed MEA, but HSI believes that the TPP should also explicitly require parties to combat illegal wildlife trade with failure to do so subject to dispute settlement. This can be accomplished through information exchange, trade capacity building and environmental cooperation activities, and cooperation with existing networks such as the Coalition Against Wildlife Trafficking (CAWT) and Association of Southeast Asian Nations, Wildlife Enforcement Network (ASEAN-WEN). Brunei Darussalam, Vietnam, and Singapore already participate in ASEAN-WEN (with assistance from the U.S. Agency for International Development as well), and the U.S. and Australia are active in CAWT. The TPP is the ideal opportunity to build on these networks and complement their work to combat illegal wildlife trade.

---

<sup>12</sup> See *El Comercio*, *Attempt to smuggle wildlife into Chile by boat foiled* (January 13, 2009) available at <http://www.traffic.org/seizures/2009/1/13/attempt-to-smuggle-wildlife-into-chile-by-boat-foiled.html>.

<sup>13</sup> See *El Mercurio*, *Chacalluta launches operation to combat illegal abalone trafficking* (January 23, 2009), available at <http://www.emol.com/noticias/ingles/detalle/detallenoticias.asp?idnoticia=341448>.

<sup>14</sup> See *Bangkok Post*, *Airport staff take on traffickers* (March 10, 2009), available at [www.bangkokpost.com/news/local/13066/airport-staff-take-on-traffickers](http://www.bangkokpost.com/news/local/13066/airport-staff-take-on-traffickers).

## ***6. Link between Illegal Logging and Illegal Wildlife Trade***

There is also a strong link between illegal logging and illegal wildlife trade that must be addressed in the TPP. The global timber trade poses one of the greatest threats to the survival of the world's wildlife and the conservation of forest habitat. Throughout South America and in Peru in particular, for example, illegal logging of mahogany degrades rivers and streams that are home to the giant river otters and other species. In addition, unsustainable logging practices result in the creation of roads into the vast forests that are used by poachers to hunt monkeys and other wildlife that end up on the illegal black market for endangered species. Similar problems are prevalent wherever there is large-scale illegal logging. For this reason, it is imperative that illegal logging and illegal wildlife trade are jointly addressed through strict forest governance provisions and border controls/monitoring.

## ***7. Biodiversity Conservation***

Many of the countries that will be part of the TPP negotiations and ultimate agreement are rich in biodiversity. Peru, for example, is one of only a few megadiverse countries in the world, and is home to unique species such as alpacas, vicuñas and Amazon River dolphins as well as a number of endangered species including the yellow-tailed woolly monkey, yellow-eared parrot, Andean mountain cat, and the Andean tapir. In Vietnam, a type of leaf-eating langur is one of the most endangered primates in the world, yet is sought after by poachers for traditional medicine purposes. These examples underscore the importance of including a commitment in the TPP requiring all parties to protect and conserve biodiversity. Parties must commit to long-term financial backing of biodiversity conservation initiatives, including through environmental cooperation.

To the extent that the TPP also encourages sustainable use of biodiversity, as was the case in the U.S.-Peru TPA, HSI strongly urges USTR to similarly include the possibility of “non-consumptive use.” This is important because non-consumptive uses of biodiversity, such as ecotourism, can greatly assist with biodiversity conservation while simultaneously providing local communities with sustainable income opportunities instead of poaching and illegal wildlife trade.

## ***8. Public Participation***

It is critical that any future TPP include strong public participation provisions and an emphasis on transparency. All parties should make their environmental laws and regulations publicly available and should be required to provide opportunities for public comments on changes to such laws or regulations as well as on other issues related to implementation of the agreement. To complement these provisions, HSI also recommends that all parties be required to establish national consultative or advisory committees, comprised of persons with knowledge of environmental issues, to provide views on the implementation of the environment provisions of the agreement.

One of the most important public participation mechanisms is the establishment of an Independent Secretariat that receives and investigates submissions from private citizens and NGOs alleging that a party is failing to effectively enforce an environmental law. This independent mechanism empowers civil society, NGOs, and the private sector to have a voice in their country's environmental policies, programs, and enforcement regimes without fear of governmental intervention in the process. To ensure that this mechanism operates in a meaningful manner, it is essential that the Secretariat receive adequate training to understand the objectives of the environment chapter and be guided by the chapter's working procedures, which should be reviewable and revisable on an annual basis.

HSI also urges inclusion of provisions that set deadlines for deliberation of whether a factual record should proceed, and for preparation of the factual record itself. An unnecessarily long process can lead to irreversible environmental harm in some instances, particularly when the case involves threatened or endangered species.

### ***9. Sanitary and Phytosanitary (SPS) Issues***

SPS provisions aim to facilitate trade while simultaneously protecting human, animal, and plant life or health from risks arising from the entry/establishment/spread of pests and diseases, and from additives, contaminants, toxins or disease-causing organisms in foods, beverages, or feedstuffs.<sup>15</sup> From HSI's perspective, animal welfare issues such as proper handling, transport, stunning and slaughter are SPS issues that must be addressed in the TPP. Strong animal welfare standards and practices directly correlate to animal health and to the mitigation of the spread of disease – issues that fall squarely within the scope of the SPS chapter. At a minimum, improvement of animal welfare standards and practices should be explicitly mentioned in the TPP as a priority area for further development and cooperation.

### ***10. Funding for Trade Capacity Building and Environmental Cooperation***

Lastly, it is incumbent upon the U.S. government and other TPP parties to devote appropriate levels of long-term funding to environmental cooperation and trade capacity building programs. Without the proper funding, environmental protection commitments will be meaningless. Implementing environmental cooperation projects, strengthening the ability of Ministries to enforce environmental laws (including CITES), building the capacity of local organizations to participate effectively in the public submission process, and training government officials on how to set up a national advisory committee system are just a few examples of the need for funding and technical assistance.

Previous FTAs have not included explicit language calling for long-term dedicated funding. Not surprisingly, if any funding was set aside for environmental initiatives, it has typically fallen short of what is needed to properly implement the environment chapter or has come only as a result of significant political pressure. The TPP must break free from this mold and include clear and explicit language and a commitment from all parties to fund environmental initiatives, which will hopefully aid in the U.S. budget and appropriations process. This is especially critical since the intention is to expand the TPP to even more countries in the region, with far-reaching implications for environmental and animal protection.

We look forward to working with TEPAC, USTR, and other agencies to consider some of these issues in more detail as negotiations proceed.

Sincerely,



Sarah Stewart  
Special Counsel, International Trade Policy  
*Humane Society International*

---

<sup>15</sup> See WTO SPS Agreement at Annex A (1)(a)-(d).