



The Trade and Sustainable Development Chapters in the New Generation of the EU FTAs

Enforcement & Civil Society

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EU Trade Agreements

The EU currently has **44 trade agreements** in place with **76 partners**.

“The EU is the world's 1st trader of goods and services, imports and exports combined, accounting for an estimated 16.1% of world trade (data from 2023)”

“[O]pen and rules-based trade supports over 30 million European jobs” **OPEN SUSTAINABLE ASSERTIVE TRADE**
- For a resilient and competitive Europe, European Commission, November 2024



Relevance of International Trade & Trade Agreements for the European Union

The **EU is the world's largest exporter**, with a total annual export of almost **€4 trillion**.

EU exports of goods to partners with which we have an agreement grew by 1.2% in 2023. Meanwhile, EU exports to partners **without** an agreement declined by 2.2%

The EU imports 28% of its **critical raw materials** under trade agreements; this could further rise once a free trade agreement with Australia is concluded, especially for critical raw materials such as lithium, manganese, bauxite, copper and cobalt.

Data from: OPEN SUSTAINABLE ASSERTIVE TRADE - For a resilient and competitive Europe, European Commission, November 2024



EU FTAs TSD Chapters

The **new generation of free trade agreements (FTAs)** concluded by the EU after the Lisbon Treaty, include **trade and sustainable development chapters** implementing international labour conventions and environmental provisions: **Canada, Central America, Chile, Colombia, Peru, and Ecuador, Georgia, Japan, Mexico, Moldova, Singapore, South Korea, Ukraine, the United Kingdom and Vietnam, Kenya and New Zealand.** In addition, negotiations are going on with **Australia, India, Indonesia, Thailand, the Philippines, and the Mercosur.**



Other «collaborations» and agreements

Collaboration with the United States:

the Trade and Technology Council

the Transatlantic Initiative on Sustainable Trade

the Minerals Security Partnership Forum

Sustainable Investment Facilitation Agreement (with Angola)

Digital Trade Agreements (with the Republic of Korea and Singapore)



Common Features of the EU TSD Chapters

Substantive provisions (open provisions, susceptible of extension)

- 1) common element of context and objects, indications of the international hard and soft law sources
- 2) Right to regulate
- 3) Commitment not to worsen sustainability standards to get market access and investments and to adequately enforce environmental and labour laws
- 4) Commitment to improve the levels of protection
- 5) Commitment not to use non-trade values as protectionist tools
- 6) Corporate social responsibility

Institutional provisions

- 1) Governance
- 2) Dispute settlement



Free Trade Agreement between the European Union and
its Member States, of the one part, and the Republic of Korea, of the other
part

CHAPTER THIRTEEN
TRADE AND SUSTAINABLE DEVELOPMENT
Article 13.1

Context and objectives

1. Recalling **Agenda 21 on Environment and Development of 1992**, the **Johannesburg Plan of Implementation on Sustainable Development of 2002** and the **2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work**, the Parties reaffirm their commitments to **promoting the development of international trade *in such a way* as to contribute to the objective of sustainable development and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.**



Article 13.1

Context and objectives

2. **The Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development.**

They underline the **benefit of cooperation** on trade related social and environmental issues as part of **a global approach to trade and sustainable development.**

3. The Parties recognise that it is **not their intention in this Chapter to harmonise the labour or environment standards of the Parties**, but **to strengthen their trade relations and cooperation in ways that promote sustainable development** in the context of paragraphs 1 and 2.



Article 13.2 Scope

2. The Parties stress that environmental and labour standards should **not be used for protectionist trade purposes**. The Parties note that their **comparative advantage** should in no way be called into question.

Commitment not to use non-trade values as protectionist tools



Article 13.3 Right to regulate and levels of protection

Recognising **the right of each Party to establish its own levels of environmental and labour protection**, and to adopt or modify accordingly its relevant laws and policies, each Party **shall seek to ensure that those laws and policies provide for and encourage high levels of environmental and labour protection**, consistent with the internationally recognised standards or agreements referred to in Articles 13.4 and 13.5, and **shall strive to continue to improve those laws and policies.**

Right to regulate

Commitment to improve the levels of protection



Article 13.7

Upholding levels of protection in the application and enforcement of laws, regulations or standards

1. A Party shall not fail **to effectively enforce its environmental and labour laws**, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.
2. **A Party shall not weaken or reduce the environmental or labour protections afforded in its laws to encourage trade or investment**, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws, regulations or standards, in a manner affecting trade or investment between the Parties.

