

“Green conditionality” in the EU’s Trade and Investment Policy: *Quo vadis?*

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Abstract

Following the implementation of the Lisbon Treaty, the external dimension of the European Union’s (EU) trade and investment policy has prominently emphasized sustainable development as a pivotal component of its external agenda. This emphasis has solidified over the years through the negotiation of various treaties and has received legal support from the Court of Justice of the European Union (CJEU). Nevertheless, there exist significant variations and subtleties in how sustainability is conceptualized and incorporated into the EU’s post-Lisbon Treaty agreements.

A pivotal moment in this context was the Advisory Opinion 2/2015 concerning the Free Trade Agreement between the European Union and the Republic of Singapore. This opinion offered critical insights into the scope and character of sustainable development chapters within the framework of trade and investment policy, taking into consideration key EU Constitutional Law provisions such as Article 218(11) TFEU, Articles 3(5) and 21 TEU, and Articles 11 and 191 TFEU. Subsequent agreements have embraced distinct approaches to sustainability, particularly within the realm of environmental protection, where provisions range from general principles to comprehensive regulations governing specific aspects.

This chapter aims to examine the concept of “green conditionality” within the Sustainable Development Chapters of the EU’s Trade and Investment Agreements, with a particular focus on the environmental provisions. Through an in-depth analysis, it seeks to shed light on the extent to which these agreements prioritize and enforce environmental sustainability, thus contributing to a nuanced understanding of the EU’s evolving approach to green conditionality within its trade and investment policy framework.

Keywords

Sustainable development chapters; EU external commercial policy; Trade and Investment Agreements; Multilateral Environmental Agreements (MEAs); Sustainable Development Goals; Sustainability; Sustainability Impact Assessments.

1. Introduction

Following the implementation of the Lisbon Treaty, sustainable development has emerged as a predominant dimension within the European Union’s (EU) trade and investment policy in its

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external sphere.³ This trend has consolidated in recent years through proactive treaty negotiations, and it has received validation through the rulings of the Court of Justice of the European Union (CJEU). Nevertheless, notable distinctions and subtleties emerge concerning the conceptualization and incorporation of sustainability within the Free Trade and Investment Agreements (FTIAs) that the EU has concluded during this period.⁴

Within and outside its borders, the European Union has intricately crafted a comprehensive policy framework pertaining to sustainable development and trade. This multifaceted strategy seeks to stimulate economic advancement while concurrently upholding environmental integrity, fostering societal welfare, and perpetuating sustainable development within its partner nations. The foundation of the EU's sustainable development and trade policy is firmly rooted in a tripartite structure, comprising economic, social, and environmental dimensions. The economic dimension is primed to propel sustainable economic growth, the social facet is resolutely committed to upholding principles of social justice and the safeguarding of human rights, while the environmental aspect is steadfastly dedicated to environmental preservation and the efficient management of finite natural resources.

Indicators of sustainability play a pivotal role, illustrating varying degrees of commitment within the European Union, including leadership demonstrated by certain Member States. The manner in which these nations report their progress also serves as a significant aspect to consider in this context.

The Trade and Sustainable Development chapters within the European Union's trade agreements are specifically designed to harmonize trade activities with the imperatives of sustainable development. Their core objectives encompass the safeguarding of environmental integrity and the advancement of labour rights.

In this realm, the EU's priority is to meet Sustainable Development Goals, and deliver sustainability globally. Against this backdrop, the chapter's main purpose is to explore the extent of the so-called "green conditionality" in the Sustainable Development Chapters (SDCs) of the Trade and Investment Agreements (TIAs) entered into by the EU with a focus on the enforcement of the provisions in cases of breach.

This paper comprehensively explores several crucial dimensions within the domain of Sustainable Development Clauses (SDCs). One significant focus is the diverse typologies of "sustainability" clauses, each encompassing specific content related to environmental law, intellectual property (IP) law, Corporate Social Responsibility (CSR), energy law, and more. The analysis extends beyond the mere identification of these clauses to an in-depth examination of their substantive provisions and implications.

A pivotal aspect of the paper involves a thorough investigation into the applicability of EU Constitutional Law Principles within the context of SDCs. This includes a meticulous examination of treaty provisions endowed with constitutional significance, accompanied by an

³ Damro, C. (2012), The post-Lisbon institutions and EU external environmental policy, in E. Morgera (Ed.), *The External Environmental Policy of the European Union: EU and International Law Perspectives* (pp. 55-75). Cambridge: Cambridge University Press.

⁴ European Commission. Negotiations and Agreements. Available at https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/negotiations-and-agreements_en (last accessed on 3 March 2024).

exploration of prevailing theoretical underpinnings. Such scrutiny is crucial for a nuanced understanding of the legal framework governing sustainable development.

Furthermore, the paper critically dissects the intricate interactions between EU law and both international and domestic realms of environmental and labor law. This exploration aims to unravel the complexities arising from the intersection of these legal domains, shedding light on potential synergies or conflicts.

In tandem, the paper delves into the nuanced interplay between trade, investment, and sustainable development. This involves dissecting the ways in which trade and investment activities align with or challenge the principles of sustainable development. By doing so, the paper contributes to the discourse on the role of economic activities in fostering or hindering sustainable practices.

Lastly, the paper directs its attention to the mechanisms available for ensuring compliance and enforcement in the event of a breach of SDCs. This includes a comprehensive analysis of the legal tools and frameworks designed to uphold the commitments laid out in sustainable development agreements. By examining these questions, the paper aims to shed light on the issue of sustainability in terms of “green conditionality” in the arena of trade and investment external relations pinpointing constraints and progress achieved so far.

2. Conceptualising “Sustainability” in the European Union

In terms of the definition and the legal framework for sustainability under international law and European Union law, it cannot be considered as a legal principle. In the EU, sustainable development is a core principle of the Treaty of the European Union, and also a priority objective for the EU’s internal and external policies. On the international level, the EU is committed to achieving the 17 Sustainable Development Goals (SDGs) included in the United Nations 2030 Agenda. Under EU law, rather than a comprehensive framework obligating Member States to raise sustainability across diverse contexts, there are various provisions and obligations scattered in different texts. Moreover, there exists a duty to perform environmental impact assessments.

Sustainability, as a concept, is shown through a multitude of norms, policies and actions in the EU. Within the EU, sustainable development is a pivotal objective that is intricately linked with other aims and it is embedded in different legal tools Member States have at their disposal. The synergy of these measures, coupled with due diligence facilitates cooperation within specific policy areas such as with regard to addressing deforestation and fosters opportunities for inter-state cooperation.

