

Greening the Andean Community Law: Proposals to Insert Carbon Pricing Policies in a Context of Green Recovery in the Andean Community

¿Cómo enverdecer el derecho comunitario andino?:
propuestas para insertar políticas de precios al carbono
en un contexto de recuperación verde de la
Comunidad Andina

PABLO GUILLERMO PEÑA ALEGRÍA*
Pontificia Universidad Católica del Perú (Perú)

MARÍA ÁNGELA SASAKI OTANI**
Pontificia Universidad Católica del Perú (Perú)

CARLOS TRINIDAD ALVARADO***
Instituto de Políticas Climáticas (Perú)

Abstract: The global pandemic crisis has created a valuable opportunity to promote green recovery policies at the level of regional integration blocks that are tightly aligned to climate policies, including carbon pricing. The European Union's Green Deal is an example. We propose that the Andean Community (CAN, by its acronym in Spanish) follows that example by establishing carbon pricing policies in its community law framework, adapting it to its level of regional integration and to the needs of its member countries. We suggest five ideas of carbon pricing policies that Andean countries could adopt within the CAN: phasing out of fossil fuel subsidies, regulating a border-adjustment carbon tax, creating a regional carbon tax, defining a reference social carbon price, and establishing a regional carbon market. To achieve them, the Andean Community can choose between establishing community legislation of uniformization or harmonization. We argue that harmonization is the best option because it would allow for setting a realistic and viable goal, freeing each member country to decide how to attain it.

Key words: International economic law, Andean Community, community law, environmental law, climate change, carbon pricing, Green Deal

* Lawyer by the Pontificia Universidad Católica del Perú (PUCP) and Master in Environmental Management by Yale University. He is a Senior Public Policy Associate at the Global Green Growth Institute (GGGI) and a professor at the Law School of PUCP.
ORCID Code: 0000-0003-2452-9665. E-mail: ppenaa@pucp.edu.pe

** Lawyer by the Pontificia Universidad Católica del Perú (PUCP), Master in International Economic Law by Universidad Andina Simón Bolívar (Ecuador), and has a PhD from Universidad Complutense de Madrid. She is a consultant at the Foreign Affairs Ministry of Peru (RREE) and professor at the Law School of PUCP.
ORCID Code: 0000-0002-1630-5242. E-mail: sasaki.ma@pucp.edu.pe

*** Bachelor of Law by the Pontificia Universidad Católica del Perú (PUCP) and an MBA candidate majoring in Green Energy and Climate Finance at the Berlin School of Economics and Law. Senior Research Fellow at the Climate Policy Institute (IPC), Lima, Perú.
ORCID Code: 0000-0002-3339-4363. E-mail: ctrinidad@politicasclimaticas.com

Resumen: La crisis global de la pandemia ha generado una valiosa oportunidad para impulsar, a nivel de los bloques de integración regional, políticas de recuperación verde que estén estrechamente alineadas a las políticas climáticas, incluyendo la fijación de precios al carbono. El Pacto Verde de la Unión Europea (UE) es un ejemplo en este sentido. Este artículo propone que la Comunidad Andina (CAN) siga ese ejemplo, estableciendo políticas de precios al carbono dentro del marco normativo comunitario, adaptándolas a su nivel de integración regional y a las necesidades de sus países miembros. Planteamos cinco ideas de políticas de precios al carbono que los países andinos podrían adoptar en el marco de la CAN: eliminar progresivamente los subsidios a los combustibles fósiles, regular ajustes fiscales al carbono en frontera, crear un impuesto regional al carbono, definir un precio social al carbono de referencia y establecer un mercado regional de carbono. Para concretarlas, la CAN puede optar entre establecer legislación comunitaria de uniformización o de armonización. Consideramos que la armonización es el mejor camino porque permitiría fijar una meta realista y viable, dejando en libertad a los Estados para decidir cómo alcanzarla.

Palabras clave: Derecho internacional económico, Comunidad Andina, derecho comunitario, derecho ambiental, cambio climático, precios al carbono, Pacto Verde

CONTENT: I. INTRODUCTION: CARBON PRICING IN THE CONTEXT OF CLIMATE CRISIS AND GREEN RECOVERY.- I.1. CARBON PRICING POLICIES.- I.2. CARBON PRICING AS PART OF GREEN RECOVERY.- II. CARBON PRICING POLICIES TO ACCOMPANY GREEN RECOVERY IN THE ANDEAN COMMUNITY.- II.1. MULTILATERAL INTEGRATION SCHEMES: ADEQUATE SPACES FOR DEVELOPING CARBON PRICING POLICIES.- II.2. CARBON PRICING POLICIES IN THE EUROPEAN COMMUNITY'S GREEN RECOVERY.- II. 3. EMISSIONS PROFILE OF THE ANDEAN COMMUNITY AND THE BACKGROUND OF THE CARBON PRICING POLICIES.- II.4. PROPOSALS FOR CARBON PRICING POLICIES FOR THE ANDEAN COMMUNITY.- II.4.1. ESTABLISHING THE GRADUAL AND PROGRESSIVE ELIMINATION OF TAX EXEMPTIONS, SUBSIDIES, AND BENEFITS FOR FUELS.- II.4.2. ESTABLISHING BORDER CARBON TAX ADJUSTMENTS.- II.4.3. EVALUATING THE FEASIBILITY OF IMPOSING A REGIONAL CARBON PRICE AS A TAX OF ITS OWN IN THE CONTEXT OF THE CONSOLIDATION OF THE ANDEAN COMMUNITY.- II.4.4. ESTABLISHING A SOCIAL PRICE FOR CARBON AS A REFERENCE.- II.4.5. ESTABLISHING A REGIONAL CARBON MARKET.- II.5. PROBLEMS AND OPPORTUNITIES OF CARBON PRICING POLICIES IN THE ACN.- III. CONSIDERATIONS FOR GREENING THE ANDEAN FRAMEWORK AND INSERTING CARBON PRICING MEASURES.- III.1. THE ACN'S LEGAL SYSTEM.- III.2. THE MODIFICATION OF THE CARTAGENA AGREEMENT AND THE DEFINITION OF ANDEAN COMMUNITY ENVIRONMENTAL LAW.- III.3. HARMONIZATION OR STANDARDIZATION?.- III.4. THE CHALLENGES OF IMPLEMENTING CARBON PRICING MEASURES IN THE ACN.- IV. CONCLUSIONS.

I. INTRODUCTION: CARBON PRICING IN THE CONTEXT OF CLIMATE CRISIS AND GREEN RECOVERY

75

Countries are currently preparing to lay the groundwork for a post-pandemic economic recovery, many are evaluating opportunities to align with other global goals, such as those related to environmental protection and climate change. The objective of this paper is to discuss ways in which the Andean Community (ACN), as a regional integration scheme, can support Bolivia, Colombia, Ecuador and Peru—its member states—in this alignment effort by including "carbon pricing" policies, taking the European Union (EU) Green Deal as a reference.

It is important to remember that the pandemic crisis and the environmental and climate crisis are related. On the one hand, the causes of the climate crisis have favored the occurrence of the pandemic crisis. For example, human occupation of wild spaces and the destruction of ecosystems—both responsible for 23% of global greenhouse gas (GHG) emissions¹—exacerbate the likelihood of diseases caused by zoonoses (IPCC, 2019, p. 10; UNEP, 2020). On the other hand, the consequences of the pandemic have been exacerbated by the characteristics of the environmental and climate crisis. One example is air pollution: one study estimates that 15% of total global deaths from COVID-19 can be attributed to long-term exposure to this type of pollution (Pozzer, 2020, p. 2249).

This climate crisis will continue to be the greatest global challenge in the post-pandemic scenario. Although the abrupt economic shutdown from quarantines in multiple countries led to an unprecedented global GHG reduction—for example, up to 8.8% lower during the first half of 2020 when compared to the first half of 2019—this is temporary and has the potential to generate rebound effects, meaning that long-term reductions must be based on transformational and structural changes (Liu *et al.*, 2020, p. 2). As early as 2018, the special report on the impacts of global warming of 1.5°C above pre-industrial levels produced by the Intergovernmental Panel on Climate Change (IPCC) warned that there would have to be urgent and unprecedented changes to limit warming to that level (IPCC, 2018, p. 15). To address the climate crisis, the countries of the world committed to strengthen joint efforts to substantially reduce their GHG emissions through the Paris Agreement, as part of the architecture of the United Nations Framework Convention on Climate Change (UNFCCC). However, the implementation of this agreement does not exist in a vacuum, but in the global social and economic context that, as of 2020, is directly influenced by the effects of the pandemic. Hence, it is necessary to ensure that national and supranational policies

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

1 Comprised by the Agriculture, Forestry and Other Land Use (AFOLU) sector.

and regulations aimed at economic recovery and addressing the climate crisis go hand in hand.

1.1. Carbon Pricing Policies

A key strategy for moving towards global climate goals and post-pandemic economic recovery is to put a price on carbon. A “price on carbon” is an expression of the polluter pays principle of environmental law, also known as the “principle of internalization of environmental costs”². This principle establishes that the obligation to incur the costs of environmental prevention or remediation is borne by the person causing the risk or damage because failure to do so would impose a negative externality on the rest of society. The basic idea is that a price on GHG emissions, through setting emission tariffs or offering incentives to emit less, sends a clear signal to the market that generates changes in consumption or investment patterns, leading, in turn, to reductions in total emissions (UNFCCC, 2020).

