

**Brief on the Chile Inclusion of Environment Commitments in Trade Agreements
and The Current EU-Chile Trade Agreement Negotiations**

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Executive summary

Chile is an open economy with a longstanding tradition in the negotiation of trade agreements. To March 2022, Chile has signed 31 free trade agreements (FTAs) with 65 economies, representing 88% of global GDP and 65% of global population². The European Union (EU) is Chile's third-largest trade partner. Their bilateral trade reached US\$19 billion in 2021; while Chile mainly exports copper ores and concentrates; cathodes and cathode sections, of refined copper; and molybdenum trioxide in 2021, the EU main exports to Chile were antifungal drugs for human use; vans for freight transport; and passenger cars in the same year³. Climate change has been recognized as a pressing issue in the international system, as there is a need for the international community to address this issue in a coordinate manner.⁴ While climate-related commitments are not at the centre of free trade agreements⁵, through the revision of trade agreements it can be identified that various agreements have incorporated sustainable development and environment-related provisions. On the contrary to the EU, where sustainable development provisions are an important part of the European trade strategy, Chile has focused on the incorporation of labour provisions within trade agreements⁶. Nevertheless, this report shows how Chile has addressed the incorporation of environment-related provisions in trade agreements and how those provisions have evolved from general reference in preambles, to cooperation activities on the matter, to specific chapters of trade and environment with provisions that promote the protection of the environment and the positive effect between trade and environment, and to the analysis of state-of-the-art discussions in environmental topics.

The main objective of this report is to analyse the incorporation of environmental commitments in the trade agreements negotiated by Chile. The report is divided into four main sections. First, the highest climate change priorities related to trade in Chile are presented, taking into consideration how Chile has addressed NDCs. Second, the negotiations behind the modernisation of the Chile-EU association agreement are analysed. Then, using both a descriptive and comparative approach, the agreements negotiated by Chile are analysed. Accordingly, in the third section the most relevant chapters within Chilean trade agreement are reviewed to identify areas in which Chile has incorporated environmental-related provisions; and the fourth section focuses on the analysis of trade and environment chapters negotiated by Chile, considering also the EU text proposal for the sustainable development chapter.

² SUBREI. Beneficios del libre comercio (2022), online <<https://www.subrei.gob.cl/landings/beneficios>>

³ SUBREI. Ficha país: Chile-Unión Europea (2021), online < https://www.subrei.gob.cl/docs/default-source/estudios-y-documentos/fichas/union-europea.pdf?sfvrsn=fedafb27_3>

⁴ Ghaleigh, Navraj, and Alan Boyle. "Climate Change And International Law Beyond The UNFCCC." *Edinburgh School of Law Research Paper 2020/06* (2021); Ruppel, Oliver, et al. "Climate Change: International Law and Global Governance Volume I: Legal Responses and Global Responsibility." *Perspective 10*:349.; Cordonier Segger, Marie-Claire. "Sustainable Developments in Foreign Investment Law and Policy-Related to Renewable Energy and Climate Change Mitigation and Adaptation." *Hungarian YB Int'l L. & Eur. L.* (2019): 29.; Gehring, Markus, and Freedom-Kai Phillips. *Brexit and Environmental Law: The Rocky Road Ahead*. C. Hurst and Company, 2018.

⁵ See recent comparison of climate-related provisions included in preferential trade agreements by WTO Secretariat, *Trade and Climate Change Information Brief N°2. Climate Change in Regional Trade Agreements.* (WTO, 2021) online <https://www.wto.org/english/news_e/news21_e/clim_03nov21-2_e.pdf>; Javiera Cáceres, Marios Tokas, Markus Gehring & Fabiano de Andrade Correa, "Environment and Climate Change in the Draft EU-Mercosur Trade Agreement" (CISDL, 2021) online <<https://www.cisdsl.org/wp-content/uploads/2021/07/Environment-and-Climate-Change-in-the-Draft-EU-29.04.2021-Final.pdf>>

⁶ It is relevant to point out that Chile has also moved towards the incorporation of gender-related provisions in trade agreements. In 2016, the first chapter on trade and gender was included with Uruguay.

1. Highest climate change priorities related to trade in Chile

In 2020, the government of Chile, in collaboration with civil society organizations, updated its NDCs in the context of the Paris Agreement. The updates of Chile's commitments were accompanied by the elaboration of the Law project "Climate Change Framework", which was recently approved by the Chilean National Congress in 2022. This new Law establishes the goal of carbon neutrality and resilience for 2050. It also recognizes the principles of non-regression and progressiveness and incorporates the principles of an ecosystem approach, equity and climate justice, territoriality, transparency, and participation⁷.

In this sense, Chile incorporated different pillars as structuring components to face climate change and comply with the provisions of the Paris Agreement, such as a social pillar of transition – sustainable development; mitigation; adaptation; integration; and means of implementation. In detail, the first pillar considers variables such as water security, gender equality, safeguarding the rights of the most vulnerable in the decarbonization process of the energy matrix, among others to implement NDCs. This pillar wants to bring together Chile's international environmental commitments and the domestic agenda. Regarding mitigation, Chile modified the emission intensity indicator (conditional and unconditional) by an unconditional absolute indicator, with a goal to reach 95 million Tonnes of carbon dioxide equivalent (MtCO₂eq) by 2030, also committing to reach the maximum emissions (peak year) by 2025, and a GHG emissions budget that will not exceed 1,100 MtCO₂eq for the period 2020-2030. This goal corresponds to a halfway point on the path to carbon neutrality by 2050 that was established in the bill. In terms of adaptation, Chile committed to increase information and management mechanisms regarding the impacts of climate change on water resources. For example, the commitments are looking to implement an indicator that allows monitoring of the water risk and progress in achieving water security in the country. When referring to integration, Chile is focused on bringing together public policies of climate and clean air to mitigate short-lived climate pollutants (black carbon). For example, it is important to have a National Landscape Scale Restoration Plan to consider the incorporation, into restoration processes, of 1,000,000 hectares of landscapes by 2030, prioritizing those with the greatest social, economic, and environmental vulnerability. Finally, in terms of implementation, Chile is looking at the coherence of these commitments with its long-term climate objectives, ensuring that the creation and strengthening of capacities, the technology development and transfer, along with financing climate, respond to the priorities established from the emission neutrality objective by 2050.

In March 2022, leftist candidate Gabriel Boric Font assumed Chile's presidency. At the beginning of his mandate, he signed the presidential message for the accession of Chile to the Escazú Agreement. During the ceremony, government officials pointed out that Chile's future is inevitably connected to the protection of the environment and ecosystems⁸. Even though the

⁷ Senado. Despachada Ley marco de Cambio Climático (09 March 2022), online <<https://www.senado.cl/despachada-ley-marco-de-cambio-climatico>>

⁸ SUBREI. Chile firma mensaje presidencial para la adhesión de Chile al Acuerdo de Escazú (2022), online <<https://www.gob.cl/noticias/chile-firma-mensaje-presidencial-para-la-adhesion-de-chile-al-acuerdo-de-escazu/>>

Chilean Congress still needs to ratify the agreement, this is a milestone in the Chilean environmental strategy⁹, as it signals President Boric's position towards a new relationship between the State and its inhabitants in environmental matters, under the construction of a new development model that allows population to live in 'a healthy environment, develop sustainably, conserve biodiversity, stop land degradation, and adapt to climate change'.

In terms of trade, President Boric declared that his economic and trade strategy will be in line with the development objectives of the country, with a focus to advance economic and trade integration with Latin America. He also proposed promoting the integration of SMEs into global and regional value chains and working to strengthen the multilateral trade system. Moreover, he advocated for an agenda that would look into the mitigation of the global climate and ecological crisis. All accompanied by the modernisation of current treaties. From here, it is not a coincidence that he decided to visit Argentina as his first official visit abroad. Here, he pointed out the importance of multilevel cooperation to promote multilateralism and productive development with a focus on gender equality and environmental protection¹⁰. Therefore, it can be argued that as his mandate focuses on building a new development model, trade agreements will have a stronger focus on environment-related commitments, so that the Chilean National Congress ratifies them in the middle of a strong rejection wave towards trade instruments and the current Chilean development model.

Even though Chile's commitments in terms of NDCs are shaping the environmental agenda, in terms of trade, priorities are structured in a different manner. As NDCs are thought and committed at the multilateral level, in a non-sovereign manner, bilateral agreements recognize multilateral environmental agreements, but NDCs are not extrapolated to trade relations. In addition, for negotiators, incorporating NDCs commitments to binding mechanisms, such as trade agreements, is contrary to its voluntary scheme. Chile's priorities within trade negotiations can be divided into several core provisions. As stated by high Chilean trade negotiators, they have sought to incorporate commitments that promote high environmental standards; comply and respect the national environmental legislation; recognize multilateral environmental agreements directly and indirectly related to trade; promote civil society participation; establish a consultation process; and present offensive cooperation objectives.

Nevertheless, it is important to acknowledge that Chile has prioritised labour provisions within trade agreements, rather than the inclusion of environment-related dispositions¹¹. The evolution of Chilean trade strategy towards environment-related issues can be characterized into four incremental stages. A first stage consists in the incorporation of environment-related provisions in the preamble of agreements (Chile-US, Chile-EU, Chile-China and Chile-Brazil). The second

⁹ Former Chilean President, Sebastián Piñera, refused to sign the agreement. For more details, see: <https://www.bbc.com/mundo/noticias-america-latina-54263916>

¹⁰ SUBREI. Presidente de la República Gabriel Boric Font participa en encuentro empresarial del Comité de Comercio Argentina-Chile: "Queremos avanzar hacia la justicia, igualdad, la mejor redistribución de la riqueza y el desarrollo productivo de nuestras naciones" (April, 5th 2022), online <<https://prensa.presidencia.cl/comunicado.aspx?id=190387>>

¹¹ For more details on this perspective, see: <https://www.lse.ac.uk/business/consulting/assets/documents/TSD-Final-Report-Feb-2022.pdf>

stage focuses on the incorporation of environmentally related provisions as part of cooperation schemes. The third stage focuses on protecting the environment and a positive effect between trade and environment. From here, specific chapters on trade and environment are incorporated in trade agreements. Within these chapters, different types of provisions are found. On the one hand, general commitments aimed at not reducing environmental standards to increase trade or investment flows. On the other hand, sectorial provisions focused on biodiversity, fisheries, forest protection, climate change, among others. In this case, it is interesting to point out that these provisions have evolved from declarations to cooperation provisions, and to binding commitments.

The fourth and current stage, aims at continuing the recent work in terms of environment and trade, but analysing state-of-the-art discussions in environmental topics. In this sense, Chilean trade approach is focused on developing a strategy that discusses the mitigation of climate change, but at the same time does not disrespect the scope of trade relations, focusing on corporate social responsibility, renewable energies, critical mineral for energetic transition, environmental goods and services, among others. It is important to acknowledge that even though President Boric has put climate change at the centre of building a new development model, his approach towards trade strategy might change in the following months.

2. The modernisation of the Chile-EU Association Agreement

Chile was the first South American country to conclude an Association Agreement with the European Union in 2003. This agreement included trade, political and cooperation provisions. Nevertheless, both parties have negotiated agreements with more disciplines with other partners, and sought deeper trade agreements, covering broader topics, such as the protection of innovations, government procurement and sustainable development¹² as their relationship reached a point in which policies are needed so that primary and secondary producers, traders, workers, etc. reach additional benefits.

From here, during the 5th EU CELAC Summit in 2012, Chile and the EU agreed to analyse if the agreement could be modernised. After several meetings determining the scope and ambition of the possible modernisation, in 2016, the parties agreed to identify their levels of ambition for the modernisation of the agreement¹³. Both partners' objective to carry on with this negotiation are similar. On the one hand, the EU's objectives behind the modernisation were to analyse the untapped potential of enhanced trade and investment flows with Chile, by further reducing barriers to trade and investment; promoting smart, sustainable and inclusive growth through the expansion of trade, investment and relevant rules; level the playing field with other countries; provide a new, up-to-date framework for the EU-Chile relationship; and improve sustainable economic, social and environmental conditions for workers, businesses and citizens in the EU

¹² European Parliament. Briefing: Modernisation of the trade pillar of the EU-Chile Association Agreement (2017), online <http://www.sice.oas.org/TPD/CHL_EU/Studies/Briefing_Modernization_EU_CHL_Agt_e.pdf>

¹³ In parallel, in 2016, the EU conducted a public online consultation on a possible modernization of the trade part of the association agreement between the EU and Chile. For more information, see: https://trade.ec.europa.eu/consultations/index.cfm?consul_id=209

and Chile; among others¹⁴. On the other hand, Chile wanted to expand the bilateral relationship with the EU, strengthening alliances in terms of digital trade and services, and better standards for environmental protection and gender equality¹⁵.

The EU has conducted both *ex post* analysis from the association agreement, as well as an *ex-ante* sustainable impact assessment (SIA) for the modernisation of the agreement. On the one hand, the *ex-post* analysis, titled ‘Evaluation of the economic impact of the trade pillar of the EU Chile Association Agreement’ was carried out by ITAQA consulting firm in 2012¹⁶. It found that, regarding trade in goods, if neither the EU nor Chile had granted any preferences, Chilean exports to the EU would have reduced by 13%, while EU exports to Chile would have fallen 45%¹⁷. On the other hand, the SIA, commissioned to BKP Development Research & Consulting, considers economic, social, and human rights implications of the agreement, using quantitative and qualitative approaches. The final report of the analysis outlined recommendations to be considered in the process of the negotiations and other measures to secure the benefits or mitigate the potential adverse effects of the modernised agreement. The results showed that a modernised agreement is likely to make a modest contribution to the existing bilateral relation, so it is unlikely to raise overall sustainability concerns¹⁸. In fact, according to the analysis, environmental impacts will be small. For example, the analysis states that the modernised agreement will have a limited effect on greenhouse gas emissions. Through the use of a CGE model simulation, the analysis presents that an increase in emissions is expected in sectors that the agreement leads to a growth in production. This means, an increase in products such as vegetables, fruits, nuts, oilseeds in Chile; and machinery and motor vehicles in the EU. The results of the assessment also showed that the modernised agreement could have a positive effect on policies aimed at tackling climate change in Chile, as the parties will commit to the UNFCCC and the Paris Agreement. Moreover, the reduction of trade barriers should give more opportunities for trade in low-carbon goods and services. Some relevant expected impacts are identified for Chile: changes in transport emissions, increase in Chilean’ imports of more environmentally friendly EU transport equipment, more stringent fuel quality standards, and an increase of European investments in Chilean transport infrastructure.

In some specific areas for trade and environment matters, the SIA expects the modernised agreement will impact both in Chile and the EU:

- Energy production: An increase in opportunities to import technical solutions to foster renewable energy. The agreement can strengthen cooperation activities between the EU and Chile in renewable energy matters.

¹⁴ *Ibid*, European Parliament note (12).

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

¹⁶ For more details, see: https://trade.ec.europa.eu/doclib/docs/2012/august/tradoc_149881.pdf

¹⁷ European Commission. Inception Impact Assessment (2015), online <https://ec.europa.eu/smart-regulation/roadmaps/docs/2015_trade_039_modernisation_eu_chile_agreement_en.pdf>

¹⁸ European Commission. Final report: Sustainability Impact Assessment in Support of the Negotiations for the Modernisation of the Trade Part of the Association Agreement with Chile (2019), online <https://trade.ec.europa.eu/doclib/docs/2020/february/tradoc_158647.pdf>

- Biodiversity: The agreement can pose an opportunity to address the pressure on Chilean biodiversity, caused by mining and land use changes.
- Waste: Increased trade liberalization of the construction sector can induce an increase of waste.
- Air quality: Unlikely impact in air quality in the EU, and a minor impact is identified for Chile.
- Water quality and water resources: There might be a localised impact on this matter in Chile, due to the increase in agricultural activity and industrial activities (copper mining).
- Land use: The results are inconclusive whether the expected growth in agriculture in Chile can be achieved without the expansion of the agricultural area.

In June 2020, the European Commission published its position paper¹⁹ on the sustainable impact assessment, which responds to the recommendations made by the consultants who conducted the SIA²⁰. It agreed on the need to have clear and effective commitments in terms of environmental protection and sustainable development. This reinforces the EU approach of including commitments to effectively implement the protocols within MEAs. Therefore, for the European Commission, the EU proposal for the TSD Chapter already included many of the recommendations made by the consultants, especially in terms of cooperation schemes. Nevertheless, it highlighted that provisions focused on topics such as air quality, are not covered by MEAs and/or do not have a clear link to trade.

