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## Sustainable Development and Economic Integration in the CPTPP

Desarrollo Sostenible e Integración Económica en el CPTPP

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### Abstract

Given that recent international trade and investment agreements include provisions related to environmental protection and the enforcement of labor laws, one may argue that sustainable development has emerged as the new paradigm for economic integration. While there remains skepticism about this new generation of treaties, it is essential to evaluate the extent to which these provisions contribute to sustainable development. The aim of this essay is to address this question through a normative and doctrinal analysis of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). This assessment concludes that incorporating environmental and labor aspects does indeed contribute to sustainable development. There are at least three reasons for this conclusion: First, the inclusion of chapters on labor and the environment enhances the interpretation of international trade and investment agreements; second, these agreements incorporate the State-State Dispute Settlement mechanism as an enforcement tool for labor and environmental commitments; and third, they respond to the challenges of achieving a multinational consensus on corporate social responsibility for companies.

Keywords: CPTPP, Sustainable development, Economic integration, Investment Law, FTA, Asia-Pacific, Regional Integration

### Resumen

Los nuevos acuerdos internacionales de comercio e inversión incluyen disposiciones relacionadas con la protección del medio ambiente y la aplicación de la legislación laboral, por lo que se puede afirmar que el desarrollo sostenible se perfila como el nuevo paradigma de la integración económica. Parte de la doctrina se muestra escéptica ante esta nueva generación de tratados y cabe preguntarse en qué medida estas disposiciones contribuyen al desarrollo sostenible. El objetivo de este ensayo es responder a esta pregunta mediante un análisis normativo y doctrinal del Tratado Amplio y Progresista de Asociación Transpacífico (CPTPP). De este examen, se concluye que la incorporación de aspectos medioambientales y laborales contribuye eficazmente al desarrollo sostenible. Esto se debe, al menos, a tres razones: en primer lugar, la inclusión del capítulo laboral y del medioambiental es útil para interpretar los acuerdos internacionales de comercio o inversión; en segundo lugar, incorporan el mecanismo de solución de diferencias entre Estados para aplicar las disposiciones relativas a los compromisos laborales y medioambientales; y, tercero, son una respuesta a la imposibilidad de lograr un acuerdo multinacional sobre la responsabilidad social de las empresas.

Palabras clave: CPTPP, Desarrollo Sostenible, Integración Económica, Derecho de las Inversiones, TLC, Asia-Pacífico, Integración Regional

## 1. Introduction

In a world where companies and their economic activities transcend borders, free trade and the promotion of foreign investment have become integral economic policies for various countries. To facilitate the unrestricted transfer of goods and services, as well as the inflow of remittances into developing economies, economic integration allows industries from different countries to collaborate and form a global supply chain. The primary objective of economic integration is the elimination of economic barriers between countries. However, recent international treaties have incorporated rules that seek to advocate an economic model that considers the social and environmental dimensions of economic integration. Consequently, sustainable development has emerged as a model wherein economic progress must be harmonized with social and environmental considerations.

Historically, Free Trade Agreements (FTAs) and Bilateral Investment Treaties (BITs) have been criticized for neglecting environmental and labor protections as limits to trade and investment. Today, however, these treaties include clauses that reaffirm the rights of states to regulate and promote corporate social responsibility among companies. In this context, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is particularly significant. This agreement not only aims to establish a free trade zone and promote investment, but also dedicates two entire chapters to labor law (Chapter 19) and environmental protection (Chapter 20).

With the development of new international agreements that incorporate rules related to environmental protection and the enforcement of workers' rights, it becomes pertinent to question the extent to which these provisions contribute to sustainable development. To address this issue, this essay analyzes the CPTPP rules and argues that these agreements do indeed contribute to sustainable development.

This essay is structured as follows: First, it analyzes sustainable development as the new paradigm of economic integration; next, it provides a normative review of chapters 9, 19, 20 and 28 of the CPTPP from the perspective of sustainable development; then, it presents the main arguments supporting the position that the CPTPP contributes to sustainable development; and finally, conclusions are offered.

