



IEEP's response to the Review of the Trade and Sustainable Development Chapter Action Plan

The European Green Deal, followed by the Trade Policy Review, highlights the EU's commitments to 'greening' the Union's trade and trade policy, including a promise to improve the mainstreaming of social and environmental sustainability concerns in EU Free Trade Agreements (FTAs). However, despite years of promising rhetoric, EU trade is not yet making a positive contribution to sustainable development. The [review of the Trade and Sustainable Development \(TSD\) Chapter](#) implementation monitoring and enforcement framework is therefore an opportunity to address recent concerns and developments in the field of bilateral trade agreements and their environmental and social impacts.

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Question 1: 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 can be a useful tool to mitigate environmental degradation along the value chains, as well as a powerful vehicle for the spreading of best practices and the diffusion of new and more sustainable economic models. Such contribution can be appraised both at the multi- and bilateral levels, and through autonomous measures. However, acknowledging that the current framework does not incorporate adequate environmental safeguards and addressing these shortcomings are the first steps to ensure both trade and environmental policy work together in a synergetic manner.

The EU's efforts to intensify cooperation in multilateral fora on the cross-border implications of climate change and the biodiversity loss are crucial and must be intensified. From a trade policy perspective, the efforts are particularly important at the WTO where most multilateral and plurilateral discussions occur (Trade and Environment Committee, TESSD, sectoral discussions, etc.). The EU must make good with its

pledge stated in its trade policy review to engage with like-minded countries to pursue a strong environmental agenda at the WTO, including through a new trade and climate initiative¹. Eventually, the WTO remains the only forum in which to discuss and agree upon a rules-based trade system, and that system should cater for the climate emergency and provide more flexibility to countries/trade blocs wanting to go further on these issues through autonomous measures.

Indeed, the EU's upcoming autonomous trade-related measures can be instrumental in increasing the share of sustainably sourced goods imported in the EU. These measures include the carbon border adjustment mechanism (CBAM), the upcoming EC initiatives on EU sustainable products, deforestation-free supply chains and corporate social responsibility, as well as a new due diligence legislation. The EU must ensure that these upcoming measures deliver on their domestic objectives and thereby on their global sustainability impact. However, as we have mentioned above, the scope of autonomous measures is limited by the current restrictiveness aspect of global trade rules.

It is in that context that bilateral trade agreements can be instrumental to foster sustainability globally. Firstly, they provide a space for discussions and negotiations between two trade partners where talks can be more substantial than in a forum of 164 members with different interests. Such substantial agreements can eventually pave the way for similar adoption at the multilateral level. Secondly, EU FTAs can have an intrinsic impact on fostering sustainable trade practices by leveraging access to its market for guarantees on environmental protection and greater governance, human and labour rights. The review of the TSD Chapter implementation monitoring and enforcement framework is, therefore, a welcomed an opportunity to address recent concerns and developments^{2,3,4,5} in this space.

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?

Civil society groups such as environmental, human and labour rights stakeholders possess valuable information on the state of play of TSD Chapter implementation, domestically and in partner countries. Civil society engagement is particularly necessary to create reliable and diversified channels for the transmission of information on practices occurring along supply chains. Involving civil society organisations in the monitoring process of FTA implementation and the social and environmental impacts of FTAs can encourage the structuring and professionalisation of these organisations on trade and sustainable development issues in countries where this is not yet the case.

While the current civil society mechanisms under the TSD Chapters, namely the civil society dialogues (CSDs) and domestic advisory groups (DAGs), are sound on paper, in practice, there have been instances where these civil society mechanisms have not worked to the best of their ability. An IEEP policy report⁶ concludes that environmental stakeholders in the CSDs and DAGs have felt inadequately heard or represented in these dialogues. Environmental stakeholders indicated that they lack incentives and/or face financial and knowledge constraints to meaningfully participate in civil society mechanisms.

