



European Commission's new approach to enforcement of sustainability chapters in FTAs

On 22 June 2022, the European Commission (Commission) published a [communication](#) on “The power of trade partnerships: together for green and just economic growth”, which sets out a new approach to promoting green and just growth through trade agreements. Given that many of the EU trade agreements already include commitments in the field of trade and sustainable development (TSD), the European Union aims to strengthen the implementation and enforcement of those commitments. In particular, the European Union will now seek to extend the application of the standard State-to-State dispute settlement procedure to the TSD chapters in its trade agreements and to impose trade sanctions in case of non-compliance.

WHAT ARE THE EUROPEAN UNION’S PRIORITIES UNDER THE NEW APPROACH?

The new EU approach is based on six priorities:

- More **active cooperation** with trade partners, including through technical and financial assistance, to assist them in meeting the sustainability requirements;
- Applying a **country-specific targeted approach** and setting implementation priorities, including through implementation roadmaps with timelines and milestones;
- **Mainstreaming sustainability** beyond TSD chapters, by prioritising market access for environmental goods and services and the assessment of impacts on sustainability of all relevant chapters of trade agreements;
- **Collective monitoring** of the implementation of TSD commitments, including through the [Single Entry Point \(SEP\)](#) and the [Chief Trade Enforcement Officer \(CTEO\)](#);
- **Enhanced engagement of civil society** including through inclusive consultation processes, strengthening and expanding the role of EU Domestic Advisory Groups (DAGs) beyond TSD provisions;
- **Strengthened enforcement of TSD commitments** by extending the general State-to-State dispute settlement mechanism, including its remedies, to TSD chapters.

HOW WILL ENFORCEMENT OF TSD CHAPTERS CHANGE?

To remedy the fact that EU free trade agreement (FTA) TSD dispute settlement procedures lack rules on compliance proceedings, the Commission proposes to extend the application of the relevant rules of the general State-to-State FTA dispute settlement procedures to the TSD chapters in its FTAs. In practice, this means that the FTA party found in breach of TSD obligations will be required to inform the other party and typically a Joint Committee established under an FTA of how it will implement the panel’s recommendations and do so within a (reasonable) period of time. Compliance measures will be subject to panel review. The Commission also proposes to involve the DAGs in monitoring the compliance stage.

Where that FTA party fails to comply, trade sanctions will be available as measures of last resort. The availability of trade sanctions will be limited to cases of serious violations of core TSD commitments, namely the ILO fundamental principles, and the failure to comply with obligations that materially defeat the object and purpose of the Paris Agreement. As under the general FTA dispute settlement procedures, those trade sanctions would take the form of the temporary and proportionate suspension of trade concessions.

WHICH OF THE EUROPEAN UNION'S TRADE AGREEMENTS WILL BE AFFECTED?

The European Union will apply the new approach, at least for the time being, in ongoing and future trade negotiations. The European Union - New Zealand FTA, which was concluded on 30 June 2022, is the first new agreement to include provisions that give effect to the European Union's new policy. The European Union is expected to put forward similar provisions in its ongoing FTA negotiations with Australia, Indonesia and India.

The EU trade agreements with Chile, China, Mercosur and Mexico, which are awaiting ratification, should not be affected. Similarly, the existing EU trade agreements with TSD chapters, will not be directly affected by the new approach. However, on the occasion of renegotiation of any of these agreements, the European Commission will likely put forward the revised TSD dispute settlement rules.

With more than 30 years of experience in trade and customs law and policy, Van Bael and Bellis advises governments, international trade associations and companies in numerous jurisdictions on a broad range of trade related matters.

In addition to Van Bael & Bellis' long-standing experience in WTO litigation, our trade team advises governments and multinational companies on FTA negotiations, assists governments in assessing compliance of their domestic legislation with WTO agreements and FTAs, helps clients with managing the risk of dispute settlement and advises governments on mutually agreed solutions in the context of WTO and FTA dispute settlement.

Van Bael & Bellis advised Korea in the first dispute arising under a TSD chapter in the European Union's FTAs. The dispute focused on the labour-related provisions of the EU-Korea FTA. Our lawyers also advised governments on the design of remedies under the sustainability chapters of EU FTAs, tailored to inducing compliance with labour and environmental provisions.

Our team is experienced in helping governments and corporate clients with cross-cutting legal issues, including trade and environment (climate change, carbon border adjustments, trade in environmental goods and services, deforestation and sustainability due diligence), human rights, and labour protection, in the context of international trade and investment obligations under WTO law, FTAs and investment agreements.

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