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*Sustainable Development and Climate
Change Mitigation in
International Trade and Investment
Law: Lessons Learned from
EU-Chile, EU-Mercosur, EU-Kenya & ACCTS*
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SUSTAINABLE DEVELOPMENT AND CLIMATE CHANGE
MITIGATION IN INTERNATIONAL TRADE AND INVESTMENT
LAW:
LESSONS LEARNED FROM EU-CHILE, EU-MERCOSUR, EU-
KENYA & ACCTS

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Linkages between international economic law and sustainable development have been debated extensively, and the question remains open whether trade and investment agreements can, through careful crafting and compliance, foster or frustrate efforts to integrate economic progress with social and environmental protections, promoting more sustainable development over time. At a midpoint in the Sustainable Development Agenda, considering a pressing global climate emergency and the need to undertake and achieve progressively more ambitious commitments under the Paris Agreement, it is important to consider how trade and investment agreements can promote global efforts to respond to climate change and other sustainability challenges worldwide. This article explores how regional economic accords may foster or frustrate climate action. For this purpose, the authors review how trade treaties can invoke important tensions affecting sustainable development, particularly material and normative risks, laying out the types of sustainable development provisions that may be found in

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international trade and investment treaties, including those related to the purpose or object of the agreement, the inclusion of exceptions or conflicts clauses to prevent trade and investment rules from undermining climate change and sustainable development efforts, provisions to promote dialogue and cooperation on climate action and sustainable development, and efforts to enhance trade and investment in more sustainable, low greenhouse gas emissions and climate resilience goods and services, and whether the agreements present process innovations. By briefly analysing recent agreements negotiated by the European Union with Chile, the Mercosur and Kenya, such provisions and process innovations are illustrated. The authors also consider negotiations undertaken in the context of the Agreement on Climate Change, Trade and Sustainability (ACCTS) as a new benchmark for economic accords which seek to promote climate and sustainability objectives. From the comparison of these agreements, some conclusions are drawn concerning the future of trade, investment and sustainability agendas, and future legal research needs.

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I. INTRODUCTION

Policies and programmes to encourage economic growth can lead to substantial environmental and social impacts, and concerns that economic development should be more sustainable continue to be raised in both domestic and international debates.¹ While both sustainability and development may be defined very differently

¹ MARIE-CLAIRE CORDONIER SEGGER, CRAFTING TRADE AND INVESTMENT ACCORDS FOR SUSTAINABLE DEVELOPMENT: ATHENA'S TREATIES (2021) [hereinafter Marie-Claire Cordonier Segger]; PAUL EKINS, *Sustainable Development and the Economic Growth Debate, in* ECONOMY, ENVIRONMENT, AND TECHNOLOGY 121-122 (1994); IAN GOLDIN & L. ALAN WINTERS, *THE ECONOMICS OF SUSTAINABLE DEVELOPMENT* (1995).

depending on sectors, regions of the world, cultures or other factors, the UN General Assembly's definition of sustainable development as "meeting the needs of the present without compromising the ability of future generations to meet their own needs" is generally accepted.² The general acceptance of global commitments to sustainable development in international affairs, treaty-making and tribunals, and collaborative partnerships more generally are underscored by the unanimous agreement of more than 190 States during the 2002 World Summit on Sustainable Development (WSSD) and over two hundred States in the 2012 UN Conference on Sustainable Development.³ Further, the adoption of the 2030 Agenda for Sustainable Development,⁴ with its annexed global Sustainable Development Goals (SDGs) in 2015, provides a comprehensive framework addressing environmental, social, and economic development priorities on a global scale.⁵

In 2015, countries' commitments to advance the SDGs as an interconnected set of common objectives to address 'wicked' global problems marked international cooperation milestones.⁶ The Agenda 2030 consists of seventeen goals with 169 targets which set a roadmap for countries and the international system to improve the quality of life for all people in an environmentally sustainable manner.⁷ Although the SDGs build on their predecessors, the UN Millennium Development Goals (MDGs), they differ significantly as this Agenda incorporates new issues that respond to the challenges faced in both domestic contexts and the international community.⁸ The seventeen SDGs and their 169 targets encompass a range of interconnected social, environmental and economic priorities such as to end poverty, overcome hunger, secure access to health and quality education, gender equality, clean water and energy, also to provide for decent employment, reduce inequalities, promote innovation and infrastructure and sustainable cities and communities, as

² Marie-Claire Cordonier Segger, *Sustainable Development in International Law*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW 381-400 (David Armstrong ed., 2009).

³ World Summit on Sustainable Development, *Johannesburg Declaration and Johannesburg Plan of Implementation (JPOI)*, U.N. Doc. A/CONF.199/20 (Sept. 4, 2002); U.N. Conference on Sustainable Development, *Outcome Document: "The Future We Want"*, U.N. Doc. A/CONF.216/16 (June 22, 2012).

⁴ G.A. Res. 70/1, *Transforming our world: the 2030 Agenda for Sustainable Development* (Sept. 25, 2015) [hereinafter G.A. Res. 70/1].

⁵ Marie-Claire Cordonier Segger, *supra* note 1.

⁶ Nuno Quental et al., *Sustainable development policy: goals, targets and political cycles*, 19 SUSTAINABLE DEV. 15 (2001).

⁷ Anita Breuer et al., *Translating Sustainable Development Goal (SDG) Interdependencies into Policy Advice*, 11 SUSTAINABILITY 2092 (2019).

⁸ Sakiko Fukuda-Parr, *From the Millennium Development Goals to the Sustainable Development Goals: Shifts in Purpose, Concept, and Politics of Global Goal Setting for Development*, 24 GENDER & DEV. 43 (2016).

well as to secure more sustainable consumption and production, climate action, life on land and below water, peace and justice, amongst others.⁹

Law and policy reform can help or hinder efforts to achieve these priorities. Indeed, among other targets in the SDGs, countries commit to “promote and enforce non-discriminatory laws and policies for sustainable development” under SDG 16.b and to “enhance policy coherence for sustainable development” under SDG 17.14, which requires continuing assessment of law and governance progress.¹⁰ National studies and reforms are well underway in many countries.¹¹ International efforts are also gaining momentum,¹² recognising that international trade, investment flows, and disciplines are key to sustainable development.¹³ The 2030 Agenda for Sustainable Development defines international trade as “an engine for inclusive economic growth and poverty reduction, [that] contributes to the promotion of sustainable development,” and its adoption commits states to help maximise the contribution of trade and investment to the success of the sustainable development agenda. Indeed, under SDG 17.10, countries agree to “promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system”, and

⁹ G.A. Res. 70/1, *supra* note 4.

¹⁰ Marie-Claire Cordonier Segger & Alexandra Harrington, *Environment and Sustainable Development*, in THE OXFORD HANDBOOK OF UNITED NATIONS TREATIES (Simon Chesterman et al. eds., 2019); G.A. Res. 70/1, *supra* note 4, SDG 16.b, SDG 17.14.

¹¹ Daniela Firoiu et al., *Achieving Sustainable Development Goals (SDG): Implementation of the 2030 Agenda in Romania*, 11 SUSTAINABILITY 2156 (2019); Valentina Gutiérrez & Felipe Muñoz, *Desigualdad Económica en Chile en el Contexto de la Agenda 2030: Análisis de las Acciones Públicas*, 54 ESTUDIOS INTERNACIONALES 87 (2022); Amanda Jiménez-Aceituno, *Local lens for SDG implementation: lessons from bottom-up approaches in Africa*, 15 SUSTAINABILITY SCI. 729 (2020).

¹² U.N. Commission on Sustainable Development, *Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development*, Geneva, Switzerland 26–28 September 1995 (Background Paper for the UNCSD New York, 1996).

¹³ Andrew Prag, *Trade and SDG 13: Action on Climate Change* (ADB Working Paper No. 735, 2017); R. Margarita Navarro-Pabsdorf et al., *Can International Trade Help Africa’s Least Developed Countries Achieve SDG-1?*, 12 SUSTAINABILITY 4470 (2020); COSIMO BEVERELLI ET AL., INTERNATIONAL TRADE, INVESTMENT, AND THE SUSTAINABLE DEVELOPMENT GOALS: WORLD TRADE FORUM, Cambridge University Press (2020); Laura Barros & Immaculada Martínez-Zarzoso, *Systematic Literature Review on Trade liberalization and Sustainable Development*, 33 SUSTAINABLE PROD. & CONSUMPTION 921 (2022); Ranja Sengupta, *International Trade and the 2030 Agenda for Sustainable Development*, SPOTLIGHT ON SUSTAINABLE DEVELOPMENT (2016), <https://www.2030spotlight.org/en/book/605/chapter/ii17-international-trade-and-2030-agenda-sustainable-development>; Clair Gammage & Tonis Novitz eds., *The Concept of Sustainability and its Application in International Trade, Investment and Finance*, in SUSTAINABLE TRADE, INVESTMENT AND FINANCE 1-29 (2019); Zhengxi Xu et al., *Impacts of International Trade on Global Sustainable Development*, 3 NATURE SUSTAINABILITY 964-971 (2020); MARKUS GEHRING ET AL., SUSTAINABLE DEVELOPMENT IN WORLD INVESTMENT LAW (2010); Marie-Claire Cordonier Segger, *supra* note 1.

under SDG 17.5, they plan to “adopt and implement investment promotion regimes for least developed countries”.¹⁴ To advance these and other SDG targets, governments may be required to adopt and implement new laws and policies in various areas related to trade and investment, both directly and indirectly. If not appropriately addressed, international economic regimes may negatively impact achieving several goals, hindering efforts to advance the agenda. Further, international trade and investment is expected to play its role as a means of implementation for achieving the SDGs.

When analysing how international trade and investment affect the achievement of SDG targets, it can be highlighted that trade and investment disciplines may allow for a more efficient allocation of resources across countries, increasing economic output, which is then expected to generate more employment and raise wages. By facilitating economic progress, trade and investment – in more sustainable goods and services – can contribute to achieving SDG 1 and SDG 2, for instance, which aim to eradicate poverty and end hunger. As one example, econometric studies have assessed the impact of international trade and investment on economic growth and poverty reduction in the context of the SDGs, including targets such as SDG 1.4 under which countries seek by 2030, to “ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance”, concluding that if carefully managed, trade flows have the potential to increase countries’ economic output and reduce poverty.¹⁵ A further example is the impact of international trade and investment on food and nutritional security, in which studies argue that trade and investment flows, if wisely managed, can improve access to food and nutrition, advancing targets under SDG 2 to end hunger, achieve food security and improve nutrition and promote sustainable agriculture. Among countries’ commitments included in SDG 2, the Parties’ willingness to increase their investment in agricultural-related infrastructure to enhance productive capacity, particularly in least-developed countries (SDG 2.a), and to correct the trade distortions generated by export subsidies in international

¹⁴ Marie-Claire Cordonier Segger, *supra* note 1; G.A. Res. 70/1, *supra* note 4, SDG 17.10, SDG 17.5.

¹⁵ R. Margarita Navarro-Pabsdorf et al., *supra* note 13; S. Sudsawasd et al., *Does International Trade Enable a Country to Achieve Sustainable Development Goals? Empirical Findings from Two Research Methodologies*, 27 INT’L J. SUSTAINABLE DEV. & WORLD ECOLOGY, 405-418 (2020) [hereinafter S. Sudsawasd et al.]; Irene Brambilla & Guido Porto, *Trade and Poverty Reduction*, in WIN-WIN: HOW INTERNATIONAL TRADE CAN HELP MEET THE SUSTAINABLE DEVELOPMENT GOALS 61-87 (Matthias Helble & Ben Shepherd eds., 2017); Zhengxi Xu et al., *supra* note 13.

agricultural markets (SGD 2.b)¹⁶ must be highlighted. From this perspective, international trade disciplines may increase access to food products and agricultural inputs, reducing vulnerability to food shortages and domestic price fluctuations. International investment also may enable small-scale farmers to access global markets, stimulating agricultural productivity and rural development. As a third example, by creating new business and investment opportunities, international trade and investment flows may also result in new employment and economic growth, as prioritised in SDG 8.¹⁷ Moreover, according to this logic, more open trade and investment may lead the way for sustainable industrialisation if they encourage adopting cleaner production methods, renewable energy sources, and sustainable practices.¹⁸

Nevertheless, if not well regulated, the extraction of natural resources and increases in industrial activity driven by increased international trade and investment may also have negative impacts, undermining the efforts of governments and stakeholders to advance key SDGs. There could be significant concerns for laws, policies, and practices supporting various SDGs, such as ensuring water availability and sanitation (SDG 6), promoting sustainable consumption and production (SDG 12), addressing climate change (SDG 13), conserving oceans and marine resources (SDG 14), and protecting terrestrial ecosystems and biodiversity (SDG 15). Poorly managed trade-offs between these goals and policies could have adverse effects.¹⁹ For instance, unregulated trade or investment can contribute to the overexploitation of water resources through scale effects as intensive agriculture or extractive industries increase in scope to feed international supply chains. This can cause water scarcity,

¹⁶S. Sudsawasd et al., *supra* note 15; Will J. Martin & Joseph W. Glauber, *Trade policy and food security, in COVID-19 AND TRADE POLICY: WHY TURNING INWARD WON'T WORK* 89 (Richard Baldwin & Simon Evenett eds., 2020); I. GADHOK ET AL., *TRADE AND SUSTAINABLE DEVELOPMENT GOAL 2—POLICY OPTIONS AND THEIR TRADE-OFFS* (2020).

