



Environment and Climate Change in the Draft EU- Mercosur Trade Agreement

Legal Analysis and Proposed Provisions

2021



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About the Project

CISDL undertook a multi-year program of work exploring EU-MERCOSUR in relation to leading trade and investment agreements and through creation of a regional community of practice to enhance legal capacity in both the EU and MERCOSUR Member States, and more broadly. An expert workshop was conducted on February 9, 2021 to discuss legal options in light of progressive practices found in regional and bilateral instruments.

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Forward

As our world economy seeks to recover from the ravages COVID-19 pandemic, trade and investment rules which can foster, rather than frustrate, attainment of the global Sustainable Development Goals (SDGs), are more crucial than ever. At a minimum, commitments to basic sustainability should be part of any future trade or investment agreement, to avoid negative impacts on efforts to achieve other international human rights or environmental obligations, and ideally, international economic law needs to be crafted to contribute directly to achieving the SDGs.

As we draw closer to 2030, the need to meet the commitments made at the United Nations level and at the European Union level is ever more pressing, and new international accords can play an important role. After two decades and 38 rounds of negotiations, the European Union and Mercosur States (Argentina, Brazil, Paraguay and Uruguay), on the 28th of June 2019, reached an agreement in principle for an “ambitious, balanced and comprehensive trade agreement.” The text of the draft agreement, though, suggests that the Parties have not been very ambitious on their sustainable development commitments. Indeed, comparative analysis with other recently-concluded trade agreements reveals that Parties have shown greater degrees of innovation, and respect for their sustainability commitments, with many other trading partners over the years.

On a more positive note, the agreement does contain obligations and specific commitments with regards to environmental protection and climate change, and certain other innovations – detailed in this report – also offer initial markers for progress. Still, the present text of the draft agreement might be better viewed as a starting point for a more ambitious final agreement, in terms of its potential to contribute to achieving the world's SDGs and integrate environmental and social priorities in economic decision-making, as the EU is required to do. The level of political flexibility, for both the EU level and the Mercosur level with regards to improving the draft text, may prove key for its long-term success.

Within this framework, this report reviews the draft agreement and offers proposals for amendments based on the analysis of world-class economic, environmental and climate experts, drawing from a comprehensive comparative analysis of other recent trade agreements concluded by EU and Mercosur countries. At a key moment in these debates, it examines specific textual examples from other trade agreements, considering how certain types of provisions could be integrated in the present draft text. By proposing both basic, and also 'stretch' provisions to more clearly incentivize sustainable development through the new accord, while bearing in mind the political agenda of the Parties, as demonstrated through their current practices, this research contributes to the legal scrubbing process, and also more broadly the present debates on what kind of world economy we seek to re-open, as we struggle to recover from the global pandemic.

This crucial contribution of the CISDL and the expert community of practice that has been convened, across the EU and the Mercosur, with the support of the European Climate Foundation, is an outstanding effort. The work, a key result from over a year of intensive academic research, analysis and debate, admirably incorporates the findings and conclusions of an extremely stimulating and successful roundtable of legal experts, members of the community of practice from EU and Mercosur countries, whose insights and ideas

were invaluable in the process. I do not doubt that this important report will support further public debate on the proposed text of the draft agreement in both regions, mobilizing law and governance engagement that can only strengthen the EU-Mercosur negotiations for a more just, sustainable and ambitious trade agreement, and I am delighted to commend it to you.

Professor Marie-Claire Cordonier Segger, DPhil (Oxon), MEM (Yale), BCL&LLB (McGill), BA Hons, Senior Director, CISDL | Leverhulme Visiting Professor, Bennett Institute for Public Policy, Fellow in Law & LLM Director of Studies, Lucy Cavendish College, University of Cambridge

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Introduction

The southern common market, Mercosur (MCS) and the European Union (EU) share a common interest in building a long-standing economic relationship. The EU has bilateral Partnership and Cooperation agreements with each of MCS states. Further, the bi-regional relationship is based on an Interregional Framework Cooperation Agreement (IFCA) signed between the EU and MCS in 1996 (entering into force in 1999). Its objective was to strengthen existing relations between them, leading to the creation of an Interregional Association¹.

The negotiation towards an EU-MCS Association Agreement started in 2000, with the objective of boosting trade integration among MCS members and create new opportunities for trade and investment with the EU. This agreement represents, for the EU, the deepening of its trade and investment link to the region; and, for MCS, a consolidation of its status as a regional trading bloc. While the negotiations on the ‘cooperation’ and ‘political dialogue’ chapters of the agreement were promptly achieved, the trade pillar has encountered various barriers and opposing approaches throughout its negotiation. In 2004, negotiations were paused within the context of the 2003 WTO Cancun Ministerial Conference, where talks between Brazil (and other developing countries) and the US and the EU ended abruptly. Bilateral negotiations were re-launched in May 2010, but then paused in 2012 due to Paraguay’s MCS suspension². In May 2016 negotiations continued, following a negotiation round in October 2016³. To date 38

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¹ European Commission. “Countries and regions: MCS” (2018), online <http://ec.europa.eu/trade/policy/countries-and-regions/regions/MCS/>. Moreover, the EU had a longstanding interest in supporting the MCS project of regional integration, which it also saw as reinforcing regionalism as an important feature of global governance. See further, in this regard, Fabiano de Andrade Correa, The implementation of sustainable development in regional trade agreements: a case study on the European Union and MCS, Florence: European University Institute, 2013, EUI PhD theses, Department of Law, European University Institute Research Repository, online: <http://hdl.handle.net/1814/28034>.

² Due to the impeachment of its president Fernando Lugo.

³ *Ibid* at 2.

negotiation rounds have been held⁴ and in June 2019, a political conclusion of the negotiations was achieved.

In 2019, the EU exports to MCS accounted for €42.7 bn and its imports reached €38.2 bn. The EU is MCS's second most significant trading partner after China⁵, but when considering both trade and investment flows, the EU represents MCS's largest partner. The EU exported €45bn in goods in 2018, and €23bn in services in 2017⁶, while its investment in the region accumulated a stock of €365bn in 2017. The EU holds investments within the region totaling €381bn, while reciprocal investment in the EU totals €52bn. Despite the scale and importance of the EU-MCS economic relationship, significant barriers remain. According to data from 2018, Brazil ranks as the sixth main investor in the EU, and it is the third destination of EU investment stocks in the world⁷.

Agricultural issues were one of the main elements of dissent during the negotiations. MCS, based on the competitiveness of its agricultural production, has an offensive position. While the EU maintained an overall defensive position, despite some specific interests on dairy, beverages, geographical indications and processed agricultural products. Regarding industrial products, the EU faced MCS's protection in this sector. For this, market access concessions balanced liberalization between these sectors to respond to both Parties' interests⁸.

Acknowledging the relevance of climate change and sustainability, it becomes critical to assess if, and how, international trade agreements incorporate these topics⁹, particularly in the EU-MCS legal text agreement. On one hand, the EU has advanced the incorporation of trade and sustainable development chapters within the framework of its 'Trade for All' strategy, which calls for sustainable development to be considered as an element for inclusion in all relevant areas of FTAs¹⁰. On the other hand, MCS is increasing its environmental awareness as its foundational treaty (Asuncion Treaty) generally addressed sustainable development. Moreover, subgroups within MCS on environment and energy issues have been established¹¹, and while previous trade agreements negotiated by MCS have not included a specific chapter addressing environmental protection, recent bilateral agreements formed between MCS members with other Latin American economies have explicitly covered trade and sustainable development chapters.

⁴ European Commission. "Latest round reports and EU proposals for the trade agreement with MCS" (2018), online: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1769>.

⁵ World Bank. "World Integrated Trade Solution" (2020), online: <https://wits.worldbank.org>.

⁶ *Ibid* at 6.

⁷ Everton Vieira Vargas. "The EU-MCS Negotiations". Friends of Europe. (2018), online: <https://www.friendsofeurope.org/publication/eu-MCS-negotiations/>.

⁸ LSE. "Sustainability Impact Assessment in Support of the Association Agreement Negotiations between the European Union and MCS" (2020). European Commission, online: https://trade.ec.europa.eu/doclib/docs/2018/march/tradoc_156631.pdf

⁹ For further literature, see, e.g., Markus W. Gehring, Marie-Claire Cordonier Segger, Fabiano de Andrade Correa, Patrick Reynaud, Alexandra Harrington and Rodrigo Mella. "Climate Change and Sustainable Energy Measures in Regional Trade Agreements (RTAs)". (2013). ICTSD Global Platform on Climate Change, Trade and Sustainable Energy, online: https://seors.unfccc.int/applications/seors/attachments/get_attachment?code=LQ2JCEUQQWAAAGYGY8I7O19FEHFGIV9; Fabiano de Andrade Correa, *Ibid* at 2; European Parliament. "Using trade policy to tackle climate change" (2019), online: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/642231/EPRS_ATA\(2019\)642231_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/642231/EPRS_ATA(2019)642231_EN.pdf); Tancrede Voituriez and Yann Laurans. "Greening trade agreements: A roadmap to narrow the expectations gap". (2020). Sustainable Development and International Relations; *Ibid* at 9.

¹⁰ *Ibid* at 9. This is also a requirement under EU law, following the objectives and requirements as laid down in Article 191 TFEU on the environmental policy that all other EU policies, including the trade policy, shall aim at a high level of environmental protection and sustainable development. See, in this regard, Ludwig Kramer, "A lost opportunity? The Environment and the EU-MCS Agreement" in Cristiane Derani, Aline Beltrame de Moura, Patrícia Grazziotin Noschang, "Regulamentação europeia sobre a água, energia e alimentos para a sustentabilidade ambiental", Florianópolis Emais, 2021.

¹¹ Amalia Stuhldreher & Virginia Morales Olmos. "Desarrollo sostenible, cambio climático y comercio de energía en el contexto regional del MCS". (2020). Latin American Journal of Trade Policy, 2(5), 65 - 82, online: <https://lajtp.uchile.cl/index.php/LAJTP/article/view/56350/59704>.

From an overall analysis of the publicly available Draft EU-MCS Trade Agreement (published in 2019), it can be argued that regarding environmental dispositions, this agreement is far less progressive than other recently concluded FTAs by the EU. This agreement was negotiated over many years and the environment chapter and related provisions were most likely negotiated even before some of the more recent EU FTAs were concluded. Furthermore, it must be acknowledged that both Parties have different approaches to sustainable development and there is not a common framework for environmental issues among them¹². Nevertheless, the current legal scrubbing process can be used to address some of the most glaring gaps and shortcomings of the current draft EU-MCS Agreement. Further effort should be made to advance a forward-facing agenda inclusive of environmental and climate-related initiatives to bring the agreement in line with current practice.

‘The conclusion of the negotiations was a result of a unique equilibrium of material, strategic and ideological conditions’.

Dr. Julieta Zelicovich, National Council for Scientific and Technical Research, Argentina

The main objective of this report is to analyse the incorporation of environmental commitments in the Draft EU-MCS FTA and propose recommendations for potential revisions that can be done within the legal scrubbing process. The report is divided into two main sections. First, using both a descriptive and comparative approach, the most relevant chapters within the agreement will be reviewed to identify areas in which environmental-related clauses can be incorporated, taking into account how other agreements have addressed this matter. Second, a comparative approach will be used to explain the significance and restrictions of the environmental commitments found in the Trade and Sustainable Development Chapter of the agreement. Accordingly, this section adopts the analytic framework of level playing field provisions in FTAs – where the three groups of provisions (two substantive and one procedural) are identified: ones focused on the implementation of multilateral (herein, environmental) obligations, requirements for existing standards not to be weakened, and enforcement mechanisms.¹³

To establish a benchmark within EU and MCS negotiations, the comparative analysis is based, on the one hand, on the latest EU FTA agreements negotiated: EU-Japan Economic Partnership Agreement (2019)¹⁴, EU-Singapore FTA (2019), CETA (2017)¹⁵, EU-South Korea FTA (2015), and EU-Vietnam FTA (2020). In addition, agreements between the EU and Latin American and Caribbean countries are considered: UE-CARIFORUM Economic Partnership Agreement (2008), and EU-Peru-Colombia FTA (2013) and EU-Central America Association Agreement (2012). On the other hand, even though MCS as a block has not incorporated sustainable development chapters in its negotiations, it is important to consider how its

¹² María Victoria Álvarez & Julieta Zelicovich. “El acuerdo MCS-Unión Europea: un abordaje multicausal de la conclusión del proceso negociador” (2020). *Relaciones Internacionales*, (44), 107-125., online:

https://revistas.uam.es/relacionesinternacionales/article/view/relacionesinternacionales2020_44_006.

¹³ For basic literature adopting a similar framework, see, e.g., L Bartels, ‘Human Rights and Sustainable Development Obligations in EU Free Trade Agreements’ (2013) 40(4) *Legal Issues of Economic Integration* 296, 306–307; K Hradilová and O Svoboda, ‘Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness’ (2018) 52(6) *Journal of World Trade* 1019, 1023–1028; S Jinnah and E Morgera, ‘Environmental Provisions in American and EU Free Trade Agreements: A Preliminary Comparison and Research Agenda’ (2013) 22(3) *Review of European, Comparative and International Environmental Law* 324.

¹⁴ This analysis shares thoughts with Markus W. Gehring and Marios Tokas, Briefing 6: The UK-Japan FTA – Comparing the Agreement with EU-Japan CEPA and other EU FTAs, CISDL Legal Brief 2020, online: <https://www.cisdsl.org/wp-content/uploads/2020/10/Briefing-6-UK-Japan-FTA-Comparative.pdf>.

¹⁵ CETA contains two separate chapters on trade and sustainable development.

member states have recently addressed these issues with other Latin American economies. This can help identify their negotiation agenda and boundaries. In this sense, in some cases, recent FTAs are considered for the analysis: MCS-Colombia (signed in 2017 and pending ratification)¹⁶, Uruguay-Chile FTA (2017), Brazil-Chile (subscribed in 2018, pending ratification in Brazil), and Argentina-Chile (2019). It can be acknowledged that even though FTAs negotiated by countries such as the US, Canada, and New Zealand contain high environmental standards, the main objective of this report is to present a benchmark in the framework of EU-MCS negotiations. Taking into consideration the long-lasting negotiation process and how MCS has internally addressed environmental issues, the latest environmental provisions negotiated by third economies may not be appropriate. Nevertheless, in order to phrase some of the proposed amendments, TCA¹⁷ and CPTPP have been used as reference¹⁸.

This assessment focuses around the following general categories: For section 1, relevant areas in which environmental provisions should be included are described; and for section 2, the following elements are included: relevant references found in the trade and sustainable chapter, defining objectives and purposes; 2) provisions regarding the implementation of multilateral environmental obligations; 3) obligations for standards not to be weakened; and 4) transparency, cooperation and enforcement mechanisms.

An initial version of this report was circulated among a Community of Practice comprised by experts, practitioners, academics and stakeholders from EU and MCS countries. In order to strengthen the analysis, experts were invited to send their comments and suggestions on the initial report and possible amendments to the EU-MCS Draft Agreement. Moreover, they participated in the International Legal Experts Roundtable ‘Examining Options for the EU-MCS Agreement’ (hereinafter ‘the Roundtable’), held online in February 2021¹⁹, in which the community of practice discussed how the EU-MCS Draft Agreement could be amended. From the analysis, 42 proposed amendments to the EU-MCS Draft Agreement are identified and phrased. The proposed provisions are divided into two categories. First, modifications that can be incorporated in the legal scrubbing process as the amendments clarify and rephrase existing provisions, strengthen cooperation schemes, and extend commitments in areas in which both Parties have expressed their common interest (Annex 2). Second, amendments that would require renegotiation among the Parties, which can be considered for future stages in the agreement as provisions that address issues in which both the EU and MCS have not reached an agreement or that have not been previously negotiated (Annex 3).

‘This transnational agreement will greatly support the international trade system and sustainable development’.

Prof. Tobias Stoll, University of Göttingen, Germany.

¹⁶ Nevertheless, this agreement does not contain a Chapter on Trade and Sustainable Development.

¹⁷ For a detailed analysis on the UK position on TCA, see Marios Tokas and Markus W. Gehring, Briefing 4: The UK’s Draft Position - Exploring the basis for negotiation with the EU, CISDL Legal Brief 2020, online: <https://www.cisdsl.org/wp-content/uploads/2020/10/Briefing-4-The-UKs-Draft-Text-in-Comparison.pdf> and M W Gehring, “Analysis 5 of the Brexit Deal: Environment and Climate Provisions” 22 Jan 2021 online: <http://eulawanalysis.blogspot.com/2021/01/analysis-5-of-brexit-deal-environment.html>; Markus Gehring and Freedom Kai Phillips. ‘Legal Options for Post-Brexit Climate Change and Energy Provisions in a Future UK-EU Trade Agreement. (2019). CISDL, online: www.cisdsl.org/wp-content/uploads/2019/07/Post-Brexit-Provisions-report-final.pdf.

¹⁸ TCA and CPTPP are not part of the comparative analysis.

¹⁹ The roundtable took place on February 9th, 2021. See Annex 1 for the International Legal Experts Roundtable Report.

Section I: Overall Assessment

This first section focuses on the analysis of the most relevant chapters of the EU-MCS FTA Draft. For this purpose, various sections of the draft agreement²⁰ will be described and compared with other EU Agreements. From this analysis, specific provisions will be proposed to incorporate a sustainable and climate change perspective throughout the agreement.

Preamble

While noting the restricted function of preambles in terms of the establishment of precise obligations, their probative value is key in terms of the interpretation of free trade agreements, especially where balances need to be struck between differing values. Additionally, preambles provide an initial window into Parties' main interests and objectives throughout the agreement. It must be acknowledged that the available draft EU-MCS Trade Agreement does not provide any publicly available preamble. However, some basic conclusions can be drawn from other treaties to inform general best practices.

There are some minimal divergences in existing practice and all agreements analysed refer to sustainable development in their preambles. The EU-Japan, EU-Singapore and EU-Vietnam FTAs all highlight the importance of pursuing environmental objectives relevant for achieving sustainable development within the Contracting Parties' economic, trade and investment relationships as a basic matrix. Furthermore, all the assessed FTAs stress the importance of the 'social' dimension, which might be interpreted to include a multidimensional perspective, complementing economic development. Only the EU-South Korea FTA refers to the protection of natural resources.

Therefore, based on current practice, the EU-MCS could include a preamble with stronger language on environmental protection and climate change. In terms of explicit references to the environment and sustainable development, there is further divergence in the total number of references and the language used to emphasise the importance of said obligations. Accordingly, the most numerous environmental references in the preambles are found in CETA, EU-Central America Association Agreement and EU-CARIFORUM Economic Partnership Agreement (in three paragraphs), followed by the EU-Singapore and EU-South Korea FTAs (in two paragraphs), while the least are found in the EU-Vietnam FTA, EU-Colombia-Peru FTA, and EU-Japan Economic Partnership Agreement (in one paragraph).

In terms of the language used, EU-Colombia-Peru FTA uses the strongest language overall.²¹ By contrast, relatively weaker language is used in CETA, EU-South Korea FTA, EU-Singapore FTA, EU-CARIFORUM and EU-Vietnam FTA. The weakest language is used in the EU-Japan Economic Partnership Agreement and EU-Central America Agreement. The former merely 'recognises' the importance of maintaining 'high levels of environmental [...] protection'; and the latter 'highlights' their commitment to work together in pursuit of sustainable development and the Parties are 'aware' of the need to promote sustainable development.

²⁰ Selected chapters, titles, sections and sub-sections of the EU-MCS Draft Agreement.

²¹ EU-Colombia-Peru FTA, Preamble; 'COMMITTED to implementing this Agreement in accordance with the objective of sustainable development, including, the promotion of economic progress, the respect for labour rights and the protection of the environment, in accordance with the international commitments adopted by the Parties'.

In this context, it seems relevant to compare the latest FTAs signed individually by MCS members to analyse if new sustainable development objectives have been included in their preambles. In the case of MCS-Colombia, there is no reference to sustainable development, only to economic and social development. Nevertheless, Brazil-Chile FTA promotes the protection and conservation of the environment and the contribution of trade to sustainable development; in Argentina-Chile FTA, the Parties agree on the promotion of sustainable development, as well as on the implementation of the agreement in a manner consistent with the protection and conservation of the environment; and in the Uruguay-Chile FTA, countries agree on the promotion of sustainable development, on the implementation of the agreement in a manner consistent with the protection and conservation of the environment, and the conservation, protection and improvement of the environment, including through the management of natural resources in their respective territories.

From the analysis above, it is clear that, as the EU and MCS have to include a preamble in the agreement, there is ample opportunity to refer explicitly to sustainable development. For this purpose, two provisions are proposed in Annex 2.

Regional integration clause

The EU-MCS Draft incorporates a regional integration clause in which Parties recognize that despite ‘the differences in their respective regional integration processes, [they will] foster conditions which facilitate the movement of goods and services between and within the two regions’ (Article X.1). It also provides some clarifications regarding movement of goods and services.

In contrast with other agreements signed between the EU and Latin American and Caribbean integration processes that also incorporate this clause, such as EU-CARIFORUM, EU-Central America, and EU-Colombia-Peru, the EU-MCS does not make any reference to the use of regional integration to address economic, social or sustainable development challenges.

