



US-KENYA STRATEGIC TRADE  
AND INVESTMENTS PARTNERSHIP

# **ENVIRONMENT**

KEY ISSUES TO BE CONSIDERED

**Prof. Uche Ewelukwa Ofodile**

(SJD Harvard)

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## 1.0 Introduction

The interaction between global trade and the environment is increasingly the subject of considerable concern and debate. There is wide agreement that trade can have both positive and negative effect on the environment. On the one hand, “[e]conomic growth resulting from trade expansion can have an obvious direct impact on the environment by increasing pollution or degrading natural resources” and trade liberalisation “may lead to specialisation in pollution-intensive activities in some countries if environmental policy stringency differs across countries.”<sup>1</sup> On the other hand, some believe that by supporting economic growth, development, and social welfare, increased trade can contribute to a greater capacity to manage the environment more effectively.<sup>2</sup> The question increasingly asked is, how can policymakers optimally combine trade and the environment policies?

NAFTA was the first free trade agreement to link environment and trade issues. However, NAFTA addressed environmental issues in a separate side agreement called the North American Agreement on Environmental Cooperation. Since NAFTA, every FTA concluded by the U.S. has incorporated provisions on the environment. U.S. negotiation objectives are clear. According to the TPA-2015, the objectives are two-fold. First, “to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world’s resources.” Second, “to ensure that trade agreements do not establish obligations for the United States regarding greenhouse gas emissions measures, including obligations that require changes to United States laws or regulations or that would affect the implementation of such laws or regulations.”

Regarding provisions on the environment, the U.S. negotiating objectives are clear. According to the Trade Promotion Authority, 2015, the negotiating objectives are two-fold. First, “to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world’s resources.” Second, “to ensure that trade agreements do not establish obligations for the United States regarding greenhouse gas emissions measures, including obligations that require changes to United States laws or regulations or that would affect the implementation of such laws or regulations.”

### **The USMCA and the Environment**

The Parties to the USMCA recognize that a healthy environment is an integral element of sustainable development and recognize the contribution that trade makes to sustainable development. The objectives of Chapter 24 are to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation, in the furtherance of sustainable development.

Following on NAFTA’s example, the USMCA contains a chapter on the environment (Chapter 24). Unlike NAFTA, the environmental provisions of the USMCA are integral part

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<sup>1</sup> <https://www.oecd.org/trade/topics/trade-and-the-environment/>

<sup>2</sup> <https://www.oecd.org/trade/topics/trade-and-the-environment/>

of the agreement and appear in Chapter 24. The USMCA makes significant changes and additions to NAFTA's environmental side agreement. Key provisions are:

- ✓ Article 24.1: Definitions
- ✓ Article 24.2: Scope and Objectives
- ✓ Article 24.3: Levels of Protection
- ✓ Article 24.4: Enforcement of Environmental Laws.
- ✓ Article 24.5: Public Information and Participation.
- ✓ Article 24.6: Procedural Matters.
- ✓ Article 24.7: Environmental Impact Assessment.
- ✓ Article 24.8: Multilateral Environmental Agreements.
- ✓ Article 24.9: Protection of the Ozone Layer.
- ✓ Article 24.10: Protection of the Marine Environment from Ship Pollution.
- ✓ Article 24.11: Air Quality.
- ✓ Article 24.12: Marine Litter.
- ✓ Article 24.13: Corporate Social Responsibility and Responsible Business Conduct.
- ✓ Article 24.14: Voluntary Mechanisms to Enhance Environmental Performance.
- ✓ Article 24.15: Trade and Biodiversity.
- ✓ Article 24.16: Invasive Alien Species.
- ✓ Article 24.17: Marine Wild Capture Fisheries.
- ✓ Article 24.18: Sustainable Fisheries Management.
- ✓ Article 24.19: Conservation of Marine Species.
- ✓ Article 24.20: Fisheries Subsidies.
- ✓ Article 24.21: Illegal, Unreported, and Unregulated (IUU) Fishing.
- ✓ Article 24.22: Conservation and Trade.
- ✓ Article 24.23: Sustainable Forest Management and Trade.
- ✓ Article 24.24: Environmental Goods and Services.
- ✓ Article 24.25: Environmental Cooperation.
- ✓ Article 24.26: Environmental Committee and Contact Points.
- ✓ Article 24.27: Submissions on Enforcement Matters.
- ✓ Article 24.28: Factual Records and Related Cooperation.
- ✓ Article 24.29: Environmental Consultations.
- ✓ Article 24.30: Senior Representative Consultations.
- ✓ Article 24.31: Ministerial Consultations.
- ✓ Article 24.32: Dispute Resolution

In the main, Chapter 24 includes obligations for parties to maintain high levels of environmental protection and robust environmental governance. The USMCA parties also signed a parallel agreement – the Environmental Cooperation Agreement – that obliges the Parties to retain the Commission for Environmental Cooperation.