Collaboration in the realm of external relations is equally vital. Sustainable development clauses included in international agreements concluded by the EU indicate that they do not only deal with carving out sustainable development protection, but that they are also about sanctioning the breach of specific sustainable development provisions. In each of the Sustainable Development chapters, the non-regression principle has been upheld within commercial aspects to prevent a race to the bottom. The legal framework that underpins the preservation and protection of sustainability within the European Union comprises an array of various instruments and policies. Nestled beneath the expansive cover of the EU’s sustainable development doctrine, various trade policy measures, initiatives, and agreements are

incorporated within this framework, which includes a wide range of both soft law and hard law instruments, of multilateral and regional scope, such as:

- Sustainable Development Goals (SDGs): At the multilateral level, the EU is committed to attaining and cooperating to achieve the 17 SDGs set by the United Nations, which include ending poverty, reducing inequality, and protecting the environment.⁵
- The EU's Generalized Scheme of Preferences (GSP): In the international trade realm and within the WTO, the EU has committed to assist developing countries through preferential trade arrangements. The GSP scheme provides preferential access to the EU market for products from developing countries that meet certain social and environmental standards.⁶
- The EU's Circular Economy Action Plan: This plan aims to promote a more sustainable and resource-efficient economy by reducing waste, promoting recycling, and increasing the use of renewable energy sources.⁷
- The EU's Green Deal. This initiative aims to make the EU climate-neutral by 2050 by reducing greenhouse gas emissions and promoting sustainable agriculture, forestry, and fisheries.⁸ The Green Deal primarily focuses on domestic actions and the implementation of additional measures to confront the global environmental impact while fostering novel sustainability paradigms.

On the international level, the EU's sustainable development and trade policy encompasses a main aim to ensure that environmental and labour clauses are respected in partner countries.⁹ For many years, the allocation of competences between the EU and Member States in external relations was controversial.¹⁰ After the Lisbon Treaty, Opinion 2/15 on the Free Trade Agreement between the European Union and the Republic of Singapore¹¹ clarified the legal basis, scope and nature of sustainable development chapters in the context of the new trade and investment policy, in light of Article 218(11) TFEU and other relevant EU constitutional law provisions, such as Articles 3(5) and 21 TEU, and Articles 11 and 191 TFEU.¹²

⁵ European Commission. Sustainable Development Goals. Available at [https://commission.europa.eu/strategy-and-policy/sustainable-development-goals_en#:~:text=Sustainable%20development%20is%20a%20core,Sustainable%20Development%20Goals%20\(SDGs\)](https://commission.europa.eu/strategy-and-policy/sustainable-development-goals_en#:~:text=Sustainable%20development%20is%20a%20core,Sustainable%20Development%20Goals%20(SDGs)) (last accessed on 3 March 2024).

⁶ European Commission, EU's Generalized Scheme of Preferences (GSP), https://policy.trade.ec.europa.eu/development-and-sustainability/generalised-scheme-preferences_en (last accessed on 3 March 2024).

⁷ European Union, Circular Economy Action Plan, available at https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf (last accessed on 3 March 2024).

⁸ European Commission, The Green Deal Industrial Plan: putting Europe's net-zero industry in the lead (1st October 2013), available at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_510 (last accessed on 3 March 2024).

⁹ Pelkmans, J. Linking “values” to EU trade policy—a good idea? *Eur Law J.* 2020; 26(5-6), pp. 391-400.

¹⁰ The allocation of competences between the EU and Member States in external relations was controversial. After the Lisbon Treaty, Opinion 2/15 on the Free Trade Agreement.

¹¹ Yotova, R. (2018). Opinion 2/15 of the CJEU: Delineating the Scope of The New EU Competence in Foreign Direct Investment. *The Cambridge Law Journal*, 77(1), pp. 29-32.

¹² G. Van der Loo, The Court's Opinion on the EU-Singapore FTA: Throwing off the shackles of mixity?, *No* 2017/17, May 2017, available at <https://www.ceps.eu/wp-content/uploads/2017/05/PI2017-17> (last accessed on 3 March 2024).

Different international agreements concluded after the adoption of this Advisory Opinion, embody “differential” approaches to sustainability, i.e. they present innovations in terms of the provisions included and mechanisms to ensure compliance. In the environmental protection realm, these agreements comprise a panoply of diverse provisions ranging from generic clauses referring to Multilateral Environmental Agreements (MEAs) to more detailed and specific clauses regulating specific aspects of international environmental protection. These chapters are in line with relevant international labour and environmental law frameworks.

3. Types of “sustainability” clauses/provisions included in EU Free Trade and Investment Treaties: Content and commitments

Recent years witnessed a considerable expansion of trade and investment treaties and important changes in the ambition, scope, and density of sustainability provisions in the EU's internal and external policies. The EU has articulated a comprehensive approach to sustainability to encompass various elements as discussed below. Notwithstanding this progress, the broader picture of sustainability in international law looks quite scattered and fragmented, offering different levels of enforcement and compliance which is revealed in the relationships of the EU with third countries. Law-making in this specific area of the EU External Relations is vested in the EU Commission with a considerable participation of the EU Parliament, under the monitoring of the CJEU. More recently, the EU Ombudsman has gained a more active role, especially regarding the sustainability impact assessments that are conducted before the signature and entry into force of the Trade and Investment Agreements.¹³

In relation to the content of the Sustainable Development (SD) Chapters of EU's Free Trade and Investment Agreements (FTIAs), they include references to MEAs and to the International Labour Organization's (ILO) core labour standards as regulated in the main conventions.¹⁴ It is worth mentioning that sustainability provisions can be also placed in other chapters of the FTIAs and that are not necessarily contained in the environmental and labour law clauses. To illustrate, these can be provisions regarding Intellectual Property (IP) rights and law, Corporate Social Responsibility, and those concerning energy law as incorporated in other chapters.¹⁵ The content and shape of these SD chapters vary greatly across EU free trade agreements. Hence, characterising and assessing the nature of the provisions and the institutionalisation that surrounds them is far from easy.

In an attempt to systematise them, SD provisions in international trade and investment agreements concluded outside the EU sphere, vary considerably. SD chapters constitute now a core component of the external dimension of the revised EU's trade and investment policy. Since the Lisbon Treaty entered into force in 2011, the EU's TSD chapter on environmental and labour matters combining both types of clauses have been shaped in different ways. Although these SD provisions are binding upon the parties, compliance with them has not been required in practice.¹⁶ Clearly, the main motivation for seeking consensus around these environmental and labour issues relates to the EU's role in global climate change negotiations.

¹³ Sustainability impact assessments, https://environment.ec.europa.eu/law-and-governance/environmental-assessments/environmental-impact-assessment_en (last accessed on 3 March 2024).

¹⁴ Environmental and labour clauses in Sustainable Development Chapters.

¹⁵ See, for instance, the Agreement with New Zealand.

¹⁶ The Lisbon Treaty introduced modifications to the Common Commercial Policy by adding investment and sustainable development under that framework.