## 2. Sustainable Development as the New Paradigm for Economic Integration

Concerned about phenomena such as global warming and forms of modern slavery, sustainable development is an objective shared by the international community. Broadly speaking, sustainable development means that environmental and social protection cannot be subordinated to economic development (Mann, 2016, p. 292). Thus, the three elements must be considered together to effectively address the issue of sustainable development.

The pursuit of sustainable development in international law can be traced back to the Stockholm Declaration on the Human Environment adopted in 1972 (Shawkat, Bhuiyan, & Razzaque, 2018, p. 17); since then, this concept has evolved and, in 2015, the United Nations (UN) proposed its Sustainable Development Goals (Boyle, 2020, p. 173). Sustainable development consists of three pillars that must be considered equally for the development of a project: Economic, social, and environmental development (Mann, 2016, p. 292). Consequently, an increasing number of FTAs and BITs are incorporating this concept.

Some scholars highlight the importance of the investment regime incorporating sustainable development provisions, as international investment law can shape the regulatory development of certain countries, particu-

larly those with less developed economies (Mann, 2013, pp. 532-533). For example, some authors emphasize that stakeholder interests are now fundamental for the development of mining or natural resource exploitation projects, demanding public participation and consultation regarding the impacts of these industries (Al Faruque, 2018, pp. 291-292).

However, any analysis of economic integration must consider that international economic law comprises at least two distinct but intrinsically related legal regimes: Foreign investment and free trade. This is notable because both regimes share a common early history and seek the same general objective: To provide specific terms and conditions for access to international markets and to guarantee certain standards regarding the expected level of treatment (Footer, 2013, p. 259). Despite these similarities, these regimes have developed separately in parallel with their own founding organizations and treaties, a phenomenon that can be framed within the fragmentation of international law (Peters, 2017, pp. 673, 681, and 697). Some authors argue that this theoretical divorce has led to international economic law developing on the margins of other international disciplines, such as environmental law and human rights; this marginal development has been controversial, as it has resulted in a lack of effectiveness in other disciplines, such as the international protection of human rights (Ciampi, 2019, pp. 241-252, 256, 261, 268-269).

Despite this “divorce of convenience”, it is worth noting the latest generation of economic integration agreements that combine aspects of free trade and foreign investment protection, incorporating them in special chapters of the respective treaty. These new agreements, along with the latest generation of investment agreements (Sornarajah, 2021, pp. 465-468), have incorporated provisions related to sustainable development, including individual chapters on environmental protection and workers’ rights. The question this essay seeks to answer is whether these rules are useful.

The signing and ratification of the CPTPP is a relevant case study to

answer this question. This regional free trade agreement, which includes a chapter dedicated to investment (Chapter 9), aims to create a free trade area encompassing American and Asian countries with coastlines on the Pacific Ocean. The treaty also includes chapters on labor rights (Chapter 19) and environmental protection (Chapter 20). Although this treaty has only recently entered into force and lacks practical case studies for a comprehensive analysis, this theoretical exercise is relevant as it sheds light on its practical application.

Before analyzing the CPTPP, it is important to consider the critical perspectives on these international treaties. Some scholars remain skeptical about the effective promotion of sustainable development in these new agreements and argue that the real purpose of FTAs is to reinforce an economic order. Thus, although treaties such as the CPTPP promote environmental protection, their real objective is economic liberalization, investment promotion, and the export of capital (Linarelli, Salomon, & Sornarajah, 2018, pp. 127-128, 168, and 173). According to this argument, claiming sustainable development through FTAs and BITs is an oxymoron. Furthermore, some authors assert that sustainable development is impossible to achieve through these treaties, as the purpose of FTAs is to enhance trade, leading to increased production and transportation of commodities, which means more pollution and less contribution to climate change action (Chatterjee, 2023, p. 56). For example, consider the carbon dioxide emitted by trucks or ships transporting goods across continents. In response, some authors argue that these criticisms should be addressed during the negotiation of FTAs to create mechanisms that encourage states to reduce greenhouse gas emissions (Leal-Arcas, Anderle, da Silva Santos, Uilenbroek, & Schragmann, 2020, p. 10). In conclusion, while this critique is valid, it does not offer any real solution or alternative for economic development.

### 3. CPTPP Labor and Environment Chapters

As previously discussed, the CPTPP serves as a state-of-the-art economic integration instrument that is conscious of sustainable development. This section aims to analyze the chapters of the CPTPP that promote sustainable development and examine the normative force of its provisions.