### **Enforcement of Environmental Laws**

The USMCA takes a very serious approach to enforcement of environmental disciplines. “No Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment

between the Parties, after the date of entry into force of this Agreement.”<sup>3</sup> Furthermore, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.<sup>4</sup> In addition, each Party is obliged to promote public awareness of its environmental laws and policies, including enforcement and compliance procedures, by ensuring that relevant information is available to the public.<sup>5</sup>

### **Procedural Matters**

Procedural matters are governed in Article 24.3 of the USMCA. Each Party shall provide for the receipt and consideration of written questions or comments from persons of that Party regarding its implementation of this Chapter. Upon receipt of questions or comments, each Party shall respond in a timely manner to these questions or comments in writing and in accordance with domestic procedures, and make the questions or comments and the responses available to the public, for example by posting on an appropriate public website.<sup>6</sup> Each Party is obliged to make use of existing, or establish new, consultative mechanisms to seek views on matters related to the implementation of the Chapter. These mechanisms may include persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, or other environmental matters.<sup>7</sup>

### **Multilateral Environmental Treaties**

Each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.<sup>8</sup> Each Party is obliged to adopt, maintain, and implement laws, regulations, and all other measures necessary to fulfill its respective obligations under seven multilateral environmental agreements (“covered agreements”).<sup>9</sup> The covered agreements are:

- ✓ the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended;
- ✓ the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as adjusted and amended;
- ✓ the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London, February 17, 1978, as amended;
- ✓ the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, done at Ramsar, February 2, 1971, as amended;
- ✓ the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, May 20, 1980;
- ✓ the International Convention for the Regulation of Whaling, done at Washington, December 2, 1946; and
- ✓ the Convention for the Establishment of an Inter-American Tropical Tuna Commission, done at Washington, May 31, 1949.

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<sup>3</sup> USMCA, Article 24.4 (1).

<sup>4</sup> USMCA, Article 24.4.2.

<sup>5</sup> USMCA, Article 24.5.1.

<sup>6</sup> USMCA, Article 24.5.2.

<sup>7</sup> USMCA, Article 24.5.3.

<sup>8</sup> USMCA, Article 24.8.2.

<sup>9</sup> USMCA, Article 24.8.4.

Significantly, none of the covered agreements relate to climate change. The USMCA *does not* reference the United Nations Framework Convention on Climate Change or the Paris Agreement.

## **Specific Environmental Protection**

Articles 24.9 to 24.23 of the USMCA focus on specific environmental protections and cover a broad range of issues including:

- protection of the ozone layer;
- protection of the marine environment from ship pollution;
- air quality;
- marine litter;
- voluntary mechanisms to enhance environmental performance;
- trade and biodiversity;
- invasive alien species;
- marine wild capture fisheries;
- sustainable fisheries management;
- conservation of marine species;
- fisheries subsidies;
- illegal, unreported, and unregulated fishing;
- conservation and trade;
- sustainable forest management and trade;
- environmental goods and services.

## **Dispute Settlement**

Many aspects of Chapter 24 are subject to the dispute settlement provisions of the agreement. The agreement specifically provides that “[n]o Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.”<sup>10</sup> In the event of a violation, other USMCA Parties can file submissions and engage in consultations.

### **Submissions**

Articles 24.27 and 24.28 of the USMCA set out a detailed procedure for the consideration of submissions once they are received. Pursuant to Article 24.27.1, “[a]ny person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with the Secretariat of the Commission for Environmental Cooperation (CEC Secretariat).” If the CEC Secretariat determines that a submission meets the admissibility criteria set out in the agreement, it shall determine within 30 days of receipt of the submission whether the submission merits requesting a response from the Party. If the CEC Secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.<sup>11</sup> The Party is required to respond within 60 days of delivery of the request. In responding, the Party shall inform the CEC Secretariat: (a) whether the matter at issue is the subject of a pending judicial or administrative proceeding; (b) whether the matter was previously the subject of a judicial or

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<sup>10</sup> USMCA, Article 24.4.1.

<sup>11</sup> USMCA, Article 24.27.3.



administrative proceeding; (c) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued; and (d) information regarding the enforcement of the environmental law at issue. If the Party informs the CEC that the matter at issue is the subject of a pending judicial or administrative proceeding, the CEC Secretariat shall proceed no further.<sup>12</sup>

### **Consultations**

The USMCA provides for several levels of consultation: Environment Consultations (Article 24.29); Senior Representative Consultations (Article 24.30), and Ministerial Consultation (Article 24.31).

