

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

Fields marked with \* are mandatory.

## Introduction

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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

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### \* 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

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Wiedenhofer

\* First name

Benedikt

\* Email (this won't be published)

b.wiedenhofer@businessseurope.eu

\* Organisation name

*255 character(s) maximum*

BusinessEurope

\* 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

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

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- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
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- Burundi
- Cambodia
- Cameroon
- Canada
- French Southern and Antarctic Lands
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- Gibraltar
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- Guadeloupe
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- 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
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- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
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- Liberia
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
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- Uruguay
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- Vanuatu
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The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its**

**transparency register number, are always published. Your e-mail address will never be published.**

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### \* **Contribution publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

**Anonymous**

Only organisation 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 as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

**Public**

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**

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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?**



With the right policy framework in place, international trade and investment can be a powerful driver of sustainability, and they have lifted millions of people out of poverty in the past decades. On the one hand, trade and investment liberalisation makes sustainable and green products and services more widely available and affordable. On the other hand, it accelerates the development of new, more sustainable technologies by giving companies access to markets that are large enough to create the necessary economies of scale. Moreover, European companies established abroad are also vehicles for European labour and social standards and sustainable production practices, and they are leading promoters of responsible business conduct and corporate social responsibility.

By opening new markets, by creating a level-playing field, facilitating access to needed inputs, and improving the investment climate for European investors in partner countries, EU trade policy enables the hundreds of thousands of European companies involved in international production networks to play their role in the quest towards a more sustainable economy. EU trade policy should keep playing this role, while exploring additional ways to leverage international trade and investment to encourage sustainability through an incentives-based approach, for instance by strengthening green technology value chains. However, EU Free Trade Agreements should not be overloaded with policy objectives that are unrelated to trade. Otherwise, it will become more difficult for the EU to conclude such trade agreements with third countries. EU development policy can also play an important complementary role in this regard by supporting partnerships between European companies and companies in partner countries that lead to more efficient and socially and environmentally sustainable production practices.

In all this, the EU must not neglect the fact that trade agreements should primarily serve to promote the competitiveness of European companies by opening-up new markets of third countries and by establishing a level-playing field. Competitiveness and sustainability are by no means contrasting elements. In fact, competitiveness is the cornerstone for companies to play their role in the society: businesses can only create value and operate in a socially and environmentally sustainable way if they are economically sustainable. European companies are committed to deliver sustainable solutions and lead sustainability efforts, both in the EU and abroad, in close cooperation with governments, local communities and the broader civil society. However, often times business actions are downplayed even though companies are at the forefront when it comes to promoting sustainable trade, for example with initiatives like fair trade schemes. At the same time, it is crucial to take into consideration the relevance that the application of TSD chapters in FTAs might have to competition. In this sense it is necessary to put in place measures to ensure a level playing field and avoid unfair competition between companies.

Against a backdrop that sees the multiplication of efforts in different policy areas and through various legislative initiatives, it is essential that existing and new instruments do not overlap and create a difficult environment and additional bureaucracy for businesses, especially small ones, to navigate and comply with.

TSD chapters are an essential instrument of EU trade policy on sustainability. They bind Parties to their commitments and promote deep cooperation among Parties and members of civil society, incentivising compliance with sustainability standards and stepping up domestic engagement. A second major positive element is the formal role they attribute to civil society organisations, thereby empowering them vis-à-vis their governments, especially in countries where the role of independent civil society is not recognised.

The EU should make sure that FTAs, TSD chapters and unilateral measures (as CBAM) do not contradict each other. TSD chapters could foster a joint understanding about the achievement of the SDGs and aim at supporting efficient procedures, processes, standards and certification to achieve sustainability provisions in the FTA jointly with the partners (e.g. development/use of track-and-trace technologies, certification schemes, verification, regulatory cooperation, enforcement in the partner countries).

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

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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?**

TSD issues are cross-cutting, and many of them can only be tackled through policy changes and reforms in partner countries. It is important that the EU passes a consistent message through all available channels, including the European Delegations in partner countries, Member States embassies, and contacts with National assemblies. For example, the involvement of the European Parliament and MEPs visits to FTAs partner countries have been instrumental in stressing the message on the need for legislative reforms and more effective enforcement of existing legislation in third countries.

