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April 2022



Policy report

Enhancing sustainability in EU Free Trade Agreements

The case for a holistic
approach



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EXECUTIVE SUMMARY

Legal basis, political commitment and demand from civil society exist for the EU trade relations in general, and its bilateral trade agreements in particular, to support the achievement of the Sustainable Development Goals internally, but also to deliver for sustainability globally. However, recent studies show that the EU generally outsources economic, social and environmental impacts abroad, notably through trade. There is therefore an urgent need to make EU trade and its impacts on global value chains more sustainable. Improving EU FTAs, both regarding the scope of their commitments toward sustainability and to their monitoring and enforcement mechanisms, is a crucial part of that objective as they encompass a large share of EU trade.

This report takes stock of the current status of the EU trade policy before looking at case studies to illustrate specific issues identified. It concludes by proposing three set of recommendations for EU bilateral trade to make a positive contribution to sustainability globally:

1. SIAs and Ex-post assessment processes

- SIAs and Ex-post assessments systematic and correlated to specific milestones of the FTA negotiations and implementation
- Co-ownership of SIAs between relevant DG.
- Flanking measures to CGE modelling
- 'Triggers' clause to initiate a review of an agreement
- Involvement of trade partner countries in Ex-post assessments

2. FTA TSD Chapters

- "Tailor-made" TSD chapters for each trade agreement
- Stronger Language in TSD provisions
- Binding framework to evaluate actual progress on commitments
- MEAs upgraded as essential elements
- Development of a Rapid Response Mechanism under FTAs.
- Effective TSD dispute settlement process.
- CTEO and SEP to effectively address TSD complaints.
- Involvement of empowered civil society throughout the process.

3. Unboxing sustainability from TSD Chapters

- Pre-agreements commitments.
- Provisions throughout FTA for sustainable trade (i.e. differentiated tariffs, bans of harmful trade etc.).
- Financial support linked to sustainability commitments.
- Alignment between FTA provisions & EU trade-related domestic measures.
- Improve the capacity to review existing FTAs.

1. BACKGROUND

1.1 EU trade policy and negative spillovers

Trading relations with the European Union (EU) have a considerable impact on third countries, including on environmental and wider sustainability-related issues. The EU is gradually taking steps toward addressing this global issue, including through its bilateral relations. Provisions on trade and sustainable development were first introduced in EU Free Trade Agreements (FTAs) through a new Trade and Sustainable Development (TSD) Chapter during the EU-South Korea FTA negotiations in 2010.

Furthermore, the [European Green Deal](#), launched by the EC in 2019, highlighted the EU's commitments to 'greening' the Union's trade policy, with a promise to improve the mainstreaming of social and environmental sustainability concerns in the EU's trade regime and in EU Free Trade Agreements (FTAs). The EGD was followed by a dedicated [EU Trade Policy Review](#) in early 2021, reaffirming the role of sustainability at the heart of the EU trade regime. In parallel, the European Commission published a 15-point action plan for TSD Chapter implementation and enforcement in 2018.

Yet, despite these positive evolutions, the applicability, and therefore impact, of the TSD Chapters in EU FTAs remained largely questioned over the years. This resulted in a further internal review of the 15-point action plan with the results expected to be published in June 2022. The EC states notably that this 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 as well as the institutional set-up and resources required"¹.

The Treaty on the European Union (TEU) and Treaty on the Functioning of the European Union (TFEU) provide a clear legal basis to pursue these objectives. TFEU Art. 11 states that "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development"². Meanwhile TEU Art. 21.3 states that "The Union shall ensure consistency between the different areas of its external action and between these and its other policies"³.

The EU's trade policy is on the forefront of such coherence effort in the context of the European Green Deal and its specific legislations, such as the EU climate law and the Fit-for-55 package. The European Commission president, Ursula von

¹ Communication on the Trade Policy Review - An Open, Sustainable and Assertive Trade Policy. [Link](#)

² TFEU. [Link](#).

³ TEU. [Link](#).

der Leyen, tasked all Commissioners, including DG Trade, to "ensure the delivery of the United Nations Sustainable Development Goals within their policy area"⁴. During his hearing in front of the European Parliament in October 2020, Commissioner Dombrovskis echoed that key principle: "in today's world, trade is about much more than just trade. European trade policy must do more to help us meet the great challenges of our time. This is why we are conducting a wide review of our trade policy"⁵.

The objective to steer the EU trade policy toward more sustainability has therefore a sound legal basis and received strong political commitment.

Furthermore, the IEEP European Green Deal Barometer, an expert consultation designed to identify the challenges to the European Green Deal's implementation and provides policy recommendations for addressing them, found that respondents identified promoting low-carbon, circular supply chains in key emitting sectors as the first most positive opportunity provided by the Green Deal⁶. There is therefore also an appetite from the civil society to tackle such challenges.

While the EU's trade policy now puts a great emphasis on trade for supporting developing countries in their efforts to improve their socio-economic status and achieve the UN Sustainable Development Goals (SDGs), the existing evidence demonstrates that a net positive contribution of the EU trade to sustainable development – going beyond the economic and addressing also the environmental and social aspects – is questionable at best.

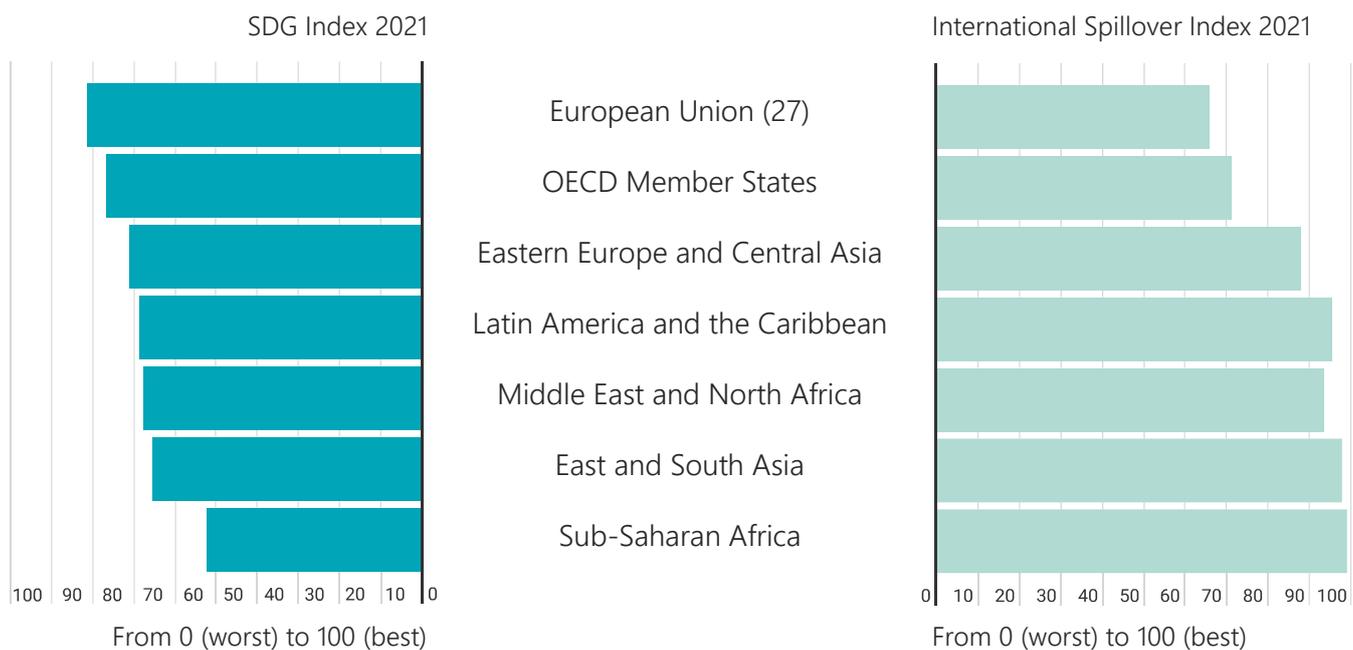
The latest issue of the European Sustainable Development Report 2021 signals that "major SDG challenges remain in all European countries and further effort is needed to align Europe's domestic transformations with its external relationships and cooperative endeavours" while suggesting that "European countries generate sizeable negative spill overs outside the region – with serious environmental and socio-economic consequences for the rest of the world"⁷. This is in direct contradiction with the objectives stated above and calls for the EU to address its negative international spill overs.

⁴ President U. von der Leyen letter to Commissioner for trade (September 2020). [Link](#).

⁵ Commissioner Dombrovskis hearing at the EP (October 2020). [Link](#).

⁶ IEEP - European Green Deal barometer. [Link](#).

⁷ ESDR 2021. [Link](#).

Figure 1: Spillover index

Note: Scores should be interpreted in the same way as the SDG Index, ranging from 0 (worst performance/significant negative spillovers) to 100 (best possible performance/no significant negative spillovers). To allow for international comparisons, most spillover indicators are expressed on a per capita basis

Source: European Sustainable Development Report (ESDR) 2021

The Spillover Index, presented above, measures transboundary impacts generated by one country that affect the ability of other countries to achieve the SDGs. It incorporates environmental and social impacts embodied in the EU's consumption of foreign goods and services and consumption (negative spillovers include CO₂ emissions, biodiversity threats, and accidents at work), financial spillovers (such as financial secrecy and profit shifting), and security/development cooperation spillovers (ODA and weapons exports). The EU's low scoring on the Spillover Index indicates its contribution, notably through trade, to negative externalities abroad, limiting the achievement of SDGs by other countries. Issues such as deforestation, biodiversity loss and environmental impacts, or tolerance for poor labour standards in international supply chains have a detrimental impact on the poorest population, and particularly women in developing countries.

The ESDR 2021 also shows that there is no sign of decoupling between economic growth and environmental spillovers embodied into EU consumption. While domestic CO₂ emissions have decreased (on average) in the EU since 2015, CO₂ emissions emitted abroad to satisfy EU consumption increased by around 3.5% in 2018, a faster rate than the EU's GDP growth. This has largely occurred through a permissive trade policy.

