

POST-FTA BRIEFING



The EU and Chile had a pre-existing agreement that went into force in 2003.



The top exported goods from Chile to the EU are agricultural and mining products.



Chile supplies up to 84% of the EU's total demand of lithium.



EU-Chile

Basic trade figures

The EU is Chile's third largest trade partner after China and the US, taking up 12% of Chile's total trade in 2020¹. Chile's economy has a high reliance on international trade, counting for 64% of its GDP in 2021².

The three most exported goods from Chile were vegetable products, specifically competitive and counter-seasonal agriculture, and mineral products and base metals such as copper and lithium³.

Political context for negotiations

On 9 December 2022, the EU and Chile announced the conclusion of negotiations for a new trade agreement, modernising the existing agreement in force since 2003. The modernisation of the trade relationship comes at a time when the EU is seeking out a stable supply of critical raw materials to secure the green and digital transitions. Chile is a main global supplier of lithium – supplying up to 84% of the EU's total demand – and a large supplier of

copper⁴, two key materials required to produce clean technologies and electronic equipment.

Summary of sustainability in Chile

In 2019, Chile exported 829k tonnes of primary materials to the EU, mostly fruits, fish, and forestry products. In comparison, 553k tonnes of secondary materials were exported, made up almost entirely of wastes, scraps and residues of forestry products, food, and metals⁵.

The relative importance of the agriculture and mining sectors for the Chilean economy means that a potential expansion of production in these sectors as a result of the trade agreement could lead to significant contributions to environmental pressures. The main environmental challenges Chile faces include pressures on the availability and quality of clean water, which has subsequent impacts such as negative outcomes for (aquatic) biodiversity and a worsened access to clean water for local communities.

What are the next steps?

- Co-create a roadmap with Chilean civil society to address sustainability challenges by setting concrete targets and milestones for their delivery.
- Pursue concrete cooperation on sustainable food systems.
- Establish an EU-Chile Strategic Partnership on Critical Raw Materials to promote sustainable mining methods and technologies, including circular initiatives.
- Follow up on TSD Committee meetings with Domestic Advisory Groups to discuss the evolving environmental realities and update the TSD provisions in a timely manner.

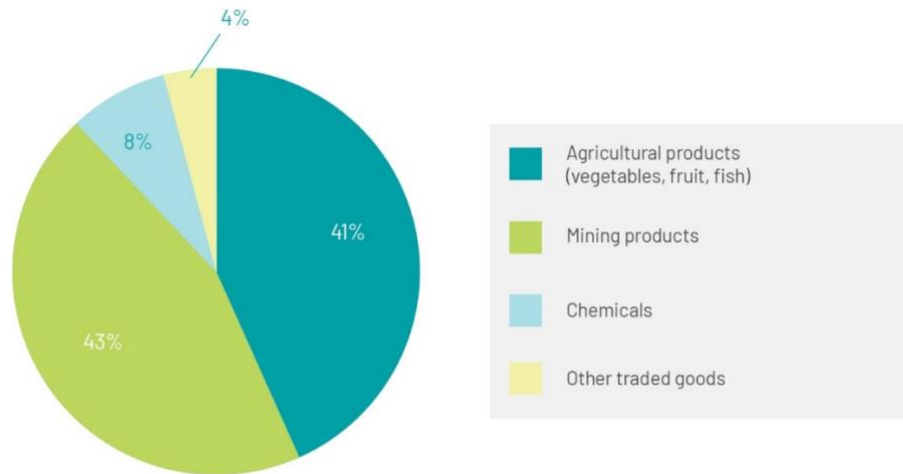
How well does the EU-Chile FTA score on our progress bar?



BUSINESS AS USUAL

Chile

GOLD STANDARD



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Source: [DG Trade, European Commission \(2022\)](#)

Political context of the negotiations

After the economy opened in the early 70s, by the 90s, Chile began to enter trade agreements with all major trading partners and subsequently entered the EU-Chile Association Agreement in 2002. In 2017, negotiations to modernise the standing agreement launched, with aims to better address the political, economic and technological changes over the past 20 years.

