

The Role of Civil Society in Promoting the Respect of Sustainable Development Principles in EU Preferential Trade Agreements

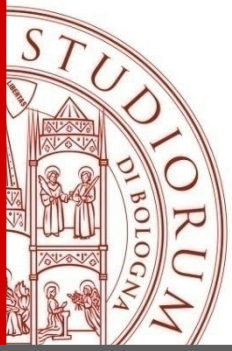


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UNIVERSITÀ DI BOLOGNA



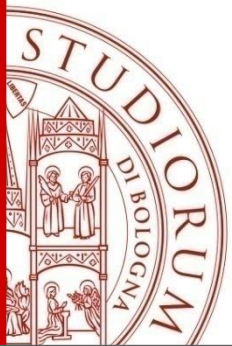
Re-Globe Special Lectures

Dr Andrea Mensi – 5 April 2023



PART 1

Introduction: the role of EU in promoting sustainable development through free trade agreements

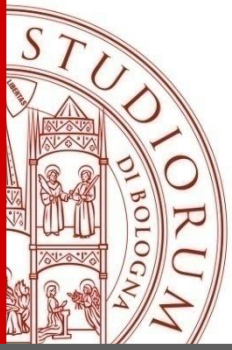


The role of the EU

While the **liberalization of trade** represents the main goal of international economic law, it **can be supportive of sustainable development values**

The **link between trade and sustainable development** is evident in many international instruments

- SDG 17
- WTO Agreement
- **Preferential trade agreements (PTAs)**



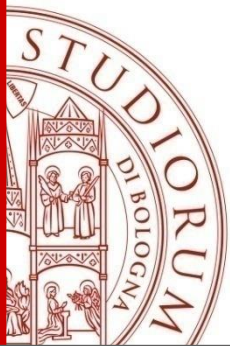
The role of the EU

The EU one of the international actors **mostly engaged with the promotion of SD through FTAs**

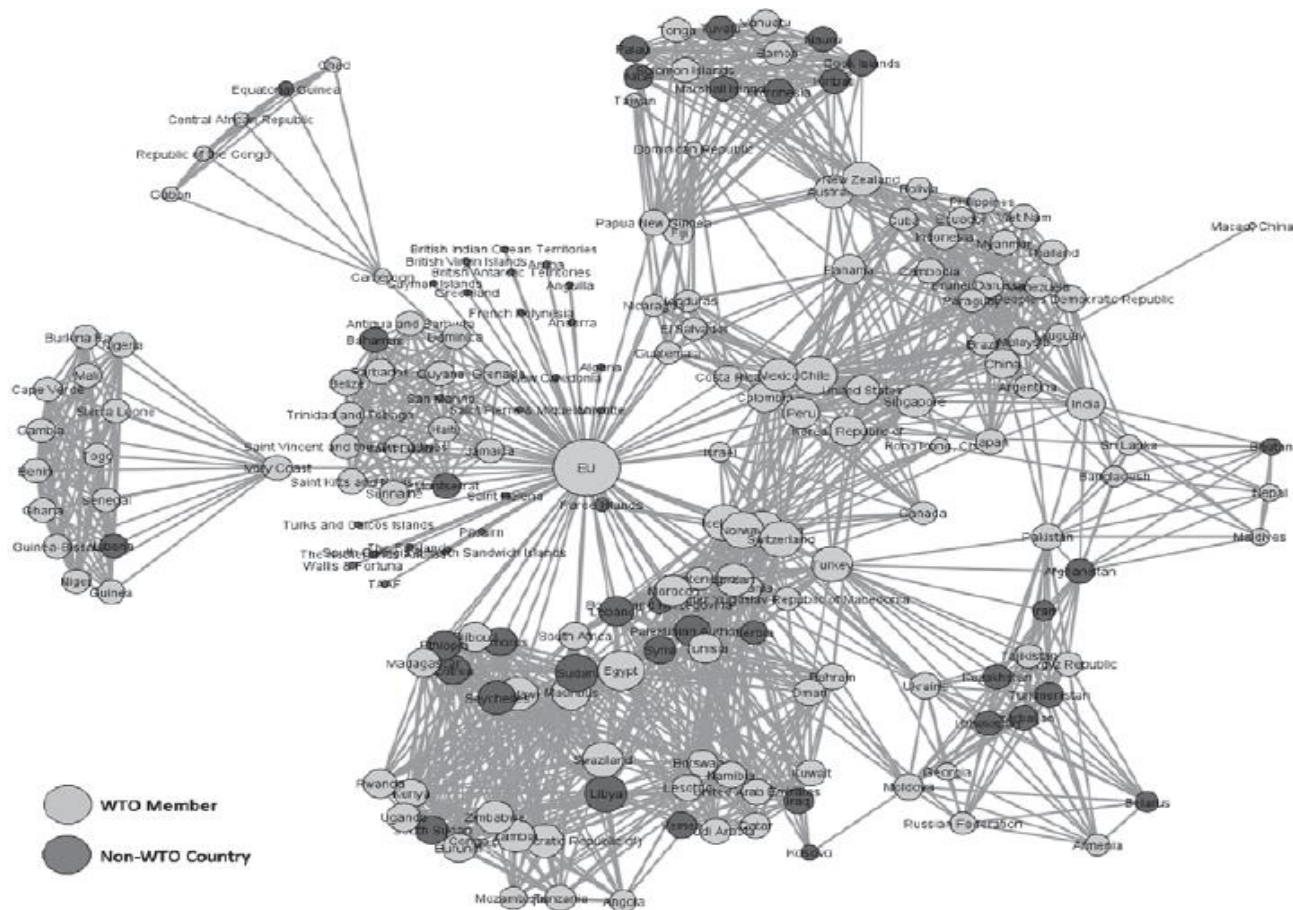
-crisis of the WTO and of the multilateral system → **growing importance of the preferentialism and FTAs**