The ESDR 2021 eventually singles out the best approach to addressing such spill overs as a coherent trade and external policies, alongside strengthened tax cooperation and transparency, the application of EU standards to exports, or curbing trade in waste.

In this context, the EU must ensure that its political ambitions, underlined in the EU Green Deal and the Trade Policy Review, are reflected in the implementation of its trade policy. The EU's trade policy must begin to deliver for sustainable development, tackling negative externalities abroad, by contributing to the development of sustainable global value chains and improving the core sustainability in EU FTAs, regarding both the scope of the environmental commitments, as well as the monitoring and enforcement mechanisms to ensure FTAs deliver for sustainable development.

1.2 The EU trade regime in figures

The European Union remains the biggest trade bloc in the world, accounting for 14% of global trade in goods, while providing access to the largest export market for around 80 countries⁸.

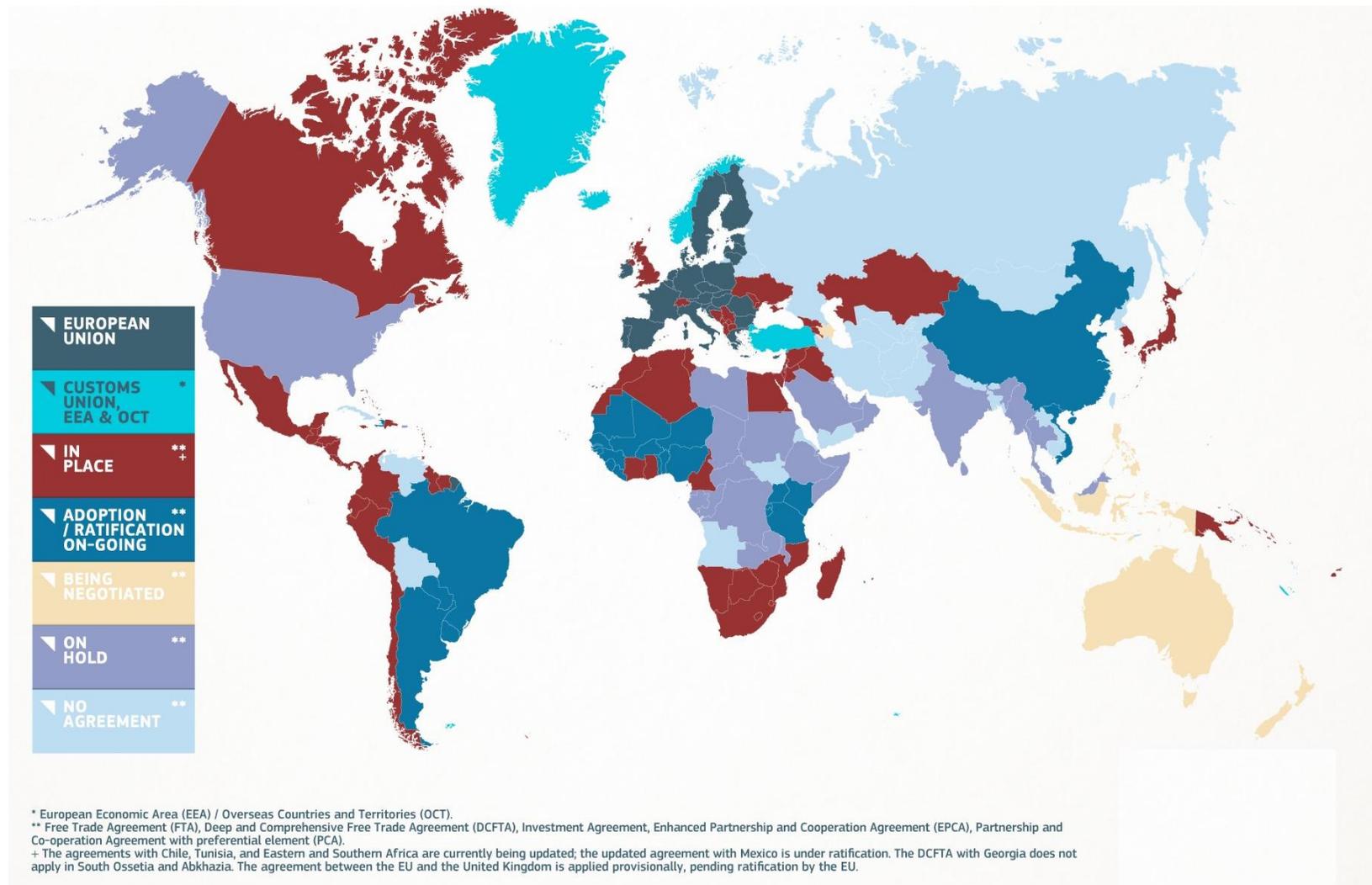
With the numerous challenges facing the World Trade Organisation (WTO) since the early 2000s, the EU turned to bilateral trade relations and engaged in a trend of negotiating Free Trade Agreements (FTAs) with its main partners. Over the past 20 years, the EU has increased the number of its bilateral and regional trade agreements to the point where [37.6% of EU external trade](#) is governed through 37 major preferential trade agreements with 67 partners in 2020⁹.

This share of EU external trade is likely to increase in 2022 as the EU-UK Trade and Cooperation Agreement (TCA) entered into force on 1 January 2021 and is therefore not yet included in these figures. This makes the EU one of the most active negotiators of trade agreements on the international arena, which in turn means that EU FTAs also play a key role in determining trade patterns, norms and standards globally.

⁸ Eurostat. (2021). International trade in goods. [Link](#).

⁹ European Commission. 2021 Annual report on the implementation of EU Trade Agreements. [Link](#). Note that these figures include trade under agreements that are finalized but not yet entered into force (e.g. MERCOSUR).

Figure 2: EU trade agreements 2021



Source: European Council - Infographics trade maps. [Link](#).

2. EU TRADE AND SUSTAINABLE DEVELOPMENT SCOREBOARD

2.1 IEEP review of TSD Chapters in EU FTAs

A recent IEEP policy report¹⁰ concluded that no single existing trade agreement can yet be considered a 'gold standard'. The manner in which current EU FTAs are negotiated does not provide fully adequate provisions for protecting the environment, neither in terms of mitigating negative impacts of trade, nor in terms of using trade to boost environmental sustainability. While some agreements appear to be headed in the right direction, progress on the policy options put forward under the 2021 Trade Policy Review and the EU Green Deal with respect to the sustainability of EU trade must continue to be monitored and improved.

In particular, non-committal language remains a key issue in TSD Chapters across all FTAs. This is observable in, for example, language on environmental cooperation, and on ensuring levels of environmental protection. Although agreements oblige the trade partners to comply with their obligations under an increasing number of Multilateral Environmental Agreements (MEAs), there are no provisions that stipulate the consequences of a failure to implement, or withdraw from, an MEA.

Furthermore, no existing agreement's TSD Chapter contains explicit provisions or safeguards to combat deforestation; more specifically none of the FTAs explicitly addresses deforestation risks, and all existing FTAs rely solely on national frameworks – with no reference to international frameworks such as the CBD – to determine what constitute sustainable forestry practices. Similarly, none of the TSD Chapters address the issue of harmful fisheries subsidies, known to be one of the key factors contributing to unsustainable use of marine resources.

On the TSD Chapter dispute settlement process, newer agreements have a greater degree of transparency compared to older agreements and mandatory language ('shall') is more prevalent in TSD Chapter articles in the newer agreements. Yet, the inclusion of more mandatory language appears to apply to economically developed partners only, with weaker language being used in agreements with non-OECD partners.

In the case of dispute resolution, the report finds there are insufficient safeguards to ensure resolution outcomes are delivered. For example, after the expert panel issues its decision, if either party fails to agree to follow the decision – thereby

¹⁰ Blot, E. & Kettunen, M. (2021). Environmental credentials of EU trade policy – A comparative analysis of EU free trade agreements. Institute for European Environmental Policy, Brussels and London. [Link](#).

hindering the resolution of the dispute – the TSD dispute settlement mechanism (DSM) provides no further mechanism or procedure to enforce the decision. Unlike under the general FTA DSM, the TSD DSM cannot enforce a (financial) penalty or suspend trade concessions as a consequence of non-compliance, nor is there a clear deadline for action following the expert panel resolution.

As none of the reviewed trade agreement can yet be considered a ‘gold standard’, the report concludes that TSD Chapters must become both more ambitious and more action-oriented in order to address issues of non-compliance in a timely manner and to improve the environmental performance of EU FTAs.

Tables 1 and 2 below, taken from the 2021 IEEP policy report on environmental credentials of EU trade policy¹¹, provide an overview of the inclusion of environmental issues in eleven recent EU FTAs. Table 1 presents the total number of MEAs explicitly mentioned in the FTA’s TSD Chapter (final column), as well as the most frequently referenced MEAs (final row). Relatively newer negotiated FTAs refer to more MEAs in the TSD Chapters than older FTAs. It is also clear that despite the Paris Agreement being a relatively newer MEA, it has been consistently cited in all recent agreements.

Table 2: Explicit reference to key MEAs

Bilateral FTA	UNFCCC	Paris Agreement	Kyoto Protocol	Montreal Protocol	CBD	CITES	Total in FTAs
EU-Andean	✓		✓	✓	✓	✓	9
EU-Australia	✓	✓		✓	✓	✓	12
EU-Canada						✓	1
EU-Indonesia	✓	✓		✓	✓	✓	11
EU-Japan	✓	✓			✓	✓	8
EU-Korea	✓		✓				3
EU-Mercosur	✓	✓			✓	✓	6
EU-Mexico	✓	✓		✓	✓	✓	10
EU-New Zealand	✓	✓		✓	✓	✓	12
EU-Singapore	✓	✓	✓		✓	✓	4
EU-Vietnam	✓	✓	✓		✓	✓	12
Total number of MEAs referenced	10	8	4	5	8	10	

Note: This table has been shortened to include the most cited MEAs. The row ‘Total reference to MEA’ presents the number of times an MEA is mentioned in all the reviewed FTAs. The column ‘Total in FTAs’ presents the number of explicitly referenced MEAs in each FTA.