Commitment not to worsen sustainability standards to get market access and investments and to adequately enforce environmental and labour laws



Article 13.4

Multilateral labour standards and agreements

3. The Parties, in accordance with the **obligations deriving from membership of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, commit to respecting, promoting and realising**, in their laws and practices, **the principles concerning the fundamental rights**, namely:

(a) **freedom of association** and the effective recognition of the **right to collective bargaining**;

(b) the **elimination of all forms of forced or compulsory labour**;

(c) the effective **abolition of child labour**; and

(d) the **elimination of discrimination** in respect of employment and occupation.

e) a safe and healthy working environment (consensus reached by the ILO Conference in June 2022)



Article 13.4

Multilateral labour standards and agreements

The Parties reaffirm the commitment to effectively implementing the ILO Conventions that Korea and the Member States of the European Union have ratified respectively. **The Parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions as well as the other Conventions that are classified as ‘up-to-date’ by the ILO.**



Article 13.10 Trade and Investment Favouring Sustainable Development (EU – Vietnam FTA)

2. ... the Parties ...

(d) recognise that **voluntary initiatives** can contribute to the achievement and maintenance of high levels of environmental and labour protection and complement domestic regulatory measures; therefore **each Party** shall, in accordance with its domestic laws or policies, **encourage** the development of, and participation in, such initiatives, including **voluntary sustainable assurance schemes such as fair and ethical trade schemes and eco-labels;**



Article 13.10

Trade and Investment Favouring Sustainable Development (EU – Vietnam FTA)

... and

(e) in accordance with their domestic laws or policies agree **to promote corporate social responsibility**, provided that measures related thereto are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade; **measures for the promotion of corporate social responsibility include, among others, exchange of information and best practices, education and training activities and technical advice**; in this regard, each Party takes into account **relevant internationally agreed instruments that have been endorsed or are supported by that Party, such as the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, the United Nations Global Compact and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy**



Article 13.12 Institutional mechanism

1. Each Party shall designate an office within its administration which shall serve as a **contact point** with the other Party for the purpose of implementing this Chapter.
2. The **Committee on Trade and Sustainable Development** established pursuant to Article 15.2.1 (Specialised Committees) shall comprise senior officials from within the administrations of the Parties.
3. The Committee shall meet within the first year of the entry into force of this Agreement, and thereafter as necessary, to oversee the implementation of this Chapter, including cooperative activities undertaken under Annex 13.
4. Each Party shall establish a **Domestic Advisory Group(s) on sustainable development (environment and labour)** with the *task of advising* on the implementation of this Chapter.
5. **The Domestic Advisory Group(s) comprise(s) independent representative organisations of civil society in a balanced representation of environment, labour and business organisations as well as other relevant stakeholders.**



Article 13.13 Civil society dialogue mechanism

1. Members of Domestic Advisory Group(s) of each Party will meet at a **Civil Society Forum** in order to conduct a dialogue encompassing sustainable development aspects of trade relations between the Parties. The Civil Society Forum will meet **once a year** unless otherwise agreed by the Parties.

The Parties shall agree by decision of the Committee on Trade and Sustainable Development on the operation of the Civil Society Forum no later than one year after the entry into force of this Agreement.

Domestic Advisory Groups = DAGs



Article 13.14

Government consultations

1. **A Party may request consultations** with the other Party regarding **any matter of mutual interest** arising under this Chapter, including the **communications of the Domestic Advisory Group(s)** referred to in Article 13.12, by delivering a written request to the contact point of the other Party. **Consultations shall commence promptly after a Party delivers a request for consultations.**

2. The Parties shall make **every attempt to arrive at a mutually satisfactory resolution of the matter.** **The Parties shall ensure that the resolution reflects the activities of the ILO or relevant multilateral environmental organisations or bodies so as to promote greater cooperation and coherence between the work of the Parties and these organisations.**

Where relevant, subject to the agreement of the Parties, they can **seek advice** of these organisations or bodies.



Article 13.14 Government consultations

3. If a Party considers that **the matter needs further discussion**, that Party may request that the **Committee on Trade and Sustainable Development be convened** to consider the matter by delivering a written request to the contact point of the other Party. **The Committee shall convene promptly and endeavour to agree on a resolution of the matter**. The resolution of the Committee shall be made **public** unless the Committee otherwise decides.
4. The Committee may **seek the advice** of either or both **Domestic Advisory Group(s)** and each Party may seek the advice of its own Domestic Advisory Group(s). A **Domestic Advisory Group** of a Party may **also submit communications on its own initiative** to that Party or to the Committee.



