

**Achieving Sustainability through  
Bilateral Trade Agreements:  
A Comparative Legal Study on Sustainable  
Development Provisions in the EU's Bilateral  
Trade Agreements**

Muhammad Hafiz Hannibal

Master's Thesis in European and International Trade Law

HARN63

Spring 2023



**SCHOOL OF  
ECONOMICS AND  
MANAGEMENT**

# Table of Contents

<b>Abbreviations .....</b>	<b>4</b>
<b>Foreword.....</b>	<b>6</b>
<b>Abstract.....</b>	<b>7</b>
<b>1. Introduction.....</b>	<b>8</b>
1.1 Background .....	8
1.2 Purpose and research question .....	11
1.3 Delimitations .....	12
1.4 Materials and method .....	13
1.5 Structure .....	16
<b>2. The Implications of EU’s Sustainable Trade Policy to its Bilateral Trade Agreement.....</b>	<b>17</b>
2.1 Introduction .....	17
2.2 Why Link Trade and Sustainability?.....	17
2.3 How does the EU Link Trade and Sustainability? .....	21
2.4 The Development of Sustainability Provisions in EU’s Bilateral Trade Agreements .....	23
2.5 Summary .....	26
<b>3. Analytical Matrix of Sustainable Development Provisions in the EU’s Bilateral Trade Agreements.....</b>	<b>28</b>
3.1 Introduction .....	28
3.2 Social Provisions .....	28
3.3 Environmental Provisions .....	31
3.4 Institutional Framework and Civil Society Participation.....	34
3.5 Enforcement and Dispute Settlement Mechanism .....	36

3.6	Summary .....	39
<b>4.</b>	<b>Legal Analysis on Selected EU’s Bilateral Trade Agreements from a Comparative Perspective .....</b>	<b>41</b>
4.1	Introduction .....	41
4.2	General Analysis on EU’s Bilateral Trade Agreement with South Korea, Mercosur and New Zealand .....	41
4.3	Social Provisions .....	43
4.4	Environmental Provisions .....	46
4.5	Institutional Framework and Civil Society Participation .....	49
4.6	Enforcement and Dispute Settlement Mechanism .....	51
4.7	Summary .....	53
<b>5.</b>	<b>Challenges for the EU’s Bilateral Trade Agreements to Deliver Sustainable Development in its Trading Partners.....</b>	<b>57</b>
5.1	Introduction .....	57
5.2	Evolving Legal Challenges .....	57
5.2.1	Lack of Enforceability .....	57
5.2.2	Ineffective Monitoring Mechanism .....	58
5.2.3	Socio-political Challenges Prior to Ratification .....	59
5.3	Proposed Recommendations .....	60
5.3.1	Strengthening Enforcement Mechanism.....	60
5.3.2	Reinforcing the Role of Civil Society.....	61
5.3.3	Adopting Pre-Ratification Commitments .....	62
<b>5.4</b>	<b>Summary.....</b>	<b>63</b>
<b>6.</b>	<b>Summary and Conclusions .....</b>	<b>64</b>
	<b>Bibliography .....</b>	<b>67</b>
	<b>Cases.....</b>	<b>74</b>

# Abbreviations

BTA	Bilateral Trade Agreement
CBD	Convention on Biological Diversity
CBDR	Common but Differentiated Responsibilities
CETA	Comprehensive Economic and Trade Agreement
CITES	Convention on International Trade in Endangered Species
CSR	Corporate Social Responsibility
DAG	Domestic Advisory Group
EC	European Commission
ECJ	European Court of Justice
EU	European Union
EPA	Economic Partnership Agreement
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
ILO	International Labour Organization
IUU	Illegal, Unreported And Unregulated
LDCs	Least Developed Countries
MEA	Multilateral Environmental Agreement
MNEs	Multinational Enterprises

NAAEC	North American Agreement on Environmental Cooperation
NAFTA	North American Free Trade Agreement
NDC	Nationally Determined Contributions
OECD	Organisation for Economic Cooperation and Development
RBC	Responsible Business Conduct
RRM	Rapid Response Mechanism
RTA	Regional Trade Agreement
SDGs	Sustainable Development Goals
SEM	Submission on Enforcement Matters
SIA	Sustainability Impact Analysis
SME	Small and Medium-sized Enterprise
SSDS	State to State Dispute Settlement
SQ	Sub-question
TCA	Trade and Cooperation Agreement
TEU	Treaty of European Union
TFEU	Treaty of the Functioning of the European Union
TSD	Trade and Sustainable Development
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
USMCA	US-Mexico-Canada Agreement
WTO	World Trade Organization

# Foreword

It is a humbling experience to acknowledge those people who have, mostly out of kindness, helped along the journey of this master program. I am indebted to so many for their encouragement and support.

My sincere gratitude to Dr. Meng Zhang for insightful advice, unwavering dedication and continuous support that encouraged me to overcome difficulties in doing this research. I also extend my heartfelt appreciation to all teachers in the European and International Trade Law program for their invaluable knowledge and inspiration.

My appreciation to the Swedish Institute for granting me the Swedish Institute Scholarship for Global Professional (SISGP) under which my master study was sponsored and this study was completed.

I would not forget all support and assistance from all friends, especially fellow Indonesian friends in Scania and classmates in the European and International Trade and Tax Law program.

And finally, to my beloved family. My lovely wife who always gives me strength which I always rely on. My sweet daughter for whom all my loves and efforts deserve. My whole big family, you should know that your support and encouragement were worth more than I can express on this piece of paper.

Lund, 26 May 2023

# Abstract

*Following the current global wave of sustainable development, the EU has been playing a leading role in reshaping the global trade landscape with its ambitious sustainable trade toolboxes. Particularly, the evolvement of sustainable development provisions in EU's Bilateral Trade Agreements (BTA) have sparked growing discussions and debates in the legal arena. This study aims to analyse the role of these provisions in delivering sustainability to trading partners by comparing several selected EU's BTAs, in particular with South Korea, Mercosur, and New Zealand. To achieve this goal, the study lays down a contextual argument on the implications of EU's sustainable trade policies on its bilateral trade agreements and develops a legal analytical matrix with parameters consisting of social provisions, environmental provisions, institutional frameworks, and dispute settlement mechanisms. The study finds that sustainable development provisions in the EU's BTAs bind the parties to implement sustainable development principles, with commitments varying among agreements based on different characteristics, priorities, and challenges. While all agreements have similarities in setting out core commitments related to international labour and environmental standards, the level of obligations significantly differs. The study also identifies evolving legal challenges and proposes recommendations to overcome them. In general, despite its limited extent in demonstrating a constructive model, sustainable development provision is a step in a right direction in developing a mechanism in pushing for a more sustainable trade practice.*

**Keywords:** Sustainable Development Provision; Bilateral Trade Agreement; Climate Change; Labour; EU-South Korea; EU-Mercosur; EU-New Zealand.

# 1. Introduction

## 1.1 Background

As a concept, sustainable development was officially used for the first time in 1987 by the United Nations World Commission on Environment and Development in its report “Our Common Future”.<sup>1</sup> It was defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>2</sup> Ever since, the concept has been developing through a series of improvements, with the 2030 Agenda for Sustainable Development being the most recent development.<sup>3</sup> The document was adopted by all United Nations (UN) Member States in 2015. From a conceptual standpoint, the United Nations supports the idea of sustainable development based on previously affirmed concept in 1992 at the UN Conference on Environment and Development which articulated sustainable development along three comprehensive dimensions: economic, social and environment.<sup>4</sup>

The 2030 Agenda provides a blueprint which consists of 17 integrated Sustainable Development Goals (SDGs), which will be evaluated in accordance with 169 separate targets.<sup>5</sup> Trade is seen as one of the significant elements within this broad and complex framework. According to the Agenda, "international trade is an engine for inclusive economic growth and poverty reduction, and contributes to the promotion of sustainable development". Goal 17 recognizes the World Trade Organization's (WTO) crucial role in promoting a universal, rules-based, open, non-

---

<sup>1</sup> The United Nations World Commission on Environment and Development (UNWCED), which had been set up in 1983, published a report in 1987 entitled ‘Our common future’. The document came to be known as the ‘Brundtland Report’ after the Commission's chairwoman, Gro Harlem Brundtland. It developed guiding principles for sustainable development as it is generally understood today.