On 9 December 2022, the EU and Chile announced the conclusion of negotiations for the modernised agreement, which was split into an interim free trade agreement (FTA) and the Advanced Framework Agreement. The ratification of the former is an exclusive EU competence, whereas the latter agreement will also be ratified by Member States.

Chile is a strategic trade partner for the EU, not only for their longstanding partnership but also for its raw materials reserves. Specifically, to ensure the delivery of the green and digital transitions, the EU plans to secure a stable supply for critical raw materials, both domestically and with strategic trade partners⁶. In fact, Chile and other Latin American countries cooperate with the EU on ensuring socially and environmentally responsible mining in the EU-Latin America Partnership on Raw Materials. As part of the Partnership, the Mineral Development Network Platform (MDNP) brings together private and public sector stakeholders involved in the critical raw materials supply chain “to deliver on a green and climate-neutral economy”⁷.

Chile is also a member of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), with ten other countries including Australia, Brunei, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. The CPTPP includes a chapter on environment to outline commitments to working toward issues such as biodiversity, transitioning to low emission economies, and encouraging corporate social responsibility⁸.

Sustainability challenges in Chile

Mining sector

Chile supplies 84% of Europe's lithium. Extraction is expanding rapidly with the surface area of its operations quadrupling between 1997-2017⁹. The extent of the subsequent negative environmental impacts as a result of increased production from trade liberalisation depend on how the metal is extracted, the inclusiveness of the process and the efficiency of its upscaling¹⁰.

The industry of lithium extraction in Chile occurs in the Atacama Desert in the Salar basin, inhabited by the indigenous Atacameño. On the one hand, the extraction of critical raw materials such as lithium have been shown to have a global net positive environmental impact, through their use in clean technologies that generate positive outcomes for the climate¹¹. On the other hand, increased mining has negative impacts on local communities, by threatening the availability and quality of water as well as dispossessing their land.

Lithium is extracted through an evaporation of salt brines in solar ponds. In lithium rich regions of Chile, extraction uses up to two thirds of the fresh drinking water in the area¹². High water use in the basin also leads to lower water levels in surrounding wetlands that are home to vulnerable wildlife, such as flamingos¹³. The worsened access to water not only impacts biodiversity but also local smallholder farms that rely on this water for their agricultural livelihoods. The effects of the unsustainable use of water with the growing lithium industry is further aggravated in the use of water purification chemicals, which can leach into water ways through spills and air emissions, polluting and harming both people and ecosystems¹⁴.

Water pollution and excessive use from the lithium industry impacts local communities' right of access to clean water, rights to health and work and therefore their agency. Currently, lithium mining projects do not require the involvement or consultation of indigenous populations when it interferes with their environment, which is not in line with ILO requirements despite Chile having ratified ILO convention 169 on the Rights of Indigenous Peoples¹⁵.

The expansion of the lithium industry must be backdropped by efforts to reduce energy use through renewable energy resources, to implement more efficient methods of extraction, and to create regulations that explicitly, mandatorily, and non-reductively include indigenous populations and local communities in Environmental Impact Assessments of new mining projects and initiatives.

Agriculture and aquaculture

In 2006, the government created a Presidential Advisory Council called the *Chile Potencia Agroalimentaria* (Chile agri-food power) which aimed to double export revenue in eight years¹⁶. This rapid growth was built on simultaneous mechanisms: decades of state sanctioned privatisation and industrialisation following the 1973 military coup, the steady

elimination of trade barriers and a new global food regime where Chile followed the whims of foods deemed “superfoods” in the Global North where a market was built for fresh seasonal produce to be available all year round¹⁷. A high dependence on global markets also primarily benefits large scale, commercial farmers who employ locals on a precarious seasonal basis¹⁸. For sectors such as the grape industry in the Guatulamé region, monocultural agribusiness profits have increased, but this growth resulted in a destruction of traditional agriculture based on local livelihoods and negative impacts on biodiversity¹⁹.

