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I. Atmosphere and Climate

A. CLIMATE—INTERGOVERNMENTAL NEGOTIATIONS AND ORGANIZATIONS

Global concern about climate change grew as the Intergovernmental Panel on Climate Change (IPCC), which shared the 2007 Nobel Peace Prize with Al Gore for work on climate change, reported unequivocal evidence of warming of the global climate system and forecasted that continued greenhouse gas (GHG) emissions at or above current rates would very likely cause greater impacts.¹ Parties to the Kyoto Protocol and the Framework Convention on Climate Change (FCCC) held a number of meetings leading up to the Thirteenth Conference of the Parties (COP-13) of the FCCC and the Third Meeting

* Any views or opinions expressed in this report are those of the authors in their personal capacities and do not represent the views of their organizations. This report is submitted on behalf of the International Environmental Law Committee by Vice-Chair and editor David R. Downes with the assistance of Vice-Chair Michael W. Wascom. David Downes, who also contributed on trade and the environment and on the Montreal Protocol, is Senior Trade Advisor and Program Analyst at the U.S. Department of the Interior in Washington, D.C. Michael Wascom is Associate Professor of Environmental and Natural Resources Law at Louisiana State University's School of the Coast and Environment in Baton Rouge, LA. Charlotte de Fontaubert, Ph.D., a marine consultant based in Washington, D.C. and a member of IUCN's Commission on Environmental Law, contributed the section on marine conservation. Joseph W. Dellapenna, Professor of Law at Villanova University Law School, contributed on water resources. Khouane Dithavong, with King & Spalding's Tort and Environmental Litigation Practice Group, contributed on chemicals. Kristen Genovese, a staff attorney with the Center for International Environmental Law in Washington, D.C., authored the section on wildlife and biological resources. Richard A. Horsch, a partner with White & Case LLP based in New York City, contributed on hazardous waste developments. David Hunter, Assistant Professor at American University's Washington College of Law, contributed on sustainable finance. Thomas Redick, with the Global Environmental Ethics Council in Clayton, MO, contributed on international regulation of biotechnology. Marianne Tyrrell, with ICF International in Washington, D.C., contributed to and compiled the section on climate change based on contributions from William L. Fang of Edison Electric Institute, in Washington, D.C., and Robert McKinstry of Ballard Spahr Andrews & Ingersoll, LLP, in Philadelphia, PA.

1. See Intergovernmental Panel on Climate Change, *Fourth Assessment Report, Climate Change 2007: Synthesis Report, Summary for Policymakers* (Nov. 16, 2007) (draft prepared for COP-13), available at http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf.

of the Parties to the Protocol (COP/MOP-3), held in December 2007 in Bali, Indonesia. These included meetings of the FCCC Subsidiary Bodies, four workshop dialogues held under the FCCC, and four meetings of the *Ad Hoc* Working Group on Further Commitments for FCCC Annex I Parties under the Protocol.

Some Kyoto parties expected that the Bali meetings would result in a mandate for negotiations on an agreement for GHG reductions to go into effect following the end of the current 2008-2012 commitment period. The Secretary-General of the United Nations, terming climate change “the defining challenge of our age,” called for a “breakthrough” in Bali to launch talks on “a comprehensive climate change deal” that would bring together developed and developing countries.² Meanwhile, a number of other international meetings dealt with climate change, including the June 2007 G-8 Summit and the September 2007 Major Economies Meeting on Energy Security and Climate Change hosted by the United States.³

The World Bank increased its commitments to renewable energy and energy efficiency projects to over US\$1.4 billion for fiscal year 2007.⁴ The World Bank’s Carbon Finance Unit manages ten funds, with approximately US\$2 billion in capital contributions, which purchase GHG emission reduction credits, mainly under the Kyoto Protocol’s Clean Development Mechanism (CDM).⁵ The World Bank is also developing a forest carbon partnership facility to help countries address deforestation, currently excluded from the CDM, in return for carbon finance credits.⁶

An amendment to Annex I of the 1996 London Protocol⁷ to the London Convention⁸ entered into force, which is intended to facilitate projects for carbon sequestration below the seabed.⁹ The amendment modifies Annex I’s list of wastes and other matter for which ocean dumping is allowed to include the sequestration of carbon dioxide (CO₂) streams from CO₂ capture processes in sub-seabed geological formations.¹⁰

2. U.N. News Service, *Ban Ki-moon Urges Climate Breakthrough in Bali After Dire Report Released*, UN NEWS CENTRE, Nov. 17, 2007, available at <http://www.un.org/apps/news/story.asp?NewsID=24704&Cr=Climate&Cr1>.

3. See U.S. Dep’t of State, Global Climate Change, Major Economies Meeting on Energy Security and Climate Change, <http://www.state.gov/g/oes/climate/mem/> (last visited Feb. 18, 2008).

4. See Press Release, World Bank, World Bank Group Raises Funding For Renewables, Energy Efficiency by 67 Percent (Oct. 20, 2007), available at <http://go.worldbank.org/DQ391I4MG0>.

5. See World Bank, Sustainable Development Network, *Clean Energy for Development Investment Framework: The World Bank Group Action Plan*, at 21 (Mar. 6, 2007), available at [http://siteresources.worldbank.org/DEVCOMMIT/Documentation/21289621/DC2007-0002\(E\)-CleanEnergy.pdf](http://siteresources.worldbank.org/DEVCOMMIT/Documentation/21289621/DC2007-0002(E)-CleanEnergy.pdf).

6. See Press Release, World Bank, Two New World Bank Carbon Facilities Will Help Fight Climate Change and Deforestation (Oct. 11, 2007), available at http://carbonfinance.org/docs/Two_New_World_Bank_Carbon_Facilities_Will_Help_Fight_Climate_Change_And_Deforestation.pdf.

7. 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, Nov. 7, 1996, S. Treaty Doc. No. 110-5, 36 I.L.M. 1, available at <http://www.admiralty-lawguide.com/conven/protodumping1996.html> [hereinafter “London Protocol”].

8. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Dec. 29, 1972, 26 U.S.T. 2406, 11 I.L.M. 1291, available at <http://www.admiraltylawguide.com/conven/dumping1972.html> [hereinafter “London Convention”].

9. See Press Release, Int’l Maritime Org., New International Rules to Allow Storage of CO₂ Under the Seabed (Feb. 9, 2007), available at http://www.imo.org/Newsroom/mainframe.asp?topic_id=1472&doc_id=7772#annex.