¹ [EC – Trade Policy Review: An Open, Sustainable and Assertive Trade Policy](#) (p.12)

² [European Ombudsman](#) – Decision in case 1026/2020/MAS concerning the failure by the European Commission to finalise an updated 'sustainability impact assessment' before concluding the EU-Mercosur trade negotiations. (17 March 2021).

³ [European Commission](#) – Panel of experts confirms Republic of Korea is in breach of labour commitments under our trade agreement. (25 January 2021).

⁴ [Greens/EFA in the European Parliament](#) – Seeking progress towards climate-supportive trade: the EU-NZ FTA negotiations. (12 July 2021).

⁵ [Politico](#) – Brussels looks to grab back trade powers in Mexico deal. (2 July 2021).

⁶ Blot, E. & Kettunen, M. (2021). Environmental credentials of EU trade policy. IEEP Brussels / London. [Link](#).

The EU-Korea dispute settlement case on labour rights conventions is a clear example of stakeholder participation demotivation. Stakeholders emphasized that the lack of a clear feedback mechanism from the Commission to address concerns brought up by the DAGs, significantly prolonged action being taken to address South Korea's failure to ratify the requires core ILO conventions. It took five years after the first concerns were raised by the EU-Korea FTA DAGs and the European Parliament, for the Commission to initiate the official consultation mechanism⁷.

If the above issues were addressed, particularly by establishing a feedback procedure in which the Commission must officially respond to concerns raised by DAG members within a specified timeframe, stakeholders would have more confidence in the DAG process and thus better contribute to the monitoring of TSD Chapter implementation. The Commission should also seek to improve early stakeholder engagement, both domestic and foreign, in the FTA negotiation process and stimulate DAG and CSD debates by involving experts from relevant DGs (e.g. ENV, CLIMA, EMPL) and international organisations.

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?

Schemes such as the EU's Aid for Trade should be utilised to provide dedicated support to partner country DAG members to ensure fair representation of environmental stakeholders and to provide the opportunity to share their concerns related to TSD implementation.

Furthermore, EU external cooperation is not only relevant in the context of trade agreements, but especially in the cases of the EU's autonomous trade measures which will create barriers to trade for many developing countries. These schemes provide technical assistance to trade partners in the context of the negotiation and/or implementation of a trade agreement. However, they must be tailored to effectively respond to the needs of the partner to improve domestic practices and policies.

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 EU-Korea dispute settlement case on labour rights commitments is a clear case of both shortcomings and achievements of TSD Chapter implementation. The dispute was officially launched by the EU in 2018, however, as early as 2013, DAG members highlighted South Korea's stagnant progress in ratifying the core ILO conventions in the TSD Chapters.

The dispute was concluded in 2021, when the Expert Panel provided their resolution, which confirmed that the requirement for both parties to make "continued and sustained efforts towards ratifying the fundamental ILO Conventions" is a legally binding and an ongoing obligation. The Panel acknowledged that while Korea has made "tangible, but slow, efforts" since 2017 with respect to ratification of the core ILO conventions in question, it was the Panel's opinion that these efforts had been "less than optimal". The Panel's decision stated that they were aware that Korea had not committed to a specific timeframe under the trade agreement in which it would ratify these ILO conventions. However, while acknowledging this, the Panel expected the ratification process "to be completed in an expeditious manner". Since the Expert Panel's decision, Korea has made progress by ratifying three core ILO conventions; however, they have yet to ratify a fourth ILO convention on the abolition of forced labour.

⁷ Ha Thu, M. & Schweissheim, E. (2020). Labour rights and civil society empowerment in the EU-Vietnam free trade agreements. Berlin School of Economics and Law. [Link](#).

The precedent set by the Expert Panel's decision – affirming that labour rights commitments under trade agreements are legally binding – is an encouraging development in the context of TSD enforceability. However, considering Korea's hesitancy in ratifying the convention on the abolition of forced labour, the Panel's omission of a more outcome-oriented final resolution with a clear deadline or timeframe leaves open the question as to when or whether Korea will ratify this final convention.

