

Trade and sustainable development in EU trade agreements: Review of current approach

Fields marked with * are mandatory.

Introduction

The trade policy of the European Union (EU) aims to promote trade while fostering sustainability in its economic, social and environmental dimensions. The two objectives are complementary and mutually reinforcing. In February 2021, the European Commission Communication on the [Trade Policy Review – An Open, Sustainable and Assertive Trade Policy](#) (TPR Communication) placed the nexus between open trade and sustainability at the centre of the EU's trade policy strategy.

Since 2011, EU free trade agreements (FTAs) (with Canada, Central America, Colombia/Peru/Ecuador, Georgia, Japan, Korea, Moldova, Ukraine, Singapore, United Kingdom and Vietnam) include trade and sustainable development (TSD) chapters. These chapters commit the parties to respect international rules and standards related to labour rights and environmental protection, including climate. EU TSD chapters stand out as compared to other countries' TSD approaches for the breadth of their provisions and for their high level of ambition.

In February 2018, after a debate involving the European Parliament, Member States and other stakeholders, the European Commission's services published a [15-Point Action Plan](#) to guide the implementation and enforcement of the TSD chapters in EU FTAs.

As announced in the TPR Communication, the European Commission is currently conducting a review of the 15-Point Action Plan: *"The review will cover all relevant aspects of TSD implementation and enforcement, including the scope of commitments, monitoring mechanisms, the possibility of sanctions for non-compliance, the essential elements clause as well as the institutional set-up and resources required"*.

As an essential part of this review, and in line with the EU's commitment to engage in a transparent way with citizens and stakeholders, the European Commission is launching an open public consultation to gather input on the key TSD aspects of the review.

The European Commission values consultation and input from all stakeholders: European institutions and bodies, Member States, social partners, civil society organisations, industry representatives, international organizations and citizens. The responses received in the course of the public consultation will inform the review process and help the European Commission to formulate the direction of EU TSD policy for the future.

This consultation will be available as of **July 2021** in English, French and Spanish. Other EU languages will

be added as they become available.

Stakeholders are invited to provide their responses to the questions set out below **by the end of October 2021**.

Only questions marked with a red asterisk are mandatory. You may **interrupt your session at any time and continue answering at a later stage**. If you do so, **please remember to keep the link to your saved answers as this is the only way to access them**. Once you have submitted your answers online, you will be able to download a copy of the completed questionnaire.

For reasons of transparency and openness, **the European Commission will publish the received contributions and views on the Europa website**, directly as received and in the form of a summary report, or included in a wider policy document. The identity of respondents together with their contributions will be disclosed only with their consent.

In parallel to the open public consultation, the European Commission's services launched at the end of May 2021 an independent study with the aim to map and compare the different approaches to TSD adopted by a number of EU trade partners.

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish

- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* Surname

Pascal

* First name

Kerneis

* Email (this won't be published)

p.kerneis@esf.be

* Organisation name

255 character(s) maximum

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* Organisation size

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- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

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Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

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- Belize
- Benin
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- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- French Southern and Antarctic Lands
- Gabon
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- Guadeloupe
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- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey

- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
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- Cyprus
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- Democratic Republic of the Congo
- Denmark
- Indonesia
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- Palestine
- Panama
- Papua New Guinea
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- Peru
- Philippines
- Pitcairn Islands
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Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

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Trade and sustainable development chapters in trade agreements

The FTAs concluded by the EU contribute to sustainable development by creating economic opportunities, including [better-paid jobs](#), promoting trade and investment in green goods and services, promoting sustainable technologies and processes, and fostering the efficient use and allocation of natural resources. The core aspects of TSD underpin the preferential trade relationships of the EU.