¹¹ Blot, E. & Kettunen, M. (2021). Environmental credentials of EU trade policy – A comparative analysis of EU free trade agreements. Institute for European Environmental Policy, Brussels and London. [Link](#).

Table 2: Specific environmental area articles included in each TSD Chapter

Bilateral FTA	Biodiversity	Forests & timber products	Marine resources & aquaculture	Climate change	Trade for sustainable development	Responsible management of supply chains	Total
EU-Andean	✓	✓	✓	✓	✓		5
EU-Australia	✓	✓	✓	✓		✓	5
EU-Canada		✓	✓				2
EU-Indonesia	✓	✓	✓	✓	✓	✓	6
EU-Japan	✓	✓	✓				3
EU-Korea					✓		1
EU-Mercosur	✓	✓	✓	✓		✓	5
EU-Mexico	✓	✓	✓	✓	✓	✓	6
EU-New Zealand	✓	✓	✓	✓		✓	5
EU-Singapore		✓	✓				2
EU-Vietnam	✓	✓	✓	✓	✓		5

Source: Blot, E. & Kettunen, M. (2021). Environmental credentials of EU trade policy – A comparative analysis of EU free trade agreements. Institute for European Environmental Policy, Brussels and London. [Link](#).

Table 2 provides an overview of the number of articles dedicated to trade and an environmental area focus included in each agreement's TSD Chapter. Similar to the Table 1, newer agreements integrate more articles addressing the interaction between, e.g., trade and its impacts on biodiversity.

2.2 Labour provisions in TSD Chapters

The International Spill over Index developed by IEEP and SDSN as part of the European Sustainable Development Report 2021 suggests that European countries generate sizeable negative spill overs outside the region – with serious environmental but also socio-economic consequences for the rest of the world. It identifies for instance that EU “imports of clothing, textiles and leather products into the EU are related to 375 fatal workplace accidents and 21,000 non-fatal accidents every year”¹². The gradual acknowledgement of that situation has led the EU to progressively integrate social aspects into its Free Trade Agreements.

Labour provisions in EU FTAs have followed a similar model since the EU-Korea FTA. Most prominently, all EU FTAs make reference to ILO core labour standards as defined in the fundamental ILO Conventions; freedom of association, the right to organise and collectively bargain, the elimination of forced labour, the

¹² IEEP & SDSN European Sustainable Development Report 2021. [Link](#)

abolition of child labour, and worker non-discrimination. FTA parties also generally commit to promoting the ILO's Decent Work agenda.

Various other international labour standards are cited, in particular FTAs including occupational health and safety (in e.g., EU-Ukraine Association Agreement, EU-Canada CETA, EU-Singapore FTA), protection of the rights of migrant workers (e.g., EU-Vietnam FTA) and minimum wage and labour inspection (EU-Canada CETA and the EU-UK TCA).

All recent EU FTAs also include reference to corporate social responsibility. Such provisions generally involve co-operation between the parties on CSR issues (EU-South Korea FTA) and general promotion of CSR (e.g., EU FTA with Colombia and Peru), with more recent agreements making reference to international instruments such as the OECD Guidelines for MNEs, the UN Global Compact, and the ILO Tripartite Declaration of Principles concerning MNEs and Social Policy (EU-Vietnam FTA).

Nonetheless, when it comes to labour conditions in EU FTAs, the focus rests on the ratification of the 8 fundamental conventions of the ILO, with mixed record on progresses linked to individual trade negotiation processes.

Across a section of relevant EU FTAs with partner countries, 15 ratification gaps can be identified at the beginning of the year from which the relevant agreement applied. Five of these gaps, a third of the total, were addressed with a reasonable link to the EU FTA negotiation process: Canada ratified C098 and C138; Mexico ratified C098; Vietnam ratified C098 and C105.

Meanwhile, 7 gaps remain: South Korea to ratify C105; Japan C105 and C111; Singapore to ratify C087, C105, and C111; and Vietnam to ratify C087.

Furthermore, South Korea ratified C029, C087, and C098 in April 2021 as a reaction to a dispute settlement process (which is detailed below) but which is not linked to the negotiation of the FTA.

Hence, the impression of mixed records that is represented below.

EU FTAs		Canada	Mexico	South Korea	Japan	Singapore	Vietnam	
Conclusion of negotiations*		30/10/2016	21/04/2018	06/10/2010	17/07/2018	19/10/2018	30/06/2019	
Ratification of ILO fundamental conventions	Freedom of association	C087	1972	1950	2021	1965	X	X
		C098	14/06/2017	23/11/2018	2021	1953	1965	05/07/2019
	Forced labour	C029	2011	1934	2021	1932	1965	2007
		C105	1959	1959	X	X	X	14/07/2020
	Discrimination	C100	1972	1952	1997	1967	2002	1997
		C111	1964	1961	1998	X	X	1997
	Child labour	C138	08/06/2016	2015	1999	2000	2005	2003
		C182	2000	2000	2001	2001	2001	2000

Ratification of convention that can reasonably be linked to the FTA negotiations process

Ratification of convention that stems for the TSD dispute settlement mechanism

Note: We consider here the date for conclusion of the negotiation, i.e. the date of signature of the agreement. That is not necessarily the same as the date of ratification, or entry into force. The rationale is that after the conclusion of the negotiations, the bargaining power of the EU fades, irrespective of when the agreement enters into force.

We consider the ratification of a convention to be linked to the FTA negotiation process if it occurred within a 13-month range around the date of conclusions of the negotiations.

Source: authors from ILO ratification of fundamental conventions by country. [Link](#).

Where trade partners have not yet ratified these Conventions, EU FTAs generally include a commitment to make 'continued and sustained' efforts towards ratification. Unlike under the Generalised Scheme of Preferences, there is no requirement for conventions to be ratified before an FTA is signed.

Where Conventions are ratified, there is a commitment to ensure effective implementation in law and practice. Indeed, ratification does not equate to implementation and therefore of actual improvement of labour conditions in the partner country. There has been considerable empirical scholarship which has investigated the effects of these provisions in practice¹³. Studies have found that there has not been a great deal of attention paid to labour commitments before FTAs are signed (see discussion of EU-Vietnam FTA below which is an exception)¹⁴. Once FTAs are in force, labour commitments have not been a high priority for either EU officials or their counterparts in trade partners¹⁵. Trade partners have also been slow to ratify conventions they have not yet ratified and the obligation to make continued and sustained efforts towards ratification does not appear very significant in this regard (see discussion of EU-Korea case below).

Box 1: Enforcement of labour provisions: The example of USMCA Rapid Response Mechanism

The US-Mexico-Canada (USMCA) agreement which replaced the North America Free Trade Agreement (NAFTA) since 1 July 2020 includes an innovative Facility-Specific Rapid Response Mechanism (RRM). This dispute settlement mechanism provides for expedited enforcement of certain social provisions such as workers' free association and collective bargaining rights at the facility level. The first step of the mechanism is for a country to submit a request for review to the other country to determine

¹³ For an overview of a number of these studies see Harrison, James, et al. "Labour standards provisions in EU free trade agreements: reflections on the European commission's reform agenda." *World Trade Review* 18.4 (2019): 635-657.

¹⁴ See e.g. Orbie, J., & Van den Putte, L. *Labour rights in Peru and the EU trade agreement: Compliance with the commitments under the sustainable development chapter*. No. 58. ÖFSE Working Paper, 2016; J. Vogt, 'The Evolution of Labour Rights and Trade – A Transatlantic Comparison and Lessons for the Transatlantic Trade and Investment Partnership', *Journal of International Economic Law*, 18(4) (2015): 827–860; Harrison, James, et al. "Governing labour standards through free trade agreements: Limits of the European Union's trade and sustainable development chapters." *JCMS: Journal of common market studies* 57.2 (2019): 260-277.

¹⁵ E.g. Orbie & Van den Putte, Above note 2, Harrison et al, Above note 1;

whether there is a denial of rights and attempt to remediate any issues it finds. In certain situations, the mechanism also provides for panellists to assess complaints about conditions at specific facilities, and, in cases of non-compliance with key labour obligations, provides for the suspension of USMCA tariff benefits or the imposition of other penalties, such as denial of entry of goods from businesses that are repeat offenders.

The design of a time-sensitive, effective, response mechanisms enshrined in FTAs stems from the difficulties to make changes to domestic laws (or simply ensure their enforcement) through most existing trade agreements cooperation mechanisms. The RRM has on-site verification capacities with specialised panels as it was "*designed to address and remedy factory-level freedom of association violations in a more immediate manner than state-to-state arbitrations that address failure to enforce domestic laws by states*"¹⁶.

This model could be used as inspiration by the European Commission as it has already recently started to integrate Rapid Response Mechanisms in its trade policy arsenal through its proposal on the new Generalised Scheme of Preferences (GSP) published in September 2021. The new mechanism includes a dedicated RRM in case of a crisis, with shorter periods for consultations and activation of withdrawal procedure. It is also accompanied by a socio-economic impact assessment of the suspension of preferences. This may open the debate for the EU to engage in the development of a similar system for FTAs.