Furthermore, it is key for the EU to cooperate with relevant international organisations to find synergies and opportunities for building on existing projects instead of duplicating their efforts. One positive example in this regard is the project on “Responsible business conduct in Latin America and the Caribbean (RBCLAC)”, which the EU is currently implementing in nine Latin American countries in cooperation with the OECD, the ILO and UNHCR.

Going forward, these partnerships should be strengthened further, using existing representations and networks to gather country- and sector-specific information on existing barriers to increased sustainability that should be removed or on good practices that could be replicated. Efforts should be made to showcase examples and best practices of how trade and investment liberalisation and the activity of European companies contributes to sustainable development in third countries, in order to contribute to further spreading the positive impact. To improve this cooperation, a multistakeholder approach should be adopted.

## **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?**

EU FTAs attribute a formal role to civil society organisations members of DAGs, thereby empowering them vis-à-vis their governments, especially in countries where the role of independent civil society is not recognised. Many of the organisations sitting on EU and third countries' DAGs enjoy a working relationship and/or have local offices in the partner country. Therefore, DAGs are an essential instrument of EU FTAs to ensure effective monitoring and implementation of sustainability provisions. Their fundamental role and contribution are to promote deep cooperation among Parties' civil society and exchange of best practices, incentivising compliance with sustainability standards and stepping up domestic engagement.

To better contribute to the monitoring of the implementation of the implementation of TSD chapters, improvements to the current system could be made. Greater attention must be paid to the composition and membership of DAGs. It is fair to say that DAGs are organised on the basis of the "European civil society model", which has led to significant challenges as relates to the membership of DAGs in partner countries, where DAG members are often not fully independent from government and where direct counterparts to BusinessEurope (e.g. Keidanren in Japan, the Chamber of Commerce in Canada) are many times not members of the DAG. BusinessEurope has devoted considerable efforts to explain to its counterparts the importance of their membership of the DAGs in order to impact the agenda and have meaningful discussions on topics of common interest, but many business organisations in third country still fail to understand the purpose and relevance of the DAGs. So, stepping up communication among all relevant stakeholders and civil society actors remains a priority.

The three-legged structure of the DAGs (business, labour and other interests) is new outside of Europe, and the overall objectives and purpose of DAGs are underestimated by partner organisations in third countries. The presence of representative third countries' business organisations is crucial to ensure that the economic dimension of sustainable development and the economic viability are taken into account in the debates as well as to ensure the balance of interests be reflected in the working programme of the DAGs. This is particularly important as the scope of sustainability chapters is constantly extended to new areas.

Another important contribution to the monitoring of the implementation of TSD chapters can be made through further encouragement of DAG-to-DAG meetings. The policy impact of DAG-to-DAG meetings has not been fully recognized yet and more efforts should be made to enable Parties' DAGs to meet on a regular basis and carry out joint work on the basis of a common agenda. Future FTAs should include provisions to this aim. DAGs Chairs should be systematically invited to report to the Trade and Sustainable Development Committee meetings.

Going forward, DAGs should be further empowered and enabled to perform their role for instance by having clear, formalised and transparent procedures concerning their role and decisions. This would avoid limbo situations that in the end might be used to criticize the effectiveness of the DAGs and the Sustainable Development Chapters as well as to undermine the potential benefits of the agreement. The latest developments including the critical role of the Chief Trade Enforcement Officer and the Single Entry Point for complaints are also a good step in the right direction. More recently, DAGs have gained visibility, including in the European Parliament, and are consulted on a regular basis and this is positive.

Furthermore, synergies could be created with other existing tools established under other EU policy areas. For example, the EU and Member States combined are the world's largest donors of development aid. Many of the projects the EU funds are highly relevant for the implementation of its TSD chapters even though they may not be directly linked to them. One example is the project "Responsible business conduct in Latin America and the Caribbean (RBCLAC)", which the EU is currently implementing in nine Latin American countries in cooperation with the OECD, the ILO and UNHCR.

