

EU の FTA における環境関連条項：断片化、多数国間化の可能性

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1 . 断片化、多数国間化¹

- ・断片化（fragmentation）
- ・多数国間化（multilateralisation）
 - (i) 効果の多角化
 - (ii) 規律の多数国間化
- ・環境関連条項は断片化、多数国間化の可能性を孕む
- ・FTA ハブとしての EU

2 . WTO における「貿易と環境」議論と EU

WTO と多数国間環境協定（MEA）の関係
環境物品・サービスの貿易自由化
予防原則

3 . EU の FTA 政策

- ・managed globalization²（多角的体制への志向）
- ・Global Europe/ Trade, Growth and World Affairs
- ・ロメ協定 / コトヌ協定 EPA（形式的には FTA）へ
- ・EU の FTA 締結状況（別紙参照）

4 . EU の FTA における環境関連条項

(1) 概要

- ・Global Europe/ Trade, Growth and World Affairs
= 持続可能な発展の強化や、労働及び環境基準に関する条項の挿入の必要性
環境章の創設、内容の充実化
- ・特に、EC - CARIFORUM EPA、EU - 韓国 FTA、EU - 中米連合協定、EU - コロンビア - ペルー FTA

(2) 環境基準の引き下げによる貿易奨励の禁止

環境や公衆の健康に関する保護水準を引き下げることや、
それらの法律の執行を怠ることによって、

¹ R. Baldwin & P. Low ed., (2009) etc.

² Abdelal & S. Meunier (2010) etc.

貿易や外国直接投資を奨励してはならない旨の規定を創設

(EC - CARIFORUM EPA 第 188 条、EU - 韓国 FTA 第 13.7 条、EU - 中米連合協定第 291 条、EU - コロンビア - ペルー FTA 第 277 条)

- ・多角的効果の保持
- ・規律の多数国間化の兆候

(3) 高い環境保護水準の奨励

- ・国内環境法が高い保護水準を規定し奨励することの確保に努めるべき旨を規定

(EC - CARIFORUM 第 184 条、EU - 韓国 FTA 第 13.3 条、EU - 中米連合協定第 285 条、EU - コロンビア - ペルー FTA 第 268 条)

- ・多角的効果
- ・規律の多数国間化の兆候

(4) 多数国間環境協定 (MEA) との関連性

- ・規定が詳細化する傾向

抽象的な記述 (EC - CARIFORUM EPA 第 183 条 3 項)

具体的な MEA や国際条約への言及 (EC 中央アフリカ EPA 第 53 条、EU - 韓国 FTA 第 13.5 条、EC - 東南部アフリカ諸国 EPA 第 49 条)

参照される MEA の数が増加 (EU - 中米連合協定、EU - コロンビア - ペルー FTA)

- ・EU - 中米連合協定第 287 条 5 項、EU - コロンビア - ペルー FTA 第 270 条 4 項
MEA の優越性、WTO での交渉における EU の主張を実現

(5) 国際基準への調和

- ・例：EC - CARIFORUM EPA 第 185 条
- ・高い保護基準としての指標 (例：EU - コロンビア - ペルー FTA 第 268 条)
- ・WTO、他国の FTA よりも多く参照

(6) 予防原則

- ・環境章に挿入

「予防原則」と規定 (EC - CARIFORUM EPA 第 186 条)

リオ宣言第 15 原則と同様の記述 (EU - 中米連合協定第 292 条、EU - コロンビア - ペルー FTA 第 278 条)

規定なし (EU - 韓国 FTA)

- ・多角的効果
- ・規律の多数国間化の実現は困難
- ・「重大又は回復不可能な」損害のおそれとの要件の存在

(7) 環境物品・サービス

- ・環境物品・サービスの貿易及び対外直接投資を促進させるよう努める旨を規定
(EU - 韓国 FTA (第 13.6 条 2 項)、EU - 中米連合協定 (第 288 条)、EU - コロンビア
- ペルー FTA (第 271 条))
- ・ EU が先駆的
- ・ 規律の多数国間化は無理？