Despite the focus on cooperative activities in the text of the TSD chapters (including on CSR issues), limited resources have been put towards those activities and no systematic evaluation of them has taken place¹⁷. Analysis of individual projects has found them to be of limited value. For instance, a project aimed at promoting regional social dialogue around the labour obligations of the EU CARIFORUM Economic Partnership Agreement did not appear to have led to any labour standards issues being raised in the agreement's committees, with Caribbean trade unions still not able to identify labour issues stemming from the trade agreement nor to formulate policies to address those issues. In relation to the EU-Korea FTA, questions were raised about focusing on projects concerning

¹⁶ Velut, JB., Baeza-Breinbauer, D., De Bruijine, M., Garnizova, E., Jones, M., Kolben, K., Oules, L., Rouas, V., Tigere Pittet, F. & Zamparutti, T. (2022). Comparative Analysis of TSD Provisions for Identification of Best Practices to Support the TSD Review. London School of Economics. [Link](#).

¹⁷ Harrison et al, Above note 1, at 644.

CSR and the implementation of ILO Convention 111 on discrimination, when there were much more high-profile political struggles going on around issues like freedom of association¹⁸.

2.3 Civil society representation in EU FTAs

The EU-Korea FTA established for the first time in 2011 a civil society mechanism to monitor the commitments made in its TSD Chapter. This took the form of a Civil Society Dialogue (CSD) process and Domestic Advisory Group (DAG) set up for each party with the aim to maintain a stable exchange between governments and civil society actors. Since 2011, all FTAs caters for the creation of DAGs in their TSD Chapters.

This civil society mechanism under the TSD Chapter is key to the identification of lack of progress on social and environmental fronts in the context of an FTA implementation. The mechanism puts in place a structure for dialogue, both horizontally - among and between DAGs - and vertically – between DAGs and their own governments. Nonetheless the DAGs have experienced difficulties to perform their primary function to monitor the implementation of the TSD provisions¹⁹.

These difficulties are particularly salient in non-EU DAGs and are, to a large extent, due to two main reasons:

- Weak vertical communication channels: the lack of interactions between the governments and DAGs result in insufficient information sharing on the implementation of trade agreements. This in turn undermines the governments' accountability toward DAGs and limit the incentives to consider DAGs inputs.
- Lack of resources for DAG members to conduct research and participate meaningfully to the process.

The DAGs' influence remains limited on environmental matters to the dissatisfaction of their members. Interviewed environmental stakeholders judged that they were underrepresented in the DAG and CSD discussions²⁰. Underrepresentation was also mainly attributed to organisations' facing capacity constraints (financial and/or varied levels of expertise on trade policy) and a lack of incentive.

¹⁸ Harrison et al, Above note 2, at 8.

¹⁹ For more information, see Martens, D., Potjomkina, D., & Orbie, J. "DAGs in EU trade agreements." (2020). [Link](#).

²⁰ Blot, E. & Kettunen, M. (2021). Environmental credentials of EU trade policy – A comparative analysis of EU free trade agreements. Institute for European Environmental Policy, Brussels and London. [Link](#).

Furthermore, regarding labour issues, the onus has been on trade unions and civil society organisations in the DAGs. But their lack of resources made it difficult to adequately assess the impact of trade agreements on labour protections²¹. Where there are clear and obvious labour violations occurring, DAGs have also struggled to get EU officials to take timely action to address these issues (see EU-Korea FTA discussions below).

The lack of incentive to join DAG and CSD meetings was attributed to stakeholders' perception that their concerns are not met. On one hand, issues raised in past DAG or CSD meetings, have not been followed up on in an adequate manner (see case of EU-Korea dispute settlement). On the other hand, the meetings do not allow for in-depth discussion of environmental or social concerns.

One option to incentivise stakeholder participation in the DAG process would be to create accountability from the Commission by establishing a systematic feedback procedure in which the Commission must officially respond to concerns raised by DAG members within a specified timeframe.

Another option to ensure DAG meetings lead to actionable outcomes could be to split up meetings based on thematic topic to allow for more in-depth discussion and space for a realistic representation of stakeholders. This is particularly relevant to environmental stakeholders that tend to have non-substitutable expertise (e.g., a biodiversity and trade expert cannot be replaced by an expert on climate change and trade). Constraints on expertise could also be addressed by involving experts from relevant DGs (e.g. ENV, CLIMA, EMPL) and international organisations.

The EU-UK TCA for the first-time also states that DAGs can be convened "in different configurations" (i.e. different DGAs for different issues), to "discuss the implementation of different provisions of this Agreement or of any supplementing agreement" (i.e. DAGs are not constrained to TSD Chapter provisions)²². The extension of the scope of action for DAGs could be duplicated to all other EU FTAs. Capacity issues would of course remain problematic in some instances, but the possibility would be there for DAGs to discuss other aspects of FTAs.

Financial capacity constraints could ultimately be remedied by the Commission providing funds to organisations, which would allow DAG members to

²¹ Ibid "DAGs in EU trade agreements." (2020), J., and, Ashraf, N. & van Seters, J. "Making it count: Civil Society Engagement in EU Trade Agreements". No. 276. ECDPM Discussion Paper, 2020. [Link](#).

²² EU-UK Trade and Cooperation Agreement – Article 13 Domestic Advisory Groups. [Link](#).

commission studies to further investigate a social or environmental issue which they have deemed as problematic.

These evolutions would incentivise policymakers to take DAGs inputs more into account and thereby increasing their political relevance. On the other hand, a lack of progress on this aspect could diminish further the interest and commitment of civil society to participate to the process. This would eventually feed into the already existing criticisms on civil society involvement in EU FTA negotiations and implementation.

2.4 Sustainability Impact Assessments (SIAs) and Ex-post assessments

The SIAs attempt to quantify the environmental, social, and human rights impacts of trade liberalisation prior to FTA implementation, while the ex-post assessments are used as a means to monitor the actual impacts of the trade agreement, several years after implementation. IEEP's comparative analysis report²³ finds that the majority of the SIA processes reviewed can be considered good practice in terms of timely stakeholder engagement (i.e., engaging with stakeholders during the initial stages of the SIAs) and in terms of concluding negotiations after the delivery of the SIA, thus allowing the SIA recommendations – in principle – to feed into the negotiation process.

However, there are examples of failures to synchronise FTA negotiations with the SIA process. The EU-Mercosur agreement concluded negotiations before the final SIA report was published, and the EU-Singapore and EU-Vietnam agreements were negotiated using an obsolete SIA (EU-ASEAN).

Box 2: The EU-Korea SIA under the looking glass

In the case of the EU-Korea SIA, the comparative analysis concluded it performed as one of the worst assessments relative to the other reviewed SIAs (IEEP, 2021). While the EU-Korea SIA covers sufficient environmental areas in the 'baseline' or 'state-of-play' environmental assessment, the overall environmental impacts only cover the FTA's impact on environmental regulations. Moreover, the sectoral assessment lacks a baseline assessment and some relevant environmental impacts are missing. An example is that the agri-food sector assessment does not consider the FTA's impacts on GHG emissions.

²³ Blot, E. & Kettunen, M. (2021). Environmental credentials of EU trade policy – A comparative analysis of EU free trade agreements. Institute for European Environmental Policy, Brussels and London. [Link](#).

Finally, the SIA's overall conclusion states that the "FTA is not foreseen to have a significant environmental effect since the projected expansion of trade is not predicted to utilise resources that are poorly managed or increase production that will lead to expansion of pollution or other negative environmental externalities that are unregulated."

This conclusion problematically assumes that negative environmental impacts are not significant because the economic expansion under the FTA is limited relative to both countries' GDPs. Furthermore, the impact assessment relies on the assumption that any expanding sectors will not increase their levels of pollution due, either to the environmental regulations they are subject to, or their abilities to efficiently manage their resource use. There is no mention of the *possibility* of environmental degradation which begs us to question the purpose of the environmental impact assessment. If, in the end, the environmental impacts of the FTA are estimated to be non-existent because of a modelling exercise, has the appropriate due diligence surrounding the purpose of the SIA taken place? The precautionary principle should be part of the SIA process and the possibility of environmental degradation an aspect to be considered fully in the process.

Table 4: Evaluation of the overall environmental assessment of SIAs

	Overall baseline	Overall impact	Sector baseline	Sector impact	SIA coverage: overall evaluation
EU-Andean	++	--	--	+	☹️
EU-Australia	++	++	++	++	😊
EU-Canada	--	--	++	+	☹️
EU-Indonesia	++	+	+	-	😊
EU-Japan	-	--	-	-	😞
EU-Korea	++	--	--	--	😞
EU-Mercosur	++	+	--	--	☹️
EU-Mexico	-	++	--	-	☹️
EU-New Zealand	++	++	++	++	😊
EU-ASEAN	++	++	++	++	😊

Note: The 'overall baseline' column considers the overall baseline assessment, which should present the environmental state of play across several environmental areas. Environmental impact assessment chapters with a comprehensive overall baseline

assessment receive a double plus, while non-comprehensive assessments receive a double minus. Similarly, environmental impact assessment chapters with a limited overall baseline assessment receive a plus or a minus, depending on the comprehensiveness, and level of structure and detail of the analysis. The 'overall impact' column considers the comprehensiveness of the environmental areas included in the overall impact assessment and how systematically it considers these environmental areas compared to the baseline. Similarly, the following two columns consider the same criteria as the overall baseline and impact assessment, but in the context of the sector analysis. The evaluation, i.e. (double) plus or minus, is based on the authors' views of the level of comprehensive consideration of environmental areas in the assessment and the systematic approach of the impact assessment for these environmental areas. Finally, the 'overall evaluation' column indicates the authors' final judgement of the treatment of environment in the SIA, taking into account the evaluation of the overall/sector baseline/impact assessment and the level of detail provided in these assessments. For example, was the impact of liberalisation on key environmental areas for specific sectors assessment?

Source: Blot, E. & Kettunen, M. (2021). Environmental credentials of EU trade policy – A comparative analysis of EU free trade agreements. Institute for European Environmental Policy, Brussels and London. [Link](#)

Table 4 above presents the comparative analysis' conclusions on the review of selected SIAs, checking for a systematic assessment (one which includes both a baseline and impact assessment for the overall economy and for relevant sectors) which is also comprehensive, i.e. the assessment covers all relevant environmental areas. On the treatment of environmental issues across SIAs, the report found there were variations in the comprehensiveness of the assessments. Yet, these variations are likely to be related to the scope of the FTAs concerned (e.g. most relevant sectors impact on environment), thus some deviations in the assessment comprehensiveness seems justified. However, there were cases where there were clear omissions in terms of the breadth and depth of environmental assessments across SIAs.

