



# **Enforcing EUFTAs and Sustainability Issues through Civil Society: from TBR to SEP**

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# Outline

Enforcement Policy of the EUFTAs + complementary autonomous measures in the field of environmental, economic, and social sustainability

Role of private parties – Role of civil society

Trade Barriers Regulation (TBR)

Trade and Sustainable Development Chapters (TSD Chapters)

- Principles

- Institutions

- Mechanisms

Chief Trade Enforcement Officer (CTEO) & Single Entry Point (SEP)



# Trade Barriers Regulation

**REGULATION (EU) 2015/1843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 6 October 2015** laying down Union procedures in the field of the common commercial policy in order **to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization**

*Subsequent revision to a 1994 Regulation - 24 complaints*

**Respect of WTO obligations**

**Respect of EUFTAs obligations**

- a) Obstacles to trade having an effect on the EU market, with the aim of removing the injury resulting therefrom**
- b) Obstacles to trade having an effect on the market of a third country, with the aim of removing the adverse trade effects resulting therefrom**



# Trade Barriers Regulation

## *Article 3*

### **Complaint on behalf of the Union industry**

1. **Any natural or legal person, or any association not having legal personality, acting on behalf of a Union industry** which considers that it has suffered injury as a result of obstacles to trade that have an effect **on the market of the Union** may lodge a **written complaint**.
2. The **complaint** shall contain **sufficient evidence of the existence of the obstacles to trade and of the injury resulting therefrom. ...**



# Trade Barriers Regulation

## *Article 4*

### **Complaint on behalf of Union enterprises**

1. **Any Union enterprise, or any association, having or not legal personality, acting on behalf of one or more Union enterprises,** which considers that such Union enterprises have suffered **adverse trade effects** as a result of obstacles to trade that have an effect **on the market of a third country** may lodge a **written complaint.**
2. The complaint shall contain **sufficient evidence of the existence of the obstacles to trade and of the adverse trade effects resulting therefrom. ...**



# Trade Barriers Regulation

5) Union procedures to ensure the effective exercise of the rights of the Union under international trade rules should be based on a **legal mechanism under Union law** which is *fully transparent*, and ensures that **the decision to invoke the Union's rights under international trade rules** is taken on the basis of *accurate factual information and legal analysis*.



# Trade Barriers Regulation

## Complaint by a private party

### *EU examination procedure*

European Commission: **notice in the EU OJ** of the initiation of an examination procedure; interaction with EU Member States, and the concerned third country

### **Article 9 – Union examination procedure ...**

5. The Commission may hear the **parties concerned**. It shall hear them if they have, within the period prescribed in the notice published in the *Official Journal of the European Union*, made a **written request for a hearing showing that they are a party primarily concerned by the result of the procedure**.

6. The Commission shall, on request, give **the parties primarily concerned an opportunity to meet, so that opposing views may be presented and any rebuttal argument put forward**. In providing this opportunity the Commission shall take account of the wishes of the parties and of the need to preserve confidentiality. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.







## Canada – Prosciutto di Parma

Notice of initiation of an examination procedure concerning an obstacle to trade, within the meaning of Regulation (EC) No 3286/94, consisting of trade practices maintained by Canada in relation to the imports of Prosciutto di Parma (1999/C 176/04)

3 May 1999, complaint lodged by the Consorzio del Prosciutto di Parma

Prosciutto di Parma enjoys a protected geographical indication

Italian agri-food excellence

centuries of tradition in agricultural and agri-food production

Producers organized in consortium (association), establishing how a specific product has to be made – name of the food indicating region & tradition

But in the new world ... phenomenon of the Italian sounding



In **1964** the relevant Canadian authority, the Federal Trade Marks Office, authorised the registration of the **trade mark “Parma”** by the Canadian company Primo Foods, which was later taken over by the Principal Marques Meat Company and then by **Maple Leaf Meats**, which is the current owner of the trade mark.

*The result of the registration of this trade mark is that Prosciutto di Parma cannot be imported under its geographical indication,* as the use of the name would allegedly constitute an **infringement of the Canadian “Parma” trade mark**. The Consortium was also **refused registration of its own mark** because of the earlier registration of the Canadian “Parma” trade mark.