10. See London Protocol, *supra* note 7, annex I, ¶ 1.8.

B. CLIMATE – OTHER INTERNATIONALLY RELEVANT DEVELOPMENTS

An internationally significant development in the domestic law of the United States, the nation with the largest GHG emissions, was the Supreme Court's decision in *Massachusetts v. Environmental Protection Agency*.¹¹ The Court held that the Environmental Protection Agency (EPA) may regulate GHG emissions under its authority granted by the Clean Air Act to regulate emissions that "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."¹² The U.S. Supreme Court also determined that the EPA had relied on impermissible rationales outside the statutory standard in refusing to regulate mobile source emissions.¹³

In the continued absence of federal action to regulate GHG emissions, individual states of the United States continued to expand cooperative efforts, often with international partners. As of February 2008, thirty-nine U.S. states, seven Canadian provinces, and two Mexican provinces have joined the Climate Registry, an effort to establish uniform rules for reporting and registering GHG emissions levels.¹⁴ Another regional effort that has become international is the Western Governors' Climate Initiative—which aims to develop a regional market-based mechanism to help achieve GHG reduction goals—to which seven U.S. states and the Canadian provinces of British Columbia and Manitoba have subscribed.¹⁵ Additionally, ten U.S. states, two Canadian provinces, the European Commission, and eleven developed countries formed the International Carbon Action Partnership (ICAP), which facilitates development of a global carbon market by sharing best practices and enhancing compatibility of trading systems.¹⁶

C. PROTECTION OF THE OZONE LAYER

Parties to the Montreal Protocol held their Nineteenth Meeting of the Parties to the Montreal Protocol in September 2007 in Montreal. In addition to commemorating the Protocol's twentieth anniversary, the parties agreed to accelerate the phase-out of hydrochlorofluorocarbons (HCFCs), interim replacements for ozone-depleting CFCs, that are ozone-depleting substances as well as greenhouse gases.¹⁷ HCFC production will be frozen in 2013 and the phase-out deadline accelerated by ten years, to 2020 for developed countries and 2030 for developing countries.¹⁸ Exemptions for use of methyl bromide were granted for anything less than 4,600 metric tons (down from 9,100 in 2006 and 16,000 in 2005).¹⁹

11. *Mass. v. Envtl. Prot. Agency*, 127 S. Ct. 1438 (2007).

12. Clean Air Act § 202, 42 U.S.C. § 7521(a)(1) (2000).

13. See *Mass.*, 127 S. Ct. at 1452-63.

14. The Climate Registry, About Us, <http://www.theclimateregistry.org/> (last visited Feb. 18, 2008).

15. Western Climate Initiative, WCI Partners, <http://www.westernclimateinitiative.org/> (last visited Feb. 18, 2008).

16. International Carbon Action Partnership, Members, <http://www.icapcarbonaction.com/members.htm> (last visited Feb. 18, 2008).

17. See Nineteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, Can., Sept. 17-21, 2007, *Final Report*, at 33, U.N. Doc. UNEP/OzL.Pro.19/7, available at http://ozone.unep.org/Meeting_Documents/mop/19mop/MOP-19-7E.pdf.

18. See *id.* at 33.

19. See *id.* at 35.

II. Marine Conservation

International cooperation on marine environment and conservation continued within the framework of the United Nations Convention on the Law of the Sea (UNCLOS).²⁰ Both States Party and non-State entities worked within the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) with the aim of framing issues for consideration by the United Nations General Assembly. In 2007, UNICPOLOS focused its consideration on marine genetic resources found on the deep seabed in areas beyond national jurisdiction. While UNCLOS articulates a special regime for mineral resources found on the seabed of the high seas²¹ and a framework for fisheries resources found in the water column on the high seas,²² it makes no specific provision for living resources on the seabed of the high seas, including genetic resources. International interest in these resources has grown, however, as biotechnological applications advance for material found in organisms living there.²³

Some developing countries argue that these resources should be subject to the “common heritage” principle found in the UNCLOS deep seabed regime,²⁴ while developed countries typically argue that as living marine resources, they are better treated by analogy to the so-called “freedom of fishing” principle found in the UNCLOS framework for high seas fisheries.²⁵ UNICPOLOS was unable to reconcile these diametrically opposed views, which are reminiscent of the negotiations on UNCLOS twenty-five years ago.

The UNCLOS régime for high seas fisheries combines the freedom of fishing concept with a duty to cooperate, which many states pursue through various regional fisheries management organizations (RFMOs). RFMOs now cover most areas of the high seas where significant commercial fishing occurs. A relatively recent convention establishing an RFMO covering tuna fishing in the Pacific²⁶ is considered to have particularly strong provisions, and the convention’s potential was strengthened further in July 2007 when the United States became a party to it.²⁷

20. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3, 21 I.L.M. 1261, available at http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm [hereinafter “UNCLOS”].

21. Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, July 28, 1994, 1836 U.N.T.S. 42, available at http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindxAgree.htm.

22. UNCLOS, *supra* note 20, art. 116. See generally CHARLOTTE DE FONTAUBERT ET AL., ACHIEVING SUSTAINABLE FISHERIES: IMPLEMENTING THE NEW INTERNATIONAL LEGAL REGIME (2003).

23. See U.N. Gen. Assembly, *Report on the Work of the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea at its Eighth Meeting*, ¶ 18, U.N. Doc. A/62/169 (July 30, 2007), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N07/443/75/PDF/N0744375.pdf?OpenElement>.

24. See *id.* ¶ 71.

25. See *id.* ¶ 74.

26. Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Sept. 5, 2000, 40 I.L.M. 278, available at <http://sedac.ciesin.columbia.edu/entri/texts/fish.west.cent.pac.2000.html>.

27. See Press Release, U.S. Dep’t of State, U.S. Joins Western and Central Pacific Fisheries Convention (June 28, 2007), available at <http://www.state.gov/t/pa/prs/ps/2007/jun/87537.htm>.