¹⁷Sudsawasd et al., *supra* note 15; Paul Vandenberg, *Can Trade Benefit Employment?*, in *WIN-WIN: HOW INTERNATIONAL TRADE CAN HELP MEET THE SUSTAINABLE DEVELOPMENT GOALS* 139 (Matthias Helble & Ben Shepherd eds., 2017); Arindam Das, *The Relationship between International Trade in Industry 4.0 Products and National-Level Sustainability Performance: An Empirical Investigation*, 15 *SUSTAINABILITY* 1262 (2023).

¹⁸Tavis Potts & Marcus Haward, *International Trade, Eco-Labeling, and Sustainable Fisheries—Recent Issues, Concepts and Practices*, 9 *ENV'T, DEV. & SUSTAINABILITY*, 91 (2007); Norifumi Kawai et al., *Stakeholder Pressures, EMS Implementation, and Green Innovation in MNC Overseas Subsidiaries*, 27 *INT'L BUS. REV.* 933 (2018); A. Lartey Theophilus et al., *Environmental Sustainability Practices and Offshoring Activities of Multinational Corporations Across Emerging and Developed Markets*, 30 *INT'L BUS. REV.* 101789 (2021).

¹⁹Pamela McElwee et al., *The Impact of Interventions in the Global Land and Agri-Food Sectors on Nature's Contributions to People and the UN Sustainable Development Goals*, 26(9), *GLOB. CHANGE BIOLOGY* 4691 (2020); Mette Bendixen et al. *Sand, Gravel, and UN Sustainable Development Goals: Conflicts, Synergies, and Pathways Forward*, 4 *ONE EARTH* 1095 (2021).

pollution, and inadequate access to clean water, directly affecting efforts to advance SDG target 6.1 to “achieve universal and equitable access to safe and affordable drinking water for all” by 2030. Similarly, if natural resources are extracted, exploited or otherwise developed in a destructive, unsustainable manner to be sold worldwide, this would undermine efforts to advance SDG target 12.2 to 2030, “achieve the sustainable management and efficient use of natural resources.”²⁰ One of the most pressing potential effects, if unmanaged, are continuing increases in greenhouse gas emissions due to long-distance transportation, energy-intensive production processes, and unsustainable land use changes that can accompany increases in international trade flows and poorly or under-regulated foreign investments.²¹ Such effects would increase the dangers of anthropogenic climate change and hinder efforts to mitigate its impacts, undermining progress on SDG target 13.2 to “[i]ntegrate climate change measures into national policies, strategies and planning” and target 13.3 to “[i]mprove education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning”.²²

Moreover, a pressing issue concerning the consecution of SDG 14 is the intensification of fishing to meet the demand of international markets. It is recognised that overfishing, destructive fishing methods and illegal marine wildlife trade can deplete fish stocks, degrade and disrupt the balance of ocean ecosystems and harm marine biodiversity. This would negatively affect the efforts to sustainably manage and protect marine and coastal ecosystems (SDG 14.2) and effectively regulate harvesting and end overfishing, illegal, unreported, unregulated fishing and destructive fishing practices (SDG 14.4).²³

Similarly, unregulated trade and investment can drive deforestation, habitat destruction, and biodiversity loss through activities like unsustainable logging, illegal wildlife trade, and land conversion for agricultural purposes. These practices can undermine efforts to conserve and sustainably use terrestrial biodiversity, degrading ecosystems and threatening endangered species, and impeding progress towards SDG 15 targets 15.1 “By 2020, ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular

²⁰ G.A. Res. 70/1, *supra* note 4, SDG 12.2.

²¹ Andiranarivo A. R. N. Avotra & Ahsan Nawaz, *Asymmetric Impact of Transportation on Carbon Emissions Influencing SDGs of Climate Change*, 324 CHEMOSPHERE 138301 (2023); Thomas Wiedmann & Manfred Lenzen, *Environmental and Social Footprints of International Trade*, 11 NATURE GEOSCIENCE 314 (2018).

²² G.A. Res. 70/1, *supra* note 4, SDG 13.2, SDG 13.3.

²³ GARETH PORTER, FISHERIES SUBSIDIES AND OVERFISHING: TOWARDS A STRUCTURED DISCUSSION (2003); Yvonne J. Sadovy de Mitcheson et al., *Valuable but Vulnerable: Over-Fishing and Under-Management Continue to Threaten Groupers So What Now?* 116 MARINE POL'Y 103909 (2020).

forests, wetlands, mountains and drylands, in line with obligations under international agreements” and 15.5 “Take urgent and significant action to reduce the degradation of natural habitats, halt the loss of biodiversity and, by 2020, protect and prevent the extinction of threatened species”.²⁴

International trade and investment rulemaking becomes critical to enhancing the positive benefits of international rules for efforts to advance global Sustainable Development Goals while minimising potential negative impacts on the biosphere, human rights and efforts to eradicate poverty. As noted elsewhere, “changes in trade and investment rules can have adverse impacts on the environment and on social development, especially in developing countries ... [given that] certain environmental impacts are irreversible, the gains of trade do not always accrue to those who are exposed to resulting pollution, and wealthiest societies [may] continue to generate the highest levels of waste without being forced to live in it.”²⁵ Depending on how they are designed, implemented, and enforced, trade and investment treaties may both help and hinder the efforts to achieve the SDGs.²⁶ Integrating sustainable development considerations into the negotiation, implementation, and monitoring processes is essential to enhance any positive benefits from trade or investment treaties towards country efforts to advance SDGs. By conducting sustainability impact assessments, engaging stakeholders, promoting policy coherence, and regularly reviewing and updating treaty provisions and implementation arrangements to align with evolving sustainability challenges, countries may take the first steps down this pathway even as they tighten trade and investment disciplines and deepen economic ties and collaborations.

II. TRADE & INVESTMENT TREATIES FOR SUSTAINABLE DEVELOPMENT: RISKS AND IMPACTS

While international trade may benefit nations in their socio-economic development process, there is concern that absent due care, trade promotion may lead to unnecessarily negative impacts on the environment and social cohesion.²⁷ The

²⁴ Gail Emilia Rosen & Katherine F Smith, *Summarizing the Evidence on the International Trade in Illegal Wildlife*, 7 *ECOHEALTH* 24 (2010); JACQUELINE L. SCHNEIDER, *SOLD INTO EXTINCTION: THE GLOBAL TRADE IN ENDANGERED SPECIES* (2012); G.A. Res. 70/1, *supra* note 4.

²⁵ Marie-Claire Cordonier Segger, *supra* note 1.

²⁶ Lise Johnson et al., *Aligning International Investment Agreements with the Sustainable Development Goals*, *COLUM. J. TRANSNAT'L L.* (Feb. 5, 2020), <https://www.jtl.columbia.edu/journal-articles/aligning-international-investment-agreements-with-the-sustainable-development-goals>; ALEXANDRA R. HARRINGTON, *INTERNATIONAL LAW AND GLOBAL GOVERNANCE: TREATY REGIMES AND SUSTAINABLE DEVELOPMENT GOALS IMPLEMENTATION* (2021); Cosimo Beverelli et al., *supra* note 13.

²⁷ Marie-Claire Cordonier Segger, *supra* note 1.

theories that predicted an automatic positive effect as income levels rise have been widely criticised as certain environmental impacts may be irreversible, and trade gains may not exceed the negative externalities over pollution or waste produced, including the unequal distribution of said externalities.²⁸ From analysing several decades of impact assessments of international trade agreements, recent studies have identified material and normative risks from these treaties, which are further developed below.²⁹

A. Material risks

Environmental, human rights and sustainability impact assessment techniques have been adopted as part of trade and investment agreement negotiation processes to identify potential negative or positive environmental and social effects, ideally to address potential negatives or enhance benefits during the negotiations.³⁰ Impact assessments, and the statements of Parties based on their findings, become relevant as part of the *travaux préparatoires* to the accords, which include records of the negotiations preceding the conclusion of a treaty, minutes of the plenary meetings and committees of the Conference which adopted the accord, and other important records.³¹ According to the Vienna Convention on the Law of Treaties (VCLT) at Article 32, the *travaux préparatoires* provide a supplementary means of interpreting treaties, shedding light on the Parties' intentions.³² Indeed, concerns have been raised in State-led or sponsored impact assessments and reviews which echo challenges highlighted in scientific studies and academic literature.³³

Potential material impacts from new trade and investment agreements can be traced to deeper normative tensions, often exacerbated by gaps in policy and regulatory frameworks of the trade and investment partner countries. Material risks can be

²⁸ Selin Özokcu & Ozlem Özdemir, *Economic Growth, Energy and Environmental Kuznets Curve*, 72 RENEWABLE & SUSTAINABLE ENERGY REVIEWS 639 (2017); Hakon Nordström & Scott Vaughan, *Trade and Environment* 47-58 (WTO Special Studies No. 4, 1999).

²⁹ Marie-Claire Cordonier Segger, *supra* note 1.

³⁰ Marie-Claire Cordonier Segger, *supra* note 1; Colin Kirkpatrick & Clive George, *Methodological Issues in the Impact Assessment Of Trade Policy: Experience from the European Commission's Sustainability Impact Assessment (SLA) Programme*, 24 IMPACT ASSESSMENT & PROJECT APPRAISAL 325 (2006); Titus Udreă & Anja Bauer, *Between Control and Independence: Computational Modelling Within EC's Trade Sustainability Impact Assessments*, 41 IMPACT ASSESSMENT & PROJECT APPRAISAL 21 (2023); Javiera Cáceres, *Briefing 5: Economic Stimulus, Trade and Investment Agreements. Contributions to the Green Transition*, in INTERNATIONAL TRADE, CLIMATE CHANGE, AND ENVIRONMENTAL INTERFACES: UK LEGAL BRIEF SERIES (2020).

³¹ ROBERT JENNINGS & ARTHUR WATTS, *OPPENHEIM'S INTERNATIONAL LAW* (1992).

³² Vienna Convention on the Law of Treaties, arts. 30-31, May 23, 1969, 1155 U.N.T.S 331 [hereinafter VCLT].

³³ Marie-Claire Cordonier Segger, *supra* note 1.

defined as those direct physical impacts on socio-economic development and environmental conditions derived from economic changes predicted from the implementation of trade agreements.³⁴ As previously mentioned, international trade promoted by these agreements may have impacts beyond trade exchanges due to the increased production of certain goods and services and the use of different resources for their production.

Economic risks have been widely discussed in the literature and included in economic theory and policy papers. It is recognised that while increases in trade or investment flows can stimulate economic growth, they can also create economic vulnerabilities. Those sectors that are not competitive at the international level will face challenges and likely need to adjust, including the loss of jobs and their potential collapse due to the increase in more competitive imports. These sectors have been identified since the first international trade theoretical models. However, they predicted that the gains of those sectors that benefited from international trade and investment would surpass the losses, compensating and absorbing resources liberated from non-competitive sectors.