The EU TSD chapters aim at fostering the improvement of workers' rights and environmental protection and preventing potential negative impacts of trade and investment. To this end, the EU TSD chapters commit the parties, in particular, to respect the fundamental principles and rights at work, to the effective implementation of International Labour Organisation (ILO) conventions as well as environmental and climate agreements that they have ratified, and to make continued and sustained efforts to ratify all ILO fundamental conventions. In addition, the most recent TSD chapters include commitments on promoting decent working conditions and social dialogue as well as implementing occupational safety and health and maintaining effective labour inspection. The European Commission has also committed to make the respect of the Paris Agreement on Climate Change an essential element in all future trade agreements. Furthermore, TSD chapters include provisions preventing a "*race to the bottom*" as parties commit not to weaken domestic labour or environmental protection to attract trade and investment.

TSD chapters also promote the sustainable trade and management of natural resources (notably via combatting illegal logging and fishing) and the fight against illegal trade in threatened and endangered species of fauna and flora. They also encourage trade that supports tackling climate change and promote responsible business conduct and corporate social responsibility.

TSD chapters form part of a broader efforts towards sustainability. The EU engages at the multilateral level to attain the goals of the UN 2030 Agenda for Sustainable Development. In this regard, the EU and its Member States are actively participating in discussions and negotiations to improve labour conditions, notably at the ILO. They are also at the forefront of pledging for an increase in the ambition in the fight against environmental degradation and climate change (e.g. during the UN Biodiversity Conference (COP-15) and the Climate Change Conference (COP-26)). The EU is also actively promoting a global transition to circular economy, notably in the context of the Global Alliance on Circular Economy and Resource Efficiency launched in February 2021. The EU is also working to mainstream and reinforce work on trade and environment in the World Trade Organization.

Furthermore, the EU is stepping up its autonomous measures in the pursuit of sustainability objectives. With the adoption of the European Green Deal in December 2019, the EU set the objective to become the world's first *"climate-neutral bloc"* by 2050. To achieve this goal, an ambitious package of legislative initiatives is being rolled out, notably the ["Fit for 55" package](#). It includes among others the Carbon Border Adjustment Mechanism (CBAM) to address carbon leakage. In addition, the European Commission is preparing legislation on sustainable corporate governance to introduce mandatory and horizontal environmental, and human and labour rights due diligence requirements in the supply chains of EU companies as well as a proposal to avoid or minimise the placing of products associated with deforestation or forest degradation on the EU market and to promote forest-friendly imports and value chains.

Question 1: The EU addresses sustainability challenges with cross-border implications in dedicated multilateral fora (e.g. on climate change and biological diversity) and via its autonomous measures (including legislative ones). Against this background, what should be the contribution of the EU trade policy to promote the transition to a greener, fairer and more sustainable economy? How should the implementation and enforcement of TSD chapters in FTAs complement and support the EU's multilateral and autonomous initiatives?

Trade policy is a strong instrument in contributing to sustainable development by increasing growth and jobs in Europe and all over the world in our trading partners, that then contribute to spread economic development. There is no doubt that increased trade of green products and related environmental services spread the use of sustainable technologies that help combat climate change. Increased European investment in developing countries contribute to spreading out European labour and environmental values, through their practice of responsible business conduct. ESF therefore encourages the pursuit of the EU trade policy.

It must be stressed here that the primary objective of the trade policy is to smooth the movement of goods, services, capital, data and business people and to improve competitiveness of European businesses, for the benefit of the European economies and consumers.

The implementation and enforcement of TSD chapters in FTAs is an important tool to complement other EU initiatives, internal and international. TSD chapters in FTA must be seen as one element among others. Trade policy is not meant to be the policy that can solve all other issues with trading partners in other areas, being foreign policy and development policy, being human rights, being labour standards, being environment protection and climate change. Trade policy is part of all the policies that contribute to EU action to address sustainability challenges. Therefore, better coordination of all these policies, and better cooperation between all European institutions and Member states ministries will be a stronger driver towards improvement of sustainability at large.

