v. 06, nº 01 - jan/jun 2026
ISSN 2763-8685

LATIN AMERICAN JOURNAL OF EUROPEAN STUDIES

BRIDGE WATCH
JEAN MONNET POLICY DEBATE
LACES
Latin American Center
of European Studies
Co-funded by
the European Union

TABLE OF CONTENTS

https://dx.doi.org/10.51799/2763-8685v6n1005

FAIR TRADE OR HIDDEN BARRIERS?

Legal challenges from tfeu to ftas for inclusive economic cooperation within the precautionary principle[1]

Amon Elpidio da Silva[2]

Melina Coelho Garcia[3]

ABSTRACT: The Precautionary Principle (PP), codified in Article 191(2) of the Treaty on the Functioning of the European Union (TFEU), has evolved from an environmental guideline into a general principle of EU law. In recent years, the EU has incorporated the PP into the Trade and Sustainable Development (TSD) chapters of Free Trade Agreements (FTAs), reinforcing the parties' "right to regulate" in matters of environmental and health protection, even amidst scientific uncertainty, when a risk is identified. However, EU's comparatively low risk threshold may generate legal tensions with trade partners. This research examines the legitimacy of the EU's application of the PP in FTAs, focusing on the EU-Mercosur Association Agreement. It asks whether precautionary measures promote inclusive cooperation or operate as disguised non-tariff barriers that disadvantage emerging economies. To address this question, the study adopts an empirical-analytical methodology using a jurimetrics approach. Through Python-based data analysis, it evaluates Court of Justice of the European Union (CJEU) judgments between 2000 and 2023, drawn from the IUROPA CJEU Database, to quantify the internal judicial rigour applied to the PP. This statistical analysis contrasts the EU's relatively restrained domestic judicial practice with its broader external standard-setting in FTAs. The research also considers relevant decisions of the World Trade Organization's Dispute Settlement Bodies to assess the perception of unilateralism in the use of the PP. The findings show that inclusive economic cooperation depends on narrowing the gap between the CJEU's internal scrutiny and the EU's external enforcement of precautionary standards. For a genuinely fair trade framework, the PP must be implemented through judicial reciprocity and science-based transparency, ensuring simultaneous environmental protection and cooperative trade relations.

KEYWORDS: Empirical Legal Studies; EU-Mercosur Association Agreement; Non-tariff Barriers;

1. Amon Elpidio da Silva and Melina Coelho Garcia, "Fair trade or hidden barriers? Legal challenges from TFEU to FTAs for inclusive economic cooperation within the precautionary principle", *Latin American Journal of European Studies* 6, no. 1 (2026): p. 101 et seq.

2. Ph.D. Candidate in Law - Federal University of Minas Gerais (UFMG); L.L.M. in European and International Law at the Universität des Saarlandes, Germany, (2021). Specialist in European Economic Law, Universität des Saarlandes (2021). B.A. degree in Public Policy and Management (2019) - Federal University of Ceará (UFC). Researcher at the Jean Monnet Center of Excellence (Erasmus+ & UFMG). Doctoral scholarship awarded by the Research Support Foundation of the State of Minas Gerais (FAPEMIG). https://orcid.org/0000-0003-1713-2846.

3. L.L.M in the International Trade and Investment Law Programme at the University of Amsterdam, the Netherlands (UvA), funded by the University of Amsterdam Merit Scholarship. LL.B. from the Federal University of Ceará (UFC). Legal Associate at Bennink Dunin-Wasowicz, Amsterdam (NL). https://orcid.org/0000-0001-7069-6531.

COMÉRCIO JUSTO OU BARREIRAS OCULTAS? DESAFIOS JURÍDICOS DO TFUE AOS ACORDOS DE LIVRE COMÉRCIO PARA UMA COOPERAÇÃO ECONÔMICA INCLUSIVA NO ÂMBITO DO PRINCÍPIO DA PRECAUÇÃO

RESUMO: O Princípio da Precaução (PP), consagrado no Artigo 191(2) do Tratado sobre o Funcionamento da União Europeia (TFUE), evoluiu de uma diretriz ambiental para um princípio geral do direito da UE. Nos últimos anos, a UE incorporou o PP aos capítulos de Comércio e Desenvolvimento Sustentável (TSD) dos Acordos de Livre Comércio (ALCs), reforçando o "direito de regular" das partes em matéria de proteção ambiental e da saúde, mesmo em meio à incerteza científica, quando um risco é identificado. Contudo, o limiar de risco comparativamente mais baixo da UE pode gerar tensões jurídicas com parceiros comerciais. Esta pesquisa examina a legitimidade da aplicação do PP pela UE nos ALCs, com foco no Acordo de Associação UE-Mercosul. Investiga-se se as medidas precautórias promovem cooperação inclusiva ou se operam como barreiras não tarifárias disfarçadas que prejudicam economias emergentes. Para responder a essa questão, o estudo adota uma metodologia empírico-analítica com abordagem jurimétrica. Por meio de análise de dados baseada em Python, avaliam-se acórdãos do Tribunal de Justiça da União Europeia (TJUE), proferidos entre 2000 e 2023, extraídos da Base de Dados IUROPA CJEU, a fim de quantificar o rigor judicial interno aplicado ao PP. Essa análise estatística contrasta a prática judicial doméstica relativamente contida da UE com sua atuação externa mais ampla na definição de padrões em ALCs. A pesquisa também considera decisões pertinentes dos Órgãos de Solução de Controvérsias da Organização Mundial do Comércio para avaliar a percepção de unilateralismo no uso do PP. Os resultados demonstram que cooperação econômica inclusiva depende da redução da lacuna entre o controle interno do TJUE e a aplicação externa, pela UE, de padrões precautórios. Para haver um regime de comércio verdadeiramente justo, o PP deve ser implementado com reciprocidade judicial e transparência baseada em evidências científicas, assegurando, simultaneamente, proteção ambiental a relações comerciais cooperativas.

PALAVRAS-CHAVES: Estudos Jurídicos Empíricos ; Acordo de Associação UE-Mercosul; Barreiras Não Tarifárias;

TABLE OF CONTENTS:

INTRODUCTION

The contemporary landscape of international trade law is undergoing a profound transformation, shifting from a traditional focus on tariff liberalisation to the integration of non-trade values within the global economic architecture.

This evolution is particularly visible in the European Union's[4] commitment to "Green Diplomacy," where environmental protection is no longer a peripheral concern but a fundamental pillar of its constitutional identity and external normative power.[5] At the heart of this shift lies the concept of regulatory autonomy: the sovereign right of states to determine their own levels of protection and societal risk in the face of scientific uncertainty.

However, the strategic projection of the EU internal norms into the bilateral (or multilateral) sphere necessitates a rigorous examination of how such values are adjudicated and enforced, especially when they intersect with the commercial interests and developmental sovereignty of emerging economic blocs.