Table 4 covers only SIAs, however, ex-post assessments are carried out through an identical process and therefore the insights and lessons learned with SIAs are applicable to ensure appropriate treatment of environmental issues also in the ex-post context. Also, Table 4 does not evaluate the positive or negative environmental impacts of SIAs reviewed but the soundness of the criteria used. For instance, it does not say that a potential EU-Australia FTA would bring positive environmental impact, but merely that the assessment of the FTA's environmental impacts was among the most comprehensive and systematic, to date. It does not mean either that no further progress can and should be done.

In the context of the SIAs, IEEP's 2021 policy report²⁴ puts forward three main – and realistically addressable – issues which were identified from the report's stakeholder interviews and from previous IEEP work.

First, that the limited resources to carry out environmental assessments as part of SIAs are one reason for the observed shortcomings²⁵.

²⁴ Blot, E. & Kettunen, M. (2021). Environmental credentials of EU trade policy – A comparative analysis of EU free trade agreements. Institute for European Environmental Policy, Brussels and London. [Link](#)

²⁵ IEEP, Trinomics, IVM and UNEP-WCMC. (2021). Methodology for assessing the impacts of trade agreements on biodiversity and ecosystems, Institute for European Environmental Policy (IEEP), Brussels/London. [Link](#).

Second, the lack of guidance and identified good practice for carrying out environmental assessments within SIAs came forward as an issue²⁶.

Third, the under-engagement of stakeholders in the trade partner countries forms a problem for the scoping of sensitive environmental areas in the trade partner country.

With several EU FTAs now in place, ex-post assessments are expected to become an increasingly prominent part of EU trade policy in the future and, unsurprisingly, they will play a critical role in monitoring the implementation of TSD Chapter provisions. This study, in turn, analyses the EU-Korea ex-post assessment (see section 2.1) as the first ex-post assessment of the EU's bilateral trade agreements for the treatment of environment with the preceding background knowledge.

²⁶ Kuik, O., Kettunen, M., J., van Vliet, Colsa, A. and Illes, A. (2018). Trade Liberalisation and Biodiversity Scoping Study on Methodologies and Indicators to Assess the Impact of Trade Liberalisation on Biodiversity (Ecosystems and Ecosystem Services). Final report for the European Commission (DG ENV) (ENV.F.1/FRA/2014/0063), Institute for Environmental Studies (IVM/Vrije Universiteit), Amsterdam & Institute for European Environmental Policy (IEEP), Brussels/ London. [Link](#).

3. CASE STUDIES

In this chapter, we analyse the capacity of specific methods and tools applied through EU FTAs to foster sustainability. We look in more detail at the cases of the EU-Korea Free Trade Agreement (provisionally applied since 2011), and the EU-Vietnam FTA (as among the last concluded negotiations, with the agreement yet to be ratified). Through these specific case studies, we review in particular the instruments of ex-post impact assessment, Dispute Settlement Mechanisms, labour provisions and Domestic Advisory Groups.

3.1 Case study 1: The EU-South Korea FTA

The trade agreement between the EU and South Korea is the first “new generation” bilateral FTA with both a publicly available SIA and ex-post impact assessment. The SIAs are a key underpinning component of FTA negotiations as it attempts to inform negotiators and policymakers on the estimated impacts of trade liberalisation, put in terms of economic, social and environmental impacts.

3.1.1 Ex-post impact assessment

The EU-Korea ex-post assessment is the second conducted for an EU bilateral agreement. It was commissioned in 2015 (4 years after the provisional implementation of the agreement) and completed in 2018 with a purpose of assessing the impacts of FTA implementation. In contrast, the first ex-post assessment for a bilateral agreement – the EU-Mexico agreement, which was initially implemented in 2000 – was only commissioned once negotiations were launched for a modernisation agreement 16 years later.

The ex-post assessment²⁷, similarly to the SIAs, estimates the impact of the trade agreement using a CGE model, as Box 3 explains, supplemented with empirical data. The specific model directly incorporates GHG emissions as a variable to estimate the GHG emissions reductions following the FTA implementation. The EU-Korea ex-post assessment focuses its environmental assessment efforts on estimating changes in GHG emissions while other environmental areas such as biodiversity loss and resource use are not treated with the same level of rigour.

Indeed, environmental impacts beyond GHG emissions such as air pollution, water usage and quality, biodiversity, waste management, deforestation and renewable energy usage are not included in the model mainly because they increase modelling complexities, and in some cases, there is inadequate data availability. Instead, the environmental impacts not taken up into the modelling

²⁷ European Commission. (2018). Evaluation of the Implementation of the Free Trade Agreement between the EU and its Member States and the Republic of Korea – Final report: Main report. [Link](#).

exercise are assessed indirectly via a Causal Chain Analysis (CCA) (see Box 3 for more information), of which the findings can be found in the annex of the ex-post assessment.

It is important to note that the modelling of environmental impacts of trade is more than the sum of the parts as, for example, biodiversity loss could lead to more substantial (non-)economic losses, such as the increased risk of exposure to zoonotic diseases²⁸. IEEP et al. developed for the European Commission a new methodology for assessing the impacts of trade liberalisation on biodiversity and ecosystems²⁹.

This methodology was published on 26 April 2021 and was endorsed by the European Commission as Executive Vice President for Trade Valdis **Dombrovskis** said that he “welcomed this new methodology which will contribute to better assessing the impact of our agreements”. This methodology has now been used for the first time in the ex-post assessment of the EU-Andean FTA and the intent should be for the methodology to become a systematic assessment instrument.

Box 3: A word on economic modelling

The main analytical tool to begin to assess the economic, social and environmental impacts of an FTA is the application of economic modelling exercises, in particular Computable General Equilibrium (CGE) models – complemented with Partial Equilibrium (PE) models. CGE models attempt to estimate and isolate the effect of trade liberalisation by comparing a ‘FTA’ scenario to a ‘baseline’ scenario in which there is no FTA. In their current application for SIAs, these economic estimations are quite general as they encompass usually between 20-50 sectors (which are then usually supplemented by the PE analyses) and the environmental dimension of the CGE model is usually limited to greenhouse gas (GHG) emissions. These models can be extended to estimate broader environmental impacts in a more robust way³⁰.

The outputs delivered by the CGE model (typically changes in employment and production) are used to estimate the impacts of the agreement on labour, human rights and the environment. This is called

²⁸ WHO. (2015). Biodiversity and Health. [Link](#).

²⁹ IEEP, Trinomics, IVM and UNEP-WCMC. (2021). Methodology for assessing the impacts of trade agreements on biodiversity and ecosystems, Institute for European Environmental Policy (IEEP), Brussels/London. [Link](#).

³⁰ Kuik, O., Kettunen, M., van Vliet, J., Colsa, A., and Illes, A. (2018). Trade Liberalisation and Biodiversity Scoping Study on Methodologies and Indicators to Assess the Impact of Trade Liberalisation on Biodiversity (Ecosystems and Ecosystem Services). Final report for the European Commission (DG ENV) (ENV.F.1/FRA/2014/0063), Institute for Environmental Studies (IVM/Vrije Universiteit), Amsterdam & Institute for European Policy (IEEP), Brussels/ London. [Link](#).

the Causal Chain Analysis (CCA), in which these social and environmental impacts are assessed indirectly, building on the findings of the CGE and PE models, and thus various social and environmental parameters are not directly integrated in the initial models³¹. Furthermore, CGE results usually only reflect production changes driven by tariff changes, whereas production levels are likely to change due to non-tariff measures (e.g. better contacts between countries, easier custom processes). These production changes and the corresponding environmental impacts are not captured in this assessment method.

A core issue with basing the impact assessment of trade liberalisation on labour, human rights and the environment on the outputs resulting from economic models is that these models cannot perfectly isolate the impacts of an FTA, nor has that been the claim of economic modellers themselves. Indeed, these CGE models design and seek to estimate economic impacts of trade liberalisation for an economy, which is inherently imperfect and complex. These models must make base assumptions to begin to build a workable model, for example full employment, frictionless labour mobility, all savings being used as investment, and that trade liberalisation will inevitably lead to welfare gains^{32,33}. In reality, labour markets are imperfect, characterised by both unemployment and moonlighting, labour mobility between sectors requires at least some form of (re)training, and savings do not fully translate to an increase in macro-economic demand through investment portfolios.

Several studies claim that some base assumptions of the CGE model related to the level of Non-Tariff Barriers (NTB) reduction³⁴, technological development and productivity changes can lead to both an under- and overestimation of the impact of trade liberalisation^{35,36}. Considering these shortcomings, CGE modelling can be useful, since it provides a starting point to estimate the impacts of trade liberalisation. However, it is essential that the model assumptions and possible shortcomings are communicated clearly to both policymakers and civil society. This would

³¹ Rojas-Romagosa, H. (2018). Overview of the evolution of the methodology and coverage of EU ex-ante trade sustainability impact assessments over time. WTI, Bern, Switzerland. [Link](#).

³² Kohler, P. & Storm, S. (2016). CETA Without Blinders: How Cutting Trade Costs and More Will Cause Unemployment, Inequality and Welfare Losses. CDAE Working Papers 16-03, Tufts University. [Link](#).

³³ De Ville, F. & Siles-Brügge, G. (2015): The Truth about the TTIP. ISBN: 978-1-509-50102-1. [Link](#).

³⁴ Raza, W., Grumiller, J., Taylor, L., Tröster, B. & von Arnim, R. (2014). ASSESS_TTIP: Assessing the claimed benefits of the Transatlantic Trade and Investment Partnership. Policy Notes 10/2014. Austrian Foundation for Development Research. [Link](#).