This being said, of course TSD chapters are an essential instrument of EU trade policy on sustainability. The commitments taken by the parties in the TSD chapters are binding. As are as well the international agreements that are referred to in these chapters, like the ILO conventions and the Paris Accord on climate. TSD chapters are not instruments to implement these individual treaties, which are binding by themselves. Better cooperation, appropriate technical and financial supports related to these treaties must be developed instead.

Assessment of the implementation of the 15-Point TSD Action Plan

The 15-Point Action Plan of February 2018 reflects the outcome of the 2017/2018 public debate that pointed to the need to promote close long-term engagement with FTA partners and capacity building, on the one hand, while stepping up implementation monitoring efforts and enforcement of the existing commitments on the other hand.

Under this plan the European Commission pursued actions in four main areas: (1) Working together, (2) Enabling civil society and social partners to play their role in the implementation of TSD chapters, (3) Delivering results, and (4) Transparency and communication.

The implementation of the Action Plan has brought important results in many areas, not just, in terms of how we work with our partners but also in terms of progress on sustainability in partner countries. The European Commission publishes information on the implementation of the TSD chapters, including deliverables under the 15-Point Action Plan, as part of the [annual reporting on the implementation of FTAs](#). The most recent information will be available in the forthcoming 2021 Annual Report on Implementation and Enforcement. Expected date for its publication is second half of September 2021. As announced in the TPR Communication, further actions may be considered in the context of this review.

1) Working together: partnering with the European Parliament, Member States, and working with international organisations

The European Commission has stepped up efforts to inform and coordinate actions with key partners, with the European Parliament notably via the INTA Committee, and with the Member States, notably through meetings of the Expert Group on trade and sustainable development. The European Commission has also continued to build on the well-established working relations with the ILO. The early implementation of TSD commitments under EU-Vietnam FTA showed how such cooperation could make a difference. The European Commission and the ILO also launched the *Trade for Decent Work* project in January 2019 to improve the implementation of the ILO fundamental conventions for example in Vietnam, Colombia, Ecuador and Peru.

Question 2: What have been the main benefits of closer collaboration of the European Commission with the European Parliament, with the Member States, other relevant EU institutions and bodies and international organizations on the implementation and enforcement of TSD chapters? How should these partnerships be shaped going forward?

There is no doubt that the visit by a delegation of Members of the European Parliament INTA Committee to Vietnam for instance has been a strong tool to persuade the Vietnamese authorities of the importance of the content of the TSD Chapter, and contributed to trigger legislative reform. The coordinated work of the European delegations with the EU Member States embassies and the European business representations in trading partners, through notably the Market Access Advisory Committee (MAAC) and the Market Access Teams in major trading partners, identifying difficulties in implementation of the FTA provisions, including from TSD Chapter, is a powerful instrument that must be strengthened. A larger awareness of the new Single Entry Point for complaints of violation of FTAs obligation, including now those related to the TSD chapter, should be encouraged. The general and regular messages around the importance of the TSD chapter of these interlocutors to the authorities of the hosting countries are integral part of the implementation process. There are also regular delegations visits of the European Economic and Social Committee, which gather the three components of the civil society, to the trading partners and deliver similar messages. The DAG-to-DAG meetings are also an opportunity to discuss about best practices of TSD implementation. These partnerships should be encouraged and may-be better coordinated, or at least well informed among themselves.

Furthermore, one can only commend the work done by the European Commission (DG Trade, but also DG Employment, DG Environment, DG Clima, DG InPa, etc.) and the EEAS together with relevant international organisations like ILO as already mentioned, the UNHCR, The World Bank, OECD, WHO, WTO, WCO, etc. and encourage the continuation and strengthening of such cooperation.