Moreover, the inclusion of regional integration in other parts of the EU-MCS agreement mainly refers to the movement of goods and services. However, other agreements refer to cooperation for regional integration to reinforce environmental objectives and the relevance of these processes for sustainable development. For example, EU-Colombia-Peru FTA, in its general provisions, recognizes regional integration as an element that may promote economic and social development (Article 10). The EU-Central America Agreement refers to the harmonization of integration instruments, including those referring to energy and the environment, among others (Article 72.4). The EU-CARIFORUM Agreement, in its section for trade partnership and sustainable development, recognizes, among other elements, Parties’ sustainable development strategies to develop their regional integration (Article 4.5). Additionally, Parties ‘reaffirm their commitments to facilitate the regional and sustainable development of CARIFORUM states when making the necessary arrangements for the progressive, reciprocal and asymmetric liberalisation of investment and trade in services and for cooperation on e-commerce’ (Article 60.1). Furthermore, in Chapter 4 ‘Environment’, this agreement explicitly refers to regional integration and use of international environmental standards, stating the importance of establishing ‘effective strategies and measures at the regional level to face environmental challenges to ensure a sustainable and sound management of the environment’ (Article 185).

The comparative analysis shows that there is an opportunity for EU-MCS Parties to recognize the important capability of regional integration to deepen sustainable development and address social and economic challenges; this argument was consistently reinforced by the Community of Practice during the online Roundtable. Accordingly, it is proposed that a provision that acknowledging the relevance that integration processes have in promoting regional sustainable development (Annex 2) be added to general discussion of regional integration (Article x).

‘It is essential to ensure that the MCS-EU Agreement confirms that there is no other purpose for regional integration than to face the economic and social challenges of sustainable development’.

Prof. Marcus Maurer de Salles, Universidade Federal de São Paulo (UNIFESP), Brazil.

Trade in goods and rules of origin

The core of most free trade agreements is its trade in goods chapter, as such chapters contain the rules on reciprocal trade preferences and market access conditions. In preferential agreements, market access provisions are complemented with rules of origin as to identify which goods will be subjected to preferential treatment. In its provisions referring to trade in goods and rules of origin, the EU-MCS Agreement Draft states that the Parties ‘agree to establish a Free Trade Area over a transitional period starting from the entry into force of this Agreement, in accordance with the provisions of this Agreement and in conformity with Article XXIV of the GATT 1994’ (Article 1). This is a common reference included in all agreements assessed, as the Parties are all WTO members. Under the Title ‘Trade in Goods’, chapters on ‘custom duties’, ‘non-tariff measures’ and ‘common provisions’ are included. While the structure may differ within individual chapters, similar commitments and scope are recognized in other EU FTAs.

Among the common provisions, national treatment, in accordance with Article III of GATT 1994 is first included (Article 2). While the provision is equivalent with that included in other EU agreements, differences can be noted in the place in which it is drafted, as most agreements (including EU-MCS) state national treatment at the beginning of the Chapter within common provisions, and others include it under non-tariff measures (EU-Central America Agreement and EU-Korea FTA). Tariff reductions and/or elimination are granted to goods originated on contracting partners which ‘means qualifying under the rules of origin’ (Article 3.1), according to the ‘Schedules set out in Annex 1’ (Article 3.2). This Article also defines what would be understood as a tariff, the classification of goods, and that ‘no new customs duties shall be introduced’ (Article 3.7). These clauses are common to all EU FTAs, and the relevance lays on the negotiated schedules, including scope, base rate, quotas, excluded products, etc. which can be found in the respective schedules, annexed to the chapter. Hence, the main controversies are not on the *corpus* of the chapter, but on the effects of trade liberalization derived from the negotiated schedules and tariff reductions.

Regarding tariff reduction/elimination, on the one hand, the EU-MCS FTA comprises a wide liberalization of trade in goods. MCS will open 91% of its market to EU exports in a transition period of up to 10 years. Sensitive products are subject to a longer transition period of up to 15 years. On the other hand, EU will liberalise 92% of its imports coming from MCS within 10 years. This liberalization includes both agricultural and industrial goods, but it must be stated that some sensitive agricultural goods will be subject to tariff

quotas. For MCS exports, the EU established the following tariff quotas: 99,000 tons for beef; 180,000 tons for poultry; 25,000 for pork meat; elimination of tariffs to 180,000 tons of sugar from Brazil, and new quota of 10,000 tons free of tariffs for Paraguay; 450,000 tons for ethanol; 60,000 tons for rice; 45,000 tons for honey, 1,000 tons for corn. Moreover, on a reciprocal basis, the following tariff quotas would be introduced with the agreement: 30,000 tons for cheese; 10,000 for milk powder; 5,000 tons for infant formula. All tariff quotas would be introduced according to schedules within a 10 year-period of implementation²².

Two main points can be highlighted with regard to the scope of the trade in goods chapter, and how it could better reflect sustainable development. Firstly, there is criticism of the environmental impact of trade liberalisation derived from the EU-MCS FTA. This impact comes dually from the increase in GHG emissions associated with expanded trade exchange between both regions, and from tariffs, quotas, and liberalisation of agricultural markets, with special emphasis on (but not limited to) beef production²³. According to this criticism, beef production is not only a highly polluting industry, responsible for high GHG emissions, but is also directly related to the deforestation of the Amazon rainforest in Brazil as result of the clearing of land for cattle and feed production. Therefore, the expected market expansion for beef, poultry, and other meats due to the agreement is perceived as a threat to the environment.

The EU-MCS Draft refers to environmental considerations within its market access chapter as part of general exceptions in which '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)). Nevertheless, no positive actions nor defensive provisions to this end are included within the draft.

The second point relates to instruments that could be used to further promote sustainable trade in goods between the two regions. One instrument that has been discussed to promote sustainable production and consumption are carbon-adjustment taxes, to compensate the emission of various products, particularly imports, which is not addressed in the chapter. While their incorporation in the Agreement may help promote more sustainable production in both regions, attention should be put on their implementation²⁴. Various members of the Community of Practice commented that carbon neutrality can be achieved through the promotion of carbon markets or carbon adjustment taxes. These instruments must be aligned with Paris Agreement objectives²⁵. Additionally, experts highlighted that the approach to carbon markets differs between the EU and MCS, and that further work among the Parties is needed to reach agreement on this matter. If carbon-adjustment taxes are indeed imposed in future, these should be consistent with GATT Article III (Annex 3).

²² Luciana Ghiotto, & Javier Echaide. "Analysis of the agreement between the European Union and the MCS". (2019). Hg. v. Anna Cavazzini MEP. Berlin, Buenos Aires, Brüssel, online: <https://powershift.de/analysis-of-the-agreement-between-the-european-union-and-the-MCS/> and *Ibid* at 9.

²³ *Ibid* at 23 and James Harrison, Sophia Paulini, Laurens Ankersmit, Harro van Asselt, Ana Flávia Barros-Platiau, Luis Eslava, Bård Harstad, Karina Marzano, Werner Raza, Carlos Rittl, and Cathrin Zengerling. "Academic Statement: Proposals on the EU-MCS Association Agreement and the Environment" (2021). Warwick University, online: <https://warwick.ac.uk/fac/soc/law/research/centres/chrp/governance/euMCSaa/statement.pdf>.

²⁴ For more details and basic literature regarding carbon-adjustment taxes, see: Matthew Porterfield. "Border Adjustments for Carbon Taxes, PPMs, and the WTO". (2019). University of Pennsylvania Journal of International Law 41; James J. Nedumpara & Shiny Pradeep. "Implementing carbon tax: from rhetoric to reality". (2020). Indian Journal of International Law, online: <https://doi.org/10.1007/s40901-020-00122-z>; Andrei Marcu, Michael Mehling, & Aaron Cosbey. "Border Carbon Adjustments in the EU: Issues and Options" (2020). ERCST, Roundtable on Climate Change and Sustainable Transition, 2020, online: <https://ssrn.com/abstract=3703387>; Joel Trachtman. "WTO law constraints on border tax adjustment and tax credit mechanisms to reduce the competitive effects of carbon taxes". (2017). National Tax Journal, 70(2), 469-493.

²⁵ John Strand. "Climate Finance, Carbon Market Mechanisms and Finance "Blending" as Instruments to Support NDC Achievement under the Paris Agreement". (2019). The World Bank.

Regardless of possible negative outcomes of market access dispositions, another instrument that can be used is tariff reductions that stimulate trade in the so called ‘environmental goods and services.’ These can include energy saving products, environmental monitoring products, waste management goods, products for water treatment, and renewable energy goods, among others. Negotiations to promote liberalization of trade in environmental goods and services have been ongoing for many years, both within the WTO umbrella and through other plurilateral negotiations.²⁶ While such negotiations seem to be stalled, provisions looking to promote trade in environmental goods and services are also found within trade and sustainable development chapters and under cooperation schemes of regional trade agreements. For instance, the EU-Colombia-Peru Agreement agrees on ‘Parties’ promotion of environmental goods and services’ (Article 271.2), and CPTPP refers to ‘Parties’ cooperation in terms of motor vehicles using alternative fuels’ (Article 5.1(c) of the Appendix between Japan and Canada). Despite this, the EU-MCS Draft does not reference similar provisions within its ‘Trade in Goods’ and ‘Trade and Sustainable Development’ chapters. Incorporating a provision on promoting trade in environmental goods and services within the ‘trade in goods’ chapter, as well as a provision on trade favoring sustainable development within the TSD chapter, could be valuable means to promote trade as an engine for sustainable development. For instance, such trade could include automobiles and their parts, favouring those using alternative fuels, as these products are part of sensitive sectors within the productive structures of both MCS and the EU. Additionally, as discussed by the Community of Practice, a second specific sector to promote is renewable energies and the reduction of fossil fuel use (Annex 3).

As the EU-MCS Agreement was concluded after the WTO Ministerial Conferences of Bali (2013) and Nairobi (2015), export competition is widely described in terms of the decisions adopted in this framework. For instance, ‘the Parties reaffirm their commitments expressed in the 2015 Nairobi Ministerial Decision on Export Competition’ (Article 7.1). This is particularly relevant for agricultural export subsidies that the EU granted its producers and listed in other agreements, making this one of the most controversial topics within both blocs’ negotiations. Regarding the rules of origin annex, this section is similar to those included in other EU FTAs, and it describes the regulation and specific dispositions for a product to be considered originally from a member party in order to benefit from the preferences of the agreement. No special references or provisions for environmental goods are included to this respect.

‘Lowering tariffs for climate-friendly goods and services or creating new rules for removing fossil fuel subsidies are positive trade measures that could be included to enhance climate effectiveness of the agreement’.

Prof. Christina Voigt, University of Oslo, Germany.

Technical barriers to trade, and sanitary and phytosanitary measures

Technical barriers to trade (TBT)

²⁶ See Fabiano de Andrade Correa, “The Role of Law in the Green Economy: Challenges and Opportunities for the Liberalization of Environmental Goods and Services” in ‘Fostering Development Through Opportunity, Inclusion and Equity, World Bank Legal Review, edited by Hassane Cisse, N.R. Madhava Menon, Marie-Claire Cordonier Segger and Vincent O. Nmeihelle, 2013, online: <https://doi.org/10.1596/978-1-4648-0037-5>.

The EU-MCS Agreement directly refers to technical barriers to trade in Chapter 5 and the “Annex on motor vehicles, equipment and parts thereof”, as well as TBT in the context of “Customs and trade facilitation” (Chapter 6), “Sanitary and phytosanitary measures” and the section “Dialogues”.

When comparing these chapters of the EU-MCS Draft Agreement against their counterparts from other FTAs and Agreements, in general, all follow the same structure and language. Some differences can be found in terms of the length and focus of the chapters. For example, CETA does not develop the provisions, as it refers to them within the WTO TBT Agreement. EU-Vietnam FTA relies on technical assistance and cooperation due to the different stages of development of the Parties.

Chapter 5 of EU-MCS FTA follows traditional EU Agreements regarding TBT's content. In this sense, it reaffirms Parties' rights and obligations under the WTO TBT Agreement (Article 2), considering legitimate objectives such as '[...] protection of human health or safety, animal or plant life or health, or the environment' (Article 2.2 WTO TBT Agreement). The EU-MCS chapter on TBT defines its scope, including the 'preparation, adoption and application of standards, technical regulations and conformity assessment procedures that may affect trade in goods between the Parties' (Article 3.1), excluding purchasing specifications prepared by governmental bodies and SPS measures addressed in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures. It reinforces cooperation towards 'the identification, promotion, development, and implementation, as appropriate of trade facilitating initiatives, on a case-by-case basis' (Article 4.1). It is important to highlight that this cooperation does not 'undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives' (Article 4.6(b)).

Regarding technical regulations (Article 5), Parties agree to make use of best regulatory practices with regard to the preparation, adoption and application of technical regulations, taking into consideration international practices, harmonization, impact analysis, and characteristics and special needs of micro, small and medium-sized enterprises. This chapter also refers to the importance of international standards, such as ISO, IEC, ITU, CODEX ALIMENTARIUS (Article 6) and includes conformity assessment procedures (Article 7) and transparency (Article 8).

Acknowledging eco-labelling as an environmental performance certification that raises awareness among consumers, this topic has been addressed only in trade and sustainable development chapters, specially within the cooperation schemes. In Article 9 of MCS-EU FTA Draft, 'marking and labelling', there is one reference to 'environment' in the context of protection against deceptive practices to accept non-permanent or detachable labels (Article 10.2(f)). When comparing other agreements, it is interesting to note that the EU-Vietnam FTA in its TBT chapter states that when requiring mandatory marking or labelling of products, Parties shall 'not require any prior approval, registration or certification of the labels or markings of products as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements, unless it is necessary in view of the risk of the products to human, animal or plant health or life, the environment or national security; [...]' (Article 5.9(2b)).

Considering the elements previously mentioned, it seems relevant to deepen the EU-MCS Agreement's commitments to promote eco-labelling cooperation in the TBT chapter (Article 10, 'cooperation and technical assistance'), rather than merely referencing it in the Trade and Sustainable Development chapter. Additionally, following the practice stated in the EU-Singapore FTA (Article 7.5(2)), environmental considerations can be introduced in the adoption of technical regulations. These provisions are included in Annex 2 as they respond to cooperation schemes and previously negotiated topics.

'It is important to properly acknowledge the role and importance of bottom-up, regulatory cooperation in paving the way for ever-increasing trade flows under conditions of reciprocity and mutual benefit.'

Prof. Panagiotis Delimatsis, University of Tilburg, Netherlands

Sanitary and phytosanitary measures

The EU-MCS Agreement Draft incorporates a chapter on Sanitary and Phytosanitary measures, a standard chapter in FTAs between WTO member states. The main objective of the chapter can be found in Article 1.1 'To protect human, animal or plant life and health in the territory of the Parties while facilitating trade between the Parties under the scope of the implementation of the sanitary and phytosanitary (SPS) measures.'

Moreover, the chapter looks to effectively incorporate WTO SPS Agreement obligations, including its risk-based approach to regulations (Article 4). The chapter identifies competent authorities (Article 5), general obligations (Article 6), trade facilitation measures (Article 7), alternative measures (Article 8), equivalence (Article 9), and recognition of animal health and plant pest status and regional conditions (Article 10), transparency (Article 11), notifications (Article 12), consultations (Article 13), emergency measures (Article 14), and verification of the official control system (Article 15). These provisions are similar in language and scope with other EU FTAs assessed.

One important element discussed during the negotiations was the precautionary principle. While included in the Trade and Sustainable Development Chapter, it is not directly addressed within the SPS chapter. This has been recognized as an opportunity by the EU-MCS Community of Practice. When referring to transparency, Article 11(f) states that the adoption of provisional measures will be done 'where relevant scientific evidence is insufficient'. Being described as a provisional measure, it could be interpreted as exceptional and temporary, only to react in situations of emergency until scientific information is available, leaving the burden of proof to the authority that is adopting the measure. In this context, within this Article of the SPS chapter, it is proposed to include a provision in which Parties are allowed to adopt sanitary or phytosanitary measures based on the precautionary principle, when scientific evidence is insufficient or inconclusive and there is a risk on human, animal or plant life or safety in its territory (Annex 3).

As in the EU-Colombia-Peru and EU-Vietnam FTAs, a provision on special and differentiated treatment is included (articles 100 and 6.15, respectively). In Article 19, the EU-MCS Draft Agreement explicitly refers to Paraguay's capability to implement Article 10 ('Recognition of animal health and plant pest status and regional conditions'), allowing the EU to give an opportunity to discuss the issue and enter into consultations to agree on 'a) alternative import conditions to be applied by the importing Party according to Article 7 (alternative measures); or b) technical assistance according to Article 18 cooperation and technical assistance; or c) a transitional period of 6 months for proposed measures to apply to goods from Paraguay, which could be exceptionally extended for another period of no longer than 6 months'. The provision in EU-Vietnam FTA offers a more general commitment, which can be replicated in the EU-MCS Agreement as the Parties already acknowledged special and differentiated treatment, especially in the case of Paraguay (Annex 2). This provision is based on providing technical assistance to comply with the EU's SPS measures, which has been recognized by the Community of Practice as a benchmark in addressing food safety and the use and generation of international standards.

A novel feature in the EU-MCS Draft is the existence of a chapter on ‘Dialogues’, which focuses on ‘strengthen their mutual confidence and agree to establish dialogues and exchange information to improve their common understanding on the following subjects: 1. Animal welfare matters. 2. Issues related to the application of agricultural biotechnology. 3. Combating antimicrobial resistance (AMR). 4. Scientific matters related to food safety, animal and plant health’ (Article 1). This chapter establishes a sub-committee to permanently work on these issues, not endangering ‘the independency of their respective national or regional agencies’ (Article 7.1), nor affecting ‘the rights and obligations of each Party to protect confidential information’ (Article 7.2).

Therefore, the Dialogues section furthers cooperation schemes to provide more information into policymaking in the recognized areas. Increased participation of relevant stakeholders could improve the efficiency of the dialogue, and to this end, a provision is proposed establishing that the sub-committee will be responsible to promote and disseminate information on its work of competence to business circles and civil society groups, which will be invited to participate in this discussion (Annex 2). According to the Community of Practice, the ‘Dialogues’ section in the draft agreement is a novel contribution that enhances cooperation in this area. It is noted that if successful, its work can be extended to other pertinent issues, such as sustainability standards and TBT/SPS environmental provisions that could lead to the creation of common rules on certifications and accreditation, including the harmonization of standards for different products (e.g., pesticides).

‘The precautionary principle, labelling, and social impact assessments can be instruments that could be used to aid the interpretation of the agreement’.

Prof. Cristiane Derani, Federal University of Santa Catarina, Brazil

Bilateral safeguards

The EU has been incorporating bilateral safeguards chapters in its negotiations, as seen in agreements such as the EU-Central America, EU-Japan, EU-Singapore, EU-Vietnam, and EU-Colombia-Peru. This mechanism allows Parties to impose safeguards on imported products that, due to preferential access, cause or threaten to cause serious damage to domestic industries.

The chapter establishes the conditions for the application of bilateral safeguards measures (Articles 2-4), their form and duration (Articles 5-8), as well as investigation and transparency procedures (Articles 9 and 10), including provisional safeguards (Article 14) and public notice (Article 15). It can be highlighted that when imposing a safeguard measure to MCS, Paraguay will be excluded unless the investigation demonstrates that Paraguayan exports caused the injury.

No previous agreement ties bilateral safeguards to climate change or environmental issues, and as this chapter only presents procedural aspects, there is not enough space to introduce a specific environment-related provision.

Government Procurement

The EU-MCS Draft includes a chapter devoted to Government Procurement, which recognises the contribution of transparent, competitive, and open tendering to economic development. It sets as an objective an ‘effective opening of their respective procurement markets’ (Article 1.1). Taking into consideration that MCS members do not adhere to the Government Procurement Agreement (GPA), the chapter comprises definitions (Article 2), scope and coverage (Article 3), valuation (Article 4), general exceptions and principles (Article 5 and 6, respectively), amongst other relevant topics. Other agreements, such as EU-Japan and EU-South Korea refer to GPA to establish government procurement frameworks, but EU-Japan expands the definitions.

In the EU-MCS Draft Agreement, within ‘General exceptions’ (Article 5) to the government procurement chapter, an environmental-related provision is included. It states that nothing in the chapter will prevent Parties from adopting measures ‘necessary to protect human, animal, or plant life or health including environmental measures’ (Article 5.2(c)). This provision builds on GPA general exceptions but adds the term ‘environmental measures’. A similar provision is included in the EU-Central America Agreement (Article 210.6).

In addition, the EU-MCS Agreement states that technical specification provisions do not intend to ‘preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or protect the environment’ (Article on Technical Specifications, 16.6). This provision builds on GPA and it is also included in EU-Singapore, EU-Vietnam, and CETA.

In the EU-MCS Agreement, the Parties directly agree that ‘the evaluation criteria [...] of tender documentation may include, among others, [...] technical merit environmental characteristics’ (Article 17.3). This provision is also included in EU-Singapore, EU-Vietnam, and CETA, but technical merit and environmental characteristics correspond to a separate criterion.

Based on the provisions included in EU-MCS and other EU FTAs, there is space for the Parties to agree on more environmental considerations throughout the procurement procedure. For this, a specific provision is proposed in ‘General Principles’ (Article 6), which ensures Parties take into consideration environmental, labour and social considerations through the procurement process. As stated by the Community of Practice, this provision expands the agreed definition and includes environmental considerations as a general principle, which is recommended in Annex 3. Moreover, within Article 28 on ‘Cooperation in Government Procurement’, a provision to enhance the exchange of information and cooperation on fair and ethical trade is included, which considers certifications and labelling schemes (i.e., eco-labelling). As it refers to a cooperation scheme, it is proposed in Annex 2.