Nevertheless, these theories do not necessarily account for transition periods or the social impact of these processes in developing countries, where social protection networks may not be strong enough to respond to these changes. Moreover, trade and investment imbalances, the dependence on commodities, which process is highly volatile, and unequal distribution of economic benefits may hinder sustainable economic development and reduce the social benefits from international trade and investment. A second dimension of material risks can be associated with social risks derived from trade and investment treaties. Trade and investment agreements may impact labour standards and social protection within the social dimension, especially in developing economies. One way to increase goods and services competitiveness in the international markets may be by reducing labour costs, which may lead to labour exploitation, poor working conditions and inadequate protection of workers' rights.

Moreover, the need to compete with international products may displace traditional livelihoods and compromise vulnerable populations, including indigenous communities. Finally, a third dimension within material risks is environmental risks. The increased production due to trade and investment disciplines to promote liberalisation may result in overexploiting renewable and exhaustible natural

³⁴ SARAH RICHARDSON, A "CRITIQUE" OF THE EU'S WTO SUSTAINABILITY IMPACT ASSESSMENT STUDY AND RECOMMENDATIONS FOR PHASE III (2000); Org. for Econ. Cooperation & Dev. [OECD], *Methodologies for Environmental and Trade Reviews*, OECD Doc. OCDE/GD(94)123 (1994); CAROLYNE L. DEERE & DANEIL C. ESTY, GREENING THE AMERICAS: NAFTA'S LESSONS FOR HEMISPHERIC TRADE (2002).

resources, environmental degradation, increased pollution and contamination, and unsustainable production practices to increase international competitiveness. For instance, the change in the use of soil to increase agricultural plantations or the increased use of carbon-based energy in the production and transportation of goods for international markets are two of the most common unintended effects of increases in economic activity under international trade or investment agreements. Other direct environmental impacts that have been identified include increased risks to biological diversity due to the conversion of native forests to plantations, loss of marine ecosystems due to increases in the exploitation of fisheries and increases in land and water degradation due to higher circulation or unsafe disposal of chemicals and wastes generated through increased production.³⁵

These material risks can be evaluated as part of impact assessment evaluations, which could be done both ex-ante and ex-post the subscription of an international agreement. For instance, the European Union has commissioned Sustainability Impact Assessments (SIA) prior to the conclusion of this type of negotiation, which underlines the material risks for both parties.³⁶ Similarly, countries such as Canada

³⁵ Marie-Claire Cordonier Segger, *supra* note 1.

³⁶ Examples of these SIA can be found in: *Trade Sustainability Impact Assessment of the Association Agreement to be negotiated between the EU and Central America: Final Report* (Sept. 2009), <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/3280a841-b272-41bb-b1a1-28b6abe2d8c5/details?download=true> [hereinafter EU-Central America SIA]; *EU-Andean Trade Sustainability Impact Assessment: Final Report* (Oct. 2009), <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/699b4fb7-95b9-4b80-ac3f-7810e039d0dd/details> [hereinafter EU-Andean SIA]; *Trade Sustainability Impact Assessment (SIA) of the Association Agreement under Negotiation between the European Community and Mercosur: Final Overview Report Trade SLA EU-Mercosur* (Mar. 2009), <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/850ecde4-31b1-4480-a0e7-c00066d92b78/details?download=true> [hereinafter EU-Mercosur SIA]; *Sustainability Impact Assessment of the EU-ACP Economic Partnership Agreements: Key Findings, Recommendations and Lessons Learned* (May 2007), <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/aec8927c-a6b3-495b-8375-234cec6590c2/details?download=true> [hereinafter EU-ACP SIA]; *Trade Sustainability Impact Assessment for the FTA between the EU and the Republic of India: Final Report* (May 2009), <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/89f95e2b-fb5e-4624-bd2d-8b7927815d0b/details?download=true> [hereinafter EU-India SIA]; *Trade Sustainability Impact Assessment of the Negotiations of a Partnership and Cooperation Agreement between the EU and China: Final Report* (Aug. 2008), <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/a37c3e53-f104-4c28-a5a9-378200ee6c/details?download=true> [hereinafter EU-China SIA]; *Trade Sustainability Impact Assessment of the EU-Korea FTA: Final Report* (June 2008), <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/d1933461-5649-43cd-90f9-2646220bfd82/details?download=true> [hereinafter EU-Korea SIA]; *Trade Sustainability Impact Assessment of the FTA between the EU*

have evaluated the ex-post impact of their trade and investment agreements, assessing how the increased trade and investment flows have impacted these issues and how mitigation policies may be implemented to reduce the negative material impact of the agreements.

B. Normative Risks

Besides material risks, the literature also recognises normative risks, which can be understood as those pressing issues derived from international agreements over domestic regulation bodies. Trade and investment agreements may include provisions that restrict the ability of governments to implement specific regulations, such as environmental protection measures, public health policies, or social standards. These constraints can limit the policy space needed to achieve sustainable development goals. Another element of such accords raised in the literature is the adoption of investor-state dispute settlement mechanisms, which may encourage foreign firms to challenge government measures that they perceive negatively impact their investments but also discourage governments from implementing regulations that promote sustainable development for fear of facing costly legal challenges. In essence, trade and investment agreements may not always align with other international agreements and commitments related to sustainable development. Inconsistencies between trade or investment rules and environmental agreements, human rights obligations, or climate change commitments can create tensions and hinder progress towards sustainable development goals.

As argued elsewhere, a survey of impact assessments commissioned by governments prior to or during economic treaty negotiations underlines three key normative impacts or ‘tensions’ that can be identified between the demands of trade and investment agreements, focusing mainly on economic growth and the corresponding effects on regulations and other efforts to protect the environment and realise human rights, including the efforts of States to comply with other related international treaty obligations.³⁷ The first tension involves the concern that new trade liberalisation obligations of non-discrimination and most-favoured nation (MFN) treatment and new investment liberalisation obligations in key sectors that often differ treaty by treaty could prevent States from effectively enacting trade or investment-related measures to prevent unsustainable development. The second tension involves concerns that through a new trade and investment agreement, there will be increased incentives for trade or investment-led industrial or extractive economic activity, which, if unmitigated, exacerbates environmental and social

and ASEAN: Final Report (June 2009), <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/7ef9b048-5a3b-404f-8416-9156240a7ce1/details?download=true> [hereinafter EU-Asean SIA].

³⁷ Marie-Claire Cordonier Segger, *supra* note 1.

problems that already exist at the domestic level due to *inter alia*, gaps in effective enforcement of the law. The third tension involves concerns that applying trade or investment rules for liberalisation will inadvertently support unsustainable growth in obsolete, destructive or otherwise unsustainable technologies and economic sectors.³⁸

Addressing these risks and tensions requires careful consideration and balancing of various interests. Trade and investment agreements should be designed to promote sustainable development by integrating sustainability considerations into their provisions, conducting thorough impact assessments, and ensuring policy coherence. Striking the right balance between trade liberalisation and sustainable development objectives is crucial to mitigate the risks and maximise the positive impacts of economic development on societies and the biosphere.

III. INNOVATIVE SUSTAINABLE DEVELOPMENT PROVISIONS IN TRADE AND INVESTMENT TREATIES

While there is a need to promote the economic objectives of trade and investment accords, this must be achieved considering the need to reduce these treaties' environmental and human rights risks. To achieve this balance, it becomes critical to focus on drafting the legal text of the agreements and including sustainable development-related commitment.³⁹ This section considers a few leading attempts to include innovative climate change and sustainable development provisions and their potential contributions to achieving this equilibrium.

Bilateral and regional economic regimes provide opportunities for States to innovate in elaborating and 'testing' instruments for proposals at the global level.⁴⁰ The initial examination pertains to the commitments or provisions integrated into the object and purpose of the agreement, sometimes found in the Preamble or the objectives of the economic treaty. Suppose they emphasise the importance of integrating economic, social, and environmental considerations in their trade or investment accord. This signals that Parties agree on sustainable development as part of the 'object and purpose' of the treaty, and the agreement will take into account the need

³⁸ Marie-Claire Cordonier Segger, *supra* note 1; See also NICO SCHRIJVER, DEVELOPMENT WITHOUT DESTRUCTION: THE UN AND GLOBAL RESOURCE MANAGEMENT (2010).

³⁹ David Vogel, *Trading Up and Governing Across: Transnational Governance and Environmental Protection*, 4 J. EUR. PUB. POL'Y, 556 (1997); DAVID G. VICTOR ET AL., THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS: THEORY AND PRACTICE (1998); JOSÉ MARIA FIGUERES-OLSEN, GREENING THE AMERICAS: NAFTA'S LESSONS FOR HEMISPHERIC TRADE (2002).

⁴⁰ Roberto Fiorentino, Luis Verdeja & Christelle Toqueboeuf, *The Changing Landscape of Regional Trade Agreements: 2006 Update* (WTO Discussion Paper No. 12, 2007); HUGH THIRLWAY, THE SOURCES OF INTERNATIONAL LAW (2019).

to balance economic growth with commitments towards human rights and the biosphere, including efforts to address climate change. Such provisions might, for instance, demonstrate a commitment to achieving SDGs alongside trade and investment liberalisation. Although preambles have limitations in establishing specific obligations, their evidential significance is crucial for interpreting free trade agreements, particularly when balancing diverse values is necessary.

Furthermore, preambles offer an initial glimpse into the primary interests and objectives of the Parties throughout the agreement.⁴¹ Most Parties explicitly commit to increases in trade and investment that support sustainable development in both preferential and multilateral agreements, including the GATT.⁴² Including these provisions, which explicitly state the objectives of the trade agreement to promote sustainable development, becomes instrumental in interpreting the commitments included in the rest of the text and the agreement's overall objective. Even a brief survey of the evolution of preambular texts in free trade agreements and bilateral investment treaties suggests that Parties are exploring new ways to express a firmer commitment to sustainable development. At the very least, the most recent trade and investment accords demonstrate what is possible between like-minded Parties concerned about sustainable development.⁴³

Further, as discussed elsewhere⁴⁴, in such accords to address the first tension, States can provide exceptions in trade and investment treaties to prevent economic rules from constraining the regulatory flexibility of the Parties for social and environmental purposes in sustainable development. One of the main challenges those opposing trade agreements identified is the reduction of policy space that could derive from these instruments, including the possibility of addressing environmental objectives.⁴⁵ Nevertheless, exception clauses allow countries to adopt measures that protect or promote sustainable development, even if they conflict with specific provisions of the trade or investment agreement. They provide flexibility to address environmental, social, or public health concerns, ensuring that trade rules do not hinder the pursuit of sustainable development goals. The most typical

⁴¹ Javiera Cáceres et al., *Environment and Climate Change in the Draft EU-Mercosur Trade Agreement*, in INTERNATIONAL TRADE, CLIMATE CHANGE, AND ENVIRONMENTAL INTERFACES (2021).

⁴² Marie-Claire Cordonier Segger, *supra* note 1.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Marc Maes, *Civil Society Perspectives on EU-ASIA Free Trade Agreements*, 7 ASIA EUR. J. 97 (2009); Sikina Jinnah, *Trade-Environment Politics: The Emerging Role of Regional Trade Agreements*, 30 HANDBOOK OF GLOBAL ENVIRONMENTAL POLITICS 386 (2012); Luter Atagher, *Beyond Multilateral Treaty Reforms: Adapting International Trade to Environmental Objectives*, 2 MCGILL GLSA RES. SER. 19 (2022).

example of these kinds of provisions is GATT article XX, which explicitly states that:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

[...] (b) necessary to protect human, animal or plant life or health;
[...]
[...] (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption [emphasis added].⁴⁶

Therefore, while a measure does not constitute arbitrary or unjustifiable discrimination or a disguised restriction on international trade, and it is not applied in a manner that may constitute discrimination between trading partners, there is nothing preventing Parties from implementing policies towards the protection of the environment or conservation of exhaustible natural resources. Preferential trade agreements have gone beyond this general exception clause and have included specific provisions to give more detail on the extent of these exception commitments, including exceptions for services and investment.

Second, States can establish prescriptions and permissions for cooperation to resolve environmental and social problems that could be exacerbated by the bilateral or regional economic treaty, strengthen domestic laws, and support efforts to mitigate potential environmental and social impacts. In essence, the hope is that international trade agreements incorporate sustainable development considerations, such as the protection of the environment, labour rights, gender considerations, and social standards⁴⁷. These provisions, sometimes as chapters, side letters or annexes, encourage collaboration on environmental protection, labour standards, technology transfer, and capacity building. Parties aim to collectively enhance their ability to

⁴⁶ General Agreement on Tariffs and Trade, art. XX, Oct. 30, 1947, 55 U.N.T.S. 194 [hereinafter GATT].