III. International Hazard Management

A. TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTE

In March 2007, the first meeting²⁸ of the *Ad Hoc* Joint Working Group on Enhanced Cooperation and Coordination,²⁹ a group established by the Basel, Stockholm, and Rotterdam Conventions, was held. These conventions concern the transport and disposal of hazardous wastes, the production, release and trade in persistent organic pollutants (POPs), and the international trade of hazardous chemicals, respectively.³⁰ The group's discussions centered on enhancing efficiency by exploring untapped areas for cooperation, such as shared legal and financial services arrangements.³¹

At the Sixth Session of the Basel Convention's Open-Ended Working Group (OEWG) in September 2007, the OEWG discussed an agenda defined by the Basel Conference of the Parties at its eighth meeting.³² The OEWG formulated comments on a draft convention for the environmentally sound recycling of ships being developed by the International Maritime Organization.³³ The OEWG also established two provisional public-private partnerships or stakeholder panels: the e2e partnership, to address the environmentally sound management (ESM) of e-wastes; and the Partnership for Action on Computing Equipment (PACE).³⁴

28. See *Ad Hoc Joint Working Group on Enhanced Cooperation and Coordination Between the Basel, Stockholm and Rotterdam Conventions*, BASEL CONVENTION BULLETIN (Basel Convention, Geneva, Switz.), Apr. 2007, at 1, available at <http://www.basel.int/press/bcb-April-2007.pdf> [hereinafter "Enhanced Cooperation"].

29. See *Ad Hoc Joint Working Group, Official Documents for the First Meeting of the AHJWG*, http://ahjwg.chem.unep.ch/index.php?option=com_content&task=section&id=6&Itemid=33 (last visited Feb. 18, 2008).

30. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 1673 U.N.T.S. 125, 28 I.L.M. 657, available at <http://www.basel.int/text/con-e-rev.pdf>; Conference of Plenipotentiaries on the Stockholm Convention on Persistent Organic Pollutants, Stockholm, Swed., May 22-23, 2001, *Final Act*, U.N. Doc. UNEP/POPS/CONF/ 4 (June 5, 2001), available at http://www.pops.int/documents/meetings/dipcon/25june2001/conf4_finalact/en/FINALACT-English.PDF; Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Rotterdam, Neth., Sept. 10-11, 1998, *Final Act*, U.N. Doc. UNEP/FAO/PIC/CONF/5 (Sept. 17, 1998), available at <http://www.pic.int/incs/dipcon/eb/English/FINALE.PDF>.

31. See *Enhanced Cooperation*, *supra* note 28.

32. See Conference of the Parties of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Nairobi, Kenya, Nov. 27-Dec. 1, 2006, *Strategic Plan for the Implementation of the Basel Convention to 2010: Basel Convention Partnership Programme*, U.N. Doc. UNEP/CHW.8/2/Add.2 (Sept. 19, 2006); Conference of the Parties of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Nairobi, Kenya, Nov. 27-Dec. 1, 2006, *Proposed Decisions by the Open-Ended Working Group at its Fifth Session for Submission to the Conference of the Parties at its Eighth Meeting*, U.N. Doc. UNEP/CHW.8/5 (Aug. 21, 2006).

33. See Open-Ended Working Group of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Geneva, Switz., Sept. 3-7, 2007, *Environmentally Sound Management of Ship Dismantling*, U.N. Doc. UNEP/CHW/OEWG/6/16 (June 26, 2007), available at <http://www.basel.int/meetings/oewg/oewg6/docs/16e.pdf>.

34. See Open-Ended Working Group of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Geneva, Switz., Sept. 3-7, 2007, *Implementation of Decisions VIII/2 and VIII/5 on Strategic Partnerships for Electrical and Electronic Wastes and Used and End-of-Life Computing Equipment*, U.N. Doc. UNEP/CHW/OEWG/6/20 (July 25, 2007), available at <http://www.basel.int/meetings/oewg/oewg6/docs/20e.pdf>.

B. CHEMICALS

The most significant international development in chemicals management occurred at the regional level with the entry into force in June 2007 of a new European Union (EU) policy on the Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH).³⁵ Passage occurred after years of controversy over issues such as the regulation's consistency with international trade obligations. The REACH policy reverses the traditional burden of proof for environmental regulation so that regulators will no longer have to show that a chemical's risk outweighs its benefits in order to ban or restrict it. Instead, manufacturers of chemicals and products containing chemicals will have to prove each use is safe or cease selling or using the product in the EU.³⁶

Any company, regardless of origin, that manufactures, imports, or uses chemicals in any EU member state is subject to the new registration system.³⁷ All new and existing chemicals produced or imported in volumes greater than one metric ton per year must be registered, except certain chemical classes that are exempt or have reduced registration requirements. The newly-created European Chemicals Agency is responsible for reviewing each registration package for the more than 30,000 chemicals expected to require registration.³⁸ Uses of chemicals found to present unacceptable risk to human health and the environment may be restricted.³⁹

The European Parliament and Council stated that REACH should serve as a model for global chemicals management and deemed it a contribution to the fulfillment of the Strategic Approach to International Chemicals Management (SAICM).⁴⁰ But the precautionary approach embodied in REACH⁴¹ has been controversial. Critics argue that it has such a high degree of risk aversion that it largely omits other relevant factors, such as cost-

35. See Commission Regulation (EC) 1907/06, Registration, Evaluation, Authorisation and Restriction of Chemicals, 2006 O.J. (L 396) 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1907:EN:NOT>.

36. See *id.* at 9 (stating that applications for

[a]uthorisations for the placing on the market and use [of substances] should be granted by the Commission only if the risks arising from their use are adequately controlled, where this is possible, or the use can be justified for socio-economic reasons and no suitable alternatives are available, which are economically and technically viable).

See also *id.* at 138, art. 55 (stating that "all manufacturers, importers and downstream users applying for authorisations shall analyse the availability of alternatives and consider their risks, and the technical and economic feasibility of substitution"); *id.* at 62, art. 5 (stating "substances on their own, in preparations or in articles shall not be manufactured in the Community or placed on the market unless they have been registered in accordance with the relevant provisions of this Title where this is required").

37. See *id.* at 62, art. 6 (stating "any manufacturer or importer of a substance, either on its own or in one or more preparation(s), in quantities of 1 tonne or more per year shall submit a registration to the Agency").

38. See *id.* at 173, art. 75 (establishing the European Chemicals Agency "for the purposes of managing and in some cases carrying out the technical, scientific and administrative aspects of this Regulation").

39. See *id.* at 164, art. 68 (stating that restrictions on the "use or placing on the market of substances on their own, in preparations or in articles" shall be adopted "[w]hen there is an unacceptable risk to human health or the environment").