Furthermore, the EU holds a considerable responsibility in global value chains as it generally outsources economic, social and environmental impacts.¹⁷

Looking at the broader picture, the current legal framework encompasses the European Green Deal (EGD) launched in 2019, which increases the reach of green provisions in the Union's trade and investment policy, calling for mainstreaming of social and environmental sustainability goals into the EU's trade external policy.¹⁸ The EGD was followed by the EU Trade Policy Review in 2021, placing sustainability at the centre of the EU external policy.¹⁹

It is worth noting that not all sustainability issues can be effectively dealt with by trade agreements. Hence, the Commission has indicated that there are many other tools at the EU, Member State, and regional levels to tackle negative effects of globalisation. Notably, the new European Consensus on Development (adopted on 7 June 2017), provides a common EU and Member State response to the 2030 Agenda from a development perspective. In the Commission's words, "sustainability issues feature prominently and stronger coherence between trade and development policies".²⁰

While EU FTIAs have included environmental protection provisions and commitments on labour standards, there are still shortcomings concerning their application. This is observed in three particular areas: protection of the environment, mitigation of negative impacts of trade, and their use to enhance sustainability on a global scale.²¹ To address these shortcomings, the EU institutions are seeking to overhaul the current policy as stated in the Communication "The power of trade partnerships: together for green and just economic growth".²² In the document, the European Economic and Social Committee outlines strategies to further strengthen the implementation and enforcement of Trade and Sustainable Development (TSD) chapters of the EU's trade agreements.

Considering this context, in the next sections the chapter delves into the execution and enforcement of Sustainable Development (SD) Chapters in Free Trade and Investment Agreements (FTIAs) established by the European Union. It explores the concept of green conditionality and its integration into associated domains. While "green conditionality" lacks a universally agreed-upon definition, in this paper, it refers to the conditions mandated in

¹⁷ Eurostat, EU and global value chains, available at <https://ec.europa.eu/eurostat/web/economic-globalisation/globalisation-in-business-statistics/global-value-chains> (last accessed on 3 March 2024).

¹⁸ European Commission, Statistics for the European Green Deal, available at <https://ec.europa.eu/eurostat/cache/egd-statistics/> (last accessed on 3 March 2024).

¹⁹ Brussels, 18.2.2021 COM(2021) 66 final, Communication from the Commission to the European Parliament, The Council, the European Economic And Social Committee And The Committee of The Regions, Trade Policy Review - An Open, Sustainable and Assertive Trade Policy, available at https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf (last accessed on 3 March 2024).

²⁰ European Commission, *Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs)*, available at https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf (last accessed on 3 March 2024).

²¹ Blot, E. and 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.

²² European Economic and Social Committee, *The power of trade partnerships: together for green and just economic growth*, available at <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/power-trade-partnerships-together-green-and-just-economic-growth> (last accessed on 3 March 2024).

international treaties, whether trade or cooperation agreements, which necessitate adherence to environmental regulations for trade and aid cooperation.²³

4. Examining sustainability through the lens of EU Law: EU Constitutional Law Principles and prevailing theoretical underpinnings

From a constitutional EU law's perspective, SD chapters raise the issue of their integration into the legal framework of the EU and the choice of the appropriate legal basis for secondary legislation.²⁴ Traditionally, the distribution of sustainable development competences in the context of the external commercial policy has been controversial due to the mismatch between internal and external allocation, i.e. environmental policy is a shared competence, whereas the external commercial policy is an EU's exclusive competence. The Advisory Opinion 2/2015 clarified that SD provisions should be included under the umbrella of the EU's exclusive competence.²⁵ In the new scenario that emerged after the Lisbon Treaty, this would imply the possibility of carrying forward legal actions in cases of treaty breach by any of the parties to the EU FTIAs.

Though the AO shed light on competence allocation, the underlying problem continues to be compliance with the specific SD provisions of the agreements. Taking a critical viewpoint, Meunier and Nicolaidis contend that the efforts to align the EU's international investment agreements with sustainable development goals have reinforced the interests of individual States and heightened the politicization of the EU's Common Commercial Policy.²⁶

Taking stock of the EU treaty-making experience, different cases brought before the EU Ombudsman illustrate controversial issues as observed in practice. In light of these cases, main obstacles to building a coherent and consistent sustainable development policy in line with SDGs become clear. These EU FTIAs are also disclosing new perspectives and contributing recommendations to improving current EU policies, enhancing its significant role in preserving sustainability globally.

Consistent with this approach, Sustainability Impact Assessments (SIAs) and Human Rights Impact Assessments (HRIAs) carried out before finalizing FTIAs with other regions or third-party states are commonly deployed as mechanisms to identify specific areas of concern and action for both the EU and its external partners. SIAs main goals are to identify, address and lessen the negative or detrimental impacts of EU FTIAs. SIAs are particularly relevant to

²³ The concept was coined in the 1990s to describe the greening of international aid, in other to promote environmental policies in developing countries donors seek to promote environmental policies in developing countries, according to their own objectives.

²⁴ From an EU constitutional law standpoint, sustainable development has been incorporated into different provisions of the treaties, see the Preamble to the TEU, Art 3(3) TEU and Art 11 TFEU, and Art 37 CFREU. Additionally, in terms of the EU's external action, see Art 3(5) TEU, Art 21(2)(d) TEU, and Art 21(2)(f) TEU. See, also, E. Morgera and G. Marín Durán, "Article 37 - Environmental Protection", in Steve Peers and others (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014), pp. 987-989 and pp. 992-994.

²⁵ Opinion 2/15 of the Court, of 16 May 2017, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=190727&doclang=EN> (last accessed on 3 March 2024). For an analysis of the Opinion and its implications for EU constitutional law, see M. Cremona, "Shaping EU Trade Policy post-Lisbon: Opinion 2/15 of 16 May 2017" (2018) 14 *European Constitutional Law Review* 23, pp. 231-259.

²⁶ Meunier, S., and Nicolaidis, K. (2019) The Geopoliticization of European Trade and Investment Policy. *JCMS: Journal of Common Market Studies*, 57, pp. 103–113. <https://doi.org/10.1111/jcms.12932> (last accessed on 3 March 2024).

monitor compliance with environmental standards and the protection of labour rights during the negotiations and before the entry into force of the agreements.