⁴⁷ James Harrison et al., *Labour Standards Provisions in EU Free Trade Agreements: Reflections on the European Commission's Reform Agenda*, 18 WORLD TRADE REV. 635 (2019); Dorotea López, Felipe Muñoz & Javiera Cáceres, *Gender inclusion in Chilean Free Trade Agreements*, FACULTAD DE ADMINISTRACIÓN Y ECONOMÍA (2019), <https://administracionyeconomia.udp.cl/wp-content/uploads/2019/05/003lopez.pdf>; Nicolas Albertoni et al., *Una revisión de los debates actuales vinculados al comercio internacional y la sostenibilidad ambiental*, 5 LATIN AM. J. TRADE POL'Y 7 (2022).

address sustainability challenges through these commitments. The inclusion of such ‘cooperative’ provisions has become one of the most extended operational means that these treaties refer to, while highlighting environmental and sustainability concerns and opportunities for collaboration.⁴⁸

Third, States may agree on permissions and prescriptions to liberalise trade and investment in specific economic sectors that they agree will contribute to sustainable development, thereby encouraging technologies and industries prioritised in other international treaties on sustainable development. In recent years, addressing the third tension, countries have also examined the possibility of including “trade enhancement provisions” or “investment facilitation measures” for sustainable products, services, investment or financing within the text of their bilateral or regional economic agreement. In the literature, and increasingly in economic agreements themselves, it is proposed to include provisions on the liberalisation of ‘environmental’ goods and services, including complete tariff reduction for lists of products that would be predefined as such. Through these means, trade and investment accords may promote sustainable development by including provisions facilitating the production and consumption of environmentally friendly goods and services, encouraging the transfer of green technologies, and incorporating sustainability standards⁴⁹. The immediate withdrawal from this approach has been the rise of double-end use products, which could either classify as environmentally friendly or not depending on their end use, and this leads to scepticism about the real outcome of this kind of provision. Hence, there is scepticism about the real outcome of this kind of provision. Nevertheless, the approach has been used at a sectorial level, trying to promote the trade of those products produced in an eco-friendly manner, such as forestry, fisheries, and other natural resources. They may also be able to collaborate in the elimination of harmful subsidies, including fossil fuel subsidies.⁵⁰ By promoting innovation and technology transfer, the hope is that the economic cooperation that ensues will support capacity building, enhance

⁴⁸ Tae Yoo & Inkyoung Kim, *Free Trade Agreements for the Environment? Regional Economic Integration and Environmental Cooperation in East Asia*, 16 INT’L ENV’T AGREEMENTS: POL. L. & ECON. 721 (2016); Sikins Jinnah & Elisa Morgera, *Environmental Provisions in American and EU Free Trade Agreements: A Preliminary Comparison and Research Agenda*, 22 REV. EUR. COMP. & INT’L ENV’T L. 324 (2013).

⁴⁹ Muhlis Can et al., *The Role of Trading Environment-Friendly Goods in Environmental Sustainability: Does Green Openness Matter for OECD Countries?*, 295 J. ENV’T MGMT. 113038 (2021); Clara Brandi et al., *Do Environmental Provisions in Trade Agreements Make Exports from Developing Countries Greener?* 129 WORLD DEV. 104899 (2020).

⁵⁰ Jun Rentschler & Morgan Bazilian, *Policy Monitor—Principles for Designing Effective Fossil Fuel Subsidy Reforms*, 11 REV. ENV’T ECON. & POL’Y 138 (2017); David Coady et al., *How Large Are Global Fossil Fuel Subsidies?*, 91 WORLD DEV. 11 (2017).

productivity, and enable sustainable development across various sectors and countries⁵¹.

Further, certain procedural innovations undertaken by the Parties may assist in identifying valuable innovations. For instance, sustainable development proposals can especially be raised in the context of (1) ex-ante (or ongoing) environment, development, human rights or sustainability impact assessments and reviews of trade and investment liberalisation policies and draft treaties. While impact assessments have been used as mechanisms for economic analysis and informed policymaking, these usually only refer to the economic impact of treaties. Nevertheless, the need for a holistic approach has included social and environmental factors within the analysis, including poverty, health, and education, within the social dimension and environmental quality, biological diversity and other natural resources stocked in the environmental dimension. Also, new sustainable impact assessments involve incorporating stakeholder consultations and ensuring transparency and inclusivity. Therefore, they look into giving the negotiation and implementation processes a greater democratic legitimacy and ensure that the concerns and interests of various stakeholders, including those related to sustainable development, are adequately addressed. Other important procedural innovations might include consultations between economic, environmental and development authorities, mechanisms to ensure transparency and public participation in trade and investment negotiations, and mechanisms to inform tribunals about sustainable development issues, including expert consultation, the acceptance of amicus curia briefs by third parties, and other public participation measures.

In essence, therefore, it is helpful to analyse five dimensions of a trade and investment agreement to consider its effect on sustainable development between the specific Parties: the purpose/object provisions, any exceptions/conflicts clauses, any explicit 'parallel' cooperation provisions, the nature of trade and investment enhancement provisions, and important process innovations. These innovative provisions demonstrate a shift towards a more integrated approach to trade and sustainable development undertaken by countries in the last decades. These commitments reflect a growing recognition of the interdependencies between economic, social, and environmental dimensions and seek to ensure that trade policies contribute positively to sustainable development goals. By incorporating these provisions into trade and investment agreements, countries are expected to strive for a more balanced and inclusive approach to global trade and investment.

⁵¹ Immaculada Martínez-Zarzoso & Santiago Chelala, *Trade Agreements and International Technology Transfer*, 157 REV. WORLD ECON. 631 (2021); Daneila Arregui & Immaculada Martínez-Zarzoso, *Do Trade Agreements Contribute to Technology Internationalization?* (NFER Working Paper Series No. 3, 2022); Anselm Kmaperman Sanders, *Intellectual Property, Free Trade Agreements and Economic Development*, 23 GA. ST. UL REV. 893 (2006).

IV. ILLUSTRATIVE EXAMPLES: EU-CHILE AGREEMENT, EU-MERCOSUR AGREEMENT & EU-KENYA AGREEMENT

The European Union's agreements with Chile, Mercosur and Kenya illustrate how trade and, to a limited extent, investment agreements may incorporate sustainable development and climate change-related provisions, particularly between developed and developing economies. With different levels of ambition, all three agreements include environment and climate-related provisions and argue that sustainable development is among their objectives. It must be highlighted that the EU-Chile Agreement corresponds to the modernisation process of an association agreement enacted initially in 2003, while the EU-Mercosur Agreement is the culmination of a twenty-year-long negotiation process started in 2000⁵², and the Economic Partnership Agreement (EPA) between the EU and Kenya has been part of a long-term strategy between the EU and African states. However, its most immediate antecedent was being part of the EU-Kenya Strategic dialogue, launched in June 2021, being the EPA signed in June 2023.⁵³

In the case of the EU-Chile Agreement modernisation, both parties shared a common interest in deepening their trade relations while promoting sustainable and inclusive growth through the expansion of trade and investments. Hence, both parties agreed on high levels of environmental protection.⁵⁴ The finalised text reached at the end of 2021, addressed the most pressing environmental challenges faced by the international system, such as climate change and the effective implementation of the Paris Agreement; the generation of alliances on energy transition; becoming both parties' strategic partners to promote, on the one hand,

⁵² For more details on the actual negotiation processes see: Javiera Cáceres Bustamante, *Brief on the Chile Inclusion of Environment Commitments in Trade Agreements and The Current EU-Chile Trade Agreement Negotiations*, in INTERNATIONAL TRADE, CLIMATE CHANGE, AND ENVIRONMENTAL INTERFACES (2022); Beatriz Hernández, *Quince Años Del Acuerdo De Asociación UE-Chile: Hacia Una Modernización Necesaria*, 48 ANÁLISIS CAROLINA 1 (2020); Javiera Cáceres et al., *supra* note 41; José Antonio Sanahuja & Jorge Damián Rodríguez, *Veinte Años De Negociaciones Unión Europea-Mercosur: Del Interregionalismo A La Crisis De La Globalización*, 13 DOCUMENTOS DE TRABAJO 1 (2019).

⁵³ Anita Kiamba & Veit Bachmann, *Kenya-EU relations: Perspectives and Expectations*, in PERCEPTIONS OF THE EU IN EASTERN EUROPE AND SUB-SAHARAN AFRICA: LOOKING IN FROM THE OUTSIDE 145-164 (2015); Sebastian Krapohl & Sophie Van Huut, *A Missed Opportunity for Regionalism: the Disparate Behaviour of African Countries in the EPA-Negotiations with the EU*, 42 J. EUR. INTEGRATION 565 (2020).

⁵⁴ Javiera Cáceres & C. Delev, *Where to Next? Modernizing Environmental Commitments in EU-Latin America Free Trade Agreements*, LEGAL ISSUES ECON. INTEGRATION (forthcoming 2023).

the EU Green Deal and, on the other hand, the Chilean National Green Hydrogen Strategy, among others.⁵⁵

The negotiations between the European Union and Mercosur go back to the late 1990s and early 2000s when both the EU and Mercosur aimed to strengthen their trade relations by subscribing to a comprehensive agreement that would create an Interregional Association.⁵⁶ The negotiation process was suspended several times following complex global scenarios -such as the outcomes of the World Trade Organization's Ministerial Conference in Cancun in 2003- and regional problems - including Paraguay's Mercosur suspension in 2012-. After 38 negotiations round, in June 2019, a political conclusion of the negotiations was reached.⁵⁷

Concerning the EPA between the EU and Kenya, it must be noted that these negotiations have been part of the long-term strategy with African countries, especially the East African Community. In this sense, as stated by the EU Commission, "a regional EPA was negotiated in 2014, signed in by Kenya, Rwanda and the EU in 2016, but could not be applied as it required signature and ratification by all the EAC countries".⁵⁸ The agreement was reached in 2023, and it is expected to "bring an important boost for trade in goods, contains substantial development and cooperation elements and is the first and most ambitious trade deal with a developing country to contain strong commitments on sustainability"⁵⁹.

This section reviews and compares the texts of the EU-Chile modernisation agreement, the EU-Mercosur agreement, and the EU-Kenya agreement to understand how sustainable development and climate-related provisions have been included in these agreements. For this purpose, and following the analytical framework presented above, the analysis focuses especially on the purpose/object provisions, any exceptions/conflicts clauses, any clear 'parallel' cooperation

⁵⁵ *Finalizan negociaciones de la modernización del Acuerdo de Asociación entre Chile y la Unión Europea*, SUBREI (Nov. 15, 2021), <https://www.subrei.gob.cl/sala-de-prensa/noticias/detalle-noticias/2021/11/15/finalizan-negociaciones-de-la-modernización-del-acuerdo-de-asociación-entre-chile-y-la-unió-n-europea>.

⁵⁶ Fabiano de Andrade Correa, *The Implementation Of Sustainable Development In Regional Trade Agreements: A Case Study On The European Union And Mercosur* (June 5, 2013) (EUI PhD theses, Florence: European University Institute Department of Law) (on file with EUI Research Repository).

⁵⁷ It must be noted that to date (May 2023), the EU-Mercosur agreement has not been ratified.

⁵⁸ Directorate-General for Trade, *Key elements of the EU-Kenya Economic Partnership Agreement*, EUR. COMM'N (2023), https://policy.trade.ec.europa.eu/news/key-elements-eu-kenya-economic-partnership-agreement-2023-06-19_en.

⁵⁹ *Id.*

provisions, the nature of trade and investment enhancement provisions, and important process innovations.