Along these lines, carbon pricing is a policy that sets a price on carbon emissions (implicit carbon price) or a public policy vehicle, implemented through a legal and institutional infrastructure that imposes a price on carbon emissions in specific sectors (explicit carbon price) (Pizarro, 2020). The most usual forms that have been adopted to set carbon prices are two: through CO₂ emissions trading systems, also known as cap and trade, and carbon taxes (UNFCCC, 2020). Other carbon pricing policies may include the elimination of fossil fuel subsidies or sunk costs in the evaluation of investment projects.

Although the text of the Paris Agreement does not explicitly discuss carbon pricing, it does use its concepts. The Paris Agreement's rules on the possibility of international trading of reduced CO₂ emission securities—through market approaches—use the conceptual basis of carbon pricing³. In addition, domestically, each country can take advantage of opportunities to implement carbon pricing measures to meet their commitments under the Paris Agreement as part of the Nationally Determined Contributions (NDCs) that they are required to submit to the UNFCCC Secretariat. The NDCs indicate the emission reduction target to which each country commits, which has to be updated every five years, aiming for a higher ambition (Paris Agreement 2015, art. 4). Parties are free to determine the national target and how to reach it and may establish mechanisms of various types, such as taxes aligned with climate targets or domestic carbon markets.

2 See Principle 16 of the Rio Declaration on Environment and Development.

3 See Article 6, paragraphs 6.2, 6.4 and 6.5 of the Paris Agreement.

In Latin America, four countries have implemented explicit carbon pricing policies: Mexico, Argentina, Chile and Colombia. These policies have focused on carbon taxes related to the consumption or production of fossil fuels (CLPC, 2020). While the cap and trade system has only been implemented in Mexico through a pilot program that contemplates the industrial and energy sector between 2020-2021, it is expected to be implemented at the national level (ICAP, 2020, p. 5). It is worth noting that Colombia and Chile are considering incorporating more ambitious policies on Emissions Trading Systems (ETS), while Brazil is negotiating the entry of carbon pricing as a carbon tax and as an ETS.

Table 1. Carbon Tax (in USD per tCO₂)

Country	Year	Goals	Regulated entities	Exceptions	Price
Argentina	2017	Revenue neutral	Fossil fuel producers and importers	Natural gas and jet fuel	10
Chile	2017	Promoting educational reform Setting the framework for other environmental taxes	Plants with more than 50 MWT of potential capacity (boilers and turbines) Companies emitting more than 25 MTCO ₂ or 100 T of particulate matter (PM) annually		5
Colombia	2017	Discouraging the use of fossil fuels	Fossil fuel producers and importers	Coal Natural gas consumers that are not part of the petrochemical or natural gas industry. Carbon-neutral fossil fuel consumers	7
Mexico	2014	Reduce GHG emissions Increasing government revenues	Fossil fuel producers and importers		2.5

Source: Prepared by authors based on Velloso *et al.* (2019, p. 42) and CLPC (2020).

With the exception of Colombia, the ACN countries do not have carbon pricing; however, the architecture of their fuel taxes has some

77

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

environmental criteria. Such is the case of Peru, which has a consumption tax (selective consumption tax) that is determined by the harmfulness of fuels to the atmosphere. Peru has also established a “sunk” carbon price for determining the profitability of public investment projects of USD 7.17.

1.2. Carbon Pricing as Part of Green Recovery

Aligning economic recovery goals with environmental goals in general, and climate goals in particular, is at the heart of what has been termed the “Green Recovery,” which includes tangible economic, social and environmental benefits. For example, in the energy sector, investments in renewable energies as part of these packages can create more direct jobs at various stages of distribution, construction and installation, which is useful in a context of recession and low employment. In turn, these investments demand goods and services from industries that are in the supply chain, promoting the creation of indirect jobs (Rijsberman *et al.*, 2020, p. 11). In addition, at the urban level, the pandemic has demonstrated the importance of access to quality public spaces, such as green areas; investment in alternative mobility infrastructure, such as bike lanes; and quality solid waste management services, such as waste recovery plants. As part of green recovery policies, increased investment in these three areas would promote resilience (e.g., by restoring urban natural spaces such as wetlands that mitigate the risks of natural disasters such as flooding), reduce GHG emissions and local air pollutants (e.g., by creating new solid waste programs and infrastructure based on the circular economy and promoting the use of mobility alternatives), and produce co-benefits to physical and mental health. These and other measures could be directly incentivized by carbon pricing policies or financed by the funds raised by them.

In the post-pandemic context, countries such as Sweden and Germany have already announced that they will implement recovery measures which will have an important environmental content that will push climate policies on carbon pricing, in line with their NDCs. On the one hand, in Sweden, the government plans to create credit guarantees for green investments, remove fossil fuel subsidies and make a green tax shift to increase environmental taxes and compensate it with lower corporate and labor taxes (Carbonbrief, 2020). On the other hand, in Germany, the government is proposing to increase the climate protection surcharge on the motor vehicle tax for new cars starting next year so that vehicles that consume more fuel (such as large pickup trucks) will pay more than double the tax⁴.

4 For further details, see Reuters (2020).

However, some countries are planning their recovery in the opposite direction to decarbonization measures. For example, Mexico announced that part of its recovery financing would go to its refineries and other GHG emission-intensive infrastructure and energy projects, without being bound by environmental conditions; and South Africa has deferred payments for its carbon tax (Vivideconomics, 2020, p. 13). Moreover, the recent Greenness of Stimulus Index rates negatively most of the recovery packages that were made public as of October 2020 (p. 11).

II. CARBON PRICING POLICIES TO ACCOMPANY GREEN RECOVERY IN THE ANDEAN COMMUNITY

Carbon pricing policies can also be considered at the supranational level in regional integration spaces such as the ACN, enhancing green recovery in a coordinated manner. In this section we explain the reasons why multilateral integration schemes such as the ACN are appropriate for developing carbon pricing policies; also, we review the example of the European Green Deal. The ACN can use this example to think about its own community carbon pricing policies to accompany green recovery efforts at the Andean regional level and to help its member countries meet their international climate obligations under the Paris Agreement. For this, it is key to consider the different circumstances, needs, and capacities of the ACN and its member countries. In this regard, we review the emissions profile of the Andean countries and their progress at the national level and propose five concrete carbon pricing policy measures.

II.1. Multilateral Integration Schemes: Adequate Spaces for Developing Carbon Pricing Policies

Although there are institutional advances and effective experiences of carbon pricing policies around the world, there are some structural problems that limit their scope. Indeed, the last United Nations Climate Change Conference (COP25) did not meet the expectations of creating the enabling conditions for a global emissions market, which highlighted the complexity of this problem in terms of market failure of public goods.

Public goods express an imbalance between supply and demand, due to the lack of incentives (Stiglitz, 2000, p. 95). Due to the global nature and free access to the benefits derived from GHG emission reductions in some countries, it is not possible to establish exclusions or limitations to their use. This gives rise to free riders: if any country has free access, at no cost, to the benefits of GHG reductions, there is no incentive to adopt individual or multilateral measures to reduce emissions. Thus,

79

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

States that have no incentive to internalize their emission costs try to improve global emission reduction targets at the expense of other Parties that do internalize their costs. The result is that all Parties end up worse off (Nordhaus, 2020).

To overcome this problem, Nordhaus (2020) proposes the design of a new climate order called the “Climate Club.” This club would have an entry requirement for its member countries: to set a carbon price on their emissions according to an international standard, either through national taxes or cap and trade systems. Countries not in this club would pay high tariffs on all their exports. The benefits of this agreement lie in its simplicity in negotiation and adoption, as there is no need for a complex architecture of verification and control; and in the creation of incentives to mobilize countries' preferences, in addition to eliminating the asymmetry of information, as a single international standard would be established for the value of emissions.

Chart 1. Co-Benefits of a Carbon Price

A carbon price can have other positive impacts for the ACN countries. Trinidad and Soberón (2020, p. 11) summarize the main benefits of a carbon price on economic reactivation in the context of the COVID-19 pandemic for Latin American countries, which could be taken into account in the case of the ACN:

- Closing health and social financing gaps: Given the impact of the COVID-19 pandemic, an eventual regional carbon tax could contribute to financing the closing of these gaps.
- Optimization of public spending: The elimination of subsidies could help contribute to the effectiveness of fiscal resources. For example, various investigations have found that fuel subsidies in the Peruvian Amazon have not met the social and economic objectives for which they were created (APEC, 2015, p. 36).
- Reducing informality: Unlike income or value-added taxes, carbon taxes, especially if they are upstream, can contribute to reducing informality, as they would have the option to build on the experience of traditional fuel taxes and fall on some taxpayers (Parry, 2019, p. 54; Liu, 2013, p. 38).
- Environmental impacts: Another positive impact could be the reduction of local air pollution (Edenhofer et al., 2015, p. 136). According to the *World Air Quality Report* (2019), Peru has the highest average annual air pollution exposure in the region (IQAir, 2020). In addition, Lima ranks 28th globally for average annual PM2.5 concentration ($\mu\text{g}/\text{m}^3$).