2) Enabling civil society and social partners to play their role in the implementation of TSD chapters

The Domestic Advisory Groups (DAGs) are key actors for the monitoring of the implementation of TSD chapters. The European Commission participates regularly in the meetings of EU DAGs to update them on relevant developments and seek advice. To enable DAGs to perform their functions, the European Commission set up a project funded by the Partnership Instrument that allocates EUR 3 million until the end of 2022 to provide logistics and technical support to DAG members to attend meetings and set up

workshops on relevant issues. This project benefits the EU DAG members but also DAGs of some trade partners.

To mobilise the business engagement and contribution to sustainable development, all recently concluded FTAs include provisions to promote and support the uptake of Corporate Social Responsibility/Responsible Business Conduct (CSR/RBC), building on international guidelines and principles. In January 2019, the Commission launched a EUR 9 million Partnership Instrument project on responsible business conduct with the ILO, the OECD and the Office of the United Nations High Commissioner for Human Rights (OHCHR) to enable outreach and capacity building activities in Latin America. This initiative complements the EUR 9 million Responsible Business Conduct Partnership Instrument project in Asia launched in early 2018 with the ILO and the OECD.

Question 3: How do you see the role and contribution of DAGs and/or other representatives of employers, trade unions, environmental and other non-governmental organisations in the monitoring of the implementation of TSD chapters? How can they better contribute to the monitoring of the implementation of TSD chapters?

ESF is, in a way or another, member of all established Domestic Advisory Groups, and currently chair the DAG for the EU-Singapore FTA. ESF welcomes the fact that the EU FTAs establish formally a role to civil society organisations that are members of these DAGs. It is a formal tool that provides civil society organisations direct access to the authorities of the Parties to the FTAs and make comments on the way the TSD chapters provisions are implemented (or not). This is particularly important in countries where the activities of the civil society organisations, being representatives of employers, trade unions, environmental or other non-governmental organisations are not recognised or consulted.

ESF notes that in many DAGs of partner countries, the usual counterparts in the business trade associations are not member, and one wonder why is that? In some countries, it is because they have not been selected, or they have not applied to be member of their country DAG because they have not properly grasped the importance of the TSD chapter and the importance of taking part to the implementation mechanism of the TSD chapter of the FTA. Traditionally, business organisations are more interested in monitoring the implementation of other chapters and provisions more directly linked to their daily activities (tariffs line reduction, understanding services schedules and domestic regulation, public procurement opportunities, etc). It would be important to encourage trading partners to broadly consult and inform the civil society on the importance of the TSD chapter and of being member of the DAG.

In some FTAs there are, in addition or in place of, “civil society forum”, which often gather a larger group of civil society organisations. Transparency is crucial and therefore such larger meetings should be continued, but the DAG-to-DAG meetings, with participants that are more focus, are often more fruitful and trigger more in-depth relationship with counterparts. They should be encouraged.

One other better way to contribute to the monitoring of the implementation of TSD chapters is to allow the DAGs Chairs to systematically be invited to report to the Trade and Sustainable Development Committee meetings. Such report is a strong incentive to the DAGs members to work towards a result/joint statement. And, on the other side, it gives a direct input to the officials on both parties on the perception by civil stakeholders on the implementation of the TSD chapter’s provision.

3) Delivering results

- *Implementation of TSD chapters*

The identification of priorities per partner country has allowed the EU to pursue a more focused approach to the implementation of TSD chapters and produce better results. The European Commission regularly informs on its TSD activities and outcomes in the annual reports on the implementation of FTAs. A few examples below illustrate the results of the implementation of TSD chapters.

With Vietnam the EU has been engaging intensively in the promotion of core labour standards that resulted in far-reaching labour reforms including the ratification of two ILO fundamental conventions and adoption of a new Labour Code by Vietnam before the entry into force of the EU-Vietnam FTA.

The labour inspection capacity in FTA countries has also been a priority given that it is key for the effective implementation of labour rights. This was the key area of engagement with Georgia which led to the adoption and implementation of a new Labour Inspections Law. Another example is the ILO technical assistance project that the EU financed in 2019-2020 in Colombia with a view to improve labour inspection tools and train labour inspectors focusing on the needs of rural areas.