In some specific cases, civil society organisations have even complained about the timing for the HRIAs and the lack of an appropriate level of protection, with cases reaching to the EU Ombudsman. In the EU Ombudsman's words "[t]he EU projects its values through its trade deals. Concluding a trade agreement before its potential impact has been fully assessed risks undermining those values and the public's ability to debate the merits of the deal. It also risks weakening European and national parliaments' ability to comprehensively debate the trade agreement."²⁷

Amongst these controversial cases, in a complaint regarding the EU-MERCOSUR Agreement, as the negotiations were protracted, the claim was that the European Commission should have concluded an updated sustainability impact assessment (SIA) before the EU-Mercosur trade deal was agreed. The European Ombudsman urged that, in future trade negotiations, such assessments should be finished ahead of the final agreement.²⁸ As the European Commission failed to ensure the finalisation of the SIA in good time (i.e. before the conclusion of the EU-Mercosur) trade negotiations, there was maladministration. In a different case, the EUO examined the complaint submitted by a group of civil society organisations, which were concerned about the European Commission's failure to ensure human rights risks were assessed before providing support to African countries to develop surveillance capabilities, notably in the context of the EU Emergency Trust Fund for Africa (EUTFaA).²⁹ The complainants contended that, before agreeing to support projects with potential surveillance implications, such as introducing biometric databases or mobile phone monitoring technologies, the Commission should have carried out prior risk and impact assessments to ensure that the projects do not result in human rights violations (such as the right to privacy).³⁰ In both cases, the Ombudsman found that the measures taken were not appropriate to guarantee a proper assessment of the human rights impact of EUTFaA. The implication of this main outcome of the inquiry is that no adequate mitigation could have been put in place. To tackle this, the Ombudsman recommended that future EU Trust Fund projects would always include a prior human rights impact assessment.³¹

Another related area in which the EU has achieved significant progress is corporate due diligence. In its approach to dealing with sustainability, the EU has adopted three different pieces of legislation. The proposed directive on CSDD would require EU Member States to adopt legislation regulating due diligence aspects of adverse human rights and environmental effects. In a nutshell, the Directive aims at requiring large EU companies and foreign companies operating in the EU to meet due diligence obligations with respect to human rights and environmental standards, setting forth an enforcement mechanism with possible sanctions

²⁷ EU Ombudsman. EU Commission 'failed' on assessing Mercosur trade deal, available at <https://euobserver.com/green-economy/151302> (last accessed on 3 March 2024).

²⁸ Decision in case 1026/2020/MAS concerning the failure by the European Commission to finalise an updated 'sustainability impact assessment' before concluding the EU-Mercosur trade negotiations, available at <https://www.ombudsman.europa.eu/en/decision/en/139418> (last accessed on 3 March 2024).

²⁹ Decision on how the European Commission assessed the human rights impact before providing support to African countries to develop surveillance capabilities (case 1904/2021/MHZ). Decision. Case 1904/2021/MHZ - Opened on Tuesday | 30 November 2021 - Decision of 28 November 2022.

³⁰ Ibid.

³¹ Decision on how the European Commission assessed the human rights impact before providing support to African countries to develop surveillance capabilities (case 1904/2021/MHZ), of 22 November 2021, available at <https://www.ombudsman.europa.eu/en/decision/en/163491> (last accessed on 3 March 2024).

and civil liabilities for non-compliance.³² Another piece of EU legislation which is relevant in this field is the Corporate Sustainability Reporting Directive (CSRD) in force since January 2023.³³

Specific milestones to improve the negotiation and implementation of EUFTIAs depend upon different scenarios. Some other existing tools include post-assessments and the new EU taxonomy.³⁴ In addition, the adoption of a Rapid Response Mechanism (RRM) to be incorporated into the EUFTIAs has been suggested.³⁵ A similar RRM has been incorporated under the USMCA (formerly known as NAFTA), which can be triggered by some contracting parties “for expedited enforcement of workers’ free association and collective bargaining rights at the facility level”.³⁶ The RRM is understood as an innovative dispute settlement mechanism that can be relied upon to prompt enforcement of SD provisions.

The effectiveness of Strategic Environmental Assessments (SIAs) varies according to the individual agreement, the timing of the assessment, the scope of its recommendations, and the degree of acceptance of those recommendations.³⁷ Recent assessments of the mechanism have found 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). The involvement of trade partners takes place not only during the negotiations, but also throughout the life of the agreement and during its revision. This ties in with the internal and external allocation of competences between the EU and Member States. Internally, the SIAs fall under the competence of different DGs (namely, trade and environment).

³² EU Commission, Proposal for a Directive of The European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM/2022/71 final).

³³ The Directive was published in the Official Journal of the European Union on 16 December 2022, after the European Parliament and the Council of the European Union formally adopted it. The CSRD entered into force on 5 January 2023. Available at https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en (last accessed on 3 March 2024).

³⁴ European Commission, EU taxonomy for sustainable activities, available at https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en (last accessed on 3 March 2024).

³⁵ See E. Blot, A. Oger and J. Harrison (2022), *Enhancing sustainability in EU Free Trade Agreements: The case for a holistic approach*, Policy report, Institute for European Environmental Policy (IEEP), available at https://www.greens-efa.eu/files/assets/docs/enhancing_sustainability_in_eu_free_trade_agreements._the_case_for_a_holistic_approach_ieep_2022_.pdf (last accessed on 3 March 2024).

³⁶ USMCA, Chapter 31 Annex A; Facility-Specific Rapid-Response Labor Mechanism, available at <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/31-Dispute-Settlement.pdf> (last accessed on 3 March 2024).

³⁷ IEEP, *Enhancing sustainability in EU Free Trade Agreements* (2022). The report’s main findings indicate that the majority of SIA processes reviewed showed a timely stakeholder engagement. Sustainable development in the European Union - A statistical glance from the viewpoint of the UN Sustainable Development Goals, available at <https://ec.europa.eu/eurostat/documents/15234730/15228899/KS-02-16-996-EN-N.pdf/e4f0a6bc-c051-1b0a-1d14-78f2f99c73de?t=1667248035644> (last accessed on 3 March 2024).

Looking at the evolution of different “generations” of FTIAs/TSD Chapters, specific wording and tailor-made clauses have varied over the years. Some of the early SD clauses contained a reference to Multilateral Environmental Agreements (MEAs) as a way to reinforce the application of international environmental law norms, such as the climate change law. Hence, the baseline for compliance is determined by specific commitments as set out in the respective environmental treaty. More modern FTIAs include a binding framework aimed at evaluating compliance with different SD commitments. In more recent agreements, for instance, the binding force of the Paris Agreement is reflected in the treaty provisions.

It is worth underlining that environmental and labour-related clauses are also found outside the specific SD chapters, such as in chapters/provisions dealing with specific trade issues. The examination of sustainability within treaties extends beyond the confines of specific Sustainable Development (SD) chapters. It encompasses diverse dimensions woven into other treaty chapters, addressing aspects such as trade tariffs and various trade-related measures, including Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS). The broader canvas of sustainability considerations within these chapters forms a critical facet of European Union Free Trade and Investment Agreements (EUFTIAs), incorporating various types of SD clauses. This nuanced approach acknowledges the multifaceted integration of sustainability principles across diverse treaty sections, reflecting the intricate intersection of trade and sustainable development objectives. Sustainability standards vary across treaties and depend on the SD provisions on environmental and labour issues included in the treaties.