Concerning the purpose of the agreements, including provisions within the preamble, may be critical, as these statements may be interpreted in favour of sustainable development.⁶⁰ As stated by Cáceres *et al.*, despite preambles' restricted function in establishing precise obligations, their probative value is key in interpreting free trade agreements, especially where balances need to be struck between differing values.⁶¹ While the original agreement between the EU and Chile includes provisions within their preamble related to sustainable development, the publicly available draft of the EU-Mercosur agreement does not provide a preamble for analysis. In the case of the EU-Kenya agreement, when reviewing the publicly available draft text published by the European Union, which may undergo modifications, including as a result of the process of legal and linguistic revisions, it can be highlighted that it includes a specific call for sustainable development and the eradication of poverty.⁶² The EU-Chile agreement's objective is explicitly stated in Art. 1.2.(i). One objective of the agreement is "[t]he development of international trade in a way as to contribute to sustainable development in its economic, social and environmental dimensions".⁶³ From here, it can be concluded that sustainable development becomes an important element within trade relations and that while the objective of these agreements may be the expansion of trade and investment flows, this growth should be promoted to achieve sustainable development objectives. Moreover, it can be argued that when negotiating with stronger economic partners such as the European Union, Chile can strengthen their environmental protection strategy and bind it through international commitments.⁶⁴ A similar wording is used in the agreement between the EU and Kenya, which states that the partnership's objective is to "contribute to economic growth and development through the establishment of a strengthened and strategic trade and development partnership consistent with the objective of sustainable development".⁶⁵

⁶⁰ JACQUES BOURGEOIS ET AL., A COMPARATIVE ANALYSIS OF SELECTED PROVISIONS IN FREE TRADE AGREEMENTS (2007); Timothy J Webster, *The Evolving Language Of Environmental Protection in Bilateral Investment Treaties, Free Trade Agreements, and Trade Promotion Agreements*, 12 LINGUISTICS & HUM. SCIENCES 204 (2016).

⁶¹ Cáceres *et al.*, *supra* note 41.

⁶² INTERIM ECONOMIC PARTNERSHIP AGREEMENT WITH KENYA FOR IMPLEMENTING THE EU-EAST AFRICAN COMMUNITY ECONOMIC PARTNERSHIP AGREEMENT Preamble, <https://www.parlament.gov.at/gegenstand/XXVII/EU/119967> [hereinafter EU-Kenya EPA].

⁶³ ADVANCED FRAMEWORK AGREEMENT, EU-CHILE, CHAPTER 1 – GENERAL PROVISIONS https://www.subrei.gob.cl/docs/default-source/acuerdos/acuerdo-marco-avanzado-ue/chapter-1--general-provisions.pdf?sfvrsn=5d52f47d_2.

⁶⁴ Bustamante, *supra* note 52.

⁶⁵ EU-Kenya EPA, *supra* note 62, art. 2.1.(a).

A relevant characteristic of international trade and investment agreements is the inclusion of escape clauses, which may allow parties to implement measures that could be otherwise understood as contrary to the agreement's objectives. In this sense, it becomes particularly relevant the inclusion of general exceptions which could be used for environmental considerations.⁶⁶ For example, the EU-Mercosur Agreement refers that parties understand that (a) the measures referred to in Article XX(b) of the GATT 1994 include environmental measures, such as measures taken to implement multilateral environmental agreements, which are necessary to protect human, animal or plant life or health' (Article 13.2(a)).⁶⁷ Similarly, the agreement between the EU and Chile includes a general exception article (Art. 32.1), paraphrasing the general exception in GATT's Article XX.⁶⁸ Hence, measures implemented by Parties to protect human, animal or plant life or health, as well as the conservation of living and non-living exhaustible natural resources, should not be considered inconsistent with the obligations of the agreement. Being the most recent agreement concluded by the EU, the EPA with Kenya reinforces the establishment of general exceptions in line with the GATT's Article XX, and similarly to the agreement with Chile, it rephrases those commitments.⁶⁹ Further expansion of this general provision is given in specific chapters of the agreements, such as sanitary and phytosanitary measures, technical barriers to trade, subsidies, government procurement or intellectual property. Overall, these commitments reinforce the State's capability to implement measures needed to achieve legit objectives, including protecting the environment, but in a manner that they do not constitute a disguised protection of international trade.

Regarding cooperation provisions, the agreements include provisions related to environmental cooperation in their trade and sustainable development chapters or annexe. It should be noted that the scope provided by said cooperation provisions is significantly broader than the areas of focus of the chapters, MEAs and environmental instruments implementation.⁷⁰ It can be observed that the cooperation provisions fall into four main topics: cooperation at the multilateral level; cooperation on trade and environment, or trade and sustainable development

⁶⁶ Mostafa Beshkar & Eric Bond, *The Escape Clause in Trade Agreements in*, HANDBOOK OF COMMERCIAL POLICY, 69-106 (Kyle Bagwell & Robert Staiger eds., 2016); Elena Cima, *Promoting Renewable Energy Through FTAs? The Legal Implications of a New Generation of Trade Agreements*, 52 J. WORLD TRADE 663 (2018).

⁶⁷ Cáceres et al., *supra* note 41.

⁶⁸ ADVANCED FRAMEWORK AGREEMENT, EU-CHILE, CHAPTER 32 – EXCEPTIONS, https://www.subrei.gob.cl/docs/default-source/acuerdos/acuerdo-marco-avanzado-ue/chapter-32-exceptions.pdf?sfvrsn=946a6a18_2.

⁶⁹ EU-Kenya EPA, *supra* note 62, arts. 128.b., 128.f.

⁷⁰ Cáceres et al., *supra* note 41.

topics; cooperation on promoting practices; and cooperation on tackling specific issues and implementing agreements.

For multilateral level cooperation, agreements between the EU, Chile, and Mercosur reinforce the importance of working together in multilateral forums for environmental protection. As stated in Art. 26.7 of the EU-Chile agreement:⁷¹

The Parties may cooperate on issues as specified throughout this chapter as well as, inter alia:

(a) labour and environmental aspects of trade and sustainable development in international fora, including in particular the WTO, the UN High-level Political Forum for Sustainable Development, UN Environment, the ILO and MEAs

This clause is also identical to the one included in Art. 13 of the Trade and Sustainable Development Chapter of the EU-Mercosur draft:⁷²

The Parties recognise the importance of working together in order to achieve the objectives of this Chapter. They may work together on inter alia:

(a) labour and environmental aspects of trade and sustainable development in international fora, including in particular the WTO, the ILO, UNEP, UNCTAD, High-level Political Forum for Sustainable Development and multilateral environmental agreements (MEAs)

As for the EU-Kenya partnership, multilateral environmental cooperation is covered within the Trade and Sustainable Development Annex, particularly in the Art. 5, which states that:

The Parties shall work together to strengthen their cooperation on trade-related aspects of environmental policies and measures, bilaterally, regionally and in international fora, as appropriate,

⁷¹ EU-Chile: Text of the Agreement, EUR. COMM'N art. 26.7 (Dec. 2022), https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/chile/eu-chile-agreement/text-agreement_en [hereinafter EU-Chile EPA].

⁷² EU-Mercosur: Text of the Agreement, EUR. COMM'N art. 13 (July 1, 2019), https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/text-agreement_en [hereinafter EU-Mercosur EPA].

including in the UN High-level Political Forum for Sustainable Development, UN Environment Programme, the UN Environment Assembly (UNEA), MEAs, and the WTO.⁷³

Nevertheless, cooperation is not limited to participation in multilateral forums, as these articles also include provisions referring to “the impact of labour and environmental law and standards on trade and investment”⁷⁴ or “the impact of trade and investment law on labour and the environment”⁷⁵. Further cooperation activities and objectives can be encountered within these chapters with different wording, as in the EU-Mercosur, the list included under the title “Working together on trade and sustainable development” is longer than in the EU-Chile’s “Cooperation Activities”. However, in the case of Chile, more details are given within other specific articles encompassing specific topics of interest. For instance, the EU-Chile agreement contains a much more detailed cooperation provision referring to climate change. In its Art. 26.10.3, it states that:

[...] the Parties shall cooperate as appropriate on trade-related aspects of climate change, bilaterally, regionally and in international fora, including in the UNFCCC, the WTO and the Montreal Protocol on Substances that Deplete the Ozone Layer. Furthermore, the Parties may cooperate as appropriate on these issues also in the International Maritime Organization.⁷⁶

It must be highlighted that while the TSD is included as an annexe in the EU-Kenya EPA, it goes beyond previous agreements in specific sectors, such as Fisheries and Agriculture, which have complete chapters devoted to their development. The Fisheries chapter includes aquaculture, maritime and inland fisheries⁷⁷, considering different cooperation schemes and provisions for each. In the chapter’s general provision, it is stated that:

The Parties further recognise that fisheries resources are also of considerable interest to both the EU and the EAC Partner State(s), and agree to cooperate for the sustainable development and

⁷³ EU-Kenya EPA, *supra* note 62, Annex V, Trade and Sustainable Development, art. 5.

⁷⁴ EU-Mercosur EPA, *supra* note 72, art. 13.b; EU-Chile EPA, *supra* note 71, art. 27.7.4(b); EU-Kenya EPA, *supra* note 62, Annex V, art.5(c).

⁷⁵ EU-Mercosur EPA, *supra* note 72, art. 13.b; EU-Chile EPA, *supra* note 71, art. 27.7.4(c); EU-Kenya EPA, *supra* note 62, Annex V, art.5(c).

⁷⁶ EU-Chile EPA, *supra* note 71, art. 26.10.3.

⁷⁷ EU-Kenya EPA, *supra* note 62, art. 51.1.

management of the fisheries sector in their mutual interests, taking into account economic, environmental and social impacts.⁷⁸

The Agriculture chapter⁷⁹ considers sustainable agricultural development⁸⁰, food and nutrition security⁸¹, and value chain management⁸², among others. Similarly to the Fisheries chapter, different cooperation schemes can be found. For example, Article 74, Geographical indications (GI), states that countries recognise the importance of GI for sustainable agriculture and rural development and:

2. The Parties agree to cooperate in the identification, recognition and registration of products that could benefit from protection as geographical indications and any other action aimed at achieving protection for products so identified.

These examples illustrate how these agreements have incorporated cooperation dimensions and how this dimension goes beyond political consensus in international forums to establish working parties to understand and mitigate possible negative impacts derived from trade agreements on the environment, as well as promote those areas in which there is a positive spillover.

Regarding trade enhancement, only the EU-Kenya EPA provide specific tariff reductions for environmentally friendly goods. In Art. 10, “Trade and Investment Supporting Sustainable Development”, of Annex V Trade and Sustainable Development, it is read:

1. The Parties recognise that trade and investment in goods and services that are related to the protection of the environment or contribute to enhancing social conditions and that fostering the use of sustainability schemes or other voluntary initiatives can meaningfully contribute to sustainable development.

2. To that end, the Parties have eliminated customs duties on environmental goods originating in the other Party pursuant to Articles 10 and 11 of Part II of the main Agreement (“Trade in Goods”).

⁷⁸ *Id.* art. 51.

⁷⁹ *Id.* art. 58.2(a).

⁸⁰ *Id.* art. 63.

⁸¹ *Id.* art. 64.

⁸² *Id.* art. 65.

3. Furthermore, the Parties have made commitments to conclude negotiations on environmental services and manufacturing activities pursuant to Article 3 of the main Agreement (“Rendez-vous Clause”).

4. In light of paragraph 1, each Party shall promote and facilitate trade and investment in:

- (a) environmental goods and services;
- (b) goods that contribute to enhanced social conditions; and
- (c) goods subject to transparent, factual and non-misleading sustainability assurance schemes such as fair and ethical trade schemes and eco-labels.⁸³

According to the Rednez-vous Clause⁸⁴, within five years of the Agreement’s entry into force, the Parties will conclude the negotiations in matters such as trade in services, trade, environment and sustainable development. Furthermore, other trade enhancement provisions can be identified for specific chapters throughout the agreements. A first example can be found in the EU-Chile agreement, which in Chapter 8 Energy and Raw Material’s objectives states:

The objective of this Chapter is to promote dialogue and cooperation in the energy and raw material sectors to Parties’ mutual benefit, to foster sustainable and fair trade and investment ensuring a level playing-field in those sectors, and to strengthen competitiveness of related value chains including value addition in accordance with the provisions of this Agreement [emphasis added].⁸⁵

Similarly, in the case of the EU-Mercosur draft, the Annex on Motor Vehicles, Equipment, and Parts thereof, a relevant sector due to the automobile production capabilities in both Parties, its Art. 2 states concerning their objectives that:

With regard to the products covered, the objectives of this Annex are to:

⁸³ *Id.* Annex V, Trade and Sustainable Development, art. 10.

⁸⁴ *Id.* art. 3.