# Canada – Prosciutto di Parma

l'accordo commerciale

## Ceta in vigore: prosciutto di Parma e Parmigiano si chiameranno così anche in Canada

di Marzio Bartoloni

20 settembre 2017



Si chiama Prosciutto di Parma anche in Canada.  
Firmato l'accordo di libero scambio UE Canada

di Informacibo

Ultima Modifica: 15/02/2017







# Saudi Arabia – Ceramic Tiles

**NOTICE OF INITIATION** Union examination procedure on obstacles to trade within the meaning of Regulation (EU) 2015/1843 applied by the Kingdom of Saudi Arabia consisting of measures affecting the import of ceramic tiles (2020/C 210/08)

The **European ceramic tiles industry (Cerame-Unie)** lodged a complaint under the Trade Barriers Regulation on 23 April 2020 concerning **two technical regulations adopted by Saudi Arabia in 2019** and their implementation.

two technical regulations concerning the conferral of the **Saudi Quality Mark (SQM)** are incompatible with GATT and TBT.

After discussions with Saudi Arabia on the removal of the identified barriers to trade with ceramic tiles, **Saudi Arabia gave firm commitments in March 2022** to amend its technical regulations and modify its conformity assessment procedures at stake in order to lift the barriers in question and make these measure compliant with WTO law.

The Commission **will monitor the implementation of Saudi Arabia's commitment to ensure completeness** before any potential closing of the TBR case.



# EU knocks down barriers to exports of ceramic tiles

As of today, 31 March 2022, EU exporters of ceramic tiles will no longer need to undergo redundant testing or product audits when they export to Saudi Arabia, meaning exporting will become cheaper, faster and more predictable.

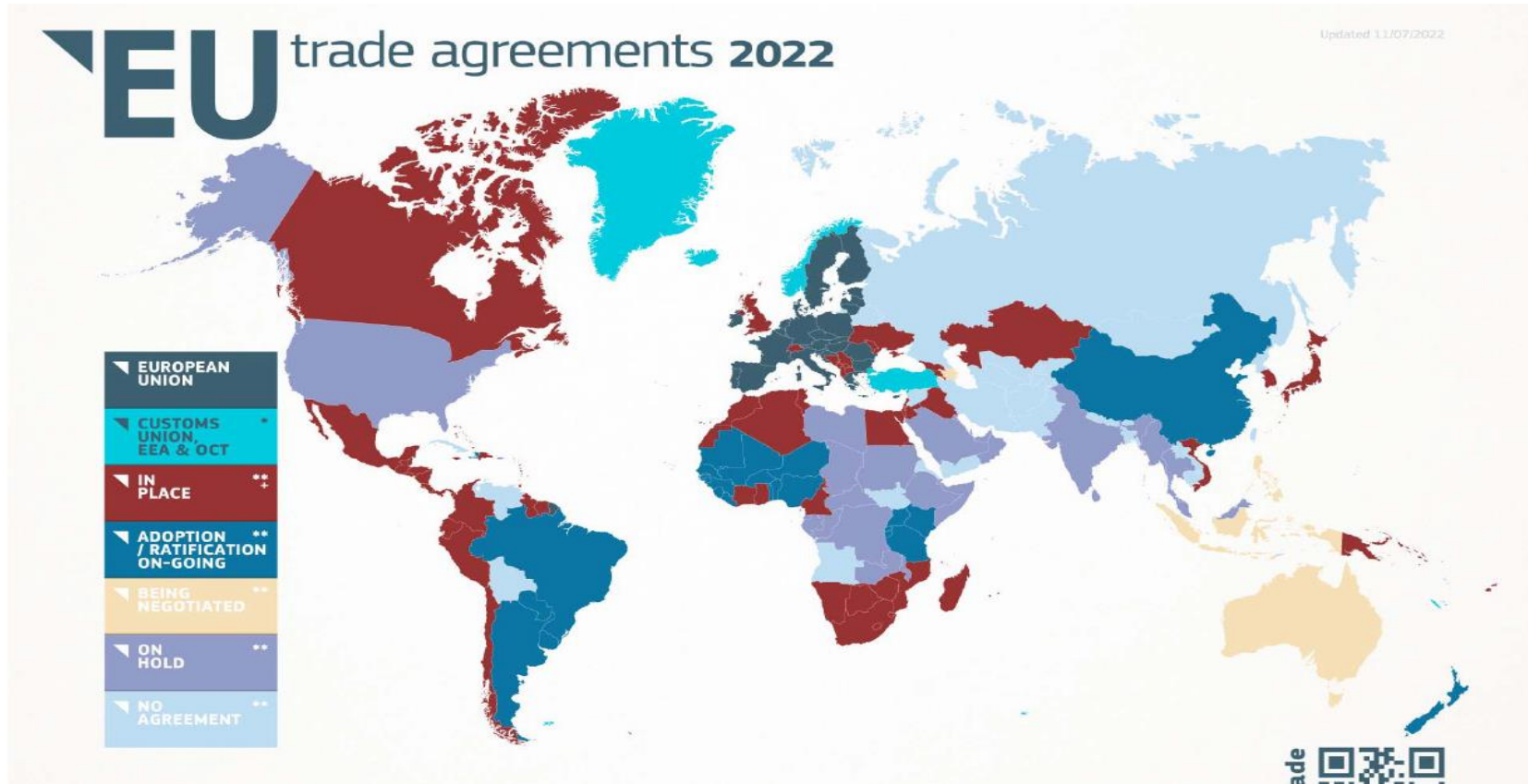
The EU secured a commitment from Saudi Arabia on the latter's removal of a number of obstacles currently affecting the import of ceramic tiles.