In the area of environment and climate, the European Commission has used the implementation of the Comprehensive Economic and Trade Agreement (CETA) with Canada to enhance the contribution of trade and investment to climate objectives. Based on the *Recommendation on Trade and Climate*, the CETA parties brought together stakeholders, including businesses, in particular small and medium sized enterprises and fostered regulatory discussions on green aspects. Also, an important increase of bilateral trade in environmental goods has been noted under CETA.

Development cooperation projects are important for successful implementation of the TSD chapters, and to ensure that regulatory and institutional capacity challenges in partner countries are addressed.

Question 4: In the last years the EU has focused its implementation efforts on specific priorities/partner countries. What would you highlight as the main achievements and/or shortcomings and what improvements could be considered in this regard?

The obvious main achievement is the Report of the panel of experts under the EU-Korea FTA. It is unfortunate that the activation of the process of the panel of experts took a very long time. The EU DAG of that FTA concretely contributed to this result by alerting early in the implementation phase the EU and Korean authorities, writing letters and asking to launch the process as agreed in the TSD chapter of the FTA. This report which has triggered concrete action by the Korean government (ratified three of the outstanding ILO conventions, and adopted accordingly national legislation) is clearly setting a precedent.

The process which led to that report is also to commend, not only the work of the EU DAG notably meeting with the Korean Ambassador to the EU, but also the diplomatic work of the EU Trade Commissioner who met at many occasions her Korean counterpart, as well as the Korea employment minister and other Korea stakeholders. Such diplomatic pressure is an important tool and must be seen as a full instrument of implementation efforts.

Question 5: How can synergies between TSD implementation and development cooperation be further explored? What type of supporting measures for developing partner countries would be needed?

As already mentioned in Question 2, Trade policy and TSD implementation through trade tools cannot solve all sustainable development shortfalls in the EU trading partners. ESF has for decades advocated that a good business and investment climate is key to attract and retain more European private foreign direct investment, who in turn create better jobs and import their values. The current negotiations for WTO disciplines on Services Domestic Regulation are a good example of the need to establish good governance and the rule of law, through encouraging trading partners to improve their local and domestic regulation (more transparency, cutting red tape, provide stakeholders with rights to comment, etc.). The spreading of a positive regulatory environment makes then easier to implement the TSD requirements.

There is however clearly a lack of means in many countries to properly invest into domestic regulation towards the adoption of the necessary legislation that would trigger the implementation of the TSD chapters, like the ratification and implementation of the ILO convention or the Paris Agreement. In most of the countries, the problem doesn't lie in the trade policy area, but in the adoption of the necessary domestic regulation. ESF believes that the EU development policy could make a meaningful contribution, through targeted technical assistance, to improving the regulatory framework of the relevant policies related to TSD requirements.

The cooperation between the relevant DGs in the Commission (as mentioned as well in Question 2), in coordination with the development and cooperation actions undertaken by the EU member states, will be a powerful instrument to help achieve this goal.

- *Enforcement of TSD chapters*

The enforceability of the commitments in TSD chapters featured prominently in the 2017/2018 debate. Stakeholders expressed varied views on effectiveness of different approaches to enforcement but the majority considered the existing dedicated dispute resolution mechanism (for TSD chapters in EU FTAs) to be adequate to meet objectives of the broad TSD provisions and bring the required expertise including from the relevant international organisations. Given the broad and ambitious set of TSD provisions in EU FTAs, effective compliance can be hampered by a mix of political, social, development and economic issues.

Notably in case of FTA partners with developing status, shortcomings often result from a lack of regulatory and administrative capacity to enforce labour and environmental laws. Overcoming these issues to achieve change on the ground requires long-term and in-depth engagement with partners, based on a relationship of trust and supported by development cooperation.