This highlights the shortcomings of the dispute settlement mechanism under the TSD Chapters. If the Expert Panel's decision leaves room for ambiguity concerning the monitoring and implementation of the TSD Chapter commitments (i.e. the absence of a set timeframe for implementation or a penalty mechanism in case of inaction) and a party decides to not follow through with the Panel's decision, then the dispute-initiating party has no other tools to enforce TSD commitment compliance.

The effectiveness of the TSD Chapter dispute settlement mechanism could be improved by improving dialogue between trade and MEA officials, as well as civil society, to support timely identification of issues of concern. In the case of future dispute on environmental issues, the convened panel of experts must bear adequate, qualitative expertise to appropriately handle cases of environmental disputes.

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 appointment of the CTEO and the creation of the Single Entry Point are relatively newer tools, therefore it is quite premature to evaluate the overall efficacy with respect to TSD Chapter implementation and enforcement.

Ensuring that these mechanisms are enough to adequately address civil society concerns on environmental and social issues requires that the Commission identify possible needs to build capacity among environmental stakeholders and/or the Commission. In order to guarantee these mechanisms, lead to tangible outcomes also relies on the Commission providing clear timelines for addressing complaints, improving transparency on decisions taken and setting dates for reviews of the performance of these processes, as addressed in other questions of this submission.

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?

Some examples of varying degrees of transparency across FTAs are found in the TSD Chapter articles on the dispute settlement mechanism. For example, in certain agreements the parties or the TSD subcommittee are permitted to decide internally on whether a resolution of a consultation is to be made publicly available or not. Such phrasings are included in the agreements with the Andean region, Korea, Japan, Singapore and Vietnam. An approach of better practice would be that taken up in CETA, which states that 'any resolution reached by the parties shall be made publicly available' with no other provision allowing the parties to keep the resolutions private⁸. Recommendations for improving the transparency of FTA implementation and enforcement processes would be to standardise the transparency provisions, making dispute settlement resolutions publicly available as the standard.

Related to the uptake of specific environmental commitments in the TSD Chapters, the Commission should improve its accountability over the final trade agreement. By improving transparency as to how the findings, insights and flanking measures of the SIAs are taken up into the final FTA, civil society would

⁸ Blot, E. & Kettunen, M. (2021). Environmental credentials of EU trade policy. IEEP Brussels / London. [Link](#).

be more informed on the interlinkages between both processes and could potentially improve confidence in the system.

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)?

The Commission has made strides to improve TSD Chapter implementation and enforcement with the appointment of the CTEO and the opening of the Single Entry Point complaints platform. Yet, enforceability of the TSD Chapters could be further reinforced through a number of avenues:

- Use stronger and more explicit language when setting the expectations for the delivery of TSD Chapter commitments to improve their enforceability. "Shall" and "must" ought to become the norm instead of "aim" or "seek to".
- This should be paired with a binding framework and effective process, including specific indicators, targets, and timelines, for delivering TSD Chapter provisions. The aim is to provide a solid backdrop onto which the Commission and stakeholders can monitor and evaluate TSD Chapter implementation
- Building on the above, and should action need to be undertaken, this backdrop also serves as an evidence base for dispute settlement. We detail our recommendations on the matter in Q6 in which we addressed the need to ensure that the dispute settlement mechanism is both actionable and outcome-oriented, using the EU-Korea case as an example – the current dispute settlement mechanism could be further reinforced to better contribute to sustainable development. Addressing issues of non-compliance of TSD chapter provisions in a timely and action-oriented manner is key.
- Integrate 'ratchet up' mechanism in TSD chapters to make sure that EU FTAs become a dynamic tool to foster sustainability globally.
- Expand the notion of "essential element" of a clause in an FTA and the concrete implications of breaching such clause. An example is the EU-UK Trade and Cooperation Agreement which foresees the respect of Paris Agreement as an essential clause, the breaching of which would lead to the suspension or termination of the trade agreement as a whole. Similar approaches could be extended to include also other MEAs, including the CBD, and core ILO conventions.
- Negotiate "tailor-made" TSD chapters with partners, to ensure that TSD provisions are in line with the specific environmental challenges of each country or region.
- Provide collaborative review mechanisms of the TSD action plans, involving experts from relevant DGs, such as ENV, CLIMA and EMPL, as well as civil society experts.