# Trade and Sustainable Development Chapters (TSD Chapters)

In 2021, the EU had in place 42 FTAs with 74 partners



# Agreement between the European Union and Japan for an Economic Partnership

entered into force on 1 February 2019 – TSD Chapter 16 – Articles 16.1 – 16.9

## ARTICLE 16.1 - Context and objectives

1. The Parties recognise the importance of promoting the development of international trade in a way that contributes to sustainable development, for the welfare of present and future generations, *taking into consideration* the Agenda 21 adopted by the United Nations Conference on Environment and Development on 14 June 1992, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference on 18 June 1998, the Plan of Implementation adopted by the World Summit on Sustainable Development on 4 September 2002, the Ministerial Declaration entitled ‘Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development’ adopted by the Economic and Social Council of the United Nations on 5 July 2006, ...





## ARTICLE 16.1 - Context and objectives

... the ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference on 10 June 2008, the outcome document of the United Nations Conference on Sustainable Development, entitled ‘**The future we want**’ adopted by the General Assembly of the United Nations on 27 July 2012, and the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, entitled ‘Transforming our world: the **2030 Agenda** for Sustainable Development’ adopted by the General Assembly of the United Nations on 25 September 2015.

**2. The Parties recognise the contribution of this Agreement to the promotion of sustainable development, of which economic development, social development and environmental protection are *mutually reinforcing components*.** The Parties further recognise that the purpose of this Chapter is to strengthen the trade relations and cooperation between the Parties in ways that promote sustainable development, and is **not to harmonise** the environment or labour standards of the Parties.



## **TSD Chapter – EU/Japan EPA**

***ARTICLE 16.2 - Right to regulate and levels of protection***

***ARTICLE 16.3 - International labour standards and conventions***

***ARTICLE 16.4 - Multilateral environmental agreements***

***ARTICLE 16.5 - Trade and investment favouring sustainable development***

***ARTICLE 16.6 - Biological diversity***

***ARTICLE 16.7 - Sustainable management of forests and trade in timber and timber products***

***ARTICLE 16.8 - Trade and sustainable use of fisheries resources and sustainable aquaculture***



## TSD Chapter – EU/Japan EPA

### ARTICLE 16.9

#### Scientific information

When preparing and implementing *measures with the aim of protecting the environment or labour conditions that may affect trade or investment*, the Parties shall take account of **available scientific and technical information**, and where appropriate, **relevant international standards, guidelines or recommendations**, and the **precautionary approach**.