In addition to stepping up implementation efforts, the European Commission has since the adoption of the 15-Point Action Plan taken a more assertive stance on enforcement. This includes the [dispute settlement case initiated in 2018 on the non-compliance by Korea with labour commitments under the TSD chapter of the EU-Korea FTA](#). The case has prompted Korea to ratify three out of the four ILO fundamental conventions that it had not ratified and to amend its domestic trade union legislation to bring it into compliance with international standards.

The appointment of the Chief Trade Enforcement Officer (CTEO), and the establishment within DG Trade

of the [European Commission's Single Entry Point \(SEP\) for complaints](#) in 2020, have further strengthened the EU's capacity to enforce TSD commitments.

Question 6: In view of the objectives and the broad scope of the provisions of TSD chapters of EU FTAs, how do you evaluate the suitability and effectiveness of the current dedicated dispute settlement mechanism for TSD?

The Korea case mentioned earlier where the government finally followed the recommendations of the panel of experts under FTA is a good precedent, demonstrating that the diplomatic dialogue is the right approach to deal with a change of a domestic regulation in the field of labour rights and environmental protection. Even if we consider that these aspects are universal and fundamental for fighting climate change for the sake of humanity, the best way to achieve such goals is not through imposing a policy to a trading partner via a dispute settlement that could result in sanction because of non-compliance, but to discuss on the way to reach these goals together. Imposition triggers counter reaction and defence of the sovereignty, and in the end does not bring concrete result in implementation of the TSD chapters, or can delay it significantly.

ESF considers therefore that the current dedicated dispute settlement mechanism for TSD in EU FTAs is adequate and efficient. One can encourage the EU to express a strong accompanying message to trading partners that the obligations undertaken in the TSD chapters are effectively binding (as any international treaties like ILO conventions and Paris Agreement are legally binding by all its signatories) and that the EU will work in concertation with the trading partners towards a full implementation.

Question 7: The European Commission has created the Chief Trade Enforcement Officer and the Single Entry Point in 2020. What in your opinion is their distinct contribution to the implementation and enforcement of the EU's TSD chapters?

ESF welcomed the creation of the position of a Chief Trade Enforcement Officer as an important message to trading partners that, as the EU will duly implement its own obligations, the EU expects a reciprocity and is now equipped to monitor such implementation and enforcement. It is important however that the CTEO action is not made exclusively to address lack of implementation through sanctions but through identifying and strengthening mutual cooperation when necessary. The CTEO actions should not in any case introduce protectionist measures but limit itself to enforcing existing obligations.

The CTEO and his team should encourage dialogue with the relevant authorities of the targeted third country. He should use existing venues and tools to collect facts and figures, like the DAG, the MAAC (Market Access Advisory Committee) and the Market Access Teams, where EU delegations in third countries, trade attachés in the EU member states' embassies, business or other representative stakeholders work together. Furthermore, ESF believes that the CTEO should be able to initiate cases on his own initiative when there is clear evidence of an obligation's breach.

We understand that the Single-Entry Point in the TSD chapter does allow relevant stakeholders to submit detailed information on possible breaches of TSD commitments to the Commission. This would support the Commission in monitoring the implementation of the TSD chapters. We also understand that this Single Entry Point (SEP) is the same that already receives complaints concerning market access or GSP issues (but not trade defense issues like anti-dumping, anti-subsidy or safeguards). We urge the Commission's Single Entry Point to treat all complaints on equal footing.

Furthermore, we also note that DAGs are also allowed to issue a formal complaint through the Single Entry Point. As such, and as for all complainants, the DAGs should be informed of any enforcement action or lack of action thereof.

4) Improving communication and transparency

Clear communication and transparency is key in TSD implementation. The European Commission is fully committed to ensure that civil society stakeholders are fully informed on the implementation and enforcement of TSD chapters. A key deliverable for this is the [publication of minutes and reports of the meetings set up under the FTAs institutional arrangements to monitor progress on implementation](#).