40. See *id.* at 3.

41. See *id.* at 47, art. 1 (stating that the regulation's provisions "are underpinned by the precautionary principle").

effectiveness, contrary to international instruments expressing the precautionary approach.⁴²

2007 was the first full year of implementation for the Strategic Approach to International Chemicals Management (SAICM), a nonbinding voluntary agreement adopted in 2006 at a conference of over 140 governments and stakeholders.⁴³ The SAICM has the goal of establishing a sound global chemicals management policy by 2020 as an essential aspect of sustainable development⁴⁴ and as agreed to at the 2002 Johannesburg World Summit on Sustainable Development.⁴⁵ Efforts focused on the initial stages of organizing regional meetings to review and provide guidance on implementation within the regions.⁴⁶

C. INTERNATIONAL REGULATION OF AGRICULTURAL BIOTECHNOLOGY

Over the past decade, worldwide production of biotechnologically modified crops or their products (“biotech crops”) has increased.⁴⁷ As of the beginning of 2007, an estimated 10.3 million farmers in twenty-two countries were planting various biotech crops, with the largest amount of planting in the United States (53 percent of total plantings), followed by Argentina, Brazil, Canada, India, and China.⁴⁸

An expert group formed under the Cartagena Protocol on Biosafety (CPB) held its third and fourth meetings on the development of liability standards for biotech crops, termed “living modified organisms” (LMOs) under the CPB, which are being traded internationally among the 145 parties to the CPB as well as between CPB parties and non-parties.⁴⁹ Discussions in 2007 focused on which effects on biological diversity should be covered in proposed text calling for strict, joint, and several liability for harm caused by biotech crops. Liability could arise for food recalls or remediation of releases of biotech crops lacking regulatory approval in the importing nation.

Nations supporting crop biotechnology, including grain exporting nations, prefer that the genetically-modified content of food and feed be regulated by the Codex Alimentarius Commission (“Codex”)—recognized under the World Trade Organization (WTO) as an

42. See, e.g., United Nations Conference on Environment and Development: Rio Declaration on Environment and Development, princ. 15, June 14, 1992, 31 I.L.M.874, 879 (referring to “cost-effective measures”).

43. U.N. Env’t Programme [UNEP], *Strategic Approach to International Chemicals Management, Comprising the Dubai Declaration on International Chemicals Management, the Overarching Policy Strategy and the Global Plan of Action* (June 6, 2006), available at http://www.chem.unep.ch/saicm/SAICM%20texts/standalone_txt.pdf.

44. See *id.*, declarations 1, 4.

45. See U.N. Dep’t of Econ. & Social Affairs, Johannesburg Plan of Implementation, http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm (last visited Feb. 18, 2008).

46. See UNEP, SAICM Regional Meetings and Activities, <http://www.chem.unep.ch/saicm/regionalmeetings.htm> (last visited Feb. 18, 2008).

47. See Int’l Serv. for the Acquisition of Agri-biotech Applications Brief 35-2006, <http://www.isaaa.org/resources/publications/briefs/35/highlights/default.html> (last visited Feb. 18, 2008) (citing the most recent available statistics from 2006) [hereinafter “ISAAA”].

48. See ISAAA Brief 35-2006, Executive Summary, <http://www.isaaa.org/resources/publications/briefs/35/executivesummary/default.html> (last visited Feb. 18, 2008).

49. See U.N. Convention on Biological Diversity, Montreal, Can., Oct. 22-6, 2007, *Report of the Open-Ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress in the Context of the Cartagena Protocol on Biosafety on the Work of its Fourth Meeting*, U.N. Doc. UNEP/CBD/BS/WG-L&R/4/3 (Nov. 13, 2007), available at <http://www.cbd.int/doc/meetings/bs/bswglr-04/official/bswglr-04-03-en.pdf>.

international standard-setting organization—rather than the CPB. Codex has an *Ad Hoc* Intergovernmental Task Force on Foods Derived from Biotechnology, which issued a proposed annex in mid-2007 to the Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants.⁵⁰ The proposal recognizes that many biotech crops are being grown widely, but regulatory approvals are granted at different rates in different countries, thus potentially triggering disruption of trade in agricultural commodities. It sets out a science-based approach for assessing the safety of foods that may contain very low levels of biotech crops that have yet to undergo regulatory review in the importing nation.⁵¹

IV. Natural Resources

A. WATER RESOURCES

Stresses on water resources around the world continue to increase—and promise to intensify—as the changing climate contributes to existing pressures from population growth and development.⁵² Not surprisingly, numerous and intense international disputes over surface water continue across Asia and the Americas, and disputes over groundwater are arising as well.

On February 12, 2007, a neutral expert appointed by the World Bank, pursuant to a treaty between India and Pakistan,⁵³ issued a decision concerning Pakistan's objections to the Baglihar Dam, which India proposed to construct in Kashmir. While finding merit in three of Pakistan's objections to the dam, the decision upheld India's right to build a run-of-the-river dam but required a reduction in its planned height and a different arrangement for water intake.⁵⁴

On the other side of India, the potential for conflict concerning the great rivers of the region is increasing. China plans to divert several of these rivers, the Brahmaputra in particular,⁵⁵ and the increased melting of glaciers in the Himalayas could deprive the Gan-

50. See Codex Alimentarius Commission [Codex], *Report of the Seventh Session of the Codex Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology*, ALINORM 08/31/34 (2008), available at <http://www.codexalimentarius.net/web/archives.jsp?year=08>; see also Circular Letter CL 2007/17-FBT rev. from Secretary, Codex Alimentarius Commission to Codex Contact Points, Interested International Organizations (June 2007), available at <http://www.mhlw.go.jp/topics/idsnshi/codex/dl/03-7-34.pdf>.

51. See Codex, *Report of the Sixth Session of the Codex Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology*, app. IV, ALINORM 07/30/34 (2007), available at <http://www.codexalimentarius.net/web/archives.jsp?year=07>.

52. See, e.g., T. P. Barnett, J. C. Adam & D. P. Lettenmaier, *Potential Impacts of a Warming Climate on Water Availability in Snow-Dominated Regions*, 438 NATURE 303-09 (2005); Geoffrey Lean, *Wars of the World: How Global Warming Puts 60 Nations at Risk*, INDEP. ON SUNDAY, Apr. 1, 2007, at 4; see generally Intergovernmental Panel on Climate Change, Working Group II, Climate Change Impacts, Adaptation, and Vulnerability, <http://www.ipcc-wg2.org/> (last visited Feb. 18, 2008).