Both Chile and the EU aimed at an ambitious text when starting negotiations, which is supposed to cover environment, labour, and cross-cutting issues such as responsible business conduct. The parties agreed on high levels of environmental protection. The first negotiation round took place on November 16th 2017. When comparing the negotiations round reports, some rounds can be pointed out. During the first round, parties decided to discuss trade and sustainable development issues in two tables: one on trade and labour, and other on trade and environment²¹. During the third round, the discussion focused on the proposal submitted by the EU, converging on issues such as fisheries, but having differences on institutional provisions²². Chile's approach has been to have separate labour and environment chapter, but similar in terms of the type of provisions included. However, the proposal presented by the EU had some labour provisions overlapping on the trade and sustainable development chapter. In the sixth round of negotiations, the parties managed to agree on the structure of the trade and environment/sustainable development chapter²³. In subsequent rounds, parties discussed articles on objectives, right to regulate, specific matters on the environment, and labour. In addition, the proposals made by Chile on

¹⁹ European Commission. European Commission Services' Position Paper on The Sustainability Impact Assessment in Support of Negotiations for the Modernisation of the Trade part of the EU– Chile Association Agreement (June 2020), online <https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156597.pdf>

²⁰ See Annex 1 for the list of recommendations.

²¹ European Union. Report on the 2nd Round of negotiations between the EU and Chile for modernising the trade part of the EU-Chile Association Agreement (15-19 January 2018), online <https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156597.pdf>

²² European Union. Report on the 3rd Round of negotiations between the EU and Chile for modernising the trade part of the EU-Chile Association Agreement (28 May – 1st January 2018), online <https://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156959.pdf>

²³ European Union. Report on the 6th Round of negotiations between the EU and Chile for modernising the trade part of the EU-Chile Association Agreement (25 – 29 November 2019), online <https://trade.ec.europa.eu/doclib/docs/2019/december/tradoc_158512.pdf>

climate change, institutional arrangements, and labour were analysed. Parties also met the trade and gender group to explore similarities regarding institutional arrangements²⁴. Even though progress has been made on some areas, articles related to upholding levels of protection, MEAs, and institutional arrangements and dispute resolution (panel of experts) needed further discussion among the parties²⁵. It is worth mentioning that Chile conducted meeting of ‘Cuarto Adjunto’ during the negotiations, which consists of gatherings that the Undersecretariat of International Economic Relations (SUBREI) has arranged to report on the progress of negotiations. This activity is made up of non-governmental organizations, academic institutions, union organizations, companies and individuals mainly, who express their interest in participating.²⁶

Finally, on November 12th, 2021, the technical negotiations of the agreements ended. Chilean authorities have pointed out that the modernisation of the agreement addresses the new challenges: climate change and the effective implementation of the Paris Agreement; alliances on energy transition; being strategic partners to promote the EU Green Deal and the Chilean National Green Hydrogen Strategy; among others²⁷. In terms of the sustainable development/environment chapter, Chilean policymakers declare that this is the greenest agreement signed by Chile, as it expressly incorporates the commitments of the Paris Agreement, goes in line with the 2030 Agenda (economic, social and environment pillars) and goes further than the commitments found in the association agreement between the parties. It is interesting to highlight that in contrast with previous agreements negotiated by Chile, there will be an ‘energy and raw materials’ article. This article establishes a strategic alliance between Chile and the EU to develop Chile's National Green Hydrogen Strategy and the EU's Green Pact, facilitating trade of this type of goods, but safeguarding the regulatory space for the development of public policies in support of emerging industries.

These results are in line with the first official bilateral meeting between the new Chilean authorities and representatives of the EU, in which Undersecretary Ahumada stated that this agreement will be the 'greenest' agreement of all times²⁸.

3. Comparison of climate commitments in Chile’s economic treaties and most suited provisions to trade and climate change

In order to characterize and select the most suitable provisions to trade and climate change for Chile, it is important to assess and compare how Chilean PTAs have incorporated environment-

²⁴ European Union. Report on the 8th Round of negotiations between the EU and Chile for modernising the trade part of the EU-Chile Association Agreement (28 September to 9 October), online <https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158998.pdf>

²⁵ European Union. Report on the 9th Round of negotiations between the EU and Chile for modernising the trade part of the EU-Chile Association Agreement (11 to 22 January 2021) online <https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159408.pdf>

²⁶ This instance has been highly criticized as this participation mechanism, from a political and legal point of view is not regulated by law, regulation or resolution. For more details, see Sánchez, Ignacio. Transparencia, participación ciudadana y rendición de cuentas en la política exterior y comercial chilena. 2020. Online <<https://repositorio.uchile.cl/handle/2250/178405>> page 58.

²⁷ *Ibid*, SUBREI note (15)

²⁸ For more details, see: https://www.instagram.com/reel/CbdUHssgPj0/?utm_medium=share_sheet

related commitments. This way, it is possible to analyse if Chile follows the current practice on environmental provisions in trade agreements signed by developed economies²⁹, or which provisions are more appropriate in its socio-economic context.

This section analyses 33 agreements subscribed by Chile between 1993 and 2022³⁰. As climate-related provisions may be too recent and specific, the review includes general environmental and

²⁹ For more information on comparisons of trade provisions included see: Cáceres et al. note (5); 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=LQ2JCEUQ0WAA_GYGXY8I7O19FEHFGIV19; Fabiano de Andrade Correa; 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; Amalia Stuhldreher & Verónica 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>; 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; 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; 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.cisdl.org/wp-content/uploads/2020/10/Briefing-6-UK-Japan-FTA-Comparative.pdf>; 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.cisdl.org/wp-content/uploads/2020/10/Briefing-4-The-UKs-Draft-Text-in-Comparison.pdf>; 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: <https://www.cisdl.org/wp-content/uploads/2019/07/Post-Brexit-Provisions-report-final.pdf>

³⁰ Chile-Bolivia Economic Complementation Agreement (signed 6 April 1993), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/bolivia>>. [Chile-Bolivia]; Chile-Venezuela Economic Complementation Agreement (signed 2 April 1993), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/venezuela>>. [Chile-Venezuela]; Chile-Mercosur Economic Complementation Agreement (signed 25 July 1996), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/mercosur>>. [Chile-Mercosur]; Chile-Canada Free Trade Agreement (signed 5 December 1996, updated 5 June 2017), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/canada/>>. [Chile-Canada]; Chile-Mexico Free Trade Agreement (signed 17 April 1998), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/mexico>>. [Chile-Mexico]; Chile-Central America Free Trade Agreement (signed 18 October 1999), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/centroamerica>>. [Chile-Central America]; Chile-European Union Free Trade Agreement (signed 18 November 2012), online: <https://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC_2&format=PDF>. [Chile-EU]; Chile-South Korea Free Trade Agreement (signed 15 February 2003), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/corea-del-sur>>. [Chile-Korea]; Chile-European Free Trade Association (EFTA) Free Trade Agreement (signed 26 June 2003), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/efta>>. [Chile-EFTA]; United States-Chile Free Trade Agreement (signed 6 June 2013), online: <<https://ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text>>. [Chile-US]; Trans-Pacific Strategic Economic Partnership (P4) between Brunei Darussalam, Chile, Singapore, and New Zealand (signed 18 July 2005), online: <<https://www.mfat.govt.nz/assets/Trade-agreements/P4/Full-text-of-P4-agreement.pdf>>. [P4]; Chile-China Free Trade Agreement (signed 18 November 2005, updated 11 November 2017), online: <<http://fta.mofcom.gov.cn/chile/xieyi/fretradexieding2.pdf>>. [Chile-China]; Chile-India Partial Scope Agreement (signed 8 March 2006), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales->

sustainable development commitments. The analysis is divided into two main sections: (a) general agreement, and (b) trade and environment chapters. The first section refers to provisions included within the agreement, while the second, analyses those provisions included within specific trade and environment chapters. Moreover, to fully understand the extent and scope of this kind of provisions, for analytical purposes, the following categories are presented: (i) recognition; (ii) right to regulate; (iii) exceptions; (iv) procedures; and, (v) cooperation activities.

3.1 Overall Assessment

The first category, recognition, refers to those provisions incorporated in PTAs that recognize the relationship between trade and sustainable development or the environment. While recognition may not represent a binding commitment between the parties, it becomes a starting point for the inclusion of environmental commitments, and to explicitly signal that sustainable development is an objective of this kind of agreements. For instance, their inclusion within the

vigentes/india>. [Chile-India]; Chile-Japan Free Trade Agreement (signed 27 March 2007), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/japon>>. [Chile-Japan]; Chile-Cuba Economic Complementarity Agreement (signed 20 December 1999), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/cuba>>. [Chile-Cuba]; Chile-Panama Free Trade Agreement (signed 27 June 2006), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/panama>>. [Chile-Panama]; Chile-Peru Free Trade Agreement (signed 22 August 2006), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/peru>>. [Chile-Peru]; Chile-Australia Free Trade Agreement (signed 30 July 2008), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/australia>>. [Chile-Australia]; Chile-Colombia Free Trade Agreement (signed 27 November 2006), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/colombia>>. [CLCOFTA], Article 7.6; Chile-Peru Free Trade Agreement (signed 22 August 2006), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/peru>>. [Chile-Colombia]; Chile-Ecuador Free Trade Agreement (signed 20 December 1994, updated 10 March 2008), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/ecuador>>. [Chile-Ecuador]; Chile-Turkey Free Trade Agreement (signed 14 July 2009), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/turquia>>. [Chile-Turkey]; Chile-Malaysia Free Trade Agreement (signed 13 November 2010), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/malasia>>. [Chile-Malaysia]; Chile-Vietnam Free Trade Agreement (signed 12 November 2011), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/vietnam>>. [Chile-Vietnam]; Chile-Hong Kong Free Trade Agreement (signed 7 September 2012), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/hong-kong>>. [Chile-HK]; Chile-Thailand Free Trade Agreement (signed 4 October 2013), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/tailandia>>. [Chile-Thailand]; Pacific Alliance Additional Protocol (signed 10 February 2014), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/alianza-del-pacifico>>. [Pacific Alliance]; Chile-Uruguay Free Trade Agreement (signed 4 October 2016), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/uruguay>>. [Chile-Uruguay]; Chile-Indonesia Free Trade Agreement (signed 14 December 2017), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/indonesia>>. [Chile-Indonesia]; Chile-Argentina Free Trade Agreement (signed 2 November 2017), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/argentina>>. [Chile-Argentina]; Chile-United Kingdom Association Agreement (signed 30 January 2019), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/reino-unido/>>. [Chile-UK]. Digital Economy Partnership Agreement (DEPA) (signed 12 June 2020), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/depas>>. [DEPA]; Chile-Brazil Free Trade Agreement (signed 21 November 2018), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/brasil>>. [Chile-Brazil]; Chile-Ecuador Free Trade Agreement (13 August 2020), online: <<https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-en-negociacion-y-suscritos>>. [Chile-Ecuador*]. See Annex 2 for more details.

Preamble of the agreements help to sort the ultimate objective of the treaties and help to interpret other ruling in the light of the general objectives of the agreement.

In the case of Chile, 25 out of 33 agreements include sustainable development or environment-related provisions within their preambles. Agreements not explicitly referring to environmental or sustainable development considerations in their preambles include Bolivia, Venezuela, Mercosur, India, Cuba, Thailand, Indonesia, and United Kingdom. For those agreements including this kind of provisions within their preambles, most refer to the promotion of sustainable development as a general commitment, while others expand this to environmental protection. For example, as seen in Table 1, the FTA between Chile and the United States reaffirms the need to implement the agreement in a manner consistent with environmental protection and conservation, and the promotion of sustainable development. Moreover, most preambles explicitly reaffirm that the trade agreement must be implemented in a manner consistent with environmental protection and conservation. The Chile-US agreement is an example of the type of provisions that can be replicated in other FTAs signed by Chile.

Table 1. Example of environment and sustainable development provisions in Preambles

Agreement	Provisions
Chile – United States	(...) IMPLEMENT this Agreement in a manner consistent with environmental protection and conservation; PROMOTE sustainable development; CONSERVE , protect, and improve the environment, including through managing natural resources in their respective territories and through multilateral environmental agreements to which they are both parties;
Chile – European Union	(...) CONSIDERING the traditional links between the Parties and with particular reference to: (...) - the need to promote economic and social progress for their peoples, taking into account the principle of sustainable development and environmental protection requirements;
Chile – China	(...) <i>Recognizing</i> that this Agreement should be implemented with a view toward raising the standard of living, creating new job opportunities, and promoting sustainable development in a manner consistent with environmental protection and conservation;
Chile – Brazil	(...) PROMOTE the protection and conservation of environment and the contribution of trade to sustainable development.

An interesting development in Chilean PTAs drafting refers to the ‘relation with other agreements’ clause. In general terms, this provision is included to reaffirm Parties’ commitments subscribed in other international agreements of which they are both signatories. Particularly, as trade agreements, PTAs refer to the WTO agreements (and in the case of Latin American agreements to the Montevideo Treaty that established ALADI). An example of this provision can be found in Chile-China FTA: ‘The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which both Parties are parties’ (article 3). Moreover, the wording of this provision has evolved, highlighting two

developments. On the one hand, some agreements, as exemplified by the Chile-South Korea FTA, have explicitly referred that ‘in the event of any inconsistency between this Agreement and such other agreements under paragraph 1, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement’ (article 1.3). This provision reaffirms that trade commitments would prevail in case of inconsistency with other agreements, particularly relevant for WTO+ and WTOX provisions, in which PTA commitments goes further than those established in the WTO agreement. This kind of provision can also be found in agreements with:

- Hong-Kong (article 1.2),
- Vietnam (article 1.2);
- Thailand (article 1.3);
- Pacific Alliance (article 1.2);
- Uruguay (article 1.1(2));
- Argentina (article 1.1(2));
- Indonesia (article 1.2);
- DEPA (article 1.2);
- Brazil (article 1.1(2-3));
- Ecuador* (article 1.2).

An interesting provision to this regard is the one found in Chile-UK FTA, as it relates to the agreement between Chile-EU (article 1). On the other hand, three PTAs explicitly refer to environmental agreements within this clause. Chile agreements with Canada, Mexico and Central America mention CITES; the Montreal Protocol; and the Basel Convention; stating that ‘such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement’ (Chile-Canada, article A-04; Chile-Mexico, article 1-06; Chile-Central America, article 1.04). This provision appears to be the most suitable one for future negotiations between Chile and other parties as it reaffirms that while environmental objectives shall prevail, parties are encourage to look for the least trade distorting alternative, which reflects Chile’ longstanding trade strategy.

A second category that could be identified within PTAs is the inclusion of provisions reaffirming parties’ right to regulate’. Provisions aiming at this can be found within technical barriers to trade (TBT), investment, and public procurement chapters. Regarding technical barriers to trade , Chile agreements with Mexico, Central America, South Korea, Colombia, Peru, and Ecuador have defined as a legit objective those aimed at ‘(...) guarantee national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the **environment** (...)’³¹. With respect to investment chapters, Chile-Canada (article G-01.3), Chile-Colombia (article 9.13), Chile-Peru (article 11.13), Pacific Alliance (article 10.31), Argentina (article 8.14), and Brazil (article 8.17) agreements recognize that the

³¹ Chile-Mexico, article 8-01; Chile-Central America, article 9.01; Chile-South Korea, article 9.1; Chile-Colombia, article 7.6; Chile-Peru, article 10.6; Chile-Ecuador, article 8.6.

provisions included in the chapter shall not be interpreted as an impediment for the parties from ‘adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that an investment activity in its territory is undertaken in a manner sensitive to **environmental concerns**’. A similar provision is incorporated in eight agreements’ public procurement chapters. Here, it is stated that no commitment of the chapter shall be interpreted in a way that it may impede the adoption of measures required to ‘protect human, animal, or plant life or health’. Moreover, to clarify the scope of the provision, some agreements expanded it adding that these measures ‘include **environmental measures** needed to protect human, animal, or plant life or health’³². In these cases, the chapter recognizes parties right to adopt the required measures to comply with said objectives, as long as they are not imposing in a discriminatory measure or constitute a disguised restriction on trade. These provisions included in TBT, investment, and public procurement chapters are appropriate to be included in other Chile FTAs, especially when directly stating that environmental measures are considered.