This legal intersection, where constitutional principles meet trade obligations, demands a clear understanding of the linguistic and institutional framework that governs the Union's external actions and the specific data-driven trends of its highest court.

Against this background, this paper aims to examine how the EU has driven the externalisation of its internal standards through the inclusion of the precautionary principle (PP) in free trade agreements (FTAs), especially when adopted with developing countries that do not hold a similar threshold to what is considered tolerable risk.

Ultimately, the research aims to assess to what extent the inclusion of the PP in FTAs could represent a disguised barrier to trade, especially to emerging economies, and how it could be conciliated with the purpose of expanding fair trade while ensuring regulatory sovereignty.

The investigation adopts an empirical-analytical methodology, grounded in a mixed-methods approach that combines the quantitative analysis of jurisprudential data with the qualitative exegesis of normative texts and judicial

4. For terminological consistency and conceptual precision, we note that the terms European Union, the Union and EU are employed interchangeably throughout this study to designate the supranational legal order and its institutional apparatus.

5. Jamile Mata Diz and Júlia Péret Tasende Tarsia. "Crafting Global Green Diplomacy: The Strategic Narrative of the European Union." In *EU External Relations Law and Sustainability: The EU, Third States and International Organizations* (The Hague: TMC Asser Press, 2025):347-370, 348.

decisions[6]. The methodological design was structured to investigate the hermeneutic consistency of the EU in projecting the PP into its FTAs, specifically within the Trade and Sustainable Development (TSD) chapter of the EU-Mercosur Association Agreement (EUMAA),[7] as contrasted with the adjudicatory praxis of the Court of Justice of the European Union (CJEU). To achieve this objective, the investigation utilizes jurimetrics as a supporting tool, enabling the extraction of decision-making patterns across a significant volume of cases and the verification of the ratio of acceptance versus rejection of legal arguments based on precaution.[8]

The primary source of data consulted is the IUROPA CJEU Database Platform, a high-resolution academic repository providing structured data on the activity of the CJEU.[9] The choice of this database is justified by its methodological integrity and the availability of detailed metadata, which allows for tracking not only the outcomes of cases but also legal citations and associated procedures.[10] Specifically, the *Judgments*, *Procedures*, and *Citations* tables were utilised, allowing for the individualised observation of each decision and its cross-referencing with the respective legal outcome.[11]

Data processing and analysis were conducted using the Python programming language, enabling the automation of data cleaning and the integration of large-scale relational tables.[12] The temporal scope of the research covers the period between 2000 and 2023, a selection based on the higher density of qualitative data and observer metadata available in the IUROPA database.[13]

---

6. European Commission. Consolidated version of the Treaty on the Functioning of the European Union (TFEU), Oct. 26, 2012, 2012 O.J. (C 326) 47.
7. European Commission. *EU-Mercosur: Text of the agreement - EU Trade.* https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/text-agreement_en.
8. IUROPA. *IUROPA CJEU Database Platform Codebook* (Ver. 2.0). (2023). https://iuropa.pol.gu.se/download-tool
9. IUROPA. *IUROPA CJEU Database Platform Codebook.*
10. IUROPA. *IUROPA CJEU Database Platform Codebook.*
11. IUROPA. *IUROPA CJEU Database Platform Codebook*.
12. The Pandas Development Team. (2024). *pandas-dev/pandas.*
13. IUROPA. *IUROPA CJEU Database Platform Codebook*.

The data collection along with filtering strategy involved a multi-layered search procedure with a scan of the *Judgments* table which was performed using subject keywords relating to environmental protection.[14] A deep search was conducted within the *Citations* table, identifying all judgments that formally cite Article 191(2) of the TFEU.

The classification of judgments regarding legal outcomes was based on the mapping of binary and categorical variables provided by the *Procedures* table. Decisions were segmented into three fundamental categories for the analysis: Accepted, for claims ruled successful on the merits (is_successful); Rejected, for cases of dismissal on the merits (is_unfounded); and Interpretative, for preliminary rulings where the Court performs a function of interpreting the norm without determining a direct winner, a variable identified by the absence of a final disposition on the merits (has_no_disposition).[15]

This methodological framework allows the paper to establish a critical counterpoint between the rhetoric of precautionary defence projected by the EU in its FTAs and the effective judicial application of this principle within the common market.

1 LEGAL STATUS AND JUDICIAL CONSTRUCTION OF THE PRECAUTIONARY PRINCIPLE IN EU LAW

While there is ongoing debate in international fora and among academics on the status of the precautionary principle,[16] and whether it is considered a legal principle or, rather, an "approach",[17] the PP is explicitly present in Article 191 of the TFEU, which establishes the primary objectives of the Union's environmental policy. Paragraph 2 states that it "shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall

14. IUROPA. *IUROPA CJEU Database Platform Codebook*.
15. IUROPA. *IUROPA CJEU Database Platform Codebook*.
16. Sabrina Shaw and Risa Schwartz. "Trading Precaution: The Precautionary Principle and the WTO." *UNU-IAS Report* (UNU-IAS, 2005).
17. Jacqueline Peel. "Precaution: A Matter of Principle, Approach or Process?." *Melbourne Journal of International Law*, no. 5 (2004):483–501.

be based on the *precautionary principle* and on the principles that *preventive action* should be taken (...)"(emphasis added).[18]

The PP, through its explicit mention in the TFEU, became one of the core guides of environmental policy-making in the EU. Its presence, therefore, translates a historical and long-standing position of the European society of antipathy to risk.[19]

The practical meaning of the principle and what it entails in the decision-making process, however, is not contained in the text of the TFEU, and was just later clarified by the CJEU, which recognised its status of general principle of EU law.[20]

1.1 From Environmental Policy to General Principle of EU Law: the CJEU interpretation of the Precautionary Principle

The development of the PP as a general principle of EU law has been reflected in the position assumed by the CJEU over the years, having the Court applied the principle either directly, by referring to its presence in the European Communities (EC) Treaty[21] and later in the TFEU, or indirectly, by making use of it as an interpretive tool.[22]

As found in the *UK v Commission* case (1998), in which the United Kingdom challenged a decision by the Commission to ban the export of beef and beef products following the wake of the mad cow disease in the United Kingdom, the legitimacy of the ban found support in the level of uncertainty towards the possible risks to human health. Consequently, the authorities were allowed to take protective measures without waiting for conclusive evidence on the actual consequences and the seriousness of harm to health.[23]

18. TFEU, Article 191(2).
19. Elizabeth Fisher. "Precaution, Precaution Everywhere: Developing a 'Common Understanding' of the Precautionary Principle in the European Community." *Maastricht Journal of European and Comparative Law,* no. 9 (2002): 7-28.
20. Paul Craig. "EU Administrative Law" (OUP, 2012), 641.
21. Treaty Establishing the European Economic Community, March 25, 1957, 298 U.N.T.S. 11.
22. *Association Greenpeace France and Others v Ministère de l'Agriculture et de la Pêche*, Case C-6/99, [2000] ECR I-1651.
23. *United Kingdom v Commission of the European Communities*, Case C-180/96, [1998] ECR I-2265.