An additional clause of a procedural nature pertains to the “trigger” clause, designed to instigate a dispute settlement process in the event of a violation of the Sustainable Development (SD) provisions outlined in the agreement. Dispute settlement chapters serve a crucial function in upholding compliance with SD provisions, facilitating the engagement of civil society organizations throughout the resolution process. Due to the imbalance often noted in agreements signed by the EU with developing or emerging contracting parties, in those agreements, it becomes imperative to ensure the assurance of technological transfer and financial support for the realization of sustainability commitments.

During the review of existing FTIAs, new proposals for enhancing sustainability commitments have been put forward. The first EU Free Trade Agreement to include the new generation of SD clauses was the EU-South Korea FTA treaty and the 2023 EU-New Zealand treaty. The former establishes a structured foundation for collaborative engagement concerning sustainability and agricultural development. This encompasses areas of significance, notably sustainable food systems, which hold the potential for enhancing the resilience of farmers in mitigating the impacts of climate change and environmental degradation.³⁸

The recently formed Free Trade Agreement (FTA) between the EU and New Zealand signifies a substantial enhancement of sustainability commitments within EU FTAs. This agreement reflects, in part, a more progressive stance on sustainability matters. The agreement mandates both contracting parties to actively pursue the objectives outlined in the Paris Agreement and adhere to fundamental conventions established by the International Labour Organisation

³⁸ The EU- New Zealand Agreement was signed on 9 July 2023. Following signature, both Parties must complete the required legal processes before the FTA can enter into force, which is expected to occur in the first half of 2024. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/agreement-explained_en (last accessed on 3 March 2024).

(ILO).³⁹ Additionally, the agreement seeks to bolster collaboration in the realms of fossil fuel subsidy reform and the advancement of sustainable food systems.⁴⁰

5. Synergies and crossroads: EU law's interplay with international and domestic environmental and labour regulations

Another significant issue that these SD Chapters pose concerns the implementation of treaty clauses in domestic environmental and labour law. One of the stumbling blocks in this respect is the absence of a level-playing field in practice, with a considerable unevenness of levels of protection across the different trade partners. An additional hurdle is the exhortatory language used in the environmental and labour provisions of the SD chapters. Taking the environmental realm as an example, the agreements usually compel the parties to comply with the commitments acquired under various Multilateral Environmental Agreements (MEAs). However, there is a weak follow-up of compliance and, often, no consequences are foreseen for the lack of observance of the treaty or related to the withdrawal from the MEA.⁴¹

In the environmental law realm, areas of particular concern are those relating to climate change provisions and deforestation. In terms of deforestation, most trade and investment treaties do not deal with these issues as demonstrated in specific cases. For instance, despite discussions about halting negotiations between the European Union and MERCOSUR due to the forest fires in the Amazon region, no specific action was taken.⁴² To address this concern, the EU has recently introduced legislation through a regulation to minimise EU-driven deforestation and forest degradation.⁴³

Turning now to analysing labour provisions in TSD Chapters, according to the International Spillover Index, EU Member States also create negative socio-economic spillovers outside the region.⁴⁴ To illustrate this, the 2021 report indicates that “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”.⁴⁵ In response to this trend, the EU has tried to progressively cover social aspects through its Free Trade Agreements. These labour provisions are modelled upon the clauses of the EU-Korea FTA. In practice, all EU FTIAs refer to ILO core labour standards as set out in the fundamental ILO Conventions, particularly acknowledging and protecting, freedom of association, the right to organise and collectively bargain, and the elimination of forced labour. Looking at the SD Chapters from a comparative analysis perspective, a

³⁹ EU-New Zealand Agreement, Article 19.6. Trade and climate change.

⁴⁰ Ibid., Article 19.7. Trade and fossil fuel subsidy reform.

⁴¹ *In arguendo*, this would mean in practice that if a trade partner would decide to leave the Paris Agreement no specific treaty mechanism would be set in motion.

⁴² EU Observer, *Amazon deforestation and the EU-Mercosur trade deal*, 2 August 2021, available at <https://euobserver.com/opinion/152572> (accessed on 3 March 2024).

⁴³ EU Commission, *Proposal for a regulation on deforestation-free products*, available at https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products_en (last accessed on 3 March 2024).

⁴⁴ Sustainable Development Report 2022, available at <https://dashboards.sdindex.org/map/spillovers> (last accessed on 3 March 2024).

⁴⁵ Ibid.

difference can be appreciated between the different TSD chapters of the FTAs between the EU and South Korea (EU-Korea), Canada (CETA) and Japan (JEFTA).⁴⁶

The new generation of EU trade and investment treaties has introduced improved transparency in the TSD dispute settlement process compared to earlier agreements. This is evidenced by the strengthened language, such as the use of “shall”, which imparts a sense of commitment in these agreements. Nevertheless, there remains inconsistency and variation across different treaties.

Civil society has played a crucial role in these FTIAs by creating networks of diverse NGOs that help with compliance with national legislation. These networks offer valuable feedback and foster cooperation on critical issues. However, the aspect of dispute resolution presents challenges, as the FTIAs lack sufficient safeguards to ensure compliance and the delivery of treaty outcomes. For instance, there is a gap in follow-up mechanisms when either party fails to adhere to the expert panel’s decision.⁴⁷

A controversial question revolves around the existence of a genuine “green conditionality” in the EU’s trade and investment policy, particularly, in terms of a weak enforcement system and the absence of a robust sanctions scheme. Altogether, these factors suggest a relatively weak green conditionality, which has prompted the revision of the enforcement and compliance mechanisms.

A consistent and coherent approach to sustainable development in external policy would have a tangible impact on EU citizens. This impact can be particularly observed in specific supply chains, where contentious issues arise concerning the importation of “risk commodities”. In this regard, there is emerging case law in the EU about sustainability and trade, for instance, the case of palm oil serves as an instructive example, notably highlighting concerns related to its elevated indirect land-use change risk (ILUC-risk). This particular instance has triggered the potential for climate change-related litigation within the European Union, as evidenced by *Santiga Lipids v. Commission* (2019).⁴⁸ The legal matter in this case revolves around the exclusion of palm oil from the category of renewable sources. Such cases underscore the intricate legal and environmental implications associated with palm oil production and its broader consequences on climate change.

The ongoing revision of the Trade and Sustainable Development chapters is pivotal in addressing emerging concerns in the realm of trade agreements. Concurrently, the European Commission has taken proactive measures to enhance compliance with obligations by

⁴⁶ Demy Van’t Wout, “The enforceability of the trade and sustainable development chapters of the European Union’s free trade agreements”, (2022) *Asia Europe Journal* 20, pp. 81–98.