Source: own elaboration.

As we will see below, community structures or international trade integration spaces could be vehicles for environmental policies (Lucas *et al.*, 2019, p. 396) of carbon pricing, as they already have an apparent regulatory framework, with directly enforceable rules and commonly

aligned economic, political, and social interests⁵. Using these integration spaces, it is possible to enhance what are mixed responses to green recovery in the countries so far. This can also reinforce the effectiveness and compliance with the international climate framework⁶.

II.2. Carbon Pricing Policies in the European Community's Green Recovery

Currently, the most ambitious example is the European one. Before the pandemic, the EU had set out its European Green Deal⁷ as:

a new growth strategy aimed at transforming the EU into an equitable and prosperous society [...] in which there will be no net greenhouse gas emissions by 2050 and economic growth will be decoupled from resource use (European Commission, 2019, sec. 1).

In this framework, the EU proposed a new target to reduce its GHGs by 55% by 2030, compared to 1990 levels (section 2.1.1). Recently, the European Parliament voted to further increase the ambition to 60%, a target to be included in the proposed Climate Bill that is part of the European Green Deal package⁸.

Several factors would explain the origin of such an ambitious EU policy: the increasingly tangible impacts of climate change, the European electoral results that favored green parties in recent years, the birth of several youth climate protest movements, and the need to counteract the denialist discourse of Presidents such as Trump in the United States and Bolsonaro in Brazil (Siddi, 2020, p. 6). This is not to say, however, that all European countries will demonstrate the same level of support, as the implications of national implementation will be dissimilar (e.g., Poland did not subscribe to the 2050 neutrality target). One of the most important issues is the energy transition to renewable energies. The European strategy assumes that, by 2030, almost one third of energy should be produced from these sources (last year's production was 20%), but there is great diversity among countries, both in relation to the achievements and the targets they should take on individually (Brodny & Tutak, 2020, p. 3). To address the challenges of the countries

5 For example, in June 2017, the member countries of the Pacific Alliance committed to intensify their efforts to measure, provide reporting and verify CO₂ emissions in order to identify possible voluntary market mechanisms among countries in the region (Jakob *et al.*, 2019, p. 21).

6 International environmental law—in which international regimes on climate change are inserted—is an example of the presence of soft law type norms (Nava, 2016, p. 110); that is, norms with an aspirational, programmatic or declarative character. As Juste (1999, p. 47) mentions, this type of norms has been a predominant phenomenon in international environmental law, where the interests and expectations of States can hardly be aligned and expressed in concrete incentives and penalties. This may increase the chances of non-compliance and ineffectiveness.

7 Communication from the European Commission of December 11, 2019 on the European Green Deal (COM(2019)0640), supported by the European Parliament through the Resolution of January 15, 2020 on the European Green Deal(2019/2956(RSP)).

8 See Euronews (2020).

81

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

that most depend on coal and fossil fuels, the Green Deal proposes a Just Transition Mechanism, accompanied by an economic fund (Siddi, 2020, p. 6). This is a valuable example of the importance of considering the principle of solidarity in the implementation of the European Green Deal (Sikora, 2021, p. 687).

Such deal is not properly part of the EU legal framework, but a roadmap, a key climate public policy strategy in the form of soft law, monitored by European countries within the framework of the EU Treaty's duty of sincere cooperation (Sikora, 2021, p. 688). The idea is that this public policy instrument will lead to a series of new rules and EU legislative reforms that implement each aspect of the deal. But it is not just any EU strategy either; rather, it is an example of how environmental protection, particularly in relation to the fight against climate change, has become an enabling condition for the entire EU project in the future (p. 687). Given its ambition and what it demands of all actors—states, citizens and businesses—it remains to be determined whether it will eventually be taken up as part of the EU's constituent hard core (p. 690).

This instrument proposes important measures associated with the principles of carbon pricing. For example, it includes reviewing and proposing improvements to the European Union Emissions Trading System (EU ETS), as well as evaluating its extension to more sectors, setting targets for Member States to reduce emissions outside the ETS and regulating emissions from land use, land-use change and forestry (LULUCF) (European Commission, 2019, sec. 2.1.1.). In addition, by 2021, the EU proposes a border carbon adjustment mechanism for some sectors that, while complying with World Trade Organization (WTO) rules, addresses the risk of carbon leakage from imports that effectively transfer emissions to producer countries that do not have ambitious emission reduction measures (Mehling, 2019, p. 435). In a similar vein, in October 2020, the European Parliament adopted by a large majority a report requesting the European Commission to propose a new Community legal framework to establish mandatory due diligence and traceability mechanisms for agricultural or forestry products imported into the European area, seeking to ensure that no deforestation has been incurred to produce them⁹.

In addition, the EU will make adjustments towards green taxation and align the tax system with the EU's climate objectives by seeking to adopt adjustments to value added tax (VAT) rules so that each member country can incorporate better environmental criteria. The EU will

⁹ The potential impact of such a measure on countries such as Peru, exporter of agricultural products associated with deforestation processes such as coffee or cocoa, could be very large. In this regard, see the Communication of the European Parliament (2020).

also review the Directive on energy taxation¹⁰, seeking to incorporate environmental aspects, and will propose to simplify the legislative process to approve related rules by qualified majority instead of requiring unanimity (European Commission, 2019, sec. 2.1.1). In addition, as part of efforts to green the national budgets of member countries, the EU will promote tax reforms “by sending the right price signals and providing the right incentives for sustainable behavior by producers, users and consumers” (sec. 2.2.2.2). Accordingly, this new European framework will allow member countries to undertake wide-ranging tax reforms ranging from eliminating fossil fuel subsidies to transferring the burden of taxation from labor to pollution (sec. 2.1.2).

The European Green Deal package has been renewed with a commitment to adopt a green recovery at the EU level. Recently, the President of the European Commission indicated that this package will be at the heart of the European economic strategy to end the pandemic crisis¹¹. One example is the Innovation Fund, which has one billion euros in its first call for proposals to finance new clean energy technologies and is fed by revenues from the auctioning of emissions permits under the ETS¹².

II.3. Emissions Profile of the Andean Community and the Background of Carbon Pricing Policies

The EU's carbon pricing measures within the Green Deal, in the current context of post-pandemic recovery, were developed considering the social, economic and environmental characteristics of its member countries. Hence, if we want to envision measures of this type for an area such as the Andean Community, it is necessary to first assess the characteristics of the four Andean countries.

Unlike the EU, the main source of emissions in the ACN countries is the LULUCF sector (Ortiz, 2020, p. 3). However, emissions from the energy sector have an important share in the composition of the Andean countries' emissions, representing, on average, 30% of the ACN's emissions.

Ecuador has the highest share of the energy sector in its total emissions (47%), while the share of this sector in Bolivia's emissions is the lowest (15%).

83

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

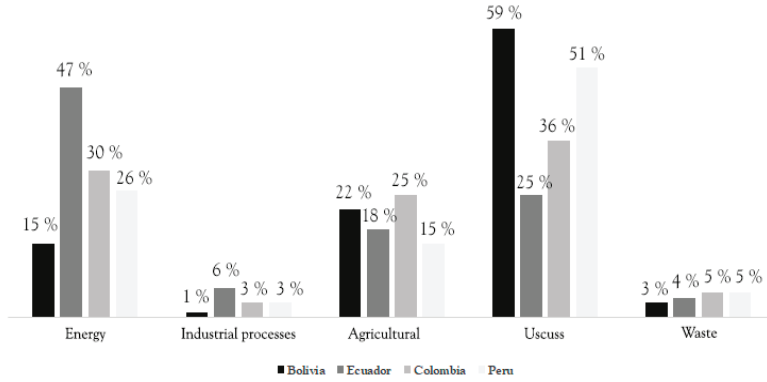
PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

10 See Council Directive 2003/96/EC.

11 See Boston Consulting Group (2020).

12 For further details, see European Commission (2020).

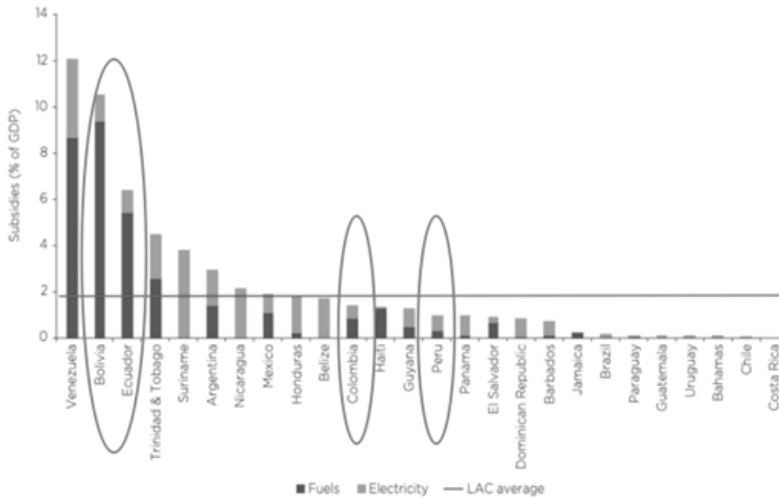
Figure 1. Emissions by Category of the ACN Countries (Percentage of Total)



Source: Prepared by authors based on Ortiz (2020, p. 3).