It may be stated that most provisions relating to environmental objectives may be classified within the third category of analysis, exceptions. First, it can be highlighted that all analysed agreements include a general exceptions article, which is a provision that will be replicated in future agreements negotiated by Chile. This kind of article may include an explicit reference to environmental considerations as an exception to the obligation of the agreement, or, for the case of goods, refer to GATT article XX, and, for Latin American treaties, Montevideo Agreement’s article 50. While the general exceptions referred in GATT articles XX(b) and XX(g) should include environmental-related measures, to be certain of that, 16 agreements explicitly refer that measures under GATT article XX(b) include those of ‘**environmental kind** needed to protect human, animal, or plant life or health’, while measures referred in article XX(g) applies ‘to measures relating to the **conservation of living and non-living exhaustible natural resources**’³³. With respect to services, agreements include reference to GATS article XIV, and as previously stated, some agreements reinforce the notion that environmental measures are included within those exceptions³⁴.

On market access, an interesting provision included throughout the analysed agreements is Chile’s prohibition to import used cars³⁵. This provision is based on Chile’s 1986 Automotive

³² Chile-EU, article 161; Chile-EFTA, article 91; Chile-Japan, article 151; Chile-US, article 9.16; P4, article 11.22; Chile-Colombia, article 13.16; Chile-Australia, article 15.23; Chile-HK, article 9.4; Pacific Alliance, article 8.20; Chile-Argentina, article 7.21; Chile-Brazil, article 12.3; Chile-Ecuador*, article 12.3.

³³ Chile-Canada, article O-01; Chile-US, article 23.1; P4, article 19.1(2); Chile-Panama, article 14.1(1); Chile-Australia, article 22.1(1); Chile-Colombia, article 22.1(1); Chile-Peru, article 17.1(1); Chile-Ecuador, article 15.1; Chile-HK, article 18.1(1); Chile-Thailand, article 15.1(1); Chile-Uruguay, article 19.1(2); Chile-Argentina, article 19.1; Chile-Indonesia, article 13.1(1), DEPA, article 15.1(2); Chile-Brazil, article 23.1(2); Chile-Ecuador*, article 23.1(1).

³⁴ Chile-US, article 23.1(2); P4, article 19.1(4); Chile-Panama, article 14.1(2); Chile-Australia, article 22.1(2); Chile-Colombia, article 21.1(2); Chile-Peru, article 17.1(2); Chile-HK, article 18.1(2); Chile-Thailand, article 15.1(2); Chile-Uruguay, article 19.1(3); Chile-Argentina, article 19.2; DEPA, article 15.1(3); Chile-Brazil, article 23.1(3), Chile-Ecuador*, article 23.1(2).

³⁵ Chile-Mercosur, Complementary note to article 7; Chile-Canada, Annex C-01. Exceptions to articles C-01 and C-08. Section II; Chile-Mexico, Annex 3-01 section A; Chile-Central America, Annex 3.10(6); Chile-EU, article 61; Chile-EFTA, Annex VII; Chile-Korea, Annex 3.9; Chile-US, Annex 3.2Section B Article 2; P4, Annex 3.A; Chile-Panama, Annex 3.2; Chile-Australia Annex 3-A; Chile-Colombia, Annex 3.1 Section B article 2; Chile-

Statute (Law N° 18.483), in which Article 21 states that ‘from the date of publication of this law only vehicles without use may be imported’.³⁶ While the Law does not explicitly refer to environmental considerations for this prohibition, the analysis of the Legislative Commission debate that led to the Law, and subsequent Customs National Service interpretations, stated that article 21 was included as part of the State’s environmental policy, and shall be interpreted to that respect.³⁷ Hence, besides being the sole Chilean product exception on market access, it can be stated that the prohibition is based on an environmental consideration, which is likely to be included in future Chile agreements. Moreover, the consistent inclusion of this provision throughout Chilean agreements proves that it is possible to exclude goods from trade exchange due to environmental considerations, proving this exclusion is based on a non-discriminatory basis and have an environmental protection basis.

In those agreements covering investment, an environmental exception is incorporated under the ‘performance requirement’ article. While a number of performance requirements are prohibited under these commitments, within these articles it is stated that these limitations shall not ‘prevent a Party from adopting or maintaining measures, including **environmental measures**: (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement; (ii) necessary to protect human, animal, or plant life or health; or (iii) related to the conservation of living or non-living exhaustible natural resources’³⁸ Following the main objective of PTAs of predictability and non-discrimination, the provision states that these kind of measures shall not be applied in a manner that are arbitrary or unjustifiable, nor constitute a disguised restriction on international trade or investment. Moreover, some agreements commit parties not to use their environmental standards as a way to promote foreign investment. In this sense, it is acknowledged the relevance of environmental policies and that a ‘relaxation of domestic measures applicable to health, safety or the **environment** shall be discouraged’³⁹. It can be stated that this type of provisions in investment agreements are the most suitable within the Chilean trade strategy for future agreements.

Regarding intellectual property rights, three agreements mandate parties to ratify or adhere to the International Union for the Protection of New Varieties of Plants (UPOV) 1991 (Chile-Australia, article 17.4(1.c); Chile-Japan, article 162; Chile-US, article 17.1(3.a)). This becomes relevant for environmental purposes, as the purpose of UPOV Convention is to secure the rights of breeders as specific stakeholders in plant breeding and, by extension, agriculture, and horticulture, which can have important environmental-related spill overs. For instance, it has been argued that UPOV could influence the development of new plant varieties, which could

Ecuador, Annex 3.2 Section B; Chile-Malaysia, article 3.11(3); Chile-HK, article 3.6(5); Chile-Thailand, article 3.8(3); Pacific Alliance, Annex 3.3 Section A; Chile-Uruguay, Annex 2.4 Section B; Chile-Ecuador*, Annex 2.3 Section B.

³⁶ Chile. Law N° 18.483 Automotive Statute 1986.

³⁷ Customs National Service [Chile], Informe N°1. Solicitud de revisión de Informe N°29, de 9 de diciembre de 2011. 2012. online <https://www.aduana.cl/aduana/site/docs/20150914/20150914083811/01_14.pdf>

³⁸ Chile-Canada, article G-06(6); Chile-Mexico, article 9.07(6); Chile-Korea, article 10.7(6); Chile-US, article 10.5(3.c); Chile-Australia, article 10.7(3); Chile-Colombia, article 9.8(3); Chile-Peru, article 9.8(3); Chile-Peru, article 11.6(3), Pacific Alliance, footnote to article 10.8(1.f).

³⁹ Chile-Australia, article G-14(2); Chile-Mexico, article 9-15(2); Chile-Korea, article 10.18(2); Chile-Japan, article 87; Pacific Alliance, article 10.31; Chile-Argentina, article 8.14; Chile-Brazil, article 8.17.

‘promote food security, reduce climate change and enhance economic development’.⁴⁰ This is an important provision that should be replicated in future Chile negotiations.

Regarding dispute settlement procedures, while all agreements allow panels to ask for external expert opinions in matters relevant to the case, some agreements have explicitly highlighted that environmental issues could be subject of external experts’ opinion. For instance, the agreements with Canada (article N-14(1)) and Mexico (article 18.12(1)) specifically refer to scientific review of ‘matters related to **environment**, health, safety or other scientific issues raised by the Parties’. The FTA with the United States includes a similar provision adding labour to the list of technical topics covered (article 22.11(1)). Moreover, these kinds of provisions are also frequent in investment dispute settlement commitments. Agreements between Chile and Canada⁴¹ (explicitly declare the possibility of the Panel to ask for experts’ reports on issues regarding environmental topics. As this type of provisions have been widely included in agreements negotiated by Chile, the recognition that disputes concerning environmental topics should not only rely on trade law, but also incorporate environmental considerations, is fitting to be part of Chilean strategy and hence, incorporated in future agreements.

References to environmental issues within cooperation activities becomes a relevant mechanism in which this topic is incorporated within PTAs, particularly for those agreements that do not incorporate trade and environment chapters. These references can be either within cooperation articles or chapters, and as provisions within other chapters that refer to cooperation between the parties to accomplish environmental-related objectives. For instance, the investment chapter within the agreement between Chile-Canada refer to the OECD Multinational Guidelines for Multinational Enterprises and the objective of social corporate responsibility (article G-14 bis). Agreements with the European Union and Canada includes specific references to relevant sectors such as energy (Chile-Canada, article G-15; Chile-EU, article 22), mining (Chile-EU, article 35) and sustainable agriculture (Chile-Canada, Annex C ter-02; Chile-EU, article 24).

With respect to cooperation chapters, some agreements include environmental issues within their scope or areas of coverage. For this purposes, different wording can be found throughout the agreements. In the case of Chile-Bolivia (article , cooperation is referred to ‘normative regimes and control systems with respect to the preservation of the **environment**’ (article 19(g)) ; Chile-China includes it in a wider provision covering labour, social security and environmental cooperation (article 108); Chile-Malaysia acknowledged the promotion of sustainable development as one of the objectives of its cooperation chapter, while within the areas of cooperation it identifies sustainable forestry management and environment (article 9.3(2.e-m)); Chile-Thailand refers to ‘**environment**’ as part of the areas of cooperation (article 11.3(l)); and Chile-Brazil to ‘biotechnological agriculture’ (article 19.6). Special attention can be given to agreements with Vietnam (article 9.3(k)), Turkey (article 37.8(a)), Malaysia (article 9.5(4.a)), Indonesia (article 9.5(6.a)), and Uruguay (article 13.3(2.k)), as they explicitly recognize **climate change** within the areas of cooperation. Moreover, the Chile-Turkey (article 37) and Chile-

⁴⁰ Sanderson, Jay. ‘Why UPOV is relevant, transparent and looking to the future: a conversation with Peter Button’ (2013). *Journal of Intellectual Property Law & Practice*, 8:615–23.

⁴¹ article G-34), Mexico (article 9-34), South Korea (article 10.37), United States (article 10.23), Japan (article 100), Australia (article 10.25), Colombia (article 9.24), and Peru (article 11.24).

Indonesia (article 9.5) agreements elaborate environmental cooperation within cooperation chapters in a similar extent to what can be found in trade and environment chapters' cooperation, acknowledging the relevance of the topic, its relationship with trade, the right to regulate, and international commitments. Even though this type of provisions has been suitable in agreements without a trade and environment chapter, it is recommended that future agreements include specific chapters in which cooperation in this matter is incorporated.

Thus, there has been a clear evolution in the recognition of environmental provisions in trade agreements. As described above, some agreements began with preambular initiatives and then went on to specify WTO+ and WTOX clauses, as well as references to specific environmental agreements.

Likewise, the comparative analysis of trade agreements in this chapter made it possible to observe the appearance of the so-called "right to regulate", a mechanism that enables the parties to dictate environmental regulations without affecting the commitments undertaken internationally. It also made it possible to identify the legitimate exceptions to the agreements, the derived procedures and the current areas of cooperation that are being incorporated into modern trade agreements.

4. Trade and Sustainable Development Chapter

This section analyses the trade and environment chapters negotiated by Chile. Chile has negotiated trade and environment or sustainable development chapters with (chronologically ordered) Canada, the United States, P4, Colombia, Hong Kong, Uruguay, Argentina, Brazil and Ecuador*. It must be highlighted that both the agreements with Canada and P4 are cooperation agreements annexed to the core text of the FTA, therefore it is understandable that not all the elements analysed are found in this type of agreements. This section analyses the aims and objectives of the chapter; Multilateral Environmental Agreements and sectorial provisions; obligations not to weaken standards; transparency and cooperation schemes; and enforcement mechanisms. In addition, the analysis considers the available EU negotiating textual proposals for the trade and sustainable development chapter⁴². From here, the most suitable provisions for Chilean agreements are pointed out.

4.1 Objectives and aims of trade and environment chapters

In terms of the provisions on the objectives and aims of trade and environment chapters, Chilean agreements contain statements that recognize the environment as 'one of the three dimensions of sustainable development and that it must be addressed in a balanced manner with the social and economic dimensions' (Argentina, article 13.1(1); Brazil, article 17.1 (1)). In this sense, the objectives are varied, but provisions' wording is similar on the following goals:

- (a) promote mutually supportive trade and environmental policies;
- (b) promote high levels of environmental protection that contribute to the objective of sustainable and equitable development;
- (c) promote an effective implementation of environmental legislation;

⁴² The document was made available on 06 February 2018.

- (d) building the capacities of the Parties to address trade-related environmental issues, including through bilateral cooperation; and
- (e) promote the use of environmental measures based on their legitimate objectives and not as a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade, in accordance with the WTO agreements (Brazil, article 17.3).

The agreements Chile-Argentina and Chile-Uruguay contain the same objectives, but some differences can be found. The former also recalls the Tratado entre la República Argentina y la República de Chile sobre Medio Ambiente de 1991 (article 13.1(3)(f)); while the latter does not mention WTO agreements.

Other agreements, such as Chile-US present a much stronger language when referring to the relationship between trade and environmental policies in the chapter's objective: '[...] to contribute to the Parties' efforts **to ensure** that trade and environmental policies are mutually supportive and to collaboratively promote the optimal use of resources in accordance with the objective of sustainable development' (objectives, chapter 19). Overall, the nexus between trade, economic relations and the environment is drawn, and reiterated, but no trade-centred approach is found. When comparing to EU agreements⁴³, two elements can be highlighted. First, instead of choosing 'the Parties recognize the contribution that trade could make to sustainable development' (EU-Mercosur), all Chilean chapters focus on 'promoting effective and economically efficient environmental measures' (Chile-Canada, article 1(i)). Second, no international environmental instruments are recalled or mentioned. Taking into consideration the Chilean approach towards environmental commitments in trade agreements, the Chile-Canada approach can be implemented in future agreements. Moreover, when comparing previous Chile agreements with the Chile-EU draft on sustainable development chapter available, it can be argued that when negotiating with stronger economic partners, it is possible to strengthen the Chilean strategy and refer to international commitments on the matter.

4.2 Implementation of Multilateral Environmental Agreements and specific aspects of trade

It should be highlighted that Chile's agreements are quite restricted when referring to broader international environmental agreements. In the case of Chile-Ecuador*, Chile-Uruguay, Chile-Argentina and Chile-Brazil, general obligations are presented in a similar wording. Parties 'recognize that MEAs play an important role at the national, regional and global level, in the protection of the environment' (Chile-Ecuador*, article 17.4). In this regard, each party 'affirms its commitment to implement the multilateral environmental agreements to which it is a party' (Chile-Uruguay, article 12.4). In the case of Chile-Argentina and Chile-Brazil, parties openly commit to cooperate and discuss matters related to MEAs (article 13.2(2) and article 17.2(2), respectively).

On the contrary, the draft published by the EU on the Chile-EU agreement shows that references to specific multilateral agreements are made, both in labour and environmental matters. It directly 'recalls' the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work (article 3.2); the ILO Declaration on Social Justice for Fair Globalization (article

⁴³ Ibid, Cáceres *et al.* note (5).

3.5)⁴⁴; and the promotion of the Decent Work Agenda (art. 3.6). Chile has included these provisions in other agreements under a trade and labour chapters. Article 4.1 recognizes the importance of the United Nations Environment Assembly (UNEA) of the United Nations Environment Programme (UNEP), then it generally refers to the multilateral environmental governance. It can be argued that including explicit MEAs can be encouraged for future Chile agreements, as they can be used for interpretation purposes. Nevertheless, as it can be seen in the current state of practice, it is unlikely that Chile will push for an explicit list of MEAs, rather than making general references to comply with MEAs' commitments.

Trade and environment chapters negotiated by Chile with Argentina, Brazil and Ecuador* contain specific aspects of trade and environmentally sustainable development. Chile-Brazil and Chile-Ecuador* have placed focus on **eight** areas. The former on climate change (article 17.14), trade and biodiversity (article 17.9), fisheries (article 17.9), forest conservation (article 17.12), sustainable agriculture (article 17.13), exotic invasive species (article 17.10), indigenous population (article 17.15), and wild fauna and flora (article 17.16); and the latter on: climate change (article 17.17), biodiversity (article 17.10), fisheries (article 17.15), forest conservation (article 17.13), illegal trade in endangered species (article 17.12), sustainable agriculture (article 17.14), indigenous population (article 17.11), and wild fauna and flora (article 17.16). The Chile-Argentina agreement has placed specific focus on **four** areas: climate change (article 13.10), fisheries (article 13.8), forest conservation (article 13.7), and sustainable agriculture (article 13.9). If the text proposal by the EU is considered, **five** areas are included: climate change (article 5), biological diversity (article 6), forest conservation (article 7), management of marine biological resources and aquaculture (article 8), and responsibly supply chain management (article 9).