<sup>2</sup> Gro Harlem Brundtland, *Report of the World Commission on Environment and Development: Our Common Future* (United Nations General Assembly document, 1987) A/42/427 54 para 1.<<http://www.un-documents.net/ocf-ov.htm>> accessed 4 April 2023.

<sup>3</sup> United Nations Conference on Environment & Development: Agenda 21. (Rio de Janeiro, 3-14 June 1992) 31 ILM 874 <[https://sustainabledevelopment.un.org/content/documents /Agenda21.pdf](https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf)> accessed 4 April 2023.

<sup>4</sup> *ibid* 8.4.1.

<sup>5</sup> UN General Assembly Transforming Our World: the 2030 Agenda for Sustainable Development (adopted 21 October 2015) A/RES/70/1 <[https://sustainabledevelopment.un.org/content/documents/21252030 %20Agenda%20for%20Sustainable %20Development%20web.pdf](https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf)> accessed 14 April 2023.



discriminatory and equitable trading system.<sup>6</sup> Specifically, the multilateral trading system is considered important to achieve goals 2, 3, 8, 10 and 11 of the SDGs, which aim to end hunger, provide healthy lives, promote decent work, reduce disparities, and regulate fishery subsidies.<sup>7</sup>

It becomes a point of concerns that the 2030 Agenda exclusively considers the role of WTO when determining relevant international trade regimes that could accelerate progress toward sustainable development, without mentioning other kinds of global trade arrangements.<sup>8</sup> The current crisis in the WTO has actually raised questions on its continued relevance in promoting multilateral trade as the Doha Development Round has struggled through nearly two decades of unsuccessful negotiations.<sup>9</sup> The 164 member states of the WTO have also been unable to come to an agreement on fundamental trade problems like gaining access to non-agricultural markets and the current crisis of the Appellate Body.

However, countries are still pursuing global trade liberalization despite these problems. As an alternative to the ineffective multilateral process, they are increasingly turning to regional trade agreements (RTAs) between smaller group of countries, and often only between two countries.<sup>10</sup> In recent years, RTA numbers have been exploding. Based on WTO facts and figures, there have been 355 RTAs in force worldwide as of 1 December 2022.<sup>11</sup> Over the years, RTAs have not only increased in number but also in depth and complexity of the trade issues. Nowadays, trade agreements cover not only traditional trade issues in the form of reducing tariffs and quotas, but also non-trade concerns covering sustainability issues such as the environment and labour.<sup>12</sup> This phenomenon continues to encourage

---

<sup>6</sup> *ibid* para 68.

<sup>7</sup> Giovanna Adinolfi, 'A Cross-Cutting Legal Analysis of the European Union Preferential Trade Agreements' Chapters on Sustainable Development', in Cosimo Beverelli, Jürgen Kurtz and Damian Raess, *International Trade, Investment, and the Sustainable Development Goals: World Trade Forum* (Cambridge University Press 2020) 16.

<sup>8</sup> *ibid*.

<sup>9</sup> Sikina Jinnah and Jean-Frédéric Morin, *Greening through Trade: How American Trade Policy Is Linked to Environmental Protection Abroad* (The MIT Press 2020) 54.

<sup>10</sup> *ibid*.

<sup>11</sup> World Trade Organization (WTO), 'Regional Trade Agreements: Facts and Figures' (*Regional trade agreements and the WTO*) <[https://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm#:~:text=As%20of%201%20December%202022,the%20GATT%20or%20the%20WTO%3F&text=Access%20the%20most%20up%20to%20the%20GATT%2FWTO.](https://www.wto.org/english/tratop_e/region_e/region_e.htm#:~:text=As%20of%201%20December%202022,the%20GATT%20or%20the%20WTO%3F&text=Access%20the%20most%20up%20to%20the%20GATT%2FWTO.)> accessed 16 April 2023.

<sup>12</sup> WTO, 'Regional Trade Agreements: An Introduction' (*Regional trade agreements and the WTO*) <[https://www.wto.org/english/tratop\\_e/scope\\_rta\\_e.htm](https://www.wto.org/english/tratop_e/scope_rta_e.htm)> accessed 15 April 2023.

countries to develop a new trade liberalization regime that is not only based on the flow of goods and services, but also guarantees sustainability aspects in the efforts to achieve sustainable development goals.

In light of its economic policy development, the European Union (EU) has recently always included sustainable development provisions in its trade agreements. The pursuit of sustainable development in EU trade policy is clearly mandated by the Treaty of European Union (TEU) and the Treaty of the Functioning of the European Union (TFEU). Article 3(5) of the TEU provides that “In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to ... peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade ...”.<sup>13</sup> Similarly, article 11 TFEU also states that “Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.”<sup>14</sup>

As part of efforts to carry out the treaty mandate, the European Commission (EC) has issued *Trade for All* Communication in 2015, which highlighted social and environmental values as the core principles of the EU trade policy.<sup>15</sup> This policy has also been subsequently reaffirmed by the launch of the European Green Deal in 2019 which underlined commitments to improve sustainability concerns in the EU’s trade regime as well as in its wide network of Free Trade Agreements (FTAs).<sup>16</sup> Furthermore, the Commission has also published 15 Actions Plan which serves as a guideline to improve the implementation and enforcement of Trade and Sustainable Development chapters in EU Bilateral Trade Agreements (BTAs).<sup>17</sup>

---

<sup>13</sup> Consolidated Version of the Treaty on European Union [2012] OJ C326/13, art 3.5.

<sup>14</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 11.

<sup>15</sup> Commission, ‘Trade for All: Towards a more responsible trade and investment policy’ (Communication) COM(2015) 497 final <<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52015DC0497>> accessed 9 April 2023.

<sup>16</sup> Commission, ‘The European Green Deal’ Communication COM(2019) 640 final <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN>> accessed 9 April 2023.

<sup>17</sup> Commission services, ‘Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements’, 26 February 2018 <[https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_9iww156618.pdf](https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_9iww156618.pdf)> accessed 9 April 2023.

The first-time sustainable development chapter materialises in EU's trade agreement was in the EU-South Korea FTA in 2011.<sup>18</sup> Ever since, Trade and Sustainable Development (TSD) chapter has been incorporated in all bilateral trade agreements with third countries. EU-New Zealand trade agreement, which was concluded on June 2022 was the latest trade agreement with sustainable development provision that has been negotiated.<sup>19</sup> The sustainability provisions in these agreements, although similar in nature, were different one from the others, in terms of scope, specific commitments, institutional arrangements and dispute settlement mechanisms. These differences reflect varying levels of commitments, specificities and priorities contained in each agreement. Therefore, it is pivotal to assess them in a comparative manner in order to provide in depth-analysis of their effectiveness in demonstrating a constructive model in achieving sustainability in the EU's trading partners.

## 1.2 Purpose and research question

This study aims to provide legal analytical perspectives on the role of trade agreements in achieving sustainability, with the sustainable development provisions in the EU's selected bilateral trade agreements serve as analytical benchmarks. Conclusively, the study aims to help readers understand the similarities and differences of those provisions from several EU's agreements, in particular with South Korea, Mercosur and New Zealand. This would contribute to enriching perspectives and insights to look into the challenges and possible recommendations for future agreements.

Based on the research background and its purpose, the main research question of this study is, **“Whether, how and to what extent sustainable development provisions in the EU's bilateral trade agreements can demonstrate a constructive model in achieving sustainability of trading partners?”**.

---

<sup>18</sup> Commission, 'EU-Trade Relations with South Korea' (*EU Trade Relationships by Country/Region*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-korea\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-korea_en)> accessed 8 April 2023.

<sup>19</sup> Commission, "Trade Agreement between the EU and New Zealand" (*EU Trade Relationships by Country/Region*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement_en)> accessed 8 April 2023.