While all countries in the region have fossil fuel taxes, only Colombia has a specific price on its carbon emissions, which covers 24% of its total emissions. In contrast, fossil fuel subsidies among member countries are deeply entrenched. Bolivia and Ecuador have some of the highest levels of energy subsidies in Latin America. And, although Peru and Colombia are below the regional average, their subsidies represent 1.5% of GDP.

Figure 2. Energy Subsidies per Country (% of GDP), 2008-2014 Average



Source: Marchán et al. (2017, p. 64).

This is an indicator of what should be the priorities of carbon pricing policies in the region. Economic subsidies to fossil fuels have the nature of negative fuel prices and generate many negative consequences, as they imply a high fiscal cost for the State, increasing public spending and reducing available public revenues (Salassa Boix, 2018, p. 188).

A green fiscal reform should take into consideration this important aspect, especially because of the opportunities that can be generated in the context of the COVID-19 pandemic, to accelerate domestic energy transitions and economic diversification strategies (Monge, 2020, p. 9). However, it is important to take into account the considerations of Salassa Boix (2018, p. 186), who mentions that the two reasons that could limit a green tax reform in Latin America are the following: a) green taxes impose a minimal tax burden and do not affect taxpayers' behavior, and b) environmental taxes are applied to products or services that have an inelastic demand for consumers.

Furthermore, in the discussion on how to accelerate the energy transition in the ACN countries, it is important to take into account the growth rate of emissions from the energy sector in this bloc of countries. For example, in Peru, emissions from the energy sector increased by 57.3 percentage points between 2000 and 2012 (Trinidad & Ortiz, 2019, p. 277).

Apart from the European case, discussions of green growth policies in the framework of the Pacific Alliance—an integration initiative of Colombia, Chile, Mexico and Peru—are an interesting precedent for the ACN. Indeed, in the framework of the Working Group on Environment and Green Growth, member countries have been exploring carbon pricing measures, such as market mechanisms or fiscal policies to reform subsidies (Cisneros, 2019, p. 23). At the 13th Pacific Alliance Summit (2018), this group was also mandated to explore the strengthening of GHG emissions measurement, reporting, and verification (MRV) systems, and to identify opportunities to establish carbon pricing measures at the regional level (p. 34). In particular, standardizing emissions accounting and MRV systems would be an important foundation on which to build other measures such as a regional carbon market or integration into other carbon markets. Along these lines, a 2019 report recommended that the Pacific Alliance explores expanding the trading of CO₂ emissions reductions to international markets, building on what Mexico and Chile have already advanced with their domestic mechanisms (p. 31).

85

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

II.4. Proposals for Carbon Pricing Policies for the Andean Community

Taking into account the possibilities offered by the concept of carbon pricing, the experience and examples of the EU and the emissions profile of the ACN member countries, we put forward five concrete policy ideas that could be developed in the EU legislation of this regional bloc within a context of green recovery and high climate ambition.

It is important to mention that these ideas are articulated on the basis of existing Community institutions in the area of taxation. The ACN has several tax instruments, but the most notable advances have to do with the elimination of double taxation (Decision 578) and the harmonization of value added and consumption taxes (Decisions 599 and 600), in addition to having several tariff and customs tools.

These five concrete policy ideas represent particular opportunities and challenges, as well as various possibilities for further development; they are presented here as a first approximation to allow for a broader discussion in the future.

II.4.1. Establishing the Gradual and Progressive Elimination of Tax Exemptions, Subsidies, and Benefits for Fossil Fuels

To date, the ACN does not have a policy to harmonize tax subsidies on energy issues (e.g., fuels). However, considering the economic and social differences between countries, one option for introducing carbon pricing policies would be to modify Decision 600, "Harmonization of Selective Consumption Taxes," to limit the granting of tax benefits in this type of tax.

Provisions of this type are not new; for example, Article 7 of this Decision provides:

The taxable base for excise taxes shall be defined in the domestic legislation of the Member Countries, ensuring that there is no discriminatory treatment between national and imported products. In the case of ad valorem tariffs, neither value added taxes nor excise taxes shall be incorporated therein.

In this sense, the selective consumption tax base could be defined by domestic legislation, but ensuring the gradual incorporation of the polluter pays principle or cost internalization until a date when this principle can be fully applied. This incorporation is one of the simplest proposals because it uses the institutional infrastructure of excise taxes in the domestic legislation of the four member countries.

II.4.2. Establishing Border Carbon Tax Adjustments

Another relevant mechanism would be to establish a regulatory framework to limit tax exemptions on fossil fuel imports in its member

countries. As Falcão (2019) mentions, this mechanism would allow Andean countries to maintain their domestic carbon prices without the need to grant exemptions at the border when the product is exported (p. 330). In this way, a congruent treatment is granted to the domestic taxation and export of high-emission goods, such as fuels (Delbeke & Vis, 2020, p. 3).

In the specific case of border adjustments, the ACN could modify Chapter IX, "Refund and Compensation of Credit Balances," of Decision 599 (Harmonization of Substantial and Procedural Aspects of Value Added Taxes) to limit the possibility of VAT refund in the case of the importation of fossil fuels.

However, one of the challenges is for member countries to have explicit carbon pricing policies to prevent the provisions from only affecting countries that have carbon taxes. In this sense, a complementary rule could be established that establishes the gradual setting of a carbon tax by member countries.

II.4.3. Evaluating the Feasibility of Imposing a Regional Carbon Price as a Tax of its Own in the Context of the Consolidation of the Andean Community

Although the ACN does not currently have its own taxes, the EU model could serve as a way to boost and increase climate ambition within the bloc. Thus, the ACN could design a regional carbon price, in the form of a carbon tax, in line with the substitution or removal of fuel subsidies and the creation of a community climate fund. To this end, a new regulatory framework, such as a specific Decision, would be required.

However, this proposal requires an institutional infrastructure that, to date, does not exist in the Andean Community. For example, an internal fund management mechanism—including tax collection and control powers—would imply the transformation of the type of integration that has been promoted.

II.4.4. Establishing a Social Price for Carbon as a Reference

The ACN could establish a common Andean price per ton of GHG emissions that would serve as a reference for the development of public policies at the internal level of each member country. A social price that functions as a "floor" standard for all countries would be useful to properly assess the costs and benefits of public and private investment projects or public policies that are being evaluated (e.g., through regulatory impact analysis), incorporating the harm caused by emissions in the calculations (or the benefits resulting from avoiding them).

A mechanism of this type should provide sufficient flexibility for each country to adjust it upwards if it deems it necessary. The danger is that,

87

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO



in the search for a price floor, countries will have the incentive to seek a very low reference price that effectively undervalues the cost to society of these emissions, below what each country could have set individually.

Therefore, ideally, the social price of carbon should be established on the basis of the best current estimates, which place it at USD 100 per ton¹³ at the least, and there should be a mechanism that allows it to be updated periodically from time to time, according to new estimates. Additionally, following the recommendations of a group of experts to update this reference price in the new Biden Administration in the United States of America, consideration should be given to reviewing the damage functions (looking at them sector by sector), evaluating the probability of occurrence of climate risks, adding "weights" that balance concerns about effects on vulnerable populations, considering discount rates (between 1% and 3% in the long term), evaluating socioeconomic trajectories (such as GDP predictions), and allowing for public input and discussion (Wagner *et al.*, 2021, pp. 549-550).

II.4.5. Establishing a Regional Carbon Market

The ACN could establish an emissions trading mechanism at the regional level that would allow carbon credit transactions to reduce overall emissions for the Andean region as a whole, with caps that are progressively. A major issue is to determine the sectors that would be covered (typically the energy sector, but could be others). These covered sectors would have maximum emissions caps, above which companies would be forced to limit their operations or buy credits from more efficient companies that do not reach the same caps. It will also be necessary to analyze, from an equity perspective, whether there are particularly vulnerable segments of the population or economic sectors for which compensation or differentiated attention mechanisms should be envisaged.

On the other hand, an Andean regional carbon market would have to take advantage of the experience and lessons learned from the European Union's carbon market (EUETS). It should also build on existing national carbon markets (such as Colombia's) to facilitate integration with other countries. With a design that allows for progressive consolidation and adequate safeguards, this mechanism could even be connected at a later stage with carbon markets regulated in other areas, such as the EU ETS. It could also take advantage of the progress made by the Pacific Alliance with a view to standardizing methodology and measurement, reporting and verification. In turn, such a mechanism should be designed within the framework of Article 6 of the Paris Agreement, which allows for a market-based and cooperative approach, and should be aligned with

¹³ See Project Syndicate (2021).

future decisions on the matter by the Conference of the Parties (COP) under the United Nations Framework Convention on Climate Change (UNFCCC).

This whole design will require not only rules, but also a new institutional arrangement, in the form of a new supranational agency to manage and control the system. Creating and managing such an agency would in itself present challenges for the ACN's operating model, which is currently much less deeply integrated than the EU.

II.5. Problems and Opportunities of Carbon Pricing Policies in the ACN

Carbon pricing policies contribute to reducing emissions from the energy sector, but unlike developed countries or multilateral blocs, such as the EU, the ACN's emissions are well below the global average. This may explain why, with the exception of Ecuador, the Andean countries' climate priorities are aimed at reducing emissions from deforestation and the extension of the agricultural frontier.