Such projects are also highly relevant for the work of the domestic advisory groups under the EU trade agreements covering the respective countries and regions. Going forward, the relevant DAGs should be

informed more thoroughly of EU cooperation projects relevant for the implementation of the TSD chapters. This could include an overview of relevant projects – including links to websites, reports and studies – that the Commission shares with each DAG. This would inform the work of DAGs and help them make more targeted and relevant recommendations. As many of the projects are not implemented by DG Trade, this would require more cooperation between DGs, particularly with DG INTPA.

### 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?**

While several successes could be quoted, the first use of the panel of experts under the EU-Korea FTA is probably one of the most significant successes as it set a precedent and showed that the current system can deliver. While it took too long to launch the process and there were some delays that can only partly be justified by the COVID-19 pandemic, the results are encouraging and hold significance beyond the EU-South Korea FTA:

- The Panel of Experts agreed with the EU that a number of provisions in the Korean trade union legislation were not consistent with the principles concerning the protection of certain fundamental labour rights.
- The Panel did not agree with the EU concerning the registration of trade unions but recommended that the Parties continue to monitor the situation.
- On the ratification of the ILO Conventions, the Panel found that Korea had made continued and sustained efforts over the last three years to ratify three of the four outstanding conventions. Nevertheless, it recognized that there was an ongoing obligation in this area, and stated that it expected Korea to expeditiously ratify the outstanding conventions.
- Since the publication of the Panel report, Korea has ratified three of the outstanding conventions.

Precedents for other trade agreements:

- Obligation to respect the principles concerning fundamental rights applied irrespective of whether the country concerned had ratified the relevant conventions.
- Continued and sustained efforts as regards the ratification of the conventions was a legally binding and ongoing obligation; it was not enough to make minimum efforts, it set a standard and implied in this case that Korea must continue to make progress including on C105 and would only satisfy this obligation when finally ratifying all outstanding ILO core conventions.
- The ruling of the Panel would frame the EU's expectations on its partners as regards ensuring effective implementation.
- Trade benefits can only be fully used by business if trade policy provides predictability. This includes the negotiation and ratification of FTAs. To avoid any unnecessary delays, it is important that the EU objectives are clear, concrete, and achievable when negotiating an FTA. They must be clearly explained to the trading partner at the beginning of the negotiations so that they are fully aware of the EU's expectations. Once the negotiations are concluded and both sides are satisfied with the outcome, we recommend avoiding adding other requests as it can (1) seriously imperil the predictability of EU trade policy for businesses, (2) negatively impact the EU's international reputation and (3) other trade partners may be potentially reluctant in engaging in trade negotiations with the EU.

**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?**

Trade and foreign direct investment are important mechanisms for countries seeking to diversify their economies and become more sustainable. Investments in value-adding sectors require sufficiently large markets to sell the products and services produced and to allow companies to reach the economies of scale necessary to be competitive internationally.

However, trade is no silver bullet, and it must be accompanied by other policies creating an overall framework conducive to sustainable development: A favourable investment climate is key to attract and retain more private investment, create more and better jobs and improve peoples' lives. Besides access to markets, it involves factors such as macroeconomic stability, good governance and the rule of law, an adequate physical and digital infrastructure, a skilled population, an accountable public sector, a country's policy framework, etc. The EU development policy can make a meaningful contribution to improving the investment climate in partner countries and the relevant policies should build on the trade agreements the EU has with the respective country or region wherever possible.

Moreover, capacity building measures in partner countries helping e.g. companies to meet EU standards or customs authorities to facilitate trade flows are important. Development cooperation is thus key to accompany countries on their development path.

Furthermore, real or perceived risk often prevents companies from investing in certain countries or sectors although these investments would have a beneficial developmental impact. In these cases, innovative financing instruments used by development financing institutions to mitigate risk and leverage additional private investment can be an important complement to trade and more traditional forms of development aid.