⁴⁷ Paolo Mazzotti, “Stepping Up the Enforcement of Trade and Sustainable Development Chapters in the European Union’s Free Trade Agreements: Reconsidering the Debate on Sanctions” (European Law Institute Paper 2021), available at https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_el/YLA_Award/Submission_ELI_Young_Lawyers_Award_Paolo_Mazzotti_2021.pdf (last accessed on 3 March 2024).

⁴⁸ Order of the General Court (Fourth Chamber) of 11 June 2020. *Lípidos Santiga, SA v European Commission*. Action for annulment – Energy – Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, available at <https://curia.europa.eu/juris/liste.jsf?num=C-402/20&language=EN> (last accessed on 3 March 2024).

introducing a comprehensive 15-point Action Plan on Trade and Sustainable Development.⁴⁹ This multifaceted plan not only seeks to bolster participation from civil society but also aims to fortify regulatory oversight through the implementation of effective dispute-resolution mechanisms. The evolving landscape of international trade agreements, underpinned by these revisions and proposals, reflects the broader commitment to fostering sustainability and accountability. It remains to be seen whether the application of the new rules would extend to agreements already in force or in those under negotiation, such as those with South Korea and MERCOSUR, and on the possibility of expanding the rules to cover raw materials and energy goods.

6. Navigating Trade, Investment, and Sustainable Development

Due to the substantial volume of trade encompassed by the EU-signed agreements, the European Union possesses the capacity to take a global leadership role in establishing environmental and labour standards. established before, the conceptualisation of SD in the EU Trade and Investment Treaties encompasses environmental and labour issues. In international law, international trade and investment systems take different approaches to mainstreaming sustainable development. Sustainable development and climate change issues considered in the broader context of International Law and the Law of the European Union are part of broader initiatives to promote decarbonisation and articulate a just transition.

In turn, the SDGs offer a framework of a soft law nature, and provide some standards for assessing success in different areas. In the overall context of international trade and investment law, the SDGs emphasized certain areas that are considered a priority, but some significant transformations must take place in external relations to reinforce collaborative external relationships with other countries, such as capacity-building. There are major SDGs challenges for EU Member States in terms of the external policy, to offset the negative spillover effects that European Member States cause outside the region. This is measured by the Spillover Index, determining the transboundary impacts of one State's action on other States. These negative effects include CO₂ emissions, biodiversity threats and profit shifting, biodiversity loss, poor labour standards and deforestation, which have a limiting effect on the achievement of the SDGs.⁵⁰ The index demonstrates that there are intrinsic relations between economic growth and environmental spill-overs from EU activities.

Regarding the manner in which the treaties integrate the Multilateral Environmental Agreements (MEAs), the core of conditionality is made up of the various commitments made through the Paris Agreement, other Multilateral Environmental Treaties, and the environmental and climate change clauses specifically incorporated into trade and investment treaties. In the context of multilateral environmental diplomacy, the European Union has historically taken a leading role in negotiations. This leadership is exemplified, for instance, by its initiatives during COP27, where it advocated for the decarbonization of the economy and the widespread adoption of renewable energy sources.⁵¹ To ensure coherence within the diverse domains of

⁴⁹ European Commission, European Parliament resolution of 6 October 2022 on the outcome of the Commission's review of the 15-point action plan on trade and sustainable development (2022/2692(RSP), available at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0354_EN.html (last accessed on 3 March 2024).

⁵⁰ Spillover Rankings. The spillover performance of all 193 UN Member States <https://dashboards.sdgindex.org/rankings/spillovers> (last accessed on 3 March 2024).

⁵¹ United Nations – Climate Change, COP27 Reaches Breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries, 20 November 2022, available at <https://unfccc.int/news/cop27-reaches->

external policy, it is imperative to bolster adherence to environmental provisions within the Sustainable Development (SD) chapters. The recent convening of COP27 offered a valuable opportunity to contemplate the formulation of more robust objectives and strategies, assess regional advancements, devise recovery plans, and leverage the insights gained from the challenges posed by the pandemic.

In turn, the Sustainable Development Goals (SDGs) serve as a foundational “road map” delineating a comprehensive global framework for international cooperation in the realm of sustainable development, encompassing diverse dimensions including economic, social, environmental, and governance aspects. The far-reaching impact of the pandemic was compounded by deficiencies in social protection, fragmented healthcare systems, and the exacerbation of disparities among countries, notably intensifying poverty indicators. Consequently, imperative emphasis must be placed on prioritizing social inclusion and striving for heightened equality, aligning these goals with the fundamental tenets of the SDGs. Simultaneously, the implementation of the Paris Agreement exhibits variances in the pace at which objectives, such as achieving “net zero” emissions and decarbonization, are being realized, necessitating a rigorous legal analysis of the diverse trajectories in climate action.

Within the Sustainable Development (SD) domain, it is crucial to recognize that labour and social standards constitute a fundamental component of this multifaceted concept. This entails a holistic examination that extends to labour rights, thereby engendering a series of intricate inquiries. In the context of the European Union’s (EU) trade agreements, an integral feature is the inclusion of a Trade and Sustainable Development (TSD) chapter, which amalgamates the stipulations of multilateral environmental agreements (MEAs) with the core labour standards established by the International Labour Organization (ILO). Under the aegis of the SD chapters, trade, labour, and environmental considerations are intrinsically linked. However, despite the advancements in this realm, the interplay between these differing sets of priorities remains contentious, marked by a discernible diversity in the standards of protection across nations. It is noteworthy that the foundational framework of labour standards hinges on four primary ILO conventions, each carrying a significant weight in shaping the landscape of international labour rights.

This intricate interplay between trade, labour, and environmental concerns within SD chapters underscores a critical area of scrutiny and debate in the realm of international law and policy. The amalgamation of environmental and labour standards in trade agreements represents a complex endeavour fraught with challenges, as it strives to strike a balance between fostering economic growth, ensuring the protection of labour rights, and promoting sustainable environmental practices. The variances in the levels of protection across countries further compound the complexities of harmonizing these priorities within the SD framework, necessitating rigorous legal analysis and policy deliberations to advance a more equitable and sustainable global trade landscape.

The objectives delineated within European Union (EU) treaties serve as the foundational framework guiding the Union’s external policy initiatives. This alignment is manifest in the numerous trade agreements, such as the 2011 EU-Korea Free Trade Agreement (FTA), which underscore the significance of these objectives. Specifically, the Trade and Sustainable Development (TSD) chapters within these agreements encompass a spectrum of standards.

[breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries](#) (last accessed on 3 March 2024).

