

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 the Andean Community, Chile and Mercosur

Roundtable Summary Report (Monday 27 November 2023 | 18:15-20:00 CET)

Matheus Garcia and Ignacio A. Sánchez González

This roundtable sought to share the preliminary findings of the current project done by the Centre for International Sustainable Development Law (CISDL) on three Free Trade Agreements (FTAs) with the EU and its partners: EU-Andean Community, EU-Chile, EU-Mercosur, and EU-Central America. Specifically, it sought to understand how the issue of climate change can be inserted into FTAs via side-letters, unilateral interpretative statements and mutually agreed declarations, as well as Coordination Council and Sustainable Development Committee decisions. It was attended by high-level participants and intervenors from Latin America, including members of civil society and academia. In light of the CISDL's principle of trilingualism,¹ many of the participants shared their findings in English, Spanish, and Portuguese. Below is a brief summary of each of the relations that were addressed in the roundtable.

The EU-Colombia-Ecuador-Peru agreement (EU-Andes) is the result of bilateral efforts between both blocks to strengthen their bilateral relations. The agreement sets the scope for future negotiations for the accession of Bolivia. Following the EU practice, the EU-Andes agreement reflects a dual purpose of promoting trade liberalisation and fostering cooperation on sustainable development between its Parties. In turn, the EU-Chile agreement was concluded in 2002, becoming the first agreement between the EU and a South American economy. While it was a comprehensive treaty, the Parties recognized the need to modernize it and, for this process, the EU conducted both an ex-post trade analysis and an ex-ante sustainable impact assessment (SIA). After 10 rounds of negotiations, the conclusion of the technical negotiations of the trade pillar was achieved in November 2021. The modernized agreement, which shows advances in environmental-related topics, including dispositions related to emerging environmental challenges, needs to be ratified by both Parties to enter into force.

As for Mercosur, negotiations towards an EU–Mercosur Association Agreement started in 2000, to boost trade integration among Mercosur members and create new opportunities for trade and investment with the EU. After 38 rounds of negotiation, a political agreement for an Association Agreement, including a trade component, was finally reached in June 2019. Concerns about environmental impacts are among the issues that have led negotiations to take over 20 years to conclude and are still at the heart of the current phase of negotiations.

Professor Marie-Claire Cordonier Segger opened the round table noting the importance of evaluating post-implementation structures and how the trade agreements in analysis interact in the real world. She also noted that progress has been made, remarking that trade agreements are now relevant and positive to foster sustainable development.

¹ For more, see the CISDL's principles at <https://www.cisdsl.org/about/>

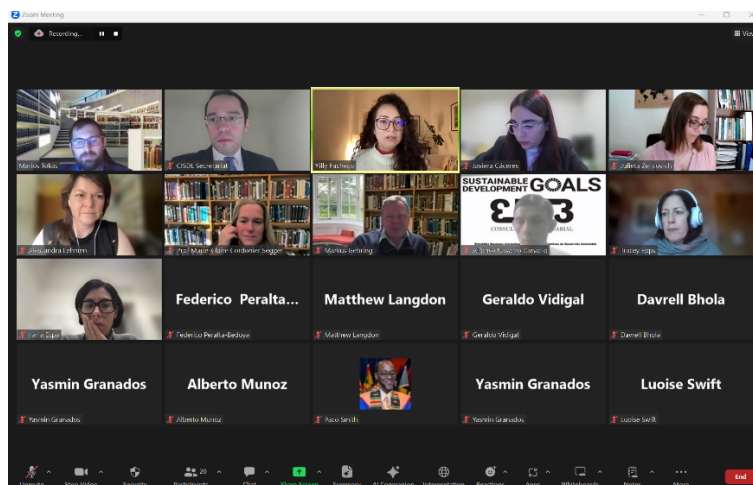
Panel 1: EU-Chile and EU-Andean Communities

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

Presenter: *Prof Javiera Cáceres, Instructor Professor at the Institute of International Studies of the University of Chile.*

Intervenors: *Dr Yilly Vanessa Pacheco, Senior Research Fellow Georg-August University of Göttingen*

- Javiera Cáceres presented her findings on the relationship between the EU and Chile; and EU and Andean Communities by noting the history of the trade relationship and the agreement; the challenges that both face; and possible options for strengthening provisions.
- The intervenors questioned what were the roles of the TSD chapters in light of these new unilateral strategies of the EU. While invoking the Deforestation Regulation adopted by the EU, the intervenors questioned the possibility of applying sanctions within the framework of the EU FTAs.
- Discussions also revolved around the institutional elements of the FTAs. Particularly, the intervenors underlined the importance of the parties' domestic advisory groups (DAG). It was noted that a careful look into the domestic situation, as reflected in the DAGs, can shed light on a different reality. In this sense, further clarification can be provided about the reality of the implementation of both the EU-Andean Communities and the EU-Chile agreement.
- It was also noted that cooperation between the parties was also a section of the agreement where attention should be given. The intervenor noted that the domestic advisory groups frequently request more cooperation from the EU bodies. That is, civil society must be engaged in this process and given a voice. In this sense, participants noted that the EU has reinforced its commitment to engage in cooperation mechanisms with its parties.