This main research question is further answered through three systematic and synergetic tiers of sub-questions (SQ) which also correspond to the structural arrangement of this study. The first tier reflects the inquiries related to the contextual nature of analysis; the second tier reflects the inquiries related to the past and present state of EU's agreements; meanwhile, the third tier reflects the inquiries related to the future arrangement. Specifically:

- **Tier I: contextual bound**

SQ1. What are the implications of EU's sustainable trade policy to its bilateral trade agreements?

- **Tier II: past and present bound**

SQ2. How do the EU's bilateral trade agreements work in supporting sustainable development in other jurisdictions?

SQ3. What are the likeness and otherness of sustainable development provisions among the selected EU bilateral trade agreements?

- **Tier III: future bound**

SQ4. What are the legal and policy challenges for EU bilateral trade agreements to deliver sustainability for the EU's trading partners?

SQ5. How to address those challenges to ensure the sustainable development of the EU's trading partners through sustainable development provisions of the EU's bilateral trade agreements?

### **1.3 Delimitations**

This study focuses on developing a comparative analytical framework upon the legal text of sustainable development provisions in the EU's bilateral trade agreements. It does not, however, assess the practical and empirical circumstances surrounding the implementation of specific sustainability sectors. The socio-environment research-based approach will be better suited to handle such empirical assessments and evaluations.

The analysis object of this study is sustainable development provisions in the EU's bilateral trade and investment agreement, which in most of cases contain in the chapter of Trade and Sustainable Development. While trade agreement covers vast area of economic relations and cooperation between countries, this paper is not aiming to provide analysis on sustainability or sustainable development element in the market access provisions, such as trade in environmental goods or investment in environmentally friendly sector.

The sustainable development provisions in the EU's bilateral trade agreements is analysed to assess to what extent such provisions can demonstrate a constructive model in achieving sustainability of trading partners based on academic discourses, reports and other literature sources. This also confirms that the researcher has not conducted direct empirical method, for instance, survey and interview.

#### **1.4 Materials and method**

This paper scrutinises and assess the role of sustainable development provisions in the EU's bilateral trade agreements in developing a constructive model to achieve sustainability in its trading partners. To answer the main research questions and all related sub-questions, this study employs multiple research methods in a comprehensive way. Doctrinal legal research, comparative legal method and discourse analysis are notably dominant in this study.

Primarily, **doctrinal legal research** is a predominant method employed by many categories of legal researchers. This approach deals with legal rules, principles, concepts and doctrines. It involves a rigorous, methodical presentation, analysis, and critical evaluation of legal rules, principles, doctrines and their interrelationships.<sup>20</sup> This method will be comprehensively utilised to analyse the main research object of this study, namely the EU's bilateral trade agreements. The first tier of research sub-question also relies very much on this comprehensive approach. Furthermore, it will also be applied to research and analyse a substantial number of international treaties, such as ILO Conventions and Paris Agreements, EU's policy documents, such as Commission's Communication titled "Trade for All. Towards a More Responsible Trade and Investment Policy" Communication

---

<sup>20</sup> P. Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press 2019) 145.

and “A Balanced and Progressive Trade Policy to Harness Globalisation” Communication. as well as literatures in the law field of study, such as “A Cross-Cutting Legal Analysis of the European Union Preferential Trade Agreements’ Chapters on Sustainable Development” by Adinolfi and “Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness” by Hradilová and Svoboda.

Secondly, to answer the second tier of research sub-questions, a **comparative legal method** is used to draw comparison between the selected EU’s bilateral trade agreements and how the EU’s bilateral trade agreements work in supporting sustainable development in other jurisdictions. The identification, analysis, and justification of similarities and differences in the implementation and interpretation of these international agreements require the use of comparative law methods.<sup>21</sup>

More specifically, this comparative study designates three of EU’s bilateral trade agreements to be extensively analysed, namely the EU-South Korea FTA,<sup>22</sup> the EU-Mercosur Trade Agreement<sup>23</sup> and the EU-New Zealand Trade Agreement.<sup>24</sup> There are four compelling reasons on these selections. First, the three trading partners represent different geographic locations. This criterion is needed to obtain different environmental issues according to the unique geographical conditions of each country. Second, these countries have different levels of development. Based on the World Bank classification, New Zealand is categorised as a developed country, South Korea is a developing country but with high income status and the majority of Mercosur member countries are developing countries.<sup>25</sup> The third reason is related to the time dimension of when the agreement was signed. This is to observe

---

<sup>21</sup> Roberts, Anthea and others (eds), 'Conceptualizing Comparative International Law', in Anthea Roberts and others (eds), *Comparative International Law* (New York, 2018) 7.

<sup>22</sup> Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part [2011] OJ L127/6 <[https://eur-lex.europa.eu/resource.html?uri=cellar:a2fb2aa6-c85d-4223-9880-403cc5c1daa2.0022.02/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:a2fb2aa6-c85d-4223-9880-403cc5c1daa2.0022.02/DOC_3&format=PDF)> accessed 8 April 2023.

<sup>23</sup> The southern common market, commonly known by Mercosur is a South American trade bloc founded in 1991 with full members include Argentina, Brazil, Paraguay and Uruguay. Free Trade Agreement between the European Union and Mercosur: Agreement in Principle [2019] <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/textagreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/textagreement_en)> accessed 8 April 2023.

<sup>24</sup> Free Trade Agreement between the European Union and New Zealand [2022] <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/text-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/text-agreement_en)> accessed 8 April 2023.

<sup>25</sup> United Nations, ‘World Economic Situation and Prospects 2022 - United Nations’ <[https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2022\\_ANNEX.pdf](https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2022_ANNEX.pdf)> accessed April 16, 2023.

how the provision of sustainable development evolves over time. The agreement with South Korea is the first to have a TSD Chapter, the agreement with New Zealand is the latest one, while the agreement with Mercosur represent the time in between. Fourth, the three trading partners represent different legal systems. New Zealand has a common law system, meanwhile Korea and the Mercosur countries adopts a civil law system.

It is also important to note that these three agreements have different legal status in terms of their implementation stages. The EU-South Korea FTA was signed on 15 October 2009 and provisionally applied from 1 July 2011. The full agreement entered into force from 13 December 2015. The EU-Mercosur Trade Agreement was agreed in principle in June 2019 after twenty years of negotiation. However, the ratification efforts has been delayed due to a number of ongoing socio-political and sustainability concerns over the negotiation process.<sup>26</sup> Meanwhile, the EU-New Zealand Trade Agreement was concluded on 30 June 2022 after four years of negotiation. The agreement is now in the process of ratification and has been largely perceived positively by both the European Parliament and the Council.<sup>27</sup> Although the two latter agreements have yet to be ratified and come into force, the agreed draft have been subject to many legal studies and provides useful insights on current and future bilateral trade agreements.

Thirdly, to answer the third tier of research sub-questions, a **discourse analysis** will be applied to investigate the challenges and to propose possible recommendations for future EU's trade agreements. This approach enables researchers to uncover the social context and the political and cultural dynamics behind legislative processes or the policy implementation.<sup>28</sup> In this context, the study will use various reports and literature related to sustainability issues and trade policy developments in exploring the context of the problem and suggesting steps that can be taken to develop a more constructive model of trade agreements in achieving sustainability.

---

<sup>26</sup> Amandine Van Den Berghe, 'EU-Mercosur Agreement: Governance Issues in EU's Trade Decision Making' (*ClientEarth* June 2021) <<https://www.clientearth.org/latest/documents/eu-mercosur-association-agreement-governance-issues-in-the-eu-trade-decision-making-process/>> accessed 17 April 2023.

<sup>27</sup> Ministry of Foreign Affairs and Trade of New Zealand, 'EU Delegation Supports Swift Ratification of NZ-EU FTA' (October 2022) <<https://www.mfat.govt.nz/assets/Trade/MFAT-Market-reports/EU-delegation-supports-swift-ratification-October-2022.pdf>> accessed 18 April 2023.

<sup>28</sup> Maryla Klajn, 'Discourse Analysis' (*Leiden Law Method Portal* December 10, 2020) <<https://www.leidenlawmethodsportal.nl/topics/discourse-analysis>> accessed 16 April 2023.