Intellectual property

Besides affirming Parties’ obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), this chapter includes main intellectual property rights and their scope of protection. However, some elements such as patent and plant variety protections are not fully addressed in the updated version of the draft. This raises some concerns as there is no clarity if new elements will be added in the final version. In terms of patents, the current version only refers to Parties’ effort to adhere to the Patent Cooperation Treaty (Article X. 40), leaving aside a previous version that expanded the terms of protection or the exclusion of environmentally harmful inventions from patentability, which has been previously included by the EU in Agreements such as EU – CARIFORUM.

Article X.6 refers to the protection of Biodiversity and Traditional Knowledge, in which countries recognize ‘the importance and value of biological diversity and its components and of the associated traditional knowledge, innovations and practices of indigenous and local communities’²⁷. They also recognize their rights and obligations adopted under the Convention on Biological Diversity (1992) with respect to access to genetic resources (Article X.6(2)) and, the Parties ‘agree that access to genetic resources for food and agriculture shall be subject to specific treatment in accordance with the International Treaty on Plant Genetic Resources for Food and Agriculture (2001)’ (Article X.6(2)).

Biodiversity and traditional knowledge are also included in other EU FTAs, such as the EU-CARIFORUM Agreement, EU-Colombia-Peru FTA and EU-South Korea FTA; however, these agreements contain more elements, and stronger language is used. In EU-CARIFORUM Agreement (Article 150), Parties recognise the importance ‘of *taking appropriate measures, subject to national legislation, to preserve traditional knowledge and agree to continue working towards the development of internationally agreed sui generis models for the legal protection of traditional knowledge*’ (Article 150.2) and Parties ‘*respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity*’ (Article 150.1). Even though EU-MCS Draft refers to the revision of the Article ‘subject to the results and conclusions of multilateral discussions’ (Article X.6(3)), it does not point to a specific fora. In this sense, EU-CARIFORUM Agreement and EU-South Korea FTA refer to WIPO and the WTO (Article 150.5 (a)-(b) in EU-CARIFORUM Agreement and Article 10.40(2a)-(2b) in EU-South Korea FTA). Additionally, while EU-CARIFORUM Agreement mentions patents in this matter, the EU-Colombia-Peru FTA goes further by emphasizing the ‘usefulness of requiring the disclosure of the origin or source of genetic resources and associated traditional knowledge in patent applications’ (Article 201.7).

From this analysis, it can be argued that it is important for EU-MCS Agreement to recognize the importance of traditional or indigenous knowledge to understand ecological impacts of climate change on cultural and social welfare. To this end, amendments are proposed to Article x.6 ‘Protection of Biodiversity and Traditional knowledge’ to strengthen the language in its provisions (Annex 3). Furthermore, experts from the Community of Practice stressed the importance of referring to the Nagoya Protocol to reinforce the protection of genetic resources and traditional knowledge, and for this, an amendment in Article x.6(8) is proposed (Annex 3).

Regarding plant varieties, the draft dictates that ‘Each Party shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants adopted in Paris on 2 December 1961, as revised in Geneva on November 10, 1972, and on October 23, 1978 (1978 UPOV ACT) or on March 19, 1991 (1991 UPOV ACT) and shall cooperate to promote the Protection of Plant Varieties’ (Article X.41). In this case, even though the Article says, ‘shall protect’, Parties may be part of either the 1978 or 1991 UPOV ACT. This gives freedom to EU members, as the majority are part of 1991 UPOV ACT, and MCS countries which only have subscribed to the 1978 UPOV ACT. In contrast, other EU Agreements, such as EU -Japan and EU-South Korea state that ‘Each Party shall provide for the protection of new varieties of all plant genera and species in accordance with its rights and obligations under the 1991 UPOV Convention’ (Article 14.38 of EU-Japan Agreement).

²⁷ The same provision is included in EU-Colombia-Peru FTA (article 201.1).

Geographical indications (GIs) are referred to in sub-section 4 of the EU-MCS Draft and the addition of new geographical indications is stated in Article X.34 (listed in Annex II of the agreement). GIs have always been a priority in the EU negotiations, promoting comprehensive lists for protection. This presents a challenge for MCS countries as some terms are used in highly commercialized products in their domestic markets²⁸. Within the negotiations, it was agreed, for example, that the geographical indication 'Parmigiano Reggiano' shall not prevent prior users of the term 'Parmesão' in the territory of Brazil, and of the term 'Parmesano' in the territory of Argentina, Paraguay and Uruguay. Acknowledging the difficulty in negotiating this right, the European Union has also used GIs as an instrument to promote biodiversity. The EU and CARIFORUM have established in Article 164(c) a cooperation clause to identify products that could benefit from protection through GIs, while preserving traditional knowledge and biodiversity. This type of clause can be instrumental for MCS countries to market some products that can disappear if not protected, affecting food quality and safety. As such, although it is a novel approach, a provision is proposed in 'Cooperation and transparency' (Article X.39) that relies on Parties' cooperation to identify products that can benefit from GIs protection to promote and protect biodiversity and traditional knowledge. As it is limited to cooperation activities, it is proposed in Annex 2.

In the EU-MCS Draft, technology transfer is referred to in the objectives, and the nature and scope of the obligations in the intellectual property subsection. It is stated that the objective of the chapter is to reach 'an adequate and effective level of protection and enforcement of intellectual property rights that provides incentives and rewards to innovation while contributing to the effective transfer and dissemination of technology' (Article X.2(b)). Additionally, it is argued that 'nothing shall prevent a Party from adopting measures necessary to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology' (Article X.3(3)). This provision is commonly found in EU FTAs that refer to the potential abuse of intellectual property rights holders.

When comparing other EU Agreements, the depth of these types of obligations can be observed. The EU-Central America Agreement directly promotes technology transfer between both regions for the creation of a viable technological base in the Central America Party (Article 228(b)), a provision that reflects the EU's interest in facilitating technology transfer for developing countries. Additionally, within the functions of the Sub-Committee on Intellectual Property, technology transfer is reinforced, stating that the Sub-Committee will define priority areas and promote technology transfer (Article 274.1(c)-(e)). EU-CARIFORUM, EU-Central America and EU-South Korea Agreements dedicate a specific Article on transfer of technology in their intellectual property chapters (Article 142, Article 231 and Article 10.3, respectively). In this section, Parties agree to exchange information and take measures to prevent or control licensing practices that may affect the international transfer of technology. Nevertheless, the language used is rather flexible, as such measures should be taken 'as appropriate'.

As it has been presented, even though some elements referring to technology transfer can be found, there is no reference to the relaxation of intellectual property rights to accelerate energy transition. Furthermore, as there are no details in the patent subsection, prohibiting the restriction of green technology transfer may not be feasible, for which a first step can be strengthening cooperation for technology transfer throughout the intellectual property section. A new Article within the 'Intellectual Property' chapter is proposed regarding 'Transfer of technology' in which Parties encourage transfer of technology to help in

²⁸ *Ibid* at 23.

the adoption of new technologies that may contribute to the mitigation of climate change and aid in energy transition, among other elements (Annex 3). Moreover, the Community of Practice highlighted the importance of creating a space for the exchange of experiences in green technologies, through the promotion of cooperation in relation to converging green patent programs, which can be incorporated in the cooperation section of the intellectual property chapter (Article X.59). Although being a cooperation activity, as it refers to a sensitive matter in the negotiation (patents), the provision is included in Annex 3.

Subsidies

The EU – MCS Draft chapter on Subsidies only refers to principles and cooperation without providing further details on how subsidies could be granted or withheld; it also does not reference WTO agreements on this matter. The general principle highlighted in the chapter states that ‘subsidies can be granted by a Party when they are necessary to achieve a public policy objective’ (Article 1). Its second Article ‘recognize[s] the need to work jointly and cooperate’ (Article 2), and ‘seek effective ways to coordinate positions and proposals regarding subsidies in the framework of the WTO negotiations’ (Article 2(a)), explore ways to improve transparency regarding subsidies (Article 2(b)), ‘provide advice and recommendations to the Association Council on ways to further enhance their understanding of the impact of subsidization on trade’ (Article 2(c)), and, ‘exchange of information on the functioning of subsidy control system’ (Article 2(d)).

This chapter differs from other Agreements such as Singapore-EU, EU-Colombia-Peru, EU-Central America and CETA, which refer to WTO’s Subsidies and Countervailing Measures Agreement (SCM), a reference not included in this chapter. South Korea-EU Agreement states as a principle the removal of distortions of competition caused by subsidies; nevertheless, it then refers to WTO’s SCM. In addition to citing SCM, EU agreements with Japan and Vietnam not only recognize that ‘subsidies may contribute to achieve public policy objectives’, but EU-Vietnam also presents an ‘illustrative list of public policy objectives for which a Party may grant subsidies’ (Article 10.4.2), in which ‘subsidies for environmental purposes are explicitly allowed subjected to the conditions within this section’ (Article 10.4.2(d)).

From this analysis, three specific proposals can be derived. First, as the subsidies chapter is not developed in the current draft, as noted by the Community of Practice, more details can be provided in terms of subsidies principles and areas in which they can be granted. Second, the inclusion of an illustrative list of public policy objectives, and environmental aspects, may encourage the use of subsidies to promote the adaptation and mitigation of climate change, and the development of renewable energy, among other environmental objectives. As stated by experts of the Community of Practice, the regulation of subsidies should be left to the WTO, where both the EU and MCS can cooperate to reach multilateral standards. In this sense, a third proposed provision refers to Parties’ acknowledgment of the relevance of achieving multilateral regulations regarding the use of subsidies for environmental purposes, for which they commit to cooperate within the framework of the WTO (Annex 3).

Dispute settlement

With respect to Title XXX ‘Dispute Settlement’, its objective is to ‘establish an effective and efficient mechanism to avoid and settle disputes between the Parties regarding Part [X] of the Agreement with a view to arrive at, where possible, a mutually satisfactory resolution of the dispute’ (Article 1). While there

is no specific reference to environmental provisions within the Title, a relevant commitment is drafted in Article 3, scope, as it states that ‘the provisions of this Title shall apply with respect to any dispute concerning the interpretation and application of the provision of Part [X] of this Agreement, except where otherwise expressly provided.’ The possibility of exempting a chapter from the dispute settlement is used in the Trade and Sustainable Chapter as it states that ‘no Party shall have recourse to dispute settlement under Title VIII (Dispute Settlement) for any matter arising under this Chapter.’ (TSD - Article 15.5).

The process of dispute settlement, as described in this title, is common to all EU FTAs. It comprises the different stages included within a dispute resolution, including consultations (Article 4), mediation (Article 5), and dispute resolution procedures (Chapter III). Within dispute resolution procedures, it states that only after failed consultations, as set forth in Article 4, ‘the complaining party may seek the establishment of an arbitration panel’ (Article 6.1), giving ‘the reasons for the request, identifying the measure it considers to be in breach of this Part which has been the subject of consultations, and indicating the provisions referred to in Article 3 that it considers applicable, in a manner that the legal basis of the complaint is presented clearly’ (Article 6.2). Further articles refer to procedural aspects including the appointment of arbitrators; composition of arbitration panel and hearings; information and technical advice; applicable law; arbitral award; withdrawal, settlement or suspension of a dispute; mutually agreed solution; and request for clarification (articles 7-14). Upon resolution of a dispute, ‘defending party shall take any measure necessary to comply promptly and in good faith with the arbitral award’ (Article 15.1), and ‘if it is impracticable to comply immediately [...] shall have a reasonable period of time in which to do so’ (Article 15.2), which is detailed in the next article. One of the most relevant aspects of these kind of dispute settlement mechanisms is their capability of enforcement, particularly due to retaliation measures, as expressed in Article 18 ‘temporary remedies in case of non-compliance’. This may include a temporary compensation (Article 18.2) or the suspension of concessions (Article 18.3). Finally, as both EU and MCS members are party to different agreements, a ‘choice of forum’ provision is included. This states that a ‘party may not initiate another proceeding on the same matter in the other forum, except when the competent body in the forum chosen has not taken a decision on the substance of the matter due to jurisdictional or procedural reasons other than termination of the proceedings following a request for withdrawal or suspension of the proceedings’ (Article 21.1).

‘The agreement can be improved, and the likelihood of its approval increased, subjecting sustainable development issues to a dispute settlement mechanism’

Dr. Rodrigo Polanco, World Trade Institute, Chile

Section II: Trade and Sustainable Development Chapter

This section analyses the TSD chapter within EU-MCS Draft FTA. It analyses the aims and objectives of the chapter, Multilateral Environmental Agreements, transparency, cooperation schemes, and enforcement mechanisms.²⁹ After describing the elements found in the chapter and comparing them to other EU and MCS members FTAs, new provisions are proposed to strengthen the chapter in Annex 2 and 3.

²⁹ This section builds on a previous analysis carried out by Markus W. Gehring, Christian Delev and Freedom Kai Phillips. ‘Assessing EU FTA Environmental Obligations: Putting the Draft EU-MCS Trade Agreement into Perspective. Draft Analysis for the European Climate Foundation’ (2020).

Chapter Descriptions of Aims and Objectives

Provisions on the Objectives and Aims of Trade and Environment/Sustainable Development Chapters

Article 1 of the Chapter on Trade and Sustainable Development in the EU-MCS Draft Trade Agreement broadly elucidates three types of statements with respect to the objectives sought: framing all established obligations in light of existing multilateral commitments, explaining the framework within which economic relations develop; establishing that the newly created ‘trade and economic relations’ would foster the achievement of sustainable development goals; and, finally, highlighting how ‘common values and interests’ would help in achieving said objectives where both Contracting Parties are at ‘different levels of development’. It is particularly important to compare the first two objectives against those established in other FTAs.

With respect to the first key aspect of the provision, several international environmental instruments are ‘recalled’, in particular Agenda 21, the Rio Declaration on Environment and Development of 1992, the Johannesburg Declaration on Sustainable Development and the Johannesburg Plan of Implementation on Sustainable Development of 2002 (Article 1.2). In terms of the overall relevance of such references, they perform a specific function in terms of interpretation – while these instruments are not expressly incorporated and, as such, do not fall within the treaty’s *corpus*. However, while there is restricted scope in terms of application, there remains extended scope in terms of the principle of systemic integration per Article 31(3)(c) VCTL IO.³⁰

In terms of practices found within other EU FTAs, there generally appears to be an overlap in treaty-making practices with respect to this obligation, particularly vis-à-vis the list of instruments cited. In terms of similarities, the Japan-EU Economic Partnership Agreement generally overlaps in terms of the treaties cited, as do CETA, the EU-Vietnam FTA, EU-Colombia-Peru FTA and the EU-South Korea FTA. One notable difference is with the EU-Singapore FTA, which makes a reference in Article 12.1 to the WTO Agreement preamble and the ‘Singapore Ministerial Declaration of the WTO of 1996’.³¹ Additionally, due the year when it was negotiated, the EU-Colombia-Peru FTA refers to the Millennium Development Goals.

In terms of the explanation for how the social, economic, and environmental aspects are critical for the sustainable development goals to be attained, the Draft EU-MCS Trade Agreement is similar in terms of its description to those found in most other EU FTAs examined. For instance, the nexus drawn between trade, economic relations and sustainable development is reiterated in all FTAs examined. Moreover, only the EU-South Korea FTA does not define this in terms of the interests of ‘present and future generations’, not being upheld as stakeholders.

³⁰ 31(3)(c) *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations* (signed 21 March 1986) UN Doc A/CONF.129/15 (VCLT IO); for distinction between application and interpretation where reference is made to a treaty, which focuses on the identically worded article 31(3)(c) *Vienna Convention on the Law of Treaties* (signed 23 May 1969, entry into force 27 January 1980) 1155 UNTS 331, see P Merkouris, *Article 31(3)(c) VCLT and the Principle of Systemic Integration: Normative Shadows in Plato’s Cave* (Brill 2015) 67–69.

³¹ However, it should be mentioned that the 1996 Singapore Ministerial Declaration was chiefly a free trade statement that was concerned with labour rights primarily and only includes a single reference the need for negotiations and for national-level policy coordination on environmental issues.

One key difference is the way in which a balance is struck between trade and sustainable development objectives, especially in terms of the environment. The Draft EU-MCS Trade Agreement adopts the following choice of words: ‘the Parties recognize the contribution that trade could make to sustainable development’. This phrasing can be contrasted with the expressly trade-centred language and denunciation of harmonization as found in the EU-Japan Economic Partnership: ‘The Parties further recognise that the purpose of this Chapter is to strengthen the trade relations and cooperation between the Parties in ways that promote sustainable development and is not to harmonize the environment or labour standards of the Parties.’ (Article 16.1(2)). The EU-Colombia-Peru FTA and EU-CARIFORUM Agreement also present a much more pro-active and trade-centred construction for the promotion of sustainable development: ‘the Parties agree to promote international trade in such a way as to contribute to the objective of sustainable development and to work to integrate and reflect this objective in their trade relationship.’ (Article 267.1 of EU-Colombia-Peru) and ‘The Parties reaffirm their commitment to promoting the development of international trade in such a way as to ensure sustainable and sound management of the environment [...]’ (Article 183.4 of EU-CARIFORUM).

However, the Draft EU-MCS Trade Agreement is less forceful than the TSD chapter in CETA: ‘The Parties underline the benefit of considering trade-related labour and environmental issues as part of a global approach to trade and sustainable development.’ (Article 22.1(2))³²; the same provision is found in EU-Central America Agreement (Article 284.2). Similarly, the EU-Singapore FTA, which elsewhere adopts language similar to Article 22.1(2) of CETA,³³ strikes a distinct balance favouring domestic environmental protection:

‘The Parties recognise that it is **inappropriate to encourage trade or investment by weakening or reducing the protections afforded by their domestic labour and environment law**. At the same time, the Parties stress that **environmental and labour standards should not be used for protectionist trade purposes**.’³⁴

In terms of references to the ‘common but differentiated’ approach as justification for the absence of harmonization, the EU-Vietnam and EU-Colombia-Peru FTAs adopt similar language and express references to the Parties’ different levels of development as reasons for different environmental policies. There is, however, an explicit restriction placed on the scope and span of cooperation in the EU-Singapore FTA: ‘In light of the specific circumstances of each Party, it is not their intention to harmonize the labour or environment standards of the Parties.’ (Article 12.1(4)).

In other words, even when compared to other EU FTAs, EU-MCS significantly falls behind what has been established practice by the EU in this field. The significance should not be underestimated as the precise wording gives substance and guidance to all subsequent provisions.

From this analysis, three provisions can be proposed to amend Article 1, ‘Objectives and Scope’. First, it seems relevant to stress the benefit of cooperation on trade-related social and environmental issues as

³² It should be noted, however, that a more nuanced statement is found in article 24.2 CETA in the chapter on Trade and Environment: ‘The Parties recognise that the environment is a fundamental pillar of sustainable development and recognise the contribution that trade could make to sustainable development.’

³³ Article 12.1 EU-Singapore FTA reads: ‘The Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development. They underline the benefit of cooperation on trade-related social and environmental issues as part of a global approach to trade and sustainable development.’ Similar provisions are found in article 13.1(4) EU-Vietnam FTA and 13.1(2) EU-South Korea FTA.

³⁴ It should be noted that the latter sentence is similar in function to article 2.2 TBT Agreement.

part of a global approach to trade and sustainable development. Second, according to experts from the Community of Practice, it is important to innovate in the issues covered by trade agreements for environmental purposes, for which both Parties can cooperate within the WTO Committee on Trade and Environment (Annex 2). A more progressive approach is established in the third proposed provision, as it has been included in other agreements. In this context, Parties should recognize that weakening environmental protection for trade and investment promotion shall not be tolerated, including their use for protectionist purposes (Annex 3).

Implementation of Multilateral Environmental Obligations

General Provisions on Multilateral Environmental Obligations

Before addressing this point in further detail, it is first important to highlight that the Draft EU-MCS Trade Agreement is quite restricted in terms of its references to broader international environmental agreements (MEAs) and instruments more generally. It adopts a general obligation for the respective Parties to ‘reaffirms [sic] its commitments to promote and effectively implement, multilateral environmental agreements (MEAs), protocols and their amendments to which it is a party,’ (Article 5.3) for which the Parties undertake information exchange (Article 5.4) and cooperation (Article 5.5) obligations.

However, one limitation to this form of general commitment, which is included in all the EU FTAs examined, is that none of the specific obligations found in MEAs are expressly incorporated into this treaty and, as such, any EU FTA contracting party which decides to withdraw from a specific MEA is not hindered from doing so and subsequently changing its standard.

In addition, similar to the Draft EU-MCS Trade Agreement, internal reference in Article 5.7 to Article 2.6, the EU-Japan Economic Partnership Agreement, EU-Singapore FTA, EU-Central America FTA, EU-Colombia-Peru FTA and EU-Vietnam FTA all adopt phrasing that allows for each party to adopt or maintain ‘measures to implement the multilateral environmental agreements to which it is party’ so long as the measure would not ‘constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade’.³⁵ In CETA, similar reference is made in Article 24.4(4) to Article 28.3 (General exceptions), which adopts a similar approach in the chapeau to Article 28.3(2).