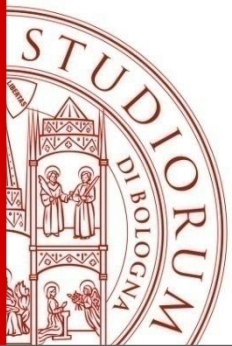
-role of the EU as a hub for FTAs (see next slide)

-importance of SD in EU Treaties



The role of the EU

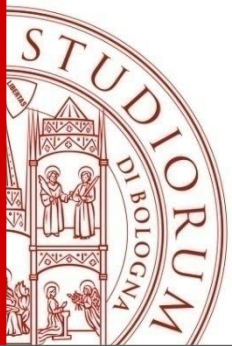




The role of the EU

Sustainable development is part of EU **primary treaties**

- Art 3 TEU → SD is considered in **both the internal and external dimensions** of the EU
- Art 21 TEU → **goal to promote SD in the EU external action**
- Art 207 TFEU → **EU Commercial policy** shall be conducted **in respect with the goals set out in Art 21 TEU**

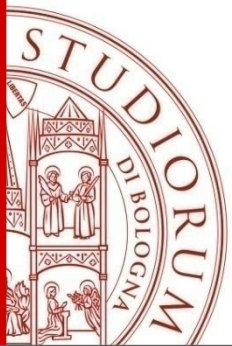


The role of the EU

Trade and sustainable development chapters ('TSD Chapters') included for the first time in EU PTAs since the **2011 agreement with South Korea**

Today **TSD Chapters** are the main instruments of the **EU** to **promote SD** → support of **non-economic values** through trade ('**Trade for all strategy**')

Opinion 2/15 of the Court of Justice of the European Union
"147. (...) the objective of sustainable development henceforth forms an integral part of the common commercial policy."



The role of the EU

TSD Chapters include obligations on the respect of non-economic values:

-Environmental (and climate change) obligations

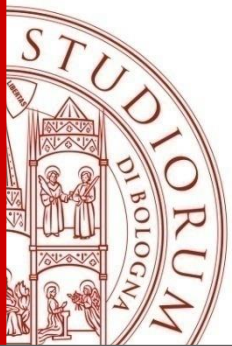
EU Canada FTA, Art 24.4

1. **The Parties recognise the value of international environmental governance and agreements** as a response of the international community to global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment policies, rules, and measures.
2. Each Party reaffirms **its commitment to effectively implement in its law and practices, in its whole territory, the multilateral environmental agreements to which it is party.**

-Labour rights obligations

EU Canada FTA, Art 24.4

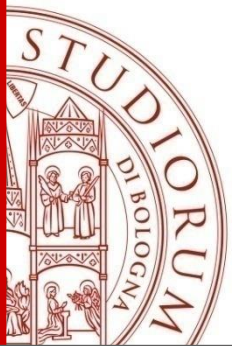
The Parties affirm their commitment to **respect, promote and realise those principles and rights in accordance with the obligations of the members of the International Labour Organization (the 'ILO')** and the commitments under the ILO Declaration on Fundamental Principles and Rights at Work



The role of the EU

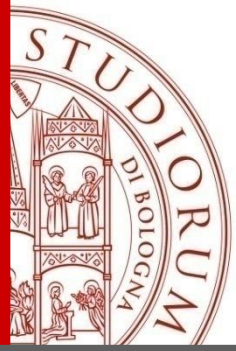
TSD Chapters include also dispute resolution mechanisms, mostly based on a diplomatic approach (as opposed to US FTAs) → are TSD Chapters provisions effective?