Some notable reports analysed include “Enhancing sustainability in EU Free Trade Agreements: The case for a holistic approach” and “Reflections on the New Approach to the TSD Chapters for Greener Trade” published by Institute for European Environmental Policy (IEEP).

## **1.5 Structure**

After explaining the background, purposes and research questions, delimitations as well as materials and methods in the introduction, chapter two will introduce the the implications of EU’s sustainable trade policy to its bilateral trade agreement. This chapter develops an understanding on the trade and sustainability nexus and how does the EU link its trade policy and sustainability concerns. The development of sustainability provisions in EU’s trade agreement will also be described within this chapter. As such, this chapter is dedicated specifically to answer research sub-question 1.

Chapter three establishes a set of parameters which are used as instruments to provide comparative analysis of sustainable development provisions on the selected EU’s bilateral trade agreements. These parameters consists of social and environmental provisions, institutional framework and civil society participation as well as enforcement and dispute settlement mechanisms. This chapter also provides analytical answer for research sub-question 2.

Chapter four provides the comparative legal analysis on the three selected bilateral trade agreements, namely the EU-South Korea FTA, the EU-Mercosur Trade Agreement and the EU-New Zealand Trade Agreement. The comparisons will be analysed based on similar criterias set up from each agreement’s scope of sustainable development provisions. In this chapter, research sub-question 2 will be further investigated along with sub-question 3.

Chapter five is exclusively dedicated to answer the second tier of research questions (sub-question 4 and 5) related to the future state of EU’s agreements. This part presents the evolving challenges for EU agreements to deliver sustainability in other trading partners and possible recommendations to address those challenges.

Chapter six summarises the study, makes legal analysis, reflects research questions and provides conclusions based on the legal analysis conducted.



## 2. The Implications of EU's Sustainable Trade Policy to its Bilateral Trade Agreement

### 2.1 Introduction

The purpose of this first chapter is to lay down the legal ground behind the inclusion of sustainable development provisions in the EU's bilateral trade agreements. To achieve this, the first section of this chapter provides an overview on the rationale of trade and sustainability nexus in the global context. The second part looks at the legal and trade policy foundations that underpin the EU's global trade strategy in relation to sustainable development. Finally, the third section analyses the impact of EU's trade policies on the development of sustainable development provisions in its bilateral trade agreements. The conclusion part summarises the discussion and draws a conclusion in a brief and structured manner.

### 2.2 Why Link Trade and Sustainability?

International trade is fundamental for economic growth and global prosperity. Empirical studies show that no country has ever succeeded in generating long-term economic growth without being open to trade.<sup>29</sup> However, trade in itself is not sufficient to achieve economic, environmental and social sustainable development. Although globalization has opened the international markets, free trade has been generally associated with negative consequences, such as social concerns and cross-border pollution.<sup>30</sup> One major issue is that increased international trade requires more production and consumption, which leads to increased use of environment and labour resources as well as greater implications on environmental pollution and degradation.<sup>31</sup> Therefore, it is crucial to make sure that the trade liberalization

---

<sup>29</sup> World Bank and WTO, 'The Role of Trade in Ending Poverty', 2015 <<https://openknowledge.worldbank.org/handle/10986/22081>> accessed 16 April 2023.

<sup>30</sup> Kateřina Hradilová and Ondřej Svoboda, 'Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness' (2018) 52 *Journal of World Trade* 1019, 1021.

<sup>31</sup> Axel Berger, Clara Brandi, Jean-Frederic Morin, and Jakob Schwab, 'The Trade Effects of Environmental Provisions in Preferential Trade Agreements', in Beverelli C, Kurtz Jürgen and Raess D, *International Trade*,

improves labor and environmental standards in order to make trade inclusive and sustainable.

International trade has also been regarded as a powerful tool in achieving the 17 Sustainable Development Goals (SDGs) and the 2030 Agenda for Sustainable Development by the international community.<sup>32</sup> The 2030 Agenda includes a broad range of indicators that represents three interrelated elements of sustainability. It aims to concurrently improve and address the global economic, social and environmental challenges. Given the all-encompassing nature of the 2030 Agenda, contradictions and compromises between the different goals seem inevitable.<sup>33</sup> In fact, implementing the 2030 Agenda depends very much on improving the coordination of different international policy regimes addressing issues relating to trade, labour, climate, deforestation and biodiversity.

The 2030 Agenda has made sustainability a universal and overarching goal for all UN operations. All UN member states are to endeavour to achieve the global sustainable development goals. The Agenda has also underlined that trade is an important instrument for achieving sustainable development. International trade has a central role in the 2030 Agenda, both as a means of generating the resources needed to implement and fulfil the SDGs and as an independent goal of its own for a more sustainable world.<sup>34</sup> Within the framework, SDG 17 on partnership for the goals has three trade-related specific targets: 1) to promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under WTO; 2) to significantly increase the exports of developing countries, including doubling the least developed countries' share of global exports by 2020; and 3) to implement timely implementation of duty-free and quota-free market access for goods from least developed countries (LDCs).<sup>35</sup>

---

*Investment, and the Sustainable Development Goals: World Trade Forum* (Cambridge University Press 2020) 16.

<sup>32</sup> UN General Assembly (no 3) para 6.

<sup>33</sup> Måns Nilsson, Dave Griggs and Martin Visbeck, 'Policy: Map the Interactions between Sustainable Development Goals' (2016) 534 *Nature* 320.

<sup>34</sup> National Board of Trade Sweden, 'Trade and Social Sustainability: An Overview and Analysis' (*kommerskollegium* 2017) <<https://www.kommerskollegium.se/globalassets/publikationer/rapporter/2017/publ-trade-and-social-sustainability-webb.pdf>> accessed 22 April 2023.

<sup>35</sup> SDG 17.10 – 17.12.

Explicit links to trade can also be found in a number of the other targets, such as targets related to eliminating agricultural export subsidies, prohibiting certain types of fishery subsidies, increasing trade aid, including small and medium-sized enterprises (SME) in value chains, and promoting sustainable consumption and production through sustainable public procurement.<sup>36</sup> Many of these trade-related targets are not new but in fact confirm how the WTO and the UN have viewed the role of trade in contributing to development and previous commitments in the area within the framework of the WTO.<sup>37</sup>

In the WTO context, the preamble to the agreement establishing the WTO points out that sustainable development as a primary goal and that one of the purposes of trade rules is to uphold human rights, raise global living standards, promote sustainable development, and preserve the environment.<sup>38</sup> The WTO's position that there is a strong connection between trade liberalization and sustainable development is also made plain in the Ministerial Declaration that launched the trade negotiations under the Doha Round.<sup>39</sup>

Legal linkages between international trade and sustainability can also be traced back to the prominent “tuna/dolphin” case dispute.<sup>40</sup> In 1991, a panel established under the 1947 General Agreement on Tariffs and Trade (GATT) upheld Mexico’s challenge to the US Marine Mammal Protection Act. The regulation prohibited the import of yellow fin tuna from the Eastern Tropical Pacific Ocean if that tuna was caught using commercial fishing technologies, which result in the incidental killing of dolphins. The GATT panel’s decision in the “tuna/dolphin” dispute was never formally adopted. However, the case sparked a lot of debate and discussion, including by putting pressure on the US government to include environmental provisions in North American Free Trade Agreement (NAFTA).<sup>41</sup> The US was ultimately successful in negotiating an environmental “side agreement” to NAFTA,

---

<sup>36</sup> SDG 2.b; 14.6; 8.a; 9.3; 12 and 12.7.

<sup>37</sup> Bernard Hoekman, *Benefits and Costs of the Trade Targets for the Post-2015 Development Agenda* (Copenhagen Consensus Centre 2014) 8.

<sup>38</sup> WTO, *Agreement establishing the WTO* [1995] Section 1, Preamble, <[https://www.wto.org/english/res\\_e/booksp\\_e/agrmntseries1\\_wto\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/agrmntseries1_wto_e.pdf)> accessed 22 April 2023.

<sup>39</sup> WTO, *Doha Ministerial Declaration*, WT/MIN(01)/DEC/a, 20.11.2001, Art. 6 and Preamble, <[http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)> accessed 22 April 2023.