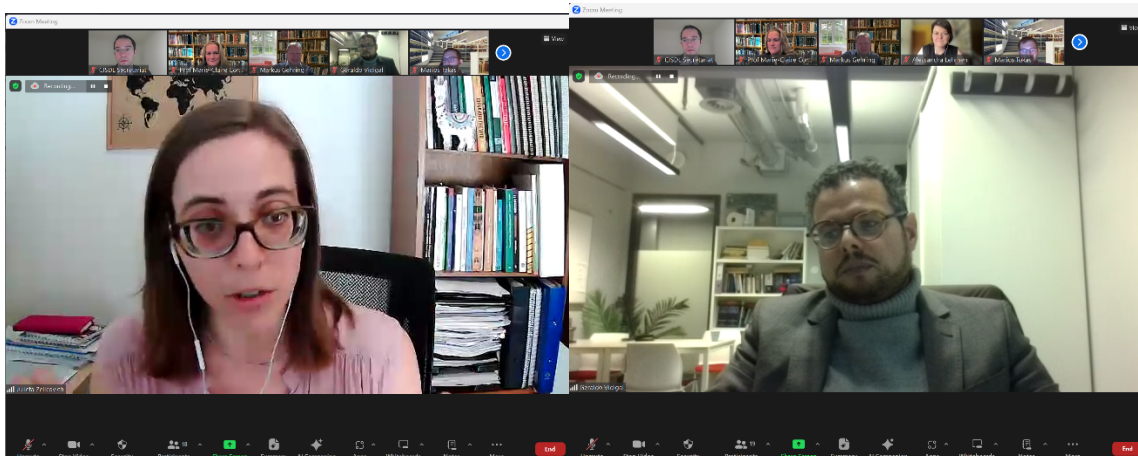
Panel 2: EU-Mercosur

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

Presenters: Dr Alessandra Lehmen, President of the Brazilian Bar Environmental Law Commission, Rio Grande do Sul State Chapter; and Matheus Garcia, Project Manager at CISDL

Intervenors: Prof Geraldo Vidigal, Professor at the University of Amsterdam; Prof Julieta Zelicovich, Professor at the Universidad Nacional de Rosário

- Dr Alessandra Lehmen gave the overview of the findings relating to the EU-Mercosur FTA. Dr Lehmen noted that the EU-Mercosur is general compared to other agreements; the agreement is a product of its time; and there is room for improvement. In turn, Matheus Garcia complemented by noting the next steps toward the possible ratification and conclusion of the negotiations in light of the new communications from the EU, Mercosur and the Argentinian elections.
- The intervenors noted that there is a general unease in the Mercosur block about possible sanctions that the EU could apply if the environmental provisions are not respected. Discussions also addressed that the window of opportunity to finish the EU-Mercosur Agreement is closing in, given the recent results of the Argentinian elections. The intervenors also underscored that, even if the Agreement is accepted by both blocks, it still has to be ratified by all concerned members, something that poses a challenge.
- It was also pointed out that focusing all of the attention, in terms of compliance with sustainable development goals, in the EU FTAs is not enough. For a comprehensive and cohesive achievement of the sustainable development goals, a more overarching perspective is needed.
- The intervenors also noted that the Mercosur block needs an institutional mechanism to negotiate with the EU on how the European unilateral measures are being implemented.
- Attention was also directed to how the private sectors of both blocks are internalizing these issues. In this sense, the private sector actors are the ones that will ultimately bear the burden of new regulations and norms that are created at the supranational level. Consequently, understanding their concerns is a vital element of the puzzle of the entire EU-Mercosur arrangement.



Panel 3: EU-Central America

Chair: Dr Markus Gehring, Senior Legal Counsel CISDL

Presenter: Prof Jorge Cabrera, Professor at the University of Costa Rica

Intervenor: Yasmin Granados Torres, Lawyer, Notary Public and Certified Mediator at Arias Law

- In his presentation, Jorge Cabrera reviewed the main features of the EU-Central America Agreement including the goals of the agreement; the mechanisms of cooperation; and strategic priorities.
- The intervenors noted that Central America has witnessed intensified migration between nationals of the region, which creates an environmental impact. Attention was also brought to the current tensions that take place in the region, including the institutional fragility of Guatemala and Nicaragua. Notwithstanding these aspects, EU-Central America cooperation has been incentivized. Cooperation in areas such as water, climate change education, and energy with France, Spain, and Germany, respectively.
- Discussions also centred on the fact that various high international courts are now addressing the issue of climate change. The intervenors noted that these opinions related to climate change can be leveraged to address many other issues, including the rights of indigenous people in Central America.