Notably, these chapters incorporate substantive standards, which necessitate the commitment of the involved parties to the effective execution of pertinent Multilateral Environmental Agreements (MEAs) or International Labour Organization (ILO) Conventions.⁵² Secondly, within the framework of Trade and Sustainable Development (TSD) chapters, there exists a set of procedural provisions that facilitate and regulate the discourse and collaboration between the involved parties. These provisions encompass critical aspects such as dialogues, cooperation mechanisms, and the ongoing assessment of the sustainability impacts resulting from the agreement's implementation. It is through these mechanisms that the parties engage in a continuous process of monitoring and revising the sustainability objectives and outcomes, thereby ensuring that the agreement remains aligned with its intended goals.

Thirdly, an essential facet of these TSD chapters is the rigorous adherence to the commitments outlined within the agreement. This aspect serves as a linchpin, embodying the fundamental principles upon which the agreement is founded. Typically, the enforcement of these commitments is entrusted to the dispute settlement section, which provides a structured mechanism for addressing any deviations or breaches that may arise during the agreement's tenure. This dispute settlement process plays a pivotal role in upholding the integrity of the TSD chapters by providing a recourse for resolving disputes and reinforcing the commitment to the agreed-upon sustainability standards.

It is essential to note that the structural arrangement of TSD chapters and the interplay of these multifaceted provisions are contingent upon the specific treaty in question. The precise configuration and the level of integration of these elements may vary, reflecting the unique characteristics and objectives of each individual agreement. As such, the intricacies of the TSD chapters are intricately linked to the particularities of the treaty at hand, thereby underscoring the need for a case-by-case analysis when evaluating their design and effectiveness. To illustrate, the EU-UK Trade and Cooperation Agreement (TCA) includes in the “Level playing field” chapter encompassing sustainable development provisions incorporating standards, but it does not comprise a robust dispute settlement mechanism.⁵³

7. Ensuring Compliance: Mechanisms in Sustainable Development Chapters

Regarding the institutional mechanisms responsible for supervising the implementation of SD chapters, they encompass a diverse array of options. These options encompass a panoply of options ranging from panel of experts tasked with scrutinising grievances and furnishing pertinent recommendations to more sophisticated mechanism including quasi-judicial bodies. In cases of non-compliance, the dispute resolution apparatus embedded within the Trade and Sustainable Development (TSD) chapters primarily entails government-to-government consultations. It also involves an impartial panel composed of trade, labour, and environmental experts, along with the ongoing process of implementation monitoring.⁵⁴

⁵² Harrison et al. 2019.

⁵³ Briefing Paper Number 9190, 20 May 2021, *The UK-EU Trade and Cooperation Agreement: Level Playing Field*, available at <https://researchbriefings.files.parliament.uk/documents/CBP-9190/CBP-9190.pdf> (last accessed on 3 March 2024).

⁵⁴ Mazzotti, P., ‘Stepping Up the Enforcement of Trade and Sustainable Development Chapters in the European Union’s Free Trade Agreements: Reconsidering the Debate on Sanctions’, available at https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/YLA_Award/Submission_ELI_Young_Lawyers_Award_Paolo_Mazzotti_2021.pdf (last accessed on 3 March 2024).

When considering adherence to Trade and Sustainable Development (TSD) chapters, it is imperative to underscore three specific aspects relating to enforcement mechanisms that merit consideration. These aspects encompass specific labour and environmental obligations articulated within the treaty, the carefully crafted mechanisms aimed at securing compliance with these commitments, and the various stages of the enforcement process.

Chapters on trade and sustainable development in the free trade agreements of the European Union reflect international consensus around main issues. Most of the trade-related issues could also be dealt with in the framework of the WTO system, however, the current dispute system is stalled. There are some useful precedents in the WTO that could be relied upon for the future (see, for instance, DS593: European Union- Certain measures concerning palm oil and oil palm crop-based biofuels).⁵⁵ Precisely, in the WTO realm it has been long debated the compatibility of EU measures with the multilateral system. Along these lines, in the framework of the Committee on Trade and Environment (CTE), WTO members have addressed the trade-related dimensions of the European Green Deal. Additionally, various developing countries (EU's partners) have outlined their respective national environmental efforts.⁵⁶

With regard to the current situation and the characteristics of treaty provisions, there is no strict “green conditionality” in the foreign policy of the European Union. In view of this, there are new proposals aimed at strengthening sustainability and compliance with environmental regulations within the framework of the common commercial policy. The inclusion of chapters pertaining to trade and sustainable development within free trade agreements occurs within the broader context of the legal framework provided by the World Trade Organization (WTO) and the principles of international law governing foreign investments.

At this point, it is worth noting that SD chapters in trade agreements embrace environmental and labour aspects. When viewed through an environmental law lens, these chapters show connections with significant international treaties, such as the Paris Agreement. Notably, these multilateral environmental agreements (MEAs) often incorporate precise mechanisms for resolving disputes. Nonetheless, despite the introduction of the Sustainable Development Goals (SDGs), which provide a novel framework for action, these goals do not offer explicit strategies for putting them into practice.

While emphasizing the opportunity for countries to enhance their commitments in various areas, the Paris Agreement has shown limited progress in achieving emission reductions, notably in meeting the Nationally Determined Contributions (NDCs).⁵⁷ While it enshrines core provisions related to adaptation, sustainable development, participation, inclusion, and transparent progress monitoring systems, countries are struggling to effectively reduce emissions to limit global temperature increases to 1.5°C. The absence of a clear link between

⁵⁵ Non-Paper of the Commission services (2018), Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements (26/02/2018), available at <https://www.politico.eu/wp-content/uploads/2018/02/TSD-Non-Paper.pdf> (last accessed on 3 March 2024).

⁵⁶ EU-Palm Oil (Indonesia), available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm (last accessed on 3 March 2024).

⁵⁷ United Nations. (2018). ‘Sustainable Development Goals’. Available at <https://sustainabledevelopment.un.org/?menu=1300> (last accessed on 3 March 2024).

non-compliance with the Paris Agreement and the Sustainable Development chapters indicates some shortcomings in these commitments.

To address these issues, the European Commission has initiated the examination of proposals for “green conditionality” while also recommending the reform of Sustainable Development chapters. In early 2021, the European Commission published a new communication on EU trade policy.⁵⁸ In light of increasing civil society activism against trade agreements, the EU Commission expedited the review of its 2018 15-point action plan on trade and sustainable development, originally slated for 2023.⁵⁹

At present, the deepening of SD commitments is though not guaranteed. Many efforts were made to include commitments in the treaty between the EU and South Korea, however, ILO commitments were breached.⁶⁰ The Republic of Korea was required to adjust its labour laws and practices to comply with the principle of freedom of association. Despite these recommendations, the Republic of Korea failed to take steps towards the ratification of fundamental ILO Conventions. Another controversial area concerns risk commodities is a sensitive field for external trade policy.