Concurrently with Chile’s export-oriented fruit sector, the salmon industry grew to fulfil overseas demand due to counter-seasonal comparative advantage because of Chile’s location in the southern hemisphere²⁰. Salmon are not native to Chile: they were introduced as an alien species to Chilean waters in the 1970s, and later propagated in the Los Lagos region in the South, which had previously been struggling economically²¹. In just a decade, from 1993-2004, salmon exports increased by around 500%, and since the mid-2000s, Chile has become the world’s second largest exporter of salmon²². The salmon industry’s prolific growth has exacerbated its negative impact on aquatic biodiversity, sediment contamination and deterioration and general quality of water²³.

There have been various crises that have impacted production in tandem with the environment, demonstrating the negative feedback loops which aquaculture can instigate, and the general volatility of the industry. In 2007, the Infection Salmon Anemia (ISA) virus crisis outbreak resulted in high salmon mortality and deformations, and led to the implementation of a sanitary management scheme²⁴. In 2016, a deadly algal bloom killed around 23 million fish, which were disposed of in the ocean²⁵. The decomposition of salmon bodies leads to increased ammonia levels in the water and even more algae bloom²⁶. In 2018, 690k salmon escaped from a farm, harming fish stocks and natural ecosystems²⁷.

From a health and safety perspective, these crises contaminate water ways with fish faeces and food, viruses and sea lice, and necessitate the use of antibiotics and pharmaceuticals which remain in the environment for years, polluting water and impacting public health²⁸.

Aquaculture regulations have evolved gradually since the ISA crisis to better manage proliferation of high-risk diseases, manage waste production, and prevent use of marine protected areas. Relevant to the use of water resources in the agricultural and the mining sectors, in January 2022, a modernised version of the Chilean Water Code was approved by the Chilean Senate. This update is a significant step forward to secure access to water as a human right, amending the original Water Code so that shares of water concessions are limited to 30 years compared to indefinitely and the allocation of shares of water is based on the availability of the supply source²⁹. Nevertheless, the current environmental licensing system is still insufficient to control the booming industry³⁰. The Chilean salmon industry would benefit from due diligence processes and systematic, scientific research on environmental impacts³¹.

Assessment of EU-Chile FTA Sustainability Impact Assessment

The EU-Chile Sustainability Impact Assessment's (SIA) sector and industry-based structure permits a transversal assessment of the environmental, social, and economic impact of the FTA for both EU and Chile-based industries. However, it lacks an aggregated analysis of environmental impacts, as its latest baseline assessment is the previous EU-Chile FTA that entered into force in 2003.

The current analysis is centred around a policy perspective, looking in qualitative, speculative terms at what certain regulations *could* bring, e.g., the benefits of potential implementation of renewable energy in the mining sector. The SIA often does not establish a scientific causal link between an industry's actions and its impacts. There is also a lack of analysis on the impacts of counter-seasonal produce supply chains which are one of Chile's main exports to the EU, as well as insufficient elaboration on the rural rifts and asymmetric impacts on smallholders and local communities where Chile's industries are operating.

Assessment of sustainability-relevant FTA Chapters

As the second trade agreement concluded after the European Commission's communication on the new approach to TSD Chapters³², the EU-Chile FTA text was published during a particularly scrutinous period. The following section assesses the new provisions, articles and thematic chapters introduced in the EU-Chile FTA and speculates whether these additions are as ambitious as those in the EU-New Zealand FTA.

The TSD Chapter

Forestry

In the article on trade and forests, the Parties recognise the role of trade and investment in the sustainable management of forests. Comparing this article to the EU-New Zealand FTA's forestry article, it is worded very similarly. This includes most notably the more explicit actions to be undertaken by the trade partners, i.e., "Parties *shall implement* measures to combat illegal logging [...]".