### **Dispute Resolution**

If the consulting Parties fail to resolve the matter under within 30 days after the date of receipt of a request under Article 24.29.2 (Environment Consultations), or any other period as the consulting Parties may decide, the requesting Party may request the establishment of a panel under Article 31.6 (Establishment of a Panel).<sup>13</sup> A panel so convened under Article 31.6 (Establishment of a Panel) has the discretion to seek technical advice or assistance, if appropriate, from an entity authorised under the relevant multilateral environmental agreement to address the particular matter, and provide the consulting Parties with an opportunity to comment on any such technical advice or assistance received. Such a panel is also mandated to provide due consideration to any interpretive guidance received in making its findings and determinations under Article 31.17 (Panel Report).

### **Policy Space**

Several articles in the environmental chapter are designed to preserve domestic regulatory space.

### **Sovereign Right to Regulate**

The USMCA, in Article 24.3.1., recognizes that each Party has "the sovereign right" to establish its "own levels of domestic environmental protection and its own environmental priorities" and the right "to establish, adopt, or modify its environmental laws and policies accordingly." The USMCA also calls on each Party to "strive to ensure" that its environmental laws and policies "provide for, and encourage, high levels of environmental protection."<sup>14</sup>

### **Enforcement**

The Parties recognize that each Party retains the right to exercise discretion and to make decisions regarding: (a) investigatory, prosecutorial, regulatory, and compliance matters; and (b) the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws a Party is in compliance with paragraph 1 if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a bona fide decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.<sup>15</sup>

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<sup>12</sup> USMCA, Article 24.27.4.

<sup>13</sup> USMCA, Article 24.32.

<sup>14</sup> USMCA, Article 24.3.2.

<sup>15</sup> USMCA, Article 24.4.2.

## **Non-interference provision**

There is a provision in the USMCA that nothing in the environmental chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.<sup>16</sup>

## **2.0 Key Considerations for Kenya**

It is increasingly accepted that trade should not happen at the expense of the environment. A chapter on the environment is a good thing. The USMCA's list of environmental and conservation topics to be addressed through trilateral cooperation is very ambitious and comprehensive. The language used in the USMCA environmental chapter is very similar to the language of NAFTA and other FTAs after NAFTA. A legal framework that commits FTA members to reporting on the state of the environment; striving for improvement of environmental laws and regulations; effective enforcement of environmental law; and publication and promotion of information can and should be welcomed.

### **Limited Scope and Reach**

Critics are of the view that the USMCA's environmental chapter does not go far enough as far as addressing conservation and sustainable development is concerned. Thus, whether the provisions of the USMCA environmental chapter are sufficient to address regulatory backsliding is a matter of considerable debate. Whether the USMCA meets the baseline criteria to protect the health and environment is also a matter of intense debate. Despite its many laudable provisions, the USMCA's environmental chapter lacks clear and effective policies regarding environmental protection and sustainability assurances. For one thing, it does not endorse or reinforce climate change commitments as set out in the Paris Agreement. Furthermore, the agreement does not really address supply chains or sustainable trade.

### **The Marginalization of Climate Change in FTA's Involving the U.S.**

The USMCA environmental chapter does not address climate change and does not include a reference to the United Nations Framework Convention on Climate Change or the Paris Agreement. The agreement references "clean technology" in a non-binding section on environmental goods and services and "carbon storage" in the sustainable forest management section but does not reference low-carbon technologies. Consider Article 13.6 of the EU-Mercosur Trade Pact that promotes "domestic and international carbon markets" and "energy efficient, low-emission technology, and renewable energy." The EU and Mercosur made commitments to effectively implement the Paris Climate Agreement and also agreed to cooperate on the climate aspects of trade between the two sides. Even with its provisions on climate, environmental groups have been very critical of the deal.<sup>17</sup> German Chancellor Angela Merkel has reportedly expressed "considerable doubts" over the trade deal.<sup>18</sup> In July 2020, the Dutch Parliament requested that the Netherlands withdraw support from the agreement, citing the risk of deforestation it poses. In September 2020, the French government announced its opposition to the current version due to deforestation worries. With

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<sup>16</sup> USMCA, Article 24.4.3.