In terms of additional commitments found in general provisions on multilateral environmental obligations: the EU-South Korea FTA expressly confirms the Parties’ obligations under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol (Article 13.5(3)). However, this provision does not refer to broader MEAs and is thus less detailed than the other EU FTAs examined. The EU-Singapore refers to the same MEAs, and to the Paris Agreement (12.6(3)). The EU-Central America Agreement and EU-Colombia-Peru FTA each provide extensive lists of MEAs, in which Parties ‘reaffirm their commitment to effectively implement in their laws and practices’ (Article 287.2 and Article 270.2, respectively). The MEAs included are: the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Stockholm Convention on Persistent Organic Pollutants, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on Biological Diversity, the Cartagena Protocol on Biosafety to the CBD, the Kyoto Protocol to the United Nations Framework Convention on Climate

³⁵ The choice of words adopted here reflects the chapeau requirements of article XX GATT and article XIV GATS respectively.

Change and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade³⁶. It can be pointed out that EU-Vietnam includes an Article regarding climate change (13.6) in which Parties ‘recognise the role of domestic policies in addressing climate change’ within the framework of UNFCCC.

Finally, in terms of the language used, all references noted were either based on desires that there must be cooperation and use of said MEAs and other instruments or, alternatively, that there is an obligation to enforce or implement them. Therefore, there is space to reaffirm Parties commitments on MEAs, as stated by the Community of Practice. From this, two amendments are proposed to Article 5 ‘Multilateral Environmental Agreements’. As these proposals cover new elements and expand certain commitments, they are included in Annex 3. For clarification purposes, a comprehensive list of MEAs is included, in which Parties reaffirm their commitment to effectively implement in their laws and practice the MEAs to which they are Parties. Besides, according to some experts of the Community of Practice, it becomes helpful to acknowledge Parties’ commitments to MEAs’ programmes, decisions and recommendations.

Outlined Areas of Specific Focus

The Draft EU-MCS Trade Agreement highlights **four** specific aspects of trade and environmentally sustainable development where MEAs must be enforced or other actions are specifically prescribed: Trade and Climate Change (Article 6), Trade and Biodiversity (Article 7), Trade and Sustainable Management of Forests (Article 8), and Trade and Sustainable Management of Fisheries and Aquaculture (Article 9).

To put this into perspective, these are the specific areas addressed by other EU FTAs: the EU-Vietnam FTA has placed specific focus on **five areas**: climate change (Article 13.6), biological diversity (Article 13.7), sustainable forest management and trade in forest products (Article 13.8), trade and sustainable management of living marine resources and aquaculture products (Article 13.9) and trade and investment favouring sustainable development (Article 13.10); the EU-Colombia-Peru FTA focuses on **four** areas: biological diversity (Article 272), trade in forest products (Article 273), trade in fish products (Article 274), and climate change (Article 275); The EU-Japan Economic Partnership Agreement has specific focus placed on **three** areas: biological diversity (Article 16.6), sustainable management of forests and trade in timber and timber products (Article 16.7), and sustainable use of fisheries and aquaculture (Article 16.8); CETA has placed specific focus on **two** areas: trade in forest products (Article 24.10) and trade in fisheries and aquaculture products (Article 24.11); the EU-Singapore FTA has similarly placed focus on **two** areas: trade in timber and timber products (Article 12.7) and trade in fish products (Article 12.8); the EU-Central America refers to **two** areas: trade in forest products (Article 289) and trade in fish products (Article 290); and the EU-South Korea FTA only places focus on **one area**: Trade favouring sustainable development (Article 13.6). When comparing the EU Agreements and other areas incorporated by MCS countries, it is recommended that other areas of special interest should also be included in the EU-MCS FTA. For example, Brazil-Chile FTA has incorporated new specific focus on sustainable agriculture (Article 17.13), invasive alien species³⁷ (Article 17.10), and Wild Flora and Fauna Trade (Article 17.16). As these topics have not previously addressed between both Parties, the proposed provisions are incorporated in Annex 3.

³⁶ Article 287.4: ‘The Parties also undertake, to the extent they have not yet done so, to ratify and effectively implement, at the latest by the date of entry into force of this Agreement, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade’.

³⁷ This area is also incorporated in CPTPP (article 20.14).

If the number of references is considered, the obligations do not adequately reflect the different policies and interests of the FTA Parties. Links between the specific areas and emerging obligations are reaffirmed by explicit references in EU FTAs based on the language highlighted in the forthcoming sections.

As for the specific areas of focus included in the EU-MCS draft, some amendments are proposed. In terms of Article 7 'Trade and Biodiversity', clarifications in terms of relevant MEAs and cooperation schemes can be incorporated (Annex 2). Regarding Article 6 'Trade and Climate change', references to MEAs are included, such as the Montreal Protocol on Substances that Deplete the Ozone Layer, and areas of cooperation are broadened and strengthened. Additionally, following the recommendation of the Community of Practice, specific reference is included to effectively implement the Paris Agreement goal to hold the increase in global average temperature well below 2°C and pursue efforts to limit it to 1.5°C. Moreover, the relevance of monitoring Parties' nationally determined contributions (NDC)³⁸ through the Paris Agreement Transparency mechanism is acknowledged (Annex 3).

Expressed MEAs references

As it was presented, there is a wide divergence of practice in terms of which agreements are referred to, and the language used. In terms of the variety of MEAs cited, the majority pertain to the specific areas of focus outlined in the previous sub-section.

In the first place, as some of the MEAs on general provisions were characterized, this overview presents the number of MEAs and other instruments that are referred to in the provisions on the implementation of multilateral environmental obligations, thus excluding preambles and provisions on objectives (see Annex 4):

- EU-Vietnam FTA – **12 references in total**;
- EU-Central America Agreement - **ten references in total**;
- EU-Colombia-Peru FTA - **nine references in total**;
- Draft EU-MCS Trade Agreement – **eight references in total**;
- EU-Japan Economic Partnership Agreement – **eight references in total**;
- EU-Singapore FTA – **six references in total**;
- EU-South Korea FTA – **three references in total**;
- CETA – **one reference in total**.

Second, it should be noted that there were references made to 'regional fisheries management organisations' in treaties which included fisheries and/or aquaculture as a specific focus. However, no specific organizations were referred to, and no treaties were included within the text of the FTAs. As such, these were not included in the final tally. However, this could be considered in identifying the restricted material scope of the Draft EU-MCS Trade Agreement.

Obligations not to Weaken Standards

³⁸ For more on NDC, see Freedom-Kai Phillips, Briefing 2: Trade-Climate Interlinkages: Approaches Taken in Nationally Determined Contributions (NDCs), CISDL Legal Brief 2020, online: <https://www.cisd.org/wp-content/uploads/2020/10/Briefing-2-Trade-Climate-Interlinkages-.pdf>

All EU FTAs that were assessed have provisions on the right to regulate in their respective trade and sustainable development/environment chapters. In this context, it is important to first examine the language used in the TSD chapter before examining the remaining treaties.

Article 2 Draft EU-MCS Trade Agreement

In the first place, Article 2 of the TSD chapter provides some key indications. First, it uses different verbs to describe the regulatory rights and restrictions that characterize the right to regulate. Consequently, the right to regulate is ‘recognised’ by the Parties; however, the standard does not allow for derogation from the Parties’ international obligations, which is phrased using mandatory language: ‘Such levels, law and policies shall be consistent with each Party’s commitment to the international agreements and labour standards referred to in Articles 4 and 5’ (Article 2(1)).

Second, it supports the adoption of ‘high and effective levels of environmental [...] protection’ (Article 2(2)). However, it does provide for some degree of flexibility, particularly since the negative obligation not to reduce standards ‘with the intention of encouraging trade or investment’ is framed using the verb ‘should’, which provides significantly more scope for derogation (Article 2(3)). This being said, the mandatory verb ‘shall’ is used where non-application, derogations, waivers or offers to derogate or waive from standards ‘in order to encourage trade or investment’ (Article 2(4) and (5)). It remains unclear how to distinguish between standard decreases made ‘with the intention of encouraging trade or investment’ and those which are done ‘in order to encourage trade or investment’. Notably, however, while domestic laws must not be weakened, there is no stabilization of MEAs and relevant international instruments. At the very least, this could affect the interpretation of domestic law in light of States’ international obligations.

Finally, there is a restriction on the adoption of environmental laws which ‘would constitute a disguised restriction on trade or an unjustifiable or arbitrary discrimination’. (Article 2(6)). The implications of this phrase have already been addressed *supra*.

Comparative Framework

There are two formal approaches to the way in which both the right to regulate, and guarantees on levels of protection, are described: either as one or two separate provisions. Indeed, the Draft EU-MCS Trade Agreement and EU-Japan Economic Partnership Agreement opt for the former model, while CETA, the EU-Singapore FTA, the EU-CARIFORUM Agreement, the EU-Colombia-Peru FTA, the EU-Central America FTA, the EU-Vietnam FTA and EU-South Korea FTA adopt the latter. Consequently, first all the provisions on the right to regulate and levels of protection are addressed, following with the texts of provisions on upholding levels of protection considered separately.

Significantly, this classification does not apply to MCS members’ latest bilateral FTAs. Within the trade and sustainable development chapters, general environmental commitments emphasize a restriction on adopting environmental laws and regulations which can constitute a means of arbitrary or unjustifiable discrimination against the other party, or a disguised restriction on international trade³⁹.

³⁹ Brazil-Chile (article 17.3), Argentina-Chile (article 13.4), and Uruguay-Chile (12.3).

Provisions on the Right to Regulate and Levels of Protection

In terms of these forms of provisions, similar to the one found in the Draft EU-MCS Trade Agreement, it is worth noting some of the differences within the texts as currently framed. First, only the Draft EU-MCS and EU-Japan Economic Partnership Agreement contain both positive and negative obligations. One significant difference between both, however, would be that the EU-Japan Economic Partnership Agreement uses mandatory language. In terms of positive obligations, first the Parties' right to regulate is recognised and each 'shall strive to ensure that its laws, regulations and related policies provide high levels of environmental and labour protection and shall strive to continue to improve those laws and regulations and their underlying levels of protection' (Article 16.2(1)).

In terms of negative obligations, the Parties 'shall not encourage trade or investment by relaxing or lowering [environmental] levels of protection' or 'waive or otherwise derogate from those laws and regulations or fail to effectively enforce them through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties' (Article 16.2(2)). In addition, a restriction on adopting environmental laws and regulations which 'would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on international trade' is also included (Article 16.2(3)).

By contrast, the remaining seven EU FTAs chiefly focus on establishing the right to regulate, with the standard to maintain and improve environmental standards. By adopting permissive language, the Draft EU-MCS Agreement thus falls behind the achievements in the EU-Japan EPA.

Provisions on Upholding Levels of Protection

There are seven FTAs which contain exclusive provisions on 'Upholding Levels of Protection'. All focus on (1) negative obligations not to waive, derogate or offer to waive or derogate from their environmental standards, and (2) the negative obligation not to omit applying their environmental standards. In general, they do not perform additional functions to the form as adopted in Provisions on the Right to Regulate *per se*. Only the EU-Vietnam FTA additionally includes the following provision:

'Party shall not apply environmental and labour laws in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade' (Article 13.3(4)).

Additional provisions can be found in EU-Colombia-Peru and EU-CARIFORUM FTAs. The first recognises each Parties' right to 'a reasonable exercise of discretion with regard to decisions on resource allocation relating to investigation, control and enforcement of domestic environmental and labour regulations and standards, while not undermining the fulfilment of the obligations undertaken' (Article 277.3). The latter agreement uses a stronger language as it commits Parties not to adopt or apply regional or national trade investments measures in a way that may limit environment and natural resources protection (Article 188.2). From this analysis, an amendment is proposed that follows a similar approach, but as it incorporates a regional approach, not previously addressed in this article, it is included in Annex 3.

Transparency, Cooperation, and Enforcement Mechanisms

Transparency Provisions

In terms of transparency provisions, six EU FTAs provide identical standards overall. As such, the obligations are linked to the treaty standard and implementation subject to the Parties' domestic legal systems. From the stated focus, all the provisions rely on information being made publicly available with reasonable periods of time for comments. However, only the Draft EU-MCS Trade Agreement and CETA provisions in the environment/sustainable development chapters explicitly focus on encouraging public participation rather than chiefly providing opportunities for interaction.

It must be highlighted that EU-Colombia-Peru FTA and EU-Central America Agreement do not refer to a 'transparency section', but they have a section on 'Dialogue with civil society'. EU-Central America Agreement state that Parties agree 'to organise and facilitate a bi-regional Civil Society Dialogue Forum for open dialogue, with a balanced representation of environmental, economic and social stakeholders' (Article 295.1). The EU-Colombia-Peru FTA states that 'a session with civil society organizations and public at large shall convene at least once a year to discuss matters related to the implementation of this chapter, procuring a balanced representation of stakeholders' (Article 282).

As stated by the Community of Practice, the participation of civil society is an important element of trade policymaking, particularly when referring to cross-cutting issues such as sustainable development. From here, building on the aforementioned experience, the EU-MCS Agreement can benefit from strengthened mechanisms to cultivate participation of civil society through institutionalized dialogue forums. For this, an Article is proposed to create and new civil society dialogue forum that will encourage public discourse among non-state actors regarding the development of policies that may lead to the adoption of environmental law by public authorities (Annex 3). Additionally, in order to ensure that the Agreement's adverse environmental impacts are minimized, it is proposed that Article 14 'Sub-Committee on Trade and Sustainable Development and Contact Points' incorporates *ex post* analysis of the environmental impacts of trade provisions (Annex 2)⁴⁰.

Cooperation on Sustainability Provisions

'The FTA is instrumental for leveraging action around Paris. Cooperation is key for vertical productivity and monitoring supply chain emissions. Carbon pricing requires mutual recognition of rough equivalence.'

'The agreement can be improved, and the likelihood of its approval increased, subjecting sustainable development issues to a dispute settlement mechanism.'

Dr. Alessandra Lehmen, Brazilian Bar Environmental Law Commission, Rio Grande do Sul Chapter, Brazil

In terms of cooperation between EU FTA Parties, it is important to highlight that the scope provided by said provisions is significantly broader than the areas of focus for MEAs and environmental instruments implementation. This should be taken into account in reviewing the scope of areas where EU FTAs promote cooperation between the Parties. This could well be seen with the example of the Draft EU-MCS Trade Agreement including cooperation on sustainable fishing practices (Article 13(b)) and other such areas.

⁴⁰ *Ibid* at 24.

Indeed, the Draft EU-MCS Trade Agreement, should it enter into force, would likely be a useful political instrument to foster soft obligations and extend soft power in the significantly more aspects of sustainable development where cooperation is required, rather than adherence to international law.

In general, one way of classifying relevant topics of cooperation would be as follows: 1) cooperation at the multilateral level; 2) cooperation on trade and environment, or trade and sustainable development topics; 3) cooperation on promoting practices; and 4) cooperation on tackling specific issues and implementing agreements.

With respect to multilateral-level cooperation on sustainable development, the Draft EU-MCS Trade Agreement provides a list of *fora* in which the Parties may cooperate: ‘the WTO, the ILO, UNEP, UNCTAD, High-level Political Forum for Sustainable Development and multilateral environmental agreements (MEAs)’ (Article 13(a) highlights *fora* particularly relevant for cooperation on environmental issues). In general, this list is more extensive than ones found in other EU FTA provisions. The EU-Japan Economic Partnership Agreement, the EU-CARIFORUM Economic Partnership Agreement and EU-Central America Association Agreement do not provide specific lists. Lists found in CETA (Article 24.12(1)(b)), the EU-South Korea FTA (Annex 13, paragraph 1(a)), the EU-Singapore FTA (Article 12.10(b)), and the EU-Vietnam (Article 13.14(1)(a), which additionally mentions the Asia-Europe Meeting) are not very extensive; and EU-Colombia-Peru FTA makes a general reference to ‘ILO Conventions and multilateral environmental agreements’ (Article 286(b)). While it should be noted that these are open lists, their specific relevance may indicate where opportunities might exist for developing additional consensus on international environmental obligations.

In terms of cooperation on trade and environment, or trade and sustainable development topics, the agreements essentially overlap in terms of the general language used, citing chiefly the beneficial role of trade for sustainable development. Only CETA notably adopts broader language to describe the relationship between trade and the environment in Article 24.12, covering different economic aspects from the product life-cycle to market forces. These provisions do not appear to differ in terms of the language used.

In terms of promoting practices, each treaty appears to be suited to its respective Parties’ interests. As such, the Draft EU-MCS Trade Agreement refers to cooperation on ‘voluntary sustainability assurance schemes such as fair and ethical trade schemes’ (Article 13(d)); ‘the sound management of chemicals and waste’ (Article 13(k)); ‘the conservation and sustainable use of biological diversity’ (Article 13(l)); ‘the promotion of the conservation and sustainable management of forests with a view to reducing deforestation and illegal logging’ (Article 13(n)); ‘the promotion of sustainable fishing practices and trade in sustainably managed fish products’ (Article 13(p)); and ‘production initiatives consistent with SDG 12, including, but not limited to, circular economy (Article 13(q)). As such, this open-ended list indicates that while restricted priorities exist for legal commitments, the list for political and other forms of cooperation is much broader. It is interesting to note that this is among the longest lists relating to the adoption of best practices. There are distinct approaches adopted by the remaining EU FTAs vis-à-vis environmental concerns.

The EU-Japan Economic Partnership agreement focuses on **four areas**, namely, exchange of information in eco-labels, the promotion of low-carbon technologies, other climate-friendly technologies and energy efficiency; promoting biological diversity; combatting illegal logging; and promoting sustainable fishing and aquaculture (Article 16.12(d), (h), (i)-(k)). CETA focuses on **three areas** in its ‘Trade and Sustainable Development’ chapter, namely ‘voluntary schemes for sustainable production of goods and services’;

‘sustainability considerations in both public and private consumption decisions’; and the ‘development, the establishment, the maintenance or the improvement of environmental performance goals and standards’ (Article 22.3(2 (a),(c),(d))). CETA in its ‘Trade and Environment’ chapter focuses on **three areas**, namely ‘the mitigation of climate change, including issues relating to carbon markets, the promotion of energy efficiency and the development and deployment of low-carbon [...] technologies’; ‘trade-related aspects of the conservation and sustainable use of biological diversity’; and ‘life-cycle management of goods, including carbon accounting and end-of-life management, extended producer-responsibility, recycling and reduction of waste, and other best practices’ (articles 24.12.(1(e),(g),(h))). The EU-Singapore FTA agreement focuses on **three area**, namely ‘the exchange of information on private and public certification and labelling schemes, including eco-labelling’; ‘low-carbon technologies and energy efficiency’; and ‘sustainable forest management to encourage effective measures for certification of sustainably produced timber’ (Article 12.10(d), (f), (h)). The EU-Vietnam FTA focuses on **four areas**, namely promoting ‘low-carbon technologies and energy efficiency’; ‘certification and labelling schemes, including ecolabelling’; ‘the conservation and sustainable use of biological diversity’; ‘trade-related measures to promote the conservation and sustainable management of forests with a view to reducing deforestation and illegal logging’; and ‘trade-related measures to promote sustainable fishing practices and trade in sustainably managed fish products’ (Article 13.14(g), (h), (j)-(k)). The EU-South Korea FTA focuses on **one area**, namely to ‘promote low-carbon technologies and energy efficiency’ (Annex 13, para 1(f)).

The EU-Central America Agreement dedicates specific sections in its Title VI ‘Economic and trade development’ for the cooperation of trade and environment from different dimensions. Specifically, it focuses on **five areas**. In terms of ‘Cooperation and Technical Assistance on Fisheries and Aquaculture’, the agreement focuses on ‘promote the sustainable exploitation and management of fisheries’; and ‘promote best practices in fisheries management’ (Article 59.1(a)-(b)). In terms of ‘Cooperation and Technical Assistance on Trade and Sustainable Development’, the area presented is the promotion of ‘trade in products derived from sustainably managed natural resources, including through effective measures regarding wildlife, fisheries and certification of legally and sustainably produced timber’ (Article 63.2(c)); ‘Energy (Including Renewable Energy)’ focuses on the promotion of ‘energy saving, energy efficiency, renewable energy and studying of the environmental impact of energy production and consumption, in particular, its effects on biodiversity, forestry and land use change’; and the promotion of ‘the application of clean development mechanisms to support the climate change initiatives and its variability’ (Article 65.2(c)-(d)). The EU-CARIFORUM Agreement focuses on **one** area which falls under the recognition of the importance of cooperation for environmental issues: the ‘promotion and facilitation of private and public voluntary and market-based schemes including relevant labelling and accreditation schemes’ (Article 190.2(d)). The EU-Colombia-Peru FTA focuses on **one area**: ‘activities to encourage best practices for sustainable forest management’ (Article 286(h)).

It must be acknowledged that in the case of EU-CARIFORUM, EU-Central America and EU-Colombia-Peru Agreements, cooperation activities are described based on the areas that Parties want to promote and how they will be carried out.

In terms of cooperation to implement MEAs, all EU FTAs except for CETA generally include such a general statement. There is some general overlap between the different EU FTAs, as can be demonstrated through the following overview: The Draft EU-MCS Trade Agreement makes express reference to the UNFCCC, Paris

Agreement, and the Montreal Protocol and amendments ratified by the Parties, as well as the specific issue of 'combatting wildlife trafficking' (Article 13(h)(i) and (m)). The EU-Japan Economic Partnership Agreement expressly refers to UNFCCC, the effective implementation of Paris Agreement, CITES and, broadly, the specific issue of combatting illegal logging (Article 16.4(4), 16.12(g) and (j)). CETA does not contain any such references in Article 22.3 and adopts generic language to discuss potential issues that could be faced. In terms of tackling specific issues, Article 24.12 is focused on the relationship between trade and the environment chiefly and biodiversity, as noted *supra*. The language used does not provide for simple categorisation between the third and fourth categories from the provision classification.