Article 13.15 Panel of experts

1. Unless the Parties otherwise agree, a Party may, **90 days after the delivery of a request for consultations** under Article 13.14.1, request that **a Panel of Experts** be convened to examine the matter that has not been satisfactorily addressed through government consultations. The Parties can make submissions to the Panel of Experts. **The Panel of Experts should seek information and advice from either Party, the Domestic Advisory Group(s) or international organisations** as set out in Article 13.14, as it deems appropriate. The Panel of Experts shall be convened **within two months** of a Party's request.



Promotional approach to the enforcement of TSD Chapters

2. ... Unless the Parties otherwise agree, the Panel of Experts shall, **within 90 days** of the last expert being selected, present to the Parties **a report. The Parties shall make their best efforts to accommodate advice or recommendations of the Panel of Experts on the implementation of this Chapter.** The **implementation of the recommendations of the Panel of Experts shall be monitored by the Committee on Trade and Sustainable Development.** The report of the Panel of Experts shall be made available to the Domestic Advisory Group(s) of the Parties.



Korea – Labour Commitments: request from civil society through the **European Parliament** “**failure of the EU to act** in this case, in light of the overwhelming evidence of the breach of Article 13, would **undermine the effectiveness of Sustainable Development Chapters in EU’s trade Agreements, and of the EU trade policy in general**” (Letter to Commissioner Malmström of the Domestic Advisory Groups (DAG) under the EU-Korea FTA, Brussels, 16 December 2016)



Jurisdiction of the Korea Panel

Article 13.2.1 of the EU/Korea FTA

“**Except** as otherwise provided in this Chapter [the TSD Chapter], this Chapter **applies** to **measures adopted or maintained by the Parties affecting trade-related aspects of labour, and environmental issues** in the context of Articles 13.1.1 and 13.1.2.”

The Panel concludes to have jurisdiction:

“[T]he proper scope of **Article 13.4.3** is established by its own terms, and thus **falls within the ‘(e)xcept as otherwise provided’ clause of Article 13.2.1**. It is not appropriate, or even possible, to apply the limited scope bounded by ‘trade-related labour’ to the terms of Article 13.4.3, as proposed by Korea.” (para. 68)



it is **not legally possible** for a Party to aim to **ratify ILO Conventions only for a segment of their workers: the ILO does not permit ratification subject to reservations** ... This fact means that progress towards ratification, in its ordinary meaning, must extend to **the full scope** of the relevant international instruments. **It defies the clear logic of Article 13.4.3 to state otherwise** [para. 67]



Jurisdiction of the Korea Panel

Group of experts on the respect by Korea of **the principle of freedom of association** (trade unions): involvement of civil society. The question “be referred to **consultative bodies** established under Article 13.12 of the EU-Korea FTA for continued consultations”

Group of experts: Cooperation approach of the parties with civil society and stakeholders for the full implementation and appropriate interpretation of sustainability issues



in **Korea - Labor Commitments**, there were several memoirs presented by civil society, with respect to which the **Group of experts expressed "full regard"**, even without specifically referring to or identifying precisely the **amicus curiae** in the text of the report where the Panel took them into consideration for its case analysis



Korea - Labor Commitments Panel Report, January 2021

Korea did not violate the **obligation under art. 13.4.3, “to ‘make continued and sustained efforts’ towards ratification of the core ILO Conventions”** . The legal standard imposed by the EUFTAS provision has been respected by Korea, **it “does not impose an obligation of result but of effort”** - even if **slow**, the Korean commitment is **tangible** “the Panel is of the view that Korea’s efforts for the past three years satisfy the legal threshold of the provisions” .