In this case, the adoption of precautionary measures was described as a *right* granted to the Commission. That is, while it was not *required* to adopt such an approach, it was *allowed to*.

In the dispute, the CJEU did not mention the PP directly, but rather indicated that the decision found support in Article 174(2) of the EC Treaty, which incorporated the PP in the environmental policy decision-making process.[24] In other words, even though this approach was originally designed to be applied in the environmental sphere, it could be expanded to reach other areas of policy-making. Precaution, therefore, was not limited to environmental protection, but reached all areas in which a level of scientific uncertainty justifies the adoption of preventive measures.

It was only in the *Artegodan* case (2002) that the CJEU explicitly mentioned the PP as a "general principle of Community law".[25] However, differently from how the idea was framed in the *UK v Commission* case, the Court found that the principle *required* the authorities to take appropriate measures to prevent potential risks to health, safety, and the environment. That is, the principle imposed an *obligation*.

A third approach to the principle was adopted in the *Pfizer* case (2002). In this dispute, the Council had banned the use of Pfizer's antibiotic as a growth promoter in animal feed, and Pfizer argued that the measure was not supported by an appropriate risk assessment and misapplied the PP. The CJEU ultimately held that the exercise of precaution was a *discretionary* exercise to be performed by policy-making authorities.[26] The decision-making process is therefore guided by factors that go beyond science and reach the democratic legitimacy of the authorities. In other words, regulating risk is not merely an exercise based on scientific risk assessment, but rather the management of non-scientific factors; a political decision.[27]

24. *UK v Commission*, Case C-180/96, para. 100.
25. *Artegodan GmbH and Others v Commission*, Case T-74/00, [2002] ECR II-4945, para. 184.
26. *Pfizer Animal Health SA v Council of the European Union*, Case T-13/99, [2002] ECR II-3305.
27. Alberto Alemanno. "Regulating the European Risk Society". In *Better Business Regulation in a Risk Society*, ed. A. Alemanno, F. den Butter, A. Nijsen, J. Torriti (Springer 2013).

Adopting a precautionary approach in policy-making, however, does not grant the Commission or Member States unlimited powers. The existence of a “threshold to regulate” aims at ensuring the free movement of goods in the internal market and a level playing field among all Member States.

In the *Greenham and Abel* case, the CJEU found that while Member States could adopt a precautionary approach towards the marketing of foodstuffs where nutrients had been added, any restrictive measure should be applied in alignment with the PP.[28] National measures, in this sense, had to be adopted only to the extent they were necessary to achieve their objective.

In addition, as found in the *Pfizer* case, a zero-risk approach is not allowed: a measure can only be adopted if based on the existence of an actual potential risk to health in accordance with scientific evidence. Merely hypothetical risks, therefore, do not justify the adoption of restrictive measures.[29]

Furthermore, preventive measures should be based on a two-steps risk assessment. The first step is one undertaken by scientists and experts, who, based on evidence, could ascertain the existence of a risk. In this exercise, the assessment should be based on the principles of excellence, independence, and transparency.[30]

The second step is the one performed by political authorities. This assessment will consider societal, cultural, and democratic aspects. That is, the assessment will evaluate what is the level of risk that the society is willing to tolerate.[31] Based on this political decision, the restrictive measures can be adopted on a preventive approach.

28. *Criminal proceedings against John Greenham and Léonard Abel*, Case C-95/01, [2004], ECR 2004 I-1333.
29. *Greenham and Abel*, Case C-95/01 (2004); *Pfizer Animal Health v Council*, Case T-13/99 (2002), para. 147-148.
30. *Pfizer Animal Health v Council*, Case T-13/99 (2002), para. 162.
31. *Pfizer Animal Health v Council*, Case T-13/99 (2002), para. 162.

1.2 The Commission Communication

Alongside the CJEU, the Commission contributed to clarifying the meaning and application of the PP within the EU, which resulted in a Communication published in 2000.[32]

The Communication outlined the PP as part of a structured approach for the analysis of risk, which is composed of three elements: risk assessment, performed by experts, risk management, based on the political decision of the authorities, and risk communication. Recourse to the principle, however, is mainly present in the risk management phase, being a guide to the political decision that will establish what level of risk a society is willing to tolerate.[33]

The Commission further clarified how the legitimacy of a measure based on the PP should be established: (i) it should follow the proportionality principle (ii) be non-discriminatory, (iii) be consistent with similar measures, (iv) be based on a costs-benefits evaluation, (v) be subject to review, (vi) be capable of assigning responsibility for producing scientific evidence.[34]

In summary, resorting to the PP is mainly an exercise to be performed by decision-makers when the scientific community has established the existence of a certain level of risk to the environment, human or animal health, but could not ascertain the extent of the risk. Facing this uncertainty, decision-makers may take preventive measures to avoid irreversible consequences, although guided by the principles of proportionality, non-discrimination, and transparency.

The Communication operated as an EU defence statement towards its external policy. As mentioned in its text, "far from being a way of evading obligations arising from the WTO Agreements, the envisaged use of the precautionary principle complies with these obligations."[35] Recourse to this line of argument showed not only the EU's commitment to its obligations in the international trade law arena, but ultimately its acknowledgment that certain of its measures based

32. Paul Craig, "EU Administrative Law", 658.
33. "Communication from the Commission on the precautionary principle", COM (2000) 1 f, 2.
34. "Communication" (2000), 2-3.
35. "Communication" (2000), 8.

on the PP would likely be challenged in light of the WTO Agreements, as it will be demonstrated in the following chapter.

2 THE WTO SCREEN: LEGITIMATE PROTECTION OR DISGUISED PROTECTIONISM?

When the precautionary principle is invoked to justify potentially protectionist trade measures, a delicate question emerges: how far can states exercise their own political judgment about risk without violating international trade obligations?

This dilemma has already been debated in certain disputes dealt by the WTO Dispute Settlement Body (DSB), which had to strike a balance between recognising states' rights to make their own sovereign regulatory choices, while simultaneously ensuring that such regulatory freedom is not used in disguise of trade barriers.

This section intends to discuss how the PP makes its presence in international trade law, particularly in the WTO Agreements. In addition, we analyse how the DSB has interpreted the principle, particularly in disputes in which the EU has invoked the principle to justify regulatory decisions.

2.1 Precautionary language in the WTO Agreements

The precautionary principle, although not explicitly mentioned in any of the WTO agreements, finds language in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and in the Agreement on Technical Barriers to Trade (TBT Agreement).

