

# Joint statement on the review of the EU FTAs Trade and Sustainable Development Chapters

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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 ongoing review of the Trade and Sustainable Development (TSD) Chapter implementation monitoring, and enforcement framework provides an opportunity to address recent concerns and developments in the field of bilateral trade agreements and their environmental and social impacts.

Building on our previous respective work, and without prejudice to our respective positions and future work on the matter, we put forward the following recommendations to strengthen the current TSD framework by tooling relevant provisions, making the dispute settlement process more robust, and empowering civil society to take part in trade dialogues.

TSD provisions themselves must become more explicit when defining commitments and expectations from trade partners under the trade agreement. This begins by **using 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". Stronger language should be paired with a **binding framework to evaluate actual progress** being made on commitments by 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. Additionally, the Commission should utilise the Sustainability Impact Assessment (SIA) process to the fullest extent by conducting systematic ex-post assessments to monitor progress, as well as including a predetermined "trigger" clause for TSD provisions to launch a review of the FTA if required.

The Trade Policy Review confirms the Commission's intent to make certain Multilateral Environmental Agreements (MEAs) an "essential element" of future trade agreements. The notion of "essential element" of a clause in an EU FTA is relatively new and should be expanded upon. 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 all or part of the trade agreement. Similar approaches could be extended to include also other MEAs, including the Convention on Biological Diversity (CBD), and core International Labour Organisation (ILO) conventions. Related to this – and key to making continued progress on environmental commitments – is this integration of a **"ratchet up" mechanism** in TSD chapters to ensure that EU FTAs become a dynamic tool to foster sustainability globally. Finally, the Commission should seek to 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.

Ensuring TSD provisions become actionable requires an effective, outcome-oriented **dispute settlement mechanism**. The EU-Korea case on the ratification of the ILO labour rights convention highlighted the shortcomings of the current dispute settlement mechanism under the TSD Chapters, specifically in

that the dispute process must become more robust, doing away with any ambiguity surrounding the Expert Panel resolution. This should involve resolutions requiring a **timeframe for implementation or a penalty mechanism in case of inaction**, in addition to improved dialogue between civil society, trade and MEA officials to support timely identification of concerns. 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.

The **civil society mechanism** under the TSD Chapter is also key to the identification of lack of progress on social and environmental fronts. Building on the last point, early stakeholder engagement should be the standard, in both domestic and foreign countries, during the FTA negotiation process. Furthermore, Domestic Advisory Group (DAG) and Civil Society Dialogue (CSD) debates could be stimulated by involving experts from relevant DGs (e.g. ENV, CLIMA, EMPL) and international organisations.

Finally, the lack of environmental stakeholder representation in the TSD civil society mechanisms is a cause for concern. 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 considerations of these recommendations would further strengthen the capacity of the EU to promote and foster sustainable development globally through the conclusion of FTAs.

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