

Strengthening Legal Analysis, Engagement, and Capacity for High Climate Ambition Commitments to Sustainability in Refining and Implementing EU-Americas Trade Treaties

EU-Americas Post-Implementation project: The cases of Mexico and New Zealand

EU FTAs and Paris Agreement Principles

Roundtable Summary Report (Monday 24 November 2023 | 18:15-20:00 CET)

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This roundtable delved into the intricate relationship between the EU FTAs and the Paris Agreement, highlighting tensions and opportunities regarding climate ambition, enforceability, and practical implications. While the Paris Agreement introduces novel provisions, the discussion raises questions about their true effectiveness, potential chilling effects on ambition, and challenges in calculating potential retaliation measures. The conversation also explored avenues for strengthening climate commitments within existing agreements, emphasizing the role of councils, civil society participation, and international cooperation. Ultimately, the path forward remains unclear, marked by both hopes for progress and concerns about geopolitical realities and the complex interplay of soft and hard enforcement tools.

The roundtable concluded with the presentation of a Policy Paper on EU FTAs, the Paris Agreement, and various aspects of Latin America. The document addressed issues such as aligning obligations and strategies for harmonizing FTA commitments with those of the Paris Agreement, ultimately boosting climate ambition within developing countries. The paper also explores ways in which trade agreements can co-exist harmoniously with the diverse and evolving demands of the Paris Agreement.

The central elements highlighted by the panellists and discussants were related to:

- **Ambition and enforceability:** The agreement sets ambitious goals but raises questions about how these will be enforced and whether “defeating the purpose” provisions are truly enforceable.
- **Practical challenges:** Potential concerns about trade disputes under climate provisions could dampen ambition while calculating retaliation measures presents practical difficulties.
- **Existing frameworks and scope for action:** Leveraging existing councils and cooperation mechanisms could offer avenues for strengthening climate commitments.
- **Civil society participation:** Ensuring diverse and secure participation of civil society, especially vulnerable groups, is crucial for effective implementation.
- **Global South realities:** Balancing stricter non-regression provisions with flexibilities for developing countries and addressing concerns about EU-centred measures are critical considerations.
- **Beyond sanctions:** Exploring different committee functions and soft enforcement approaches could prove more effective than solely relying on sanctions.

- Tech transfer and international cooperation: Facilitating technology transfer and promoting international cooperation remain essential for collective climate action.

Opening remarks

Dr Ilaria Espa (*Università della Svizzera italiana*) opened the discussion by highlighting the ongoing efforts and advancements made in the realm of trade and climate coherence, even predating the Paris Agreement. She elaborated on the various tools, concepts, frameworks, and approaches developed for the WTO to facilitate this coherence. The crucial role of ensuring supportive trade regimes that align with climate change goals and the necessity of evolving interpretive exceptions for environmental protection were emphasized.

Panel 1: EU-New Zealand

Chair: Dr Markus Gehring, Senior Legal Counsel, CISDL

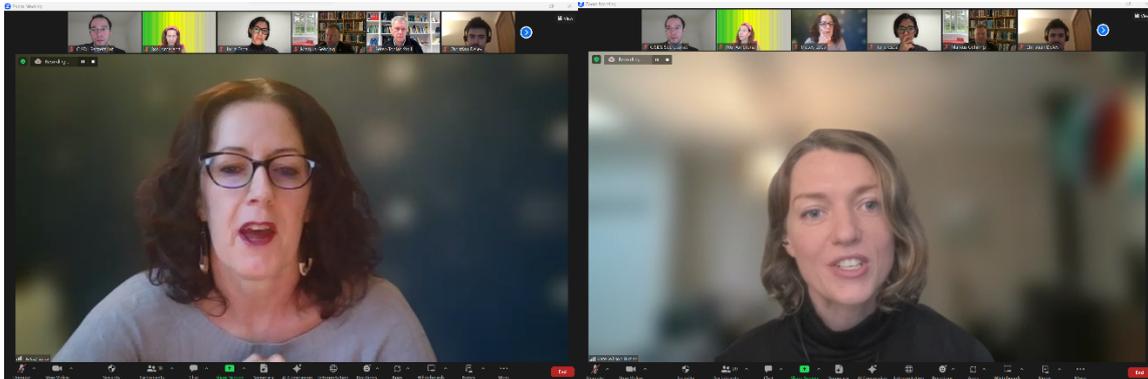
Presenter: Tracey Epps, Trade Policy Consultant