Even though the length of these specific articles varies, some similarities can be found in terms of the formal structure and type of commitments. Overall, these articles contain provisions in which parties (1) recognize the importance of specific trade and environment matters (biodiversity, climate, trade, forest conservation, etc.); (2) reaffirm commitments in MEAs or declare parties' commitment to comply with international obligations; (3) promote and encourage the conservation and sustainable use of the specific matter; and, (4) exchange of information, experiences, and cooperation in related matters among the parties, but also between the Trade and Environment Committee and other Committees throughout the agreement⁴⁵.

Following the second type of provisions, both general references to MEAs can be found⁴⁶, but also specific agreements are recalled. Nevertheless, there is a wide divergence of practice in terms of which agreements are referred to, their type and the language used. Overall, the

⁴⁴ It is worth noting that labour chapters were not revised. This idea just points out that labour and environmental MEAs are included in the Chile-EU proposal.

⁴⁵ This type of provision can be found in the Chile-Brazil chapter, where 'The Trade and Environment Committee will coordinate with the SPS Committee established in Chapter 4 [...] to identify opportunities for cooperation with a view to exchanging information and experiences of (...) (article 17.20(2)).

⁴⁶ The Chile-Brazil agreement contains a general reference to MEAs: 'The Parties, in accordance with their international obligations in the MEAs and their legal system, undertake to: (a) promote trade in legally obtained wild flora and fauna, and (...) (article 17.16(2)).

agreements cited pertain to the specific areas of focus in terms of their subject-matter. For comparison purposes, the draft available for Chile and the EU is used.

- Chile-Argentina FTA: United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol (article 13.10(1)), Paris Agreement (article 13.10(1)), and Sustainable Development Goals (articles 13.7(2.c), 13.8(3.c), and 13.9(3)).
- Chile-Brazil FTA: United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol (article 17.14.1), Rio Declaration on Environment and Development 1992 (articles 17.5(1-2)), Paris Agreement (article 17.14.1), and Convention on Biological Diversity (article 17.9 (1)).
- Chile-Ecuador* FTA: Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (article 17.16(2)-(3)(a)), United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol (article 17.17(1)), and Paris Agreement (article 17.17(1)).
- Chile-EU FTA: United Nations Framework Convention on Climate Change (UNFCCC) (article 5.1 and 5.1(a)), Paris Agreement (article 5.1(a)), Convention on Biological Diversity (article 6.1), Convention on International Trade in Endangered Species of Wild Fauna and Flora (article 6.1(b)), UN Convention on the Law of the Sea, the UN Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the FAO Code of Conduct for Responsible Fisheries and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) fishing (article 8.3(b)), OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact and the UN Guiding Principles on Business and Human Rights (article 9.2(b)).

It is worth mentioning that besides the agreements mentioned *supra*, the chapters between Chile-Brazil and Chile-Ecuador state that each party shall seek to operate a fisheries management system that regulates capture wild marine fisheries, which will be designed system based on ‘the best available scientific evidence and good internationally recognized practices for fisheries management and conservation’. In this context, the following agreements are mentioned: United Nations Convention on the Law of the Sea, Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organisation on 31 October 1995, and Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, approved by the Food and Agriculture Organization Conference on 22 November 2009. The only difference is that Chile-Brazil mentions these agreements in the core text of the article 17.11(4), while Chile-Ecuador includes them on a foot note for clarification purposes in article 17.11(4).

From previous analysis, it can be reasoned that there is space for Chile to incorporate a broad variety of specific trade and environment aspects. These articles should be strengthened by commitments to comply with specific MEAs, the promotion and conservation of the areas selected, as well as both cooperation practices and the creation of cooperation schemes.

4.3 Obligations not to weaken standards

In terms of obligations not to weaken standards, not all trade and environment chapters negotiated by Chile have provisions on the right to regulate or levels of protection. Nevertheless, when comparing the formal structure of the chapters, it can be argued that both types of provisions can be found either as one or two separate articles. Only Chile-US and Chile-Canada agreements have specific articles on ‘levels of protection’. In them, they recognize ‘the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws’ (art. 19.1 and art. 3, respectively). This provision cannot be found in any other agreement, and both Canada and the US contain the same wording.

In the other agreements, the article on ‘right to regulate contains’ also contains provisions on levels of protection. In terms of right to regulate, Chilean trade and environment chapters with Latin American partners contain positive obligations. In the agreements with Argentina, Brazil, Ecuador* and Uruguay, the parties ‘recognize the sovereign right of each to establish its own levels of internal environmental protection and its own environmental priorities, as well as to establish, adopt, or modify its environmental legislation and policies accordingly’ (Chile-Uruguay, art. 12.3(1)). It is worth noting that Chile-Colombia chapter uses similar wording, but stronger language as parties ‘reaffirm the sovereign right [...] and reiterate their sovereign right to establish their own levels of environmental protection (...)’ (Chile-Colombia, art. 18.2(1)). Chile-US and Chile-Canada agreements follow a different approach as they focus on the right to exercise discretion in environmental matters. They use similar wording in stating that the parties ‘recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities’ (Chile-US, art. 19.2(1)(b)). It is important to point out that Chile-US and Chile-Ecuador* contain a provision to ensure that nothing in the chapter empowers a party’s authority to ‘undertake environmental law enforcement activities in the territory of the other Party’ (art. 19.2(3) and art. 17.3(8), respectively). Taking into consideration the Chilean strategy towards the incorporation of environment-related provisions in trade agreements, it is safe to say that the inclusion of this type of provisions give policymakers certainty of their sovereign right. Recalling that in March 2022, a new government coalition assumed power in Chile, it can be argued that similar provisions will be present in future agreements.

The provisions that “uphold certain levels of protection” can be found as 1) positive or negative obligations not to waive, derogate or offer to waive or derogate from their environmental standards; and, 2) the previous provision plus a provision on the negative obligation not to omit applying their environmental standards. For example, Chile-US state that ‘it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws’ (art. 19.2(2))⁴⁷. Chile chapters with Ecuador* and Uruguay contain the first provision, and another one that states ‘neither Party will fail to effectively enforce its environmental law through a sustained or recurring course of action or inaction in a manner that affects trade or investment between the Parties’ (art. 17.3(3) and art. 12.3(3), respectively). It

⁴⁷ The same type of provision is found in the Chile-Colombia trade and environment chapter.

must be highlighted that Chile-Argentina, Chile-Brazil and Chile-Canada⁴⁸ do not contain these provisions. The longstanding opened-trade strategy led by Chile is reflected in these kinds of provisions on the fact that not all agreements contain commitments to uphold certain levels of protection, and on the idea that environmental laws should not affect trade and investment. Nevertheless, upholding certain levels of protection is one of the pillars of the Chilean strategy, so this can be a suitable provision for future agreements.

In addition, while domestic laws must not be weakened, not all agreements refer to MEAs and relevant international instruments, if they do, provisions have different levels of commitments. The strongest commitment is found in chapters with Argentina and Brazil as each party ‘**shall ensure** that its environmental legislation and policies are consistent with the MEAs to which it is a party’ (art. 13.2(2) and art. 17.2(2), respectively). Then Chile-Colombia states that each party ‘**shall strive to ensure** that its environmental policies, laws, regulations [...] are consistent and comply with its international environmental commitments arising from MEAS’ (art. 18.2(3)). The Chile-Ecuador agreement makes reference to the WTO Committee on Trade and Environment but stating that the parties ‘shall seek to cooperate on matters of mutual interest’ (art. 17.3(7)).

Finally, only the chapters with Ecuador* and Uruguay contain a restriction arguing that ‘environmental legislation and policies will not be established or applied for commercial protectionist purposes’ (art. 13.3(6) and art. 12.3(6), respectively).

4.4 Transparency, cooperation, and corporate social responsibility

In terms of transparency provisions, the majority⁴⁹ of FTAs analysed contain transparency-related commitments. These are not structured in ‘transparency’ articles, but rather focused on providing opportunities for public participation and contact points. It is worth noting that the obligations are linked to the implementation of standards according to the parties’ domestic legal systems and rely on information being made publicly available. For example, the Chile-US, Chile-Colombia and Chile-Uruguay FTAs contain the same provisions, stating that ‘(...) Each Party shall promptly make available to the other Party and to its public all communications it receives and shall review and respond to them in accordance with its domestic procedures’ (article 19.4(1); article 17.7; and article 12.7, respectively). It is worth highlighting that Chile-Uruguay FTA goes further and contain a ‘public communication’ article (12.8) that details communication procedures, which is a provision that can be included in other agreements as a way of promoting communication exchange.

Three agreements innovate in the inclusion of articles focused on ‘procedural aspects’ or ‘Access to justice, information and participation’. The chapters between Chile with Ecuador* and Uruguay contain the same article stating commitments on the promotion of public awareness of environmental laws and policies or the request of the investigation of alleged violations of environmental legislations, among others (articles 15.5 and 12.5, respectively). The Chile-

⁴⁸ As it was mentioned, in the case of Chile-Canada, a cooperation annex on trade and environment is analysed, therefore those type of provisions will not appear.

⁴⁹ The Chile-Colombia, Chile-P4 and Chile-Hong Kong agreements only make reference to contact-point related provisions.

Argentina and Chile-Brazil chapters present a stronger article in which the parties ‘reaffirm the full validity of Principle 10 of the Rio Declaration on Environment and Development of 1992’ (article 13.5(1) and article 17.5(1), respectively); agree to exchange information in this matter; can request the investigation of alleged violations of the environmental legislations; provide appropriate remedies and sanctions for violations of environmental laws, among others. It is important to mention that Chile has been working on bringing together the discussion between policymakers and civil society on trade issues, for which promoting public awareness of environmental laws and having clear procedures for alleged violations or related matters are necessary commitments to strengthen the relation between policymakers, academia, enterprises, and civil society in general.

This last point can also be supported by the presence of contact point with the objective of facilitating communication among the parties. The length of these articles may vary, finding articles that detail each function of contact points⁵⁰, to others that only mention the government institutions that will have this role (Chile-Colombia agreement, article 18.4).

When comparing these provisions to the available draft of the Chile-EU chapter, it is relevant to point out that there is a rather weak article called ‘transparency’, but no additional references are made to public communications or participation.

When focusing on cooperation commitments in trade and environment chapters negotiated by Chile, 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. In general, relevant topics of cooperation can be categorized as 1) cooperation at the multilateral level; 2) cooperation on trade and environment topics; 3) cooperation on promoting practices; and 4) cooperation on tackling specific issues within cooperation articles and thematic articles.

First, cooperation at the multilateral level is not widely present in agreement negotiated by Chile. Only the Chile agreements with Argentina and Brazil state that the parties ‘agree to cooperate, as appropriate, with respect to matters environmental issues of mutual interest related to MEAs of which both are party and, in particular, trade-related issues (...)’ (articles 13.2(2) and 17.4(2), respectively). Second, all the agreements analysed contain an article on cooperation on trade and environment topics. Overall, these provisions overlap in terms of the language used, differences appearing on the length of the cooperation activities listed. The Parties mainly recognize the importance of strengthening capacity to protect the environment and list ways in which cooperation can be achieved, such as joint research and information exchange. The Chile-US agreement contains an article on environmental cooperation (article 19.5), supported by an Annex that details the cooperation commitments, as well as areas that will be addressed by the parties.

Third, in terms of promoting practices, each treaty appears to be suited to its respective parties’ interests. For example, agreements such as Chile-US, Chile-Colombia, Chile-Ecuador*, Chile-Uruguay, and Chile-Brazil promote ‘sustainable development in concert with strengthening trade and investment relations’ (articles 19.5(1); 18.3(3); 17.18(1); 12.11(1); and 17.8(1), respectively). In addition, Chile agreements with Brazil, Ecuador and Uruguay refer to

⁵⁰ Chile-P4 (article 4), Chile-Argentina (article 13.11), and Chile-Brazil (article 17.17) agreements.

cooperation on ‘voluntary sustainability schemes’ for the promotion of products based on environmental qualities. In this regard, parties:

‘recognize that flexible and voluntary mechanisms, for example, voluntary audits and reports, market-based incentives, voluntary exchange of information and specialized knowledge, among others, can contribute to the achievement and maintenance of high levels of environmental protection (...)’ (articles 17.7(1); 17.9(1); and 12.9(19), respectively)’

Finally, some agreements refer to cooperation on specific issues⁵¹:

- Chile-US agreement (Annex 19.3): develop a pollutant release and transfer register (PRTR) (article 1.a); reduce mining pollution (article 1.b); improve environmental enforcement (article 1.c); improve agricultural practices (article 1.e); reduce methyl bromide emissions (article 1.f); improve wildlife protection (article 1.g); and increase the use of cleaner fuels (article 1.h).
- Chile-Colombia agreement (article 18.3): forest development and natural resources; management of hydrobiological resources; desertification and recovery of vegetation; green markets; ecotourism and sustainable tourism; biodiversity; control and monitoring of environmental pollution; water quality management and related technologies; conservation of marine and coastal areas; and watershed management.
- Chile-Uruguay agreements (article 12.11(4)): SDGs; climate change; biodiversity, conservation of natural resources and protected areas; management of chemicals and waste; air quality; water management and quality; conservation of the biodiversity of the marine and coastal edge; and renewable energies and energy efficiency.
- Chile-Ecuador* agreement:
 - Within the climate change article (17.16(4)), cooperation on: climate governance and institutions; sustainable consumption and production and climate change; air quality co-benefits of greenhouse gas control measures; climate change mitigation and adaptation; resilient water management; sustainable agriculture; energy efficiency; research and development of cost-effective low emission technologies; development of alternative, clean and renewable energy sources; solutions to deforestation and forest degradation; recovery of degraded areas; among others.
 - Within the biodiversity article (17.19(5)), cooperation on: conservation and sustainable use of biological diversity; the protection and preservation of ecosystems and ecosystem services; access to genetic resources; the bioeconomy.
 - Within the indigenous people article (17.11(2)), cooperate: the consideration of traditional knowledge in environmental management.
- Chile-Argentina agreement:
 - Within the climate change article (13.10(3)), cooperate on: energy efficiency; low emission technologies; development of energy sources; development of resilient agriculture; solutions to forest degradation; emissions monitoring; spread control of pests and diseases, preparation and action against extreme events related to climate change, such as forest fires and desertification.
 - Within the fisheries article (17.10(5)), cooperation on: the conservation and sustainable use of biological diversity; the protection and preservation of

⁵¹ It is worth mentioning that the Chile-Canada cooperation agreement focuses more on procedural matters, rather than providing specific areas of cooperation.

ecosystems and ecosystem services; access to genetic resources; and the bioeconomy.

- Within the forest conservation article (17.3(1)(b)), cooperation on: sustainable forest management; and SDGs.
- Chile-Brazil agreement:
 - Within the climate change article (17.14(4)), cooperation on: climate finance; climate governance and institutions; sustainable consumption and production; air quality; climate change mitigation; resilient water management; sustainable agriculture; energy efficiency; clean and renewable energy sources; solutions to deforestation; control spread of pests and diseases, among others.
 - Within the biodiversity article (17.9(6)), cooperation on: conservation and sustainable use of biological diversity; the protection and preservation of ecosystems and ecosystem services; and access to genetic resources.
 - Within the forest conservation article (17.12(2)(b)), cooperation on: forest management, including initiatives to combat illegal logging.
 - Within the exotic invasive species article (17.10(2)), cooperation on: eradication of invasive alien species.
 - Within the indigenous people article (17.15(2)), cooperation on: the consideration of traditional knowledge in environmental management.
 - Within the wild fauna and flora article (17.16(2)(b)), cooperation on: legal and sustainable trade, conservation and the fight against poaching and trafficking of wild flora and fauna.