<sup>40</sup> WTO, Panel Report United States - Restrictions on Imports of Tuna [1991] DS21/R - 39S/155, <[https://www.wto.org/english/tratop\\_e/dispu\\_e/gatt\\_e/91tuna.pdf](https://www.wto.org/english/tratop_e/dispu_e/gatt_e/91tuna.pdf)> accessed 25 April 2023.

<sup>41</sup> *ibid.*

called the North American Agreement on Environmental Cooperation (NAAEC). NAFTA's environmental provisions has subsequently opened the door for what would become a long record of sustainability linkages in trade agreements.

The reason why governments decide to link environmental concerns to trade agreements has been examined by a number of scholars. Three factors are especially prevalent in the literature, as Morin, Dür, and Lechner have already noted, namely: 1) domestic pressure from civil society; 2) protectionist interests, and 3) low compliance costs for environmental requirements. First, incorporating environmental provisions in trade agreements might be resulted from political pressure from citizens who value environmental protection. The majority of people in most countries agree that environmental conservation outweigh the costs. In fact, citizens of both developed and developing countries support the inclusion of environmental provisions in trade agreements.<sup>42</sup>

Second, the inclusion of environmental provisions in trade agreements is frequently justified by protectionist interests or, in other term, a desire to level the playing field. The basic argument is that firms based in countries with higher levels of environmental protection bear higher costs of production than do firms based in countries with lower levels of environmental protection. In requiring trading partners to raise their levels of environmental protection, costs associated with this disparity can be reduced.<sup>43</sup>

Third, low costs of compliance may be a driver of the inclusion of environmental provisions in trade agreements. The reasoning here is that countries are unlikely to commit to international obligations that are costly to them. Therefore, a country that exports products made under environmentally harmful conditions is unlikely to support the inclusion of environmental provisions in trade agreements. Instead, it will emphasize the need to keep trade and the environment separate. On the other hand, a nation with strict internal laws has nothing to lose by spreading its standards around the globe.<sup>44</sup> Recent case studies have revealed that the United States' and the European Union's commitments to include environmental provisions in their

---

<sup>42</sup> Jean-Frédéric Morin, Andreas Dür, Lisa Lechner, 'Mapping the Trade and Environment Nexus: Insights from a New Data Set' (2018) 18 *Global Environmental Politics* 122, 8.

<sup>43</sup> *ibid* 10.

<sup>44</sup> *ibid* 12.

bilateral trade agreements originate from their desire to export the standards of their home countries.

### **2.3 How does the EU Link Trade and Sustainability?**

The implementation of the Treaty of Lisbon has resulted to a potential strengthening of the EU's role as an exporter of values and rules in the field of sustainable development. In the Preamble of the Treaty on the European Union (TEU), EU members declare the desire "to promote economic and social progress of their peoples, taking into account the principle of sustainable development...".<sup>45</sup> The main goal is to make sustainable development an overarching principle for the EU institutions that will foster the progress of its member states.

In general terms, according to Article 3(5) TEU, one of the overall objectives of the Union is to "contribute to ... peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade ...".<sup>46</sup> More specifically on the environmental dimension, Article 11 of the Treaty on the Functioning of the European Union (TFEU) states that "environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development".<sup>47</sup> In addition to that, the EU's efforts to safeguard the environment are not limited within the boundaries of its environmental policy (Articles 191–193 TFEU).<sup>48</sup> Hence, the promotion of sustainable development is deemed to be of utmost importance and meant to serve as a basis for all EU policies and activities.

As for the basis of the EU's external action, Article 21 TEU establishes the principles and objectives. Among these objectives include fostering "the sustainable, economic, social and environmental protection of developing countries, with the primary aim of eradicating poverty"<sup>49</sup> which essentially directs the EU policy on development cooperation.<sup>50</sup> Similarly, the purpose is also stated to "help develop international measures to preserve and improve the quality of the

---

<sup>45</sup> TEU, preamble.

<sup>46</sup> *ibid* art. 3(5).

<sup>47</sup> TFEU, art. 11.

<sup>48</sup> *ibid* art. 191-193.

<sup>49</sup> TEU, art. 21(2)(d).

<sup>50</sup> TFEU, art. 208-211.

environment and the sustainable management of global natural resources, in order to ensure sustainable development”.<sup>51</sup> The importance of this provision is also subsequently strengthened by Article 205 TFEU, on the opening clause of the provisions on the external action, in which “the Union’s action on the international sphere ... shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions” laid down in Article 21 TEU.<sup>52</sup> Another main point is that Article 207 TFEU envisages that “the common commercial policy shall be conducted in the context of the principles and objectives of the Union’s external action”.<sup>53</sup> This makes sustainable development the main foundation that guides all external EU policies.

In addition to the founding treaties, the European Court of Justice (ECJ) has affirmed that the objective of sustainable development “forms an integral part of the common commercial policy” in its landmark Opinion 2.15.<sup>54</sup> Accordingly, the sustainable development provisions fall within the purview of the EU’s exclusive competence on trade and investment matters as mentioned in Article 3(1)(e) TFEU. This Court’s Opinion provided constitutional mandate for the Commission to include sustainable development provisions in the form of Trade and Sustainable Development (TSD) Chapter in the bilateral trade agreements with third countries.

At the policy level, the European Commission’s Communications issued in 2015 titled “Trade for All. Towards a More Responsible Trade and Investment Policy” emphasizes how the Union may utilise trade policy to advance the social and environmental pillars of sustainable development.<sup>55</sup> Furthermore, in the Communication issued in 2017, titled “A Balanced and Progressive Trade Policy to Harness Globalisation”, the Commission acknowledged that “trade policy has an important role in harnessing globalisation to ensure its economic, social and environmental effects are positive for people and businesses in Europe and beyond”.<sup>56</sup> It also envisages the utilisation of trade policy instruments to promote

---

<sup>51</sup> *ibid* art. 21(2)(f).

<sup>52</sup> *ibid* art. 205.

<sup>53</sup> *ibid* art. 207.

<sup>54</sup> Opinion 2/15 of the Court (Full Court), 16 May 2017, ECLI:EU:C:2017:376, para. 167.

<sup>55</sup> Commission, ‘Trade for All’ Communication (no 13) 4.

<sup>56</sup> Commission, ‘A Balanced and Progressive Trade Policy to Harness Globalisation’ Communication COM(2017) 492 final, 3 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:492:FIN>> accessed 21 April 2023.

around the world the high European standards of environmental, consumer, social and labour protection, as well as fundamental rights without compromise, in line with the Sustainable Development Goals.<sup>57</sup>

These commitments to strengthen trade policies in promoting sustainable development was further emphasized by “The European Green Deal” Communication, published in December 2019. It insists that the EU must act as a “global leader” and its trade policy must serve to export its values to the world and promote sustainable development, committing third countries in labour and environmental issues.<sup>58</sup>

Ultimately, the EU frames its trade strategy into the wider context in the attainment of the 2030 Agenda. To pursue this strategy, the EU has been actively promoting the inclusion the provision of sustainable development in its bilateral trade agreements with trading partners. The sustainable development provision complements the trade concessions made by the contracting parties with obligations concerning environmental and labour standards, in order to ensure that progress in the economic field be balanced with advancements in the protection of such concurring interests.

## **2.4 The Development of Sustainability Provisions in EU’s Bilateral Trade Agreements**

The European Union is the world’s largest trading bloc, accounting for 16% of world exports and imports as well as the largest export market for around 80 countries.<sup>59</sup> With numerous challenges facing the WTO since the early 2000s, the EU turned to bilateral trade agreements with its trading partners. The EU has expanded the number of its bilateral and regional trade agreements over the past 20 years to the point where, in 2020, 37.6% of EU external trade is covered by 37 bilateral trade agreements with 67 countries.<sup>60</sup> Trading relations with the EU have a considerable impact on third countries, especially on environmental, social and

---

<sup>57</sup> *ibid* 4.

<sup>58</sup> Commission, ‘The European Green Deal’ Communication (no 14) 7.