Specifically in the SPS Agreement, precaution is indirectly mentioned as the agreement allows contracting parties to adopt sanitary and phytosanitary measures to achieve the level of health and phytosanitary protection that they deem appropriate,[36] thereby leaving a margin for regulatory power. Neverthe-

36. World Trade Organization. *Agreement on the Application of Sanitary and Phytosanitary Measures*, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493 (SPS Agreement), Annex A (5).

less, such measures must be "applied only to the extent necessary", "based on scientific principles" and "not maintained without sufficient scientific evidence".[37] In addition, they shall not discriminate between members nor be applied in a manner that constitutes a disguised barrier to trade.[38] In summary, precaution is allowed, for as far as it does not represent a protectionist trade measure.

Precautionary measures are also subject to a temporal limit, and should therefore only be adopted under a provisional basis, where scientific information is insufficient, and on the basis of pertinent information available. While conclusive scientific evidence is not required, a minimum of scientific study must exist.[39] The regulating party should in addition seek further information regarding the potential threat and review the measure within a reasonable time.[40] By stating such requirements, Article 5.7 of the SPS provides the obligation of countries to conduct a risk assessment exercise when adopting preventive and restrictive measures.

The PP is also reflected in the TBT Agreement. At first, the TBT's preamble recognises that countries are allowed to adopt measures "for the prevention of deceptive practices, at the levels it considers appropriate", although such measures could not be applied in a manner which would constitute arbitrary or unjustifiable discrimination or as a disguised restriction on trade.[41]

Similar language is reproduced in Article 2.2., which states that technical regulations, where adopted, shall not be "more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create".[42] Amongst these objectives, which are listed in an exhaustive manner in

37. SPS Agreement, Article 2.2.
38. SPS Agreement, Article 2.3.
39. Shaw, Schwartz. "Trading Precaution."
40. SPS Agreement, Article 5.7
41. World Trade Organization. *Agreement on Technical Barriers to Trade,* April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 120 (TBT Agreement), preamble.
42. TBT Agreement, Article 2.2.

the article, the "prevention of deceptive practices" and the "protection of human health or safety, animal or plant life or health, or the environment" are included.[43]

The Article additionally adopts an objective language for what "risk" could mean: it is not a product of subjective societal analysis, but the outcome of an objective, neutral, risk assessment, considering elements such as "available scientific and technical information, related processing technology or intended end-uses of products".[44]

The DSB, since 1995, has had the chance to discuss to what extent the PP can be used as a justification for potentially trade-restrictive measures. While these previous decisions do not strictly bind future DSB compositions,[45] they provide for a clearer understanding of the limits of the application of the principle, and in which situations resorting to it does not justify the implementation of trade-restrictive measures.

Two examples of disputes in which the PP played an important aspect are outlined below and show a case on how the DSB has interpreted the EU's use of the PP as an argument for its measures.

2.2 EC – Hormones (1997)

The *EC - Hormones* dispute was originally initiated by complaints filed by the United States (US) and Canada, in 1996. The complainants argued that the EC, by adopting a ban on imports of meat and meat products derived from cattle to which certain hormones had been administered for growth purposes, in fact imposed a restriction on trade which (i) was not based on an adequate risk assessment, (ii) was maintained without sufficient scientific evidence, (iii) was not justified as a provisional measure, (iv) did not follow scientific principles, and (v) was more trade-restrictive than necessary to achieve its stated level of

43. TBT Agreement, Article 2.2.

44. TBT Agreement, Article 2.2.

45. Michiru Ishihara. "Policy Brief: Should the WTO recognize legal precedent? The Walker Principles and Beyond." *IIEL Blog*, 2 February 2023. https://www.law.georgetown.edu/iiel/research/publication-opportunities/iiel-blog/should-the-wto-recognize-legal-precedent/.

sanitary protection. All these elements represented, therefore, a breach of the provisions set forth in the SPS Agreement.[46]

The EC based its defence, among other arguments, on the application of the PP, and supported that its measures were based on a risk assessment. When assessing this argument, however, the Panels differed from the EC when interpreting its application in conjunction with the rules of the SPS Agreement.

As clarified by the Panel, even if the PP is to be considered as part of customary international law and therefore be used as a source of interpretation of the provisions of the SPS Agreement,[47] it would still not override the explicit wording of the Agreement. For the purposes of this dispute, this meant that the EC, when designing its measures, did not follow the minimal procedural requirements present in Article 5.1. to base its import ban on a risk assessment.[48]

The EC appealed from the decision of the Panel and, when commenting on the debate of whether the PP could already be considered part of customary international law, the AB was of the opinion that it was not within its mandate to make such a definitive finding regarding the status of the principle.[49]

The AB found it important, however, to clarify that while this principle was not present in the SPS Agreement as an exemption for the provisions contained therein, it was indeed reflected in Articles 3.3 and 5.7, and allowed the recognition that Members have the right to establish their own level of sanitary protection, which could be higher than the ones present in international standards.[50] The principle, however, did not remove from Members the duty to comply with the provisions in Articles 5.1 and 5.2. and therefore base all sanitary measures on

46. Panel Report, *European Communities - Measures Concerning Meat and Meat Products (Hormones)*, complaint by the United States, *WT/DS26/R/USA*, World Trade Organization, adopted 13 February 1998 (*EC - Hormones (United States)*, Panel Report), para. III.2.
47. World Trade Organization. *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, Apr. 15, 1994, 1869 U.N.T.S. 401.
48. *EC - Hormones (United States)*, Panel Report, para. 8.158.
49. Appellate Body Report. European Communities — Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R, WT/DS48/AB/R. World Trade Organization. Adopted February 13, 1998. *(EC - Hormones (United States),* Appellate Body Report), para. 123.
50. *EC - Hormones*, Appellate Body Report, para. 124.

scientific principles, evidence, and risk assessment. Precaution, in that sense, could not be a replacement for evidence-based science.

2.3 EC – Biotech (2006)

Observing the growth in the use of genetically modified organisms (GMOs) in the market at the end of the previous century, the EC adopted a sequence of legal instruments establishing the administrative procedure to be followed by companies to place a biotech product in the EU market.[51]

When adopting these provisions, the EC was explicitly guided by the PP,[52] and argued that the existence of a "potential threat" justified the assessment of the risks on a precautionary basis. As further submitted by the EC, the PP would have already assumed a status of "general principle of international law", seeing its reflection in many MEAs, as well as in many other countries local approval systems regarding GMOs.[53]

This argument was heavily refuted by the US, which noted that the principle could not be considered a general principle or norm of international law as it was not provided with a single, consistent formulation.[54]

As recognised by the AB, the mere fact that the status of the PP was still brought to debate, reproducing the same discussion previously held in *EC - Hormones*, demonstrated that this principle had not found its position as a general principle of customary international law.[55]

In this respect, the Panel declined to undertake a more thorough examination of the status of the principle or to rely on it as an interpretative source for the provisions of the SPS Agreement. By doing so, the Panel missed an opportunity to clarify the extent to which this principle could or could not inform the rela-

51. Panel Reports, *European Communities - Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291/R, WT/DS292/R, WT/DS293/R, World Trade Organization, adopted 29 September 2006, (*EC – Biotech*), paras. 7.104-5.