Some differences can be found when classifying the cooperation provisions found in Chile-EU draft. There are commitments for cooperation at the multilateral level, stating that parties can cooperate in the context of MEAs and ILO (articles 4.6 and 3.9), as well as in the UNFCCC, the WTO, the Montreal Protocol on Substances that Deplete the Ozone Layer and the International Maritime Organization (article 5.3). Even though there are general references to cooperation on trade and environment topics within specialized articles, some differences arise. The draft contains the article ‘working together on trade and sustainable development’ (article 12), which brings together parties’ willingness to cooperate on aspects of trade and sustainable development, but also in specific MEAs or international fora. This type of article has not been negotiated in previous Chile agreements. Finally, there is cooperation commitments on tackling specific issues, such as cooperation on natural resource-based products; conservation of biodiversity; tackling illegal wildlife trade (article 6); and trade and forest: sustainable forest management and the conservation of forest and illegal logging (article 7.3).

Even though Chile has evolved in terms of how cooperation is thought and applied on environment-related matters, stronger language can be used for voluntary sustainable schemes, as well as direct reference to which MEAs will be taken into consideration. In addition, it can be highlighted that Chile agreements contain cooperation on specific issues. This should be replicated in all future agreements as selected areas will serve as a guide to plan cooperation activities during the implementation of the agreement (considering budgets, institutions in charge, etc.). These elements are in line with the trade and environment pillars of Chilean negotiation strategies, so it is something that can be incorporated in future agreements.

Another interesting topic within the trade and environment chapters negotiated by Chile is the inclusion of corporate social responsibility provisions. This type of provisions has been incorporated in agreements with Argentina, Brazil, Uruguay and the US, with some differences. For example, Chile-Argentina and Chile-Uruguay agreements contain the same provision,

arguing that each party ‘shall encourage companies, operating within its territory or jurisdiction, **to voluntarily incorporate**, in their internal policies, sound principles of corporate social responsibility **that are related to the environment**’ (articles 13.6 and 12.6, respectively). However, the Chile-Brazil agreement includes stronger language by saying that parties ‘shall encourage companies operating within its territory or jurisdiction to **incorporate**, in their internal policies, principles and standards of responsible business conduct **that contribute to achieving sustainable development** (...)’ (article 17.6). The Chile-EU draft contains a larger article called ‘trade and responsible supply chain management’ (article 9), in which they commit to promote corporate social responsibility conduct; support the OECD Guidelines for Multilateral Enterprises, among others international instruments; and promote trade in goods contributing to enhanced social conditions and environmentally sound practices. This article can be considered a next step on corporate social responsibility provisions, deeper than the ones previously negotiated by Chile, but directly in line to what Chilean policymakers have been working on.

4.5 Enforcement

In terms of enforcement, trade and environment chapters negotiated by Chile are excluded from the main dispute settlement system and have a separate consultations process should issues emerge. In particular, Chile’s agreements with Argentina, Brazil and Uruguay contain a specific article stating that ‘neither party may resort to the dispute settlement mechanism’ (articles 13.14, 17.19 and 12.13, respectively); while Chile agreements with the US, Hong Kong and Ecuador exclude the trade and environment chapter from the dispute settlement mechanism in the article that directly addresses the mechanism (articles 19.6(8), 17.1(3) and 17.24, respectively)⁵².

Regarding the consultations process, it can be argued that its complexity has evolved in Chilean agreements, with one or more steps to solve the controversy. For example, the process declared in the Chile-Colombia (article 18.5), Chile-P4 (article 5), and Chile-Hong Kong (article 14.5) agreements is general and with little details. These agreements state that parties will make every effort to resolve any matter that could affect the application of the chapter in good faith, amicably through dialogue, consultation and cooperation. They also make reference to the use of contact points to request consultations, which in turn will identify the institution or official responsible for the matter. In addition to this, the Chile-Hong Kong agreement states that ‘if the consultations do not resolve the matter within 6 months of receipt of the request [...] either Party may refer the matter to the Commission for further consideration’ (article 14.5(4)), leaving it to a second instance of resolution. Similarly, the Chile-P4 chapter declares that parties should set a term for consultations, which should not exceed 6 months, and that the second step of resolution is ‘a special meeting of interested Parties, to which all Parties will be invited. The matter may also be referred to the Trans-Pacific Strategic Economic Partnership Commission by any interested Party for discussion’ (article 5.5).

Other agreements such as Chile-Argentina (article 13.13), Chile-Brazil (article 17.18), and Chile-Uruguay (article 12.12) provide a three-step resolution process after the formal request for consultations is made to the contact point. In their case, they will enter consultations within 90 days following the date of receipt of the request. From here, if no mutually satisfactory solution is reached, parties can request that the Trade and Environment Committee be convened, which can resort to procedures such as good offices, conciliation, or mediation. If the Committee cannot solve the matter, parties can contact their Ministers. The result of the process is written down in

⁵² As the Chile agreements with Canada and P4 are side agreements, they are directly excluded from the dispute settlement mechanism.

a report. During the first and second step of the process, parties can request independent experts' advice.

The Chile-Ecuador* agreement also contains a three-step consultations process, but more detail is given in each step. For example, when the request for consultations is received, the requested party is given seven days to acknowledge receipt of the request (article 17.20(3)). If parties are not able to resolve the matter through consultations at the point of contact level, within 90 days following the expiration of the term, either of them may request that the Committee meets to consider the matter. The Committee should meet no later than 60 days from the date of receipt of the request, resolving the matter through consultations. After that, parties can refer the matter to Ministers.

This manner of solving disputes is different from the one applied in the Chile-Canada agreement (article 22 to 36), as a panel of experts can be requested. In this case, after asking for the consultation process, parties can request the Council to meet, which will get together within 20 days of the request. If 60 days after the Council met, there is still no solution, a panel of experts is called. This cooperation agreement exhaustively explains how the panel will proceed, how members are chosen, their requisites, among other details. When the panel determines, in its final report, that there has been a persistent pattern of omissions of the party complained against in the effective application of its environmental legislation, the parties may agree on a mutually satisfactory plan of action. If this is not possible, parties can ask the panel of experts to meet again. The panel can also impose monetary contributions. It is interesting to note that a similar dispute resolution process can be found in the Chile-EU draft, where details for the consultations process and panel of experts are provided.

As it can be seen in the analyses, Chile's approach to dispute resolution is focused on solving matters amicably through consultations, using two or more levels if matters are not solved. As it has been widely explained by the current practice⁵³, it is not politically realistic to incorporate binding compliance mechanisms from the TSD chapter as there is no international jurisprudence to serve as a basis for analysing. One of the pillars for future negotiations is to analyse how new environment and trade trends are being applied and analyse the feasibility in Chilean agreements. Even though some agreements are selecting which provisions within environment chapters include to the general dispute settlement rules, it would be interesting to see if the Chile-EU agreement finally adopts the ad-hoc dispute resolutions presented by the EU, if so, how it will impact future Chilean negotiations.

5. Conclusions

The objective of this report was to analyze the incorporation of environmental commitments in Chilean trade agreements. For this purpose, the analysis looked into both the corpus of trade agreements and its traditional components, and trade and environment chapters; analyzing 33 trade agreements signed between 1993 and 2022. The EU text proposal for the Trade and Sustainable Development chapter within the EU-Chile modernization agreement was used as a proxy, as the official text has not yet been publicly released.

⁵³ For similar analysis, see: *Ibid*, Cáceres *et al.* note (5); George, C. Regional Trade Agreements and the Environment: Monitoring Implementation and Assessing Impacts: Report on the OECD Workshop (2011), OECD Trade and Environment Working Papers, No. 2011/02, OECD Publishing, Paris, online <<https://www.oecd-ilibrary.org/docserver/5kgcf7154tmq-en.pdf?expres=1649198784&id=id&accname=guest&checksum=4061682C9BE6AAC5507C93C340DEAB51>>

Overall, it can be argued that Chile's incorporation of environmental provisions in trade agreements has evolved. The general analysis shows that Chile has mainly incorporated environment-related provisions as general commitments in Preambles and within exceptions. Even though only minimum environmental-related provisions can be found throughout the agreements, cooperation articles tend to include environmental-related issues and activities. Regarding trade and environment chapters, while they recognise the relevance of the topic, the commitments vary in terms of scope and depth. Similarly, though these chapters are excluded from the general dispute settlement of the agreement, they provide specific consultation process. These consultations may range from dialogues at the national contact points level to Committees and the involvement of Ministers.

The EU text proposal for a Trade and Sustainable Development chapter includes specific commitments for the implementation of the Paris Agreement; recalls other MEAs which are not commonly mentioned by previous Chilean agreements; deepens articles for specific thematic areas of trade and sustainable development; provides detailed and thorough information on cooperation activities; and, elaborates on the creation of a panel of experts after the consultation process as an alternative for dispute resolution.

Finally, it should be noted that environmental considerations are becoming part of a wider sustainable development agenda in Chile, which has been highlighted by President Boric. Hence, action to this respect must be framed in comprehensive strategies, including the negotiation of trade agreements. In this context, and in line with the countries evolving trade agreements strategy, Chile is open to discuss and incorporate new provisions on trade and environment, deepening its relationship with partners such as the European Union. Nevertheless, at the moment of the present brief, the new Chilean administration has only assumed office for the past three weeks, therefore, it is still early to determine the exact pathway it will follow.

In this sense, it is important to analyze in detail the content of the chapters dedicated to Trade and Environment/Sustainable Development. In this sense, the relevance lies in the fact that each agreement with its respective chapter, covers different topics that are impregnated by such modern provisions.

Furthermore, in addition to the contents covered by the chapters, the legal language adopted is a relevant factor of analysis, as it provides greater or lesser reinforcement of the sovereign right of each State to regulate the matters necessary for the protection of the environment, or in terms of levels of transparency and areas of effective cooperation between the parties.

Annex 1: SIA recommendations

1. Greenhouse Gas Emissions⁵⁴

- a. Include a clause in the trade and sustainable development Chapter that:
 - i. ‘reconfirms the ratification and full implementation of the Paris Agreement to address the urgent threat of climate change; and
 - ii. recognises the need to adopt or modify relevant climate change legislation, regulation and policy instruments to support achieving the national commitment to the Paris Agreement.
- b. Include in the Cooperation part of the modernised agreement an ‘agreement between the Parties to use mutual experiences in development and implementation of carbon pricing to exchange lessons learned and jointly support international cooperation in carbon pricing and the global implementation of carbon markets. In that same part of the Agreement, the Parties could consider including actions to strengthen cooperation on development and promotion of specific GHG mitigation and adaptation actions, energy efficiency solutions and deployment of renewable energy technologies, for example by defining a cooperation framework between the Chilean Ministry of Environment and the European Commission’s DG Climate Action that identifies specific GHG actions and barriers to these actions. Also, an agreement could be included to support mutual strengthening and alignment of procedures for procurement and standardisation of customs procedures to support bilateral trade in all such low-carbon technologies and services’.

2. Transport and use of energy⁵⁵

- a. Include a clause in the TSD Chapter that ‘confirms the need to encourage low-carbon transport and recognises the need to adopt or modify relevant domestic regulation and policy instruments such as uptake of more stringent fuel quality standards and improvement of the transport policy framework’.
- b. Include a clause in the TSD Chapter that ‘recognises the value of foreign investments in Chilean transport infrastructure for improving the environmental sustainability of transport, and confirms the need to address barriers to such investments. Furthermore, the Agreement could, for example, include provisions in which the Parties’:
 - i. ‘Confirm the importance of electrification of vehicles and the need to define specific policy measures to simulate achieving electrification targets. Including an agreement to stimulate research exchange on electrification and facilitate increased cooperation with respect to the manufacturing, import and sale of electric motor vehicles.
 - ii. Confirm the multiple benefits of energy efficiency and recognising the need to adopt or modify relevant regulation that includes specific sectoral targets. Agreeing on a time path to defining such regulation and targets and agreeing on exchanging the resulting targets as well as monitoring of progress to target achievement.
 - iii. Include agreements on knowledge exchange on energy market reform to facilitate further increase of low-carbon energy production in the EU and Chile, for example by agreeing to set up a task force to identify actions and responsible bodies for knowledge exchange and for defining follow-up measures needed to facilitate low-carbon energy production. It is suggested to agree that such follow-up measures would include a plan and policy measures to address barriers to import of low-carbon technical solutions’.

3. Air quality⁵⁶

- a. Include a clause in TSD Chapter in which ‘Parties recognise that, although trade arrangements between the EU and Chile are not expected to result in a high impact on air quality at aggregate level, the local effects could still be significant and should be addressed.

⁵⁴ Ibid, European Commission note (18), page 142.

⁵⁵ Ibid, European Commission note (18), page 145.

⁵⁶ Ibid, European Commission note (18), pages 147-148.

This could be complemented by including in the TSD Chapter a confirmation from both Parties of their intentions to achieve international air quality agreements and to that end implement all needed local air quality standards as well as solid systems for monitoring, reporting and enforcement. In addition, an agreement could be included to share best practices and to adapt existing regulation and implementation to these best practices. It is recommended that both Parties identify a body that is assigned the task to implement these agreements’.

- b. Include a clause in TSD Chapter in which the Parties ‘recognise the need of reduced energy consumption and promote transfer of low-energy and lowcarbon technologies, specifically in high energy consumption and high pollution sectors such as the built environment and mining. It is recommended to include an agreement in which both parties set up a joint task force to promote the multiple benefits of improved air quality to the wider audience, where possible in a quantified manner and referring to international agreements, standards and thresholds’.
- c. ‘the Parties could recognise, in a clause in the TSD Chapter, the need to support modal shift and enhanced transport infrastructure, the need to adopt or modify the necessary legislation, regulation and policy instruments to support these objectives and promote capacity building in these areas’.

4. Land use⁵⁷

- a. Include a clause in TSD Chapter in which the Parties ‘reconfirm ratification and full implementation of the Paris Agreement (as already recommended above), the importance of land use and land use change (including growing the forest area and improving forestry management) should explicitly be mentioned, as should be the need to adopt or modify relevant legislation, regulation and policy instruments to support improvements in land use and land management’.
- b. Include a clause in TSD Chapter in which the Parties ‘recognise the need of good data for understanding opportunities for improvement in agricultural production and land use change. This should be complemented with an agreement of the Parties to strengthen cooperation on improving data collection and research on improvement of agricultural yield and forest management. It is recommended that both Parties identify a body that is assigned the task to implement these agreements or to assign specific universities or other research institutes with these tasks’.
- c. Include a clause in TSD Chapter in which the Parties ‘reconfirms the need for both Parties to monitor actions on climate change adaptation and report on current and planned adaptation measures in the scope of the National Communications to the UNFCCC. Given the high importance of adaptation in Chile’s climate change goals, a statement could be included in which Chile identifies the governance structure and reporting responsibilities on its policies and measures as identified in the adaptation plans, for example by agreeing that reporting templates will be developed at sectoral level within one year following this agreement, that sectoral Ministries are assigned the responsibility for monitoring and for bi-annual reporting of policies and measures defined in their sectoral adaptation plans (for example the Ministry of Agriculture would report on the progress to implementing actions included in the Climate Change Adaptation Plan for the silvoagricultural sector), and that monitoring reports are actively shared among the responsible Ministries’.

5. Biodiversity⁵⁸

- a. Include a clause in TSD Chapter in which Parties ‘reconfirm the objectives and Aichi targets as agreed in the scope of the Convention on Biological Diversity. In this clause, the Parties should also recognise the need to adopt or modify as soon as possible the relevant legislation, regulation and policy instruments to support achieving the Aichi targets’
- b. In the TSD Chapter, Parties could furthermore agree to:

⁵⁷ Ibid, European Commission note (18), pages 149-150.

⁵⁸ Ibid, European Commission note (18), page 151-152.