<sup>17</sup> Will environmental failings bring down the EU-Mercosur deal? EURACTIVE, 25 September 2020. <https://www.euractiv.com/section/economy-jobs/opinion/will-environmental-failings-bring-down-the-eu-mercotur-deal/>

<sup>18</sup> Id.

the recent change in administration in the U.S. and with the U.S. rejoining the Paris Agreement, prioritizing climate change in FTAs involving the U.S. may not be a problem in the near future.

### **Strong Enforcement from the U.S.**

Strong enforcement from the U.S. can be expected. As already noted, under the USMCA, certain environmental violations are subject to the state-to-state dispute settlement mechanism. In the past the U.S. has submitted environmental disputes to the same state-to-state mechanism used for trade disputes.<sup>19</sup>

## **3.0 Key Recommendations**

### ***Sovereignty Issues and Concerns. The Right to Regulate***

The Kenyan government must be careful not only to safeguard the right to regulate in the public interest but also ensure that it only takes on obligations that are consistent with the Kenyan Constitution. Where changes to existing law may be required, prior consultation with the Kenyan Parliament and other relevant stakeholders is recommended. This is the attitude of the U.S. regarding all FTAs. In the USTR's Negotiating Objectives, one of the principle objectives of the U.S. as regards the environment is:

“to ensure that trade agreements do not establish obligations for the United States regarding greenhouse gas emissions measures, **including obligations that require changes to United States laws or regulations or that would affect the implementation of such laws or regulations.**”<sup>20</sup>

### ***Include the Precautionary Principle***

The precautionary principle, a recognized principle of international environmental law, is not reflected in the USMCA's environmental chapter. Principle 15 of the Rio Declaration on Environment and Development (1992) codified for the first time at the global level, the precautionary approach. Principle 15 reads:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

The precautionary principle essentially allows states to anticipate and avoid an environmental damage before it occurs and is thus an extension of the right of states to regulate in the public interest. The precautionary principle is now reflected in numerous international instruments. For example, Article 3 of the United Nations Framework Convention on Climate Change (UNFCCC) establishes that “parties should take precautionary measures to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects.” It further states that “[w]here there are threats of serious or irreversible damage, lack of full scientific

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<sup>19</sup> See David A. Gantz, “Labor Rights and Environmental Protection under NAFTA and Other U.S. Free Trade Agreements,” *University of Miami Inter-American Law Review* 42 (2011): 297. See also, see Mark Spalding and Marc Stern, *NAFTA Effects: Claims and Arguments 1991- 1994, 1996* (Ottawa, CA: Commission for Environmental Cooperation, 1996), [https:// bit.ly/2WnTRnl](https://bit.ly/2WnTRnl).

<sup>20</sup> Section 102(a)(7); 19 USC 4201(a)(7). Emphasis added.

certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.”

Increasingly, states are including the precautionary principle in their FTAs. Article 24.8 of the Canada-EU CETA is an example and provides:

1. When preparing and implementing measures aimed at environmental protection that may affect trade or investment between the Parties, each Party shall take into account relevant scientific and technical information and related international standards, guidelines, or recommendations.
2. The Parties acknowledge that **where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.**<sup>21</sup>

### ***Address Climate Change Explicitly in any FTA***

The USMCA is silent on one of the biggest environmental challenges confronting Kenya - climate change. It is also significant that going into negotiations, one of the negotiating objectives of the U.S. is “to ensure that trade agreements do not establish obligations for the United States regarding greenhouse gas emissions measures.” It is imperative that FTAs involving Kenya address climate change explicitly and comprehensively including by:

- requiring parties to ratify the United Nations Framework Convention on Climate Change or the Paris Agreement;
- including explicit provisions related to renewable energy; and
- including languages related to carbon storage, in the context of sustainable forest management, and clean technology should be in the binding sections of any agreement.

It is worth noting that compared to the USMCA’s neglect of climate change, the 2019 EU-Mercosur Trade Pact between the European Union and Argentina, Brazil Paraguay and Uruguay includes provisions related to “domestic and international carbon markets” and “energy-efficient, low-emission technology, and renewable energy.”

### ***Carry Out a Comprehensive Environmental Impact Assessment***

It is recommended that the Kenyan government carry out a study of the impact of any proposed environmental chapter on the Kenyan economy and on individual sectors. What are the likely costs and benefits of an environmental chapter? Will such a chapter help Kenya address the myriad environmental issues and challenges it currently faces? With regard to the UCMCA’s environmental chapter, the USITC concluded that “[t]he impact of USMCA’s environment chapter on the U.S. economy and trade is difficult to measure quantitatively because of the complexity in measuring the economic impacts of environmental policies (especially those that are nonbinding). There does not appear be any public analysis of the potential economic impact of the chapter; commentaries have focused on the environmental aspects.”<sup>22</sup>

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<sup>21</sup> Emphasis added.