52. Caroline Henckels. "GMOs in the WTO: a critique of the Panel's legal reasoning in *EC - Biotech.*" *Melbourne Journal of International Law*, no. 7 (2006):278-305.

53. *EC - Biotech,* paras. 7.78-7.79.

54. *EC - Biotech,* paras. 7.81-7.82.

55. *EC - Biotech*, para. 7.88

tionship between international trade law and Members' regulatory autonomy in other fields of law.[56]

2.4 A Summary of the WTO Position

As can be noted from the discussion in the disputes outline above, although the PP is not explicitly present in the WTO Agreements, it does find language in the provisions of the SPS and the TBT, and, in this sense, the DSB acknowledged that WTO Members are not expected to have the same level of health or environmental protection. Therefore, the restrictiveness of certain measures and approaches will likely vary from one society to the other, and this variation does not automatically entail a violation of WTO rules.

Nonetheless, as demonstrated in the discussion present in the *EC - Hormones* dispute, the PP should not override the explicit language of WTO provisions. This means that states, even when adopting a precautionary approach towards certain issues, must base their decision-making procedures in scientific principles and the final decision to regulate must aim at the least trade-restrictive option.

By providing this explanation, the DSB clarified that WTO Members are able to conciliate the application of the PP in their domestic legislation with their commitments towards an inclusive, open, and fair trade policy that is compliant with international trade rules.

In the next section, we discuss whether such an approach could find a place in the implementation of this principle when it is present in FTAs involving considerably distinct economies and societies, each with its own specific level of tolerance towards risk and capability to implement precautionary measures.

56. Henckels. "GMOs in the WTO".

3 THE PRECAUTIONARY PRINCIPLE IN FTAS: AN ANALYSIS OF REGULATORY CONVERGENCE AND GEOPOLITICAL TENSIONS WITHIN THE EUMAA

The EU has sought to internationally expand its economic relevance by resorting to the adoption of several FTAs, many of which are signed with developing countries.[57] These agreements have also been a vehicle to expand the Union's exercise of its normative power by exporting some of its "values" and "standards" via incorporation in the text of FTAs.[58] As a consequence, FTAs negotiated by the EU have become progressively extensive, incorporating themes and areas that go beyond the reduction or abolishment of tariff and non-tariff barriers to trade.

The Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU, which provisionally entered into force in 2017, is considered the first of the EU's "third-generation agreements": FTAs that incorporate clauses going beyond the liberalisation of trade, including gender-related provisions, labour rights, and competition policy.[59]

One of the most remarkable aspects of "third" or "new" generation FTAs is their environmental-related provisions, which usually fall under a specific chapter named Trade and Sustainable Development.

Despite the apparent willingness of the contracting parties to enforce the provisions contained in the TSD Chapters, they are usually not tied to a dispute settlement provision. Consequently, none of the parties, nor interested third parties, have access to an effective procedure based on retaliation in case of breach of the TSD provisions,[60] Critiques, therefore, identify a potential low level

57. Bettina Rudloff. "The EU between unilateral sustainability approaches and bilateral trade agreements: Paths to better partnerships". *Working Paper № 35*, March 2025.

58. Ian Manners. "The EU's Normative Power in Changing World Politics." In *Normative Power in a Changing World: A Discussion*, ed. André Gerrits (Clingendael Institute, 2009); Anu Bradford. "Exporting Standards: The Externalization of the EU's Regulatory Power via Markets." *International Review of Law & Economics* 42, no. 5 (2015):158–173.

59. Patrick Leblond and Crina Viju-Miljusevic."CETA as the EU's First Third-Generation Trade Agreement: Does It Act Like One?" *Perspectivas – Journal of Political Science* 27 (2022):106–20.

60. Jamile Mata Diz. "The Mercosur and European Union relationship: an analysis on the incorporation of the Association Agreement in Mercosur." *Europe and the World: A law review* 1, no. 6 (2022):1-19.

of enforceability of the instruments contained in the TSD chapters, which have their status of "hard law" questioned.[61]

The most recent FTAs signed by the EU additionally contain an explicit reference to the PP, specifically in the TSD Chapter. In this section, we aim to assess how the principle is made present in recent FTAs adopted by the EU with developing economies, with particular attention to the EUMAA, and how its language may (continue to) impact the negotiation of the Agreement and its potential future execution.

3.1 From Multilateral Standards to EU Normative Power

The FTA between the EU and Mercosur is an example of a legal instrument that can be considered one of the most complex in the history of contemporary international trade.[62] At the epicentre of the discussions that shaped this treaty is the PP, which emerges as an environmental guideline that triggers a shift in global governance.

That is, the right to regulate to protect health and the ecosystem confronts the demands of predictability and legal certainty in commodity trade.[63] Thus, the case study on this agreement is justified due to the recent formalisation event held in January 2026, focusing on the manifestation of the PP in the TSD Chapter. Furthermore, an attempt is made to contrast the normative expectations of the EU with the structural resistance and concerns about "green protectionism" expressed by the Member States of both blocs.

The architecture of the EUMAA seeks to integrate non-trade objectives, such as climate protection and biodiversity, into a trade liberalisation frame-

61. For a detailed analysis on this subject, *see* Alessandra Lehmen and Geraldo Vidigal. "Trade and Environment in EU-Mercosur Relations: Negotiating in the Shadow of Unilateralism." *European Foreign Affairs Review* 30 (2025):87–114.
62. European Commission. *EU-Mercosur.*
63. European Commission. *Factsheet: EU-Mercosur partnership agreement - Trade and sustainable development.* https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/factsheet-eu-mercosur-partnership-agreement-trade-and-sustainable-development_en.

work covering 780 million consumers.[64] The inclusion of the PP is the result of a normative evolution in EU trade policy. The European bloc now requires its trading partners to go beyond the minimum requirement of compliance with WTO rules to integrate "new generation" sustainability standards, which would be a reference to the PP itself.[65]

This reference to the principle provides yet another example of the EU's quest to "internationalise" its standards through multilateral agreements and to confer international legitimacy on the PP. Once enshrined in international treaties, this standard is no longer seen as an arbitrary trade barrier, thereby validating the EU's regulatory position.[66]

64. Erika Bethman and Fernando Gracia. "The Impact of Non-tariff Measures within the EU-Mercosur Agreement on Member Countries and the United States". *Economics Working Paper Series.* (U.S. International Trade Commission, 2022), 3.

65. Carmen Martínez San Millán. "Finally, Mercosur!… Or not? The stumbling block with the chapter on trade and sustainable development."*EJIL: Talk!*, 6 February 2026. https://www.ejiltalk.org/finally-mercosur-or-not-the-stumbling-block-with-the-chapter-on-trade-and-sustainable-development/.

66. Daniel R. Keleman. "Globalizing European Union environmental policy." *Journal of European Public Policy* 17, no. 3 (2010):335-349, 342.