- in case of a dispute between the Parties of a treaty, an independent Panel of expert may approve a **Report**
- Parties shall conduct '**best efforts**' to respect the Panel findings but **no real obligation**
- No system of **sanctions** in case of violation of TSD Chapters



PART 2

The role of the civil society

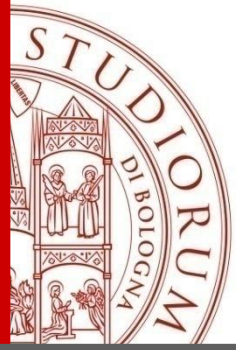


The role of the civil society

The role of civil society is guaranteed through the **domestic advisory groups (DAGs)** and the **Civil Society Forums**

Mandate → to provide **inputs** on TSD Chapters and **assist and monitor** their implementation

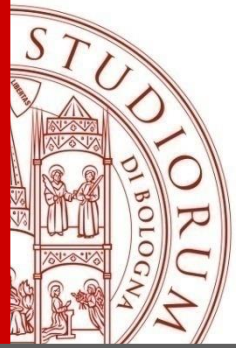
DAGs are composed of **representatives of the European Economic and Social Committee**, labour unions, employer federation, environmental and human rights stakeholders, Civil Society Forum has a broader representation (DAGs + other stakeholders)



The role of the civil society

The approach varies in different PTAs but overall **lack of a precise definition of civil society role**

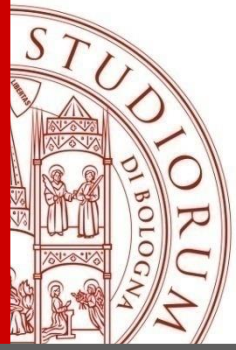
- **EU-Korea FTA:** Each Party shall establish a Domestic Advisory Group(s) on sustainable development (environment and labour) **with the task of advising on the implementation of this Chapter (Article 13.12.4, EU-Korea FTA)**
- **JEFTA:** Parties shall interact with civil society on the implementation of this Chapter (Article 16.13.2).
- **CETA:** Each regular meeting or dedicated session of the [...] [TSD Committee] includes **a session with the public to discuss matters relating to the implementation of the relevant Chapters (Article 22.4.4)**



The role of the civil society

ISSUE 1: Lack of a clear mandate, limited consideration by EU institutions → no right to petition

- DAGs can issue **opinions and recommendations** on implementation of TDS chapters upon request of EU institution or on their own initiative
- There is **no obligation for the Parties to follow up their views**
- There is **no *locus standi*** to initiate a proceedings

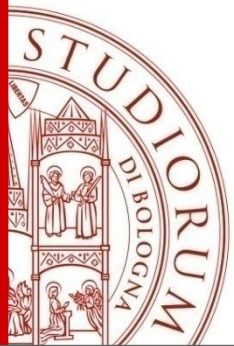


The role of the civil society

ISSUE 1: Lack of a clear mandate, limited consideration by EU institutions → no right to petition

In 2014, the **DAG established under the EU-Korea FTA that called on the Commission to initiate formal action against Korea** regarding the latter's failure to ratify core ILO Conventions

However, it was a decision of the **EU Commission to initiate the dispute → no obligation!**

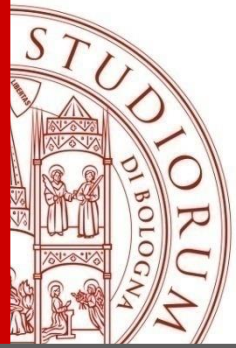


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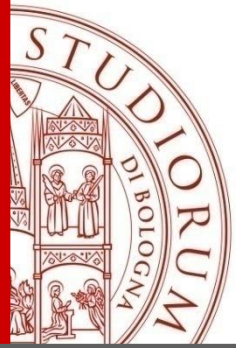