### ARTICLE 16.10

#### Transparency

Each Party shall ensure that **any measure of general application pursuing the objectives of this Chapter is administered in a transparent manner**, in accordance with its laws and regulations and Chapter 17, **including by providing the public with reasonable opportunities and sufficient time to comment, and by publishing such measures.**



# TSD Chapter – EU/Japan EPA

**ARTICLE 16.11 - Review of sustainability impacts**

**ARTICLE 16.12 - Cooperation**

**ARTICLE 16.13 - Committee on Trade and Sustainable Development**

Functions of the TSDC: reviewing and monitoring the implementation and operation of this Chapter and, when necessary, making appropriate recommendations to the Joint Committee;

interacting with civil society on the implementation of this Chapter

*For the purposes of this Chapter, 'civil society' means independent economic, social and environmental stakeholders, including employers' and workers' organisations and environmental groups*

seeking solutions to resolve differences between the Parties as to the interpretation or application of this Chapter

The **Committee** will pursue **coherence and cooperation** between its work and the **activities of the ILO** and of **relevant multilateral environmental organisations or bodies**.



## TSD Chapter – EU/Japan EPA

### *ARTICLE 16.14* - Contact points

### *ARTICLE 16.15* - Domestic advisory group

1. Each Party shall convene meetings of its own new or existing **domestic advisory group or groups on economic, social and environmental issues related to this Chapter** and **consult with the group** or groups in accordance with its laws, regulations and practices.
2. Each Party is responsible for ensuring **a balanced representation of independent economic, social and environmental stakeholders**, including employers' and workers' organisations and environmental groups, in the advisory group or groups.
3. The advisory group or groups of each Party may **meet on its or their own initiative** and **express its or their opinions on the implementation of this Chapter independently of the Party** and **submit those opinions to that Party**.



## ARTICLE 16.16

### Joint Dialogue with civil society

The Parties shall convene the **Joint Dialogue with civil society organisations situated in their territories** (hereinafter referred to in this Chapter as ‘Joint Dialogue’), including members of their domestic advisory groups referred to in Article 16.15, to conduct a dialogue on this Chapter.

The Parties shall promote in the Joint Dialogue a **balanced representation of relevant stakeholders, including independent organisations which are representative of economic, environmental and social interests as well as other relevant organisations as appropriate.**

The Joint Dialogue shall be convened no later than one year after the date of entry into force of this Agreement. Thereafter, the Joint Dialogue shall be convened regularly, unless the Parties agree otherwise. The Parties shall agree on the operation of the Joint Dialogue before the first meeting of the Joint Dialogue. **Participation in the Joint Dialogue may take place by any appropriate means of communication as agreed by the Parties.**

The Parties will provide the Joint Dialogue with **information on the implementation** of this Chapter. The views and opinions of the Joint Dialogue may be submitted to the Committee and may be made publicly available.



## TSD Chapter – EU/Japan EPA

### ARTICLE 16.17 - Government consultations

#### *Request for consultations*

4. During consultations, each Party shall provide **sufficient information to enable a full examination of the matter in question**. The Parties shall **take into account the activities of the ILO and other relevant international organisations or bodies in which both Parties participate** and, as may be required by the Parties on an *ad hoc* basis, may **seek advice from those international organisations or bodies, or other experts**. The Parties shall discuss **appropriate measures to be implemented, taking into account that advice**.
5. If **no solution** is reached through the consultations held in accordance with paragraphs 2 to 4, **the Committee shall be convened promptly on request of a Party to consider the matter in question**.
6. The Parties shall ensure that the solutions reached through the consultations under this Article will be jointly made **publicly available**, unless the Parties agree otherwise.



# TSD Chapter – EU/Japan EPA

## ARTICLE 16.18 - Panel of experts

3. The **panel of experts** may obtain **information from any source it deems appropriate**. For matters related to ILO instruments or multilateral environmental agreements, it should seek information and advice from the **relevant international organisations or bodies**. Any information obtained pursuant to this paragraph shall be submitted to the Parties for their comments.

6. The Parties **shall discuss actions or measures to resolve the matter in question, taking into account the panel's final report and its suggestions**. Each Party shall inform the other Party and its own domestic advisory group or groups of any follow-up actions or measures no later than three months after the date of issuance of the final report. **The follow-up actions or measures shall be monitored by the Committee**. The domestic advisory group or groups and the Joint Dialogue may submit their observations in this regard to the Committee.