³⁵ EC. (2016). Evaluation of the Implementation of the EU- Republic of Korea FTA – Inception report. [Link](#).

³⁶ Nilsson, L. (2018). Reflections on the Economic Modelling of FTAs. *Journal of Global Economic Analysis*. Vol 3, No 1. [Link](#).

allow stakeholders to recommend effective flanking measures to mitigate potential impacts of liberalisation for areas covered insufficiently in the assessment.

In the case of the EU-Korea ex-post assessment, the CGE model estimates that CO₂ emissions have increased in both the EU (+0.12%) and Korea (+0.19%) due to the FTA. Yet, the assessment concludes that global CO₂ emissions have decreased (-0.02%) as a result of trade diversion effects, i.e. EU and Korean emissions being offset by trading more with each other and less with the US and China.

The above findings hold under a few assumptions made by the modellers. Firstly, the modellers acknowledge that the CGE model does not account for the EU's Emission Trading System (ETS), and therefore, they write that the ETS "*most likely has prevented the realisation of these CO₂ emission changes*", concluding that CO₂ emissions in the EU did not increase. Over the period 2005 to 2019, EU ETS led to a 35% reduction in EU emissions over covered industries, while the emissions cap prevents emissions from rising above a set limit (which decreases yearly)³⁷. However, the assumption that total EU emissions do not increase under trade liberalisation due to the ETS emissions cap is a misrepresentation of reality, as there are additional considerations to the workings of the EU ETS that impact its efficacy at lowering GHG emissions.

Firstly, the EU ETS covers only 40% of EU GHG emissions of select sectors. Stating that the total EU emissions do not rise due to EU ETS, while in actuality only 40% of EU emissions are covered, misrepresents the design and efficacy of the EU ETS. For example, if the production of steel was estimated to have expanded under the agreement, then yes, EU ETS would play a hand at regulating emissions from this industrial expansion as this sector is covered by EU ETS.

As a counterexample in the EU-Korea agreement, the EU's agriculture sector is estimated to have expanded. In particular, the model finds that the sectoral value-added effect for the EU's agricultural sector is estimated to have increased by 0.3%. However, since the EU's agricultural emissions are *not* covered by EU ETS, the assumption that EU emissions would not increase due to the ETS does not hold up in the same capacity as an expansion of the steel sector.

Furthermore, as stated above, EU ETS has led to a reduction of emissions in targeted industries. However, experts have argued that the system has not been as effective as anticipated in accelerating industrial decarbonisation. There are

³⁷ European Commission. (n.d.) EU Emissions Trading System (EU ETS). [Link](#).

two substantial shortcomings of the ETS system that put into perspective the system's effects – or lack thereof – on European industrial decarbonisation.

On one hand, over the analysed period, emissions prices were not high enough to incentivise widespread industrial decarbonisation³⁸. On the other hand, the free emissions allowances given to the most polluting industries covered by ETS – as a competitiveness measure – are said to have led to windfall profits³⁹ instead of encouraging decarbonisation efforts. Therefore, taking the above points into account, the modellers reliance on the assumption of EU ETS efficacy to have prevented any increase in EU emissions under trade liberalisation is, in our view, short-sighted.

The other conclusion that the FTA has led to a decrease in aggregate CO₂ emissions also relies on the assumption that average production technologies of exporting firms in relevant sectors are less carbon-intensive in the EU and Korea than in the US and China. The assumption being that if the exporting firm's emissions are subject to an environmental tax, that these firms will invest in abatement, i.e. lowering their environmental footprint, while the related costs are minimized when production levels are higher. However, the cited study model⁴⁰ (limited to two countries) concludes that aggregate emissions are not affected by trade liberalisation if emissions taxes are equal. Only in the case of differing emissions tax rates does this model estimate an aggregate decline in emissions due to the number of exporting firms increasing in the "pollution haven" (i.e. lower emissions tax), who will in turn increase their abatement investments while out competing inefficient non-exporting firms.

This study's economic model is based on its own – quite restrictive – set of assumptions, describing a very specific situation that is therefore very unlikely to reflect economic reality, and thus these findings must be interpreted as estimations.

Finally, it is also worth reflecting on the nature of the environmental assessment. A majority of the findings are a secondary assessment based on the findings derived from the economic assessment. However, when the impacts of trade liberalisation are concluded to be very small and thus environmental impacts are considered to be negligible, one wonders whether the appropriate due diligence has been exercised. The environmental assessment should become a primary

³⁸ Elkerbout, M. & Egenhofer, C. (2017) The EU ETS price may continue to be low for the foreseeable future – Should we care? CEPS Policy Insights. [Link](#).

³⁹ Carbon Market Watch. (2016). Industry windfall profits from Europe's carbon market. [Link](#).

⁴⁰ Forslid, Rikard, Toshihiro Okubo, and Karen Helene Ulltveit-Moe. "Why are Firms that Export Cleaner? International Trade, Abatement and Environmental Emissions." 2015. CEPR Discussion Paper no. 8583

assessment utilising more qualitative assessment methods⁴¹, focusing on specific partner country sensitive environmental areas.

3.1.2 Dispute settlement mechanism under TSD Chapters

The story of South Korea's sluggish ratification process of the required ILO conventions began nine years ago. As early as 2013, the EU and Korean DAGs, in addition to the civil society forums, flagged the Korean government's non-ratification as a failure under the TSD Chapter commitments. In the following years, civil society continued to raise this issue, the EU DAG asked DG Trade to undertake steps under the available TSD Chapter mechanisms to resolve the issue. In May 2017, the European Parliament published a resolution urging the Commission to begin consultations with the Korean government⁴².

Several months later, the Commission formally acknowledged these concerns and began cooperative meetings with the Korean government. Still, insufficient progress was made in these meetings, which led to the EU launching official consultations under the foreseen TSD Chapter mechanism in 2018⁴³. After these consultation efforts did not yield progress on Korea's ILO convention ratification, the EU launched a TSD dispute settlement case which concluded in 2021⁴⁴.

Box 3: Dispute settlement as defined under the EU-Korea FTA

A process for raising and seeking to settle TSD disputes is defined under articles on consultations and panels of experts, which come into play during the process of either party requesting consultations regarding any matter of mutual interest arising under the TSD Chapter, including any dispute on the implementation of TSD provisions.

When such a request is filed, the parties consult with a relevant person, organisation or body that contributes to the examination of the matter at issue. If further discussion is warranted a party may request for the TSD subcommittee to be convened to consider the dispute and come to a resolution of the matter. If the resolution mechanism under the consultations provision is unsuccessful, a panel of experts is convened.

⁴¹ E.g. 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 Environmental Policy (IEEP), Brussels/London. [Link](#).

⁴² Thu, M. H. & Schweisshelm, E. (2020). Labour rights and civil society empowerment in the EU-Vietnam Trade Agreement. Institute for International Political Economy Berlin. [Link](#).

⁴³ Ibid.

⁴⁴ EC (2021)

The articles on the panel of experts include provisions with varying time periods in which the interim and final reports must be issued.

However, the EU-Korea FTA, as all other EU FTAs, indicate that TSD disputes must be settled within the rules and procedures of the chapter, none of which specify a follow-up mechanism to ensure parties abide by the expert panel's decision, nor is there any (financial) penalty mechanism. Therefore, any meaningful implementation of TSD-related dispute is left to the will of the parties.

The resolution provided by the Expert Panel confirmed that the requirement for both parties to make "continued and sustained efforts towards ratifying the fundamental ILO Conventions" is a legally binding and ongoing obligation. The Panel acknowledges that while Korea has made "tangible, but slow, efforts" since 2017 with respect to ratification of the core ILO Conventions in question, it is the Panel's opinion that these efforts have been "less than optimal". The Panel's decision states that they are 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 expects the ratification process "to be completed in an expeditious manner"⁴⁵. 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 labour⁴⁶. 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 hesitance 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.

⁴⁵ Panel of Experts Proceeding Constituted Under Article 13.15 of the EU-Korea Free Trade Agreement (2021). [Link](#).

⁴⁶ The Korea Herald. S. Korea ratifies key UN labor conventions (26 Feb 2021). [Link](#).

3.2 Case study 2: The EU-Vietnam Free Trade Agreement

3.2.1 General review of EUVFTA and sustainability concern

The European Union and Vietnam signed a Trade Agreement and an Investment Protection Agreement on 30 June 2019, and which entered into force on 1st August 2020. The Agreement was promoted as putting a strong focus on sustainable development, to the point that the EU considers that it “can serve as a model for trade agreements concluded between the EU and developing countries”⁴⁷.

Yet, our recent review of this EU-Vietnam Free Trade Agreement (EUVFTA) concludes that although its TSD chapter indeed expands the coverage of international agreements to be ratified as part of the parties’ commitments, it still fails to address key concerns related to the operationalisations of provisions aiming to foster sustainability in the TSD Chapter as highlighted in Table 5 below.

Table 5: IEEP review of sustainability aspects in EUVFTA

	
<ul style="list-style-type: none"> • Commonly reaffirming parties’ commitments to 12 MEAs (Paris Agreement, CBD, CITES) which is a strong MEAs coverage. • Highlighting the need to exchange information and cooperate to implement these commitments. • Include the welfare perspective of present and future generations. This is a relatively new and most welcome addition into FTA provisions, although it now needs to be transcribed in concrete actions/provisions. • Clauses on climate change, biodiversity, forestry, fisheries, sustainable energy and investment which is reflective of latest FTAs wide coverage. 	<ul style="list-style-type: none"> • Use of weak or “unbalanced” language on environmental aspects; for instance, the EUVFTA explicitly states that measures to implement MEAs “should not ‘constitute a means of arbitrary or unjustifiable discrimination between the parties or a disguised restriction on trade”. • No mention of the Sustainable Development Goals (SDGs) • No mention of the Sustainable Development Goals (SDGs) • No monitoring framework for concrete action or progress required from the parties on the implementation of MEAs. • No new SIA commissioned to support the FTA negotiations; sole reliance on a 6-years old EU-ASEAN SIA, which lacked country-specific conclusions. • Civil society meetings were held prior to EU-Vietnam negotiations ending but as an ex-post briefing of negotiations status (Oct 2015).