53. Indus Waters Treaty, India-Pak., Sept. 19, 1960, 419 U.N.T.S. 125, available at <http://siteresources.worldbank.org/INTSOUTHASIA/Resources/223497-1105737253588/IndusWatersTreaty1960.pdf>.

54. See RAYMOND LAFITTE, THE INDUS WATERS TREATY 1960: BAGLIHAR HYDROELECTRIC PLANT (2007), available at <http://siteresources.worldbank.org/SOUTHASIAEXT/Resources/223546-1171996340255/BagliharSummary.pdf> (executive summary of expert determination).

55. See *A Survey of China and its Region: Grim Tales*, ECONOMIST, Mar. 31, 2007, at 75 [hereinafter "*China and its Region*"]; Sumit Ganguly & Manjeet S. Pardesi, *India Rising: What is New Delhi to Do?*, 24 WORLD

ges and the Brahmaputra of their base flows during the dry season.⁵⁶ In Southeast Asia, the four lower basin countries sharing the Mekong have begun talks about strengthening the powers and operations of the Mekong Basin Commission because of unprecedented drought and other problems.⁵⁷ While China does not participate in any treaty on these rivers,⁵⁸ and as the uppermost riparian has no fear of counter-diversions by other riparian states, China's desire to expand its regional influence has led it to enter into discussions regarding its projects.⁵⁹

Tension over water continued in North America as well. While a North American Free Trade Agreement (NAFTA) arbitral panel rejected a challenge by Texan irrigators to Mexico's disposition of Rio Bravo/Rio Grande water,⁶⁰ disputes over internationally shared groundwater along the Mexican-U.S. border have heated up.⁶¹ The Ninth Circuit affirmed the denial of an injunction in a challenge to a proposed project that would line the All-American Canal to reduce seepage losses that occurred from transporting water from the Colorado River to Imperial Valley, which would threaten groundwater supplies south of the border. The ruling was based on lack of standing, the sovereign immunity of some of the defendants, and a statutory exemption of other defendants from legal challenges to the project.⁶² In December 2006, Congress enacted legislation directing the Secretary of the Interior to assess transboundary aquifers along the Mexico-U.S. border.⁶³

Minnesota and Illinois became the first states to pass legislation implementing the 2005 interstate compact among the eight Great Lakes states.⁶⁴ The compact is intended to preclude the export of water from the Great Lakes.⁶⁵ The dispute over the draining of water from Devils Lake in North Dakota north into Manitoba had seemed to be resolved in 2006 by an agreement on steps to prevent the introduction of contamination or invasive

POL'Y J. 9 (2007); James Johnston, *The Great River Theft: A Plan to Redirect Water from the Himalayas Is Dire News for the Mainland's Neighbours*, S. CHINA MORNING POST, July 15, 2007, at 11.

56. See M. Shahjahan Mondal & Saleh A. Wasimi, *Evaluation of Risk-Related Performance in Water Management for the Ganges Delta of Bangladesh*, 133 J. WATER RESOURCES PLAN. & MGMT. 179 (2007); see also Brahma Chellaney, *Averting Water Wars in Asia: The Next Struggle*, INT'L HERALD TRIB., June 27, 2007, at 8; Justin Huggler, *Retreating Himalayan Icefields Threatening Drought in Bangladesh*, INDEP. (UK), Mar. 29, 2007, at 8.

57. *Laos: International Donors Ante up for Mekong River Commission*, THAI PRESS REPS., July 3, 2007, available at "2007 WLR 12466463" on Westlaw; *Vietnam: Promoting MRC Cooperation*, THAI PRESS REPS., Apr. 25, 2007, available at "2007 WLNR 7733381" on Westlaw. The participating countries are Cambodia, Laos, Thailand, and Vietnam. Burma (Myanmar) and China do not participate.

58. See, e.g., Timo Menniken, *China's Performance in International Resource Politics: Lessons from the Mekong*, 29 CONTEMP. S.E. ASIA 97 (2007).

59. See *China and its Region*, supra note 55; N.T. Dammen, *Still Much to Do to Improve ASEAN-China Long-Standing Ties*, JAKARTA POST, Oct. 31, 2006, at 6.

60. See discussion *infra* Part V.A (Trade and Environment).

61. See Philip Dunlap, *Border Wars: Analyzing the Dispute over Groundwater Between Texas and Mexico*, 12 L. & BUS. REV. AM. 215 (2006).

62. See Consejo de Desarrollo Economico de Mexicali v. United States, 482 F.3d 1157 (9th Cir. 2007).

63. United States-Mexico Transboundary Aquifer Assessment Act app., Pub. L. No.109-448, § 1962, 120 Stat. 3328 (2006), 42 U.S.C. § 1962.

64. See Council of Great Lakes Governors, *Projects: Great Lakes-St. Lawrence River Basin Water Resources Compact Implementation*, <http://www.cglg.org/projects/water/CompactImplementation.asp> (follow "State Legislative Activity") (last visited Feb. 18, 2008).

65. Great Lakes-St. Lawrence Basin Water Resources Compact, Dec. 13, 2005, available at http://www.cglg.org/projects/water/docs/12-13-05/Great_Lakes-St_Lawrence_River_Basin_Water_Resources_Compact.pdf.

species.⁶⁶ But in 2007, Manitoba complained that North Dakota had violated that agreement by operating the drain without a filter.⁶⁷ Manitoba reportedly raised the possibility of legal action⁶⁸ and threatened to withhold funding for a works to prevent flooding in North Dakota.⁶⁹

In South America, proceedings advanced in a complaint that Argentina had filed against Uruguay before the International Court of Justice (ICJ) concerning proposed paper mills on the River Uruguay, a boundary river between the two nations. In January 2007, the ICJ denied Uruguay's request for provisional measures, finding that Uruguay had not shown that its interests in the dispute would be irreparably prejudiced by Argentina's failure to prevent its citizens from blockading a bridge between the two countries across the River Uruguay.⁷⁰ At the global level, the International Law Commission is awaiting comments on draft articles concerning transboundary groundwater in anticipation of a final reading at the Commission's May 2008 session.⁷¹

B. BIOLOGICAL RESOURCES AND WILDLIFE

In 2007, the Fourteenth Conference of the Parties (COP-14) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was held in The Hague, Netherlands. Once again, the issue of trade in elephant ivory dominated the proceedings. Botswana and Namibia had proposed an annual export quota for raw ivory from populations of African elephants (*Loxodonta africana*) included in Appendix II while Kenya and Mali proposed maintaining the current zero quota and imposing a twenty-year moratorium on trade.⁷² The COP-14 ultimately approved a compromise endorsed by African range States, which allowed for the sale of all government-owned ivory stocks from Botswana, Namibia, South Africa, and Zimbabwe registered by January 31, 2007, in addition to the quantity approved for sale in 2002.⁷³ From the date of the sale deadline,

66. See Press Release, U.S. Dep't of State, Joint Press Statement on Devils Lake Flooding and Ecological Protection by the United States and Canada, North Dakota, Minnesota and Manitoba (Aug. 5, 2005), available at <http://www.state.gov/r/pa/prs/ps/2005/50831.htm>.

