

# Balance of the last five years of the free trade agreement between Colombia and the European Union on environmental rights



I hereby certify that this is the correct translation, in what corresponds to the documents that it accompanies, (Balance of the Free Trade Agreement on Environmental Rights) Shall further information be required please contact me at [ALVEMILBAU@GMAIL.COM](mailto:ALVEMILBAU@GMAIL.COM)

Alvaro Emilson Bautista certified English-Spanish-English Translator and Interpreter License number **0439** issued by the National University of Colombia, registered before the Colombian ministry of foreign affairs. This translation is signed and sealed on May 17, 2021.



Picture: República.net

## EXECUTIVE SUMMARY

The following report is presented as a report document of compliance with the environmental protection provisions of the last five years of the Trade Agreement between the EU and Colombia (hereinafter TA), which entered into force on August 1, 2013.

This agreement not only has trade and investment objectives, but belongs to the "new generation" of EU trade agreements that focus on the sustainable development of partner countries and the inclusion of environmental aspects in the text of the agreement.

To organize this summary, the information is divided into three large blocks: the first related to the environmental obligations acquired by Colombia, the second, the mechanisms for evaluating and monitoring the commitments and, third, the results of the agreement on environmental rights.

### 1. ENVIRONMENTAL OBLIGATIONS ACQUIRED BY COLOMBIA

In March 2011 and February 2012, more than 200 national and international negotiating organizations and sectors highlighted the serious negative socio-economic and environmental effects of trade agreements.

In this context, before the approval of the TA, the European Parliament asked Colombia «to secure the preparation of a transparent and binding roadmap on human, environmental and labor rights» and to present «action plans for sustainable development». The plans were delivered in October 2012.

In this way, the parties agreed to work within the framework of the Rio Declaration on Environment and Development, the Agenda 21 adopted by the United Nations Conference on Environment and Development, the Millennium Development Goals, the Johannesburg Declaration on Sustainable Development and its Implementation Plan.

For this reason, the following general environmental objectives were set (TA, art. 267.2):

- Promote dialogue and cooperation between the parties in order to facilitate the application of the provisions and strengthening relations between trade and environmental practices.
- Strengthen compliance with environmental legislation, as well as the commitments derived from accepted Conventions and Treaties, to promote sustainable development.
- Strengthen the role of trade and trade policy in promoting the conservation and sustainable use of biological diversity and natural resources.
- Promote public participation in these areas.

## 2. NATIONAL AND EUROPEAN MECHANISMS FOR MONITORING THE APPLICATION OF THE TA.

In order to do a follow up on the TA, a Trade Committee was created, made up of representatives of the EU and each signatory Andean country. Specialized bodies were also installed to evaluate its application. The Subcommittee on Trade and Sustainable Development, hereinafter the Subcommittee, was in charge of issues related with environmental matters.

The Subcommittee meets annually to present and analyze strategies and progress. Meanwhile, since 2016 the European Commission has produced four annual reports that have been presented to the European Parliament.

Likewise, since 2017, the Colombian Government has presented reports on the development, progress and consolidation of the Trade Agreements in force in Colombia, within which there is a special chapter on the TA with the EU. These are presented annually in a formal session of the Second Joint Committees of the Senate and House of Representatives, and shared with the citizens, unions and workers' unions from the different economic sectors that are in the FTAs signed by Colombia.

## 3. ENVIRONMENTAL RIGHTS WITHIN THE COMPLIANCE FRAMEWORK OF THE FTA

It is important to point out that in terms of commercial matters there has been a market diversification and the participation of new economic actors related to export sectors has been encouraged. In the three reports corresponding to the years 2018, 2019 and 2020, the progress of the application of the FTA was presented, however, they did not have room for evaluating their socio-environmental impacts or the fulfillment of the commitments to achieve sustainable development.

On the other hand, observations have been made to Colombia regarding compliance with the agreements in the annual reports of the European Commission on the different meetings of the Subcommittee.

In its second annual report, from 2015, the body highlights that Colombia has promoted its National Development Plan, which incorporates strategies for green growth, a National Green Business Plan, and a policy on sustainable public procurement.