⁸⁵ EU-Chile EPA, *supra* note 71, art. 8.1.

(a) recognise the right of each Party to determine its desired level of health, safety, as well as environmental and consumer protection [emphasis added].⁸⁶

In the EU-Kenya partnership, Art. 58 on Part IV Agriculture point out the chapter's objectives, and Parties agree to the following:

(d) develop modern and competitive agro-based industries;
 (e) promote the sustainable use and management of natural and cultural resources, by developing environmentally friendly and sustainable technologies that improve agricultural productivity [emphasis added];⁸⁷

These examples are part of specific chapters included due to the relevance of those sectors in bilateral trade and investment relations. Interestingly, while specific rules for exchanging these products are negotiated and committed within these chapters, the objectives explicitly state that the Parties have the right to determine their desired level of environmental protection and that they would promote sustainable trade. This illustrates the concept of environmentally friendly trade or investment enhancement provisions, as while promoting economic exchanges, it also considers sustainability purposes and enhances the exchange of products that either respect environmental protection or are defined as sustainable.

Following the previous analysis, more commitments to fostering environmentally friendly international exchanges are incorporated within the Trade and Sustainable Development Chapter's specific topics of interest. In the case of EU Chile, these provisions are included under the articles on Climate Change⁸⁸ and Trade and Forest⁸⁹. Regarding trade and climate change, the article refers to the need to facilitate and promote trade and investment in relevant goods and services for climate change mitigation and adaptation. This differs from the other commitments that mainly promote the trade of sustainable products concerning those managed or produced in non-sustainable ways. In the case of EU-Mercosur, similar provisions are included in three articles: Trade and Biodiversity⁹⁰, Trade and Sustainable Management of Forests⁹¹, and, Trade and Sustainable Management of Fisheries and

⁸⁶ EU-Mercosur EPA, *supra* note 72, Annex on motor vehicles, equipment, and parts thereof, art. 2.

⁸⁷ EU-Kenya EPA, *supra* note 62, art. 58, Part IV.

⁸⁸ EU-Chile EPA, *supra* note 71, art. 26.10.(c).

⁸⁹ *Id.* art. 26.11.(c).

⁹⁰ EU-Mercosur EPA, *supra* note 72, Trade and Sustainable Development, art 7.(c).

⁹¹ EU-Mercosur EPA, *supra* note 72, Trade and Sustainable Development, art. 8.2.(a).

Aquaculture⁹². The EU-Kenya EPA contains four articles on environmental provisions: “Trade and Climate Change”⁹³, “Trade and Biological Diversity”⁹⁴, “Trade and Forests”⁹⁵, and “Trade and Sustainable Management of Marine Biological Resources and Aquaculture”⁹⁶.

Another element that may signal the relevance of sustainable development within these agreements, and process innovation for international trade law-making, is the inclusion of a specific chapter dealing with trade and sustainable development. First, it must be recalled that these chapters cover both environmental and labour provisions, but for this analysis, references will be drawn from environmental-related commitments. In the cases of UE-Chile and UE-Mercosur, both agreements include this kind of chapter within the proposed text. In the case of the EU-Kenya EPA, trade and sustainable development is Annex V, and besides environmental-related commitments, it also refers to “Multilateral Labour Standards and Agreements”⁹⁷ and “Trade and Gender Equality”⁹⁸. This becomes an innovation in how trade and environmental objectives are integrated.⁹⁹ The trade and sustainable development chapters and Annex in the agreements analysed have common and different elements. As the agreement with Mercosur is part of a long-lasting negotiation process, it is expected that the level of ambition in this chapter would be lower than that from the negotiation with Chile or Kenya, which is reflected in the number and depth of topics addressed.

In the chapter of the EU-Mercosur Agreement, the Parties agreed on an explicit objective “to enhance the integration of sustainable development in the Parties’ trade and investment relationship, notably by establishing principles and actions concerning labour and environmental aspects of sustainable development of specific relevance in a trade and investment context”.¹⁰⁰ Similar provisions are included within the UE-Chile Agreement, only that in this case, the objectives are separated

⁹² *Id.* Trade and Sustainable Development, art. 9.1.

⁹³ EU-Kenya EPA, *supra* note 62, Annex V, Trade and Sustainable Development, art. 6.

⁹⁴ *Id.* Annex V, Trade and Sustainable Development, art. 7.

⁹⁵ *Id.* Annex V, Trade and Sustainable Development, art. 8.

⁹⁶ *Id.* Annex V, Trade and Sustainable Development, art. 9.

⁹⁷ *Id.* Annex V, Trade and Sustainable Development, art. 3.

⁹⁸ *Id.* Annex V, Trade and Sustainable Development, art. 4.

⁹⁹ Katerina Hradilova & Ondrej Svoboda, *Sustainable Development Chapters In The EU Free Trade Agreements: Searching For Effectiveness*, 52 J. WORLD TRADE 1019 (2018); Marin G. Durán, *Sustainable Development Chapters In EU Free Trade Agreements: Emerging Compliance Issues*, 57 COMMON MKT. L. REV. 1031 (2020); JB. VELUT ET AL., *COMPARATIVE ANALYSIS OF TRADE AND SUSTAINABLE DEVELOPMENT PROVISIONS IN FREE TRADE AGREEMENTS* (2022), <https://www.lse.ac.uk/business/consulting/assets/documents/TSD-Final-Report-Feb-2022.pdf>.

¹⁰⁰ EU-Mercosur EPA, *supra* note 72, Trade and Sustainable Development Chapter, art. 1.

between environmental and labour sections, for which Art. 26.8 expands exclusively on the environmental objectives, stating:

1. The Parties aim to promote mutually supportive trade and environmental policies; promote high levels of environmental protection in line with multilateral environmental agreements to which they are a Party respectively and effective enforcement of their respective environmental laws; and enhance their capacities to address trade-related environmental issues, including through cooperation.
2. The Parties recognise that enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources brings benefits that can contribute to sustainable development, strengthen their environmental governance and complement the objectives of this Agreement.

The Parties recognise the importance of mutually supportive trade and environmental policies and practices to improve environmental protection in the furtherance of sustainable development.¹⁰¹

Annex V in the EU-Kenya is more specific, as Art. 1 recalls commitments under multilateral environmental agreements, such as the Agenda 21 and the Rio Declaration on Environment and Development adopted by the UN Conference on Environment and Development in 1992, the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002; the International Labour Organisation, e.g., the Declaration on Social Justice for a Fair Globalisation of 2008; and sustainable development, such as the UN 2030 Agenda for Sustainable Development. Besides, Art. 1 states:

3. The Parties recognise the urgent need to address climate change, as outlined in the IPCC Special Report on Global Warming of 1.5°C, as a contribution to the economic, social and environmental objectives of sustainable development.¹⁰²

¹⁰¹ ADVANCED FRAMEWORK AGREEMENT, EU-CHILE, CHAPTER 26 – TRADE AND SUSTAINABLE DEVELOPMENT, https://www.subrei.gob.cl/docs/default-source/acuerdos/acuerdo-marco-avanzado-ue/chapter-26-trade-and-sustainable-development.pdf?sfvrsn=46902518_2.

¹⁰² EU-Kenya EPA, *supra* note 62, Annex V, Trade and Sustainable Development, art. 1(3).

A common provision found in the agreements analysed is the right to regulate and levels of protection. This is a typical commitment included in the EU agreements, which recognise the right of each party to determine its sustainable development policies and priorities, to establish its own levels of domestic labour and environmental protection and its own labour and environmental priorities, and to adopt or modify its law related to labour and environment and policies accordingly.¹⁰³ Nevertheless, the same articles provide further explanation in order not to use this right to regulate to weaken or reduce the levels of protection to encourage trade or investment and to encourage a high level of environmental protection. It can be stated that this principle gives policymakers certainty of their sovereign right to define their policies according to their legitimate objectives while encouraging high levels of environmental protection.¹⁰⁴

Another element in trade, investment and sustainable development chapters/annexes related to environmental protection is the recognition of multilateral environmental agreements (MEAs). The agreements between EU-Chile (Art. 26.9), EU-Mercosur (Art. 5), and EU-Kenya (Annex V – Art. 5) have similar structures concerning these provisions, recognising the United Nations Environment Assembly (UNEA) of the United Nations Environment Programme (UNEP) and their commitment to promote and effectively implement MEAs, protocols and their amendments to which they are a party.

From here, a series of specific articles addressing particular issues are drafted in each agreement. Trade and Climate Change¹⁰⁵, Trade and Sustainable Management of Forests¹⁰⁶, and Trade and Biodiversity¹⁰⁷, are common to all agreements. The EU-Mercosur and EU-Chile agreements also have specific articles on Trade and

¹⁰³ EU-Chile EPA, *supra* note 71, Chapter Trade and Sustainable Development, art. 26.2.1; EU-Mercosur EPA, *supra* note 72, Chapter Trade and Sustainable Development, art. 2; EU-Kenya EPA, *supra* note 62, Annex V, Trade and Sustainable Development, art. 2.

¹⁰⁴ Javiera Cáceres Bustamante, *supra* note 52; Crina Baltag FCI Arb et al., *Recent Trends in Investment Arbitration on the Right to Regulate, Environment, Health and Corporate Social Responsibility: Too Much or Too Little*, ICSID REV. – FOREIGN INV. L. J. (2023); Ronald Labonté et al., *USMCA (NAFTA 2.0): Tightening the Constraints on the Right to Regulate for Public Health*, 15 GLOBALIZATION & HEALTH 1 (2019).

¹⁰⁵ EU-Chile EPA, *supra* note 71, Chapter Trade and Sustainable Development, art. 26.10; EU-Mercosur EPA, *supra* note 72, Chapter Trade and Sustainable Development, art. 6; EU-Kenya EPA, *supra* note 62, Annex V, Trade and Sustainable Development, art. 6.

¹⁰⁶ EU-Chile EPA, *supra* note 71, Chapter Trade and Sustainable Development, art. 26.11; EU-Mercosur EPA, *supra* note 72, Chapter Trade and Sustainable Development, art. 8; EU-Kenya EPA, *supra* note 62, Annex V, Trade and Sustainable Development, art. 8.

¹⁰⁷ EU-Chile EPA, *supra* note 71, Chapter Trade and Sustainable Development, art. 26.13; EU-Mercosur EPA, *supra* note 72, Chapter Trade and Sustainable Development, art. 7; EU-Kenya EPA, *supra* note 62, Annex V, Trade and Sustainable Development, art. 7.

Sustainable Management of Fisheries and Aquaculture in common¹⁰⁸. However, the EU-Kenya EPA has a specific article in the core of the agreement called Fisheries¹⁰⁹ and a Trade and Sustainable Management of Marine Biological Resources and Aquaculture in the TSD Annex¹¹⁰. At the same time, the EU-Chile agreement also includes an article on Trade and Wild Flora and Fauna¹¹¹. The obligations derived from these provisions are similar, and the main difference encountered is the wording and depth of the provisions within TSD chapters and Annex, including the cross-references to other agreements and organisations.

Concerning Trade and Climate Change, parties in all agreements analysed recognise the importance of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC) and reaching the goals of the Paris Agreement. The EU-Chile agreement expands this provision, explicitly referring to commitments regarding their Nationally Determined Contribution. Both the EU-Chile and EU-Kenya agreements also refer to cooperation with other relevant organisations such as the UNFCCC, the WTO, the Montreal Protocol on Substances that Deplete the Ozone Layer, and the International Maritime Organization. However, a progressive expansion of MEAs is included in trade agreements, as explicated in the case of the EU-Chile agreement.¹¹² Similar conclusions can be drawn from including biodiversity and wild flora and fauna. In the case of the EU-Kenya Agreement, these topics are covered under the Trade and Biological Diversity article (Art. 7), which explicitly references the Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In addition to the previous references, the EU-Mercosur agreement also mentions the International Treaty on Plant Genetic Resources for Food and Agriculture in Art. 7 Trade and Biodiversity. In the case of Chile, these commitments and references are further developed in two articles on trade and wild flora and fauna (Art. 26.12) and trade and biological diversity (Art. 26.13).