The EU-Singapore FTA does not identify treaties and refers to one specific issue, namely the negative impact of trade on climate change (Article 12.10(f)). The EU-Vietnam FTA does not identify cooperation with respect to specific treaties but identifies two specific issues: illegal trade in wildlife illegal logging (Article 13.14(1)(j) and (k)). The EU-South Korea FTA does not identify specific treaties but does refer to two specific issues: the impact of trade on climate and the issue of illegal logging (annex 13, paragraph 1(f) and (i)). The EU-Colombia-Peru FTA identifies cooperation in the context of UNFCCC, and specifically refers to biological diversity, forestry products and fishery products (Article 286(e)-(g), (i)). Both EU-CARIFORUM and EU-Central America Agreements do not identify cooperation with respect to a specific treaty. In the EU-CARIFORUM Agreement specific issues are not clear, while in EU-Central America Agreement it can be argued that due to the specific sections found, the issues identified are: renewable energy, and fisheries and aquaculture.

From the previous analysis and the issues addressed by the Community of Practice, some proposals can be derived to complement Article 13 'Working together on trade and sustainable development'. First, cooperation on current and future international climate change regime, including issues related to carbon markets, means to promote energy efficiency and the development of low-carbon technologies. Second, promote cooperation to halt deforestation through increasing vertical productivity in order to research and implement scientific solutions to related problems. Third, even though it has not been previously included in FTAs, acknowledging the relevance of the Amazon for global climate and environment⁴¹, a clause on cooperation on the conservation of biomes is included. Fourth, in the context of this agreement, it is important to include a provision on cooperation to establish effective strategies and measures at the regional level. Even though these proposals refer to cooperation schemes, as they cover elements not previously addressed, they are included in Annex 3.

It is relevant to acknowledge, as pointed out by the Community of Practice, that the existence of an agreement and its cooperation schemes allow Parties to include other related issues in the discussion. For example, cooperation to reduce deforestation and illegal logging can pave the way to the negotiation of a Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreements (VPAs)⁴². Additionally, it can be expected that through cooperation activities on sustainable consumption and production initiatives consistent with SDG 12 may foster discussions towards incentives on circular economy. Finally, actions towards the reduction of GHG may be encouraged in various industries through the exchange of best practices between the EU and MCS.

⁴¹ *Ibid* at 24.

⁴² As of February 2021, Brazil had eight FLEGT related projects. For more details, see: EU FLEGT Facility, online: <https://www.euflegt.efi.int/map-flegt-projects>.

‘Ensure the progressive integration of instruments such as eco-labelling and carbon credit measures to overcome the status quo’.

Dr. Amalia Stuhldreher, Universidad de la República, Uruguay

Enforcement

In terms of enforcement, the Draft EU-MCS Trade Agreement appears to follow a similar formal enforcement process for its ‘Trade and Sustainable Development’ chapter as found in other EU FTAs. Enforcement is thus characterised by being formally excluded from the main dispute settlement system and having a separate three-step approach (consultations, reference to a panel of experts, and monitoring) should issues emerge. In this assessment, the focus is placed on the process of enforcement and not on the institutional differences immediately, although some reference is made to the latter consideration *infra*.

As stated by the Community of Practice, most differences are solved through institutionalized and informal dialogues. For this, the work of the Sub-Committee on trade and sustainable development is relevant as it represents the first approach between Parties ‘to facilitate communication and coordination’ (Article 14.5), including discussions with the civil society.

‘The international community is a shame-based society [...] the overwhelming majority of disputes are not resolved in legal dispute settlement but rather bilaterally, through posts, committees, informally, and then through structured discussions’

Dr. Gregory Messenger, University of Liverpool, United Kingdom

Government Consultations

According to Article 15(1) of the Draft EU-MCS Trade Agreement, disputes arising from the TSD chapter may first be addressed through ‘dialogue, consultation, exchange of information and cooperation’ and nothing is subjected to the more stringent dispute settlement process otherwise available (Article 15(5)). Should a request for consultations be made under Article 16, where it conforms to the formal obligations of summarising the claim, indicating relevant provisions and explaining how it may affect the objectives of the chapter, then consultations may start ‘not later than 30 days of the date of receipt of the request’ (Article 16(1)). In terms of the precise interaction, there is the possibility of consulting with relevant international organisations and qualified experts (Article 16(3) and (4)) should the Parties decide to do so. Should no resolution emerge, then the TSD Sub-Committee may be convened to find a ‘mutually satisfactory resolution of the matter’ taking into account views expressed within the civil society mechanism (Article 16(5) and (6)). Finally, all resolutions are made publicly available (Article 16(7)).

This approach is generally mirrored in other EU FTAs. It should be noted that, similar to CETA, there is an obligation for resolutions or decisions to be made publicly available. All other EU FTAs provide for the option for solutions to remain concealed, through a provision stating that ‘Any resolution reached by the Board on the matter shall be made public unless it otherwise decides’ (EU-Colombia-Peru FTA, Article 12.16(6)).

Panel of Experts

The procedure outlined in Article 17 of the Draft EU-MCS Trade Agreement allows for a party the establishment of a 'Panel of Experts' following 120 days after consultations have started where 'no mutually satisfactory resolution' is found. Accordingly, following the process of selection and appointment, the panel shall make its recommendations having consulted or used information from relevant MEA bodies (Article 17(7)) and interpret the chapter 'in accordance with the customary rules of interpretation of public international law' (Article 17(8)). After an interim report is issued 'within 90 days of the establishment of the Panel', on which comments may be provided by the EU FTA Parties within 45 days and, a final report must be issued 'no later than 60 days after issuing the interim report' (Article 17(9)). Once again, the report must be made public within 15 days of its conclusion by the Panel of Experts (Article 17(10)).

It is critical to note that the Parties have liberty in choosing which of the recommended measures they would implement (Article 17(11)), thus ensuring the ultimately non-binding nature of the dispute settlement process under the Chapter on Trade and Sustainable Development. Should a party choose to adopt measures, then their implementation would be monitored by the Sub-Committee on Trade and Sustainable Development taking into account observations from civil society advisory groups (Article 17(11)).

To put this into perspective, there are two key differences that could be noted: 1) differences in the time allotted to the Panel of Experts to issue its interim and final reports and 2) the subsequent obligations of Parties. With respect to the first point, there are some differences in the EU Agreements analysed. It must be highlighted that the EU-CARIFORUM Agreement is limited to the consultation and monitoring process, no additional procedure is included.

In the EU-Japan Economic Partnership Agreement, the interim report must be issued in 90 days, while the final report in 180 days from the establishment of the panel unless otherwise notified by the Panel chairperson. In the latter case, the deadline is 200 days unless the Parties agree otherwise (Article 16.18(5)). In CETA, the panel is required to deliver the interim report within 120 days of the last panellist's selection, leaving 45 days for the Parties to provide comments. The final report must be issued 60 days following the submission of the interim report (Article 24.15(10)). In the EU-Singapore FTA, the panel must issue its interim report 'no later than 90 days from its date of establishment', whereby Parties may submit written comments. The final report is required no later than 180 days after the date of [the panel's] establishment' (Article 12.17(8)). In the EU-Vietnam FTA, the panel must issue its interim report 'no later than 90 days from its establishment', leaving the Parties with 45 days to 'submit written comments' to them. The final report is expected 'no later than 180 days after the date of establishment unless the Parties agree otherwise' (Article 13.17(8)). In the EU-South Korea FTA, the panel is provided with 90 days to issue its report (Article 13.15(2)). In the EU-Colombia-Peru FTA, the panel is required to deliver the interim report no later than 90 days from its date of establishment. The final report must be issued 150 days from the establishment, if deadlines cannot be met, the time limit is 180 days unless the Parties agree otherwise (Article 12.17(8)). In the EU-Central America Agreement, the panel has 120 days to present the initial report and the final report must be issued 180 days from the establishment (Article 300, 301).

In terms of the form of obligations to be undertaken, EU FTAs generally adopt a similar approach. In the EU-MCS Trade Agreement Draft, 'the Parties shall discuss appropriate measures to be implemented *taking*

into account the report and recommendations of the Panel of Experts. The Party complained against shall inform its ... [civil society domestic advisory group] referred to in Article ... of Chapter ... and the other Party of its decisions on any actions or measures to be implemented no later than 90 days after the report has been made publicly available.’ (Article 17(11)). The EU-Japan Economic Partnership Agreement states that ‘the Parties shall discuss actions or measures to resolve the matter in question, *taking into account the panel's final report and its suggestions.* Each Party shall inform the other Party and its own domestic advisory group or groups of any follow-up actions or measures no later than three months after the date of issuance of the final report.’ (Article 16.17(6)). According to CETA, ‘If the final report of the Panel of Experts determines that a Party has not conformed with its obligations under this Chapter, the Parties shall engage in discussions and shall endeavour, within three months of the delivery of the final report, to identify an appropriate measure or, if appropriate, to decide upon a mutually satisfactory action plan. In these discussions, *the Parties shall take into account the final report.* The responding Party shall inform, in a timely manner, its civil society organisations, through the consultative mechanisms referred to in Article 24.13.5, and the requesting Party of its decision on any action or measure to be implemented.’ (Article 24.14(11)). In terms of the EU-Singapore FTA, ‘the Parties shall discuss the appropriate measures to be implemented, *taking into account the report and recommendations of the Panel of Experts.* The Party concerned shall inform its stakeholders, through the consultative mechanisms referred to in paragraph 5 of Article 12.15 (Institutional Set Up and Monitoring Mechanism), and the other Party, of its decisions on any actions or measures to be implemented, no later than three months after the report has been submitted to the Parties.’ (Article 12.17(9)).

In the EU-Vietnam FTA, ‘the Parties shall discuss appropriate actions or measures to be implemented *taking into account the final report of the Panel of Experts and the recommendations therein.* The Party concerned shall inform its domestic advisory group or groups and the other Party of its decisions on any actions or measures to be implemented no later than 90 days, or a longer period of time mutually agreed by the Parties, after the final report has been submitted to the Parties.’ (Article 13.17(9)). In the EU-South Korea, ‘the Parties shall make their best efforts to accommodate advice or recommendations of the Panel of Experts on the implementation of this Chapter.’ (Article 13.15(2)). In the EU-Colombia-Peru FTA, ‘The Parties shall discuss the appropriate measures to be implemented, *taking into account the report and recommendations of the Panel of Experts.* The Party concerned shall inform its stakeholders, through the consultative mechanisms referred to in paragraph 5 of Article 12.15 (Institutional Set Up and Monitoring Mechanism), and the other Party, of its decisions on any actions or measures to be implemented, no later than three months after the report has been submitted to the Parties (Article 12.17(9)). Finally, EU-Central America Agreement states that ‘The Parties to the procedure shall, *taking into account the report and recommendations of the Panel of Experts,* endeavour to discuss appropriate measures to be implemented including, where appropriate, possible cooperation to support implementation of such measures’ (Article 301.3).

As the texts demonstrate, the main difference is found in the slight variance in the language used. For instance, Article 24.14(11) CETA uses two sentences to emphasise the obligation to take into account the panel report. By contrast, all remaining FTAs, including the Draft EU-MCS Trade Agreement, are entirely discursive. Moreover, with the exception of the EU-South Korea FTA, all other examined EU FTAs clearly provide the choice of what obligations must be adopted to the party which purportedly violates its international obligations. With the exception of the EU-South Korea FTA, all other EU FTAs are heavily reliant on their respective Committee or Sub-Committee on Trade and Sustainable Development to

conduct monitoring while accepting written communications from and taking into account the interests of stakeholders.

According to some experts of the Community of Practice, it is politically unrealistic to incorporate binding compliance mechanisms from the TSD chapter. There is no international jurisprudence to serve as a basis for analysing how environmental and sustainable development provisions are being implemented in other treaties or how the existence of damage would be determined. Additionally, as stated by some experts, during the negotiations, a working group expressly argued that environmental issues could not be made binding in the same way as trade issues. Nevertheless, existing mechanisms on labour issues in the USMCA can be considered for sustainable development provisions in the EU-MCS Agreement. Some recent FTAs, for example the CPTPP, have opted to include the (weaker) environment chapter under the general dispute settlement rules. A more progressive approach in the EU-MCS FTA could thus be promoted in a future modernization of the agreement. From here, two provisions are proposed, both listed in Annex 3. An initial approach emphasizes the Parties' obligation to take into account the panel report and engage in discussions if the final report of the Panel of Experts determines that a Party has not conformed with its obligations under the TSD chapter. Second, a binding approach recourses environmental matters to the Dispute Settlement Mechanism in the Agreement, after exhausting the matter within the TSD consultations and panel processes (Annex 3).

Conclusions

In the context of the current legal scrubbing process of the Draft EU-MCS FTA, the objective of this report was to analyze the draft's incorporation of environmental commitments in order to propose recommendations for amendments that could advance sustainable development outcomes. For this purpose, the analysis was divided into two main sections: the first covering an assessment of selected chapters of the Agreement, and the second focused on the Trade and Sustainable Development Chapter. The EU-MCS Draft was compared to other EU Agreements, as well as the latest agreements subscribed by MCS members to establish the current standard on this topic.

Overall, the analysis finds that newer EU trade agreements contain more provisions in terms of sustainable development and environmental protection at different levels, and demonstrates that the EU-MCS Draft Agreement lags behind current practice. Besides the TSD chapter, only minimum environmental-related provisions can be found throughout the Draft Agreement. Regarding TSD, even though it goes further in terms of cooperation activities than the other agreements analysed, due to its exclusion from the Dispute Settlement Mechanism, its enforcement remains subjected to Parties' political will.

From the first section of the analysis, it is evident that declaring sustainable development as a main objective in the preamble of the agreement is critical, and this has been done in other EU Agreements. From the acknowledgment of the relationship between trade, environment and sustainable development, it is possible to include these elements in various chapters, such as, trade in goods, SPS, subsidies and intellectual property. The assessment of the second section concludes that while the TSD chapter in EU-MCS Agreement falls behind other EU negotiations, it follows both the structure and content promoted by the EU in this matter. The issues that arise from the chapter refer to the depth and scope of the provisions, for which specific proposals are identified. These provisions aim at reinforcing the relationship with MEAs,

the identification of new areas of interest, cooperation and providing an enforceable dispute resolution mechanism.

Following the categories previously explained, a total of 42 proposals were identified. In Annex 2, 14 proposals can be part of the legal scrubbing process of the agreement as they clarify and rephrase existing provisions, strengthen cooperation activities, and develop commitments in areas of common interest. In Annex 3, there are 28 amendments that can be considered for future stages in the agreement. These provisions focus on issues in which Parties have not reached consensus or which have not been previously negotiated. Within Annex 3 and considering that to date no TSD chapter has been subjected to the dispute settlement mechanism, two independent provisions are proposed. First, a provision that strengthens the ad hoc panel report and a second that eliminates the exclusion from this mechanism.

Nevertheless, it must be acknowledged that barriers to environmental ambition arise inherently from differences in the level of development between the Parties, the difficulties of reaching an initial agreement, and the fickle political willingness of current governments. From here, the likelihood of incorporating of a progressive environmental approach within other chapters of the agreement is reflected in Annex 2. A sustainable development perspective can be first recognized as a cross-cutting issue within the agreement through public procurement procedures, technical assistance, and cooperation schemes. As stated by the Community of Practice, further changes can be included from an interpretative declaration, MoU, or side letter attached to the agreement.

Finally, it should be noted that environmental considerations are part of a wider sustainable development agenda. Hence, action to this respect must be framed in comprehensive strategies, such as the Agenda 2030. In this context, the interplay between climate change, gender issues, consumption, energy, among other topics could be addressed in future discussions of the EU-MCS Agreement.

Annex 1: International Legal Experts Roundtable Report: Examining Options for the EU-MCS Agreement

International Legal Experts Roundtable Report

Examining Options for the EU-Mercosur Agreement

There have been 38 rounds of negotiations for a Trade Pact of the EU-Mercosur Association Agreement. The Agreement in principle outlines the building blocks for a comprehensive trading relationship and includes provisional outlines of a Trade and Sustainable Development chapter which includes reference to the Paris Agreement. While progress has been made on areas such as trade in goods, wine/spirits, rules of origin, procurement, and intellectual property, other core aspects such as environment, climate change, and 'green goods' such as renewable energy technology remain open to debate. It should be recalled that despite an agreement in principle on the main parts of the text, there is time in the 'legal revision' process to make important changes (as was the case in the Canada – EU Comprehensive Economic and Trade Agreement). In this context, there is a need for updated, timely, legal analysis and expertise to advance strong environmental pillars remain prominent features of the future agreement. It must be acknowledged that the current draft, also because it was negotiated some time ago, appears to be less progressive than the most recent EU FTAs.

On 09 February 2021, a roundtable workshop was organized by the Centre for International Sustainable Development Law (CISDL), which convened 38 experts, practitioners, academics, stakeholders, and graduate students from law, governance and other fields to discuss options on how to strengthen the environmental and sustainable development provisions of the EU-Mercosur Draft Agreement. The roundtable gathered experts from the European Union and Mercosur countries, who engaged in a substantive and diverse dialogue both in English and Spanish. During the roundtable, multiple visions were presented regarding the inclusion of environmental-related provisions in the agreement to work on the drafting of a comprehensive research report to inform the negotiations. This roundtable was organized into four key themes:

1. Strengthening environmental governance in the trade in goods chapter

Trade in goods chapters are a fundamental part of trade agreements, which may constitute a stepping stone towards environmental governance objectives. The analysis aimed at strengthening the implementation of international climate and sustainable development obligations in the current EU-Mercosur Draft Agreement.

2. Addressing intellectual property rights and dispute settlement in EU- Mercosur Draft

On the one hand, in the context of intellectual property issues, technology transfer and capacity building can be relevant tools to support sustainable development. On the other hand, trade and sustainable chapters have been excluded from dispute settlement mechanisms, questioning their appropriateness to resolve environmental disputes.

3. Provisions for sustainable development in subsidies, market access and TBT/SPS measures

Even though the EU- Mercosur Draft Agreement does not deepen the subsidies section, the incorporation of specific disciplines or exceptions on green subsidies can contribute to sustainable development. Environmental performance within technical regulations and the discussion of the precautionary principle in the SPS chapter can contribute to sustainable development. Aside from tariff, market access instruments should be used to foster the access of Mercosur green goods in the common market.

4. Protecting biodiversity and combating climate changes

The protection of biodiversity has been incorporated in the EU- Mercosur Draft Agreement, making specific reference to the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the International Treaty on Plant Genetic Resources for Food and Agriculture. In terms of climate change, the Agreement makes reference to the United Nations Framework Convention on Climate Change (UNFCCC). Nevertheless, issues such as carbon pricing or other carbon neutrality tools can be discussed to improve this agreement.

The international experts' roundtable was co-chaired by Dr. Markus Gehring (CISDL & University of Cambridge) and Dr. Fabiano De Andrade Correa (CISDL). Prof. Marie-Claire Cordonier Segger (CISDL, University of Cambridge & University of Waterloo) welcomed the event highlighting, in her opening remarks, experts' exchange to build a treaty that contributes to achieving sustainable development and climate change goals and construct a basis on which we can build back together the economy.

Before experts' discussion, Ms. Javiera Caceres (University of Chile & CISDL) and Mr. Marios Tokas (CISDL) presented the initial report 'Environment and Climate Change in the Draft EU- Mercosur Trade Agreement' and the proposed amendments for the Draft EU- Mercosur Trade Agreement. The presentation was moderated by Mr. Freedom-Kai Phillips (CISDL & University of Cambridge).

Overall, different approaches to the agreement were discussed. On the one hand, some experts argued the unlikelihood of incorporating new changes to the agreement in its current state, so the proposals analysed should be kept for future environmental discussion. On the other hand, other experts pointed out that there is still space for changes during the legal scrubbing process. Nevertheless, all sessions discussed best practices and concrete proposals for the agreement.

Session 1: Trade in Goods and Environmental Governance in EU- Mercosur Draft

Co-Chairs: Dr. Markus Gehring (CISDL & University of Cambridge), Dr. Fabiano De Andrade Correa (CISDL)

Intervenors: Prof. Tobias Stoll (University of Göttingen, Germany), Dr. Aline Beltrame de Moura (Federal University of Santa Catarina, Brazil), Dr. Julieta Zelicovich (National Council for Scientific and Technical Research, Argentina), Dr. Nicolás Albertoni (Universidad Católica del Uruguay, Uruguay), Prof. Marcus Maurer de Salles (Universidade Federal de São Paulo, Brazil)

Rapporteur: Ms. Fabiana Piccoli (University of Cambridge & CISDL, Brazil)

During this first session, intervenors highlighted the importance of comparing different agreements to focus on best practices, taking into consideration the contexts, circumstances and differing levels of ambition of the Parties. Some drawbacks of the agreement were pointed out (e.g., the fact that there are no sanctions in the case of non-compliance and that there are no environmental considerations in the other chapters). It was stressed the importance of having a sustainable development approach not only in the TSD chapter, but also throughout the entire text, but as this is a trade agreement, the effective protection

of the environment is limited. Therefore, experts cautioned that setting a higher standard for Mercosur in environmental protection may be confused with a protectionist approach of the European market, which is a concern in the private sector of Mercosur economies.