## ARTICLE 16.19 - Review





## Chief Trade Enforcement Officer (CTEO) & Single Entry Point

24 July 2020: the European Commission appoints Mr Denis Redonnet as the first Chief Trade Enforcement Officer (CTEO)

The CTEO is a new post created by the Commission to strengthen the enforcement of EU trade agreements. The CTEO is in charge of implementing and enforcing EU trade agreements, both within the EU and outside the EU, under direct guidance of the Commissioner for Trade.

November 2020: important tool of the Single Entry Point (SEP):  
<https://trade.ec.europa.eu/access-to-markets/en/contact-form#contact>



Through SEP, TSD Chapters of EUFTAs may be enforced, so as to have third countries partner of the EU fully respecting

1) the TSD Chapters obligations concerning a) workers' rights; b) climate change; c) the environment;

2) The **Generalised Scheme of Preferences (GSP) regulation** (Regulation (EU) No 978/2012)



# ANNEX VIII - Conventions referred to in Article 9

## PART A

### Core human and labour rights UN/ILO Conventions

1. Convention on the Prevention and Punishment of the Crime of Genocide (1948)
2. International Convention on the Elimination of All Forms of Racial Discrimination (1965)
3. International Covenant on Civil and Political Rights (1966)
4. International Covenant on Economic Social and Cultural Rights (1966)
5. Convention on the Elimination of All Forms of Discrimination Against Women (1979)
6. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
7. Convention on the Rights of the Child (1989)
8. Convention concerning Forced or Compulsory Labour, No 29 (1930)
9. Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948)



## ANNEX VIII - Conventions referred to in Article 9

10. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98 (1949)
11. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No 100 (1951)
12. Convention concerning the Abolition of Forced Labour, No 105 (1957)
13. Convention concerning Discrimination in Respect of Employment and Occupation, No 111 (1958)
14. Convention concerning Minimum Age for Admission to Employment, No 138 (1973)
15. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No 182 (1999)



# ANNEX VIII - Conventions referred to in Article 9

## PART B

### Conventions related to the environment and to governance principles

16. Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973)
17. Montreal Protocol on Substances that Deplete the Ozone Layer (1987)
18. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989)
19. Convention on Biological Diversity (1992)
20. The United Nations Framework Convention on Climate Change (1992)
21. Cartagena Protocol on Biosafety (2000)
22. Stockholm Convention on persistent Organic Pollutants (2001)
23. Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998)
24. United Nations Single Convention on Narcotic Drugs (1961)
25. United Nations Convention on Psychotropic Substances (1971)
26. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
27. United Nations Convention against Corruption (2004)



# COM/2021/579 final, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on applying a generalised scheme of tariff preferences and repealing Regulation (EU) No 978/2012 of the European Parliament and of the Council

(11) The list of conventions relevant for GSP should be updated to better reflect the evolution of core international instruments and standards and take a proactive approach to sustainable development in keeping with the Sustainable Development Goals and Agenda 2030. In this regard, **the following conventions are added:** the Paris Agreement on Climate Change (2015) – replacing the Kyoto Protocol; the Convention on the Rights of Persons with Disabilities (CRPD); the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC-AC); ILO Convention No 81 on Labour Inspection; ILO Convention No 144 on Tripartite Consultation; and the UN Convention against Transnational Organized Crime.



# Brussels, 22 June 2022 - Operating guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and arrangements

## 2. Who can submit a complaint

### ii. 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.**



## Brussels, 22 June 2022 - Operating guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and arrangements

A complaint may be lodged by **one complainant** amongst the above categories or by **various complainants (within one or various categories) acting jointly as collective complainants**. Potential complainants must provide information about whether they are acting exclusively on their own behalf or if they are representing other interests as well, **including interests of similar entities or organisations located in the partner country**. In the latter case, they shall fully disclose the identity of that other person/company/association/entity, which shall remain confidential as indicated under section 6.





## Single Entry Point (SEP)

Through CTEO & SEP, civil society –from the EU and third countries which are partners of the EU- may become major actors in the enforcement of the rules of «**the global framework for international cooperation and action on sustainable development**», a global legal framework formed by the United Nations' 2030 Agenda and its 17 Sustainable Development Goals; the Paris Agreement on Climate Change; multilateral agreements for the protection of the environment and labour standards

**COM(2022) 730, Report from the Commission on Implementation and Enforcement of EU Trade Agreements, 11 October 2022:** “2021 constituted the first full year when the Single Entry Point was fully operational. In total, the Single Entry Point was contacted 61 times about potential trade barriers or potential breaches of third countries' sustainability commitments ... All of these complaints concerned market access issues.