Moreover, like in the EU-New Zealand article, the EU-Chile article includes an additional provision on the role of forests in combating climate change and biodiversity loss. To this extent, Parties "shall promote initiatives addressing deforestation, including deforestation-free supply chains" and are expected to cooperate bilaterally and in relevant international fora "to minimise deforestation and forest degradation worldwide". This is in reference to the EU's Deforestation Regulation which is expected to enter into force in June 2023 with an 18-month transition period for businesses and a 24-month for smallholders and SMEs to ensure compliance³³.

Biodiversity

The article on biological diversity in the EU-Chile agreement is very similar to the biodiversity article in the EU-New Zealand FTA³⁴ with the only main difference being that the provisions related to CITES and wildlife trade have their own dedicated article in the EU-Chile agreement, i.e., Article 26.12 Trade and Wild Flora and Fauna. The mandatory language is used to commit the Parties to “implement effective measures to combat illegal trade in wild flora and fauna.” Moreover, this article states actions to be undertaken by the Parties in the conservation and sustainable use of the CITES-listed species, to prevent the spread of invasive alien species, and to promote trade in products derived from the sustainable use of biological resources.

New additions to the biodiversity article include provisions recognising the knowledge and practices of indigenous and/or local communities in the contribution the conservation and sustainable use of biological diversity, and cooperation on the access to genetic resources the fair and equitable sharing of benefits from their utilisation consistent with the objectives of the CBD³⁵.

Climate change

This article includes provisions to improve cooperation on trade-related aspects of climate change at the usual fora however, unlike the EU-New Zealand FTA, there is no obligation to cooperate in the International Maritime Organisation. This is a missed opportunity to have the Parties commit to address transport-related emissions embedded in international trade.

The most notable addition to this article is the obligatory language for the Parties to implement the UNFCCC and the Paris Agreement, including their Nationally Determined Contributions. However, the EU-Chile agreement does not include the “obligation to refrain from any action or omission which materially defeats the object and purpose of the Paris Agreement”, which was the case with the EU-New Zealand FTA.

Dispute settlement

The EU-Chile agreement has limited the enforceability of the TSD provisions back within the confines of the TSD dispute settlement mechanism, essentially taking a step backwards from the EU-New Zealand FTA’s approach. Indeed, the agreement’s main dispute settlement Chapter does not reference the ILO conventions, the Paris Agreement or the TSD Chapter which means that the Paris Agreement is not an essential element of the EU-Chile FTA.

Yet, there have been amendments to the TSD dispute settlement articles in the EU-Chile agreement which indicate a new outcome-oriented approach to dispute resolution. For example, once a panel of experts has been convened

and they have issued their resolution on the dispute at hand, the Parties are expected to discuss actions or measures to be undertaken considering the expert panel's recommendations. Furthermore, these actions are expected to be implemented no later than three months after the expert panel's resolution is made public³⁶. This precise wording aims to ensure that the dispute settlement resolution does not end with the expert panel's decision, and instead delivers outcomes to be implemented, no longer relying on the will of the Parties to take action^{37,38}.

Although there is no recourse for sanctions in case of violations of the Paris Agreement, this dispute settlement mechanism is an improvement compared to the FTAs with countries such as Canada and Japan³⁹.

Review

A final and most notable addition to the TSD Chapter is Article 26.23 "Review" which obligates the TSD sub-committee to discuss the effective implementation of the TSD provisions, taking into account major policy developments and developments in international agreements. Following the outcomes of these discussions, either Party may request the review of the TSD provisions at any time after the entry into force of the agreement.

This is a significant addition to the TSD Chapter, as it opens the door for amenable TSD provisions to update the contents of the TSD Chapter to better reflect the evolving nature of environmental and labour standards in FTAs⁴⁰. Interestingly, the inclusion of a Review Article in new FTAs is not reflected in the new TSD approach. Therefore, it is uncertain whether similar articles will be introduced in all FTAs going forward.