- i. ‘Exchange lessons learned in addressing biodiversity and promote actions to support sustainable use of biological resources.
 - ii. Strengthen cooperation on addressing trade related biodiversity impact such as biodiversity loss due to mining of natural resources for export and promote sustainable production alternative production methods.
 - iii. Agree on specific modalities that support identification of needs and actions as well as to assign responsibilities’.
 - c. Include a clause in TSD Chapter in which Parties ‘recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems as well as of promoting responsible and sustainable aquaculture, and reconfirm the objectives and agreements made in international conventions to this end’.
 - d. Include a clause in TSD Chapter in which Parties ‘recognise the need to promote sustainable fishing practices, good fisheries governance and good aquaculture governance through bilateral and regional cooperation. To support this, the relevant government bodies from both Parties could agree to exchange data and information on best practices in sustainable fishing, to enhance bilateral cooperation to develop specific agreements on sustainable fishing practices (e.g. analysing the option to increase the share of certified farms), and to support sustainable fish consumption (e.g. by developing targeted consumer campaigns or by agreeing on minimum quota of certified salmon in imports)’.
6. Water quality and resources
- a. Include a clause in TSD Chapter in which Parties ‘recognise the importance of addressing local water stress and the need to address any potential negative impact of increased trade in, among others, agricultural and mining products. This could be implemented by agreeing on specific modalities such as strengthening exchange of best practices on domestic water management strategies. A Task Force could be assigned to formulate the specific actions needed to do so, including assigning government bodies to take responsibility for the exchange of information, the underlying water management strategies and aims, as well as the specific ambitions to learn from international cooperation’.
 - b. ‘To support further improvement in water use and water management it is recommended to include a further clause in the TSD Chapter in which Parties agree to promote research, development and innovation in the areas of use of dewatering technologies and improvement of water management (specifically in sectors with high water consumption and high improvement potential). The above-mentioned Task Force could be assigned the task to implement this agreement by means of identifying research organisations, relevant private parties and a governance structure to improve innovations’.
7. Waste and waste management⁵⁹
- a. Include a clause in TSD Chapter in which Parties ‘reconfirm full implementation of international conventions on waste and waste management such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. In this clause, the Parties should recognise the need to adopt or modify relevant legislation, regulation and policy instruments to support achieving the international conventions on waste and waste management’.
 - b. Furthermore, Parties could agree to:
 - i. ‘Strengthen cooperation to support data collection and exchange of aggregated data on generation of waste, waste risk in mining of raw materials and waste management. This can be implemented by identifying the relevant institutions and government bodies responsible for data collection and monitoring of waste risks and waste management, by outlining the specific aims of strengthened cooperation and by assigning the relevant bodies for oversight of achievements.

⁵⁹ Ibid, European Commission note (18), page 157.

- ii. Strengthen exchange of best practices on domestic waste policy developments and waste management strategies. This can be implemented by identifying the government bodies responsible for waste policy development and waste management strategies and agreeing on a format and timeframe for information exchange.
 - iii. Promote research, development and innovation in the areas of lowering waste from waste intensive industrial production, lowering the amount of municipal solid waste per inhabitant and improvement waste management. This can be implemented by identifying relevant research organisations, private parties and government institutions, agreeing on a timeframe to develop specific targets (for amounts of waste per unit of industrial production and per inhabitant), and agreeing on a governance structure for oversight of achievements’.
8. Ecosystem services and protected areas⁶⁰
- a. Include a clause in TSD Chapter in which Parties:
 - i. ‘Recognise the need to implement environmental policies and priorities in line with each Party's commitment to the internationally recognised agreements and standards as included in Appendix B (Table 53);
 - ii. Recognise the need to adopt or modify relevant legislation, regulation and policy instruments to support achieving these commitments; and
 - iii. Emphasise the need to provide a clear governance framework to support development of such relevant legislation, regulation and policies’.

⁶⁰ Ibid, European Commission note (18), page 157.

Annex 2: Trade and Environment provisions in Chilean FTAs

Partner	Context	Objectives	Levels of Protection	Right to regulate
Canada (1997) Canada-Chile agreement on environmental cooperation	Article 2: General commitments - Reports on environmental status; formulation of measures for environmental contingencies; promote environmental education; foment environmental-related R&D; promote the use of economic instruments to achieve environmental goals; Possibility to include in domestic law Council recommendations; Examine possibility of prohibit the export of pesticides and toxic substances when prohibited in own territory.	Article 1: Objectives - Encourage environment protection; promote sustainable development; increase environmental cooperation; support environmental goals; avoid trade distortions; enhance regulatory cooperation; improve the application of environmental laws; promote transparency and civil society participation; promote environmental effective and economically efficient policies; promote policies to prevent contamination.	Article 3: Levels of protection Recognizing each parties right to establish their own environmental protection levels, parties guarantee that their laws and regulations will have high environmental protection levels.	Article 37: Principles for environmental law application - Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party. Article 38: Rights of individuals - Neither Party may grant a right of action in its legislation against the other Party, on the grounds that a measure of the other Party is inconsistent with this Agreement. Article 39: Information protection - Protection of confidential information (including business, personal and government information). Article 42: National security - No obligation to share or give access to information of essential interest related to security, including armament, ammunition, and war equipment; or the application of domestic laws or international agreements related to non- proliferation of nuclear weapons or devices.
United States (2004) FTA Chapter 19	-	- Contribute to efforts to ensure that trade and environmental policies are mutually supportive; Collaboratively promote the optimal use of resources in accordance with the objective of sustainable development.	Article 19.1: Levels of protection - Right to establish own levels of domestic environmental protection and development policies; Ensure high levels of protection and continue to improve environmental laws.	Article 19.2: Enforcement of Environmental Laws - not fail to effectively enforce its environmental laws; each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters; it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws; Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.
P4 (2006) Environment cooperation agreement among the parties to the P4	-	Article 1: Objectives - promote strong environmental policies and practices and enhance capabilities of the parties (including civil society); promote, through environmental cooperation, the commitments of the parties; facilitate cooperation and dialogue to strength the relation between the parties.	-	-
Colombia (2009) FTA Chapter 18	-	Article 18.1 - Contribute to ensure that trade and environmental policies reinforce to the promotion of best practices in the sustainable use of natural resources and protection of ecosystems, according to the sustainable development objective.	-	Article 18.2 - Recognize sovereignty on natural resources and to establish their own levels of protection; Recognize the rights of the parties to establish their own environmental protection levels and priorities, and regulations; Each party shall ensure that their environmental legislation and policies procure high environmental protection standards; Each party ensure that their environmental legislation and policies are consistent with multilateral environmental agreements (MEAs); it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws; Parties reaffirm necessity of environmental education and culture; Parties recognize the relevance that their legislation includes participation schemes.
Hong Kong (2014) FTA Chapter 14	-	Article 14.1 Objectives - promote better environmental policies and practices, and improve the capabilities of the parties to approach environmental issues; promote, through cooperation, the	-	-

		commitments of the Chapter; Facilitate the dialogue between the parties.		
Uruguay (2018) FTA Chapter 12		Article 12.2 - promote trade and environmental policies that mutually support; promote high environmental protection standards to contribute to sustainable development; promote an effective application of environmental legislation; enhance the parties' capabilities to treat environmental matters related with trade through bilateral cooperation; promote the use of environmental measures for their objectives and not as a disguised restriction on trade or investment.		Article 12.3 - Recognize the rights of the parties to establish their own environmental protection levels and priorities, and regulations; Each party shall ensure that their environmental legislation and policies procure high environmental protection standards; it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws; Parties reaffirm necessity of environmental education and culture; Parties recognize the relevance that their legislation includes participation schemes; Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party; each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters.
Argentina (2019) FTA Chapter 13	Article 13.1(1) - Recognition that environment is one of the three dimensions of sustainable development, that should balance with economic and social dimensions. Recognize the contribution of trade on sustainable development.	Article 13.1(3) - promote trade and environmental policies that mutually support; promote high environmental protection standards to contribute to sustainable development; promote an effective application of environmental legislation; enhance the parties' capabilities to treat environmental matters related with trade through bilateral cooperation; promote the use of environmental measures for their objectives and not as a disguised restriction on trade or investment, as stated in WTO; promote bilateral instance based on Tratado entre la República Argentina y la República de Chile sobre Medio Ambiente de 1991; promote cooperation in issues regarding biological diversity and environment conservation.		Article 13.2: Right to regulate in environmental issues - Recognize the rights of the parties to establish their own environmental protection levels and priorities, and regulations; Each party ensure that their environmental legislation and policies are consistent with multilateral environmental agreements (MEAs).
Brazil (2022) FTA Chapter 17	Article 17.1(1) - Recognition that environment is one of the three dimensions of sustainable development, that should balance with economic and social dimensions. Recognize the contribution of trade on sustainable development.	Article 17.3 - promote trade and environmental policies that mutually support; promote high environmental protection standards to contribute to sustainable development; promote an effective application of environmental legislation; enhance the parties' capabilities to treat environmental matters related with trade through bilateral cooperation; promote the use of environmental measures for their objectives and not as a disguised restriction on trade or investment.		Article 17.2: Right to regulate in environmental issues - Recognize the rights of the parties to establish their own environmental protection levels and priorities, and regulations; Each party ensure that their environmental legislation and policies are consistent with multilateral environmental agreements (MEAs).
Ecuador (2022) FTA Chapter 17		Article 17.2(2-3) - Increased cooperation to protect and conserve the environment and sustainably manage natural resources benefits sustainable development; Recognition that it is inappropriate to use environmental measures as a disguised restriction on trade or investment.		Article 17.3 - Recognize the rights of the parties to establish their own environmental protection levels and priorities, and regulations; Each party shall ensure that their environmental legislation and policies procure high environmental protection standards.

Partner	Multilateral Environmental Agreements	Environmental commitments	Access to justice, information and participation/procedural matters	Corporate social responsibility
<p>Canada (1997)</p> <p>Canada-Chile agreement on environmental cooperation</p>	<p>Article 40: Relation with other environmental agreements</p> <p>No disposition of the agreement will be interpreted in a way that it could affect rights and obligations derived from other international agreements, included conservation agreements.</p>		<p>Article 4: Publication</p> <p>- Recognizing domestic sovereignty, each party guarantee their legislation provide high environmental protection standards.</p> <p>Article 5: Governmental control measures</p> <p>- Parties commitment to effectively apply their environmental legislation; availability of judiciary, cuasi-judiciary or administrative procedures to enforce environmental legislation; Sanctions and resources against environmental violations shall take into account the nature of the infraction, and the benefits perceived, and include compliance agreements, fines, imprisonment, precautionary measures, facility closures, and the cost of confining or cleaning up contamination</p> <p>Article 6: Available actions for individuals</p> <p>- Parties will guarantee interested stakeholders to procedural process regarding environmental matters, including right to sue for damages, ask for sanctions, request appropriate measures for law enforcement, and precatory measures.</p> <p>Article 7: procedural guarantees</p> <p>- Parties will ensure that the procedures will be just, open and equitable. Definitive resolutions will be written, and reflect the motives in which they are stated, due diligence, based on facts and proofs. Parties will guarantee opportunity for revision and modification if proceeds, having impartial and independent courts, with no substantial interest in the results.</p>	
<p>United States (2004)</p> <p>FTA Chapter 19</p>	<p>Article 19.9: Relation with environmental agreements</p> <p>- Recognition of WTO regulations and negotiations, as well as, other trade specific commitments in other multilateral environmental agreements, for which parties will consult to those aspects applicable to the agreements.</p>		<p>Article 19.4: Opportunities for Public Participation</p> <p>- Provide for the receipt and consideration of public communications; promptly make available to the other Party and to its public all communications it receives; and shall review and respond to them in accordance with its domestic procedures. Make best efforts to respond favorably to requests for consultations by persons or organizations. Each Party may convene, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organizations, and other persons, to advise it on the implementation of the Chapter.</p>	<p>Article 19.10: Principles of Corporate Stewardship</p> <p>- Party should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies, such as those principles or agreements that have been endorsed by both Parties.</p>
<p>P4 (2006)</p> <p>Environment cooperation agreement among the parties to the P4</p>		<p>Article 2: Main elements/commitments</p> <p>- Parties reaffirm their intention to achieve high environmental protection standards, and comply with their respective multilateral commitments and international action plans, design to achieve sustainable development; parties will procure that their environmental laws, regulations, policies and practices are consistent with their international environmental commitments; parties will respect the sovereign right of each party to establish, manage, and enforce their environmental laws, regulations and policies; parties recognize that it is inappropriate to establish or use their environmental laws, regulations, policies or practices with protectionist objectives; parties recognize that is inappropriate to relax or abstain to enforce environmental laws and regulations to promote trade and investment; each party will promote the domestic</p>		

		knowledge of environmental laws, regulations, policies and practices.		
Colombia (2009) FTA Chapter 18	-	Article 18.2: Principles and commitments - Parties reaffirm the sovereign right over natural resources and environmental protection standards; Parties reaffirm their intention to achieve high environmental protection standards, and comply with their respective multilateral commitments and international action plans, design to achieve sustainable development; parties will procure that their environmental laws, regulations, policies and practices are consistent with their international environmental commitments; parties will respect the sovereign right of each party to establish, manage, and enforce their environmental laws, regulations and policies; parties recognize that it is inappropriate to establish or use their environmental laws, regulations, policies or practices with protectionist objectives; parties recognize that it is inappropriate to relax or abstain to enforce environmental laws and regulations to promote trade and investment; each party will promote the domestic knowledge of environmental laws, regulations, policies and practices.	-	-
Hong Kong (2014) FTA Chapter 14	-	Article 14.2: Main commitments - Parties reaffirm their intention to achieve high environmental protection standards, and comply with their respective multilateral commitments and international action plans, design to achieve sustainable development; parties will procure that their environmental laws, regulations, policies and practices are consistent with their international environmental commitments; parties will respect the sovereign right of each party to establish, manage, and enforce their environmental laws, regulations and policies; parties recognize that it is inappropriate to establish or use their environmental laws, regulations, policies or practices with protectionist objectives; parties recognize that it is inappropriate to relax or abstain to enforce environmental laws and regulations to promote trade and investment; each party will promote the domestic knowledge of environmental laws, regulations, policies and practices.	-	-
Uruguay (2018) FTA Chapter 12	Article 12.4: Multilateral Environmental agreements - Parties recognize the role of MEAs at the global and domestic level, in the protection of the environment and that their implementation is critical to achieve environmental objectives. Hence, they reaffirm their commitment to implement MEAs.	-	Article 12.5: Procedural aspects - each party will promote the public awareness of environmental legislation and policies, including application procedures and compliance; Parties will guarantee interested stakeholders to procedural process regarding environmental matters; parties will ensure that their judiciary or administrative procedures to be just, equitable, transparent and comply with due process; parties will have appropriate sanctions and reparation measures for violations of environmental laws; parties will ensure that pertinent factors are taken into account; these factors include the nature and severity, the environmental damage and any economic benefit derived from the infraction. Article 12.7: Opportunities for public participation - Parties will seek to respond to requests for information regarding the implementation of this Chapter; they shall use its best efforts to respond favorably to requests for consultations made by persons or organizations in its territory; Parties shall	Article 12.6: Social corporate responsibility - Party should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate social responsibility in their internal policies, such as those principles or agreements that have been endorsed by both Parties.