67. See Mia Rabson, *Devils Lake Outlet Starts Pumping Water: No Permanent Filter, Manitoba May Cut Flood Relief*, WINNIPEG FREE PRESS, June 12, 2007, at A5; Yangkyoung Lee, *N.D. Officials Say Pumping Will Continue: State Concedes Performance Isn't Optimal But Has "No Alternative,"* GRAND FORKS HERALD, Aug. 29, 2007, at A1; Paul Samyn, *Canada Not Warned of Lack of Filter: Baird in Breach of Agreement on Devils Lake Outlet*, WINNIPEG FREE PRESS, June 16, 2007, at A3.

68. See Mia Rabson, *Manitoba Threatens to Sue N.D. Over Devils Lake Outlet*, WINNIPEG FREE PRESS, June 29, 2007, at A5.

69. See *Outlet Opinions Flow Freely: Water Begins to Move Toward Sheyenne*, GRAND FORKS HERALD, June 13, 2007, at A1.

70. See *Pulp Mills on the River Uruguay (Arg. v. Uru.)* (Req. for provisional measures) (Order of Jan. 23, 2007), para. 41, available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&code=au&case=135&k=88>.

71. See U.N. Int'l Law Comm'n, *Report on the Work of its Fifty-Eighth Session*, May 1-June 9, 2006 & July 3-Aug. 9, 2006, at 183-245, U.N. Doc. A/61/10 (2006), available at <http://untreaty.un.org/ilc/reports/2006/2006report.htm>.

72. See UNEP, *Convention on International Trade in Endangered Species of Wild Fauna and Flora, Proposals for Amendment of Appendices I and II, CoP14 Props. 4 & 6*, <http://www.cites.org/eng/cop/14/prop/index.shtml> (last visited Feb. 18, 2008) [hereinafter CITES CoP14 Proposals].

73. See Fourteenth Conference of the Parties, The Hague, Neth., June 13-15, 2007, *Amendments to Appendices I and II of the Convention*, No. 2007/022 (July 26, 2007), available at <http://www.cites.org/eng/notif/2007/E022.pdf>.

however, no further trade in ivory from Appendix populations listed in Appendix II shall be proposed for nine years.⁷⁴

Several high-profile proposals for commercially-valuable species failed to garner the two-thirds support of the parties necessary to list a species on the CITES appendices.⁷⁵ The COP-14 rejected a proposal by Japan to review whether cetaceans should remain in Appendix I⁷⁶ and confirmed its longstanding position that all great whales should remain in Appendix I (prohibiting commercial trade) as long as those species are protected under the moratorium on commercial whaling established by the International Whaling Commission (IWC).⁷⁷

Wildlife trade regulatory developments in Europe and the United States bear mentioning. In March 2007, the European Commission issued a regulation⁷⁸ prohibiting the importation of birds—except those captive-bred in approved breeding establishments—into the EU, previously the world's largest market for wild-caught birds.⁷⁹ The regulation makes permanent a ban put in place by the Commission in October 2005,⁸⁰ following the discovery in a quarantine facility in the United Kingdom of a wild-caught bird infected with avian influenza.⁸¹ In August 2007, the United States Fish and Wildlife Service published⁸² the first substantive revision of federal regulations implementing CITES in over thirty years.⁸³

The fifty-ninth Meeting of the IWC was held in Anchorage, Alaska, in May 2007. At that meeting, the IWC affirmed its moratorium on commercial whaling and the important role that CITES plays in supporting the IWC's management approach to the conserva-

74. *See id.*

75. *See* CITES CoP14 Proposals, *supra* note 72, Props. 15, 16, 21 & 33. These proposals cover porbeagle shark, spiny dogfish, red and pink coral, and Spanish cedar, respectively.

76. *See* Fourteenth Meeting of the Conference of the Parties, The Hague, Neth., June 3-15, 2007, *Interpretation and Implementation of the Convention, Species Trade and Conservation Issues, CETACEANS*, CoP14 Doc. 51, available at <http://www.cites.org/eng/cop/14/doc/E14-51.pdf>; Fourteenth Meeting of the Conference of the Parties, The Hague, Neth., June 3-15, 2007, *Summary Record of the Third Session of Committee I*, CoP14 Com. I Rep. 3 (Rev. 2) (June 6, 2007), available at <http://www.cites.org/eng/cop/14/rep/E14-Com-I-Rep-03.pdf>.

77. *See* Great Whales, CITES Decision 14.81, http://www.cites.org/eng/dec/valid14/14_81.shtml (last visited Feb. 18, 2008).

78. Commission Regulation (EC) 318/07, Laying Down Animal Health Conditions for Imports of Certain Birds into the Community and the Quarantine Conditions Thereof, 2007 O.J. (L 84) 7. This regulation does not apply to poultry or game birds, among several limited exceptions.

79. *See* Birds are for Watching, Fast Facts on the Wild Bird Trade and the European Union 2000-2003, <http://www.birdsareforwatching.org/news.html> (last visited Feb. 18, 2008) (trade statistics courtesy of Species Survival Network and derived from the CITES Trade Database, UNEP-World Conservation Monitoring Centre, Cambridge, UK).

80. Commission Decision 2005/760, Concerning Certain Protection Measures in Relation to Highly Pathogenic Avian Influenza in Certain Third Countries and the Movement from Third Countries of Birds Accompanying Their Owners, 2005 O.J. (L 285) 60.

81. *See* U.K. DEP'T FOR ENV'T, FOOD & RURAL AFFAIRS, EPIDEMIOLOGY REPORT ON AVIAN INFLUENZA IN A QUARANTINE PREMISES IN ESSEX (2005), available at <http://www.defra.gov.uk/animalh/diseases/notifiable/disease/ai/pdf/ai-epidemrep111105.pdf>.