5 . 考察

- ・ 環境関連条項の充実・詳細化
- ・ 米国その他の FTA でも類似の規定 規律の多数国間化
- ・ EU 独自の規定 断片化の可能性 (現状では、「可能性」)
- ・ 多数国間化にむけてなお残される課題 (「高い保護基準」とは？)
- ・ EU の FTA における環境関連規定は...
 - (+) 貿易と環境問題の調和に向けた規律の充実
 - (-) 断片化や非統一性の懸念が内在
- ・ 断片化を紛争処理手続の段階で解消する手立ては存在するが、断片的な状況は継続することになると予想される

6 . 結びに代えて

- ・ 今後の見通し = 環境関連条項がさらに充実・拡大する可能性
- ・ リスボン条約の影響 (欧州議会の関与)
- ・ 米国の動向 (eg., 2007 年 : Bipartisan Agreement on Trade Policy (A New Trade Policy for America))

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補足資料

1 . 環境基準の引き下げによる貿易奨励の禁止

EU - 韓国 FTA 第 13.7 条

Upholding levels of protection in the application and enforcement of laws, regulations or standards

1. A Party shall not fail to effectively enforce its environmental and labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.
2. A Party shall not weaken or reduce the environmental or labour protections afforded in its laws to encourage trade or investment, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws, regulations or standards, in a manner affecting trade or investment between the Parties.

EU - 中米連合協定第 291 条

UPHOLDING LEVELS OF PROTECTION

1. The Parties recognise that it is inappropriate to encourage trade or investment by lowering the levels of protection afforded in domestic environmental and labour laws.
2. A Party shall not waive or derogate from, or offer to waive or offer to derogate from, its labour or environmental legislation in a manner affecting trade or as an encouragement for the establishment, acquisition, expansion or retention of an investment or an investor in its territory.
3. A Party shall not fail to effectively enforce its labour and environmental legislation in a manner affecting trade or investment between the Parties.
4. Nothing in this Title shall be construed to empower a Party's authorities to undertake law enforcement activities in the territory of the other Party.

2 . 高い環境保護水準の奨励

EU - 韓国 FTA 第 13.3 条

Right to regulate and levels of protection

Recognising the right of each Party to establish its own levels of environmental and labour protection, and to adopt or modify accordingly its relevant laws and policies, each Party shall seek to ensure that those laws and policies provide for and encourage high levels of environmental and labour protection, consistent with the internationally recognised standards or agreements referred to in Articles 13.4 and 13.5, and shall strive to continue to improve those laws and policies.

3 . 多数国間環境協定 (MEA) との関連性

EU - コロンビア - ペルー 第 270 条 4 項

4. Nothing in this Agreement shall limit the right of a Party to adopt or maintain measures to

implement the agreements referred to in paragraph 2. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

4 . 国際基準の採用

EU - コロンビア - ペルーFTA 第 268 条

Right to regulate and levels of protection

Recognizing the sovereign right of each Party to establish its domestic policies and priorities on sustainable development, and its own levels of environmental and labour protection, consistent with the internationally recognized standards and agreements referred to in Article 269 and 270, and to adopt or modify accordingly its relevant laws, regulations and policies; each Party shall strive to ensure that its relevant laws and policies provide for and encourage high levels of environmental and labour protection.

5 . 予防原則

EU - コロンビア - ペルー第 278 条

The Parties recognize the importance, when preparing and implementing measures aimed at protecting health and safety at work or the environment which affect trade between the Parties, of taking into account scientific and technical information and relevant international standards, guidelines or recommendations, while acknowledging that, where there are threats of serious or irreversible damage, the lack of full scientific certainty should not be used as a reason for postponing protective measures⁸⁷.

87 Peru interprets this Article against the background of the Principle 15 of the Rio Declaration on Environment and Development.

Rio Declaration, Principle 15

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.

Communication from the Commission on the precautionary principle
... specifically where preliminary objective scientific evaluation, indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the high level of protection chosen for the Community.