<sup>22</sup> <https://www.usitc.gov/publications/332/pub4889.pdf>, p. 251.

### ***Address Corporate Social Responsibility/Corporate Accountability***

Given the relationship between globalization, industrialization and environmental pollution, it is imperative that the activities of businesses be addressed directly and explicitly in any FTA. Imposing direct responsibilities on businesses should not be off the table. Although the USMCA contains provisions on corporate social responsibility, the provisions are weak and non-binding. The USMCA provides that each Party “**shall encourage** enterprises organized or constituted under its laws, or operating in its territory, to adopt and implement **voluntary best practices of corporate social responsibility** that are related to the environment, such as those in internationally recognized standards and guidelines that have been endorsed or are supported by that Party.”<sup>23</sup> The agreement does not define “voluntary best practices” and does not reference the United Nations Guiding Principles on Business and Human Rights or related instruments. Furthermore, the USMCA does not impose direct binding obligations on businesses. Parties generally agree to encourage “the use of flexible, voluntary mechanisms to protect the environment and natural resources, such as through the conservation and sustainable use of those resources, in its territory.”<sup>24</sup>

In a growing number of trade and investment agreements, states are choosing to impose direct responsibilities on businesses. For example, in the Nigeria-Morocco BIT (2016), enterprises are required to conduct environmental impact assessments as stipulated in the domestic law of the host state. Furthermore, the Nigeria-Morocco BIT requires investors to apply the precautionary principle in their impact assessment. Article 14 of the Nigeria-Morocco BIT provides:

#### ARTICLE 14

##### IMPACT ASSESSMENT

- 1) Investors or the investment shall comply with environmental assessment screening and assessment processes applicable to their proposed investments prior to their establishment, as required by the laws of the host state for such an investment or the laws of the home state for such an investment, whichever is more rigorous in relation to the investment in question.
- 2) Investors or the investment shall conduct a social impact assessment of the potential investment....
- 3) Investors, their investment and host state authorities shall apply the precautionary principle to their environmental impact assessment and to decisions taken in relation to a proposed investment, including any necessary mitigation or alternative approaches of the precautionary principle by investors and investments shall be described in the environmental impact assessment they undertake.

### ***Address Environmental Issues in Other Chapters of an FTA***

An environmental chapter in an FTA is a good start but is not enough to address the environmental issues and problems confronting Kenya. The provisions of several chapters of an FTA – for example, investment, agriculture, regulatory harmonization, and competition – have the potential to have major implications for the environment and for climate change. Should Kenya choose to conclude a comprehensive FTA with Kenya, it is important that the Kenyan government fully assess the impact of the entire agreement on the environment.

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<sup>23</sup> USMCA, Article 24.13.2. Emphasis added.

<sup>24</sup> USMCA, Article 24.14.2 (a).

### ***Technical Assistance and Capacity Building***

It is recommended that attention be paid to addressing issues relating to technical assistance and capacity building as they relate to environmental problems and challenges. The good news is that technical assistance and capacity building are already addressed in the Trade Promotion Authority, 2015. One of the principal negotiating objectives of the United States with respect to the environment is to strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable development. The bad news is that FTA provisions relating to technical assistance and capacity building come in all shapes and sizes. Unless addressed in clear and precise terms that signal binding commitments, these provisions may be virtually useless.

Trade Promotion Authority, 2015

(10) LABOR AND THE ENVIRONMENT.—The principal negotiating objectives of the United States with respect to labor and the environment are—

....

(D) to strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable development.

### ***Review and Update Negotiation Objectives***

Considering the climate change-related challenges facing Kenya and the fact that environment is explicitly addressed in the Constitution of Kenya, it is surprising that climate change is not mentioned in Kenya's negotiating objectives. It is thus recommended that Kenya's negotiating objectives on environmental issues be reviewed and revised.

### **Environmental**

<b>Negotiating Objectives (Kenya)</b>	<b>Negotiating Objectives (United States)</b>
<ul style="list-style-type: none"><li>• Recognize the importance of Environment and support the Multilateral Environmental Agreements (MEAs) that each country is party to and the two should continue working closely in those foras.</li></ul>	<ul style="list-style-type: none"><li>- Establish strong and enforceable environment obligations that are subject to the same dispute settlement mechanism that applies to other enforceable obligations of the Agreement.</li><li>- Establish rules that will ensure that Kenya does not waive or derogate from the protections afforded in environmental laws for the purpose of encouraging trade or investment.</li><li>- Establish rules that will ensure that Kenya does not fail to effectively enforce environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.</li></ul>