ILO principles concerning the fundamental rights

The Panel “finds **that the ordinary meaning of ‘commit to’ ... is ‘to bind oneself to a course of action’** ... this represents *a legally binding obligation of commitment* to respecting, promoting and realising the obligations arising from membership of the ILO and the 1998 ILO Declaration in relation to the principles concerning the fundamental rights”



New Developments

The **2019 EU-Japan Economic Partnership Agreement** is the first trade agreement ever to include commitments to implementing the **UN Framework Convention on Climate Change**, as well as the **Paris Agreement**:

“The Parties recognise the **importance of achieving the ultimate objective of the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992 (hereinafter referred to as ‘UNFCCC’), in order to address the urgent threat of climate change, and the role of trade to that end.** The Parties reaffirm their commitments to effectively implement the UNFCCC and **the Paris Agreement, done at Paris on 12 December 2015 by the Conference of the Parties to the UNFCCC at its 21st session.** The Parties shall cooperate to promote **the positive contribution of trade to the transition to low greenhouse gas emissions and climate-resilient development.** The Parties commit to working together to take actions to address climate change towards **achieving the ultimate objective of the UNFCCC and the purpose of the Paris Agreement**” (Article 16.4.4)



New Developments

COM(2022) 409 final, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - The power of trade partnerships: together for green and just economic growth, Brussels, 22.6.2022

strengthen the enforcement of TSD commitments in future agreements; involve the DAGs in monitoring the compliance stage; extend the possibility to apply **trade sanctions** in cases of failure to comply with **obligations that materially defeats the object and purpose of the Paris Agreement on Climate Change or in serious instances of non-compliance with the ILO fundamental principles and rights at work.**



“The European Parliament has asked for **gender mainstreaming in EU trade agreements to be reinforced**, calling for **gender issues to be taken into account throughout the texts and during negotiations**. ***Parliament is particularly keen for all trade agreements to include dedicated chapters on gender equality and women's empowerment, with binding and enforceable gender provisions and provisions for proper monitoring and compliance.*** It has also called for **comprehensive ex ante and ex post gender analysis of potential and actual impacts**, and for **gender balanced representation** and **gender expertise on trade negotiating teams** and **the bodies established to advise on, monitor and assess the implementation of trade agreements”**



EU-New Zealand FTA

(Council Decision (EU) 2024/244 of 27 November 2023 on the conclusion, on behalf of the Union, of the Free Trade Agreement between the European Union and New Zealand)

first agreement to integrate **the new TSD approach**.

a dedicated trade and gender equality article (see also the EU PTAs with Chile and Kenya, and the SIFA with Angola)

in instances of **serious violations of core labour and climate commitments**, namely **the ILO fundamental principles and rights at work, and of the Paris Agreement**, sanctions can be applied - these sanctions may take the form of **compensation** by the party who is complained against, or also **suspension of 'the application of obligations under the covered provisions'**

none of the other provisions in the TSD chapters are subject to sanctions

DAGs advise on all aspects of the agreement, and their activity is not limited to the TSD chapter, as was the case in previous EU FTAs (except the EU-UK Trade and Cooperation Agreement)



EU obligation to promote women's rights and gender equality extends to its trade policy - inherent in the EU treaty commitment to sustainable development.

Article 2, TEU «*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, (...) in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and **equality between women and men** prevail*»

Article 8, TFEU « In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women. »

Article 23 “Equality between men and women” of the Charter of Fundamental Rights of the European Union



Free Trade Agreement between the European Union and New Zealand

SEEKING to advance gender equality and **the economic empowerment of women** by promoting the importance of gender inclusive policies and practices in economic activities, including international trade, in an effort to eliminate all forms of gender-based discrimination (Preamble)

Article 19.4 - Trade and gender equality

1. The Parties recognise the need to advance gender equality and **women's economic empowerment** and to promote a gender perspective in the Parties' trade and investment relationship. Moreover, **they acknowledge the important current and future contribution by women to economic growth through their participation in economic activity, including international trade**. Accordingly, the Parties emphasise their intention to implement this Agreement in a manner that promotes and enhances gender equality.
2. The Parties recognise that **inclusive trade policies** can contribute to **advancing women's economic empowerment** and gender equality, in line with **United Nations Sustainable Development Goals Target 5** and the objectives of the **Joint Declaration on Trade and Women's Economic Empowerment adopted at the WTO Ministerial Conference in Buenos Aires on 12 December 2017**.



6. Each Party shall effectively implement its obligations under the United Nations conventions to which it is a party that address gender equality or women's rights, including the **Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, noting in particular its provisions related to eliminating discrimination against women in economic life and in the field of employment.** ...

9. Acknowledging the importance of the work on trade and gender being carried out at the multilateral level, **the Parties shall cooperate in international and multilateral fora, including at the WTO and OECD, to advance trade and gender issues** and understanding, including, as appropriate, through voluntary reporting as part of their national reports during their WTO Trade Policy Reviews.