			make use of existing consultative mechanisms or establish new mechanisms, such as national advisory committees. These mechanisms may include persons with relevant experience, including experience in business, conservation and management of natural resources, or other environmental matters.	
<p>Argentina (2019) FTA Chapter 13</p>	<p>Article 13.2: Right to regulate in environmental matters - Each party will ensure that their environmental laws, regulations, policies and practices are consistent with MEAs of which are part.</p> <p>Article 13.3 Multilateral environmental agreements - Parties recognize the role of MEAs at the global and domestic level, in the protection of the environment and that their implementation is critical to achieve environmental objectives. Hence, they reaffirm their commitment to implement MEAs; Parties will cooperate in mutual interest topics within MEAs, particularly those related to trade. Moreover, they will have dialogue on multilateral negotiations on trade and environment.</p>	<p>Article 13.4: Environmental commitments - Parties reaffirm their intention to achieve high environmental protection standards; parties will respect the sovereign right of each party to establish, manage, and enforce their environmental laws, regulations and policies; parties recognize that it is inappropriate to establish or use their environmental laws, regulations, policies or practices with protectionist objectives; parties recognize that is inappropriate to relax or abstain to enforce environmental laws and regulations to promote trade and investment; each party will promote the domestic knowledge of environmental laws, regulations, policies and practices; nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.</p>	<p>Article 13.5: Access to justice, information and participation - Parties reaffirm the full validity of Principle 10 of the Rio Declaration on Environment and Development of 1992; exchange information and cooperate with each other in regarding the application of Principle 10 of the Rio Declaration; ensure, in accordance with its legal system, that an interested person may request that the competent authorities investigate alleged violations of their environmental legislation, and that they grant due consideration of such requests; ensure that judicial or administrative procedures for the application of their environmental laws comply with due process; provide appropriate remedies and sanctions for violations of environmental laws and will ensure their due application; promote public awareness of its legislation and environmental policies, as well as on compliance procedures and compliance, guaranteeing the availability and access to information; receive written communications regarding the implementation of the Chapter; make available to the public the procedures established for the reception and consideration of written communications, as well as the admissibility requirements to process the communication. filed and the body or agency competent to receive, manage and respond to said communication; provide the data that identifies the case in process; make use of the national consultative mechanisms to gather opinions on matters related to the implementation of the Chapter.</p>	<p>Article 13.6: Social corporate responsibility - Party should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate social responsibility related with environmental protection in their internal policies, such as those principles or agreements that have been endorsed by both Parties.</p>
<p>Brazil (2022) FTA Chapter 17</p>	<p>Article 17.2 (2): Right to regulate in environmental matters - Each party will ensure that their environmental laws, regulations, policies and practices are consistent with MEAs of which are part.</p> <p>Article 17.4: Multilateral environmental agreements - Parties recognize the role of MEAs at the global and domestic level, in the protection of the environment and that their implementation is critical to achieve environmental objectives. Hence, they reaffirm their commitment to implement MEAs; Parties will cooperate in mutual interest topics within MEAs, particularly those related to trade. Moreover, they will have dialogue on multilateral negotiations on trade and environment.</p>	<p>Article 17.3: General commitments - Parties reaffirm their intention to achieve high environmental protection standards; parties will respect the sovereign right of each party to establish, manage, and enforce their environmental laws, regulations and policies; parties recognize that it is inappropriate to establish or use their environmental laws, regulations, policies or practices with protectionist objectives; parties recognize that is inappropriate to relax or abstain to enforce environmental laws and regulations to promote trade and investment; parties will seek for mutually interest topics in the WTO committee on trade and environment; nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.</p>	<p>Article 17.5: Access to justice, information and participation in environmental matters - Parties reaffirm the full validity of Principle 10 of the Rio Declaration on Environment and Development of 1992; exchange information and cooperate with each other in regarding the application of Principle 10 of the Rio Declaration; promote the public awareness of environmental legislation and policies, including procedures and compliance; ensure, in accordance with its legal system, that an interested person may request that the competent authorities investigate alleged violations of their environmental legislation, and that they grant due consideration of such requests; ensure that judicial or administrative procedures for the application of their environmental laws comply with due process; provide appropriate remedies and sanctions for violations of environmental laws and will ensure their due application; promote public awareness of its legislation and environmental policies, as well as on compliance procedures and compliance, guaranteeing the availability and access to information; receive written communications regarding the implementation of the Chapter; make available to the public the procedures established for the reception and consideration of written communications, as well as the admissibility requirements to process the communication; make use of the national consultative mechanisms to gather opinions on matters related to the implementation of the Chapter.</p>	<p>Article 17.6: Responsible business conduct - Party should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate social responsibility that contribute to achieve sustainable development, included the environmental dimension, such as those principles or agreements are compatible with the respective legislation and have been endorsed by each Party.</p>

<p>Ecuador (2022)</p> <p>FTA Chapter 17</p>	<p>Article 17.4: Multilateral environmental agreements</p> <p>- Parties recognize the role of MEAs at the global and domestic level, in the protection of the environment and that their implementation is critical to achieve environmental objectives. Hence, they reaffirm their commitment to implement MEAs; Parties will cooperate in mutual interest topics within MEAs, particularly those related to trade. Moreover, they will have dialogue on multilateral negotiations on trade and environment.</p>	<p>-</p>	<p>Article 17.5: Procedural matters</p> <p>- promote the public awareness of environmental legislation and policies, including procedures and compliance; ensure, in accordance with its legal system, that an interested person may request that the competent authorities investigate alleged violations of their environmental legislation, and that they grant due consideration of such requests; ensure that judicial or administrative procedures for the application of their environmental laws comply with due process; provide appropriate remedies and sanctions for violations of environmental laws and will ensure their due application; parties will ensure that pertinent factors are taken into account; these factors include the nature and severity, the environmental damage and any economic benefit derived from the infraction.</p> <p>Article 17.7: Public participation</p> <p>- Parties will seek to respond to requests for information regarding the implementation of this Chapter; they shall use its best efforts to respond favorably to requests for consultations made by persons or organizations in its territory; Parties shall make use of existing consultative mechanisms or establish new mechanisms, such as national advisory committees. These mechanisms may include persons with relevant experience, including experience in business, conservation and management of natural resources, or other environmental matters.</p>	<p>-</p>
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Partner	Contact point / Committee	Cooperation	Dispute settlement (Agreement)	Consultation on trade and environment
<p>Canada (1997)</p> <p>Canada-Chile agreement on environmental cooperation</p>	<p>Article 8: The Commission - A commission on environmental cooperation will be established, composed by a Council, a Joint Petition review committee and a Joint Advisory Public committee.</p> <p>Section A: The Council Article 9: Council structure and procedures - Composed by representatives of the Parties at a Ministerial level, with own regulations and procedures; shall meet at least once a year, or under request of one of the parties. The Council may delegate responsibilities in ad hoc or permanent working groups or experts; ask for advice or people or NGOs. Their decisions will be taken under mutual consent, and shall be public, unless establish otherwise.</p> <p>Article 10: Council functions - serve as a forum for the discussion of environmental matters within the scope of the Agreement; oversee the implementation and develop recommendations on the further elaboration of the Agreement; oversee the functions assigned to the National Secretariats within the scope of the Agreement; address questions and differences that may arise between the Parties regarding the interpretation or application of the Agreement; approve the annual program of work and budget of the Commission; and promote and facilitate cooperation between the Parties with respect to environmental matters. - The Council may consider, and develop recommendations regarding various environmental topics. - strengthen cooperation on the development and continuing improvement of environmental laws and regulations, including by: promoting the exchange of information on criteria and methodologies used in establishing domestic environmental standards; and without reducing levels of environmental protection, establishing a process for developing recommendations on greater compatibility of environmental technical regulations, standards and conformity assessment procedures in a manner consistent with the CCFTA.</p> <p>Section B: The National Secretariats Article 11: National secretariats - Each party will establish a national secretariat, with an Executive Secretary, responsible for management. This Secretariat will give technical, administrative and operational support to the Council and committees. For this it will present a work program and annual budget. They shall make public all data, when possible.</p> <p>Article 12: The Joint Submission Committee - A Joint Submission Committee consisting of two members, one from each Party, shall be established.</p>	<p>Article 20: Cooperation - Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to resolve any matter that might affect its operation; each Party shall notify of any proposed or actual environmental measure that might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement; on request, a Party shall promptly provide information and respond to questions pertaining to any such actual or proposed environmental measure; a Party may notify the other Party of any credible information regarding possible violations of its environmental law, specific and sufficient to allow the other Party to inquire into the matter. The notified Party shall take appropriate steps in accordance with its law to so inquire and to respond to the other Party.</p> <p>Article 21: Provision of Information - On request of the Council, a National Secretariat or the members of the Joint Submission Committee, each Party shall provide information, including: (a) promptly making available any information in its possession required for the preparation of a report or factual record, including compliance and enforcement data; and (b) taking all reasonable steps to make available any other such information requested.</p>	<p>-</p>	<p>Article 22: Consultations - Either Party may request consultations regarding whether there has been a persistent pattern of failure to effectively enforce its environmental law. In such consultations, the Parties shall make every attempt to arrive at a mutually satisfactory resolution.</p> <p>Article 23: Initiation of Procedures - If the Parties fail to resolve the matter within 60 days may request a special session of the Council. The Council may: (a) call on such technical advisers or create such working groups or expert groups, (b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or (c) make recommendations, as may assist the Parties to reach a mutually satisfactory resolution of the dispute. Any such recommendations shall be made public if the Council so decides. If the Council decides that a matter is more properly covered by another agreement, it shall refer the matter for appropriate action in accordance with such other agreement or arrangement.</p> <p>Article 24: Request for an Arbitral Panel - If the matter has not been resolved within 60 days after the Council has convened pursuant to Article 23, the Council shall, on convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its environmental law relates to a situation involving workplaces, firms, companies or sectors that produce goods or provide services: (a) traded between the territories of the Parties; or (b) that compete, in the territory of the Party complained against, with goods or services produced or provided by persons of the other Party.</p> <p>Article 25: Roster - The Council shall establish and maintain a roster of up to 30 individuals, six of whom must not be citizens of either of the Parties, who are willing and able to serve as panelists. Roster members shall: (a) have expertise or experience in environmental law or its enforcement, or in the resolution of disputes arising under international agreements, or other relevant scientific, technical or professional expertise or experience; (b) be chosen strictly on the basis of objectivity, reliability and sound judgment; (c) be independent of, and not be affiliated with or take instructions from, either Party or the Joint Public Advisory Committee; and (d) comply with a code of conduct to be established by the Council.</p> <p>Article 26: Qualifications of Panelists - panelists shall meet the qualifications set out in Article 25(2). Individuals may not serve as panelists for a dispute in which: (a) they have participated pursuant to Article 23(4); or (b) they have, or a person or organization with which they are affiliated has, an interest, as set out in the code of conduct established under Article 25(2)(d).</p>

<p>Article 13: Annual Report of the Commission - The National Secretariats shall jointly prepare an annual report; The final report shall be released publicly; The report shall cover: (a) activities and expenses of the Commission during the previous year; (b) the approved program and budget of the Commission for the subsequent year; (c) the actions taken by each Party in connection with its obligations under this Agreement; (d) relevant views and information submitted by NGOs and persons; (e) recommendations made on any matter within the scope of this Agreement; and (f) any other matter that the Council instructs to include.</p> <p>Article 14: Submissions on Enforcement Matters - A submission on enforcement matters may be sent to either National Secretariat, which will provide a copy to the other National Secretariat. The submission will be forwarded to the Joint Submission Committee if comply with presentation requirements.</p> <p>Article 15: Factual Record - If the Joint Submission Committee considers that the submission warrants developing a factual record, the Joint Submission Committee shall so inform the Council and provide its reasons. A factual record shall be prepared if a Party so decides. The expert in environmental matters shall submit a draft factual record for consideration by the Council.</p> <p>Section C: Advisory Committees Article 16: Joint Public Advisory Committee - The Joint Public Advisory Committee shall comprise six members, unless the Council otherwise decides. Each Party shall appoint an equal number of members; The Council shall establish the rules of procedure for the Joint Public Advisory Committee, which shall choose its own chair; The Joint Public Advisory Committee shall convene at least once a year; The Joint Public Advisory Committee may provide advice to the Council on any matter within the scope of this Agreement; The Joint Public Advisory Committee may provide relevant technical, scientific or other information to the National Secretariats, including for purposes of developing a factual record under Article 15. The National Secretariats shall provide to the Council copies of any such information. The National Secretariats shall provide to the Joint Public Advisory Committee at the time they are submitted to the Council copies of the proposed annual program of work and budget of the Commission and the draft annual report.</p> <p>Article 17: National Advisory Committees - Each Party may convene a national advisory committee, comprising members of its public, including representatives of NGOs and persons, to advise it on the implementation and further elaboration of this Agreement.</p>			<p>Article 27: Panel Selection - For purposes of selecting a panel, the following procedures shall apply: (a) The panel shall comprise five members; (b) The Parties shall endeavour to agree on the chair of the panel within 15 days after the Council decides to convene the panel; (c) Within 15 days of selection of the chair, each Party shall select two panelists who are citizens of the other Party; (d) If either Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other Party.</p> <p>Article 28: Rules of Procedure - The Council shall establish Model Rules of Procedure. The procedures shall provide: (a) a right to at least one hearing before the panel; (b) the opportunity to make initial and rebuttal written submissions; and (c) that no panel may disclose which panelists are associated with majority or minority opinions.</p> <p>Article 29: Role of Experts - On request of either Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate.</p> <p>Article 30: Initial Report - the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 29; the panel shall, within 180 days present to the Parties an initial report containing: (a) findings of fact; (b) its determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, or any other determination requested in the terms of reference; and (c) in the event the panel makes an affirmative determination under subparagraph (b), its recommendations.</p> <p>Article 31: Final Report - The panel shall present to the Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report.</p> <p>Article 32: Implementation of Final Report - If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, the Parties may agree on a mutually satisfactory action plan, which normally shall conform with the determinations and recommendations of the panel.</p> <p>Article 33: Review of Implementation - If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, and: (a) the Parties have not agreed on an action plan under Article 32 within 60 days of the date of the final report, or (b) the Parties cannot agree on whether the Party complained against is fully implementing an action plan.</p>
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	<p>Article 18: Governmental Committees - Each Party may convene a governmental committee, which may comprise or include representatives of national and provincial governments, to advise it on the implementation and further elaboration of this Agreement.</p> <p>Section D: Official Languages Article 19: Official Languages - The official languages of the Commission shall be English, French and Spanish.</p> <p>Article 43: Funding of the Commission - Each Party shall contribute an equal share of the annual budget of the Commission.</p>			<p>Article 35: Domestic Enforcement and Collection - It determines the procedure to enforce through domestic procedures the panels resolutions.</p> <p>Article 36: Funding of Panel Proceedings - The Parties shall agree on budget for each panel, and contribute equally to this budget.</p>
<p>United States (2004) FTA Chapter 19</p>	<p>Article 19.3: Environment Affairs Council - The Parties establish an Environment Affairs Council comprising cabinet level or equivalent representatives, or their designees. The Council shall meet once a year, or more often if the Parties agree, to discuss the implementation of, and progress under the Chapter. Meetings of the Council shall include a public session, unless the Parties otherwise agree; In order to share innovative approaches for addressing environmental issues of interest to the public, the Council shall ensure a process for promoting public participation in its work, including by seeking advice from the public in developing agendas for Council meetings and by engaging in a dialogue with the public on those issues; The Council shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the United States - Chile Environmental Cooperation Agreement; All decisions of the Council shall be taken by mutual agreement and shall be made public, unless the Council decides otherwise, or as otherwise provided in this Agreement.</p>	<p>Article 19.5: Environmental Cooperation - The Parties recognize the importance of strengthening capacity to protect the environment and promote sustainable development in concert with strengthening trade and investment relations between them. The Parties agree to undertake cooperative environmental activities, in particular through: (a) pursuing, through their relevant ministries or agencies, the specific cooperative projects that the Parties have identified and set out in Annex 19.3; and (b) promptly negotiating a United States – Chile Environmental Cooperation Agreement to establish priorities for further cooperative environmental activities, as elaborated in Annex 19.3, while recognizing the ongoing importance of environmental cooperation undertaken outside this Agreement; Each Party shall take into account public comments and recommendations it receives regarding cooperative environmental activities the Parties undertake pursuant to this Chapter; Parties shall, as they deem appropriate, share information on their experiences in assessing and taking into account positive or negative environmental effects of trade agreements and policies.</p>	<p>Article 19.6: Environmental Consultations - Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 19.2(1)(a). Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 19.2(1)(a) without first pursuing resolution of the matter in accordance with this Article.</p>	<p>Article 19.6: Environmental Consultations - Parties may request consultations providing specific and sufficient information in the request for the other Party to respond; Parties shall make every attempt to arrive at a mutually satisfactory resolution; if consultations fail, either Party may request that the Council be convened to consider the matter; The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting governmental or outside experts and having recourse to such procedures as good offices, conciliation, or mediation; If the matter concerns whether a Party is conforming to its obligations under Article 19.2(1)(a), and the Parties have failed to resolve the matter within 60 days of a request for consultations under paragraph 1, the complaining Party may request consultations or a meeting of the Commission and, as provided in Chapter Twenty-Two (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter; the Council may, where appropriate, provide information to the Commission regarding any consultations held on the matter.</p> <p>Article 19.7: Environment Roster - Parties shall establish a roster of at least 12 individuals who are willing and able to serve as panelists in disputes arising under Article 19.2(1)(a). Unless the Parties otherwise agree, four members of the roster shall be selected from among individuals who are non-Party nationals; Environment roster members shall: (a) have expertise or experience in environmental law or its enforcement, international trade, or the resolution of disputes arising under international trade agreements; (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment; (c) be independent of, and not affiliated with or take instructions from, either Party; and (d) comply with a code of conduct to be established by the Commission.</p> <p>Article 19.8: Procedural Matters - Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to sanction or remedy violations of its environmental laws; each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental</p>