The document states that EU's interest in the Subcommittee meeting was focused on reporting on the development of a new cross-cutting policy on circular economy, changes to CITES and the Rotterdam Convention on the prior informed consent procedure applicable to certain hazardous chemicals and pesticides in international trade, "the prospect of an EU action plan against wildlife trafficking and the revision of the EU Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT)."

It also addressed the issue of corporate social responsibility, under which the EU highlighted its support for the OECD's work on this issue, particularly in the textile and minerals sectors.

It reported as miscellaneous activities, the holding of an event on trade and sustainable development with the Bogotá Chamber of Commerce, on June 18, 2015, in which more than 400 people participated. In this event, topics such as renewable energies, geographical indications, trade facilitation, fair trade and ecological certification were discussed.

The third annual report of 2016, highlighted developments in the MEA framework, as well as measures to implement the Paris Agreement commitments.

In relation to the Conference of the Parties in CITES, the EU encouraged Colombia to fulfill its commitments regarding robust control mechanisms for trade in crocodile and alligator skins.

In addition, it documented that "problems remain on both labor and environmental issues and additional efforts, such as cooperative activities, are required to support the implementation of this chapter."

In the evaluation of the 2018 application, the European body inquired whether the implementation of the TA meant a progressive regression of environmental legislation in Colombia, contrasting it with government policies in the fight against climate change, the signing of the Minamata Convention and the prohibition of mercury in gold mining, the lack of compliance by the State and companies with the obligations derived from ILO Agreement 169 (due to, among other things, the lack of a statutory law on prior consultation; weak State intervention; the lack of a systematized cartography of ethnic communities; mistrust between the parties; the appearance of new communities; the lack of criteria to define compensatory measures; and the armed conflict).

Regarding the conservation of renewable and non-renewable resources, this report highlighted that the Subcommittee had not been aware of the "abusive relaxation of mining and energy exploitation

authorizations, even in areas of special protection such as moors or ancestral territories” as well as the "systematic non-compliance by the Colombian State of its constitutional obligation to demand the

execution of the consultation and consent procedure – rigorously and without manipulation – to indigenous or Afro-descendant populations."

Additionally, the report stated that "this scenario seems to suggest a possible relationship between FDI (Foreign Direct Investment) and environmental conflict, and that there is a direct relationship between FDI in the mining-energy sector and the FTA."

The last five-year period of implementation of the TA in Colombia has been characterized by the worsening of socio-environmental conflicts, in particular, between indigenous, Afro-descendant and peasant communities in the face of government support for a public policy of environmental relaxation.

According to the Environmental Justice Atlas, in the 2016-2020 period, Colombia positioned itself as one of the first places in Latin America with the most socio-environmental conflicts. As of 2020, Colombia is the sixth country with the most conflicts of this nature, with a tally of 129 murders of environmental human rights defenders. Likewise, in many cases, the culprits leave with total impunity.



Picture: Engepoli

## OTHER PROBLEMS

**The arduous ratification process of the Escazú Agreement.** Despite the fact that on December 11, 2019, the Colombian Government signed the agreement and in July 2020 presented the bill before the Congress of the Republic, to date Colombia has not ratified the Escazú Agreement.

This treaty has the support of environmentalists, academics, ethnic groups, peasants and more than 150 organizations, as well as the EU, as it constitutes the first treaty in Latin America to promote transparency,

access to timely environmental information and justice; in environmental matters, environmental participation as well as the protection of environmental defenders and leaders.

**Deforestation.** The strategies developed by the Colombian Government to address deforestation were characterized by being mostly coercive, focused on the prosecution of environmental crimes and on shock plans to respond to deforestation alerts, leaving unattended the indigenous and peasant communities that inhabit and sustainably use the forests of the Amazon.

Despite these programs, in 2017 the Institute of Hydrology, Meteorology and Environmental Studies (IDEAM) reported a total loss of 219,973 hectares of natural forest, 23.17% higher than in 2016, with a concentration of 65% in the Amazon.