Finally, it is paramount that the economic consequences of COVID-19 in the EU and in the rest of the world do not lead to increased protectionism, new barriers to trade and reduced market access for the developing countries that will already be hit hard by the crisis as this would also have a negative impact on the speed at which we can move towards a more sustainable economy globally.

More broadly, the EU Institutions must ensure that the initiatives taken by different DGs towards developing countries are complementary and mutually reinforcing. With regards to Africa, for example, the objective to mobilise European private investment on the continent is largely treated separately from the objective to promote trade between the EU and Africa, for instance in the EU delegations' events in African countries. However, the trade liberalisation and investment promotion are strongly interlinked, as explained above. Moreover, the deeper disciplines included in modern trade agreements (e.g. provisions on trade in services, investment, intellectual property, competition, and public procurement) facilitate the two-way flows of businesspersons, capital and ideas, in addition to goods, and give assurances to investors that they will be treated fairly. Thereby, they create favourable conditions for the participation in international value chains and contribute to an investment climate conducive to attracting foreign direct investment. Hence, the EU needs emphasise the complementarity between the External Investment Plan, the implementation and broadening of its Economic Partnership Agreements and Association Agreements, and its support of African continental integration in its dialogues with African counterparts and its Africa-related events. This requires strong coordination and coherence at European level, for instance between DG Trade, DG DEVCO, DG NEAR, DG GROW, the EEAS, the EIB and EDFI. A regular structured dialogue between the representatives of the European private sector, Commission and European IFIs should be put in place.

Improving capacity building – e.g. via supporting the trade facilitation agreement of the WTO - as well as the use of the EU Connectivity Strategy- Global Gateway-, could be elements future TSD chapters could refer to. Furthermore, they could support regional cooperation among developing and emerging economies as well as domestic initiatives for compliance with due diligence requirements in developing countries.

- *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 actions taken by the Korean government following the recommendations of the panel of experts under the TSD chapter of the EU-South Korea FTA show once again that an approach based on dialogue and a deep cooperation mechanism is the best suited for complex and intertwined issues such as labour rights and environmental protection. On these issues, sensitivity to the specific context as well as flexibility are required to find intelligent solutions that are acceptable to all parties involved. An efficient approach to TSD enforcement mechanisms is ideally based on the creation of incentives to implementation rather than on the sanctioning of non-compliance, thus building on engagement, cooperation and capacity-building with the trading partner(s). The ultimate goal of TSD provisions in FTAs is to improve the de facto situation regarding social and environmental standards in the partner country.

BusinessEurope considers that the following positive elements are found in the current EU system and should be retained in the future:

- It is designed to strengthen a multilateral approach to labour and environment provisions against a proliferation of bilateral and often non-harmonised approaches anchored in various bilateral agreements;
- It ensures that companies operate in third countries in the respect of laws in force, and it includes provisions that prevent a race to the bottom through weakening domestic labour or environment protection for the purpose of increasing trade;
- It allows for a continuous and sustainable engagement with third partners on labour and environmental issues on the long term;
- It supports the establishment of a government-to-government systematic dialogue on sensitive issues;
- It allows for the empowerment of civil society structures, promoting dialogue between governments and organisations in third countries that many times have a different understanding of the role of civil society in public policy choices;
- It combines a specific monitoring and enforcement mechanism to ensure compliance with commitments;
- It includes the possibility of exerting strong public pressure on third countries through the adoption of a report.

**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 creation of the position of a Chief Trade Enforcement Officer is a major step towards ensuring that the EU FTAs deliver and remain relevant over time. To ensure that FTAs deliver, a comprehensive enforcement strategy should be established and coordinated by the Chief Trade Enforcement Officer (CTEO) and his team. The CTEO should focus on a positive agenda, where possible, and he should not use his role for protectionist purposes.

Moreover, the CTEO shall endeavour to find an amicable solution with the relevant authorities of the third country in the shortest time period. This requires that the CTEO takes action as soon as a problem has been identified and reported with substantiated evidence by member states, EU delegations in third countries or relevant Commission services, business or other representative stakeholders, including DAGs. The CTEO should be able to initiate cases on his own initiative as well.

