

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 05 November 2021 (midnight)**.

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
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* I am giving my contribution as

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

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* Organisation name

255 character(s) maximum

AVE International

* Organisation size

- Micro (1 to 9 employees)
- 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

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- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
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- Canada
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- Guyana
- Haiti
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- Honduras
- Hong Kong
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- Iceland
- India
- Moldova
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- Mongolia
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- Morocco
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- 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
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- Svalbard and Jan Mayen
- Sweden
- Switzerland
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- The Gambia
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- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey

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- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
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- Congo
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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?

Cross-border implications necessitate cross-border-efforts in order to be realized. EU Policy Makers might provide support to selected FTA-Partners in such regard that global agreements (such as the Paris Convention) and/or other international conventions are extracted from the FTA-Partner's perspective and schedules of feasible objectives in the scope of each individual FTA are established. Implementation and enforcement of TSD chapters should remain one option to deal with sustainability objectives at all, considering there are no further practical ways to enable enforcement at this point in time; intended option of cooperation and dialogue remains also advisable. The Commission should have the holistic perspective on how to handle preliminary situations in which breach is committed due to a stakeholder having recently joined (e.g. a newly elected government) and/or white knights offering the breaching FTA-Partner compensation for any sanctions imposed by the Commission.

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?

The integration, cooperation and collaboration with all related partners and stakeholders with regard to the enforcement and implementation of TSD chapters will allow to abolish or at least minimize incoherencies and duplication of efforts, and in the best case, avoid diffusion of responsibilities in the monitoring stages.

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?

A proactive integration of the DAG and various other parties who have substantial interest regarding the enforcement and implementation of TSD chapters remains highly advisable, provided their input and suggestions for improvement and progress is feasible. The importance of the DAG will depend on its balanced composition of members.

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 main achievement is the final conclusion of negotiated free trade agreements, even though in due course of ratification stakeholder interests are likely to change, including, but not limited to TSD chapters. The shortcomings thereby include that FTAs are never ratified comprehensively, i.e. the investment agreements are always characterized by delay through member states, due to a lack of a binding time schedule for ratification.

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?

Trading partners with FTAs including TSD chapters remain in regional and global competition with countries without any such “pressure” of implementation of sustainability measures. Considering external effects and the such and given that such “competing” countries benefit unilaterally from other preferential treatments (such as the GSP), it should be considered that on the short and mid- term this might be perceived a disadvantage for TSD-FTA-Partners and their operators, solely looking at it from an economic perspective; additional accommodation might be advisable.

- *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?

In our opinion, given the value of TSD-FTAs in relation to DSM-cases, there is not sufficient data yet to conclude any evaluation (at this point in time) with regard to suitability and effectiveness, especially with the role of the CTEO, which remains to be determined.

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?

The possibility and opportunity the EU has created with such an instrument to actively monitor breaches and violations might lead to efforts of compliance with the such.

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?

This question should be answered by civil society stakeholder, and given constructive criticism and feedback, provided monitoring and/or amendments should be executed.

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)?

Having the option of remedies to ensure enforcement with a concrete catalogue of possible actions is advisable to be in place, as is the existence of the CTEO. The approach of the Commission to be able to react to breaches, analogously to anti-coercion and/or extra-territorial sanctions to the disadvantage of EU-Parties, is clearly evident. Though, the approach of collaboration and cooperation and a DSM might be reasonable, depending in the individual case.

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?

If it remains as an optional enforcement instrument, having such measures in place might be reasonable. This might depend on the individual FTA Partner and its own means of remedy if there is breach by the EU (and being realistically feasible to execute such remedy against the EU).

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

We are not aware of any applied remedy in case of a TSD-FTA-violation.

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?

Having established international agreements and conventions should be the benchmark and *primus inter pares*-option with regard to sustainability efforts and measures. If unilateral measures complement the such, there should be an effort to get these measures agreed on multilaterally before implementing them in TSD.

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?

Having established international agreements and conventions should be the benchmark and primus inter pares-option with regard to sustainability efforts and measures. If unilateral measures complement the such, there should be an effort to get these measures agreed on multilaterally before implementing them in TSD.

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?

Pursuant the Commission's principle of 'Open Strategic Autonomy', supply chains might need to be rebalanced and reevaluated with regard to parameters such as availability, economics, sustainability and resilience. As being currently done, strategic goods and services need to be determined and treated accordingly along all reliable parameters, which could embrace transition support for companies and operators affected, whereby this balancing needs to be considered in advance by TSD chapters.

Additional topics

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

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Contact

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