Considering that the 2030 Agenda is being implemented in Mercosur, experts highlighted important advancements in the social aspect of sustainable development. In this context, it is strategically important that the regional integration clause is strengthened by including regional institutions and the social dimension to contribute to the governance of the agreement. Experts also referred to MEAs, stating that besides including specific MEAs in the agreement, references should be included to programmes, decisions and recommendations that they have undertaken.

Specifically, intervenors stated that Parties should take over issues that are already being discussed in the WTO Committee on Trade and Environment. Regarding best practices, the sessions referred to the promotion of carbon market and the harmonization of ecological certifications. Finally, experts discussed the relevance of effectively implementing obligations regarding environmental protection, and the promotion of trade on 'environmental goods and services' through the agreement.

Session 2: Intellectual Property Rights and Dispute Settlement in EU- Mercosur Draft

Co-Chairs: Dr. Markus Gehring (CISDL & University of Cambridge), Dr. Fabiano De Andrade Correa (CISDL)
Intervenors: Dr. Henning Grosse Ruse-Khan (University of Cambridge, Germany), Prof. Christina Voigt (University of Oslo, Germany), Dr. Fabiola Wüst (University of Chile, Brazil), Dr. Rodrigo Polanco (World Trade Institute, Chile), Dr. Javier Echaide (CONICET, Argentina), Mr. Fernando Bertrán (World Trade Organization, Chile)

Rapporteur: Ms. Blessing Ajayi (University of Waterloo, Canada)

During this session, experts presented their insights into the intellectual property chapter and how environmental disputes should be addressed in the dispute settlement mechanism. In terms of intellectual property (IP), the experts highlighted that the chapter is below international standards and care is taken not to increase IP protection in Mercosur countries. Intervenor expressed their concern regarding the non-existent reference to the Nagoya Protocol to reinforce genetic resources and traditional knowledge.

Regarding the dispute settlement mechanism, experts discussed that there is no international jurisprudence to serve as a basis for analysing how environmental and sustainable development provisions are being implemented in other treaties. This was identified as a potential area for further work on international jurisprudential analysis. From a political perspective, intervenors believe that it would be difficult to enforce environmental provisions. It is difficult to incorporate compliance mechanisms from the chapter on sustainable development and no party has the right to impose retaliation rights for non-compliance with sustainable development provisions. Nevertheless, intervenors expressed that the agreement can be improved, subjecting sustainable development issues to a dispute settlement mechanism.

Session 3: Subsidies, Market Access and TBT/SPS Measures

Co-Chairs: Dr. Fabiano De Andrade Correa (CISDL), Dr. Markus Gehring (CISDL & University of Cambridge)
Intervenors: Dr. Vera Thorstensen (FGV School of Economics São Paulo, Brazil) Prof. Panagiotis Delimatsis (University of Tilburg, Greece), Dr. Dominic Coppens (Sidley & Austin LLP, Belgium), Prof. Cristiane Derani

(Federal University of Santa Catarina, Brazil), Dr. David Kleimann (Georgetown University, Germany), Dr. Geraldo Vidigal (University of Amsterdam, Brazil)
Rapporteur: Mr. Ignacio Sánchez (University of Chile, Chile)

During this panel, there were multiple visions regarding the EU- Mercosur Agreement. Overall, experts referred to the EU- Mercosur as a non-environmental agreement that contains statements calling for the observation of MEAs and social justice for fair globalisation. In terms of subsidies, experts highlighted that environmental subsidies should not undermine the correct functioning of markets and the benefits of trade liberalization. In this context, it is important to get rid of harmful subsidies and discuss environmental subsidies at the WTO.

Regarding TBT and SPS measures, this session discussed that the EU has led the way in terms of sustainability standards, so it should implement those standards in the public and private sector and promote them in Mercosur countries. To strengthen the concept of SPS and TBT measures, environmental justice and a strong idea of sustainable development should be incorporated. Finally, experts discussed instruments that could be used to aid interpretation including the precautionary principle, labelling, certification of origin, and environmental and social impact assessments, among others.

Session 4: Climate Change and Protection of Biological Diversity in EU- Mercosur Draft

Co-Chairs: Dr. Fabiano De Andrade Correa (CISDL), Dr. Markus Gehring (CISDL & University of Cambridge)
Intervenors: Dr. Gregory Messenger (University of Liverpool, United Kingdom), Ms. Sophia Paulini (Erasmus University of Rotterdam, Germany), Dr. Ilaria Espa (World Trade Institute, Italy), Mr. Rodrigo Mella (CISDL, Chile), Dr. Alberto do Amaral Jr. (University of São Paulo, Brazil), Dr. Ana Toni (Instituto Clima e Sociedade, Brazil), Dr. Amalia Stuhldreher (Universidad de la República, Uruguay), Dr. Lorena Balbuena (Universidad Católica Ntra. Sra. De la Asunción, Paraguay), Dr. Alessandra Lehmen (Brazilian Bar Environmental Law Commission, Rio Grande do Sul Chapter, Brazil), MA. Daniela Guerra (Universidad de la República, Uruguay)
Rapporteur: Ms. Emily Webster (Hughes Hall Climate Change Engagement Centre, University of Cambridge, UK)

During this session, several issues were discussed and proposed. Experts claimed that this agreement should be a building block to a sustainable global economy. Furthermore, intervenors agreed on the fact that the Paris Agreement could be further emphasized in the agreement as the current obligation for its effective implementation lacks clarity. The wording of key commitments of other instruments was proposed, such as holding the increase in global temperature, the inclusion of non-regression for those Parties that have already assumed commitments within their NDCs and monitor changes with the transparency mechanism of the Paris Agreement.

The session pointed out that cooperation activities need clarification and substance, so measures involving technical cooperation, halting imported deforestation/outsource emissions, and financing-related activities could be included. Additionally, the progressive integration of eco-labeling measures and the use of geographical indications to promote biodiversity were addressed. Other issues referred to by intervenors were the roles of supply chain monitoring and the creation of incentives for the low carbon transition, circular economy, the protection of the Amazon rainforest, and pursuing a clean energy matrix.

Furthermore, experts acknowledged that the discussions at the WTO regarding non-trade impacts (i.e. forestry) are very important and provide a learning opportunity for this agreement. Nevertheless, some experts acknowledged caution regarding the use of measures that the European Union accepts, while there is a more mixed approach in Mercosur members.

To conclude the event, Dr. Fabiano De Andrade Correa (CISDL), Dr. Markus Gehring (CISDL & University of Cambridge) and Dr. Vera Thorstensen (FGV School of Economics São Paulo, Brazil) offered some closing remarks, highlighting key insights from the roundtable.

In conclusion, the international legal experts roundtable was a valuable instance to make distinctive contributions to the debate regarding the EU- Mercosur Agreement. Intervenors from the EU and Mercosur countries were able to discuss innovative legal and institutional mechanisms, proposals and best practices to incorporate environmental-related issues in the EU- Mercosur Agreement. It can be highlighted that the proposed amendments can be incorporated not only in the TSD chapter, but throughout the entire agreement, acknowledging the environmental impact of trade, and how trade agreements may contribute to achieve sustainable development objectives.

Annex 2: Proposed provisions for the legal scrubbing process

Proposed provision 1 and 2:

Preamble

COMMITTED to implementing this Agreement in accordance with the objective of sustainable development, including, the promotion of economic progress, the respect for labour rights and the protection of the environment, in accordance with the international commitments adopted by the Parties;

(EU-Colombia-Peru FTA)

REAFFIRMING their commitment to promote sustainable development and the development of international trade in such a way as to contribute to sustainable development in its economic, social and environmental dimensions;

(CETA)

Proposed provision 3:

Article X

Regional Integration

1. The Parties recognise the importance of regional integration in furthering the social, economic and sustainable development of the signatory MCS and of the European Union, enabling to strengthen the relations between the Parties, acknowledging the relevance these processes may have in promoting regional sustainable development and to contribute to the objectives of this Agreement.

(EU-Colombia-Peru Agreement)

2. While recognising the differences in their respective regional integration processes, and without prejudice to the commitments undertaken under this Agreement, the Parties shall foster conditions which facilitate the movement of goods and services between and within the two regions.
3. With respect to movement of goods, pursuant to paragraph 1:
 - a. goods originating in a signatory Member State of MCS that are released for free circulation in the European Union [EU Party] shall benefit from free movement of goods within the territory of the European Union [EU Party] under the conditions established by the Treaty on the Functioning of the European Union;
 - b. the signatory Member States of MCS shall apply to goods originating in the European

Union [EU Party] that are imported in its territory from another signatory Member State of MCS, customs procedures that are no less favourable than those applicable to goods originating in that signatory Member State of MCS.

The treatment referred to under points (a) and (b) of this paragraph does not include tariff treatment for goods, which is governed by Chapter X [Trade in Goods].

- c. the signatory Member States of MCS shall periodically review their customs procedures with a view to facilitating the movement of goods of the European Union [EU Party] between their territories and to avoiding duplication of procedures and controls when practicable and in accordance with the evolution of their integration process.
 - d. benefits of MCS harmonization of technical regulations and conformity assessment procedures, SPS requirements and approval procedures (including import certificates, controls) shall be extended under non-discriminatory conditions to goods originating in the EU if they have been imported in compliance with the importing Member State of MCS laws and regulations.
4. With respect to trade of services, pursuant to paragraph [2](#):
- a. Member States of the European Union shall endeavour to facilitate, as appropriate, the freedom to provide services between their territories to enterprises owned or controlled by natural or juridical persons of a signatory Member State of MCS and established in a Member State of the European Union;
 - b. signatory Members States of MCS shall endeavour to facilitate, as appropriate, the freedom to provide services between their territories to enterprises owned or controlled by natural or juridical persons of a Member State of the European Union and established in a signatory Member State of MCS.

Proposed provision 4:

CHAPTER

TECHNICAL BARRIERS TO TRADE

Article 10

Cooperation and technical assistance

1. To contribute to fulfilling the objectives of this Chapter, the Parties agree to, inter alia:
 - a) Promote cooperation and joint activities and projects between their respective organizations, public and/or private, national and/or regional, in the fields of technical regulations, standardization, [eco-labelling](#), conformity assessment, metrology and accreditation;

- b) Promote good regulatory practices through the exchange of information, experiences and best practices about, inter alia, regulatory impact assessment, regulatory stock management and risk assessment and public consultation;
- c) Exchange views on market surveillance;
- d) Strengthen the technical and institutional capacity of the national regulatory, metrology, standardization, conformity assessment and accreditation bodies, supporting the development of their technical infrastructure, including labs and testing equipment, and sustaining the continuous training of human resources;
- e) Promote, facilitate and, whenever possible, coordinate their participation in international organizations and other fora related to technical regulations, conformity assessment, standards, accreditation and metrology;
- f) Support technical assistance activities by national, regional and international organizations in the areas of technical regulations, standardization, conformity assessment, metrology and accreditation;
- g) endeavour to share available scientific evidences and technical information among regulatory authorities of the Parties, to the extent necessary to cooperate or pursue technical discussions under this Chapter, with the exception of confidential or other sensitive information.

2. A Party shall give appropriate consideration to proposals of the other Party for cooperation under this Chapter.

Proposed provision 5:

CHAPTER
TECHNICAL BARRIERS TO TRADE

Article 5

Technical regulations

1. The Parties agree to make best use of good regulatory practices with regard to the preparation, adoption and application of technical regulations, as provided for in the TBT Agreement, including, for example, preference for performance-based technical regulations, use of impact assessments or stakeholder consultation. In particular, the Parties agree to:

- a) use relevant international standards as a basis for their technical regulations including any conformity assessment elements therein, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued. Where international standards have not been used as a basis for a technical regulation, which may have a significant effect on trade, a Party shall, upon request of the other Party, explain the reasons why such standards have been judged inappropriate or ineffective for the aim pursued.
- b) when reviewing their technical regulations, in addition to the Article 2.3 and without prejudice to the Articles 2.4 and 12.4 of the TBT Agreement, to increase their alignment with relevant international standards. The Parties shall consider, inter alia, any new development in the relevant international standards and whether the circumstances that have given rise to any divergence from any relevant international standard continue to exist.
- c) promote the development of regional technical regulations and that these are adopted at national level and/or replace existing ones, in order to facilitate trade between the Parties; and

d) allow a reasonable interval between the publication of technical regulations and their entry into force for economic operators of the other Party to adapt. The phrase “reasonable interval” shall be understood to mean normally a period of not less than 6 months, except when this would be ineffective in fulfilling the legitimate objectives pursued.

e) to carry out the impact analysis of planned technical regulations in accordance with its respective rules and procedures.

f) when preparing technical regulations, to take due account of the characteristics and special needs of micro, small and medium-sized enterprises.

g) Where appropriate, the Parties shall specify technical regulations based on product requirements in terms of performance, including environmental performance, rather than design or descriptive characteristics.

(EU-Singapore FTA)

Proposed provision 6:

CHAPTER

SANITARY AND PHYTOSANITARY MEASURES

Article 19

Special and Differentiated Treatment

1. The European Union should provide technical assistance to address specific needs of MCS Members to comply with the Union's SPS measures, including food safety, animal and plant health, and the use of international standards.

2. In application of Article 10 of the SPS Agreement, when Paraguay has identified difficulties with a proposed measure notified by the EU Party, Paraguay may request, in its comments submitted to the EU, pursuant to Annex B to the SPS Agreement referred to in Article 7 of the SPS Trade part of the Agreement, an opportunity to discuss the issue. The EU Party and Paraguay shall enter into consultation in order to agree on:

a) alternative import conditions to be applied by the importing Party according to Article 7 (alternative measures); or

b) technical assistance according to Article 18 cooperation and technical assistance; or

c) a transitional period of 6 months for proposed measures to apply to goods from Paraguay, which could be exceptionally extended for another period of no longer than 6 months.

(EU-Vietnam FTA)

Proposed provision 7:

CHAPTER

DIALOGUES

Article 2

The subcommittee

1. The Parties hereby establish a Subcommittee on Dialogues in animal welfare, in agricultural, biotechnology, in combating antimicrobial resistance and in food safety, plant and animal health, hereinafter referred as the Subcommittee.
2. The Subcommittee shall be comprised of representatives of the Parties with responsibility on matters covered by this Chapter.
3. The Subcommittee will appoint ad-hoc working groups to conduct the Dialogues. It will also establish the scope, mandate and agendas of these working groups.
4. The working groups will be composed of representatives of the Parties with technical expertise on the matters subjected to dialogue. They will be co-chaired by the representatives of the Parties.
5. The Subcommittee and the working groups may meet by video or audio-conference and may also address issues electronically.
6. The co-chairs of the working groups shall report to the Subcommittee on the work of the group.
7. The Subcommittee may review the task assigned to a working group.
8. The Subcommittee will be responsible to promote and disseminate information on its work of competence, inter alia, to business circles and civil society. When appropriate, relevant stakeholders shall be invited to participate in the discussions of issues of their expertise.

Proposed provision 8:

CHAPTER

GOVERNMENT PROCUREMENT

Article 28

Cooperation in Government procurement

The Parties commit to cooperate to ensure the effective implementation of this chapter. The Parties shall use the available and existing instruments, resources and mechanisms. In particular, cooperation activities in this area shall be carried out, inter alia, through:

- i) exchange of information, good practices, statistical data, experts, experiences and policies in areas of mutual interest;
- ii) exchange of good practices regarding the use of sustainable procurement practices and other areas of mutual interest;
- iii) promoting networks, seminars and workshops in topics of mutual interest;
- iv) transfer of knowledge, including, inter alia, contacts between experts from the EU and MCS countries;
- v) sharing of information between the EU and MCS countries, with a view to facilitate access to the government procurement markets of each other Parties', in particular for micro, small and medium size enterprises.

vi) exchange of information and cooperation on fair and ethical trade, private and public certification and labelling schemes including eco-labelling and green public procurement;

(EU-South Korea and EU-Singapore FTAs).

Proposed provision 9:

CHAPTER [XX]

INTELLECTUAL PROPERTY

Article X.39

Cooperation and transparency

1. The Sub Committee on Intellectual Property established in accordance with Article X.59 shall see to the proper functioning of this Sub-Section and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:

- (a) taking decisions amending Annex I as regards the references to the law applicable in the Parties,
- (b) taking decisions modifying Annex II as regard to geographical indications and exchanging information for that purpose,
- (c) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications,
- (d) cooperating on the development of alternative names for products that were once marketed by producers of a Party with terms corresponding to geographical indications of the other Party, especially in cases subject to a phasing out. Parties shall notify each other if a geographical indication listed in Annex II ceases to be protected in the territory of the Party concerned. Following such notification, the Sub Committee shall modify Annex II in accordance with Article X.39.3 (b) to end the protection under this Agreement. Only the Party in which the product originates is entitled to request the end of the protection under this Sub-Section of a geographical indication listed in Annex II.

(e) cooperating on the identification of products that could benefit from protection as geographical indications and any other action aimed at achieving protection as geographical indications for these products. In so doing, the European Union and MCS shall pay particular attention to promoting and preserving local traditional knowledge and biodiversity through the establishment of geographical indications.

4. Parties shall, either directly or through the Sub Committee, remain in contact directly on all matters relating to the implementation and the functioning of this Sub-Section. In particular, a Party may request

from the other Party information relating to product specifications and their amendments, as well as contact points for control provisions.

5. A product specification referred to in this agreement shall be the one approved, including any amendments also approved, by the authorities of the Party in the territory from which the product originates.

6. Parties may make publicly available the product specifications or a summary thereof corresponding to the geographical indications of the other Party protected pursuant to this Subsection, in Portuguese, Spanish or English.

(EU-CARIFORUM Agreement)

Proposed provision 10 and 11:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article 1

Objectives and Scope

1. 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 labour¹ and environmental aspects of sustainable development of specific relevance in a trade and investment context.

2. The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development of 1992, the Johannesburg Declaration on Sustainable Development and the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the United Nations Economic and Social Council on Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development of 2006, the Declaration on Social Justice for a Fair Globalisation of 2008 of the International Labour Organisation (ILO), and the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want" and the document "Transforming our World: the 2030 Agenda for Sustainable Development", adopted in 2015.

3. The Parties recognize that the economic, social and environmental dimensions are interdependent and mutually reinforcing dimensions of sustainable development and reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations. They underline the benefit of cooperation on trade-related social and environmental issues as part of a global approach to trade and sustainable development.

4. Consistent with the instruments referred to in paragraph 2, the Parties shall promote sustainable development through:

¹ For the purposes of this chapter, the term "labour" means the strategic objectives of the ILO under the Decent Work Agenda, which is expressed in the ILO 2008 Declaration on Social Justice for a Fair Globalisation

(a) the development of trade and economic relations in a manner that contributes to the objective of achieving the Sustainable Development Goals and supports their respective labour and environmental standards and objectives in a context of trade relations that are free, open, transparent, and respectful of multilateral agreements to which they are Party.

(b) the respect of their multilateral commitments in the fields of labour and of the environment.

(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.

(d) joint cooperation in relevant trade and environment forums, including the WTO Committee on Trade and Environment.

5. Recognizing the differences in their levels of development, the Parties agree that this Chapter embodies a cooperative approach based on common values and interests.

(EU-Singapore)

Proposed provision 12:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article 7

Trade and Biodiversity

1. The Parties recognise the importance of the conservation and sustainable use of biological diversity [and the role of trade in pursuing these objectives, including by promoting sustainable trade or controlling or restricting trade in endangered species, in line with] ~~consistent with~~ the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Treaty on Plant Genetic Resources for Food and Agriculture [and other relevant multilateral environmental agreements to which they are a party], and the decisions adopted thereunder ~~and the role that trade can play in contributing to the objectives of these agreements.~~

2. Pursuant to paragraph 1, each Party shall:

(a) promote the use of CITES as an instrument for conservation and sustainable use of biodiversity; including through the inclusion of animal and plant species in the Appendices to the CITES where the conservation status of that species is considered at risk because of international trade]; and conduct periodic reviews, which may result in recommendation to amend the Appendices to the CITES, in order to ensure that they properly reflect the conservation needs of species subject to international trade.]

(b) implement effective measures leading to a reduction of illegal trade in wildlife, consistent with international agreements to which it is Party.

(c) encourage trade in natural resource-based products obtained through a sustainable use of biological resources or which contribute to the conservation of biodiversity, in accordance with domestic laws.

(d) promote the fair and equitable sharing of benefits arising from the use of genetic resources and, where appropriate, measures for access to such resources and prior informed consent.

3. The Parties shall also exchange information on initiatives and good practices on trade in natural resource-based products with the aim of conserving biological diversity and cooperate, as appropriate, bilaterally, regionally and in international fora on issues covered by this article.

(EU-UK TCA)

Proposed provision 13:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article 14

Sub-Committee on Trade and Sustainable Development and Contact Points

1. The Parties hereby establish a Sub-Committee on Trade and Sustainable Development (hereafter "TSD Sub-Committee"). It shall comprise senior officials, or their delegates, from each Party.
2. The TSD Sub-Committee shall meet within a year of the date of entry into force of this Agreement, unless otherwise agreed by the Parties, and thereafter as necessary in accordance with Article ... of Chapter ... [*Institutional provisions on meetings of Sub-Committees of the Trade Committee*]. [This TSD Sub-Committee shall establish its own rules of procedures and adopt its decisions by consensus.]
3. The functions of the TSD Sub-Committee are to:
 - (a) facilitate and monitor the effective implementation of this Chapter, including cooperation activities undertaken under this Chapter,
 - (b) carry out ex post analysis of the environmental impact of trade provisions and make recommendations to the Trade Committee with respect to negative outcomes of the agreement,
 - (c) carry out the tasks referred to in Articles 16 and 17,
 - (d) make recommendations to the Trade Committee, including with regard to topics for discussion with the [*civil society mechanism*], referred to in Article ... of Chapter ... [*general institutional provisions*],
 - (e) consider any other matter related to this Chapter as the Parties may agree.
4. The TSD Sub-Committee shall publish a report after each of its meetings.
5. Each Party shall designate a Contact Point within its administration to facilitate communication and coordination between the Parties on any matter relating to the implementation of this Chapter.