A second problem has to do with distributional impacts. Carbon pricing policies, such as the removal of fuel subsidies, could have an impact on the price of transportation and consumer goods, such as food, which would be regressive for the poorest. This is especially true because, in order to be effective and reduce emissions, they require other enabling conditions, such as diversification of transportation alternatives or compensatory policies.

A third problem is the presence of power groups and the influences of business elites, especially in the hydrocarbon sector. Jakob (2017, p. 95) and Trinidad and Ortiz (2019, pp. 303-304), mention that the adoption of carbon pricing policies in some ACN countries, such as Peru and Ecuador, are made difficult because energy policies are highly politicized and have high regulatory thresholds. Another stumbling block, mentions Jakob (2019, p. 230), is the socio-environmental conflicts between extractive companies and local populations.

On the opportunity side, carbon pricing policies can be beneficial for reducing emissions from the LULUCF, as forest conservation and reducing pressures associated with deforestation is costly, especially because of the presence of opportunity costs for indigenous and rural communities (Trinidad & Ortiz, 2019, p. 311). For example, the substitution of fossil subsidies in the Peruvian Amazon could be allocated to a fund for payments for ecosystem services that would contribute to the reduction of deforestation.

A price on carbon can also finance more aggressive social policies. According to research by the Inter-American Development Bank, if

89

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

only 30% of carbon tax revenues in Latin America were earmarked to compensate—through direct transfers—poor families, regressive effects could be mitigated, allowing the remaining 70% to be used for other national priorities (Vogt-Schilb *et al.*, 2019, p. 947). A similar study was done in relation to subsidies in Ecuador and the results showed that a distributive policy could be achieved if the elimination of subsidies goes hand in hand with compensatory policies (Schaffitzel *et al.*, 2020, p. 12).

Finally, carbon pricing policies in the ACN countries could be an opportunity to align their policies to promote renewable energies, electromobility and energy transition. Thus, for example, promoting a carbon tax could complement national efforts to renew their vehicle fleet and promote electromobility in public transport.

In the following, we provide some normative scopes on how to green Andean community law and adjust the community legal framework to implement these carbon pricing policy ideas.

III. CONSIDERATIONS FOR GREENING THE ANDEAN LEGAL FRAMEWORK AND INSERTING CARBON PRICING MEASURES

It is not enough to determine that the Andean Community can be a favorable space for developing carbon pricing policies, putting forward concrete proposals that are appropriate to the social, economic and environmental characteristics of its member countries. It is also necessary to review how to create them within the Community's institutional and legal framework. This section briefly explains how the Andean legal system works and its progress in incorporating “the environment.” In addition, we propose two ways to include carbon pricing policies: harmonization or standardization; then, we discuss the different challenges involved.

III.1. The ACN's Legal System

The Andean Community is a supranational integration process—like the EU—where the principles of direct effect, immediate application, and the primacy of Community law over the national laws of the member countries apply¹⁴. Likewise, in the Andean sphere, there has been a jurisdictionalization of the dispute settlement system in which the Member States, the Community institutions, and the natural and legal persons whose rights are affected participate on an equal footing. Precisely, this regulatory and jurisdictional framework is a unique asset

¹⁴ Currently, the ACN member countries are Bolivia, Colombia, Ecuador and Peru. Chile withdrew from the Cartagena Agreement in 1976 and Venezuela in 2006.

that does not exist in other Latin American integration processes (Sasaki Otani, 2019, p. 1).

In addition, it should be noted that the Andean countries have transferred sovereign powers—from regulatory and political direction to jurisdictional, executive or deliberative—to the ACN. Therein lies its great value, in having achieved what no other bloc could: that its members are willing to give up a certain degree of sovereignty in pursuit of collective, common and higher objectives (Sasaki Otani, 2019, p. 1).

Thus, the Andean legal framework, capable of generating supranational norms, can be an optimal instrument for implementing priority environmental actions and programs for the region, especially when environmental protection, by its very nature, calls for joint action. The fact that pollution does not stop at borders, added to the fact that the action of a given country can have an impact on its neighbor, is one of the reasons why action at the community level in this area is indispensable (Mateu *et al.*, 1986, p. 132).

In the structure of the Andean Integration System (SAI) there are bodies or spaces that are not being used to their full potential and that could be used for the proposal, study and discussion of environmental regulatory projects. The law derived from the Community bodies includes the Decisions of the Andean Council of Foreign Ministers (CAMRE) and the Commission, as well as the Resolutions of the General Secretariat of the Andean Community (SGCA), in accordance with Article 1 of the Treaty of Creation of the Court of Justice of the Andean Community (CJAC).

Entering into the sources of secondary legislation binding on member countries, in the first place are the Decisions, which may be adopted by the CAMRE by consensus or by the Commission by absolute majority (articles 17 and 26 of the Cartagena Agreement). Decisions have general legal effects, i.e., a normative nature (*Process 1-AN-97*, 1998, pp. 18-19), and may establish a harmonized regime or a common one (Sasaki Otani, 2017, p. 185).

III.2. The Modification of the Cartagena Agreement and the Definition of Andean Community Environmental Law

On December 1, 2020, the ACN member countries approved the Andean Environmental Charter, which will allow the development of joint actions to address environmental problems. The Charter establishes the following general principles:

The need to promote coordinated actions within the framework of the Andean Community to address the problems arising from climate

91

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

change, taking into account the global and cross-cutting nature of its effects through appropriate adaptation and mitigation measures.

Among the common objectives, the following stand out:

Accelerate the implementation of the 2030 Agenda and the Sustainable Development Goals (SDGs), the United Nations Framework Convention on Climate Change, the Paris Agreement, the Convention on Biological Diversity, and other environmental agreements signed by our countries, through actions, measures and projects developed through the *committees and working groups of the Andean Community*, which may have an impact on environmental and sustainable development issues¹⁵.

Consequently, it would be advisable to activate these mechanisms to initiate the debate on greening the Andean legal framework and inserting carbon pricing measures. In this sense, Andean community law could pivot and constitute the ideal means to implement carbon pricing policies in the region, taking into account the global context towards green recovery and the international framework for climate change, anchored in the commitments and rules of the Paris Agreement.

At present, the environmental issue does not have its own existence in the Cartagena Agreement. That is to say:

the articles that refer to natural resources and the environment appear linked to other programs (agriculture, trade liberalization, and industrial) or integrated into the economic and social area (Chapter XIV of the Cartagena Agreement), with the consequent legal and action limitations that this dependence implies (Ponce de León, 2000, p. 102).

Only one article is dedicated to the use and conservation of natural resources and the environment as an independent action not linked to other programs in Chapter XIV, “Economic and Social Cooperation” (Sasaki Otani, 2012, p. 1). Indeed, Article 128 of the Cartagena Agreement states: “The member countries shall undertake joint actions that allow greater use of their renewable and non-renewable natural resources and the conservation and improvement of the environment,” which could include the regulatory implementation of carbon pricing policies in the ACN.

The location of “the environment” in the text of the Cartagena Agreement indicates that it is not yet sufficiently important to be

¹⁵ Emphasis added by the authors.

given an autonomous chapter¹⁶, as is the case of the agricultural, trade liberalization, and industrial programs. However, environmental protection does not make sense if it is outlined exclusively as one of “the community's sectoral policies” (Sasaki Otani, 2012, p. 1). As a complement, “the principle of globality indicates that environmental policy itself must also be predicated on an overview of all the sectors in which public authorities intervene” (Manteca, 2003, p. 84).

Thus, in general terms, the ACN does not have a global body of regulations that specifically covers environmental issues. Instead, there are several isolated Andean Decisions that refer directly and indirectly to the environment (Vigil, 2011, p. 218). In fact, the ACN's environmental regulation archive is composed of approximately 40 Decisions and 300 Resolutions of the SGCA. However, these norms and acts are mostly programmatic in nature, which is clearly insufficient, as it postpones the achievement of a comprehensive and global regulation of environmental issues in the ACN (Sasaki Otani, 2012, p. 1).

It is important to point out that in the energy field, the ACN already has a “General Framework for the Sub-Regional Interconnection of Electricity Systems and Intra-Community Exchange of Electricity” (Decision 536) and a “Regulatory Framework for the Sub-Regional Interconnection of Electricity Systems and Intra-Community Exchange of Electricity” (Decision 816). Although this regulatory framework has contributed to the exchange of energy between the countries, the development of three regulations of Decision 816 (the Operational, Commercial and Regional Coordinator regulations) is still pending, which will allow the simplification of the rules for the optimization of surpluses once the domestic market is supplied, as well as the efficient use of energy resources in the countries that make up the Andean region. It should be noted that the aforementioned instruments do not establish any regulation on fossil fuels, nor do they develop criteria for mitigating emissions in the Andean electricity sector. Therefore, in the Andean Community, the existence of a community regulation related to fossil fuels, as is the case in the EU, is strange.

Consequently, after analyzing the Andean Decisions that refer directly and indirectly to the environment, we can propose the creation of an independent environmental chapter in the Cartagena Agreement and, at the same time, the greening of the other programs with environmental considerations. Although it is considered convenient to adopt the two mentioned strategies, we must recognize that this matter requires an in-depth debate, since its definition will have an important impact on

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

¹⁶ With the adoption of the Single European Act (SEA), a comprehensive EU environmental policy framework (“autonomous chapter”) was established with the capacity to influence other EU policies.

the definition of an Andean environmental community law (Ponce de León, 2000, p. 103).