82. *See* Revision of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 72 Fed. Reg. 48,402 (proposed Aug. 23, 2007) (to be codified at 50 C.F.R. pts. 10, 13, 17, 23).

83. UNEP, Convention on International Trade in Endangered Species of Wild Fauna and Flora, *United States' New CITES Federal Regulations*, No. 2007/027 (Aug. 23, 2007).

tion of whales.⁸⁴ The IWC also approved a resolution calling on Japan to suspend its hunt in the Southern Ocean Whale Sanctuary, carried out under the scientific permit provisions of the International Convention on the Regulation of Whaling.⁸⁵

For the first time, in its 2007 meeting, the World Heritage Committee deleted a site previously registered on the World Heritage List under the World Heritage Convention.⁸⁶ The Committee deleted the Arabian Oryx Sanctuary from the list on the basis that Oman had failed to fulfill its obligations under the Convention to protect and conserve the site, finding that Oman had reduced the site's size and proceeded with oil exploration within its original boundaries.⁸⁷

V. The International Economy and the Environment

A. TRADE AND ENVIRONMENT

1. *The WTO and Other Multilateral Settings*

Little progress was made in negotiations on fisheries subsidies and other environmental issues due to a continuing impasse on other issues, especially agriculture.⁸⁸ In dispute settlement, the WTO Appellate Body upheld with modifications a WTO panel ruling in favor of the EU's complaint against restrictions placed by Brazil on the import of retreaded, used, and waste tires.⁸⁹ The Appellate Body found that the import restrictions on retreaded and used tires qualified for the exception from obligations under the General Agreement on Tariffs and Trade (GATT) for measures necessary to protect human, animal, or plant health.⁹⁰ The application of the import restriction in certain respects constituted unjustifiable discrimination and a disguised restriction on trade, however, insofar as imports of similar retreaded tires were permitted from MERCOSUR countries pursuant to a ruling under the MERCOSUR trade agreement, and certain imports of used tires were permitted under court injunctions.⁹¹

84. Fifty-ninth Annual Meeting of the International Whaling Commission, Anchorage, Alaska, May 28-31, 2007, *Revised Chair's Summary Report (May 2007)*, available at <http://www.iwcoffice.org/meetings/meeting2007.htm>.

85. *See id.* at 12. Under its research program, Japan has authorized the take of 850 minke, fifty fin, and fifty humpback whales in the Antarctic ecosystem, in addition to the 150 minke, fifty Bryde's, fifty sei, and ten sperm whales it has authorized in the western North Pacific. *See id.* at 4-5, n.3-5.

86. Press Release, U.N. Educ., Scientific, & Cultural Org. [UNESCO], Twenty-two New Sites Inscribed on UNESCO's World Heritage List, and One Deleted During Committee Meeting in Christchurch (July 2, 2007), available at http://portal.unesco.org/en/ev.php-URL_ID=38732&URL_DO=DO_TOPIC&URL_SECTION=201.html.

87. Thirty-first Session of the World Heritage Committee, Convention Concerning the Protection of the World Cultural and National Heritage, Christchurch, N.Z., June 23-July 2, 2007, *Decisions Adopted*, at 50, Decision 31 COM 7B.11, Arabian Oryx Sanctuary (Oman) (N 654), WHC-07/31.com/24 (July 31, 2007), available at <http://whc.unesco.org/archive/2007/whc07-31com-24e.pdf>.

88. *See* Stephen Castle, *Mired Talks on Trade to Resume*, N.Y. TIMES, Sept. 1, 2007, available at <http://www.nytimes.com/2007/09/01/business/worldbusiness/01wto.html>.

89. *See* Appellate Body Report, *Brazil—Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R (Dec. 3, 2007).

90. *See id.* ¶ 212.

91. *See id.* ¶¶ 233, 239, 246, & 251.

Also in September 2007, members of the International Coffee Organization completed renegotiation of the International Coffee Agreement, subject to approval by the organization's governing council. The new agreement augments provisions in the previous agreement concerning sustainability in the coffee sector.⁹²

2. *Bilateral and Regional Negotiations and Agreements*

In May 2007, members of the Democratic majority, elected to the U.S. Congress in 2006, outlined a new approach to the environment in free trade agreements (FTAs).⁹³ Under this approach, all obligations in the environmental chapters of an FTA would be enforceable on the same terms as the rest of the FTA,⁹⁴ in contrast to FTAs previously negotiated by the Bush Administration in which the sole provision subject to binding dispute settlement was the obligation that a party not fail to effectively enforce its environmental laws.⁹⁵ FTAs would also include a new requirement that each party implement its obligations under certain multilateral environmental agreements.⁹⁶

The Bush Administration subsequently renegotiated four FTAs that were awaiting Congressional approval in order to incorporate these requirements.⁹⁷ In response to concerns in Congress about alleged illegal logging in Peru and illegal export of CITES-listed mahogany from that country, the Bush Administration negotiated an annex to the Peru agreement containing provisions that would be unique in international trade law. These provisions required that Peru strengthen its capacity to enforce forest laws and conduct audits and investigations of Peruvian timber producers and shipments upon the request of the United States.⁹⁸ In late 2007, the U.S. Congress approved implementing legislation for the Peru agreement, which was signed by both leaders of Peru and the United States at the end of the year.⁹⁹

92. See Fourth Meeting of the Working Group on the Future of the Agreement, London, Eng., Sept. 24-27, 2007, *International Coffee Agreement 2007*, WGFA 3/07 Rev. 8 (Sept. 28, 2007), available at <http://dev.ico.org/documents/wpwgfa3r8e.pdf>.

93. See Press Release, House Comm. on Ways & Means, Congress and Administration Announce New Trade Policy (May 11, 2007), available at <http://waysandmeans.house.gov/News.asp?FormMode=print&ID=512>.

94. See House Comm. on Ways & Means, A New Trade Policy for America, available at <http://waysandmeans.house.gov/Media/eNewsLetter/5-11-07/07%2005%2010%20New%20Trade%20Policy%20Outline.pdf> [hereinafter "A New Trade Policy"].

95. The main elements of these FTAs are summarized in previous editions of this review. See, e.g., *International Environmental Law*, 40 INT'L LWYR. 197, 209-10 (2006).