Annex 3: Proposed provisions for future negotiations

Proposed provision 1:

CHAPTER I CUSTOM DUTIES

Article 3

1. For purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Annex [X] (Rules of Origin).
2. Except as otherwise provided for in this Agreement, each Party shall reduce and/or eliminate its customs duties on originating goods in accordance with the Schedules set out in Annex 1 (hereinafter referred to as "Schedules").
3. A customs duty includes any duty or charge of any kind imposed on or in connection with the importation of a good, including any form of surtax or surcharge imposed on or in connection with such importation,¹ but does not include any:
 - (a) internal taxes or other internal charges imposed consistently with Article III of GATT 1994 [\[including carbon-adjustment taxes.\]](#)
 - (b) Antidumping or countervailing duties applied in accordance with Articles VI and XVI of GATT 1994 and the WTO Agreement on the Implementation of Article VI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures in conformity with the Chapter (Trade Remedies).
 - (c) measures applied in accordance with Article XIX of GATT 1994 and with the WTO agreement on Safeguards, or with other safeguard measures of the Agreement.
 - (d) measures authorised by the WTO Dispute Settlement Body or under the Dispute Settlement provisions of this Agreement.
 - (e) fee or other charge, imposed consistently with Article VIII of GATT 1994.
 - (f) measures adopted to safeguard a Party's external financial position and its balance of payments, in conformity with Article XII of GATT 1994 and the Understanding on Balance of Payments Provisions of GATT 1994.

Proposed provision 2, 3 and 4:

TRADE AND SUSTAINABLE DEVELOPMENT

[Article \[X\]](#)

[Trade Favouring Sustainable Development](#)

1. [The Parties shall strive to facilitate and promote trade and foreign direct investment in environmental goods and services, including through addressing the reduction of non-tariff barriers related to these goods and services.](#)

(EU-Colombia-Peru/CETA)

2. The Parties shall facilitate increased cooperation with respect to the manufacture, importation, sale and operation of motor vehicles using alternative fuels.

(CPTPP – EU-UK TCA)

3. The Parties recognise the need to ensure that, when developing public support systems for fossils fuels, proper account is taken of the need to reduce greenhouse gas emissions and of the need to limit distortions of trade as much as possible. The Parties share the goal of progressively reducing subsidies for fossil fuels. Such reductions may be accompanied by measures to alleviate the social consequences associated with the transition to low carbon fuels. In addition, both Parties will actively promote the development of a sustainable and safe low-carbon economy, such as through investment in renewable energies and energy efficient solutions, and promote the use of nature based solutions.

Proposed provision 5:

CHAPTER

SANITARY AND PHYTOSANITARY MEASURES

Article 11

Transparency and exchange of information

1. Upon request of a Party and within 15 working days following the date of such request, the Parties shall exchange information on:

- a) SPS procedures for the import approval of a product, including, if possible, expected timelines;
- b) The requirements that apply for the import of specific products, including as appropriate the model of certificate;
- c) Information on the pest status, including surveillance, eradication and containment programs and their results in order to support such pest status and import phytosanitary measures;
- d) The state of play of the procedure for import approval of specific products;
- e) The relation of the SPS measure to the international standards, guidelines and recommendations and, in case that a measure is not based on international standard, the scientific information on which the SPS measure is not in conformity with and an explanation of the reasons of such measure.
- f) In cases where relevant scientific evidence is insufficient, a Party adopting a provisional measure shall provide the available pertinent information on which the measure is based and, when available the additional information for a more objective assessment of the risk and will review the SPS measure accordingly in a reasonable period of time.
- f) In cases where relevant scientific evidence [or information] is insufficient [or inconclusive and there is a risk on human, animal or plant life or safety in its territory], a Party [may adopt sanitary or phytosanitary measures based on the precautionary principle].-[Such measures shall be based upon available pertinent information and subject to periodic review. The Party adopting the measure shall seek to obtain new or additional scientific information necessary for a more conclusive assessment and shall review the measure as appropriate.]

2. The Parties shall make publicly available, by the means they decide, updated information of their:

- a) SPS import requirements and authorisation procedures for the products covered by this chapter.
- b) List of regulated pests.

3. The Parties shall inform each other of:

- a) Any change in the sanitary and phytosanitary status that may affect trade between the Parties.
- b) Matters related to the development and application of SPS measures that may affect trade between the Parties.
- c) Any pertinent information for the adequate implementation of this Chapter.

4. Without prejudice of paragraph 1 when the information referred has been made available by notification to the WTO or to the International Standard Setting Body, in accordance with the relevant rules, or on publicly accessible and fee free web-sites of the Parties, the information shall be considered communicated to the other Party.

5. Each Party shall designate a contact point and inform the other Party no later than one month after the entry into force of this Agreement.

Proposed provision 6:

CHAPTER

GOVERNMENT PROCUREMENT

Article 6

General Principles

1. With respect to any measure related to covered procurement:

- a. the EU Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the signatory MCS countries and to the suppliers of the signatory MCS countries offering such goods and services, treatment no less favourable than the treatment accorded to its own goods, services and suppliers;
- b. each signatory MCS country, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the EU Party and to the suppliers of the EU Party offering such goods and services, treatment no less favourable than the treatment accorded to its own goods, services and suppliers.

2. With respect to any measure concerning covered procurement, the EU and each MCS State, including their respective procuring entities, shall not:

- a. treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation to, or ownership by, juridical or natural persons of the other Party; nor
- b. discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

3. The provisions of this Article do not apply to custom duties or any other measure of an equivalent nature, which have an impact on foreign trade, or to other import regulations and measures which affect the trade in services, different to the ones which specifically regulate public procurement covered under this agreement.

4. Each Party shall ensure that its procuring entities may take into account environmental, labour and social considerations throughout the procurement procedure, provided that those considerations are compatible with the rules established this Chapter and are indicated in the notice of intended procurement or in another notice used as a notice of intended procurement or tender documentation.

(EU-Japan FTA and EU-UK Trade and Cooperation Agreement)

Proposed provision 7 and 8:

CHAPTER [XX]

INTELLECTUAL PROPERTY

Section A – General Provisions and Principles

Article X.6

Protection of Biodiversity and Traditional knowledge

- ~~1. The Parties recognise the importance and value of biological diversity and its components and of the associated traditional knowledge, innovations and practices of indigenous and local communities~~ [The Parties recognise the past, present and future contribution of indigenous and local communities to the conservation and sustainable use of biological diversity and all of its components and, in general, the contribution of the traditional knowledge of their indigenous and local communities to the culture and to the economic and social development of nations].
- ~~2. [Subject to their domestic legislation the EU and MCS respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.]~~
- ~~3. [The Parties recognise the importance of taking appropriate measures, subject to national legislation, to preserve traditional knowledge.]~~
4. The Parties furthermore reaffirm their sovereign rights over their natural resources and recognise their rights and obligations as established by the Convention of Biological Diversity of 1992 (henceforth referred to as CBD) [and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD] with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilisation of these genetic resources.
- ~~5. [The Parties shall cooperate, subject to domestic legislation and international law, to ensure that intellectual property rights are supportive of, and do not run counter to, their rights and obligations~~

under the CBD, in so far as genetic resources and associated traditional knowledge of the indigenous and local communities located in their respective territories are concerned]

6. Recognising the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions, the Parties agree that access to genetic resources for food and agriculture shall be subject to specific treatment in accordance with the International Treaty on Plant Genetic Resources for Food and Agriculture (2001).
7. The Parties may, by mutual agreement, review this Article subject to the results and conclusions of multilateral discussions.

(EU-CARIFORUM)

Proposed provision 9:

CHAPTER [XX]

INTELLECTUAL PROPERTY

Article [x]

Transfer of technology

1. The Parties agree to exchange views and information on their practices and policies affecting transfer of technology, both within their respective regions and with third countries. This shall in particular include measures to facilitate information flows, business partnerships, licensing and subcontracting. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including issues such as development of human capital and legal framework.
2. The Parties shall take measures to prevent or control licensing practices or conditions pertaining to intellectual property rights which may adversely affect the international transfer of technology and that constitute an abuse of intellectual property rights by right holders or an abuse of obvious information asymmetries in the negotiation of licences.
3. The EU Party shall facilitate and promote the use of incentives granted to institutions and enterprises in its territory for the transfer of technology to institutions and enterprises of the MCS States in order to enable the MCS States to establish a viable technological base.
4. The Parties encourage transfer of technology to help in the adoption of new technologies that may contribute to the mitigation of climate change and aid in energy transition.

(Based on EU-CARIFORUM, EU-Central America and EU-South Korea Agreements.)

Proposed provision 10:

CHAPTER [XX]

INTELLECTUAL PROPERTY

Section D - Final provisions

Article X.59

Cooperation

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter in view of Objectives set out in Article X.2 and Principles set out in Article X.4 of this Chapter.
2. The areas of cooperation include, but are not limited to, the following activities:
 - a) The exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;
 - b) The exchange of experience between the Parties on legislative progress;
 - c) The exchange of experience between the Parties on the enforcement of intellectual property rights;
 - d) The exchange of experience between the Parties on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;
 - e) Coordination to prevent exports of counterfeit goods, including with other countries;
 - f) Technical assistance, capacity-building; exchange and training of personnel;
 - g) The protection and defence of intellectual property rights and the dissemination of information in this regard in, inter alia, business circles and civil society;
 - h) Public awareness of consumers and right holders; enhancement of institutional cooperation, particularly between the intellectual property offices;
 - i) Actively promoting awareness and education of the general public on policies concerning intellectual property rights;
 - j) Engaging with SMEs, including at SME-focused events or gatherings, regarding using, protecting and enforcing intellectual property rights;
 - k) The application of the CBD and related instruments, and the domestic frameworks on access to genetic resources and associated traditional knowledge, innovations and practices;
 - l) The promotion of the convergence of green patent programs, with the objective of creating a space for the exchange of experiences in green technologies.
 - m) Facilitation of voluntary stakeholder initiatives to reduce intellectual property rights infringement, including over the internet and in other marketplaces;
 - n) The exchange of information related to public domain in their territories.

[3. Without prejudice to paragraph 1 and 2 and to supplement them if necessary, the Parties agree to establish a Sub-Committee on Intellectual Property to follow up on the implementation of the provisions of this Chapter and any other relevant issue. This Sub-Committee shall be co-chaired by officials of both Parties and will meet at least once per year, except if the Parties agree otherwise. These meetings shall be carried out through any agreed means, including by video conference. The Sub-Committee on Intellectual Property will adopt its decisions by consensus. It may also adopt specific rules of procedure, by consensus.]

Proposed provision 11, 12 and 13:

SECTION

SUBSIDIES

Article X.1

Principles

1. The Parties agree that subsidies can be granted by a Party when they are necessary to achieve a public policy objective. ~~The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.~~

2. With a view to ensuring that subsidies are not granted where they have or could have a material effect on trade or investment between the Parties, each Party shall have in place and maintain an effective system of subsidy control that ensures that the granting of a subsidy respects the following principles:

- a) subsidies pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns (“the objective”);
- b) subsidies are proportionate and limited to what is necessary to achieve the objective;
- c) subsidies are designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided;
- d) subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy;
- e) subsidies are an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means;
- f) subsidies’ positive contributions to achieving the objective outweigh any negative effects, in particular the negative effects on trade or investment between the Parties.

2. An illustrative list of public policy objectives for which a Party may grant subsidies, subject to not undermine the proper functioning of markets and the benefits of trade liberalisation, includes the following:

- (a) making good the damage caused by natural disasters or exceptional occurrences;
- (b) promoting the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (c) remedying a serious disturbance in the economy of one of the Parties;
- (d) facilitating the development of certain economic activities or of certain economic areas, including but not limited to, subsidies for clearly defined research, development and innovation

purposes, subsidies for training or for the creation of employment, subsidies for environmental purposes, subsidies in favour of small and medium-sized enterprises as defined in the Parties' respective legislations;
(e) promoting, developing and increasing the generation of energy from renewable and sustainable non-fossil sources; and
(f) promoting culture and heritage conservation.

3. The Parties acknowledge the relevance of achieving multilateral regulations regarding the use of subsidies for environmental purposes, for which they commit to cooperate within the framework of the WTO.

4. The Parties recognise the importance of a secure, affordable and sustainable energy system and environmental sustainability, notably in relation to the fight against climate change which represent an existential threat to humanity. Therefore, without prejudice to Article 1.1 [Principles], the subsidies in relation to energy and environment shall be aimed at, and incentivise the beneficiary in, delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market or increasing the level of environmental protection compared to the level that would be achieved in absence of the subsidy. Such subsidies shall not relieve the beneficiary from liabilities arising from its responsibilities as a polluter under the law of the relevant Party.

(EU-Vietnam and EU-Singapore FTAs and EU-UK TCA)

Proposed provision 14:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article 1

Objectives and Scope

1. 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 labour¹ and environmental aspects of sustainable development of specific relevance in a trade and investment context.

2. The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development of 1992, the Johannesburg Declaration on Sustainable Development and the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the United Nations Economic and Social Council on Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development of 2006, the Declaration on Social Justice for a Fair Globalisation of 2008 of the International Labour Organisation (ILO), and the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want" and the document "Transforming our World: the 2030 Agenda for Sustainable

¹ For the purposes of this chapter, the term "labour" means the strategic objectives of the ILO under the Decent Work Agenda, which is expressed in the ILO 2008 Declaration on Social Justice for a Fair Globalisation

Development”, adopted in 2015.

3. The Parties recognize that the economic, social and environmental dimensions are interdependent and mutually reinforcing dimensions of sustainable development, and reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations.

4. Consistent with the instruments referred to in paragraph 2, the Parties shall promote sustainable development through:

(a) the development of trade and economic relations in a manner that contributes to the objective of achieving the Sustainable Development Goals and supports their respective labour and environmental standards and objectives in a context of trade relations that are free, open, transparent, and respectful of multilateral agreements to which they are Party.

(b) the respect of their multilateral commitments in the fields of labour and of the environment.

(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.

5. Recognizing the differences in their levels of development, the Parties agree that this Chapter embodies a cooperative approach based on common values and interests.

6. [The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded by their domestic labour and environment law. At the same time, the Parties stress that environmental and labour standards should not be used for protectionist trade purposes.]

(EU-Singapore)

Proposed provision 15 and 16:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article 5

Multilateral Environmental Agreements

1. The Parties recognize that the environment is one of the three dimensions of sustainable development and that its three dimensions -economic, social and environmental- should be addressed in a balanced and integrated manner. Additionally, the Parties recognize the contribution that trade could make to sustainable development.

2. The Parties recognise the importance of the United Nations Environment Assembly (UNEA) of the United Nations Environment Programme (UNEP) and multilateral environment agreements as a response of the international community to global or regional environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment policies.

3. Recalling the above paragraphs, each Party reaffirms its commitments to promote and effectively implement, multilateral environmental agreements (MEAs), protocols ~~and~~, their amendments [and specific programmes, decisions and recommendations] to which it is a party.

4. The Parties reaffirm their commitment to effectively implement in their laws and practice the multilateral environmental agreements to which they are Parties including:

- a) United Nations Framework Convention on Climate Change (UNFCCC);
- b) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- c) The Stockholm Convention on Persistent Organic Pollutants;
- d) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade;
- e) Convention on Biological Diversity (CBD);
- f) Cartagena Protocol on Biosafety to the CBD;

5. The Parties shall regularly exchange information on their respective progress as regards the ratifications of MEAs, including their protocols and amendments.

7. The Parties shall consult and cooperate, as appropriate, on trade-related environmental matters of mutual interest in the context of multilateral environmental agreements.

8. The Parties acknowledge their right to invoke Article [insert Article number – General Exceptions] in relation to environmental measures.

9. Nothing in this agreement shall prevent Parties from adopting or maintaining measures to implement the MEAs to which they are party provided that such measures are consistent with Article 2.6.

(EU-Colombia-Peru and EU-Central America)

Proposed provision 17:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article [X]

Invasive Alien Species

1. The Parties recognise that the movement of terrestrial and aquatic invasive alien species across borders through trade-related pathways can adversely affect the environment, economic activities and development, and human health. The Parties also recognise that the prevention, early detection, control and, when possible, eradication, of invasive alien species are fundamental strategies for the prevention and mitigation of risks related to the introduction of these species and for the management of adverse impacts.
2. Accordingly, the Committee shall coordinate with the Subcommittee on Sanitary and Phytosanitary Measures established under Article 18 (Subcommittee on SPS matters) to identify cooperative opportunities to share information and management experiences on the movement, prevention, detection, control and eradication of invasive alien species, with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species.

(CPTPP and Brazil-Chile FTA.)

Proposed provision 18:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article [X]

Sustainable Agriculture

1. The Parties recognize the increasing impact that global changes, such as climate change, biodiversity loss, land degradation, droughts and the emergence of new pests and diseases have on the development of productive sectors such as agriculture, livestock and the forestry sector.
2. The Parties recognize the importance of strengthening policies and developing programs that contribute to the development of more productive, sustainable, inclusive and resilient agricultural systems.
3. The Parties will share information and experiences in the development and implementation of integrated policies that promote the incorporation of the pillars of agricultural sustainable development. In this sense, the Parties will seek to improve agricultural productivity considering the protection and sustainable use of ecosystems and natural resources, including water, soil and air, biodiversity and ecosystem services, as well as reinforcing the social dimension, in addition to contributing to the adaptation and effective mitigation of the agricultural, forestry and food sectors to global changes.

(Brazil-Chile and Argentina-Chile FTAs.)

Proposed provision 19:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article [X]

Trade in Wild Fauna and Flora

1. The Parties affirm the importance of combating the illegal trade in wild fauna and flora and recognize that this trade undermines efforts to conserve and sustainably manage those natural resources.
2. The Parties, in accordance with their international obligations in MEAs and their legal system, undertake to:
 - (a) promote legally obtained wild fauna and flora trade, and
 - (b) exchange information and cooperate, as appropriate, in mutual initiatives interest that allow improving coordination, communication, training between authorities, in areas such as legal and sustainable trade, and that promote the conservation and the fight against poaching and trafficking of wild fauna and flora.

Proposed provision 20:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article 6

Trade and Climate Change

1.

~~1. The Parties shall also cooperate, as appropriate, on trade related climate change issues bilaterally, regionally and in international fora, particularly in the UNFCCC. [The Parties shall work together to strengthen their cooperation on trade-related aspects of climate change policies and measures bilaterally, regionally and in international fora, as appropriate, including in the UNFCCC, the WTO, the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal on 26 August 1987 (the “Montreal Protocol”), the International Maritime Organisation (IMO) and the International Civil Aviation organization (ICAO). Such cooperation may cover inter alia:~~

- ~~(a) policy dialogue and cooperation regarding the implementation of the Paris Agreement, such as on means to promote climate resilience, renewable energy, low-carbon technologies, energy efficiency, sustainable transport, sustainable and climate-resilient infrastructure development, emissions monitoring, international carbon markets;~~
- ~~(b) supporting the development and adoption of ambitious and effective greenhouse gas emissions reduction measures by the IMO to be implemented by ships engaged in international trade;~~
- ~~(c) supporting the development and adoption of ambitious and effective greenhouse gas emissions reduction measures by the ICAO;~~
- ~~(d) supporting an ambitious phase-out of ozone depleting substances and phase-down of hydrofluorocarbons under the Montreal Protocol through measures to control their production, consumption and trade; the introduction of environmentally friendly alternatives to them; the updating of safety and other relevant standards as well as by combating the illegal trade of substances regulated by the Montreal Protocol]~~

2. Pursuant to paragraph 1, each Party shall:

(a) effectively implement the UNFCCC and the Paris Agreement established thereunder [of which one principal aim is strengthening the global response to climate change and holding increase in global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.];

(b) consistent with Article 2 of the Paris Agreement, promote the positive contribution of trade to a pathway towards low greenhouse gas emissions and climate-resilient development and to increasing the ability to adapt to the adverse impacts of climate change in a manner that does not threaten food production.

(c) to fulfil the obligations of Article 4 of the Paris Agreement, enhance cooperation for the implementation of nationally determined contributions.

3. The Parties shall also cooperate, as appropriate, on trade-related climate change issues bilaterally, regionally and in international fora, particularly in the UNFCCC [including the monitoring of NDCs through the Paris Agreement Transparency mechanism.]

(EU-UK TCA)

Proposed provision 21:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article 2

Right to regulate and levels of protection

1. The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish the levels of domestic environmental and labour protection it deems appropriate and to adopt or modify its law and policies. Such levels, law and policies shall be consistent with each Party's commitment to the international agreements and labour standards referred to in Articles 4 and 5.
2. Each Party shall strive to improve its relevant laws and policies so as to ensure high and effective levels of environmental and labour protection.
3. A Party should not weaken the levels of protection afforded in domestic environmental or labour law with the intention of encouraging trade or investment.
4. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental or labour laws in order to encourage trade or investment.
5. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental or labour laws in order to encourage trade or investment.
6. A Party shall not apply environmental and labour laws in a manner that would constitute a disguised restriction on trade or an unjustifiable or arbitrary discrimination.
7. The Parties commit to not adopting or applying regional or national trade or investment-related legislation or other related administrative measures as the case may be in a way which has the effect of frustrating measures intended to benefit, protect or conserve the environment or natural resources or to protect public health.