Table 1 - Comparative Lexical Frequency of Selected Legal Terms in TSD Chapters and Their Implications for the Mercosur Context

Selected Legal Term	Frequency in Selected Agreements (Only Trade and Sustainable Development Chapters - TSD)				Implications in the Mercosur Context
	EU-Mercosur (EUMAA)[67]	CETA[68]	EU-India[69]	EU-Vietnam (EVFTA)[70]	
Precautionary Principle	1	0	1	0	Anchor for the EU's environmental "Right to Regulate".[71]
Scientific Evidence	1	0	0	0	Validation criteria to avoid arbitrary measures.
Sustainable Development	33	57	16	0	The central axis that permeates the obligations of the TSD chapter.
Non-tariff Barriers	0	2	3	0	Omitted in the TSD, but addressed in chapters of the SPS/TBT.

The EUMAA and the negotiations with India are part of a more recent phase of European foreign policy, which, to ensure environmental protection, clearly ends up "exporting" the PP. This movement seeks to guarantee that its trading partners follow environmental and health standards equivalent to its own.[72] It is here that the new approach is assumed to seek greater legal certainty. But it is still questionable whether this is part of a new round of updated standards or an attempt to circumvent partners considered less reliable in regulatory matters.

67. European Commission. *EU-Mercosur.*
68. European Union. *Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part*, OJ L 11, 14.1.2017 (2017).
69. European Commission. *EU-India agreements: Trade and Sustainable Development.* Documents. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreements/documents_en.
70. European Union. *Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam,* L 186/3, 12.6.2020 (2020).
71. By "right to regulate" we state that the EU exercises a strong and comprehensive right to regulate the environment to its protection (primarily based on Article 191 of the Treaty on the Functioning of the EU). It is exemplified by initiatives like the REPowerEU and the European Climate Law targeting climate neutrality by 2050 (according to the European Green Deal). For more, *see* European Commission. *The European Green Deal: Striving to be the first climate-neutral continent.* https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.
72. Edith Brown Weiss. "Environment and Trade as Partners in Sustainable Development: A Commentary." *American Journal of International Law* 86, no. 4 (1992):728-735, 733.

It is therefore inevitable to analyse the political scenario. In the case of EU-MAA, there is significant media attention due to concerns from European agri-business.[73] In fact, there is cause for concern about the use of pesticides and deforestation (especially in the Amazon)[74], which provokes extreme sensitivity in Europe. Along with this, the explicit inclusion of the principle can serve as a legal safeguard for the EU to block imports based on "scientific uncertainty" without this being immediately labelled as illegal protectionism by the WTO.

The comparative lexical frequency across the EUMAA, CETA, EU-India, and EVFTA (Table 1) reveals a strategic evolution in EU trade diplomacy. While earlier agreements such as with Vietnam and Canada show lower terminology density, recent negotiations, specifically Mercosur and India, exhibit a marked increase in the explicit mentions of 'Sustainable Development' and the 'Precautionary Principle'.

This discrepancy suggests a selective 'regulatory export' model: the Union anchors the PP more aggressively when facing partners with perceived regulatory gaps or sensitive agricultural sectors, such as the Amazonian deforestation concerns in Mercosur, potentially using scientific uncertainty as a legal safeguard for trade-restrictive measures.

Consequently, the explicit inclusion of the PP in the EUMAA functions less as a rhetorical tool and more as a formal mechanism to validate the Union's internal risk thresholds in the international arena. In other words, by explicitly including it in the EUMAA, the EU attempts to give legal legitimacy to decisions that affect large agricultural exporters, while in agreements with Global North countries such as Canada, based on apparent regulatory confidence, the same has not been similarly applied.

73. Laurence Girard. "EU-Mercosur Deal Divides France's Agricultural Sectors." *Le Monde*, December 19, 2025. https://www.lemonde.fr/en/economy/article/2025/12/19/eu-mercosur-deal-divides-france-s-agricultural-sectors_6748675_19.html.

74. Sandra Damiani et al. "Water and Sediment Pesticide Contamination on Indigenous Lands Surrounded by Oil Palm Plantations in the Brazilian Amazon." *Heliyon* 9, no 10 (2023): e20845, 3.

3.2 The Manifestation of the Precautionary Principle in the TSD Chapter

Unlike purely technical chapters, the TSD seeks to establish an inseparable link between economic growth and ecological integrity, thereby becoming a primary repository for the agreement's environmental and labour obligations.[75] In this vein, the PP is inserted into this context as a mechanism that allows parties to adopt defensive measures even when scientific evidence on a specific risk is inconclusive or insufficient.

At first glance, by conducting a semantic evaluation, the definition of PP in the agreement demonstrates a certain degree of refinement. That is, the text establishes that, in situations where scientific knowledge is insufficient or there is scientific uncertainty and a risk of "serious environmental degradation" or hazards to occupational health and safety has been identified, a Party may adopt measures based on precaution.

In this sense, we see the use of a "potential risk analysis" instead of what is commonly required (an "absolute proof") as a change in the burden of proof in cross-border trade.[76] Furthermore, there is a terminological precision that is evidenced by the requirement that such measures be based on "relevant available information" and subject to "periodic review."

It is clear that the linguistic detail adopted is intended to mitigate the arbitrary use of the principle. Therefore, the party invoking the PP is required to actively seek new scientific data to validate or revoke the measure in the future.[77] Compared to CETA, the EUMAA shows a more explicit concern with the scientific justification of precaution, possibly in response to fears of unjustified barriers to South American agricultural exports.

Within the framework of the EUMAA, the inclusion of the PP in the TSD chapter represents a strategic effort by the EU to externalise its environmental and

75. European Commission. *Factsheet.*

76. FERN. *The EU-Mercosur Trade Agreement: what is it, and what could it mean for forests and human rights?* (FERN 2020), 2.

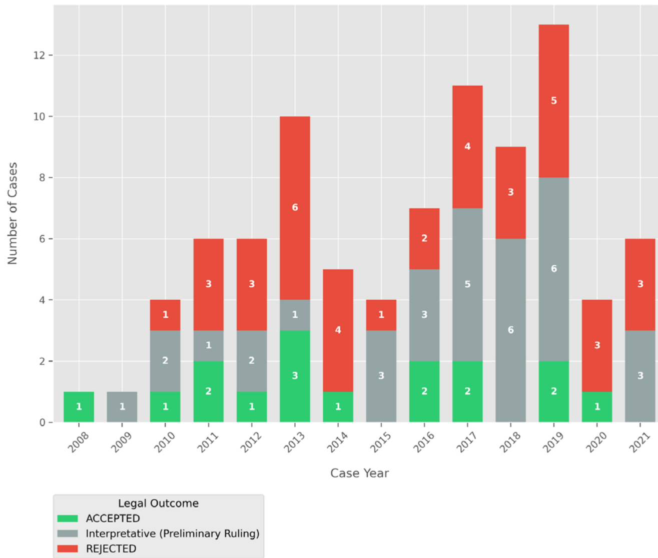
77. Marcus Maurer de Salles and Marina Amaral Egydio de Carvalho. *O Mercosul ante os mega-acordos regionais: o tema de desenvolvimento sustentável e meio ambiente* (Ipea, 2024), 41.

health standards. By enshrining the right to regulate under conditions of scientific uncertainty, the EU aims to ensure that trade liberalisation does not undermine the transition toward inclusive, sustainable economies. This "external narrative" presents precaution as a safeguard for high environmental standards; however, it also functions as a powerful tool for regulatory export, often perceived as a potential form of "green protectionism" that could mask trade barriers.