It is necessary to promote a debate within the ACN to evaluate the advisability of modifying the Cartagena Agreement with the aim of “greening” it by including precise references to sustainable development and protection of the region's natural resources (Ponce de León, 2000, p. 157).

In short, it is time to create Andean community law with real environmental implications and one of these cross-cutting policies should be carbon pricing.

III.3. Harmonization or Standardization?

The regulation legal nature of the Andean Decisions may be more or less intense, depending on whether they contain a complete regulation or whether they limit themselves to setting an objective and leave the States free to decide how to achieve it. That is, the Decisions may contain both exhaustive regulations (common regime) and limit themselves to pointing out an objective that the States will then have to achieve (harmonized regime) (Sasaki Otani, 2017, p. 190).

Regarding the harmonized regime, Andean case law has indicated that:

its fundamental characteristic is the approximation of legislations [...] the reduction of differences in the legislations of the member countries based on the identification of common elements [...] without this entailing the imposition [...] of a common regime [...] while the member countries maintain a margin of maneuver [...]. Therefore, a harmonized regime implies that the States will modify their legislation independently from that of the other member countries within the framework of a strategy designed by the latter or by the Commission (*Process 1-AN-2010*, 2013, p. 23).

On the other hand, regarding the common regime, Andean case law has specified that:

this is typical of the supranational nature of the Community, since the Commission is no longer called upon to establish a strategy for the approximation of legislations [...] the Community body is in charge of issuing a common rule for them, which does not allow variations between each country nor grants a margin of maneuver to the States on how to use it. Since it is a rule applicable to all member countries, it must be understood and applied in a single sense by them (*Process 2-AN-2007*, 2009, pp. 19-20; *Process 1-AN-2010*, 2013, pp. 23-24).

In the EU, unifying effects are identified in the case of Regulations and harmonizing effects in the case of Directives. In the words of Alonso García (2012):

[s]tandardizing in the case of Regulations, with the same law for all Member States, excluding internal varieties in this respect, capable of having an impact on the sphere of citizens; harmonizing in the case of Directives, in the sense of approximation of national regulations which, while preserving their own specificity, would converge towards this common basic regulation, which implies a law also equal for all Member States, but of a more general nature, referring to the objective to be achieved, allowing, therefore, particularities (p. 127)¹⁷.

For its part, in the ACN, a Decision that obliges member countries to adapt their domestic law to it would be equivalent to an EU Directive, but a Decision could, due to its standardizing scope, also be equated to a Regulation. As we have observed, EU secondary law is, in this sense, much clearer because of this distinction between Regulations and Directives¹⁸, although the actual content of the measure in question must also be taken into account (Sasaki Otani, 2017, pp. 193-194).

However, in the ACN there is no such correspondence between the (generic) figure of the Decision and its legal effects for the States. It is a real problem that all Andean Decisions are called in this way (Decision) without taking into account whether they standardize or harmonize, even more so when in the ACN there is no detailed study on the different Decisions that standardize or harmonize (Sasaki Otani, 2017, p. 194).

On this point, Montaña Galarza (2013) was among the first authors to warn that assigning the principles of immediate application and primacy of the Community rule to Decision 388, “Harmonization of Indirect Taxes as Incentives for Exports of Goods,” would result:

[p]olemical, because on the one hand, it defends the direct and immediate application of harmonization rules over incompatible national rules—a criterion reiterated in subsequent rulings—and, on the other hand, it confuses the harmonization regime with a standardized regime, obviously dissimilar cases (p. 12).

¹⁷ Emphasis added by the authors.

¹⁸ Article 288 of the Treaty on the Functioning of the European Union (TFEU) prescribes: “To exercise the Union’s competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them. Recommendations and opinions shall have no binding force.”

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

Montaño Galarza (2013) goes on to point out that the fact that the ACN adopts a harmonization regime demonstrates precisely that it does not have competence in the matter, so it is unacceptable that through the interpretation and application of Decision 388, entitled “Harmonization of Indirect Taxes as Incentives for Exports of Goods,” the Court of Justice of the Andean Community (CJAC) grants the ACN competences that it does not have, unduly achieving a result that is impossible to realize through harmonization rules of an incomplete nature (Sasaki Otani, 2017, p. 196).

In conclusion, the prior and clear distinction between the harmonized and common regimes is essential, since only the harmonizing normative Decisions would leave margin of appreciation to the member countries, while the standardizing ones would not. However, it may happen that an apparently harmonizing Decision is so detailed and exhaustive that it constitutes, in fact, a standardizing rule; or, on the contrary, that it is a standardizing Decision which, nevertheless, in some specific aspect, leaves a margin of appreciation to the member countries.

Although there is no Andean case law, nor has the concept of “margin of appreciation” been taken into account in the Andean Decisions with respect to which they harmonize, the General Secretariat of the Andean Community (SGCA) and the CJAC should control that their execution and transposition is carried out within the deadline and in a correct manner.

III.4. The Challenges of Implementing Carbon Pricing Measures in the ACN

The recently adopted Andean Environmental Charter (2020) provides that “Each Technical Committee of the Andean Community will identify the contributions it can make to the implementation of the Andean Environmental Charter and submit, as appropriate, a work plan to the General Secretariat.” The Charter also establishes that the SGCA will consolidate information on progress and submit recommendations or draft decisions to the Commission, which may evaluate them in an expanded meeting with the Ministers of the Environment of the member countries with a view to agreeing on the measures deemed pertinent.

Therefore, under the umbrella of the Andean Environmental Charter, a Technical Committee—made up of officials from the Ministries of Environment of the member countries—could be activated to reach a consensus and design a draft decision to implement carbon pricing measures in the Andean subregion.

Below, we will outline some of the challenges that such Technical Committee would face:

1. To assess and decide whether the regulation of carbon pricing policies would be achieved through harmonization or standardization. To this end, it is advisable to start the implementation process through harmonization, since this would allow:

- To set a goal that is realistic, achievable and feasible.
- To give States freedom to decide how to achieve it.

This freedom of means to achieve the final objective and result will make it possible to begin the approximation and reduction of differences between national legislations, without this entailing—for the time being—the imposition or establishment of an ambitious common regime, even more so when there is neither the evidence nor the necessary experience to do so.

Definitively, harmonization would benefit the Andean countries because they would enjoy a greater margin of appreciation by being able to act, for example, between minimum floors and maximum ceilings. Given the sensitivities that each member country may have, we believe that the ACN could begin to move forward with a gradual, progressive and flexible approach according to each country's emissions.

In the event that the Technical Committee decides that the regulations will be harmonized, the Andean countries will have to modify two aspects:

- Their national legislation within the framework of the harmonization strategy designed by the ACN.
 - The current Andean regulations, such as Decisions 599 and 600, in order to adapt them to the new harmonized regime to be adopted.
2. To design a system at the community level based on the progress already made in this area by each country, since taking advantage of this accumulated experience would benefit the harmonization project. To this end, the following considerations may be taken into account:
 - The fact that Colombia has a carbon tax, whose passive subjects enjoy the necessary incentives to adopt more rational and sustainable consumption patterns, giving rise to cooperation between business, society, and the State for the materialization of the objectives of the national environmental policy and those established within the framework of international agreements (Aristizábal & González, 2019, p. 179).

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

- The experiences of Colombia and Peru in the framework of green growth policy discussions in the Pacific Alliance are valuable inputs that could serve as a basis for establishing monitoring and verification measures, or carbon price ranges, with a view to building a regional carbon market.
3. To include the cooperative approach of Article 6 of the Paris Agreement. Indeed, the Andean harmonized regime should develop and concretize the following objectives:
 - To promote the mitigation of greenhouse gas emissions while fostering sustainable development.
 - To encourage and facilitate the participation of public and private entities authorized by the Parties in the mitigation of greenhouse gas emissions.
 - To contribute to the reduction of emission levels in host Parties, which will benefit from mitigation activities that will generate emission reductions that can also be used by another Party to meet its nationally determined contribution.
 - To produce global mitigation of global emissions.

After outlining some of the challenges facing the Technical Committee in charge of designing the draft harmonizing regulatory decision, it must be admitted that, in any case, “the environmental issue must go beyond a regulatory change or proposal, which requires strategic action at all levels that also includes economic, market, financial and fiscal instruments” (Manteca, 2003, p. 85). Also, the Andean legislative body should select the sectors that have an impact on carbon prices in order to introduce the necessary changes that will result in a positive balance in favor of environmental protection in the ACN (Sasaki Otani, 2012, p. 1).

IV. CONCLUSIONS

Countries around the world need to align their policies and legal frameworks to address the causes and consequences of two global crises: the pandemic and climate change. Some European countries are already preparing by aligning both efforts in a green recovery, including the implementation of key climate policy such as carbon pricing. However, most countries' post-pandemic recovery plans currently have mixed assessments of their potential to align with appropriate climate policies.

These recovery plans could be greened and enhanced by joint regional efforts. In that sense, regional integration blocs, such as the EU or ACN, can help their member countries to increase their green recovery efforts

with greater climate ambition, in which carbon pricing takes center stage. This is the example of the European Green Deal.