The European Commission is also committed to treat input received from civil society in a transparent way. For instance, following the first ever complaint from civil society (received in October 2017) with allegations of non-compliance with TSD commitments by Peru, the Commission engaged intensively with the Peruvian authorities and with civil society representatives in the EU and in Peru. Information about the agreement reached with Peru on how to address the implementation challenges was shared with civil society.

Question 8: Is the level of transparency and available information on the implementation and enforcement of TSD chapters sufficient for civil society to follow and to contribute to these processes? Where do you see gaps? Do you have suggestions to address them?

Even if we can consider that level of transparency and available information on the implementation and enforcement of TSD chapters in the EU is already good for civil society thanks to the civil society dialogues and the publication of the studies on Sustainable Impact Assessment, one can always try to improve this transparency. More importantly, this transparency should be increased in the trading partners, in cooperation with the local authorities.

As we mentioned the need for more coordination between the different Directorate General of the European Commission, it might be envisaged that more important efforts of transparency of all the existing projects (that directly or indirectly aim at a better implementation of TSD chapters) be established in a more systematic manner. This information should be shared with the DAGs and possibly be published on the dedicated websites run by the European Economic and Social Committee.

Potential additional elements for future TSD policy

Enforcement tools

Given the broad scope and ambitious set of TSD provisions in EU FTAs, their effective implementation /compliance requires long-term and in-depth engagement with partners, based on a relationship of trust and supported by cooperation, in particular with developing FTA partners. This has been the EU's approach so far.

In this context, the question arises whether the introduction of remedies (including the withdrawal of trade concessions) under TSD enforcement would be effective to complement this approach when addressing violations of TSD commitments and whether it would affect the EU capacity to negotiate the broad commitments and ambitious objectives that characterise the current TSD chapters.

A comparative study running in parallel to this open public consultation should identify and analyse the practices of other countries.

In addition to TSD chapters, the EU pursues sustainability via multilateral agreements, and through autonomous legislative initiatives. Therefore, a reflection on how to ensure that FTA partners comply with sustainability commitments should also focus on how these different strands complement each other.

Question 9: Do you think EU TSD chapters need additional remedies to ensure enforcement? If so, what type of remedies would be effective in contributing to sustainable development? Would there be a need for a targeted approach (i.e. adapted to the nature of commitments or for specific sustainability priorities)?

No, at this stage, ESF does not think that EU TSD chapters need additional remedies to ensure enforcement. The use of the existing tools, with in particular the new Single Entry Point and the work of the CTEO team, should be monitored and assessed after a period of time, before envisaging any reform.

Question 10: Do you see any disadvantages with the introduction of additional remedies for the enforcement of TSD chapters, including their impact on the cooperation and engagement on the ground?

It is likely that introduction of additional remedies for the enforcement of TSD chapters will indeed have some negative impact, depending on the nature of these remedies.

The issues dealt within the TSD chapters are often seen as subjects that are negotiated at the request of the EU, and hence negotiating trading partners will be tempted to ask for additional concessions in other more traditional trade aspects (lower market access, lower level of norms standards, Rules of Origin, and regulation, etc.).

Furthermore, before introducing any additional remedies that would result in possible economic sanctions, or even temporary suspension of the agreement, the EU will have to carefully assess the possible negative effects on the very purpose of the TSD chapter. Indeed, it could happen that the trading partner might then decide that, since the trade relationship with the EU would be broken, there will be less interest in implementing the TSD chapter requirements in the field of labour or environment. Businesses of that country could be tempted to try to gain on the international market with other countries, playing on the margin obtained by lower labour and environmental standards. It would then be to the detriment of the local workers and of the local environment, i.e. exactly the contrary of the TSD chapter *raison d'être*.

Question 11: Are there remedies used by other countries that you think should be considered?