Specifically, the TSD chapters grant parties the explicit right to adopt protective measures, yet they introduce constraints to prevent arbitrary discrimination or disguised restrictions on international trade. This inclusion is a cornerstone of the EU's "Green Deal" diplomacy, establishing a benchmark for what constitutes "fair trade" in an era of climate crisis. Yet, the effectiveness of these provisions remains debated, as they often operate within enforcement mechanisms that lack the same binding judicial rigour found in other chapters of FTAs, raising questions about the principle's actual role in fostering inclusive economic cooperation.

A quantitative analysis of the CJEU case law offers a critical counterpoint to this external rhetoric. Based on data from the IUROPA CJEU Database, an examination of 87 relevant judgments since 2000 reveals that the internal application of the PP is far from absolute. While variables such as *is_successful* indicate instances where the Court upheld protective measures, a substantial number of cases are categorized as "Interpretative" preliminary rulings or even "Rejected" *(is_unfounded)*. This variance suggests that the Union's own judiciary maintains a cautious approach, scrutinising the proportionality and scientific plausibility of precautionary measures before granting them legal validity.

GRAPHIC 1 - Evolution of the Application of the Precautionary Principle in the CJEU (2000-2023)[78]



This discrepancy between expansive political rhetoric and restrictive judicial enforcement highlights a significant "precautionary gap." Domestically, the CJEU often requires a rigorous evidentiary threshold, demanding "solid and convincing evidence" even under uncertainty, to prevent the principle from being misused as an arbitrary tool. Consequently, for inclusive economies to be built on "fair trade" the same degree of judicial consistency and transparency must be applied to the trade-restrictive measures the EU imposes on its partners. Without a shared understanding of this evidentiary burden, the PP risks becoming a unilateral instrument rather than a mutually agreed-upon safeguard.

The challenge of reconciliation is particularly acute in the context of the energy transition and sustainable investments. The data shows that a significant portion of the CJEU's output consists of preliminary rulings, where the Court defines the legal scope of Article 191(2) TFEU without necessarily deciding the outcome of the dispute. This "interpretative power" allows the CJEU to shape

78. Source: Elaborated by the authors based on data extracted from the IUROPA CJEU Database. Note on the temporal scope: while the algorithmic search query spanned the full 2000–2023 period, no judgments meeting the specific environmental and article citations criteria were rendered by the Court between 2000–2007 or 2022–2023. Consequently, the visual representation only displays the years when data points were present (2008–2021).

the global understanding of how energy communities and green investments should be regulated. For a cooperation to be truly inclusive, the legal interpretation of precaution must facilitate a "just transition" that balances environmental protection with the economic development needs of emerging partners like those in Mercosur.

Ultimately, the primary legal challenge for inclusive economic cooperation within EU FTAs lies in bridging the gap between internal judicial restraint and external standard-setting. A truly inclusive economy requires that the PP be applied with "judicial reciprocity," ensuring that the standards used to evaluate the legitimacy of environmental measures are consistent across borders. The path toward "Fair and Free Trade" depends on the development of shared, transparent, and science-based criteria for risk management, in alignment with the WTO's understanding of the PP in trade relations.

Only by aligning the political promise of the EUMAA TSD Chapter with the rigorous judicial standards observed in the CJEU can the precautionary principle serve as a legitimate foundation for a sustainable and globally inclusive economic partnership, one in which the Global North does not impose standards on the South but rather build them conjointly.

FINAL CONSIDERATIONS

This paper aimed to examine the inclusion of the precautionary principle as a key element of the TSD chapters of the EU's new generation FTAs, especially when adopted with emerging economies with considerably different levels for what is understood as a "tolerable" risk. With a special focus on the EUMAA, the paper sought to analyse to what extent the inclusion of the PP in the TSD chapters promotes inclusive economic cooperation or risks functioning as a disguised non-tariff barrier to trade.

The analysis of WTO disputes that involved the recourse to the PP as an argument applied by the EU to its regulatory choices demonstrated that, while the PP finds wording in the SPS and the TBT Agreements, it does not override the legal text. Therefore, where regulatory freedom is justified by the presence of risk, it must still be supported by scientific principles and not be used to support disguised restrictions to trade.

A similar understanding is also supported by the examination of the CJEU's jurisprudence on the PP: precaution does not authorise arbitrary decision-making. Rather, it requires a structured risk assessment, respect for proportionality, and reliance on scientifically plausible evidence. The jurimetric analysis of 87 judgments between 2000 and 2023 reinforces this conclusion: precautionary arguments are neither automatically upheld nor systematically rejected. Instead, the Court applies a consistent evidentiary threshold, ensuring that regulatory autonomy coexists with internal market freedoms.

The central finding of this research is the existence of a potential "precautionary gap" between internal judicial restraint and external political projection on the application of the PP, especially in the EUMAA. Bridging this gap is crucial to ensuring fair and inclusive trade relations, particularly with developing countries that, on the one hand, continue to bear the structural consequences of colonial trade patterns as exporters of low value-added goods, and, on the other, often lack the institutional and scientific capacity to conduct risk assessments at a level comparable to that of the EU.

On that note, judicial reciprocity, transparency in risk assessment, and cooperation in scientific production are indispensable to ensuring that precaution operates as a shared governance tool rather than a unilateral instrument of regulatory dominance. Therefore, the inclusion of the PP in FTAs should not automatically be construed as an instrument of post-colonial regulatory dominance but instead may serve as a catalyst for upward regulatory convergence, ensuring that free trade advances alongside sustainable development.

REFERENCES

Alemanno, Alberto. "Regulating the European Risk Society". In *Better Business Regulation in a Risk Society*, edited by A. Alemanno, F. den Butter, A. Nijsen, J. Torriti (Springer 2013).

Artegodan GmbH and Others v Commission, Case T-74/00, [2002] ECR II-4945.

Association Greenpeace France and Others v Ministère de l'Agriculture et de la Pêche, Case C-6/99, [2000] ECR I-1651.

Bethman, Erika, and Gracia, Fernando. "The Impact of Non-tariff Measures within the EU-Mercosur Agreement on Member Countries and the United States." *Economics Working Paper Series.* (U.S. International Trade Commission, 2022).

Bradford, Anu. "Exporting Standards: The Externalization of the EU's Regulatory Power via Markets." *International Review of Law & Economics* 42, no. 5 (2015):158-173.