The EU Single Entry Point

Chief Trade Enforcement Officer Single Entry Point -

<https://trade.ec.europa.eu/access-to-markets/en/content/single-entry-point-0>



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

Directorate F – Enforcement, Market access, SMEs, Legal affairs and Technology
Unit F1 – Single entry point on Enforcement, Market access and SMEs

COMPLAINT

relating to alleged violations of commitments stemming from free trade agreements (FTA) concluded by the European Union or Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences (GSP) and repealing Council Regulation (EC) No 732/2008¹



Operating guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and Arrangements (December 2023)

Who can submit a complaint

For TSD or GSP complaints:

- a. EU Member States
- b. **Entities having their registered office, central administration or principal place of business within the Union**
- c. **Industry associations of EU companies**
- d. **Associations of EU employers**
- e. **Trade unions** or trade union associations formed in accordance with the laws of any **EU Member State**
- f. **EU Domestic Advisory Groups (DAGs) formed in accordance with EU trade agreements (for TSD complaints)**
- g. **NGOs formed in accordance with the laws of any EU Member State**
- h. **Citizens or permanent residents of an EU Member State**



CNV Internationaal v. Colombia and Peru (May 2022)

First Complaint filed under the SEP procedures

CNV Internationaal (The Netherlands), also on behalf of two trade unions from Colombia and Peru

Infringement of the TSD Chapter of the EU Trade Agreement with Colombia, Peru, and Ecuador

Sub-contracted workers in local mining companies owned by the Swiss multinational Glencore

Colombia: coal

Peru: minerals (zinc, copper, tin, silver and lead)



CNV Internationaal v. Colombia and Peru (May 2022)

VIOLATIONS OF FREEDOM OF ASSOCIATION AND OF THE RIGHT TO COLLECTIVE BARGAINING

WAGE INEQUALITY BETWEEN DIRECT EMPLOYEES AND OUTSOURCED WORKERS

LACK OF ADEQUATE LEGISLATION

INADEQUATE LABOUR INSPECTION

LACK OF PROPER IMPLEMENTATION OF LEGISLATION

Violations of articles 267, 269, 271 and 277 of the TSD Chapter
Article 271, para. 3: «The Parties agree to promote best business practices related to **corporate social responsibility**»



ARTICLE 267

2. ... the objectives of this Title [IX] are, among others, to:

(b) strengthen compliance with the labour and environmental legislation of each Party, as well as with the commitments deriving from the international conventions and agreements referred to in Articles 269 and 270, **as an important element to enhance the contribution of trade to sustainable development; ...**

(d) strengthen the commitment to labour principles and rights in accordance with the provisions of this Title, as an important element to enhance the contribution of trade to sustainable development;

(e) promote public participation in matters covered by this Title.

3. The Parties reaffirm their full resolve to fulfil their commitments under this Title, taking into account their own capacities, in particular technical and financial capacities.



Article 269 - Multilateral labour standards and agreements

3. Each Party commits to the promotion and effective implementation in its laws and practice and in its whole territory of internationally recognised core labour standards as contained in the fundamental Conventions of the International Labour Organisation (hereinafter referred to as the "ILO"):

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.



Article 271 - Trade favouring sustainable development

1. The Parties reaffirm that **trade should promote sustainable development**. The Parties also recognise **the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity**, as well as **the value of greater coherence between trade policies on the one hand, and labour policies on the other**.

...

3. **The Parties agree to promote best business practices related to corporate social responsibility.**



Article 277 - Maintaining levels of protection

1. **No Party shall encourage trade or investment by reducing the levels of protection afforded in its environmental and labour laws. Accordingly, no Party shall waive or otherwise derogate from its environmental and labour laws in a manner that reduces the protection afforded in those laws, to encourage trade or investment.**

2. A Party shall **not fail to effectively enforce its environmental and labour laws** through a sustained or recurring course of action or inaction in a manner that affects trade or investment between the Parties.



Trade

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NEWS ARTICLE | 20 March 2024 | Brussels | Directorate-General for Trade | 1 min read

EU and Peru agree on cooperation activities to ensure respect of labour rights

The European Commission and the Peruvian government have agreed on a list of technical cooperation activities to implement the labour rights commitments taken under the EU-Colombia-Peru-Ecuador Trade Agreement.

Today, the Commission has published a [list of cooperation activities](#) agreed with Peru to ensure the respect and implementation of labour rights in the country, according to six priorities defined jointly.

The objective of the agreed list is broad and ambitious: it aims at strengthening the implementation of the labour system in Peru as a whole.



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