The role of the civil society

ISSUE 2: 'civil society' takes different forms in different trade partners

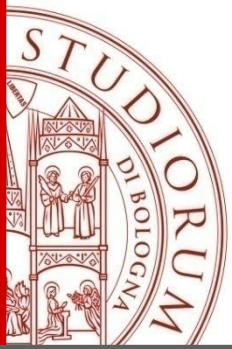
- **Some trade partners are unfamiliar with civil society organizations and participation**
 - Korea DAG is composed half of academics
 - Japan uses its Labour and Environmental Council (more than 100 members!)
- Problems in terms of **representativeness**, **equal distribution** of stakeholders, and **independence** of the member organisations in trade partners



The role of the civil society

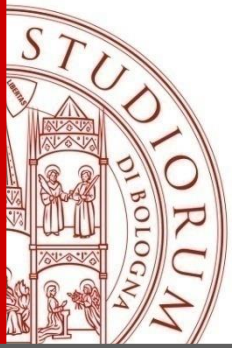
ISSUE 3: Problem of funding

- **DAGs requires economic resources to provide monitoring and studies on TSD Chapters compliance**
- **DAGs funding is a problem also in third countries (eg developing States)**
- **Since 2018 the Commission addressed this issue with a (limited) fund of 3 millions euros/year**



PART 3

Recent trends in strengthening the role of civil society



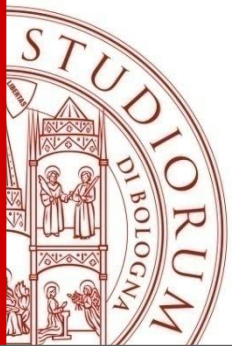
New trends

In 2016 the EU Parliament **urged the EU Commission to respond to the concerns raised by the DAGs**

EU Parliament, Resolution of 5 July 2016

22. Reiterates its request for sustainable development forums or **advisory groups to be set up at the various stages of drafting, negotiating and implementing an agreement**; recalls the need for **all Domestic Advisory Groups (DAGs) to be fully independent and to have access to adequate resources**; takes notes of the criticisms often voiced by some participants in DAGs set up by the EU under existing trade agreements that their deliberations **have no practical impact and proposes that the Commission implement the following measures**:

- (a) to set up a reporting system that enables Parliament to assess the work of the advisory groups,
- (b) **to respond systematically in a concrete manner to concerns raised by EU DAGs and to follow up on initiatives proposed by EU SCOs and social partners in this framework,**
- (c) **to lay out basic logistical provisions in TSD chapters to enable effective implementation**, as these aspects have in some cases proven to be serious hurdles, as well as related accompanying measures such as technical assistance and cooperation programmes.

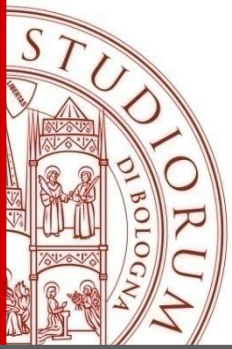


New trends

In 2022 the EU Commission in a document entitled '*The power of trade partnerships: together for green and just economic growth*' approved **a new strategy for the promotion of SD in FTA**

Action points

- **Abandon of the diplomatic approach** to solve TSD disputes
- **Involvement of DAGs in monitoring the compliance stage**
- Possibility to adopt **sanctions** in case of a breach of TSD Chapters obligations

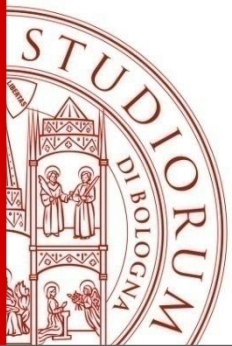


New trends

In 2022, the **European Economic and Social Committee** proposed a **reform of the DAGs**

Each PTAs should contain a **Protocol on the functioning of the DAGs**

- **transparent criteria to select DAGs members**
- **give the DAGs a proactive role in triggering the dispute settlement proceeding**
- **establish regular meeting of the DAGs of a PTA Parties**
- **ascertain financial resources**
- **incorporate DAG recommendations into EU priorities on TSD Chapters**



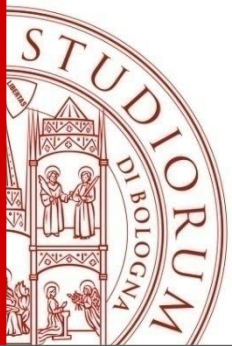
New trends

Despite new trends, **no proposal to give DAGs a right to petition → where to find a civil society right to claim violation of TSD Chapters?**

Various international bodies, including the UN General Assembly, human rights Council declared the **human right to a clean, healthy and sustainable environment**

This has been confirmed also in the **Sharm el-Sheikh Implementation Plan of the COP 27**

Including this right also in PTAs would provide a *locus standi* for the civil society to claim violation of TSD Chapters?



Many thanks!

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