Brown Weiss, Edith. "Environment and Trade as Partners in Sustainable Development: A Commentary." *American Journal of International Law* 86, no. 4 (1992):728-735.

"Communication from the Commission on the precautionary principle", COM (2000) 1 f.

Craig, Paul. *EU Administrative Law* (OUP, 2012).

Criminal proceedings against John Greenham and Léonard Abel, Case C-95/01, [2004], ECR 2004 I-1333.

Damiani, S., Montalvão, M. T. L., de Alcântara Mendes, R., da Costa, A. C. G., & Passos, C. J. S. "Water and sediment pesticide contamination on indigenous lands surrounded by oil palm plantations in the Brazilian Amazon." *Heliyon*, 9 no. 10 (2023):e20845.

De Smedt, Kristel and Vos, Ellen. "The Application of the Precautionary Principle in the EU." In *The Responsibility of Science,* edited by Harald A. Mieg (Springer 2022).

European Commission. *EU-India agreements: Trade and Sustainable Development.* Documents. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreements/documents_en.

European Commission. *EU-Mercosur: Text of the agreement - EU Trade*. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/text-agreement_en.

European Commission. *Factsheet: EU-Mercosur partnership agreement - Trade and sustainable development.* https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/factsheet-eu-mercosur-partnership-agreement-trade-and-sustainable-development_en.

European Commission. *The European Green Deal: Striving to be the first climate-neutral continent.* https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

European Union. *Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part*, OJ L 11, 14.1.2017 (2017).

European Union. *Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam*, L 186/3, 12.6.2020 (2020).

FERN. *The EU-Mercosur Trade Agreement: what is it, and what could it mean for forests and human rights?* (FERN, 2020).

Fisher, Elizabeth. “Precaution, Precaution Everywhere: Developing a ‘Common Understanding’ of the Precautionary Principle in the European Community.” *Maastricht Journal of European and Comparative Law*, no. 9 (2002):7-28.

Girard, Laurence. “EU-Mercosur Deal Divides France’s Agricultural Sectors.” *Le Monde*, December 19, 2025. https://www.lemonde.fr/en/economy/article/2025/12/19/eu-mercosur-deal-divides-france-s-agricultural-sectors_6748675_19.html.

Henckels, Caroline. “GMOs in the WTO: A Critique of the Panel’s Legal Reasoning in EC — Biotech.” *Melbourne Journal of International Law*, no. 7 (2006):278-305.

Ishihara, Michiru. “Policy Brief: Should the WTO recognize legal precedent? The Walker Principles and Beyond.” *IIEL Blog*, 2 February 2023, https://www.law.georgetown.edu/iiel/research/publication-opportunities/iiel-blog/should-the-wto-recognize-legal-precedent/.

IUROPA. (2023). *CJEU Database Platform* [Data set]. https://iuropa.pol.gu.se/.

IUROPA. (2023). *IUROPA CJEU Database Platform Codebook* (Ver. 2.0). https://iuropa.pol.gu.se/download-tool.

Keleman, Daniel R. “Globalizing European Union environmental policy.” *Journal of European Public Policy* 17, no. 3 (2010):335-349.

Leblond, Patrick and Viju-Miljusevic, Crina. “CETA as the EU’s First Third-Generation Trade Agreement: Does It Act Like One?.” *Perspectivas – Journal of Political Science* 27 (2022):106–20.

Lehmen, Alessandra and Geraldo Vidigal. “Trade and Environment in EU-Mercosur Relations: Negotiating in the Shadow of Unilateralism.” *European Foreign Affairs Review* 30 (2025):87–114.

Manners, Ian. “The EU’s Normative Power in Changing World Politics.” In *Normative Power in a Changing World: A Discussion*, edited by André Gerrits (Clingendael Institute, 2009).

Martínez San Millán, Carmen. “Finally, Mercosur!... Or not? The stumbling block with the chapter on trade and sustainable development.” *EJIL: Talk!*, 6 February 2026. https://www.ejiltalk.org/finally-mercosur-or-not-the-stumbling-block-with-the-chapter-on-trade-and-sustainable-development/.

Mata Diz, Jamile. “The Mercosur and European Union Relationship: An Analysis on the Incorporation of the Association Agreement in Mercosur.” *Europe and the World: A Law Review* 6, no. 1 (2022):1-19.

Mata Diz, Jamile and Tasende, Júlia Péret. “Crafting Global Green Diplomacy: The Strategic Narrative of the European Union.” In *EU External Relations Law and Sustainability: The EU, Third States and International Organizations* (The Hague: TMC Asser Press, 2025):347-370.

Maurer de Salles, Marcus and Amaral Egydio de Carvalho, Marina. *O Mercosul ante os mega-acordos regionais: o tema de desenvolvimento sustentável e meio ambiente* (Ipea, 2024).

Peel, Jacqueline. “Precaution: A Matter of Principle, Approach or Process?.” *Melbourne Journal of International Law*, no. 5 (2004):483–501.

Pfizer Animal Health SA v Council of the European Union, Case T-13/99, [2002] ECR II-3305.

Rudloff, Bettina. "The EU between unilateral sustainability approaches and bilateral trade agreements: Paths to better partnerships". *Working Paper № 35*, March 2025.

Shaw, Sabrina and Schwartz, Risa. "Trading Precaution: The Precautionary Principle and the WTO." *UNU-IAS Report*, (UNU-IAS, 2005).

The Pandas Development Team. (2024). *pandas-dev/pandas.*

Treaty Establishing the European Economic Community. March 25, 1957, 298 U.N.T.S. 11.

Treaty on the Functioning of the European Union. October 26, 2012. Official Journal of the European Union C 326/47.

United Kingdom v Commission of the European Communities, Case C-180/96, [1998] ECR I-2265.

World Trade Organization. *Agreement on Technical Barriers to Trade*. April 15, 1994. Marrakesh Agreement Establishing the World Trade Organization, Annex 1A. 1868 U.N.T.S. 120.

World Trade Organization. *Agreement on the Application of Sanitary and Phytosanitary Measures*, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493.

World Trade Organization. *General Agreement on Tariffs and Trade 1994*, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Apr. 15, 1994, 1867 U.N.T.S. 187.

World Trade Organization. *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, Apr. 15, 1994, 1869 U.N.T.S. 401.

World Trade Organization. *European Communities - Measures Affecting the Approval and Marketing of Biotech Products*. Reports of the Panel, WT/DS291/R, WT/DS292/R, WT/DS293/R, adopted 21 November 2006.

World Trade Organization. *European Communities — Measures Concerning Meat and Meat Products (Hormones)*. Appellate Body Report, WT/DS26/AB/R, WT/DS48/AB/R. Adopted February 13, 1998.

World Trade Organization. *European Communities — Measures Concerning Meat and Meat Products (Hormones)*. Panel Report, WT/DS26/AB/R, WT/DS48/AB/R. Adopted February 13, 1998.

Received on 03/03/2026

Approved on 21/05/2026