Another controversial area concerns the possibility of resorting to sanctions to reinforce compliance with SD provisions. Proponents of this option submit that sanctions will reinforce compliance with SD provisions.⁶¹ Conversely, those who are opposed to the use of sanctions, allege that they are futile, and argue that soft measures based on litigation would be more effective to encourage compliance. The critics of the use of sanctions and the view that sanctions could lead to the opposite outcome by undermining the attainment of commitments in SD Chapters. The table below presents a summary of the main features of SD in FTAs recently signed or negotiated by the EU.

EU FTAs - Sustainable Development Chapters

EU Trade Agreement	Type of Agreement	Status	Sustainable Development Chapter
EU-Chile agreement	EU-Chile Advanced Framework Agreement	Being adopted or ratified	Chapter 26 includes reinforced cooperation regarding climate change, forest, biodiversity. In terms of labour law provisions, it encompasses specific provisions on core labour issues.

⁵⁸ United Nations. (2018). ‘Sustainable Development Goals’. Available at <https://sustainabledevelopment.un.org/?menu=1300> (last accessed on 3 March 2024).

⁵⁹ European Commission, Non-paper of the Commission services, Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements, available at https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf (last accessed on 3 March 2024).

⁶⁰ European Commission, Panel of experts confirms the Republic of Korea is in breach of labour commitments under our trade agreement, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_21_203

⁶¹ European Commission, Sustainable development in EU trade agreements (2022), https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements_en (last accessed on 3 March 2024).

EU Trade Agreement	Type of Agreement	Status	Sustainable Development Chapter
EU-India agreement	EU-India Free Trade Agreement, Investment Protection Agreement and Geographical Indications Agreement	Being negotiated	TBD (To Be Determined) Negotiations are still ongoing. The agreement may introduce a tailored approach. The Trade Sustainability Impact Assessment (SIA) in Support of Negotiations with India has already taken place. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreement/documents_en
EU-Kenya agreement	EU-Kenya Economic Partnership Agreement	Being adopted or ratified	The agreement includes strong and binding provisions on labour standards, climate change and biodiversity, and gender equality. In addition, it prevents both parties from lowering labour and environmental standards to attract trade or investment. These commitments are binding and enforceable.
EU-Mercosur agreement	EU-Mercosur Trade Agreement	Being adopted or ratified	TBD The Chapter has been hailed as putting forward an advanced SD approach. However, scholars like Harrison conclude that the SD Chapter does not significantly reinforce countries' climate change commitments as set out in the Paris Agreement. Nor does it provide a strong framework for addressing other important environmental and social issues. There is also a lack of a proper monitoring system of the treaty's effects, so that State parties can react accordingly.⁶²
EU-Mexico agreement	Trade part of new EU-Mexico Association Agreement	Being adopted or ratified	TBD Modernisation of the agreement, the EU and Mexico have agreed to a common sustainable development framework establishing a set of rules for both labour and the environment.⁶³

⁶² Harrison, J. and Paulini, S., [The Trade and Sustainable Development Chapter in the EU-Mercosur Association Agreement](#) | ClientEarth 15 July 2020.

⁶³ European Commission, [EU-Mexico agreement explained \(europa.eu\)](#) (last accessed 3 March 2024).

EU Trade Agreement	Type of Agreement	Status	Sustainable Development Chapter
EU-New Zealand agreement	EU-New Zealand Trade Agreement	Being adopted or ratified	TBD The EU-New Zealand Free Trade Agreement was signed on 9 July 2023. ⁶⁴ The Trade and Sustainable Development (TSD) Chapter of the NZ–EU FTA incorporates key provisions relating to labour standards, gender equality, climate change, emissions trading, environmental goods and services, forests, fisheries subsidies, and fossil fuel subsidy reform
EU-Singapore agreement	EU-Singapore Free Trade Agreement, Investment Protection Agreement, Digital Trade Agreement	In place	The European Union and Singapore Free Trade Agreement and Investment Protection Agreement entered into force on 21st November 2019. From a legal perspective, the EU-Singapore FTA ought to be comprehended in tandem with two intertwined instruments.
EU-South Korea agreement	EU-South Korea Free Trade Agreement, Digital Trade Agreement	In place	The EU and South Korea have agreed on high labour and environmental standards that protect workers and the environment. The agreement sets up mechanisms to make sure these commitments are met, including through involving civil society.

Note: Authors' own elaboration based on the information available on the European Commission's website⁶⁵

A persistent point of contention revolves around the disparities in approaches between the European Union (EU) and the United States regarding trade and sustainable development chapters. While the United States has chosen to adopt a robust system featuring specific punitive measures, the EU's model emphasizes a more cooperative approach that does not incorporate punitive actions.⁶⁶ The paradigmatic case at hand related to the dispute between the US and Guatemala in the textile sector which did not lead to an effective resolution as it did not solve the non-compliance issue.⁶⁷

⁶⁴ Ballingall, J., [Sustainability and the New Zealand-EU Free Trade Agreement: A step up in accountability | International Institute for Sustainable Development \(iisd.org\)](https://www.iisd.org/publications/sustainability-and-the-new-zealand-eu-free-trade-agreement-a-step-up-in-accountability/), 15 January 2023.

⁶⁵ The EU is also negotiating other agreements, e.g. EU-Indonesia Free Trade Agreement.

⁶⁶ Hradilová, K. and Svoboda, O., 'Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness', *Journal of World Trade*, Volume 52, Issue 6 (2018) pp. 1019-1042.

⁶⁷ In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR, available at <https://ustr.gov/issue-areas/labor/bilateral-and-regional-trade-agreements/guatemala-submission-under-cafta-dr> (last accessed on 3 March 2024).

8. Conclusions

The Trade and Sustainable Development chapters within the European Union free trade and investment treaties have undergone a significant evolution. The EU's trade policy is now intrinsically linked to its environmental objectives, reflecting a growing emphasis on sustainability. However, amid these advancements, the issue of consistency remains a paramount challenge when it comes to compliance with the pertinent Sustainable Development (SD) provisions. A notable observation within the current framework is the existence of a relatively weak "green conditionality", which pertains to the assurance of compliance. One notable feature is the absence of a centralized mechanism for monitoring and ensuring compliance. Notably, some clauses integrated into Free Trade and Investment Treaties (FTIT) mirror obligations found within international environmental agreements.

A development on the horizon is the proposal to institute sanctions against EU trading partners found in violation of labour or environmental standards. This proposal is a subject of ongoing debate, and irrespective of its final outcome, it serves as a catalyst for generating innovative ideas that could potentially lead to the implementation of a more efficient compliance mechanism.

Within the global arena, the EU's ambition to establish a regional legal framework that aligns with ambitious goals and objectives is driving reforms that herald a new era for trade and investment treaties. These transformative changes signify a shift towards a more holistic and sustainable approach to international trade and investment, reflecting the EU's commitment to environmental and social responsibility.

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