Andean countries could take note of the European experience to green Andean community law and align their post-pandemic recovery and reactivation efforts with climate policies. As a first approximation, we have proposed five concrete and ambitious ideas for carbon pricing policies that could be discussed and integrated into the Andean legal framework. These five ideas seek that the four ACN member countries incorporate the cost of GHG emissions in their economies and public policies. The ideas propose fiscal, tax and tariff reforms, as well as the creation of emissions markets. These present design challenges—both institutional and for the implementation—that will need to be properly evaluated.

The Cartagena Agreement and, in general, the Andean legal system, offer an apparent space for the development of environmental policies and the regulation of issues such as the regulatory implementation of carbon pricing policies. Indeed, in order to achieve such regulatory implementation, it will be necessary for the Andean legislative body to define, first, whether the Andean regulation establishing such policy would be one of harmonization or standardization. Ultimately, the environmental challenge requires harmonized or standardize solutions from the Andean countries in order to achieve the expected definition of an Andean environmental community law.

In the Andean case, it would be advisable to begin the implementation process through harmonization, since this would allow:

1. To set a goal that is realistic, achievable, and feasible.
2. To leave States free to decide how to achieve it.

This freedom of means to achieve the final objective and result will make it possible to begin the approximation and reduction of differences between national legislations, without this entailing—for the time being—the imposition or establishment of an ambitious common regime, especially when there is neither the evidence nor the necessary experience to do so.

Finally, a protocol amending the Cartagena Agreement could create an independent environmental chapter and, at the same time, permeate the other programs with environmental considerations that integrate, in an important area, carbon pricing policies.

99

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

REFERENCES

- Alonso García, R. (2012). *Sistema Jurídico de la Unión Europea*. Pamplona: S. L. Civitas Ediciones.
- Aristizábal Alzate, C. E., & González Manosalva, J. L. (2019). Impuesto al carbono en Colombia: un mecanismo tributario contra el cambio climático. *Semestre Económico*, 22 (52), 179-202. <https://doi.org/10.22395/seec.v22n52a8>
- Asia-Pacific Economic Cooperation (APEC). (2015). *Peer Review on Fossil Fuel Subsidy Reforms in Peru. Final Report*. <https://bit.ly/2ZJg8J0>
- Boston Consulting Group. (2020, June 30). *How an EU Carbon Border Tax Could Jolt World Trade*. <https://www.bcg.com/en-au/publications/2020/how-an-eu-carbon-border-tax-could-jolt-world-trade>
- Brodny, J., & Tutak, M. (2020). Analyzing Similarities between the European Union Countries in Terms of the Structure and Volume of Energy Production from Renewable Energy Sources. *Energies*, 13 (4). <https://doi.org/10.3390/en13040913>
- Carbonbrief. (2020). *Coronavirus: Tracking how the world's 'green recovery' plans aim to cut emissions*. <https://www.carbonbrief.org/coronavirus-tracking-how-the-worlds-green-recovery-plans-aim-to-cut-emissions>
- Carbon Pricing Leadership Coalition. (2020). *Carbon pricing in action*. <https://www.carbonpricingleadership.org/who>
- Cisneros, N. (2019). *Crecimiento Verde en la Alianza del Pacífico: avances y oportunidades de cooperación (resumen ejecutivo)*. <https://wedocs.unep.org/bitstream/handle/20.500.11822/28679/Alianza-Crecimiento-verde.pdf?sequence=1&isAllowed=y>
- Court of Justice of the Andean Community (CJAC). (2011). *Memorias del "II Encuentro de Magistrados de la CAN y del MERCOSUR"*. Quito: TJCA.
- Delbeke, J., & Vis, P. (2020). *A way forward for a carbon border adjustment mechanism by the EU*. STG Policy Briefs. <https://cadmus.eui.eu/handle/1814/69155>
- Edenhofer, O., Jakob, M., Creutzig, F., Flachsland, C., Fuss, S., Kowarsch, M., Lessmann, K., Mattauch, L., Siegmeier, J., & Steckel, J. C. (2015). Closing the emission price gap. *Global Environmental Change*, 31, 132-143. <https://doi.org/10.1016/j.gloenvcha.2015.01.003>
- Euronews. (2020, October 7). *El Parlamento europeo enmienda la Ley del Clima para pedir más ambición*. <https://es.euronews.com/2020/10/07/el-parlamento-europeo-enmienda-la-ley-del-clima-para-pedir-mas-ambicion>
- European Commission. (2019). *COM (2019) 640 final: El Pacto Verde Europeo*. <https://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:52019DC0640&from=EN>
- European Commission. (2020). *Boosting the EU's Green recovery: Commission invests € 1 billion in innovative clean technology projects*. https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1250

European Parliament. (2020, October 22). *Legislation with binding measures needed to stop EU-driven global deforestation*. <https://www.europarl.europa.eu/news/en/press-room/20201016IPR89560/legislation-with-binding-measures-needed-to-stop-eu-driven-global-deforestation>

Falcão, T. (2019). Epílogo. In Carlos Trinidad (ed.), *Precio al carbono en América Latina. Tendencias y oportunidades*. Lima: SPDA, KAS. https://spda.org.pe/wpfb-file/precio-al-carbono-en-al_digital_6nov_2-pdf/

International Plant Protection Convention (IPCC). (2018). Summary for Policymakers. In *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*. https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf

International Plant Protection Convention (IPCC). (2019). Summary for Policymakers. In *Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems*. https://www.ipcc.ch/site/assets/uploads/sites/4/2020/02/SPM_Updated-Jan20.pdf

International Carbon Action Partnership (ICAP). (2020). *Emissions Trading Worldwide: Status Report 2020*. Berlin.

Jakob, M., Soria, R., Trinidad, C., Edenhofer, O., Bak, C., Bouille, D., Buirra, D., Carlino, H., Gutman, V., Hübner, C., Knopf, B., Lucena, A., Santos, L., Scott, A., Steckel, J. C., Tanaka, K., Vogt-Schill, A., & Yamada, K. (2019). Reforma fiscal verde para una transición energética justa en América Latina. *Economics*, 13. <https://doi.org/10.5018/economics-ejournal.ja.2019-17>

Jakob, M. (2017). Ecuador's climate targets: A credible entry point to a low-carbon economy? *Energy for Sustainable Development*, 39, 91-100. <https://doi.org/10.1016/j.esd.2017.04.005>

Jakob, M. (2018). Can carbon pricing jointly promote climate change mitigation and human development in Peru? *Energy for Sustainable Development*, 44, 87-96. <https://doi.org/10.1016/j.esd.2018.03.005>

Juste, J. (1999). *Derecho internacional del medio ambiente*. Madrid: McGrawhill.

Liu, Z., Ciais, P., Deng, Z., Ciais, P., Deng, Z., Lei, R., Davis, S. T., Feng, S., Zheng, B., Cui, D., Dou, X., Zhu, B., Guo, R., Ke, P., Sun, T., Lu, C., He, P., Wang, Y., Yue, X., Wang, Y., Lei, Y., Zhou, H., Cai, Z., Wu, Y., Guo, R., Han, T., Xue, J., Boucher, O., Boucher, E., Chevallier, F., Tanaka, T. K., Wei, Y., Zhong, H., Kang, C., Zhang, N., Chen, B., Xi, F., Liu, M., Bréon, F. M., Lu, Y., Zhang, Q., Guan, D., Gong, P., Kammen, D. M., He, K., & Schellnhuber, H. J. (2020). Near-real-time monitoring of global CO₂ emissions reveals the effects of the COVID-19 pandemic. *Nature Communications*, 11, 5172. <https://doi.org/10.1038/s41467-020-20254-5>

Liu, A. A. (2013). Tax Evasion and Optimal Environmental Taxes. *Journal of Environmental Economics and Management*, 66(3), 656-670. <https://doi.org/10.1016/j.jeem.2013.06.004>

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

Lucas Garín, A., Tijmes-Ihl, J., Salassa Boix, R., & Sommer, C. (2019). Un diálogo entre la gobernanza comercial global y las políticas ambientales y tributarias internacionales. *Derecho PUCP*, (83), 387-414. <https://doi.org/10.18800/derechopucp.201902.013>

Manteca Valdelande, V. (2003). Política de medio ambiente en la Unión Europea. *Noticias de la Unión Europea*, (223/224).

Marchán, E., Espinasa, R., & Yépez-García, A. (2017). *The Other Side of the Boom. Energy Prices and Subsidies in Latin America and the Caribbean During the Super-Cycle*. <https://doi.org/10.18235/0000916>

Mateu Isturiz, J. F., Cepas Palanca, R., & Pedernal Peces, M. J. (1986). *La protección de los consumidores y el Medio Ambiente en la Comunidad Económica Europea*. Madrid: Editorial Trivium.

Montaño Galarza, C. (2013). La jurisprudencia del Tribunal de Justicia de la Comunidad Andina en materia de armonización legislativa: el caso del impuesto al valor agregado. *Boletín Informativo Spondylus*. Quito: Universidad Andina Simón Bolívar.