Proposed provision 22:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article [X]

Public Information and Civil Society Dialogue Forum

1. Each Party shall encourage public debate with and among non-state actors as regards the development and definition of policies that may lead to the adoption of environmental law by its public authorities.
2. Each Party shall promote public awareness of its environmental law, as well as enforcement and compliance procedures, by ensuring the availability of information to stakeholders.
3. The Parties agree to organise and facilitate a bi-regional Civil Society Dialogue Forum for open dialogue, with a balanced representation of environmental, economic and social stakeholders. The Civil Society Dialogue Forum shall conduct dialogue encompassing sustainable development aspects of trade relations between the Parties, as well as how cooperation may contribute to achieve the objectives of this Title. The Civil Society Dialogue Forum will meet once a year, unless otherwise agreed by the Parties.
4. Unless the Parties agree otherwise, each meeting of the Board will include a session in which its members shall report on the implementation of this Title to the Civil Society Dialogue Forum. In turn, the Civil Society Dialogue Forum may express its views and opinions in order to promote dialogue on how to better achieve the objectives of this Title.

(EU-Central America Agreement and CETA.)

Proposed provision 23, 24, 25 and 26:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article 13

Working together on trade and sustainable development

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)
- (b) the impact of labour and environmental law and standards on trade and investment;
- (c) the impact of trade and investment law on labour and the environment;
- (d) voluntary sustainability assurance schemes such as fair and ethical trade schemes and eco-labels through the sharing of experience and information on such schemes;

as well as trade-related aspects of:

- (e) the implementation of fundamental, priority and other up-to-date ILO Conventions;
- (f) the ILO Decent Work Agenda, including on the inter-linkages between trade and full and productive employment, labour market adjustment, core labour standards, decent work in global supply chains, social protection and social inclusion, social dialogue, skills development and gender equality;
- (g) the implementation of MEAs and support for each other's participation in such MEAs;
- (h) the dynamic international climate change regime under the UNFCCC, in particular the implementation of the Paris Agreement;

(e) trade-related aspects of the current and future international climate change regime, as well as domestic climate policies and programmes relating to mitigation and adaptation, including issues relating to carbon markets, ways to address adverse effects of trade on climate, as well as means to promote energy efficiency and a clean energy matrix, and the development and deployment of low-carbon and other climate-friendly technologies;

- (i) the Montreal Protocol and any amendments to it ratified by the Parties, in particular measures to control the production and consumption of and trade in Ozone Depleting Substances (ODS) and Hydrofluorocarbons (HFCs), and the promotion of environmentally friendly alternatives to them, and measures to address illegal trade of substances regulated by the Protocol;
- (j) corporate social responsibility, responsible business conduct, responsible management of global supply chains and accountability, including with regard to implementation, follow-up, and dissemination of relevant international instruments;
- (k) the sound management of chemicals and waste;
- (l) the conservation and sustainable use of biological diversity, and the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to such resources, as referred to in Article 7;
- (m) combatting wildlife trafficking, as referred to in Article 7;
- (n) the promotion of the conservation and sustainable management of forests with a view to reducing deforestation and illegal logging, as referred to in Article 8;
- (o) private and public initiatives contributing to the objective of halting deforestation, including those linking production and consumption through [\[vertical productivity and\]](#) supply chains, consistent with SDGs 12 and 15;
- (p) the promotion of sustainable fishing practices and trade in sustainably managed fish products, as referred to in Article 9;

(q) sustainable consumption and production initiatives consistent with SDG 12, including, but not limited to, circular economy and other sustainable economic models aimed at increasing resource efficiency and reducing waste generation.

(r) the conservation of biomes, such as the Amazon, considering its relevance to global climate and environment.

(s) In the light of the environmental challenges facing their respective regions, and in order to promote the development of international trade in such a way as to ensure sustainable and sound management of the environment, the Parties recognise the importance of establishing effective strategies and measures at the regional level. The Parties agree that in the absence of relevant environmental standards in national or regional legislation, they shall seek to adopt and implement the relevant international standards, guidelines or recommendations, where practical and appropriate.

(EU-CARIFORUM)

Proposed provision 27:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article 17

Panel of Experts

1. If, within 120 days of a request for consultations under Article 16 no mutually satisfactory resolution has been reached, a Party may request the establishment of a Panel of Experts to examine the matter. Any such request shall be made in writing to the contact point of the other Party established in accordance with Article 14.5 and shall identify the reasons for requesting the establishment of a Panel of Experts, including a description of the measure(s) at issue and indicating the relevant provision(s) of this Chapter that it considers applicable.

2. Except as otherwise provided for in this Article, the provisions set out in Articles 8 (Composition of arbitration panel), 9 (Hearings) and 10 (Information and technical advice) of Chapter 3 (Dispute Settlement Procedures), Articles 23 (Confidentiality) and 24 (Costs) of Chapter 4 (General Provisions) of Title VIII (Dispute Settlement), as well as the Rules of Procedure in Annex I and the Code of Conduct in Annex II to Title VIII (Dispute Settlement) shall apply.

3. The TSD Sub-Committee shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve on the Panel of Experts. The list shall be composed of three sub-lists: one sub-list proposed by the EU, one sub-list proposed by MCS and one sub-list of individuals that are not nationals of either Party. Each Party shall propose at least five individuals for its sub-list. The Parties shall also select at least five individuals for the list of individuals that are not nationals of either Party. The TSD Sub-Committee shall ensure that the list is kept up to date and that the number of experts is maintained at least at 15 individuals.

4. The individuals referred to in paragraph 3 shall have specialised knowledge of, or expertise in issues addressed in this Chapter including labour, environmental or trade law, or in the resolution of disputes

arising under international agreements. They shall be independent, serve in their individual capacities and shall not take instructions from any organisation or government with regard to issues related to the disagreement, or be affiliated with the government of any Party, and shall comply with Annex II (Code of Conduct) to Title VIII (Dispute Settlement).

5. A Panel of Experts shall be composed of three members, unless the Parties agree otherwise. The Chairperson shall be from the sub-list of individuals that are not nationals of either Party. A Panel of Experts shall be established according to the procedures set out in paragraphs 1 and 4 of Article 8 (Composition of arbitration panel) of Chapter 3 (Dispute Settlement Procedures) of Title VIII (Dispute Settlement). The experts shall be selected from the relevant individuals on the sub-lists referred to in paragraph 3 of this Article, in accordance with the relevant provisions of paras 2, 3 or 5 (Composition of arbitration panel) of Chapter 3 (Dispute Settlement Procedures) of Title VIII (Dispute Settlement).

6. Unless the Parties agree otherwise within seven days from the date of establishment of the Panel of Experts, as defined in paragraph 6 of Article 8 (Composition of arbitration panel) of Chapter 3 (Dispute Settlement Procedures), Title VIII (Dispute Settlement), the terms of reference shall be: "to examine, in the light of the relevant provisions of Chapter X [Trade and Sustainable Development] of the EU-MCS Association Agreement, the matter referred to in the request for the establishment of the Panel of Experts, and to issue a report, in accordance with Article 17 of that Chapter, making recommendations for the resolution of the matter".

7. With regard to matters related to the respect of multilateral agreements referred to in this Chapter, the opinions of experts or information requested by the Panel of Experts in accordance with Article 10 (Information and Technical Advice) of Chapter 3 (Dispute Settlement Procedures) of Title VIII (Dispute Settlement) should include information and advice from the relevant ILO or MEA bodies. Any information obtained under this paragraph shall be provided to both Parties for their comments.

8. The Panel of Experts shall interpret the provisions of this Chapter in accordance with the customary rules of interpretation of public international law.

9. The Panel of Experts shall issue to the Parties an interim report within 90 days of the establishment of the Panel, and a final report no later than 60 days after issuing the interim report. These reports shall set out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations. Either of the involved Parties may submit written comments on the interim report to the Panel of Experts within 45 days of the date of issue of the interim report. After considering any such written comments, the Panel of Experts may modify the report and make any further examination it considers appropriate. Where it considers that the deadlines set in this paragraph cannot be met, the chairperson of the Panel of Experts shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to issue its interim or final report.

10. The Parties shall make the final report publicly available within 15 days of its submission by the Panel of Experts

~~11. The Parties shall discuss appropriate measures to be implemented taking into account the report and recommendations of the Panel of Experts. [If the final report of the Panel of Experts determines that a Party has not conformed with its obligations under this Chapter, the Parties shall engage in discussions and shall endeavour, within three months of the delivery of the final report, to identify an appropriate measure or, if appropriate, to decide upon a mutually satisfactory action plan. In these discussions, the Parties shall take~~

into account the final report.] The Party complained against shall inform its... [civil society domestic advisory group] referred to in Article ... of Chapter ... and the other Party of its decisions on any actions or measures to be implemented no later than 90 days after the report has been made publicly available. The Sub-Committee on Trade and Sustainable Development shall monitor the follow-up to the report of the Panel of Experts and its recommendations. The ... [civil society domestic advisory groups set up under the Agreement] referred to in Article(s) ... of Chapter... may submit observations to the TSD Sub-Committee in this regard.

(CETA)

Proposed provision 28:

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Article 15

Dispute Resolution

1. The Parties shall make all efforts through dialogue, consultation, exchange of information and cooperation to address any disagreement on the interpretation or application of this Chapter.
2. Any time period mentioned in Articles 16 and 17 may be extended by mutual agreement of the Parties.
3. All time periods established under this Chapter shall be counted in calendar days from the day following the act or fact to which they refer.
4. For the purpose of this Chapter, Parties to a dispute under this chapter shall be as set out in Article 2 (Parties) of Chapter 1 (Objective and Scope) of Title VIII (Dispute Settlement).
5. ~~No Party shall have recourse to dispute settlement under Title VIII (Dispute Settlement) for any matter arising under this Chapter.~~ [If the consulting Parties have failed to resolve the matter under the framework proposed in this chapter, the requesting Party may recourse to dispute settlement under Title XXX Dispute Settlement.]

(CPTPP and USMCA)

Annex 4: MEAs comparison

Treaty or Instrument Reference/ FTA	EU-MCS Draft FTA	EU-Japan Economic Partnership Agreement	CETA	EU-Singapore FTA	EU-Vietnam FTA	EU-South Korea FTA	EU-Colombia-Peru FTA	EU-Central America FTA
United Nations Framework Convention on Climate Change (UNFCCC)	x	x		x	x	x	x	
Paris Agreement	x	x		x	x			
Convention on Biological Diversity	x	x			x		x	x
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	x	x	x	x	x		x	x
International Treaty on Plant Genetic Resources for Food and Agriculture	x							
Montreal Protocol and any amendments to it ratified by the Parties	x						x	x
United Nations Convention on the Law of the Sea	x	x			x			
Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas		x		x	x			

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks		x			x			x
Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organisation on 31 October 1995	x	x			x			
Kyoto Protocol to the UNFCCC				x	x	x	x	x
the Strategic Plan for Biodiversity 2011-2020					x			
Aichi Biodiversity Targets					x			

Experts Biographies:

DR. NICOLÁS ALBERTONI

Nicolás Albertoni holds a PhD in Business Administration (Pontificia Universidad Católica de Argentina). Dr. Albertoni is doing a PhD in Political Science and International Relations at the University of Southern California in Los Angeles. Dr. Albertoni holds a master's degree in Economics and Politics and International Relations (University of Southern California); and in Latin American Studies (Georgetown University School of Foreign Service). Dr. Albertoni is a professor at Universidad Católica del Uruguay and an associate researcher at the Security and Political Economy Lab (SPECLab) of the University of Southern California in Los Angeles. Dr. Albertoni works in International political economy, MCS - European trade negotiations, international trade norms.

DR. LORENA BEATRIZ BALBUENA DE SANCHEZ

Lorena Balbuena holds a PhD in Law (Carlos III University of Madrid, Spain), and a PhD in current problems of criminal law (University of Salamanca, Spain). Dr. Balbuena is Postgraduate Director, Professor and Member of the strategic plan promoting Universidad Católica "Ntra. Sra. De la Asunción" - UC, Paraguay; and Lecturer at the National University of Caaguazu, Paraguay. Dr. Balbuena was advisor in environmental law to the Energy and Environment Commission of the National Congress, and environmental consultant for the United Nations, representing Paraguay before the III Conference on urban development and sustainable development, projected by UN Habitat, 2014/2016.

DR. ALINE BELTRAME DE MOURA

Aline Beltrame de Moura holds a PhD and Master's Degree in Law (Università degli Studi di Milano). Dr. Beltrame de Moura is professor in the Law School at the Federal University of Santa Catarina, Brazil. Prof. Beltrame de Moura was visiting researcher at the Max Planck Institute for Comparative and International Private Law in Hamburg, Germany. Currently, Prof. Beltrame de Moura coordinates the Centre of Research in Private International Law UFSC/CNPq as well as the Jean Monnet Network "Bridge Project" and the Jean Monnet Module CCJ/UFSC, both projects funded by the European Union's Erasmus+ programme. Prof. Beltrame de Moura is also Chief-Editor of the Latin American Journal of European Studies. Prof. Beltrame de Moura also acts as President of the International Relations and Law Commission of the Brazilian Bar Association in the State of Santa Catarina.

FERNANDO BERTRAN

Fernando Bertrán is an international lawyer with broad experience in the fields of international trade, foreign investment, business and commercial law, and telecommunications and media matters. He is currently a lawyer at the WTO Legal Affairs Division, while he has previously worked at the Directorate General for Trade of the European Commission, and at a law firm based in Chile. He was a Member of the first cohort of the WTO Young Professionals Programme. He holds an LLM from the University of Cambridge and has participated at the Hague Academy of International law.

JAVIERA CÁCERES

Javiera Cáceres holds a Master's Degree in International Strategy and Trade Policy (University of Chile) and a Bachelor Degree in English Literature and Linguistics (Catholic University of Chile). Javiera Cáceres is a

Faculty member at the Institute of International Studies of the University of Chile (Instructor). Javiera Cáceres has worked as consultant for the Inter-American Development Bank, Chilean Undersecretariat of International Economic Affairs, and ProChile, among others. Ms Cáceres works in international trade and sustainable development, trade and gender, and intellectual property issues.

DR. DOMINIC COPPENS

Dr. Dominic Coppens is a senior associate at Sidley Austin LLP, Brussels. He advises governments, business, and NGOs on international trade rules, in particular on WTO rules, and on the intersection between trade and environment (such as circular economy, international waste regulation, and the EU's Green Deal). Dominic also regularly lectures and writes on trade law, including at Belgian universities and in the new LLM in International Economic Law (EPLO, Greece). This Spring, Dominic will co-teach a PhD course on sustainable trade at the World Trade Institute in Bern. He is a member of the International Law Association's Committee on Sustainable Development and the Green Economy in International Trade Law. Dominic participates in this event in his individual capacity.

PROF. MARIE-CLAIRE CORDONIER SEGGER

Professor Dr Marie-Claire Cordonier Segger, is a distinguished professor, scholar and expert jurist in law and governance on sustainable development. She serves as Senior Director of the CISDL in a pro bono academic capacity, where she mentors CISDL lawyers and fellows, and guides new international legal scholarship and education. She is also a Full Professor of Law (part-time) at the University of Waterloo and Fellow of the Balsillie School of International Affairs in Canada; and Fellow and Advisor of the Centre for Energy, Environment and Natural Resources Governance (C-EENRG) and Affiliated Fellow of the Lauterpacht Centre for International Law (LCIL) in the University of Cambridge. Her current research focuses on law and governance regimes related to climate change; natural resources and biodiversity management; investment, trade and the green economy; among other emerging sustainable development challenges. She received the 2016 international Justitia Regnorum Fundamentum Award for her leadership on behalf of future generations, among other international awards and honours.

PROF. PANOS DELIMATSI

Professor Panos Delimatsis is the Chair of EU and International Economic Law and the Director of the Tilburg Law and Economics Centre (TILEC) at Tilburg University, the Netherlands. He has twenty years of experience in international economic and EU law. His most influential work is in the areas of international trade law (notably trade in services liberalization); EU market regulation; transnational private regulation; technical barriers to trade, standardization and sustainability. In December 2016, he was awarded an ERC Consolidator Grant. In the period 2017-20, he has been a Member of the IUCN World Commission on Environmental Law.

DR. CRISTIANE DERANI

Cristiane Derani holds a PhD (J. W. Goethe Universitaet) and was awarded a PhD in Economic Law (USP). She is a lawyer (University of Sao Paulo). Dr. Derani is a Professor at the Federal University of Santa Catarina, Brazil, in International Economic and Environmental Law; Head of the research group on 'Advanced Studies of Economics and Environment in International Law' (EMAE), Researcher of the Brazilian National Research Agency (CNPq); and Vice-Chancellor of Graduate Studies. She has experience as part of the Brazilian delegation for the COP 8 and 9 of the Convention on Biological Diversity. Dr. Derani worked as an environmental lawyer and was associated with the Union for Ethical Biotrade.

DR. FABIANO DE ANDRADE CORREA

Dr. Fabiano de Andrade Correa is a lawyer and legal specialist in sustainable development law and policy, with experience across the public, private and international sectors. Fabiano serves as Lead Counsel on Peace, Justice and Governance at CISDL, and works as an international legal consultant since 2012, providing technical assistance for the implementation of international agreements and the promotion of the rule of law and enabling environments at the national level with a particular focus in the areas of climate change, biodiversity, environmental law and policy, land, human rights, trade and responsible investments. Fabiano obtained his PhD in Law at the European University Institute (EUI, Florence, Italy), where his thesis focused on the implementation of sustainable development in regional trade agreements.

DR. ALBERTO DO AMARAL J.

Alberto do Amaral Jr. holds a PhD in Law (University of Sao Paulo). Dr. Do Amaral Jr. is a Tenure Associate Professor 3, at the Department of International Law, Faculty of Law, University of São Paulo. Dr. Do Amaral Jr. was an alternate member of the permanent MCS Review Tribunal, member of the list of arbitrators of Brazil for the Agreement between MCS - Chile (ACE 35). Member of the Editorial Board PUC Campinas, founding member of the “Corpo de Pensadores Skepsis”. Dr. Do Amaral Jr. areas of interest are International Law, acting mainly on the following topics: International Trade, MCS, International Law, Human Rights and Consumer Rights.

DR. JAVIER ECHAIDE

Javier Echaide holds a PhD in Law (Universidad de Buenos Aires, UBA). Dr. Echaide is a lawyer (UBA) specialized in International Law. Dr. Echaide is a university lecturer and researcher. Dr. Echaide is an associate researcher at CONICET (Argentina) and an External Expert Advisor for the United Nations High Commissioner for Human Rights (2019) and UNCTAD (2016). Dr. Echaide is the former Vice President of CAITISA (*Comisión de Auditoría de los Tratados de Inversión y del Sistema de Arbitraje*) of Ecuador. Dr. Echaide works in International investment law (ICSID and BITs), human right to water, international trade, among others.

DR. ILARIA ESPA

Dr. Ilaria Espa is Assistant Professor of International Economic Law at USI Lugano, Senior Research Fellow and Lecturer at the WTI and at the University of Milan. Ilaria is an elected member of the Committees of the International Law Association (ILA) on the ‘Role of International Law in Sustainable Natural Resources Management for Development’ and ‘Sustainable Development and the Green Economy in International Trade Law’, and a Lead Counsel at the Centre for International Sustainable Development Law (CISDL) Natural Resources Program. Ilaria holds a PhD in International Law and Economics from the Department of Legal Studies of Bocconi University and was awarded a Marie Curie fellowship from the European Commission for her post-doctoral studies at the WTI.

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Dr. Markus Gehring serves as a Jean Monnet Chair in Sustainable Development Law with the Centre. He is a University Lecturer in the Faculty of Law, University of Cambridge and a Fellow in Law at Hughes Hall. He is also a Founding Fellow of the Cambridge Centre for Environment, Energy and Natural Resources Governance (CEENRG) and a Fellow of the Lauterpacht Centre for International Law (LCIL). Before joining Cambridge Law, he was a Lecturer in International and European Law at the Centre of International Studies,

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Daniela Guerra Basedas has a Master's in Environmental Sciences (University of Barcelona) and a Bachelor degree in International Relations (University of the Republic). Currently, she is studying the Master's Degree in Gender and Equality Policies (FLACSO-Uruguay). Daniela Guerra is an Adjunct Professor and researcher at the Faculty of Law at the undergraduate and graduate levels. Daniela Guerra is a member of the Political Economy teaching group at the Faculty of Law and is a delegate to the Thematic Network on the Environment of the University of the Republic. Her lines of research are international economic relations, climate change, gender and environmental education.

DR. DAVID KLEIMANN

Dr. David Kleimann is a Visiting Senior Research Fellow at Georgetown University's Institute for International Economic Law. His research focuses on international trade law, EU external economic relations law, and trade policy. Dr. Kleimann earned his PhD in Law at the EUI in Florence, Italy, in 2017. He holds a 1st of class Master's degree in International Law and Economics from the WTI in Berne. In the past, Dr. Kleimann has served as a policy advisor to the Chairman of the European Parliament's Committee for International Trade, Bernd Lange and was a DAAD post-doctoral Fellow at the Foreign Policy Institute of Johns Hopkins' School of Advanced International Studies (SAIS) in Washington DC. He also currently teaches WTO law at the University of Mannheim.

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