In general, the EU-Chile TSD Chapter comes close to the EU-New Zealand agreement's TSD Chapter, the main difference being each agreement's approach to cases of non-compliance with the Paris Agreement. Notwithstanding, the EU-Chile agreement has improved the TSD dispute settlement mechanism to secure outcomes and address non-compliance with all TSD provisions. Lastly, the Review article is a positive addition to create amenable TSD Chapters, which hopefully are included in future TSD Chapters.

Energy and raw materials

As a key player in the export of raw materials, the contents of the energy and raw materials Chapter is of particular interest in the EU-Chile agreement. The articles in the Chapter relevant to the environment include "assessment of environmental impact" and "cooperation on energy and raw materials."

The article on assessment of environmental impact states the goals and principles of the environmental assessment that must be conducted prior to authorising a project or activity. Any activity relating to energy or raw materials that can have an impact on

“population; human health; biodiversity; land, soil, water, air or climate; and cultural heritage or landscape” must follow the provisions in this article. This includes a provision on ensuring public participation in the assessment process, such as providing relevant information to the public and giving them time and opportunities to participate. However, the wording is less ambitious than the EU-New Zealand FTA which explicitly states that “all interested persons [...] have an *early and effective opportunity*, and an appropriate time period, to participate”.

The next article on cooperation on raw materials for one part entails the Parties recognising their commitment to responsible sourcing and sustainable production of raw materials. This includes their willingness to cooperate on “responsible mining practices and raw materials value chains sustainability, including the contribution of the raw materials value chains to the fulfilment of the SDGs.”

The EU has an existing Partnership on Raw Materials with Latin America which could serve as a working cooperative framework for sustainable mining practices. Yet, as Chile is estimated to house the largest global reserves of lithium, it would be beneficial for the EU to conclude and establish the EU-Chile Strategic Partnership on Critical Raw Materials. Such a framework would provide a forum for cooperation on the sustainable and future-proof use of necessary critical raw materials.

Despite the pursuance of an EU-Chile Strategic Partnership on Critical Raw Materials considering the sector’s role in water use and quality, impacting not only local biodiversity but also communities, it is fair to say that the environment-related provision in this Chapter do not suffice on their own. Though more sound procedures surrounding the launch of a new mining project are welcome, inviting local communities to participate in the environmental impact assessment would be best practice. As Chile is a main source of lithium, the EU should ensure proper due diligence has taken place so that imported lithium and copper have been extracted in a manner conforming with the EU’s environmental standards.

Newly added chapters

Cooperation on sustainable food systems

The Chapter on sustainable food systems (SFS) is a new Chapter that first made an appearance in the EU-New Zealand FTA. The EU-Chile’s Chapter on SFS is very similar to EU-New Zealand’s, except that it has incorporated an article on animal welfare and on fighting antimicrobial resistance.

This objective of this Chapter is to establish close cooperation between the partners to transition towards SFS. Therein, the partners recognise the importance of strengthening policies and defining programmes that contribute to the development of sustainable, inclusive, healthy and resilient food systems and the role of the trade in pursuing this objective.

In this Chapter, a SFS is defined as “a food system that delivers food security, safety and nutrition for all in such a way that the economic, social and environmental bases to generate food security and nutrition for future generations are not compromised.”

Since the objective of the Chapter is to increase cooperation on SFS, the scope includes provisions for cooperation on specific aspects. This includes dedicated articles on the sustainability of the food chain and reduction of food loss and waste, the fight against food fraud along the food chain, animal welfare, fight against antimicrobial resistance and the reduction of the use of fertilisers and chemical pesticides for which a risk assessment has shown that they cause unacceptable risks for health or the environment, in addition to an article on cooperation in multilateral fora, though no fora in particular are specified.

Under this Chapter, a sub-committee on SFS is established, and tasked with monitoring the implementation of this Chapter and setting up annual work plans with actions to achieve the objectives of this Chapter, accompanied by milestones for these actions. Moreover, the sub-committee on SFS can establish technical working groups with expert representatives from each Party. The Chapter also states that the Parties can establish technical working groups to support the implementation of the articles on animal welfare and fighting antimicrobial resistance.