We understand that the US-CAFTA has a somewhere similar TSD obligations, and that breach of compliance of these obligations are subject to the general dispute settlement of the agreement. This means however that the complainant must provide evidence that the breach triggers a quantifiable reduction of trade due to the discrimination that would occur by not enforcing labour or environmental protection rules. In the USMCA, the Parties have put into place a Cooperation Mechanism (Article 23.12) and a Cooperative Labor Dialogue (Article 23.13, and following), as well as Environmental Cooperation and other consultation mechanisms (Article 24.25, and following). Such mechanisms might be considered, when possible, in future EU TSD chapters.

Green agenda

The TPR Communication calls for trade policy to become a pillar of the EU green agenda and proposes concrete steps to take this forward, including by promoting climate and sustainability considerations in the WTO, seeking climate neutrality commitments from G20 partners, and making the respect of the Paris Agreement on Climate Change an essential element in all future agreements. The TPR Communication also highlights other aspects of the European Green Deal such as biodiversity - the European Commission has developed a new methodology for assessing the impacts of trade liberalisation on biodiversity and ecosystems, which will contribute to further improve the sustainability impact assessments and ex-post evaluations of the EU trade agreements - and circular economy, and the important role of the implementation and enforcement of TSD chapters to support the green transition and promote responsible and sustainable value chains. The review will explore how to make this contribution the most effective.

Question 12: Are there any key additional environmental or climate commitments that should be covered by TSD chapters? What areas should the EU prioritise in TSD implementation, and what actions do you think should be pursued to make progress on those priorities?

More efficient and well-financed development cooperation tools should be put into place, with well-coordinated efforts among all players within the EU institutions, with the EU Member States and other external actors like international institutions and private stakeholders, to monitor the implementation of the Paris Agreement, that is now systematically integrated in EU TSD chapters. This would be in line with the ambitions expressed by the EU in its recent “green deal” proposal.

Decent work agenda

The promotion of respect for core human and labour rights, as reflected in the fundamental conventions of the ILO, is a key part of TSD chapters, reflecting EU priorities like zero tolerance for child labour.

The EU is also strengthening labour provisions in the most recent trade agreements to reflect the Decent Work Agenda by including commitments beyond the ILO core labour standards covering working conditions, social dialogue, labour inspection and health and safety at work. The EU has also proposed gender commitments in recent negotiations.

Question 13: Are there any key additional labour rights that should be covered by TSD chapters? What areas should the EU prioritise in TSD implementation, and what actions do you think should be pursued to make progress on those priorities?

Like in the USMCA labour chapter, the EU might look at the possibility to establish in its TSD chapter mechanism that promote compliance with labour requirements through appropriate relevant authorities action, such as by appointing and training work inspectors and by monitoring compliance and investigating suspected violations, including through unannounced on-site inspections, and giving due consideration to requests to investigate an alleged violation of labour laws, notably through the CTEO.

Post COVID-19 economic recovery

The COVID-19 pandemic and global health and economic crisis that followed have had important social impacts felt severely in some of the most vulnerable FTA partners. It has also highlighted the need to enhance resilience of supply chains. As the EU works on promoting a fairer and greener recovery for a sustainable and more resilient economy, there is an opportunity to reflect how the TSD chapters of the EU trade agreements could contribute to this process.

Question 14: How can the implementation of EU TSD chapters contribute to a greener, socially just and more resilient post-Covid-19 global economic recovery? What areas should the EU prioritise in TSD implementation and what actions do you think should be pursued to make progress on those priorities?

As the TSD chapters are putting into place platforms for cooperation with trading partners on labour and environmental issues, these platforms could be used to promote the production and distribution of more sustainable products and services, that consumers are more and more demanding, as a follow-up of the Covid crisis, which triggered a deep reflection about the diversity of the supply chains (circular economy, greener products, bigger energy efficiency, etc.).

Additional topics

Question 15: Are there any other important topics not covered by the questions above that the TSD review should address?

No comment.

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