Finally, despite the inclusion of provisions promoting more balanced trade and environment objectives, it must be stated that a substantive part of these commitments is left away from the dispute settlement mechanisms. The regular dispute settlement processes of the agreements do not cover trade and sustainable development chapters or annexes. Instead, they have their consultation process to solve matters amicably through consultations, using two or more political levels if

¹⁰⁸ EU-Chile EPA, *supra* note 71, Chapter Trade and Sustainable Development, art. 26.14; EU-Mercosur EPA, *supra* note 72, Chapter Trade and Sustainable Development, art. 9.

¹⁰⁹ EU-Kenya EPA, *supra* note 62, Part III, arts. 51-56.

¹¹⁰ *Id.* Annex V, Trade and Sustainable Development, art. 9.

¹¹¹ EU-Chile EPA, *supra* note 71, Chapter Trade and Sustainable Development, art. 26.12.

¹¹² Cáceres et. al., *supra* note 41; Cáceres & Delev, *supra* note 54.

matters are not solved. As the current practice has widely explained, it is not politically realistic to incorporate binding compliance mechanisms from the TSD chapters or Annex, and there is no international jurisprudence to serve as a basis for analysing.¹¹³ Nevertheless, it is worth noting that as the Fisheries article in the EU-Kenya EPA is in the body of the agreement, it is subjected to the dispute settlement mechanism.

V. CURRENT DEBATES: ACCTS AS A NEW DIRECTION FOR TRADE TREATIES

As stated in the previous sections, there is an increasing recognition of the relationship between international trade agreements and sustainable development/climate change mitigation, for which specific provisions related to sustainable development have been included in existing agreements and ongoing negotiations.¹¹⁴ While the cases of the agreements between the European Union with Chile, Mercosur and Kenya are three examples of how trade negotiations may address the climate emergency and weight economic and environmental objectives, other negotiation processes include these issues within their negotiation mandate. Hence, understanding the urgency of climate change and the need for sustainable development, countries have explored new ways to address trade and environmental negotiations.

One of the most interesting current developments in addressing trade and climate change may be found in the negotiations led by New Zealand¹¹⁵ on an Agreement

¹¹³ Cáceres & Delev, *supra* note 54.

¹¹⁴ Nicolas Albertoni, *supra* note 47; Michael Jakob, *Globalization and Climate Change: State of Knowledge, Emerging Issues, and Policy Implications*, 13 WILEY INTERDISCIPLINARY REVIEWS: CLIMATE CHANGE 771 (2022); Lisa Lechner & Gabriele Spilker, *Taking It Seriously: Commitments to the Environment In South-South Preferential Trade Agreements*, 31 ENV'T POL. 1058 (2022).

¹¹⁵ New Zealand has actively participated in the discussion and inclusion of new issues within trade policymaking, at the bilateral, regional, and multilateral levels. These topics includes digital economy issues, environmental/sustainable development provisions, and trade and gender, amongst others. For further information see: Felipe Muñoz & Javiera Cáceres, *Drafting E-Commerce Regulations For A Sustainable Economic Recovery: Lesson From DEPA Analysis*, 36 REV. JUST. DIREITO 69 (2022); M. Fröhlich, *Promoting Gender Equality in International Trade Agreements: Pioneering or Pipe Dream?*, in LEGAL ISSUES OF INTERNATIONAL LAW FROM A GENDER PERSPECTIVE 179-197 (Ivana Krstić et al. eds., 2023); Damien O'Connor, *New Zealand's Trade in the Pandemic Era*, 46 NEW ZEALAND INT'L REV. 420 (2021); Vangelis Vitalis, *The End of the Golden Weather: New Zealand's Trade Policy During a Time of International Transition*, in FROM ASIA-PACIFIC TO INDO-PACIFIC: DIPLOMACY IN A CONTESTED REGION 281-302 (Robert Patman et al. eds., 2022).

on Climate Change, Trade and Sustainability (ACCTS).¹¹⁶ Announced on 25 September 2019 by New Zealand's Prime Minister Jacinta Ardern at the United Nations, this negotiation includes the governments of Norway, Iceland, Costa Rica, Fiji, and Switzerland.¹¹⁷ Prime Minister Ardern's declaration stated that through the ACCTS, participating countries would demonstrate that the use of trade rules to remove barriers on environmental goods and services may support actions on climate.¹¹⁸ From here, the agreement's main objectives were "remove tariffs on environmental goods and make new commitments on environmental services; establish concrete commitments to eliminate fossil fuel subsidies; and develop voluntary guidelines for eco-labelling programmes and mechanisms".¹¹⁹ This was reinforced by a joint statement subscribed by the negotiating parties on the occasion of the COP25, held in Madrid in 2019. In their statement, Climate Change Ministers stated that their "[a]im and intention is that ACCTS will demonstrate in a concrete and substantive manner how trade and trade policy can support climate, environmental and sustainable development objectives and provide momentum towards an eventual multilateral set of outcomes".¹²⁰

While the text is still under negotiations, the scope of the agreement can be derived from the declarations made by Heads of State and Ministers. First, it is expected that liberalisation of environmental products trade would occur. These provisions for boosting trade will encourage the sharing of activities that, as outlined by the OECD, involve creating goods and services to assess, prevent, reduce, or rectify

¹¹⁶ Press Release, *New Zealand leading trade agreement driving action on climate change and the environment*, BEEHIVE.GOV.T.NZ (Sept. 26, 2019), <https://www.beehive.govt.nz/release/new-zealand-leading-trade-agreement-driving-action-climate-change-and-environment>; Caroline E. Foster, *The Agreement on Climate Change, Trade and Sustainability*, in ELGAR ENCYCLOPEDIA OF ENVIRONMENTAL LAW 480-482 (Michael Faure ed., 2022).

¹¹⁷ Switzerland joined the negotiations in January 2020. See SECO ROUNDTABLE ON TRADE, CLIMATE CHANGE, AND THE SDGs: CDE/WTI SUMMARY REPORT (Sept. 16, 2021), https://boris.unibe.ch/164086/1/Report_SECO_Roundtable_on_trade_climate_change_and_the_SDGs.pdf.

¹¹⁸ Ronald Steenblik & Susanne Droege, *Time To ACCTS? Five Countries Announce New Initiative on Trade and Climate Change*, IISD (Sept. 25, 2019), <https://www.iisd.org/articles/insight/time-accts-five-countries-announce-new-initiative-trade-and-climate-change>.

¹¹⁹ New Zealand Government, *New Zealand Leading Trade Agreement Driving Action on Climate Change and the Environment*, BEEHIVE.GOV.T.NZ (2019), <https://www.beehive.govt.nz/release/new-zealand-leading-trade-agreement-driving-action-climate-change-and-environment>.

¹²⁰ New Zealand Government, *Climate Change Ministers express support for the Agreement on Climate Change, Trade and Sustainability at COP25*, NEW ZEALAND FOREIGN AFFAIRS & TRADE (Dec. 13, 2019) <https://www.mfat.govt.nz/en/media-and-resources/climate-change-ministers-express-support-for-the-agreement-on-climate-change-trade-and-sustainability-at-cop25/>.

environmental harm, including water, air, and soil. This also encompasses addressing issues related to waste, noise, and ecosystems.¹²¹ The elimination of tariffs on environmental goods would achieve this. For that, trade, customs, and environmental authorities are working on establishing a list “ambitious, implementable and appropriately targeted to deal with any issues of dual-use”.¹²² The problem of dual-use has been extensively discussed as the intended liberalisation for environmentally friendly products may be hindered by alternative uses that these goods may have.¹²³ In relation to services, the discussions are anticipated to broaden the interpretation of environmental and environmentally-related services, aiming to capture the evolving nature of this dynamic sector.¹²⁴ This expanded perspective would open the door for fresh agreements in services, potentially making it easier to provide services that contribute to positive environmental results and promote sustainable development.

A second element included in the negotiation mandate is establishing concrete commitments to eliminate fossil fuel subsidies. The use of trade policy instruments to promote a transition towards clean energies has been widely debated, including carbon-based tariffs, emission trading schemes or provisions within trade agreements.¹²⁵ The ACCTS negotiations have explored ways to advance disciplines to eliminate harmful fossil fuel subsidies. As stated in a Joint Ministerial Declaration issued during the Twelve WTO Ministerial Conference held in Geneva in 2022, Ministers recognise that “[g]lobally, rising fossil fuel prices demonstrate that we must urgently accelerate the transition towards clean, green energy systems. It is a crucial moment of both risk and opportunity, with the case to reform fossil fuel subsidies

¹²¹ Steenblik & Droegge, *supra* note 118.

¹²² Hon Damien O’Conner, *Joint statement: Agreement on Climate Change, Trade and Sustainability (ACCTS) Trade Ministers’ meeting*, BEEHIVE.GOV.T.N.Z (Oct. 6, 2021), <https://www.beehive.govt.nz/release/joint-statement-agreement-climate-change-trade-and-sustainability-accts-trade-ministers>.

¹²³ Huiling Liu et al., *Do Imported Environmental Goods Reduce Pollution Intensity? The End Use Matters*, 112 ENERGY ECON. 106130 (2022); Jaime de Melo & Jean-Marc Solleder, *Towards An Environmental Goods Agreement Style (EGAST) Agenda to Improve the Regime Complex for Climate Change*, in HANDBOOK ON TRADE POLICY AND CLIMATE CHANGE 202-219 (Michael Jakob ed., 2022); Joy A. Kim, *Issues of Dual Use and Reviewing Product Coverage of Environmental Goods* (OECD Trade & Environment Working Paper No. 2007/1, 2007); PAUL BRENTON & VICKY CHEMUTAI, *Adaptation to Climate Change: Trade in Green Goods and Services and Access to Low-Carbon Technologies*, in THE TRADE AND CLIMATE CHANGE NEXUS: THE URGENCY AND OPPORTUNITIES FOR DEVELOPING COUNTRIES 53-66 (2021).

¹²⁴ O’Conner, *supra* note 122.

¹²⁵ Michael Jakob et al., *How Trade Policy can Support the Climate Agenda*, 376 SCI. 1401 (2022); Harro van Asselt et al., *Using the Trade Regime to Phase Out Fossil Fuel Subsidies*, in HANDBOOK ON TRADE POLICY AND CLIMATE CHANGE 180-201 (Michael Jakob ed., 2022); Weiqing Huang et al., *Review of Recent Progress of Emission Trading Policy in China*, 349 J. CLEANER PROD. 131480 (2022).

more relevant than ever. We call on negotiators to accelerate this critical, complex and unprecedented work”.¹²⁶

Finally, the third component of the negotiation mandate is the development of voluntary guidelines for eco-labelling programmes and mechanisms. In this way, member parties seek to improve consumers’ information to promote environmentally friendly products. For this objective, the agreements seek to implement a principles-based guideline for voluntary eco-labelling programmes. Member parties expect that “these guidelines, alongside institutional mechanisms to support their implementation, will provide a useful tool to help ensure that eco-labels are able to best achieve their environmental purposes, while avoiding the inadvertent creation of barriers to trade”.¹²⁷

In their last available Joint Statement, issued in the margins of COP27 in Sharm El Sheikh, Egypt, Ministers reinforced their “determination to achieve ambitious outcomes aligned with the Paris Agreement’s aims”.¹²⁸ Furthermore, they reinstate their will to conclude negotiations and expand the membership to other countries sharing the objective of an ambitious and effective implementation of the Paris Agreement. This is consistent with the expressed will of Parties that ACCTS would be open to all WTO membership and that this agreement does not collide with multilateral efforts, but on the contrary, it may become a pathfinder towards multilateral action in trade policymaking and climate change mitigation.¹²⁹

¹²⁶ O’Conner, *supra* note 122.

¹²⁷ *Id.*

¹²⁸ New Zealand Government, *Agreement on Climate Change, Trade and Sustainability (ACCTS): Ministers issue a joint statement in the margins of COP27, Egypt*, NEW ZEALAND FOREIGN AFFAIRS & TRADE (Nov. 17, 2022) <https://www.mfat.govt.nz/en/media-and-resources/agreement-on-climate-change-trade-and-sustainability-accts-ministers-issue-a-joint-statement-in-the-margins-of-cop27-egypt/>.

¹²⁹ New Zealand Government, *Agreement on Climate Change, Trade and Sustainability (ACCTS) negotiations*, NEW ZEALAND FOREIGN AFFAIRS & TRADE (2023), <https://www.mfat.govt.nz/en/trade/free-trade-agreements/trade-and-climate/agreement-on-climate-change-trade-and-sustainability-accts-negotiations/>.