BUT...



# On Non-Compliance by the Colombian and Peruvian Governments of Chapter IX, on Sustainable Development, of the Trade Agreement with the European Union, 17 May 2022

## *Complaint - Single Entry Point, On Non-Compliance by the Colombian and Peruvian Governments of Chapter IX, on Sustainable Development, of the Trade Agreement with the European Union,*

Submitted by: CNV Internationaal, in support of the Trade Unions: Sintracarbon, Sintracerrejón and Union of Metallurgical Mining Workers of Andaychagua Volcan Mining Company and of the Specialised Companies, Contractors and Intermediary Companies that provide services to Volcan Mining Company – Andaychagua; Submitted to: Chief Trade Enforcement Officer CTEO, 17 May 2022

Alleged exploitation of sub-contracted workers in the mining sites of Glencore in Colombia and Peru, infringing the TSD Chapter of the EU FTAs EU/Colombia / Peru – also responsibility of local enterprises for violation of “the obligation of companies to minimise human rights risks, since failure to reduce precarious work would mean complicity in rights violations ... [i]n short, the use of precarious work beyond the necessary limits violates human rights as well as trade union rights and the right to equality” - “human rights due diligence” – corporate social responsibility



# Council of the European Union – Conclusions on the Trade and Sustainability Review, 17 October 2022 -

*The Council “welcomes” COM(2022) 409, Communication from the Commission on “The power of trade partnerships: together for green and just economic growth”, 22 June 2022*

4. **Sustainability** is one of the main priorities for the EU, as underlined in the European Green Deal and Decent Work Worldwide initiatives, and together with **openness** and **assertiveness** constitutes **three pillars of the broader strategic approach towards the EU’s trade policy**.

**The EU must be at the forefront of the sustainability efforts.**

**Cooperation and engagement with partners bilaterally as well as at plurilateral and multilateral levels are crucial in order to bring about the real change.**

The EU must continue to promote a **cooperative approach and provide incentives and support** including, where needed, technical or financial assistance to trading partners, especially to **developing and Least Developed Countries**, in their endeavour to comply with sustainability commitments. Effective coordination of the Commission and Member States on support measures is essential in this context.



## Council of the European Union – Conclusions on the Trade and Sustainability Review, 17 October 2022

7. ...The Council also stresses **the importance of reinforcing the role of civil society**, ensuring an inclusive consultation process through all stages of the lifecycle of trade agreements, **further strengthening the role of Domestic Advisory Groups (DAGs)** and closer cooperation with Member States and ensuring the monitoring by the Council of the **implementation of TSD commitments**. The Council also attaches great importance to the timely finalisation of sustainable impact assessments of trade agreements that will feed the debate on the respective negotiations.



# Council of the European Union – Conclusions on the Trade and Sustainability Review, 17 October 2022

8. The Council supports the Commission's commitment to strengthen further the implementation and **enforcement of TSD provisions** in all future negotiations of trade agreements and to reflect it in the ongoing negotiations as appropriate, including by proposing to apply **the compliance stage of the general state-to-state dispute settlement to the TSD chapter of such agreements**. The Council invites the Commission to use review clauses and, where relevant, joint committees to align existing trade agreements with the new TSD approach, as appropriate. Moreover, the involvement of DAGs in monitoring the compliance stage must also be strengthened in line with the Communication. Furthermore, **trade sanctions, which may take the form of suspension of trade concessions, could be applied, as a matter of last resort, after exhausting possibilities for an amicable settlement**. They can be applied for **serious violations of agreed commitments concerning ILO fundamental principles and rights at work as well as cases of failure to comply with obligations that materially defeat the object and purpose of the Paris Agreement on Climate Change**. Any such trade sanctions should be **temporary, targeted and proportionate**. In addition, **the respect of the Paris Agreement on Climate Change** will be proposed by the EU to be an **essential element in future trade agreements**.



How to conclude?

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