Intervenors: Kate Wilson Butler, Partner at Chapman Tripp

- The presenter expressed strong belief in the potential of Free Trade Agreements (FTAs) to accelerate a paradigm shift towards a proactive and sustainable future; and further emphasized the importance of transitioning from a reactive approach to climate change issues to a proactive one, advocating for the promotion of models for fostering environmental protection.
- The EU-NZ FTA is an exciting prospect due to its progressive inclusion of enforceable sustainability commitments, representing a significant step forward in international trade agreements.
- Tracey Epps focused on the comparison of the climate provisions in the EU-NZ FTA with other agreements (UK FTA, CPTPP) highlighting stronger climate commitments. The key features identified were related to tariff elimination on environmental goods, carbon pricing cooperation, and fossil fuel subsidy elimination.
- Kate Wilson Butler focused on Art. 19.6.3 of the EU-NZ FTA, regarding the parties' commitment to refrain from any action or omission that materially defeats the object and purpose of the Paris Agreement – and its implications. She presented some concerns about “hard” obligations vs. Paris Agreement’s “soft” commitments.
- The presenter and discussants indicated that the EU-NZ FTA marks a significant step forward in trade and climate integration. It includes ambitious commitments exceeding those seen in other agreements, such as eliminating tariffs on environmental goods and fostering cooperation on carbon pricing.
- It was noted that dispute settlement provisions present both opportunities and potential challenges. While they offer a mechanism for ensuring compliance, concerns exist about how actions, particularly by smaller countries like New Zealand, could be interpreted in the context of potential breaches.
- The agreement could influence the interpretation of core trade principles like market access and non-discrimination. Trade and climate provisions within the FTA might pave the way for reinterpreting established trade rules in light of environmental considerations.
- The Paris Agreement's emphasis on continuous progress and the highest possible ambition adds another layer of complexity. Even if Nationally Determined Contributions (NDCs) are

technically met, failing to fulfil aspirational principles could fall under the interpretation of "materially defeating" the agreement.

- The intervenors pointed out that EU-NZ FTA's framework could potentially restrict certain justifications previously upheld under WTO dispute settlement mechanisms. For example, the FTA might limit fossil fuel subsidies even if permitted under WTO rules.
- Overall, the discussion highlighted the EU-NZ FTA's potential to be a game-changer in trade and climate policy. While challenges remain, particularly regarding interpretation and enforcement, the agreement paves the way for a more sustainable and collaborative approach to international trade in the years to come.



Panel 2: EU-Mexico

Chair: *Dr Markus Gehring, Senior Legal Counsel, CISDL*

Presenter: *Christian P. Delev, Lecturer in International Economic Law, University of Bristol*

Intervenors: *Dr Peter-Tobias Stoll, Professor, University of Göttingen; Rosi Amerena Amigo, Executive committee member of Chapter Zero Mexico; Federico Peralta Bedoya, Environmental & Climate Law Consultant*

- The Presenter stated that the original EU-Mexico agreement provides good examples of cooperation on sustainable development, promoting collaboration (non-binding), and the EU-Mexico Joint Council and Joint Committee are key coordination bodies focusing on dialogue (e.g., CBAM talks). The modernized agreement moves beyond cooperation, introducing clear obligations for a level playing field and regulatory rights, and expanded significantly the areas of cooperation. Civil Society involvement plays a crucial role in providing input and feedback to the TSD Committee's work on climate change.
- Discussant Rosi Aravena focused also on civil society participation, in order to ensure proper implementation and effectiveness of agreements in fighting climate change. On the other hand, transparency and openness are needed within the committee to facilitate civil society participation.
- Intervenors addressed anti-corruption actions, in the sense that the EU can help Mexico with public policy cooperation and knowledge-sharing to promote transparency; and also "fasten the process", regarding the need to speed up committee work and implement agreed-upon plans due to the urgency of climate action.

- Mexico's commitment to sustainable public procurement and international biodiversity cooperation was a key topic. Participants urged increased funding and active participation from Mexico to maximize the impact of these initiatives.
- Concerns about the pace of progress were raised, urging faster implementation of agreed-upon plans to tackle climate change. Recognizing the stark differences between developed and developing nations, the discussion explored the need for balanced compliance requirements and tailored support for Global South countries transitioning to sustainable practices.
- Ultimately, the conversation highlighted the importance of collaboration, inclusivity, and flexible approaches to address the complex challenges of climate action. By empowering civil society, ensuring transparency, and acknowledging varying national contexts, we can move towards a more sustainable future together.



Panel 3: Policy Paper on the Interrelation between the Paris Agreement and EU FTAs

Presenter: Dr Marios Tokas, Teaching Assistant Geneva Graduate Institute / Program Manager, CISDL

Intervenors: Dr Ilaria Espa, Università della Svizzera italiana; Professor Marie-Claire Cordonier Segger, Senior Director, CISDL

- The presentation explored the potential friction between Free Trade Agreements (FTAs) and the Paris Agreement’s environmental commitments, particularly for developing nations. Concerns focused on three main areas: the inflexible ambition requirements of the Paris Agreement that could hinder development, the potential clash between top-down EU measures and bottom-up NDCs, and the lack of punitive responses for non-compliance.
- To bridge this gap, three solutions were proposed. First, enhanced cooperation would see Paris Agreement parties actively contribute to relevant FTA committees, sharing knowledge, setting goals, and crafting roadmaps for implementation. Second, integrating Paris Agreement principles into FTAs would create a trade environment that actively supports climate action. Finally, utilizing FTAs to facilitate investment and financing for climate change infrastructure, potentially through binding agreements, would ensure dedicated resources for global climate action.
- Intervenors stated that climate change mitigation and adaptation measures should be explicitly discussed and included in FTAs; and also, these instruments should actively encourage and facilitate the transfer of climate-related technology and knowledge between countries.
- FTAs should explicitly incorporate the goals and ambition levels of the Paris Agreement, ensuring trade aligns with climate action principles and promotes a “greener transition”.
- Trade policies and commitments to the Paris Agreement should be in harmony, with FTAs paving the way for “right” trade that drives positive environmental outcomes beyond mere economic exchange.
- By prioritizing these innovative solutions, it was pointed out that we can move towards a future where FTAs and the Paris Agreement work in harmony, driving both economic progress and environmental responsibility for all nations.