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

The USMCA agreement includes a dedicated mechanism to ensure labour rights are protected and upheld between trade partners. This Rapid-Response Labour Mechanism allows for complaints to be filed against specific producers and, if judged as non-compliant, a penalty in the form of targeted import restrictions could be placed on that producer's output.

The EU could look to embed a similar mechanism for the environment into its trade agreements and recognise the right and facilitate the role of civil society stakeholders to initiate a complaint in case of a violation of TSD provisions.

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?

Prior to adding new environmental commitments in the TSD Chapters, we must ensure that the TSD Chapter framework becomes an effective tool to monitor progress on environmental commitments. This would include looking beyond the TSD Chapters, into sector-specific chapters to mainstream environmental provisions, in addition to removing provisions in other chapters of the trade agreement that may hinder environmental progress and protection.

Yet, a key dossier of the EU Green Deal that is not predominantly featured in TSD Chapters is the circular economy. The uptake of circular economy principles, along with efforts to encourage sustainable consumption and production are only mentioned in the draft TSD Chapters of the EU-Australia and EU-New Zealand trade deals. Going forward, the EU should seek to integrate circular economy principles into its new trade deals.

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?

TSD Chapter implementation has the potential to contribute to a greener, socially just and more resilient post-COVID-19 global economic recovery, considering the issues and recommendations previously discussed (i.e., more explicit provisions, strengthened monitoring framework and outcome-oriented dispute settlement mechanism).

During the pandemic, several governments announced plans to roll back environmental policies in an effort to stimulate economic recovery⁹. In this context – and if applicable to an EU trade partner – the EU should assertively use its trade instruments to strongly disincentivise any reduction or temporary roll back of environmental and social standards or measures.

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

A key underpinning component of trade agreements are the SIAs, which could and should become better linked to the TSD Chapters and their monitoring process, by considering the following elements:

- The environmental performance of SIAs must be improved, particularly by utilising a more granular and qualitative methodology for assessing impacts of trade liberalisation on the environment (e.g. impacts of trade liberalisation on biodiversity¹⁰).
- Final SIA reports must be published for public viewing prior to the conclusion of FTA negotiations.

⁹ [UN](#) – COVID-19 environmental roll back 'irrational and irresponsible': rights expert. (15 April 2020)

¹⁰ [IEEP, Trinomics, IVM and UNEP-WCMC](#) (2021). Methodology for assessing the impacts of trade agreements on biodiversity and ecosystems. Service contract for the European Commission (No 07.0202/2019/812941/SER/ENV.D.2), Institute for European Policy (IEEP), Brussels/London.

- The Commission must provide clarity on the findings of the environmental impact assessment translate into environmental safeguards, provisions and flanking measures being taken up into the text of the final agreement.
- Introduce a 'trigger' clause for a review of FTA implementation and/or dispute settlement (e.g. triggering a review in the event of a failure to ratify or implement a relevant MEA, or a decision to withdraw from it).
- Link environmental targets and progression timelines in the TSD Chapters to a systematic monitoring process supported by ex-post assessments. Additionally, integrate predetermined 'triggers' / 'thresholds' to initiate a review of an agreement if required (e.g. in the light of time-bound actions and targets set out in TSD Chapters).

More info

IEEP's response to the European Commission's public consultation drew on a number of IEEP publications, including [Blot, E. & Kettunen, M. \(2021\)](#), [Kettunen, M. et al \(2020\)](#), and [IEEP, Trinomics, IVM and UNEP-WCMC \(2021\)](#).

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