Table 1: Summary of Sustainable Development Inclusion in Provisions

	EU-Chile	EU-Mercosur	EU-Kenya	ACCTS
Purpose/object provisions	<p>Agreement objective - Art. 1.2</p> <p>“(i) the development of international trade in a way as to contribute to sustainable development in its economic, social and environmental dimensions”</p> <p>TSD chapter objective – Art. 26.8</p> <p>1. The Parties aim to promote mutually supportive trade and environmental policies; promote high levels of environmental protection in line with multilateral environmental agreements to which they are a Party respectively and effective enforcement of their respective environmental laws; and enhance their capacities to address trade-related environmental issues, including through cooperation.</p>	<p>TSD chapter objective -Art. 1</p> <p>The objective of this Chapter is to enhance the integration of sustainable development in the Parties’ trade and investment relationship, notably by establishing principles and actions concerning labour and environmental aspects of sustainable development of specific relevance in a trade and investment context.</p>	<p>Agreement objective - Art. 2</p> <p>(a) contribute to economic growth and development through the establishment of a strengthened and strategic trade and development partnership consistent with the objective of sustainable development</p> <p>ANNEX V. Trade and Sustainable Development Context and Objectives Art1.2</p> <p>The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing and affirm their commitment to promote the</p>	<p>Negotiation mandate</p> <p>“Our aim and intention is that ACCTS will demonstrate in a concrete and substantive manner how trade and trade policy can support climate, environmenta 1 and sustainable development objectives and provide momentum towards an eventual multilateral set of outcomes [emphasis added]”. (Joint Ministers’ Statement underlines need for urgent climate action.)</p>

			development of international trade and investment in a way that contributes to the objective of <i>sustainable development</i>	
Exceptions/conflict clauses	<p>General exceptions Art. 32.1</p> <p>2.(b) necessary to <i>protect human, animal or plant life or health</i>;</p> <p>3. (b) point (g) of Article XX of GATT 1994 applies to <i>measures relating to the conservation of living and non-living exhaustible natural resources.</i></p>	<p>General exceptions Art. 13</p> <p>2.(a) the measures referred to in Article XX(b) of the GATT 1994 include <i>environmental measures</i>, such as measures taken to implement multilateral environmental agreements, which are <i>necessary to protect human, animal or plant life or health</i>; and</p> <p>2.(b) Article XX(g) of the GATT 1994 <i>applies to measures for the conservation of living and non-living exhaustible natural resources.</i></p>	<p>General exceptions. Art. 128</p> <p>(b) necessary to <i>protect human, animal or plant life or health</i></p> <p>(g) relating to the <i>conservation of exhaustible natural resources</i>, if such measures are made effective in conjunction with restrictions on domestic production or consumption</p>	Under negotiations
Cooperation provisions	Article 26.1 Objectives	Article 1	Part III. Fisheries	Under negotiations

	<p>4. The Parties agree that this Chapter embodies a cooperative approach based on common values and interests.</p> <p>Article 26.7 Cooperation Activities</p> <p>1. The Parties recognise the importance of cooperation activities on trade-related aspects of environmental and labour policies in order to achieve the objectives of this Agreement and implement this Chapter.</p>	<p>Objectives and Scope</p> <p>4. Consistent with the instruments referred to in paragraph 2, the Parties shall promote sustainable development through: [...] (c) enhanced cooperation and understanding of their respective labour and environmental trade-related policies and measures, taking into account the different national realities, capacities, needs and levels of development and respecting national policies and priorities.</p> <p>Article 13 Working together on trade and sustainable development</p> <p>The Parties recognise the importance of working together in order to achieve the objectives of this Chapter.</p>	<p>Title I General provisions Art. 51</p> <p>1. The cooperation in fisheries trade and development shall cover marine, inland fisheries and aquaculture.</p> <p>3. The Parties further recognise that fisheries resources are also of considerable interest to both the EU and the EAC Partner State(s), and agree to cooperate for the sustainable development and management of the fisheries sector in their mutual interests, taking into account economic, environmental and social impacts.</p> <p>Title II Maritime fisheries Art. 53</p> <p>2. The objectives of cooperation are to:</p>	
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			<p>(a) promote the sustainable development and management of fisheries;</p> <p>(b) <i>strengthen cooperation</i> to ensure the sustainable exploitation and management of fisheries resources as a strong basis for regional integration, given the straddling and migratory species which are shared among coastal EAC Partner State(s), and given that no individual EAC Partner State has the capacity to ensure sustainability of the resource;</p> <p>Title III Inland fisheries and aquaculture development Article 56</p> <p>2. The objectives of <i>cooperation in inland fisheries and aquaculture development</i> will be to promote sustainable</p>	
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			<p>exploitation of inland fisheries resources, and enhance aquaculture production, remove supply-side constraints, improve fish and fish products' quality to comply with international SPS measures, improve access to the market of the EU, address intra-regional trade barriers, attract capital inflows and investment into the sector, build capacity, and enhance access to financial support for the private investors for inland fisheries and aquaculture development</p> <p>Part IV. Agriculture Art. 59 General Principles</p> <p>3. The Parties agree <i>to cooperate in promoting the sustainable growth of the agriculture sector</i>, taking into account its multiple facets</p>	
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			<p>and the diversity of the economic, social, environmental characteristics and development strategies of the EAC Partner State(s).</p> <p>Part V Economic and development cooperation</p> <p>Article 75 General provisions</p> <p>1. In accordance with Articles 34 and 35 of the ACP – EU Partnership Agreement, signed in Cotonou on 23rd June 2000 as revised to date and the corresponding provision of its successor agreement, the Parties reaffirm that <i>development cooperation</i> is a core element of their Partnership and an essential factor for achieving the objectives of this Agreement. The Parties</p>	
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			agree that Annex VI to this Agreement prevails over the provisions of this Part of the Agreement	
Trade enhancement provisions	<p>CHAPTER 8 ENERGY AND RAW MATERIALS</p> <p>Article 8.1 Objective</p> <p>The objective of this Chapter is to <i>promote dialogue and cooperation in the energy and raw material sectors</i> to Parties' mutual benefit, to <i>foster sustainable and fair trade</i> and investment ensuring a level playing-field in those sectors, and to strengthen competitiveness of related value chains including value addition in accordance with the provisions of this Agreement.</p> <p>CHAPTER 26 TRADE AND SUSTAINABLE DEVELOPMENT</p> <p>Article 26.10 Trade and Climate Change</p>	<p>ANNEX ON MOTOR VEHICLES, EQUIPMENT, AND PARTS THEREOF</p> <p>Article 2 Objectives</p> <p>With regard to the products covered, the objectives of this Annex are to:</p> <p>(a) <i>recognise the right of each Party to determine its desired level of health, safety, as well as environmental and consumer protection.</i></p> <p>Chapter on Trade and Sustainable Development</p> <p>Article 7 Trade and Biodiversity</p> <p>(c) <i>encourage trade in natural resource-based products obtained through a</i></p>	<p>Part III. Fisheries</p> <p>Article 51</p> <p>4. The Parties agree that the appropriate strategy to promote the economic growth of the fisheries sector and to enhance its contribution to the economy of the EAC Partner State(s), while taking into consideration <i>its long term sustainability,</i> is through increasing value-adding activities within the sector.</p> <p>Part IV Agriculture</p> <p>Article 58(1)</p> <p>(d) <i>develop modern and competitive agro-based industries;</i></p>	<p>Under negotiations</p> <p>Negotiation mandate: the removal of tariffs on environmental goods and the establishment of new commitments for environmental services.</p>

	<p>(c) <i>facilitate and promote trade and investment in goods and services of particular relevance for climate change mitigation and adaptation,</i> for sustainable renewable energy, and for energy efficiency, in a manner consistent with other provisions of this Agreement.</p> <p>Article 26.11 Trade and forests</p> <p>1. (c) <i>promote trade and consumption</i> of timber and timber products, which are legally obtained from sustainably managed forests.</p>	<p><i>sustainable use of biological resources</i> or which contribute to the conservation of biodiversity, in accordance with domestic laws.</p> <p>Article 8 Trade and Sustainable Management of Forests</p> <p>2.(a) <i>encourage trade in products from sustainably managed forests</i> harvested in accordance with the law of the country of harvest</p> <p>Article 9 Trade and Sustainable Management of Fisheries and Aquaculture</p> <p>1. The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems as well as of <i>promoting responsible and sustainable</i></p>	<p>(e) <i>promote the sustainable use and management of natural and cultural resources,</i> by developing environmental friendly and sustainable technologies that improve agricultural productivity;”</p>	
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		<p><i>aquaculture, and the role of trade in pursuing these objectives</i> and their shared commitment to achieving Sustainable Development Goal 14 of the 2030 Agenda for Sustainable Development, particularly SDGs 14.4 and 14.6.</p>		
<p>Process innovations</p>	<p>Sustainable impact assessment</p>	<p>Sustainable impact assessment</p>	<p>Fisheries and agriculture chapters</p>	<p>Agreement completely devoted to trade and sustainable development.</p> <p>New disciplines under negotiation</p> <ul style="list-style-type: none"> - the establishment of disciplines to <i>eliminate harmful fossil fuel subsidies</i>. - the development of <i>guidelines to inform</i> the development and implementation of <i>voluntary eco-labelling programmes and mechanisms</i>.

				Agreement open to new members This treaty-level instrument will be open to other countries to accede to in the future if they are able to meet its obligations.
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Text in bold by authors.

Source: Authors' elaboration based on publicly available draft agreements and declarations

VI. CONCLUSIONS AND FUTURE RESEARCH NEEDS

The main objective of this article is to analyse the sustainable responsiveness of trade and investment agreements by examining recently concluded negotiations conducted by the European Union with Chile, Kenya and Mercosur and the new developments undertaken in the Agreements on Climate Change, Trade and Sustainability (ACCTS).

It is shown that the EU-Chile, EU-Mercosur, and EU-Kenya include various provisions that look into a balance of trade and environmental objectives, including establishing Trade and Sustainable Development Chapters or Annexes. The most pressing issues affecting trade and the environment are covered within the agreements (including issues such as climate change, biodiversity, forestry or aquaculture), not only within TSD chapters but also on their own, as illustrated in the most recent example of the EU-Kenya agreement's inclusion of fisheries and agriculture. However, these provisions are mainly based on cooperation schemes related to the trade enhancement of environmentally friendly goods and services. Nevertheless, these agreements show a positive evolution of trade and environmental commitments. Moreover, the currently negotiated ACCTS presents a unique opportunity for governments to move forward in the interplay between trade and the environment, not only to balance their objectives but to use trade to advance in pursuing environmental objectives. In this sense, the removal of tariffs on environmental goods and the establishment of new commitments for environmental services and the establishment of new regulations to eliminate harmful fossil fuel subsidies, and the development of guidelines to inform the development and implementation of voluntary eco-labelling programmes and mechanisms may lead the path for more ambitious agreements in the near future.

In conclusion, it can be stated that trade agreements may constitute an important instrument to achieve sustainable development, as on the one hand, they may promote the economic and material development needed to advance towards the achievement of the SDGs, and on the other hand, they may include provisions to reduce or mitigate the potential adverse effects over the environment. For this purpose, drafting coherent and environmentally friendly agreements is necessary. Moreover, there is a need to assess their impact sustainably, for which most countries have included holistic impact assessments that go beyond trade and economic dimensions to incorporate social and environmental dimensions.

Nevertheless, there is room for improvement and open legal and economic discussion topics. Topics such as environmentally friendly product liberalisation and the potential harm of dual-use are still on the table, and agreements such as the recent EU-Kenya EPA and ACCTS present an opportunity to go beyond their definition and certification process. The use of subsidies to promote clean energy or

mitigate the effects of climate change is also part of the debate that negotiators need to address to balance economic and sustainable objectives.

Finally, the absence of dispute settlement binding mechanisms for most environmental-related provisions left these topics to the political will and cooperation schemes between Parties. Nevertheless, the inclusion of articles on fisheries and agriculture in the body of the EU-Kenya text subjected to dispute settlement might be highlighted. There is also a need to review how this mechanism may promote environmental objectives and enhance countries' achievement of the SDG and other climate-related objectives, such as the Paris Agreement commitments.