96. See A New Trade Policy, *supra* note 94. These agreements include the Convention on International Trade in Endangered Species, the Montreal Protocol on Ozone Depleting Substances, the Ramsar Convention on Wetlands, and several treaties on marine conservation and environmental protection.

97. United States-Peru Trade Promotion Agreement, Dec. 14, 2007; United States-Colombia Trade Promotion Agreement, Nov. 22, 2006; United States-Panama Trade Promotion Agreement, June 28, 2007; and Free Trade Agreement Between the United States and the Republic of Korea, June 30, 2007. The texts of these agreements are available at the Office of the United States Trade Representative website at http://www.ustr.gov/Trade_Agreements/Bilateral/Section_Index.html.

98. See United States-Peru Trade Promotion Agreement, *supra* note 97, Annex on Forest Sector Governance, ¶¶ 3, 5-12.

99. See Office of the U.S. Trade Representative, PTPA Press Releases, http://www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Press_Releases/Section_Index.html (last visited Feb. 18, 2008).

3. *Investment Liberalization*

In June 2007, an arbitral panel ruled that it lacked jurisdiction over a claim brought by Texas irrigators, who alleged that Mexico's failure to deliver water into the Rio Bravo/Rio Grande, as called for in a 1944 treaty, violated its obligations to protect investors under Chapter 11 of NAFTA.¹⁰⁰ The tribunal reasoned that NAFTA is intended to afford protection for foreign investors making investments in the territory of a NAFTA country other than their own, whereas, in this case, the claimants were U.S. nationals whose investments were entirely within U.S. territory.¹⁰¹ The 1944 treaty, by which Mexico and the United States apportioned river basin waters between themselves, did not confer a property right to water in Mexico on the claimant irrigators, and consequently, they did not have an investment in Mexico within the terms of the NAFTA.¹⁰²

B. FINANCE AND THE ENVIRONMENT

The World Bank Group,¹⁰³ widely viewed as the leader in international sustainable finance and development policies, adopted completely revised versions of its Environmental, Health, and Safety (EHS) Guidelines as of April 2007.¹⁰⁴ The new guidelines replace standards previously published in the Pollution Prevention and Abatement Handbook. Each project financed by the World Bank is normally expected to meet the EHS guidelines as well as any applicable national standards.

In August 2007, the Multilateral Investment Guarantee Agency (MIGA) adopted new disclosure, social, and environmental policies.¹⁰⁵ While based closely on the 2006 performance standards of the International Finance Corporation (IFC), they go beyond the IFC's approach by committing to report on the impacts of individual "sensitive" projects,¹⁰⁶ whereas the IFC only reports on aggregate impacts of its overall portfolio.

The regional development banks have policies that largely track those in effect at the World Bank. In October 2007, the Asian Development Bank (AsDB) released a consultation draft of a new Safeguard Policy Statement laying out a framework for revising its environmental and social policies.¹⁰⁷ It generally proposes to follow the current World

100. *Bayview Irrigation Dist. v. United Mexican States*, Award, ICSID W. Bank Case No. ARB(AF)/05/1 (Jun. 19, 2007), available at <http://icsid.worldbank.org/ICSID/Index.jsp> (follow "Cases," then "List of Cases," then "Concluded Cases").

101. *Id.* ¶¶ 98-108.

102. *Id.* ¶¶ 112-21.

103. The World Bank Group is comprised of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), and the Multilateral Investment Guarantee Agency (MIGA).

104. See World Bank Group, International Finance Corporation, New Environmental, Health and Safety Guidelines, <http://www.ifc.org/ifcext/enviro.nsf/Content/EnvironmentalGuidelines> (last visited Feb. 18, 2008).

105. See World Bank Group, Multilateral Investment Guarantee Agency, *Performance Standards on Social & Environmental Sustainability* (Oct. 1, 2007), available at http://www.miga.org/documents/performance_standards_social_and_env_sustainability.pdf.

106. See World Bank Group, Multilateral Investment Guarantee Agency's, *Policy on Information Disclosure*, ¶ 23 (Oct. 1, 2007), available at http://www.miga.org/documents/enviro_social_disclosure_policy_021507.pdf.

107. Asian Development Bank, *Consultation Draft of the Safeguard Policy Statement* (Oct. 2007), available at <http://www.adb.org/Documents/Policies/Safeguards/Consultation-Draft.pdf>.

Bank approach, which relies on national laws where the Bank deems them “equivalent to” its own safeguard policies.

In May 2007, the African Development Bank (AfDB) put its Independent Review Mechanism into operation by naming a three-member Roster of Experts to be primarily responsible for evaluating compliance of AfDB projects.¹⁰⁸ The Independent Review Mechanism also received its first complaint regarding Uganda’s proposed Bujagali dam.¹⁰⁹

In June 2007, the Organization for Economic Cooperation and Development (OECD) adopted revisions to its Common Approaches on the Environment and Officially Supported Export Credits.¹¹⁰ Under the Common Approaches, first adopted in 2003, export credit agencies of OECD countries must ensure environmental reviews are completed for projects they finance that have significant adverse impacts. The revisions clarify that the rules cover both new and existing operations, expand the range of international standards against which projects should be assessed, and require advance public disclosure of information on environmental impacts.

As of November 2007, twelve additional commercial banks, including banks from France, Australia, Brazil, the Middle East, and Canada, have agreed to follow the Equator Principles, bringing the total number to fifty-five.¹¹¹ The Equator Principles, which closely follow the environmental policies and standards of the IFC, set out an overall framework for banks to review and to mitigate environmental and social impacts and risks.

108. Press Release, African Development Bank, AfDB Appoints Experts for Independent Review Mechanism (May 7, 2007) available at http://www.afdb.org/portal/page?_pageid=293,174339&_dad=portal&_schema=PORTAL&press_item=18376236&press_lang=us.

109. See Request Register of the Independent Review Mechanism, http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/CRMU_DOCS/REQUEST%20REGISTER%2029-10-2007.PDF (last visited Feb. 18, 2008).

110. OECD, Trade & Agric. Directorate, *Revised Council Recommendation on Common Approaches on the Environment and Officially Supported Export Credits*, TAD/ECG(2007) 9 (June 12, 2007), available at [http://webdomino1.oecd.org/olis/2007/doc.nsf/Linkto/tad-ecg\(2007\)9](http://webdomino1.oecd.org/olis/2007/doc.nsf/Linkto/tad-ecg(2007)9).

111. See The Equator Principles, <http://www.equator-principles.com> (last visited Feb. 18, 2008).