In 2018, under the tenure of President Iván Duque, the Consejo Nacional de Lucha Contra la Deforestación (National Council against Deforestation) was created, following the same line of coercive programs. In this context, the Ministry of Environment celebrated the reduction of the deforestation by 197,159 hectares, a reduction of 10% compared to 2017; However, sectors of civil society highlighted that this number was still insufficient.

#### NON-COMPLIANCE WITH JUDICIAL DECISIONS AIMED AT THE RESTORATION AND CONSERVATION OF ECOSYSTEMS.

In the five-year period from 2016 to 2020, the Colombian justice declared different ecosystems, including rivers and snow-capped mountains, as subjects of rights in order to stop their deterioration, as part of a strategic civil society litigation.

Although these orders involve the application of current environmental legislation in Colombia, the conservation of biodiversity, the reduction of deforestation, as well as the achievement of the Sustainable Development Goals, the authorities responsible for guaranteeing the conservation of these ecosystems have not diligently complied with what was ordered.

This situation is exemplified by the pronouncement of the NGO Dejusticia, which assures that 30 months after the judicial decision, none of the five orders of the sentence had had a high compliance.

**Regarding the deficit of the environmental participation in the energy mining sector in Colombia.** This sector in particular is the one that faces the most challenges in terms of sustainability, as its practices are highly invasive and polluting, while it is an important part of the trade with the EU.

During the five-year period analyzed, there were multiple socio-environmental conflicts related to the imposition of extractive projects of the mining-energy sector, in particular, due to the fact that the Colombian State had its sovereignty over the natural resources in the subsoil, granting mining concessions disproportionately since 2002 without any type of control, without considering the environmental rights of local communities and the impact on key ecosystems or the traditional order.

Also, through different ruses, the Government left important sectors of the local communities without a participation mechanism, and these sectors were subsequently involved in the gradual dismantling of the Popular Consultations.

**“Non-mining energy” products.** The growth of these sectors has generated and intensified socio-environmental conflicts in Colombia, among them those related with oil palm, avocado and illegal fishing.

**Climate Change and Energy Transition.** This is a great challenge that, without a doubt, requires the intervention of the Government to adopt measures in the short, medium and long term, especially, after

the deficiencies demonstrated in terms of mitigation and adaptation after the passage of Hurricane Iota through the island of San Andrés and Providencia in the year 2020.

**Territorial Rights of Indigenous Peoples.** There is evidence of a lack of protection for traditional knowledge and prior consultation. The ILO has exposed a series of difficulties in the implementation of the processes of prior consultation of ethnic peoples in Colombia by the State and companies, among them, it specified the lack of a Statutory Law on Prior Consultation, a weak state intervention, the lack of a systematized cartography of ethnic communities; mistrust between the parties; the lack of criteria to define compensatory measures, and the armed conflict.

On the other hand, there are no guarantees for the exercise of the defense of territorial rights: between 2016 and February 2020, more than 300 indigenous people have been assassinated, linked to the defense of territorial rights and collective ways of life; More than 85 massacres committed in 2020 and six massacres so far in 2021 generate terror throughout the rural world. This reality is not exclusive to indigenous communities. Also in 2020, five environmental leaders were assassinated in the country.

**Sustainable use of biological diversity.** The Colombian Government has focused on exploiting the economic potential embedded in its Biodiversity Conservation Plans, and abandoning its integral protection and conservation. To exemplify the above, the Colombian Government, in the analyzed five-year period, kept the budget for the operation of the environmental sector down, which hinders environmental conservation and biodiversity.

Also, to date, the program for the delimitation of moorland ecosystems has not been completed, and in many cases, it has been harshly criticized by civil society for excluding important areas of the ecosystem, hindering its conservation.

Undoubtedly, Colombia has an important number of policies, strategies, plans and programs for the conservation and sustainable use of the environment, however, in practice there are high rates of loss of natural resources, increase and intensification of socio-environmental conflicts, as well as increase in the violation of rights of people and communities that defend environmental causes, often in territories desired by sectors that participate in the goods exported from Colombia to the EU.



We can conclude that the promised results resulting from the implementation of the TA have not been fulfilled, including those related to environmental protection.