<sup>59</sup> Commission, ‘EU Position in World Trade’ (*Trade*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-position-world-trade\\_en#:~:text=Facts%20and%20figures%20on%20the%20EU's%20position%20in%20global%20markets&text=The%20EU%20is%20the%20world's,of%20manufactured%20goods%20and%20services](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-position-world-trade_en#:~:text=Facts%20and%20figures%20on%20the%20EU's%20position%20in%20global%20markets&text=The%20EU%20is%20the%20world's,of%20manufactured%20goods%20and%20services)> accessed April 25, 2023.

<sup>60</sup> *ibid*.

wider sustainability issues. Through sustainable development provisions in its bilateral trade agreements, the EU is gradually taking steps toward addressing these issues.

As mandated by its founding treaties, the EU is to define and pursue common policies and actions in order to foster the sustainable economic, social and environmental development of trading partners. As such, sustainable development provisions become an important instrument for the EU in carrying out its trade policy. Consequently, every bilateral trade agreement negotiated by the EU has a provision for sustainable development. Such provisions is promulgated in the form of non-trade issues to reflect the significance of the concept of sustainable development.<sup>61</sup>

The historically first type of such non-trade issues was compliance with international human rights obligations, the rule of law and democratic principles. Since 1995, the EU has included human-right clauses into its trade agreements. This approach is pursued in various EU's development cooperation agreement, such as Generalized System of Preferences (GSP). This mechanism allows exports from developing countries to the EU at preferential tariff rates under the condition that they uphold the fundamental UN human rights principles.<sup>62</sup>

As the sustainable policy in the EU develops, the provision for sustainable development then evolves into a more concrete and comprehensive textual form. The first trade and sustainable development articles appeared in the EU-Cariforum Economic Partnership Agreement (EPA), agreed on 2008, where the rules on social and environmental dialogues were reinforced into fully fledged commitments. For example, Article 73 of the EU-Cariforum EPA introduced an obligation not to lower environmental, labour and other social standards in order to attract foreign direct investment (FDI).<sup>63</sup> The EU-Cariforum EPA also for the first time introduced a monitoring provision on decent work and other areas of sustainable development.<sup>64</sup>

---

<sup>61</sup> Billy A. Melo Araujo, *The EU Deep Trade Agenda: Law and Policy* (Oxford University Press 2016) 67.

<sup>62</sup> *ibid* 68.

<sup>63</sup> Economic Partnership Agreement between the EU and Cariforum States [2008] OJ L289/3, art.73.

<sup>64</sup> *ibid* art. 195.



The current practice of the EU's trade policy gives a high importance to include TSD chapters in bilateral trade agreements, where labour and environmental issues are explicitly addressed. In 2011, the trade agreement between the EU and South Korea was the first FTA to have a stand-alone TSD chapter.<sup>65</sup> The EU-South Korea FTA has also set a new feature to include civil society dialogue mechanism which become a standard attribute of EU's upcoming bilateral trade agreements. It further introduced an ad hoc two-stage process to deal with disputes under the TSD chapter, first is done through consultation and then the setting up of a panel of experts. However, the TSD chapters are not yet covered within the scope of the dispute settlement mechanism, and there are no sanctions for violation of the rules.<sup>66</sup>

Accordingly, each subsequent bilateral trade agreements concluded by the EU contains a dedicated TSD chapter. Nowadays, there are nineteen agreements with the inclusion of TSD chapters, but the state of play of their negotiations and their further implementation varies. This includes the EU trade agreements already in force (fully or provisionally) with Canada, Central America, Andean Community (Colombia, Peru and Ecuador), Georgia, Japan, Moldova, Singapore, South Korea, Ukraine, Vietnam and United Kingdom. Similar chapters are part of the concluded negotiations but not yet ratified with Chile, China, Mercosur, Mexico and New Zealand. The proposals for TSD chapters are also a subject of ongoing FTA negotiations with countries such as Australia, Indonesia and India.<sup>67</sup>

The EU-United Kingdom Trade and Cooperation Agreement (TCA) was the first agreement that allows the Parties to impose rebalancing measures when significant divergences regarding their policies and priorities with respect to labour, social, environmental or climate protection, or with respect to subsidy control, arise and cause material impacts on trade and investment between them.<sup>68</sup> Following the publication of Commission's Communication document on June 2022, titled "The power of trade partnerships: together for green and just economic growth", the EU

---

<sup>65</sup> EU-South Korea FTA, ch.13.

<sup>66</sup> *ibid.*

<sup>67</sup> Commission, 'Sustainable Development in EU Trade Agreements' (*Trade*) <[https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements\\_en](https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements_en)> accessed April 26, 2023.

<sup>68</sup> Trade and Cooperation Agreement between the EU and the UK [2021] OJ L149/10, art. 411.

began to introduce the use of trade sanctions as a measure of last resort.<sup>69</sup> This approach has been applied in the EU-New Zealand Trade Agreement, where the negotiation has been concluded on the same year.

The scope of the sustainable development provisions included in these agreements extends to a wide range of topics. They mainly promote compliance with international environmental and core labour standards, mechanisms to involve civil society organization, dispute settlement mechanism through the establishment of expert panel as well as specific environment and labour issues, such as climate change, biodiversity, forests and timber products, freedom of association, elimination of forced labour and the abolition of child labour. However, there is no “one size fits all” approach with regard to commitments in each agreement. They were different one from the others reflecting varying levels of commitments, specificities and priorities to better tailor the sustainable development objectives to the challenges, needs and capacities of each of the trading partners.<sup>70</sup>

Sustainable development provisions in the agreements with developing countries, such as Vietnam include capacity building program in the form of technical assistance, training and studies as a way to bridge the development gap between the Parties. The agreements with several trading partners in South America, such as EU-Colombia/Peru/Ecuador Trade Agreement and EU-Central America Association Agreement also include provisions on genetic resources protection which refer to the knowledge and practices of indigenous and local communities. These provisions were designed to ensure that sustainable development provisions are in line with the specific challenges of each country or region.

## **2.5 Summary**

As a fundamental instrument in driving global development, international trade is considered one of the most effective ways to achieve world sustainability. The UN 2030 Agenda which is universally agreed upon along with its SDGs has provided a general framework regarding the linkages between international trade and

---

<sup>69</sup> Commission, ‘The power of trade partnerships: together for green and just economic growth’ Communication COM(2022) 409 final < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0409>> accessed 24 April 2023.

<sup>70</sup> *ibid* 6.

sustainable development. Gradually, countries are implementing these guidelines through trade policies that prioritize the principles of sustainability. The EU's founding treaties and its development of trade policies provide a strong mandate to include provision for sustainable development in bilateral trade agreements. As a consequence, there are three notable implications of EU's sustainable trade policies on its bilateral trade agreements: 1) all bilateral trade agreements have to include sustainable development provisions; 2) these provisions evolve and improve systematically along with the development of the EU's sustainability policies; 3) the provisions vary one another reflecting different priorities, needs and challenges of each agreement.

# 3. Analytical Matrix of Sustainable Development Provisions in the EU's Bilateral Trade Agreements

## 3.1 Introduction

Serving as an upstream-step that builds up a solid foundation for comparative legal studies in this thesis, the aim of this chapter is to primarily establish a comparative matrix that can be further utilised to analyse the sustainable development provisions of the three selected agreements (EU BTAs with South Korea, Mercosur, and New Zealand) in the following chapters. The parameters are developed based on examining the scope and content of sustainable development provisions in the EU's bilateral trade agreements. Analysis will be carried out by scrutinising the sustainable development provisions contained in the recent EU's concluded bilateral trade agreements.<sup>71</sup> There are four parameters that are used, which corresponds to each section of this chapter: namely 1) social provisions; 2) environmental provisions; 3) institutional framework and civil society participation as well as 4) enforcement and dispute settlement mechanisms. Based on the analytical matrix established and elaborated in this chapter, these four types of commitments will be further utilised as parameters to compare the three selected EU's bilateral trade agreements according to their relevances in chapter 4.

