



**First Meeting of Environmental Law Advisory Group
Washington, D.C.
March 16, 2007
9:00 a.m. – 5:00 p.m.
Organization of American States, General Secretariat Building, 704**

**Background note on Environmental Law Aspects of
Trade and Environment in the Americas Project**

The Department of Sustainable Development (DSD) of the Organization of American States (OAS) is working to respond to trade-related capacity building needs in the area of environmental management, through a project, executed with the support of the Canadian International Development Agency (CIDA). The project addresses priority challenges of OAS Member States, in the following areas:

- (a) Strengthening capacities in the sound management of chemicals (*cluster 1*),
- (b) Enhancing public participation and effective enforcement of environmental laws, (*cluster 2*)
- (c) Improving market-based approaches to the conservation of biological diversity, through the support of Payment for Ecological Service Payments (PES) (*cluster 3*), and,
- (d) Strengthening educational capacities in trade and environment, through the development and dissemination of a “tool kit” on trade and sustainable development (*cluster 4*).

Each cluster of the project addresses aspects related to environmental law, as follows:

STRENGTHENING CAPACITIES IN THE SOUND MANAGEMENT OF CHEMICALS

The legal analysis in this cluster of the initiative is focused on compiling existing legal and regulatory frameworks addressing systems for the management chemicals vis a vis institutional capacities at the national level in two pilot countries: Chile and Nicaragua. The objective of this analysis is to identify gaps, priorities and potential best practices for the region in areas such as capacity building, normative action and enforcement of laws for the sound management of chemicals.

The information from this analysis will be incorporated into an online data base developed in collaboration with national authorities, the private sector and civil society of information needs, including information from national implementation plans submitted by countries in support of the UN Stockholm Convention, among other sources. Information will be gathered directly from countries and different stakeholders for a better understanding of the legal and institutional framework for the sound management of Persistent Toxic Chemicals (PTS) in Latin America, as well as to identify the main gaps priorities for action at the national and regional level.



Questions for discussion:

What basic elements should be considered in the development of legal frameworks for the sound management of chemicals and to address obsolete chemical stockpiles? And, what do you foresee to be the main challenges for OAS member states in achieving a basic efficient national structure?

What is the required institutional structure to support an effective system for the sound management of chemicals? Are any options less demanding for developing countries?

How can countries with limited resources achieve better institutional coordination to address commitments in MEAs related to chemical substances? Which commitments should be prioritized, if any?

What areas should be considered in a trade related environmental cooperation program to improve safety in the management of chemicals in agriculture and mining?

ENHANCING PUBLIC PARTICIPATION AND THE EFFECTIVE ENFORCEMENT OF ENVIRONMENTAL LAWS

Within this cluster, the Department of Sustainable Development (DSD) will work towards improving mechanisms related to the effective enforcement of domestic environmental laws and implementation of environmental commitments in trade agreements. This will be achieved through identifying institutional and capacity-building needs at the country and regional levels in the Andean Community, the Caribbean and Central America. These needs and priorities will be the basis for drawing recommendations on best-practices related to effective enforcement of domestic environmental laws and civil society participation mechanisms.

The legal analysis in this cluster will involve reviewing existing and proposed trade agreements that contain environmental provisions and require governments to adhere to prescribed levels of environmental protection; reviewing mechanisms such as citizen submissions or similar processes that are used to facilitate the enforcement of domestic environmental laws and analyzing administrative and institutional requirements that support citizen submissions processes and other mechanisms related to effective enforcement obligations

Questions for discussion:

What are the main challenges for developing countries in implementing current environmental provisions in trade agreements? Are there other options to improve environmental compliance within trade agreements?

What elements should be considered in a national legal framework for environmental management to improve enforcement? What elements are most effective bringing about coherence in environmental law?

What would be the best institutional approach in order to ensure positive results in compliance?



How should key stake holders be engaged in efforts towards environmental compliance?

How can adequate conditions for citizen participation be fostered? Are current mechanisms effective?

Would there be any three priorities you consider essential in improving enforcement and compliance as well as public participation?

IMPROVING MARKET-BASED APPROACHES TO THE CONSERVATION OF BIOLOGICAL DIVERSITY, THROUGH THE SUPPORT OF PAYMENT FOR ECOLOGICAL SERVICES (PES)

Within the context of trade-related capacity building, PES systems and market based approaches can help countries maximize their comparative advantages in global and regional trade in environmental goods and services and maintaining the natural resource base for economic development.

The objective of the legal analysis within this cluster is to support the development of a hemispheric approach to payment for ecological services and other mechanisms such as debt for nature swaps, conservation easements among others. This will be achieved through analyzing existing legal and regulatory frameworks at the national level in the Andean and Central American Region, in areas such as forest management, water management, Biodiversity, fiscal incentives, natural resource valuation, recognition of ecological services, public utilities, agricultural easements, property rights, funding for conservation and guarantees among others to determine which provisions facilitate or inhibit this type of mechanisms.

Existing transactions from the PES inventory developed by the OAS among other sources will also be analyzed to identify instrumental elements in institutional infrastructure and public policies that allow PES and other transactions to work. Common elements from the analysis at the national level will be highlighted regarding gaps that need to be addressed and most suitable legal conditions. These gaps and elements will be considered in the development of the hemispheric approach.

Questions for discussion:

What are the legal challenges faced by countries of the region in implementing innovative finance mechanisms for conservation and environmental management?

Which areas of environmental law could facilitate the implementation of these mechanisms and in particular PES?

Would guidelines regarding legal issues involving environment and economics be helpful?

Are clear property rights a fundamental element? Or is there a way around dealing with the challenges in this area?

What institutional structures should be available for these mechanisms to work? What would be their main role?



What type of capacity building efforts do you consider necessary?

TRADE AND ENVIRONMENT CAPACITY BUILDING TOOL KIT

The design and implementation of this tool kit aims to strengthen and improve educational capacity of government officials, private sector, civil society and academia in the area of trade and environment.

The tool kit will be comprised of several training modules that are being designed with a vision of maintaining a balance between trade and environmental protection from the initial stages of trade negotiations to the implementation phase of adopted commitments. In particular, the tool kit will outline the basic structures of trade and environmental law and their interaction. It will also underscore the rationale for environmental protection within trade agreements and provide economic and physical reasons to design effective legal frameworks for environmental management. The tool kit will be offered as a training course twice before the end of 2007 to two pilot groups one in Central America and the other one in the Andean Region. Participants that complete these trainings will be able to assess the effectiveness and coherence of domestic laws in a trade scenario and to participate in the negotiations of trade agreements and in the design of national frameworks with compliance and sustainable development in mind.

Questions for discussion:

*What is the best approach to developing the contents of the tool kit and who should be involved?
Is there a potential role for academia?*

Are there any issues that you think should be stressed in this training course?

What is the best way to ensure continuity of this effort?

Are there any suggestions for peer review of the materials?