First, Chapter 19 addresses workers' rights from the perspective of the International Labour Organization (ILO). In this regard, the contracting parties affirm their shared commitments associated with the ILO Declaration (article 19.2). Article 19.3 outlines the minimum rights from the ILO Declaration that each state must adopt in its legal system, which must be complied with and effectively enforced within their territories (article 19.5). The CPTPP further stipulates that the contracting parties may not promote trade or encourage foreign investment by derogating from or reducing labor legislation (article 19.4). Particularly noteworthy in terms of sustainable development is article 19.7, which recognizes the duty of states to promote corporate social responsibility among companies operating within their jurisdictions.

Next, Chapter 20 establishes obligations concerning environmental protection. Specifically, article 20.2 sets forth objectives to promote mutually supportive trade and environmental policies. The parties acknowledge that sustainably managing their natural resources brings benefits that contribute to sustainable development (article 20.2.2). Based on these shared objectives, article 20.3 outlines the parties' general commitments. Broadly, it highlights that the parties recognize the sovereign right of each state to legislate and protect the environment. Additionally, each state is required to ensure that its environmental laws and policies enhance protection levels, taking into account Multilateral Environmental Agreements ratified by the states (article 20.4). Like the Labor Chapter, article 20.10 encourages companies to voluntarily adopt principles of social responsibility in environmental matters.

Furthermore, the CPTPP outlines dispute settlement mechanisms. Chapter 9 addresses the protection of foreign investment and establishes the traditional Investor-State Dispute Settlement (ISDS) mechanism (Section B). Notably, this chapter recognizes that the promotion and protection of foreign investment may be subject to regulatory objectives such as health and environmental protection (article 9.16). It also emphasizes the importance of promoting corporate social responsibility among companies (article 9.17). Additionally, Chapter 28 establishes the State-State Dispute Settlement (SSDS) mechanism, which provides means to resolve disputes arising between state parties regarding the implementation of the CPTPP (article 28.3). Significantly, both the Labor Chapter (article 19.15.12) and the Environment Chapter (article 20.23.1) allow contracting parties to resort to a panel (article 28.7) if consultations between the states fail to resolve the legal dispute.

In conclusion, based on the characterization of its Chapters 9, 19, 20, and 28, it is evident that the CPTPP is part of the latest generation of FTAs. While it seeks economic integration, it does not subordinate environmental protection and workers' rights to economic goals. Instead, its provisions emphasize the importance of environmental protection and labor law. Additionally, the ISDS and SSDS provisions, particularly the latter, ensure the enforceability of Chapters 19 and 20 through state-to-state consultations and, if necessary, the establishment of a panel (article 28.7).

### 4. Do these Chapters contribute to Sustainable Development?

Although the CPTPP is a relatively new treaty, making it difficult to fully assess its practical impact, it is possible to predict that the inclusion of chapters dedicated to sustainable development will influence its

implementation and interpretation. Despite some scholarly skepticism (Chatterjee, 2023, p. 56), there are three main arguments suggesting that this new generation of economic integration treaties can contribute to sustainable development.

Firstly, the positive incorporation of environmental protection and labor law within the CPTPP mandates that these issues be considered during the treaty's interpretative process. This inclusion redirects the international economic discourse, emphasizing not only the trade of commodities and the promotion of investments but also the achievement of sustainable development goals. Consequently, it is argued that referring to these treaties as "new FTAs" is inappropriate; rather, they should be understood as comprehensive agreements that blend traditional trade instruments with investment agreements and sustainable development objectives (Hush, 2018, p. 106). These new agreements aim to balance the power between investors and host states (Hush, 2018, p. 107), forcing investors to pursue socially responsible and environmentally sustainable investments (Toro-Fernández & Tijmes-Ihl, 2021, p. 163). Thus, sustainable development becomes the guiding principle for the new generation of FTAs (Hush, 2018, p. 108). Additionally, the inclusion of these chapters is not arbitrary but serves a practical function: It ensures, through the interpretative rules of the Vienna Convention on the Law of Treaties (VCLT) (Shaw, 2008, p. 933), that free trade and investment treaties are interpreted within the framework of sustainable development (Hush, 2018, p. 154).