				laws and that the competent authorities give such requests due consideration in accordance with its law; each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to judicial, quasi-judicial, or administrative proceedings for the enforcement of the Party's environmental laws; each Party shall provide persons appropriate and effective rights of access to remedies in accordance with its laws.
P4 (2006) Environment cooperation agreement among the parties to the P4	Article 4: Institutional dispositions - Each party will designate a contact point for environmental issues; Parties shall meet within the first year of the agreement; the agenda could include: areas of cooperation, forum for dialogue in topics of mutual interest, review the implementation, operation and results of the agreement; parties will use diverse means of communication to exchange information; after three years, parties will review the agreement's operation; Parties may consult with representatives of their private sector and NGOs; Parties may invite experts to provide information; Parties may develop mechanism to inform their public of the activities undertaken within the agreement.	Article 3: Cooperation - Parties will cooperate in environmental topics mutually agreed, through the interaction of governmental institutions, industry, education and research institutions; each party may invite NGOs to identify areas of cooperation and develop cooperation activities; among the activities, it includes, joint research; experts exchange; exchange of information and publications; financing will be decided on a case-to-case basis; the intention of the parties is to cooperate in environmental areas of shared interest, either global or national.	-	Article 5: Consultation - Parties shall at all times endeavour to agree on the interpretation and application of the Agreement, and shall make every attempt through dialogue, consultation and cooperation to resolve any issue that might affect its operation; Should any issue arise between any of the Parties over the application of Article 2, the concerned Parties shall in good faith resolve the issue amicably through dialogue, consultation and cooperation; a Party may request consultation with the other Party(ies) through the national contact point regarding any issue arising over the interpretation or application of Article 2. The contact point shall identify the office or official responsible for the issue and assist if necessary in facilitating the Party's communications with the requesting Party. The concerned Parties will provide initial advice of the issue to the other Parties for their information; the concerned Parties shall decide a timeframe for consultation which shall not exceed 6 months; the issue not be able to be resolved through the initial consultation process it may be referred to a special meeting of the interested Parties and to which all Parties would be invited. The issue may also be referred to the P4 Commission by any interested Party for discussions; The special meeting of the interested Parties shall produce a report. The concerned Party(ies) shall implement the conclusions and recommendations of the report, taking into account the views of the P4 Commission, as soon as practicable.
Colombia (2009) FTA Chapter 18	Art. 18.4: Institutional dispositions - Parties will designate a National Contact Point to review queries and requests from the other Party, promote the exchange of information and evaluate possible actions in terms of cooperation; National Contact Points will inform the Commission of the development and implementation of the Chapter each time it meets.	Art. 18.3: Cooperation - Parties recognize that cooperation contributes to their respective efforts to ensure that trade and environmental policies are mutually supportive and promote the best forms of use of natural resources in accordance with the objective of sustainable development; Parties shall strive to strengthen said cooperation in the various bilateral, regional and multilateral forums they share; parties agree to undertake cooperation activities in various topics, through activities including exchange of documentation and information; exchange of experts; seminars, workshops, and conferences; joint research; Parties define the Comisión Nacional del Medio for Chile, and the Ministerio de Ambiente, Vivienda y Desarrollo Territorial - Viceministerio de Ambiente for Colombia as coordination points for cooperation activities; coordinators shall elaborate the joint work plan; define the specific projects undertaken; coordinate and facilitate activities; present reports. Cooperation activities can be also undertaken under the Cooperation chapter of the FTA. Cooperation shall be		Art. 18.5: Consultation - Parties shall make every effort to resolve any matter that could affect the application of this chapter; if any question arises regarding the interpretation or application of the Chapter, the Parties shall, in good faith, resolve the matter amicably through dialogue, consultation and cooperation; a Party may request consultations with the other Party through the National Contact Point regarding any question that arises regarding the interpretation or application of this Chapter. The National Contact Point will identify the institution or official responsible for the matter and will help, if necessary, to facilitate the communications of the Party with the requesting Party.

		subject to domestic regulations, and the availability of human and financial resources.		
Hong Kong (2014) FTA Chapter 14	Article 14.4: Institutional Arrangements - each Party will designate a contact point; the Parties may exchange information by any means of communication, including internet and videoconference; the contact points will report to the Commission about the implementation of this Chapter, if necessary; the Parties may agree to meet in order to discuss matters of mutual interest, including areas of potential collaborative activities, reviewing the implementation of the Chapter and addressing any issue that may arise between the Parties.	Article 14.3: Collaborative Framework - Parties agree to establish a collaborative framework as a means to provide enhanced opportunities to advance the common commitments on environmental protection under the framework of the Chapter, by taking account of their respective priorities and available resources; To implement this framework, the Parties should encourage the establishment and development of direct contacts, including stakeholders as appropriate, in the field of environmental protection; collaborative activities undertaken in this framework may be implemented through a variety of ways, such as the exchange of best practices and information, visits, workshops and dialogue. The funding of collaborative activities shall be decided by the Parties on a case-by-case basis; parties will strive to strengthen their collaboration on trade and environment in appropriate international fora in which they participate.	Chapter 17: Dispute Settlement Article 17.1: Scope Should any matter arise in relation with chapter 14, it will be resolved through the procedures provides in Article 14.5.	Article 14.5: Consultations - Parties shall endeavor, at all times, to make every effort to settle in good faith any issue concerning the interpretation, implementation or application of the Chapter through dialogue, collaboration and consultation; a Party may request consultations with the other Party through its contact point regarding any issue concerning the interpretation, implementation or application of Article 14.2. The contact point shall identify the office or official responsible for the issue and assist if necessary in facilitating communication between the Parties; the Parties shall complete the consultations as soon as practicable; if the consultations under paragraph 3 fail to resolve the issue within 6 months either Party may refer the issue to the Commission for further consideration.
Uruguay (2018) FTA Chapter 12	Article 12.10: Institutional dispositions - to facilitate communication, each party will designate a contact point; parties could exchange information through any mean of communication; if necessary, contact point will inform the Commission; Parties establish that the Environmental Committee, which may meet to discuss matters of mutual interest, including potential areas of cooperation, propose aspects of the implementation of the Chapter and to deal with any matter that may arise between the Parties. The Environmental Committee will be made up of High-level government representatives, or their designees, responsible for environmental and trade issues.	Article 12.11: Environmental cooperation - Parties recognize cooperation as a mechanism to implement the chapter, enhance its benefits and strengthen the joint and individual capacities of the Parties to protect the environment and promote sustainable development, while strengthening their trade and investment relations; whenever possible and appropriate, the Parties shall seek to complement and use their existing cooperation mechanisms and take into account the relevant work of regional and international organizations; Cooperation may take place through various means, such as dialogues, workshops, seminars, conferences, collaborative programs and projects, technical assistance to promote and facilitate cooperation and training, the exchange of best practices in policies and procedures, and the exchange of experts, and in various relevant topics; cooperation will take into consideration the environmental priorities and needs of each party. Finance of the activities will be decided on a case-to-case basis. Parties will make available to the public information related to the projects and activities made.	Article 12.11: Non application of dispute settlement - No party may resort to the dispute settlement mechanism provided for in Chapter 18.	Article 12.12: Environmental consultation - Parties shall endeavor, at all times, to make every effort to settle in good faith any issue concerning the interpretation, implementation or application of the Chapter through dialogue, collaboration and consultation; a Party may request consultations with the other Party; Parties will proceed with no delay within 90 days from the requested consultations; the Parties shall make every attempt to arrive at a mutually satisfactory resolution; if parties are unable to reach a mutually agreed solution, the Environmental Committee will be summoned to review the issue; if the issue is not resolved by the Environmental Committee, it may be referred to the relevant Ministers for their intervention; consultations made under this article will be confidential; Parties will elaborate a report with the results of the consultations and commit to implement its conclusions and recommendations.
Argentina (2019) FTA Chapter 13	Article 13.11: Institutional dispositions - In order to facilitate communication between the Parties for the purposes of the Chapter, each Party shall designate a Contact Point; The Parties establish the Trade and Environment Committee that will be composed of high-level government representatives responsible for environmental and trade matters or by whom they designate; the Trade and Environment Committee shall have the following functions: Dialogue on the implementation of the Chapter; Identify potential areas of cooperation, consistent with the objectives	Article 13.12: Cooperation in environmental and trade matters - Parties recognize that the strengthening of cooperation is an important element to advance the objectives of the Chapter and agree to cooperate and exchange trade-related information in international forums that deal with issues relevant to trade and environmental policies; cooperation may take place through various means, such as dialogues, workshops, seminars, conferences, collaborative programs and projects, technical assistance to promote training, the	Article 13.14: Non application of dispute settlement No party may resort to the dispute settlement mechanism provided for in Chapter 18.	Article 13.13: Consultations on trade and environment - Parties shall endeavor, to make every effort to settle any issue of the Chapter through dialogue, consultation, and information exchange; a Party may request consultations with the other Party; Parties will proceed with no delay within 90 days from the requested consultations; the Parties shall make every attempt to arrive at a mutually satisfactory resolution; if parties are unable to reach a mutually agreed solution, the Trade and Environment Committee will be summoned to review the issue; if the issue is not resolved by the Trade and Environment Committee, it may be

	<p>of the Chapter; Inform the Bilateral Administrative Commission regarding the implementation of the Chapter; Consider matters of mutual interest in matters of trade and environment; Consider matters referred by the Parties under Article 13.13, and; Carry out coordinated activities, when appropriate, with the Environment Subcommittee with a view to strengthening the joint work in the cooperation activities that they develop, avoiding duplication of functions.</p>	<p>exchange of good practices in policies and procedures, and the exchange of experts; the matters object of cooperation will include, among others: Objectives of Sustainable Development; access to information, participation and justice in matters environmental; chemical management; environmental impact; environmental education; and other areas that the Parties agree; where possible and appropriate, the Parties shall seek to complement and use their existing cooperation mechanisms and take into consideration the relevant work of regional and international organizations; such cooperation shall take into account the environmental priorities and needs of each Party, as well as the available resources. The financing of the activities of cooperation will be decided on a case-by-case basis by the Parties</p>		<p>referred to the relevant Ministers for their intervention; consultations made under this article will be confidential; Parties will elaborate a report with the results of the consultations and commit to implement its conclusions and recommendations.</p>
<p>Brazil (2022) FTA Chapter 17</p>	<p>Article 17.17: Institutional dispositions - In order to facilitate communication between the Parties for the purposes of this Chapter, each Party shall designate a point of contact. Each Party shall notify the other Party, as soon as possible, about any changes to the point of contact; Parties may exchange information by any means of communication, including Internet and video conferencing; Parties establish the Trade and Environment Committee, which will be made up of high-level government representatives, or their designees, responsible for the environmental and business issues. The Trade and Environment Committee will meet every 2 years, unless the Parties agree otherwise; the Trade and Environment Committee shall have the following functions: discuss the implementation of the Chapter; identify potential areas of cooperation, consistent with the objectives of the Chapter; inform the Administrative Commission regarding the implementation of the Chapter, if necessary, and consider matters referred by the Parties under Article 17.18.</p>	<p>Article 17.8: Cooperation in environmental and trade matters - Parties recognize the importance of cooperation as a mechanism to implement the Chapter, to enhance its benefits and to strengthen the joint and individual capacities of the Parties to protect the environment and to promote sustainable development, while strengthening their business and investment relationships; Taking into account their priorities, national circumstances and available resources, the Parties shall cooperate to address matters of mutual interest related to the implementation of the Chapter and may include international bodies and organizations or non-governmental organizations in this cooperation; each Party shall designate the authority or authorities responsible for cooperation related to the implementation of this Chapter, to serve as its national point of contact in the coordination of cooperative activities; each Party may share its cooperation priorities and propose cooperation activities related to the implementation of the Chapter; cooperation may include various areas; whenever possible and appropriate, the Parties shall seek to complement and use their mechanisms of existing cooperation and take into account the relevant work of regional and international organizations; cooperation may be carried out through various means, including: dialogues, workshops, seminars, conferences, collaborative programs and projects, technical assistance for promote and facilitate cooperation and training; the exchange of good practices in policies and procedures and the exchange of experts; each Party shall, as appropriate, promote public participation in the development and implementation of cooperation activities; all cooperative activities under the Chapter are subject to the availability of funds and of human and other resources, as well as the laws and applicable regulations of the Parties. The Parties will decide, on a case-by-case basis, the financing of cooperative activities.</p>	<p>Article 17.19: Non application of dispute settlement - No party may resort to the dispute settlement mechanism provided for in Chapter 22.</p>	<p>Article 17.18: Dialogue on trade and environment - Parties shall endeavor, to make every effort to settle any issue of the Chapter through dialogue, consultation, and information exchange; a Party may request consultations with the other Party; Parties will proceed with no delay within 90 days from the requested consultations; the Parties shall make every attempt to arrive at a mutually satisfactory resolution; if parties are unable to reach a mutually agreed solution, the Trade and Environment Committee will be summoned to review the issue; if the issue is not resolved by the Trade and Environment Committee, it may be referred to the Administration Committee for their intervention; consultations made under this article will be confidential, and by any communicational mean.</p>

<p>Ecuador (2022)</p> <p>FTA Chapter 17</p>	<p>Article 17.19: Institutional dispositions</p> <p>- In order to facilitate communication between the Parties for the purposes of the Chapter, each Party shall designate a contact point. Each Party shall notify the other, as soon as possible, of any change in point of contact; the Parties may exchange information by any means of communication, including the Internet and videoconferences; the Parties establish the Trade and Environment Committee, which shall be composed of high-level government representatives from the institutions responsible for environmental matters and foreign trade matters, or by who they designate. The Committee will meet in person or by technological means, every two years; the Committee will have the following functions: discuss the implementation of the Chapter; identify potential areas of cooperation, consistent with the objectives of this Chapter; inform the Commission regarding the implementation of this Chapter, if necessary, and, consider matters referred by the Parties under Article 17.21; all decisions and reports of the Committee shall be made by consensus, unless the Committee agrees to something different or otherwise provided in the Chapter.</p>	<p>Article 17.18: Cooperation</p> <p>- Parties recognize the importance of cooperation as a mechanism to implement the Chapter, to enhance its benefits and to strengthen the joint and individual capacities of the Parties to protect the environment and to promote sustainable development, while strengthening their relationships, business and investment; Taking into account their priorities, national circumstances and available resources, the Parties shall cooperate to address matters of mutual interest related to the implementation of the Chapter and may include international bodies and organizations or non-governmental organizations in this cooperation; each Party may share its cooperation priorities and propose cooperation activities related to the implementation of the Chapter; whenever possible and appropriate, the Parties shall seek to complement and use their existing cooperation mechanisms and take into account the relevant work of regional and international organizations; cooperation may be carried out through various means, including dialogues, workshops, seminars, conferences, collaborative programs and projects, technical assistance to promote and facilitate cooperation and training, the exchange of good practices in policies and procedures, and the exchange of experts; each Party, as appropriate, will promote public participation in the development and implementation of cooperative activities; all cooperative activities under this Chapter are subject to the availability of funds and human and other resources, as well as the legal system of the Parties. The Parties will decide, on a case-by-case basis, the financing of cooperation activities.</p>	<p>Article 17.24: Non application of dispute settlement</p> <p>- No party may resort to the dispute settlement mechanism provided for in Chapter 22. But parties may resort to good offices, conciliation and mediation, in accordance with established in Article 22.5.</p>	<p>Article 17.20: Consultations on trade and environment</p> <p>- Interpretation and application of the chapter through dialogue, consults, exchange of information and cooperation; Consultations regarding trade and environment may be requested through the contact points; Parties will make all the efforts to reach a mutually satisfactory solution, which could include cooperation activities; If the issue is solved through the contact point, a consensual report will be published.</p> <p>Article 17.21: Consultation in the framework of the Trade and environment committee</p> <p>- If the Parties are unable to resolve the matter through consultations at the point of contact level, within ninety (90) days following the expiration of the term established in Article 17.20.4, either of them may request the Committee that meets to consider the matter; The Committee shall meet no later than 60 days, and shall seek to resolve the matter, including, if appropriate, through consultation to independent experts; the consultations carried out in accordance with this Article will be confidential and will be held in the capital of the consulted Party; if the Committee is successful in resolving the matter, it will document the outcome, including, if appropriate, the specific steps and the agreed deadlines. The Committee will prepare a consensus report that summarizes the result of the consultations held and will make it available of the public, unless the Parties agree otherwise.</p> <p>Article 7.22: Ministerial consultations</p> <p>- If the Committe is unable to resolve the issue in 90 days, the parties may refer the issue to the respective Ministries.</p> <p>Article 17.23: End of consultation</p> <p>- Parties will agree a report with the results of consultations, and commit to implement in a reasonable period of time its conclusions and recommendations.</p>
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