The CTEO should have the enforcement of trade and trade provisions and the establishment of fair competition at the centre of his enforcement activity. The activities of the CTEO should always be compliant with WTO rules. To be effective, a close and efficient coordination/ cooperation between the CTEO and EU member states would be helpful.

With regards to TSD chapters, the Single Entry Point allows relevant stakeholders to submit detailed information on possible breaches of TSD commitments to the Commission. This helps the Commission monitor the implementation of the TSD chapters and is a valuable complement to the DAGs.

Nevertheless, DAGs play a crucial role in monitoring the implementation of trade and sustainable development chapters of EU FTAs. As the number of DAGs has increased in recent years, it is important to ensure these bodies are kept efficient and effective. They represent the best platform to discuss issues in the implementation of trade and sustainable development chapters and, should monitoring reports highlight breaches of FTA provisions, all procedures must be followed swiftly and within strict deadlines. Should a DAG launch a formal complaint in particular through the Single Entry Point, it should be informed as to whether it leads to an enforcement action and receive detailed information if this is not the case.

#### **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?**

DAGs do not always have a clear visibility of the priorities and actions of the EU vis-à-vis partner countries under the EU TSD chapters. Moreover, they are often consulted too late and can no longer make a meaningful contribution to the Commission's priorities. Several actions could be taken to improve this:

- While DAG members often benefit from their own networks and channels and use these to gather information on the implementation of TSD chapters in partner countries, independent information from reliable sources is always a useful supplement. Therefore, the EESC-European Economic and Social Committee secretariat could create a document with links to the websites, publications and databases of relevant international organisations (e.g. ILO, OECD, regional organisations) that DAG members can use as additional data sources. This document could be shared with all DAG members at the beginning of their mandate.
- The different DGs of the Commission should coordinate to create an overview of EU-funded projects in relevant partner countries that contribute directly or indirectly to the implementation of TSD chapters. Each of these documents should be shared with the DAG dealing with the respective country or region.
- When consulting DAGs, the Commission should do so at an early stage of their deliberations and provide for enough time for feedback in order that the DAGs can make a meaningful contribution.
- The Commission should regularly update the DAGs on relevant developments and the implementation of relevant projects and initiatives. Updates should also be shared with the DAGs on an ad hoc basis by e-mail and not only during the DAG meetings.

## **Potential additional elements for future TSD policy**

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### **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)?**

We believe the EU should make a more assertive use of the existing dedicated dispute settlement mechanism as improved by the newly established Single Entry Point and the appointment of a Chief Trade Enforcement Officer. The South Korea case has shown that this mechanism can deliver.

Any reform should consider that the framework regarding due diligence in the EU is already changing with increasing obligations and bureaucracy for EU companies. Supporting developing countries in their ability to meet future EU due diligence obligations would be helpful for companies.

**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?**

The introduction of additional remedies for the enforcement of TSD chapters could have the following unwanted side effects:

- As TSD chapters are very comprehensive in scope and include commitments that are perceived in general to be more in the interest of the EU by partner countries, the EU would likely be obliged to make additional concessions in other areas of the agreement. This could either involve less market access in certain areas for EU companies or granting more access to the EU market in sensitive areas, such as agriculture.
- The issues covered by the TSD chapters are very different from those covered in the rest of the agreement. For disputes regarding market access or the potential discrimination of EU companies in partner countries, it is clear that the government of the partner country is responsible for these infringements. For TSD-related issues (labour, social, or environmental standards in companies), however, the government sets and enforces the legislative and regulatory framework, which is implemented by tens of thousands of independent companies. In developing countries, many of these companies are part of the informal economy, which is outside of the government's control. In many cases, the government may be willing but not able to duly enforce its regulations in the area of labour, social and environmental standards. In these cases, a dialogue-based approach supplemented with capacity building and funding is best-suited to improve the situation. Therefore, enforcing TSD chapters through a dedicated mechanism is warranted, and moving to a sanctions-based approach does not address the core of the problem and is unlikely to lead to any concrete improvements on the ground.