Mehling, M., Van Asselt, H., Das, K., Droege, S., & Verkuijl, C. (2019). Designing border carbon adjustments for enhanced climate action. *The American Society of International Law*, 113(3), 433-481. <https://doi.org/10.1017/ajil.2019.22>

Monge, C. (2020). *Coronavirus, Oil and Latin America: The Urgency of Economic Diversification and Energy Transition*. Natural Resource Governance Institute. https://resourcegovernance.org/sites/default/files/documents/coronavirus_oil_and_latam_urgency_of_economic_diversification_and_energy_transition.pdf

Nava, C. (2016). El Acuerdo de París: predominio del soft law en el régimen climático. *Boletín Mexicano de Derecho Comparado*, 147. <https://doi.org/10.22201/ij.24484873e.2016.147.10641>

Nordhaus, W. (2020). *The Climate Club. How to Fix a Failing Global Effort*. Foreign Affairs. <https://www.foreignaffairs.com/articles/united-states/2020-04-10/climate-club>

Ortiz, E. (2020). *Reactivación económica post Covid y la mitigación del Cambio Climático en los países de la CAN*. Konrad Adenauer Foundation. <https://www.kas.de/es/web/energie-klima-lateinamerika/einzeltitel/-/content/reactivacion-economica-post-covid-y-la-mitigacion-del-cambio-climatico-en-los-paises-de-la-can>

Parry, I. (2019). ¿Qué es la tributación del carbono? Los impuestos sobre el carbono son cruciales para reducir los gases de efecto invernadero. *Finanzas y Desarrollo*, (junio), 54-55. <https://bit.ly/2kqQASs>

Pizarro, R. (2020). *Defining carbon pricing and policy instruments*. <https://www.carbonpricingleadership.org/blogs/2020/4/20/defining-carbon-pricing-policy-and-instruments>

Ponce de León, E. (2000). *Temas de Derecho comunitario ambiental andino*. Bogotá: Universidad Externado de Colombia.

Pozzer, A., Dominici, F., Haines, A., Witt, C., Münzel, T., & Lelieveld, J. (2020). Regional and global contributions of air pollution to risk of death from COVID-19. *Cardiovascular Research*, 116(14), 2247-2253. <https://doi.org/10.1093/cvr/cvaa288>

Project Syndicate. (2021, February 15). *Getting the Social Cost of Carbon Right*. <https://www.project-syndicate.org/commentary/biden-administration-climate-change-higher-carbon-price-by-nicholas-stern-and-joseph-e-stiglitz-2021-02>

Reuters. (2020, June 8th). *Germany to double climate protection surcharge on gas guzzlers from 2021 – draft*. <https://www.reuters.com/article/uk-germany-emissions/germany-to-double-climate-protection-surcharge-on-gas-guzzlers-from-2021-draft-idUKKBN23F18N?edition-redirect=uk>

Rijsberman, F., Acosta, L., Bhardwaj, N., Dickinson, C., Gibson, M., Grafakos, S., Solvang, I., & Storey, D. (2020). *GGGI Technical Report No. 13: Achieving Green Growth and Climate Action Post-COVID-19*. <https://ggi.org/site/assets/uploads/2020/07/GGGI-Technical-Report-Achieving-Green-Growth-and-Climate-Action-Post-COVID-19.pdf>

Sasaki Otani, M. Á. (2012). *La protección del medio ambiente en la Comunidad Andina (CAN): Avances y perspectivas*. Mercojuris. <https://www.mercojuris.com/2237/la-proteccion-del-medio-ambiente-en-la-comunidad-andina-can-avances-y-perspectivas-maria-angela-sasaki-otani/>

Sasaki Otani, M. Á. (2017). *La responsabilidad patrimonial de los países miembros de la Comunidad Andina frente a los particulares por incumplimiento del Derecho comunitario* [doctoral dissertation, Universidad Complutense de Madrid].

Sasaki Otani, M. Á. (2019, May 28). Por una potenciación de la CAN. *El Comercio*. <https://elcomercio.pe/opinion/colaboradores/potenciacion-can-maria-angela-sasaki-noticia-639207-noticia/?ref=ecr>

Salassa Boix, R. (2018). The Environmental Taxation in Latin America. In R. Mann and T. Roberts (eds.), *Tax and Environment* (pp. 175-195). New York: Lexington Books.

Schaffitzel, F., Jakob, M., Soria, R., Vogt-Schilb, A., & Ward, H. (2020). Can government transfers make energy subsidy reform socially acceptable? A case study on Ecuador. *Energy Policy*, 137. <https://doi.org/10.1016/j.enpol.2019.111120>

Siddi, M. (2020). *The European Green Deal: Assessing its current state and future implementation* [working paper FIA 114]. https://www.researchgate.net/publication/341701815_The_European_Green_Deal_Assessing_its_current_state_and_future_implementation

Sikora, A. (2021). European Green Deal – legal and financial challenges of the climate change. *ERA Forum*, 21, 681-697. <https://doi.org/10.1007/s12027-020-00637-3>

Stiglitz, J. E. (2000). *La economía del sector público*. Barcelona: Antoni Bosch.

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO

Trinidad, C., & Ortiz, E. (2019). Precio al carbono en el Perú: transición energética y justicia climática. En C. Trinidad Alvarado (ed.), *Precio al carbono en América Latina. Tendencias y oportunidades*. https://spda.org.pe/?wpfb_dl=4161

Trinidad, C., & Soberón, D. (2020). ¿Puede un precio al carbono ayudar a mitigar los efectos económicos y sociales del Covid-19? *Serie EKLA: Cambio Climático en tiempos de Coronavirus*, (13). https://www.kas.de/documents/273477/8706787/Puede+Precio+al+Carbono+mitigar+los+efectos+economicos+y+sociales+del+COVID+19_vf.pdf/d85ac3d6-a45e-3d05-ec45-b01f1cf5f4b2?version=1.1&t=1596495067479

United Nations Environment Programme (UNEP). (2020). *Coronaviruses: are they here to stay?* <https://www.unenvironment.org/news-and-stories/story/coronaviruses-are-they-here-stay>

United Nations Framework Convention on Climate Change (UNFCCC). (2020). *About Carbon Pricing*. <https://unfccc.int/about-us/regional-collaboration-centres/the-ci-aca-initiative/about-carbon-pricing#eq-1>

Velloso, G., Vilas Boas, B., Lefèvre, G., & Nicolletti, M. (2019). Instrumentos de fijación de un precio al carbono en América Latina. In C. Trinidad Alvarado (ed.), *Precio al carbono en América Latina. Tendencias y oportunidades*. Lima: SPDA, KAS. https://spda.org.pe/?wpfb_dl=4161

Vigil Toledo, R. (2011). *La estructura jurídica y el futuro de la Comunidad Andina*. Madrid: Thomson Reuters.

Vivideconomics. (2020). *Greenness of Stimulus Index (updated to October 2020). An assessment of COVID-19 stimulus by G20 countries and other major economies in relation to climate action and biodiversity goals*. https://www.vivideconomics.com/wp-content/uploads/2020/10/201028-GSI-report_October-release.pdf

Vogt-Schilb, A., Walsh, B., Feng, K., Di Capua, L., Liu, Y., Zuluaga, D., Robles, M., & Hubacek, K. (2019). Cash transfers for pro-poor carbon taxes in Latin America and the Caribbean. *Nat Sustain*, (2), 941-948. <https://doi.org/10.1038/s41893-019-0385-0>

Wagner, G., Anthoff, D., Cropper, M., Dietz, S., Gillingham, K.T., Groom, B., Kelleher, J.P., Moore, F.C., & Stock, J.H. (2021). Eight priorities for calculating the social cost of carbon. *Nature*, 590, 548-550. <https://doi.org/10.1038/d41586-021-00441-0>

World Air Quality Index (AQI). (2020). *Ranking - AirVisual IQAir*. <https://www.iqair.com/world-air-quality-ranking>

Jurisprudence, regulations and other legal documents

Acuerdo de Cartagena (1969).

Acuerdo de París (2015).

Directiva 2003/96/EC por la que se reestructura el régimen comunitario de imposición de los productos energéticos y de la electricidad.

Protocolo de Kyoto (1997).

Convención Marco de las Naciones Unidas sobre Cambio Climático.

Proceso 1-AN-97 (TJCA, 26 de febrero de 1998).

Proceso 2-AN-2007 (TJCA, 17 de noviembre de 2009).

Proceso 1-AN-2010 (TJCA, 19 de junio de 2013).

Resolución del Parlamento Europeo sobre el Pacto Verde Europeo (2019/2956(RSP)).

Received: 18/11/2020

Approved: 08/03/2020

105

GREENING
THE ANDEAN
COMMUNITY LAW:
PROPOSALS TO
INSERT CARBON
PRICING POLICIES
IN A CONTEXT OF
GREEN RECOVERY
IN THE ANDEAN
COMMUNITY

¿CÓMO
ENVERDECER
EL DERECHO
COMUNITARIO
ANDINO?:
PROPUESTAS
PARA INSERTAR
POLÍTICAS DE
PRECIOS AL
CARBONO EN UN
CONTEXTO DE
RECUPERACIÓN
VERDE DE LA
COMUNIDAD
ANDINA

PABLO GUILLERMO PEÑA ALEGRÍA /
MARÍA ÁNGELA SASAKI OTANI /
CARLOS TRINIDAD ALVARADO