Sustainable development in EU trade negotiations

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European Commission presents new approach to sustainable development in trade agreements

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions – The power of trade partnerships: together for green and just economic growth

Update

On 22 June 2022 the European Commission published a Communication, The power of trade partnerships: together for green and just economic growth, which sets out its new approach to trade and sustainable development (TSD) in trade agreements. It describes the principles and mechanisms that will be employed by the EU in all upcoming trade negotiations, and that will also influence existing trade agreements.

What is changing?

The Communication identifies six EU priorities in relation to TSD.

Cooperating proactively with partners

Trade agreements must reinforce internationally agreed sustainability principles. This means that any bilateral commitments in trade agreements must be closely aligned with multilateral agreements. The EU prioritises international standards to ensure broad legitimacy and stronger cooperation, and to guard against protectionism. The EU supports trading partners in their efforts to comply with international labour and environmental standards through capacity building in the form of technical and financial assistance.

Identifying country-specific priorities

The EU recognises that each trading partner faces different economic, social and environmental challenges. TSD priorities therefore need to be specifically identified for each country. This can be done with the help of civil society. Implementation roadmaps responding to the priorities identified should be established, including timelines and milestones for implementation.

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Mainstreaming sustainability

The EU believes that sustainability ambitions should not be limited to the TSD chapter of trade agreements. Sustainability considerations should be reflected across all chapters of trade agreements. This can include prioritising the liberalisation of environmental goods and services in market access negotiations; and investment in the raw materials and energy goods needed to transition to climate-neutral economies. Sustainability impact assessments should be used to identify sustainability challenges and opportunities in all relevant areas of trade agreements.

Monitoring TSD commitments

The EU intends to pull together expertise to ensure adequate follow-up on sustainability commitments. This will involve the Commission's own services, its in-country EU Delegations, local stakeholders, and the civil society Domestic Advisory Groups (DAGs) that are established under trade agreements.

Reinforcing the role of civil society

The EU seeks to reinforce the role of DAGs, increasing transparency by publishing TSD committee meeting agendas and minutes. It also intends to improve interactions between EU Delegations and DAGs. While DAGs' remit is currently limited to TSD, the EU would like to extend this to the entirety of trade agreements (as already foreseen in the EU-UK Trade and Cooperation Agreement).

Improving enforcement, including trade sanctions

Today, TSD commitments are already legally binding and enforceable through state-to-state dispute settlement mechanisms. However, this does not include specific rules on how to monitor the implementation of reports made by the dispute settlement panel of independent experts that arbitrates disputes. Any party found to be in violation of TSD commitments during dispute settlement must promptly inform how it will implement remedies to identified breaches, and the time period required. These actions will be subject to panel review. In addition, the EU proposes the possibility to impose sanctions for serious violations of core TSD commitments, (e.g. the fundamental principles of the International Labour Organization (ILO), and the Paris Agreement on Climate Change).

Timeline

The EU's new approach to TSD in trade negotiations applies immediately. Trade with countries outside the EU is the responsibility of the EU, rather than the national governments of Member States. Consultation with the European Parliament and Member States preceded the publication of this Communication.

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What are the major implications for exporting countries?

What are the potential impacts for EU trade partners?

Each chapter of a trade deal is subject to negotiation, so there can be no guarantee that all aspects of this Communication will be reflected in every future EU trade deal. For example, the EU intends to include in all future trade agreements sustainability considerations for public procurement processes, and specific provisions on sustainable food systems (European Parliament 2022). Not all trading partners will be open to such demands. Some fear that concluding agreements will become more difficult (e.g. VDMA 2022).However, the recent EU-New Zealand trade agreement does reflect the Commission's new approach to sustainable development. One criticism of current TSD provisions is that the language is too vague to be enforced, a point not addressed by the Communication (TSD Platform 2022).

How will existing agreements be affected?

Some of the improvements foreseen by the Commission may not require changes to the texts of existing agreements, such as monitoring the implementation of TSD commitments, or enhancing the functioning of DAGs. Other elements, such as extending state-to-state dispute settlement, or extending the monitoring role of DAGs, may require renegotiation of existing free trade agreement (FTA) provisions.

Will the new approach make trading under FTAs unpredictable?

The Commission has emphasised that sanctions are a matter of last resort, only used for serious violations of core TSD commitments. These commitments have been made in multilateral forums, the ILO and the United Nations, and any assessment of breaches will reflect the monitoring they undertake. Even countries such as the USA, which has had recourse to sanctions in relation to labour and environmental standards for a long time, rarely use them (Trade4SD 2022). The possibility to impose sanctions serves as a constant reminder and reinforcement of sustainability commitments.

Can complaints be made about suspected breaches?

Any EU-based stakeholder – EU Member States, entities registered in the EU, industry associations of EU companies and employers, trade unions, EU DAGs, EU NGOs, residents of EU Member States – can lodge a complaint via the EU Single Entry Point. This complaints mechanism is one of the tools used by the EU to monitor implementation, and its functioning has been improved (European Commission 2022).The European Parliament (2022) also wishes to strengthen the role of EU Delegations in partner countries. Complaints are followed up by the Commission services or EU Delegations in the countries involved. Non-EU stakeholders concerned about the implementation of an EU FTA have to contact the relevant authorities in their own country.

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Why do DAGs need to be improved?

Researchers identify a lack of dialogue between DAGs and governments, and highlight weaknesses such as lack of clear purpose, and inadequate resources for monitoring (Velut et al. 2022). In some instances, civil society groups have been excluded from participating in trading partners' DAGs. The frequency of meetings (two per year) and their length (half a day) is considered inadequate for effective civil society scrutiny of trade agreements (EESC 2021).

Are tariff reductions linked to TSD compliance?

Some groups in the EU have advocated linking tariff reductions in bilateral trade deals with TSD compliance, for example through step-by-step reduction of tariffs as commitments to TSD goals are met (Fern 2022; TSD Platform 2022). However, the EU does not intend to link tariff preferences directly to TSD commitments. These commitments are legal obligations to which EU trade partners have committed in multilateral forums, and are not conditional.

Background

All recent EU trade agreements include TSD chapters. However, in light of the European Green Deal, in 2021 the Commission launched a review of its approach to sustainability in trade arrangements, to strengthen EU trade deals contribution to sustainability. The review included an independent comparative study on TSD processes worldwide (Velut et al. 2022) and a public consultation (European Commission 2021).

Resources

EESC (2021) Non-paper: Strengthening and Improving the Functioning of EU Trade Domestic Advisory Groups. European Economic and Social Committee.

European Commission (2021) Open public consultation on the Trade and Sustainable Development (TSD) Review.

European Commission (2022) Operating guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and arrangements.

European Parliament (2022) European Parliament resolution on the outcome of the Commission's review of the 15-point action plan on trade and sustainable development.

Fern (2022) Recommendations for the Effective Implementation of TSD Chapters.

Trade4SD (2022) The EU's proposed reforms to Trade and Sustainable Development chapters: a big change, or more of the same?

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TSD Platform (2022) Joint Statement on the review of Trade and Sustainable Development (TSD) chapters.

VDMA (2022) Position paper on the Chapter Trade and Sustainable Development in EU Free Trade Agreements.

Velut, J.B. et al. (2022) Comparative Analysis of Trade and Sustainable Development Provisions in Free Trade Agreements. London School of Economics.

Sources

Communication: The power of trade partnerships: together for green and just economic growth

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