Trade and Gender Equality

A dedicated Chapter on gender equality is a new addition to EU FTAs. Though gender equality has already been taken up as an article in the EU-New Zealand TSD Chapter, logically the EU-Chile agreement’s Chapter is much more fleshed out in comparison.

In this Chapter, the Parties recognise that women's participation in international trade can contribute to advancing their economic empowerment and economic independence. In that context, they “recall the objectives” of SDG Target 5 pertaining to trade and gender equality⁴¹ and of the WTO MC11 Joint Declaration on Trade and Women's Economic Empowerment. In addition, the Parties recall/reaffirm their commitments under the UN Declaration of Human Rights to mainstream gender equality and empowerment of women and girls, as well as those under the Beijing Declaration and Platform for Action, particularly the provisions related to women’s equal access to resources, employment, markets and trade.

Regarding more concrete actions, the Parties are expected to implement their gender equality-related obligations under the ILO⁴² and UN⁴³ conventions in the context of eliminating discrimination against women in economic life and employment, in addition to any other multilateral agreements addressing gender equality or women’s rights they are Party to.

Furthermore, the Parties commit to cooperate on trade-related aspects of gender equality policies and measures. Some of these activities include promoting awareness of their gender equality laws, regulations and policies, exchanging best practices on data collection, design, implementation, monitoring, evaluation and strengthening of policies and programmes on women’s participation in economic activity, in addition to a list of

cooperation activities to be developed and implemented at multilateral fora such as the UN, WTO, ILO and the OECD.

The Chapter does not establish binding commitments or mandatory actions for the Parties to implement specific legislation related to gender equality. Therefore, the enforceability of the commitments in this Chapter will likely be more difficult compared to standard trade and labour provisions. In fact, this Chapter states that any disputes fall under the TSD dispute settlement mechanism, meaning there is no possibility for sanctions as a last resort. Yet, if the contents of this Chapter would ever come to a dispute and the expert panel's decision finds that a Party is not in compliance with the contents of this Chapter, that Party would be required to develop a set of actions to be implemented three months following the panel's decision.

Conclusion

The EU-Chile trade agreement has integrated new sustainability elements into the TSD Chapter and across the rest of the FTA. Yet, the text is a step back as the Paris Agreement is not an essential element of the deal and thus non-compliance is not sanctionable. However, the TSD dispute settlement has improved compared to older FTAs. For example, it requires the non-compliant Party to formulate and implement actions to become compliant. Moreover, the Review article is a positive addition to create amenable TSD Chapters, which hopefully is included in future TSD Chapters.

As with the EU-New Zealand FTA, the cooperative activities in the context of environmental sustainability remain the primary tool to foster sustainable practices, rather than the development of specific targets, actions, and timelines. Therefore, targeting and following up on the activities in the various working groups, committees and partnership frameworks could impact the sustainable trade between the EU and Chile.

Recommendations

- Co-create an implementation roadmap with Chilean civil society involvement to address sustainability challenges (as discussed above) by setting concrete targets and milestones for their delivery.
- Pursue concrete strong cooperation on sustainable food systems as Chile is a large supplier of counter seasonal agri-food products.
- Establish an EU-Chile Strategic Partnership on Critical Raw Materials to promote sustainable mining methods and technologies, including circular initiatives.
- Follow up on TSD Committee meetings together with the Domestic Advisory Groups to discuss the evolving environmental realities and utilise the Review article to update the TSD provisions in a timely manner.

The progress bar presented on the front page of this briefing indicates how well a given FTA scores at being a gold standard FTA for sustainability. The criteria for a gold standard FTA builds on previous IEEP research and recommendations, while the rating of the FTAs scoring of each criteria is conducted by the author. For more information, please reach out to the corresponding author at eblot@ieep.eu.

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