⁴⁷ EU-Vietnam declaration announcing the conclusion of the FTA negotiations. [Link](#)

The conclusion of the negotiations for the EUVFTA was nonetheless welcomed with regards to its expected impact on labour laws in Vietnam. Therefore this particular case study aims to address the matter of labour provisions in EU FTAs.

3.2.2 EUVFTA social provisions: the importance of pre-ratification period

From the outset there was a great deal of criticism of the EU-Vietnam FTA because of Vietnam's poor human and labour rights records. Human rights concerns in Vietnam included detention of human rights activists and journalists, violations of the freedom of expression and the right to protest, the restriction of democratic freedoms and violence against women⁴⁸. In terms of labour rights, independent trade unions were outlawed and few labour rights were protected in law.

A human rights impact assessment (HRIA) was demanded by civil society organisations and the European Parliament to assess the human rights situation in Vietnam, as well as the impact the FTA would have on human rights, and the action needed to address these issues⁴⁹. But the European Commission argued that human rights clauses in the EU-Vietnam FTA were sufficient, and that no assessment was required. However, such human rights clauses appear to be of limited use for addressing the human rights issues that are prevalent in Vietnam because they are only activated in exceptional circumstances such as a *coup d'état* or in other situations where there is political unrest⁵⁰. A case was therefore brought by civil society organisations to the European Ombudsman for failure to conduct an HRIA, which she concluded constituted maladministration⁵¹. However, no subsequent HRIA was conducted by the Commission prior to the EU-Vietnam FTA coming into force.

In relation to labour rights, pressure from the European Parliament for labour reform while the EU-Vietnam FTA was being negotiated bolstered the cause of reformist factions within Vietnam. These pressures are credited with being important in the Vietnamese government's decision to ratify ILO Convention 98 (Right to Organise and Collective Bargaining), to pass a new labour code, and to create a roadmap for ratifying the ILO core conventions to which it is not yet

⁴⁸ See e.g. Human Rights Watch, World Report 2022, Vietnam. [Link](#).

⁴⁹ European Parliament resolution (17/04/2014) on the state of play of the EUVFTA, Parag. 1&25. [Link](#).

⁵⁰ A.-C. Prickartz, I. Staudinger, 'Policy vs practice: The use, implementation and enforcement of human rights clauses in the European Union's international trade agreements' [2019] 3(1): 2. Europe and the World: A law review at 20.

⁵¹ European Ombudsman, Decision in case 1409/2014/MHZ on the European Commission's failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement (26/02/2016). [Link](#).

party⁵². It has long been recognised that this pre-ratification period is where the EU is in its strongest position to demand reform from potential trade partners⁵³.

However, since the EU-Vietnam FTA has come into force, concerns have been raised that Vietnam's labour reforms do not in fact allow for independent trade unions, and that progress on labour reform has otherwise stalled, despite the commitments made⁵⁴. The EU DAG to the FTA also raised concerns about the ongoing imprisonment of civil society activists in Vietnam and about the independence of the Vietnamese DAG constituted under the FTA⁵⁵. The European Parliament adopted a resolution on 21 January 2021 on the human rights situation in Vietnam⁵⁶ in reaction to these evolutions, demanding the immediate release of the imprisoned journalists, human rights and environmental defenders, trade unionists and prisoners of conscience. In the same resolution, the European Parliament calls for Vietnam to revise its criminal code which governs notably the rights to freedom of association in Vietnam and is in direct contradiction to ILO convention 087 despite Vietnam's commitment to ratify it.

This highlights the relevance of the FTA's pre-ratification period to press for domestic (legal) reforms, whether this relates to labour or environmental standards but also the importance to secure results rather than commitments only.

An inspiration could be taken from the US model of FTA compliance as an impactful tool. The US process formally involves several layers of the administration, from the U.S. Trade Representative (USTR) to the president to ensure that the FTA partner implement domestic reforms before the agreement can enter into force. A concrete example of such a process is presented in the LSE Study with the 2009 US-Peru FTA and its dedicated Annex on Forest Sector Governance approved prior to the ratification of the agreement⁵⁷.

This example highlights the influence that trade negotiations with a large market such as the EU can have on third countries, including on involving domestic reforms in sectors relevant for sustainable development.

⁵² Marslev, Kristoffer, and Cornelia Staritz. "Towards a stronger EU approach on the trade-labour nexus?: The EU-Vietnam FTA, domestic labour reforms and social struggles in Vietnam." 33rd SASE 2021 Conference: After Covid? Critical Conjunctures and Contingent Pathways of Contemporary Capitalism. 2021, page 19f.

⁵³ See e.g. Smith, Adrian, et al. FTAs and Global Labour Governance: The European Union's Trade-Labour Linkage in a Value Chain World. Routledge, 2020.

⁵⁴ Joe Buckley, The Limits of Vietnam's Labor Reforms (1 January, 2022). [Link](#). David Hutt, Vietnam's labor rights make two steps forward, one step back (22 February 2021). [Link](#).

⁵⁵ Statement from EU DAG on the occasion of the 1st meeting of the Viet Nam – European Union Joint Civil Society Dialogue Forum 12 November 2021. [Link](#).

⁵⁶ EP resolution of 21 January 2021 on the human rights situation in Vietnam, in particular the case of human rights journalists Pham Chi Dung, Nguyen Tuong Thuy and Le Huu Minh Tuan (2021/2507(RSP)). [Link](#).

⁵⁷ Velut et al, 2022. [Ibid](#).

4. CONCLUSIONS AND RECOMMENDATIONS

There is still a long way to go to ensure that EU trade relations in general, and its bilateral trade agreements in particular, deliver for sustainability globally. This involves a significant effort from the EU and its trade partners to cooperate, negotiate and agree on what commitments can (and should) be included in Free Trade Agreements as part of strengthened TSD Chapters.

However, above and beyond addressing the current limitations of TSD chapters, there is a need to address the fact that the EU conducts its trade relation with the primary objective to increase trade volumes and support economic growth, while environmental, social and human rights considerations are considered as mere side-effects to be mitigated. This calls for a shift in the way the EU considers its trade relations to making sustainable development a primary goal.

This report proposes a set of recommendations for EU FTAs to participate to that effort through SIAs and Ex-post assessments, FTA TSD Chapters and general considerations on how to unbox sustainability from these chapters.

4.1 Recommendations for improved SIAs & ex-post assessments

Overall, the EU should seek to enhance the use of trade impact assessments as part of the FTA negotiation and implementation processes. The purpose of the SIAs and ex-post assessments should instead be conducted with the objective to fully investigate how trade agreements can achieve specified environmental and social goals, rather than just minimising negative social and environmental effects. This could be achieved through a limited number of key principles:

1. **SIAs and ex-post assessments are systematic and correlated to specific milestones of the FTA negotiations and implementation.** This should include the finalisation of **SIA reports prior to the conclusion of FTA negotiations** in time to feed into the process as well as improved accountability by providing clarity and transparency as to how SIA insights and recommendations have been taken up in the final FTA.
2. Fostering **co-ownership of SIAs between relevant DGs** (e.g. TRADE, ENV, CLIMA and EMPL), to ensure robustness and transparency.

Reviewing the SIA guidance to include minimum requirements and best practice for the assessment. In particular, there is a need to rebalance the weight of CGE modelling in current SIAs. The limits of such economic models should be acknowledged and the interpretation of their results more nuanced (e.g., clearly addressing model assumptions and limitations to policymakers).

CGE modelling should also be accompanied by appropriate flanking measures to mitigate negative impacts of trade liberalisation on environment and society. Such flanking measures could include:

- The recently developed methodology for assessing the impacts of trade liberalisation on biodiversity and ecosystems, endorsed by the European Commission⁵⁸.
 - Ad hoc consultation of relevant experts and stakeholder to ensure comprehensive and systematic assessment of environmental, social and human rights aspects. This could take the form of specific studies to identify particular sectors at risks and propose provisions to be included in the FTA to address such risks.
 - Anticipate the need for specialised provisions for dialogues on areas of interest (e.g., environmentally relevant sectors) to be included in the FTA. For example, the CETA establishes bilateral dialogues on critical materials and on forest products. These dialogues facilitate EU-Canada cooperation in this space and led to the creation of the Canada-EU Strategic Partnership on Critical Materials⁵⁹ which looks to develop resilient supply chains and support innovation and circularity in the sourcing and processing of critical materials.
3. Set up a systematic and robust process for an ex-post assessment of existing trade agreements, with predetermined **'triggers' / 'thresholds' to initiate a review of an agreement** in the light of time-bound actions and targets set out in TDS Chapters, at which points:
- ✓ Identified negative impacts (either environmental, social or in terms of human rights) should trigger an immediate re-evaluation of the corresponding trade measures (either individual or by sector).
 - ✓ Lack of progress should trigger a dialogue on how to better implement TSD provisions or towards the strengthening of these provisions.
4. As best practice, encourage **carrying out ex-post assessments jointly with trade partner countries**, with EU financial support made available for developing economies (e.g. as part of Aid for Trade mechanism).

⁵⁸ 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 Environmental Policy (IEEP), Brussels/London. [Link](#).

⁵⁹ European Commission. (2021). EU and Canada set up a strategic partnership on raw materials. [Link](#).

4.2 Recommendations for a strengthened TSD Chapter

In parallel to upgraded SIAs and ex-post assessment processes, TSD Chapters must become both more ambitious and more action-oriented in order to ensure the overall performance of EU FTAs is geared towards sustainable development. The following identified set of solutions could result in such strengthened TSD Chapters⁶⁰, if systematically discussed between the EU and its trade partners.