## 3.2 Social Provisions

Provisions on labour standards have continuously been included in the EU's trade agreements since 1999, when the EU finalized its bilateral trade agreement with South Africa.<sup>72</sup> This approach has developed gradually over time and was formalized with the EU-Korea FTA in 2011 when the labour rights provisions were

---

<sup>71</sup> Ten recent EU's bilateral trade agreements are studied to provide examples of each parameter in the agreements and not for comparative purpose.

<sup>72</sup> Agreement on Trade, Development and Cooperation between the European Community and the Republic of South Africa [1999] OJ L311/3.

combined with standards regarding environmental protection in a TSD chapter.<sup>73</sup> Ever since, labour provisions in EU's bilateral trade agreements have followed a similar model.

The labour provisions are centered to the concept of decent work.<sup>74</sup> There is a general provision on reference to the UN 2030 Agenda for Sustainable Development that was adopted in 2015 and consists of seventeen SDGs. When it comes to labour issues, the SDG 8 promotes full and productive employment and decent work for all. There are also references to some multilateral agreements, such as Parties' commitment to the 2006 Ministerial Declaration by the UN Economic and Social Council on Full Employment and Decent Work as well as 2008 International Labour Organization (ILO) Declaration on Social Justice for a Fair Globalization. The ILO Declaration provides that the Parties shall promote occupational safety and health, decent working conditions for all, labour inspection and non-discrimination in respect of working conditions.<sup>75</sup>

Most prominently, the labour provisions conform to minimum labour standards set out by the 1998 ILO Declaration on Fundamental Principles and Right at Work and its Follow-up, namely: 1) freedom of association and the effective recognition of the right to collective bargaining; 2) the elimination of forced or compulsory labour; 3) the abolition of child labour; and 4) the elimination of discrimination in respect of employment and occupation.<sup>76</sup> These four fundamental principles are based on eight fundamental ILO conventions (Conventions No. 29, No. 87, No. 98, No. 100, No. 105, No. 111, No. 138, No.182). Parties are obliged to ratify and effectively implement these conventions.

In addition, the Parties shall make an effort to ratify the other ILO Conventions. The 2008 ILO Declaration on Social Justice for a Fair Globalization particularly underlines the significance of the ILO governance (priority) conventions. The governance conventions cover increasingly important topics such as labour

---

<sup>73</sup> EU-South Korea FTA, ch.13.

<sup>74</sup> Hradilová and Svoboda (no. 25) 1023.

<sup>75</sup> International Labour Organization, 'ILO Declaration on Social Justice for a Fair Globalization' (*Social Justice Declaration: ILO Declaration on Social Justice for a Fair Globalization* August 13, 2008) <[https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS\\_099766/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang--en/index.htm)> accessed April 29, 2023.

<sup>76</sup> ILO Declaration on Fundamental Principles and Right at Work [1998] 2.

inspections, employment policy or tripartite consultations. FTA parties also generally commit to promoting the ILO’s Decent Work agenda. Various other international labour standards are also referred, such as occupational health and safety in EU-Ukraine Association Agreement,<sup>77</sup> EU-Canada Comprehensive Economic and Trade Agreement (CETA)<sup>78</sup> and EU-Singapore FTA,<sup>79</sup> protection of the rights of migrant workers in EU-Vietnam FTA<sup>80</sup> and minimum wage and labour inspection in EU-Canada CETA<sup>81</sup> and the EU-United Kingdom (UK) TCA.<sup>82</sup>

All recent EU FTAs also include reference to Corporate Social Responsibility (CSR) or Responsible Business Conduct (RBC). Such provisions generally involve cooperation between the Parties on CSR issues and general promotion of CSR. Some agreements also make reference to international instruments such as the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (MNEs), the UN Global Compact, and the ILO Tripartite Declaration of Principles concerning MNEs and Social Policy. Table 1 below provides an overview of the inclusion of several international labour and social standards out of the ILO Fundamental Conventions.

Table 1. Inclusion of several international labour and social standards (excluding ILO Fundamental Conventions)

Trade Agreements	Minimum wage	Occupational health and safety	Labour inspection	Rights of migrant workers	Gender equality	Promotion of CSR/ RBC
South Korea (2011)	x	x	x	x	✓	✓
Andean (2013)	x	✓	x	✓	x	✓
Ukraine (2014)	x	✓	x	x	✓	✓
Canada (2016)	✓	✓	✓	✓	x	✓

<sup>77</sup> EU-Ukraine Association Agreement [2014] art. 339.

<sup>78</sup> EU-Canada CETA [2016] art. 23.3.

<sup>79</sup> EU-Singapore FTA [2018] art. 12.4.

<sup>80</sup> EU-Vietnam FTA [2019] art. 13.14.

<sup>81</sup> EU-Canada CETA [2016] art. 23.5.

<sup>82</sup> EU-UK TCA [2020] art. 388.

Japan (2018)	x	x	x	x	x	✓
Singapore (2018)	x	✓	x	x	✓	✓
Vietnam (2019)	x	x	x	✓	✓	✓
Mercosur (2019)	✓	✓	✓	✓	✓	✓
UK (2020)	✓	✓	✓	✓	✓	✓
New Zealand (2022)	✓	✓	✓	x	✓	✓

Nonetheless, when it comes to labour conditions in EU’s bilateral trade agreements, the focus rests on the ratification of the eight fundamental conventions of the ILO.<sup>83</sup> Where trade partners have not yet ratified these conventions, EU FTAs generally include a commitment to make ”continued and sustained” efforts towards ratification. Where conventions are ratified, there is a commitment to ensure effective implementation in law and practice.

### 3.3 Environmental Provisions

The environmental provisions include a wide and broad range of environmental standards. Initially, they covered only to exceptions to trade commitments that might be used to protect human, animal or plant life or health or to conserve exhaustible natural resources, referring to General Exceptions set out in Article XX of the GATT 1994.<sup>84</sup> However, the provisions now address a wider variety of environmental issues, including climate change, deforestation, marine resources and aquaculture as well as renewable energy. Other environmental provisions facilitate the harmonization of environmental policies, strengthen multilateral environmental agreements (MEAs) or regulate the transfer of green technologies to developing countries.

There are explicit references to numerous MEAs related to areas such as climate change and biological diversity. These provisions commonly reaffirm parties’ commitments to specific MEAs and highlights the need to exchange information

---

<sup>83</sup> Eline Blot, Antoine Oger, James Harrison, ‘Enhancing sustainability in EU Free Trade Agreements: The case for a holistic approach’ (2022) Institute for European Environmental Policy (IEEP) 10.

<sup>84</sup> Axel Berger et al. (no 26) 114.

and cooperate to implement these commitments. Some of the most referred environmental agreements across EU's bilateral trade agreements are the 1992 United Nations Framework Convention on Climate Change (UNFCCC), the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 2015 Paris Agreement and the 1992 Convention on Biological Diversity (CBD), the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer and the 1997 Kyoto Protocol.

Table 2 provides an overview of the MEAs references in recent EU's bilateral trade agreements. The figure shows that relatively newer concluded agreements refer to more MEAs than older agreements. It is also clear that despite the Paris Agreement being a relatively newer MEA, it has been consistently referred to in all recent agreements.

Table 2. Explicit references to main MEAs

Trade Agreements	UNFCCC	Paris Agreement	Kyoto Protocol	Montreal Protocol	CBD	CITES
South Korea (2011)	✓	Irrelevant	✓	x	x	x
Andean (2013)	✓	Irrelevant	✓	✓	✓	✓
Ukraine (2014)	✓	Irrelevant	✓	x	✓	x
Canada (2016)	x	x	x	x	x	✓
Japan (2018)	✓	✓	x	x	✓	✓
Singapore (2018)	✓	✓	✓	x	✓	✓
Vietnam (2019)	✓	✓	✓	x	✓	✓
Mercosur (2019)	✓	✓	x	✓	✓	✓
UK (2020)	✓	✓	x	✓	✓	✓



New Zealand (2022)	✓	✓	x	✓	✓	✓
--------------------	---	---	---	---	---	---

In addition to the MEAs related commitments, environmental provisions go further as they include more specific environmental areas. These provisions include actions that parties must take to adopt and implement national or international standards. Such provisions also outline areas for collaboration and information sharing between trading partners. Some of them make declarations about initiatives to encourage trade and investment activities that are environmentally friendly. Table 3 lists recent agreements which contains such articles as well as the specific environmental areas they address.