Secondly, the CPTPP's contribution to sustainable development is supported by the SSDS mechanism (article 28). As described above, non-compliance with the provisions of Chapters 19 and 20 by a state party can be challenged by another state through consultations or the establishment of a panel (article 28.7). This means that non-compliance with environmental or labor obligations under the CPTPP may result in international responsibility. However, it is important to note that the use of SSDS to enforce labor or environmental provisions has not been entirely successful

in other treaties. For example, in the 2014 dispute between the USA and Guatemala under the Dominican Republic-Central America FTA (CAFTA-DR), the arbitration panel concluded that the USA had failed to prove Guatemala's non-compliance in the terms required by the CAFTA-DR.<sup>1</sup> The case highlighted the challenges in using FTAs to enforce labor standards (Païement, 2018, p. 676 and 688). Even though the USA succeeded in demonstrating non-compliance with the enforcement of labor law by Guatemala, the panel's standard for determining non-compliance with the FTA implies that the breach affects trade between the two states.<sup>2</sup> Scholars argue that the core issue is that international trade law principles, which differ significantly from labor rights, govern FTAs (Païement, 2018, p. 690 and 691). It should be remembered that the reason behind the incorporation of labor law provisions is not only to promote them, but also to avoid unfair competition by relaxing labor standards (Namgoong, 2019, p. 486 and 487). Although the case analyzed does not allow to affirm the success of FTAs in promoting sustainable development, the CPTPP and similar agreements provide forums to discuss these issues, and their mechanisms can be improved in future implementations (Namgoong, 2019, pp. 486-487).

Finally, the CPTPP serves as a development tool in the absence of a binding multilateral agreement on corporate social responsibility or sustainable development obligations for businesses. While there is a common concern for sustainable development, a binding multilateral agreement remains elusive on the issue of negative impacts of business on human rights (Peters, Gless, Thomale, & Weller, 2023, pp. 419-420). While so-

<sup>1</sup>United States of America v. Republic of Guatemala. Issues Relating to Guatemala's Obligations Under Article 16.2.1.(a). Final Report of the Panel of June 14, 2017. Paras. 462-465.

<sup>2</sup>United States of America v. Republic of Guatemala. Issues Relating to Guatemala's Obligations Under Article 16.2.1.(a). Final Report of the Panel of June 14, 2017. Paras. 169 and 190.

me countries express concern about climate change, they often prioritize the impact of environmental restrictions on their economic development (Cohen, 2018, p. 50). In a multipolar world with diverse and sometimes conflicting interests, the adoption of regional agreements that facilitate practical implementation appears to be an effective solution. As one scholar argues, given the limited effectiveness of ambitious multilateral treaties, it is more pragmatic to rely on regional agreements, which can offer more effective governance (Cohen, 2018, pp. 65-66). The CPTPP exemplifies this approach, providing a regional platform for the promotion of sustainable trade and investment.

In conclusion, despite academic criticisms regarding the effectiveness of FTAs in promoting sustainable development, there are compelling reasons to believe otherwise. First, the incorporation of environmental and labor law commitments aids in the interpretation of economic agreements under the VCLT. Second, the SSDS provides an enforcement mechanism for these commitments. Third, the CPTPP represents a practical response to the absence of a multinational agreement on corporate social responsibility. However, this analysis remains theoretical and comparative, requiring continued observation of CPTPP implementation to verify these predictions.

## 5. Final remarks

Based on the analysis and arguments developed in this essay, several conclusions can be drawn.

First, the CPTPP represents a new generation of economic integration agreements aimed not only at creating a free trade area but also at promoting sustainable development as a business and investment model. The inclusion of chapters focused on sustainable development promises significant advancements in international economic law.

Second, the inclusion of these chapters shifts the focus of international economic discussions beyond mere trade and investment promotion to the achievement of sustainable development goals. The development of agreements like the CPTPP indicates that sustainable development is becoming the new paradigm for regional economic integration.

Lastly, in a multipolar world, pursuing less ambitious regional goals may be more effective than attempting to achieve broad multilateral projects. Thus, in today's context, regional integration systems such as the CPTPP may contribute not only to economic development but also to broader goals, such as sustainable development.

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