However, if after thorough assessment the EU decides to consider a system that involves economic penalties, this should always be a last resort measure, only used after exhausting all other channels and with objective, strict and clearly defined conditions for application. Otherwise, the EU endangers its efforts to achieve the SDGs overall and reduces its influence with regard to global competitors. BusinessEurope remains doubtful that sanctions for non-compliance would encourage enforcement (for example, if this is due to lack of capacity). Furthermore, serious concerns arise concerning how sanctions would be disciplined if they were introduced. Many aspects remain extremely vague, including:

- o How non-compliance and breaches related to TSD chapters would be assessed and on the basis of what criteria;
- o How to quantify breaches in economic terms and what range amounts would possibly reach;
- o Whether violations would be ascertained for an entire sector or whether individual companies would be considered (and if only manufacturing or services sectors would be analysed);
- o Whether sanctions would be linked to the sector where breaches were found;
- o Whether sub-contractors or value chains would be considered;
- o Who would ascertain the violations (the International Labour Organisation - ILO for social issues? What about the environment?);
- o Whether redress for victims would be provided by companies or a country.

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

We are not aware of remedies used by other countries that should be considered but will be carefully reading the Commission study that analyses the practices of other countries.

## 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?**

As part of the external dimension of the EU Green Deal, climate action, the circular economy and sustainable development should be further promoted as a part of the TSD chapters of new FTAs.

Particularly, the Paris Agreement should be added to the list of conventions listed in TSD chapters as it is a core tool in the global fight against climate change. Its implementation will also be key for achieving a global level playing field in this regard. Adding it to the list of conventions could strengthen the link between trade and the environmental sustainability in EU partner countries and thus contribute to the external dimension of the EU's Green Deal. One way of measuring a country's efforts could be based upon the Nationally Determined Contributions reported to the UNFCCC. It is important that the incentive-driven nature of the model is maintained.

## 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?**

Trade agreements can contribute to improved labour standards in several ways: on the one hand, the increased exports and economic growth facilitated by FTAs contribute to social development and poverty reduction, which, in the long run, can have a positive effect on the compliance with human and labour rights. On the other hand, the interaction between European and local businesses and European investment in beneficiary countries can help promote labour and social standards as well as human rights.

To maximise the impact, the EU should particularly keep promoting better labour inspections in partner countries as these are key to ensure compliance and a level playing field for EU companies in this area.

The task of gathering information on the global human rights situation cannot be placed solely on companies as it can be difficult for organisations alone to acquire valid information on the ground. A useful solution would be for the EU to develop a “European contact point/observatory” where companies could obtain reliable information on regional human rights situations that would enable them to take or justify decisions in relation to their value chains and also provide guidance and support.

**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?**

The economic disruptions caused by the COVID-19 pandemic have emphasised the importance of countries diversifying their sources for essential raw materials, inputs, and final products. In the aftermath of the crisis, many companies will seek to diversify their supply chains and reduce their reliance on one single country or region to be more resilient to future shocks. The EU trade policy has an essential role to play for companies to achieve this goal. In times of supply chain disruption, a weakened multilateral system, ongoing tensions between the EU's main trading partners and rising protectionism, bilateral trade agreements can give companies a supporting framework. This will allow them to develop long-term relationships with new suppliers, start operations in new countries and help build local capacity to meet their requirements.

The TSD chapters of EU FTAs set minimum labour, social and environmental standards and help create a level playing field in this area by monitoring their effective implementation. At the same time, they create a platform for cooperation with partner countries on these issues. This is key for European companies, particularly as European consumers increasingly demand sustainably produced products. Thus, full implementation of the existing EU FTAs, and the full use of all the tools they provide, including review clauses and rendez-vous clauses, is key in a post-COVID world.

The proper implementation of EU FTAs can also contribute to the EU's open strategic autonomy, particularly with regards to the raw materials that will be key for the green transition. TSD chapters coupled with EU development policy can help create a pool of suppliers in different partner countries that produce these raw materials in a socially and environmentally sustainable way. This is important for making sure that the EU's green transition is not undermined by unsustainable production processes in the countries where we source the necessary raw materials.

## **Additional topics**

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**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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