First and foremost, the European 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. This is highlighted for instance by the lack of explicit provisions or safeguards to combat deforestation or even address deforestation risks in the EU-MERCOSUR Agreement. This is also linked to the need to conduct ad hoc consultations and studies as part of the SIA process, connected to relevant provisions in FTAs.

Below are several recommendations for a strengthened TSD Chapter which could be implemented across the board.

1. **Stronger language:** TSD provisions must become more explicit when defining commitments and expectations from trade partners under the trade agreement. "Shall" and "must" ought to become the norm instead of "aim" or "seek to".
2. This should be paired with a **binding framework to evaluate progress being made on commitments** by including specific indicators, targets, and timelines for delivering TSD Chapter provisions with the aim to provide a solid backdrop onto which the Commission and stakeholders can monitor and evaluate TSD Chapter implementation. This operationalisation of the TSD provisions should be linked to a "trigger clause" to initiate a review of an agreement.
3. **MEAs upgraded as essential elements:** the latest EU FTA, the EU-UK Trade and Cooperation Agreement, upgraded the respect of Paris Agreement as an "essential element" of the FTA. This upgraded notion signals that the breaching of that clause would lead to the suspension or termination of all or part of the trade agreement. The extension of this clause to other MEAs would be a realistic objective for the Commission in future negotiations.
4. **Extend the development of a Rapid Response Mechanism** to FTAs based on the models recently proposed for the EU GSP or the USMCA.

⁶⁰ For more details, see IEEP's response to the consultation on the TSD review. [Link](#).

Such a system would aim to address and remedy factory-level labour law violations in a more immediate manner than state-to-state cooperation or Dispute Settlement mechanisms that seek to address failure to enforce FTA provisions by the parties.

5. **An actionable and outcome-oriented TSD dispute settlement process** is a key requirement to ensure compliance with the TSD provisions and make FTAs deliver for sustainable development. As demonstrated with the EU-Korea case, the ratification of the ILO labour rights conventions highlighted the shortcomings of the current DSM under the TSD Chapters. The TSD 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 mechanism⁶¹ in cases 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.
6. **Chief Trade Enforcement Officer (CTEO) and Single-Entry Point (SEP): to effectively address TSD complaints:** in its first report in November 2021, the CTEO acknowledge that of all complaints that had been officially processed by its office, none were related to sustainability issues, despite the commitment that TSD related complaints would be given the same level of attention and scrutiny as those relating to market access barriers through the SEP⁶². This opens the question as to the level of attention given by the CTEO to both types of complaints.

Furthermore, the system is so far open only to EU stakeholders (Member States, individual companies, business and trade associations, civil society organisations and citizens). However, CSOs / DAGs of the partner countries are arguably the best informed on issues related to their domestic environmental and social context and should therefore have the capacity to access the system and lodge formal complaints under the FTA.

7. **Involvement of empowered civil society at all stages of the process.** Lack of vertical communication, underrepresentation and capacity constraints (financial and/or varied levels of expertise on trade policy undermine the key role of civil society mechanism under the TSD Chapter to identify lack of progress on social and environmental fronts. This could

⁶¹ Sanctions (including financial) are so far an exception in trade agreements, however US and Canada do integrate such aspects in their FTAs. For more information, see the LSE study (Velut et al, 2022). [Link](#).

⁶² EC press release on the new complaint system (November 2020). [Link](#).

be addressed by establishing a **systematic feedback loop** where the Commission must officially respond to concerns raised by DAG members within a specified timeframe.

Financial capacity constraints are addressed under recommendation 4.3.3 below. Constraints on expertise could also be addressed by involving experts from relevant DGs (e.g. ENV, CLIMA, EMPL) and international organisations in the DAGs.

These recommendations intend to address the identified weaknesses of FTA TSD Chapters and seek to reinforce the capacity for such Chapters to foster sustainability globally. However, there is also a need for a realignment in the way the EU trades with the rest of the world by supporting the decoupling of environmental impact and economic growth, and by shifting the focus of future EU FTAs toward sustainability rather than trade volumes.

4.3 Beyond the TSD Chapter: Recommendations for innovative approaches

The following set of recommendations aim to go beyond the effective implementation of strengthened TSD Chapter provisions and call for a shift in the way trade is conducted between the EU and its partners beyond trade volumes and economic growth. This approach can be pursued by the EU through six essential types of measures:

1. Mobilise all the tools at its disposal to secure **pre-agreement commitments and/or reforms** i.e. guarantees from both parties that certain national policy frameworks pertaining to sustainability (such as progress on national labour laws) would be implemented irrespective of the final results of the negotiations. The US model of FTA compliance could be considered.
2. Ensure that all future negotiated trade agreements contain legal obligations that will achieve the sustainable goals identified in the impact assessment. This includes not only a strengthened TSD chapter as seen in the previous section but also **provisions throughout the rest of the agreement to promote sustainable trade** (e.g. differential tariffs etc.) as well as the exclusion of trade which pose serious risks to social and environmental goals (e.g. ban pesticides).

The aim of such approach would be to “unbox” sustainability i.e. incorporating environmental, social or human rights related provisions in other chapters of the FTAs. Research has found that import tariffs and nontariff barriers are significantly higher on clean industries than dirty ones, which implicitly provides a subsidy for

CO₂ emissions⁶³. This is due to tariff schedules in FTAs being the result of negotiations between the parties driven by commercial interests, which do not seek the achievement of environmental objectives. However, tariffs could be utilised as incentives for sustainable production, as recommended by the governments of the Netherlands and France⁶⁴. There are already examples of tariff schedules in FTAs being linked to sustainable production standards⁶⁵.

Furthermore, there is a need for the inclusion of a hierarchy clause⁶⁶ to resolve potential conflicts between environmental and social issues and trade arising under the trade framework. This clause would act as a mean to prioritise the delivery of the SDGs through trade frameworks.

3. Provide **financial support** when the fulfilment of legal obligations would impose significant burdens on trade partners. Such support is currently lacking for sustainability initiatives which are initiated or strengthened as a result of obligations in the FTA. Two types of funding are particularly important:
 - In the context of the Domestic Advisory Groups, dedicated financial support to address financial constraints to stakeholder participation as well as, to allow members to commission independent assessments of whether the parties are living up to their social and environmental commitments and/or whether FTAs are themselves having detrimental environmental and social outcomes.
 - Technical assistance and financial support from the EU to developing countries for the setting up and maintaining of sustainability initiatives which are initiated or strengthened as a result of commitments in an FTA. Instruments such as Aid for Trade and the new Neighbourhood, Development, and International Cooperation Instrument (NDICI) must be mobilised to that effect.

This could take the form of a Memorandum of Understanding related to the TSD Chapter in which the trade partners would lay out the instruments and financial measures (Aid for Trade, NDICI, Global Gateway, EIB...) that would be mobilised to implement the commitments listed in the agreement. Such a document would

⁶³ Joseph S Shapiro, The Environmental Bias of Trade Policy, The Quarterly Journal of Economics, Volume 136, Issue 2, May 2021, Pages 831–886. [Link](#).

⁶⁴ See Non-paper from the Netherlands and France on trade, social economic effects and sustainable development (15 May 2020). [Link](#). This states notably: "Parties should introduce, where relevant, staged implementation of tariff reduction linked to the effective implementation of TSD provisions and clarify what conditions countries are expected to meet for these reductions, including the possibility of withdrawal of those specific tariff lines in the event of a breach of those provisions."

⁶⁵ For instance, under the Indonesia-EFTA FTA, the importation of palm oil from Indonesia to Switzerland only receives a preferential rate if it can provide proof of compliance with certification systems such as Roundtable on Sustainable Palm Oil (See FERN – D. Brack – Improving forest governance in relation to palm oil - 2022. [Link](#).)

⁶⁶ ClientEarth - A new blueprint for environmental provisions in EU trade agreements - 2021. [Link](#).

acknowledge the main capacity constraints faced by the partner countries and improve the credibility of the sustainability aspects of the FTA. Such commitments could also alleviate the concerns of trade partners on sustainability obligations which tend to be seen as a one-way imposition by the EU and promote the TSD chapters as an enabler for a more balanced development path.

4. **FTA provisions aligned with EU trade-related autonomous measures:** the EU is currently working on several trade-related domestic initiatives (on deforestation, due diligence or sustainable products) with stronger obligations imposed on economic operators trading with the EU. EU FTAs provisions should therefore be aligned to these autonomous measures to ensure a level-playing field. Ultimately, FTAs could reinforce proposed domestic legislations. However, provisions on this issue would need to go beyond cooperation between the parties and general promotion of obligations as such provisions have been found to be ineffective on CSR and business and human rights issues in previous FTAs⁶⁷.
5. **Improve the capacity to review existing FTAs:** This is a key element considering existing FTAs cover close to 40% of EU trade. Yet, very few include review mechanisms. The EU-UK FTA is by far the most advanced as it provides for a review of the Agreement every five years (Final Provisions - Part Seven) and for the possibility of termination with twelve months' notice in case of breach of the essential elements of the partnership (Article INST.35). This can of course be due to the particular political context between the EU and UK after Brexit.

In comparison the EU-Vietnam FTA only caters for the Parties to, jointly or individually, review, monitor and assess the impact of the implementation of this Agreement on sustainable development through their respective policies, practices, participative processes and institutions (Chapter 13 Art. 13 - Review of Sustainability Impact). Other EU FTAs are on the same line and limit the review mechanism essentially through cooperation in the joint committees. Efforts should be made to empower these committees to engage with meaningful revisions on sustainability provisions, in line with the improved ex-post assessments and trigger clause proposed earlier.

⁶⁷ Harrison, James, et al. "Labour standards provisions in EU free trade agreements: reflections on the European commission's reform agenda." *World Trade Review* 18.4 (2019): 635-657 at 646.



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