Table 3. Specific environmental areas that are included in environmental provisions

Trade Agreements	Biodiversity	Forest & timber products	Marine resources & aquaculture	Climate change	Trade for Sustainable Development	Responsible management of supply chains
South Korea (2011)	x	x	x	x	✓	x
Andean (2013)	✓	✓	✓	✓	✓	x
Ukraine (2014)	x	✓	✓	x	✓	✓
Canada (2016)	x	✓	✓	x	x	x
Japan (2018)	✓	✓	✓	x	x	x
Singapore (2018)	x	✓	✓	x	x	x
Vietnam (2019)	✓	✓	✓	✓	✓	x
Mercosur (2019)	✓	✓	✓	✓	✓	✓
UK (2020)	✓	✓	✓	✓	✓	✓

New Zealand (2022)	✓	✓	✓	✓	✓	✓
--------------------	---	---	---	---	---	---

The article on biodiversity is the issue most addressed by a specific article in the recent bilateral trade agreements. It include commitments to combat illegal wildlife trading and to conserve and use biodiversity in a sustainable manner. Article on sustainable use of forests and timber include promotion to trade in legal and sustainable forest products, with what constitutes legal and sustainable specified to be determined based on the law in the producing country. These articles include provisions for the exchange of information and cooperation on sustainable forest management.

The article on sustainable use of marine resources and aquaculture include implementing measures to combat illegal, unreported and unregulated (IUU) fishing, adhering to long-term fish stock conservation measures, promoting sustainable aquaculture, and cooperation and information exchange. Climate change article include commitment to effectively implement international climate agreements. Provisions aimed at making trade more supportive of climate policy and/or making trade contribute positively to climate policy objectives are also typically included in the article. Trade for sustainable development and responsible management of supply chains article encourages and supports trade and investment in environmentally friendly goods and services.

### **3.4 Institutional Framework and Civil Society Participation**

Since the EU-South Korea trade agreement in 2011, the institutional structure of all EU TSD chapters is based on the work of three main bodies that are involved in the process of implementing, monitoring and enforcing the obligations. The three main bodies are: 1) Trade and Sustainable Development Committee; 2) Domestic Advisory Group (DAG) and 3) Joint Civil Society Dialogue.

The TSD Committee is established to assist in the implementation of sustainable development provisions. Depending on the terms of the agreement, such a body

may be referred to as a committee,<sup>85</sup> sub-committee,<sup>86</sup> or board.<sup>87</sup> they are made up of high-level representatives from each Party's administration responsible for labour, environmental, and trade matters. They can perform a variety of functions, such as identifying actions to achieve sustainable development objectives, making recommendations for the proper implementation of sustainable development provisions, identifying areas of cooperation, assessing the impact of the agreement on labour and the environment, and resolving specific issues that arise from the application of sustainable development provisions. In some agreements, they may receive and consider public submissions on TSD matters.<sup>88</sup> This committee usually gathers once per year and reports to Trade Committee of the respective trade agreement. This constitutes a multi-layered cooperation and consultation mechanism within the treaty framework.

The second and third body established by the TSD Chapters represent the civil society involvement. It is increasingly recognised that civil society plays an important role in collecting information and monitoring the compliance of sustainable development commitments that governments agree to in international treaties. The sustainable development provisions in the EU's bilateral trade agreements have established innovative structures to enhance civil society participation in the implementation of labour and environmental standards at the international level.<sup>89</sup>

The Domestic Advisory Group (DAG) is established for each parties and consists of civil society actors and local public authorities. Joint Civil Society Dialogue is an open forum composed by civil society (including DAGs) from both sides and the governments which on the EU side are represented by the European Commission. While DAG is a membership-based closed mechanism, the Joint Civil Society is not member-based and therefore more open and less structured than the

---

<sup>85</sup> EU-Canada CETA [2016] art. 22.4(1).

<sup>86</sup> EU-Andean Community Trade Agreement [2013] art. 280.

<sup>87</sup> EU-Singapore Free Trade Agreement [2011] art. 12.15(2).

<sup>88</sup> EU-Andean Community Trade Agreement [2013] art. 282.

<sup>89</sup> Marco Bronckers, Giovanni Gruni, 'Retooling the Sustainability Standards in EU Free Trade Agreements' (2021) 24 *Journal of International Economic Law* 25, 34.

DAGs.<sup>90</sup> Both bodies are entitled to express views and making recommendations on trade related aspects of sustainable development. The the Joint Civil Society Dialogue meetings are usually held once per year, together with TSD Committee meetings. The views of the Joint Civil Society Dialogue may be submitted to TSD Committee.

All EU's trade agreements also allow the general public to submit comments and views on sustainability matters or the implementation of sustainable development provisions. Public submissions can be made to the parties themselves or the institutional mechanisms established under the agreements. Under the EU-South Korea FTA, the views, opinions, or findings of the Civil Society Forum can be submitted to the Parties directly or through the DAGs. This provision is part of TSD chapters in all bilateral trade agreements ever since.

### **3.5 Enforcement and Dispute Settlement Mechanism**

With regard to implementation, all obligations in the provision of sustainable development are contained in commitments related to social and environment areas. In both social and environment provisions, the agreement envisages the parties' "right to regulate", which provides that each party has the right to establish its own levels of domestic labour and environmental protection. All agreements also provide a non-derogation clause which prohibits the parties to waive or derogate from its environment and labour domestic law, or to a certain extent fail to effectively enforce them, as a way to encourage trade or investment activities.

All EU's bilateral trade agreements have a state to state dispute settlement (SSDS) mechanism based on the establishment of an arbitration panel, with the decisions rulings are binding upon the parties.<sup>91</sup> Failure to implement the panel report may lead the claiming party to request compensation or to suspend obligations deriving from the agreements in its relationships with the respondent. Both kind of such remedies are regarded as temporary measures, as the main aim of the dispute

---

<sup>90</sup> Deborah Martens, Diana Potjomkina, and Jan Orbie, 'Domestic Advisory Groups in EU Trade Agreements: Stuck at the Bottom or Moving up the Ladder?' (Friedrich Ebert Foundation, 2020) <<https://biblio.ugent.be/publication/8690502>> accessed April 5, 2023.

<sup>91</sup> Adinolfi (no 5) 38.

settlement and enforcement mechanism is to ensure compliance with the relevant agreement.<sup>92</sup>

However, in all EU's bilateral trade agreements (excluding with the UK and New Zealand), this general SSDS procedure does not apply for the infringement of the TSD chapters. Instead, the agreements establish a special procedure, based on a common dialogue between the Parties which also comprises the civil society. As such, sustainable development provisions exclude the adoption of countermeasures against the non-complying party.<sup>93</sup>

The resolution of disputes arising from violations of the TSD chapter is divided into three stages.<sup>94</sup> First, any matter arising under the chapter has to be brought to the attention of the other party. In some agreements, Parties may be permitted to request that the relevant TSD committee considers the matter.

In the second stage, if a mutually satisfactory resolution is not reached during the government consultation, a panel of experts may be convened to support the Parties in resolving the dispute. The panel is composed of three experts appointed on the basis of a list established by the Committee. They serve in their independent capacity and must not be directed by any organisation or government. They must also have specialised knowledge or competence in the issues covered by the sustainable development provisions or in international dispute resolution.<sup>95</sup> This panel will then produce a report containing recommendations, which must usually be publicly published within a certain timeframe by the Parties. The final report by the panel of experts has to set out the findings of fact, including as to whether the responding party has conformed with its obligations under the TSD chapter and the rationale behind its findings, determinations and recommendations.

After the panel of experts has delivered its report, in the final stage, Parties are required to “make their best efforts to accommodate” the panel's recommendations<sup>96</sup> or to “discuss appropriate measures to be implemented taking

---

<sup>92</sup> *ibid.*

<sup>93</sup> *ibid.* 39.

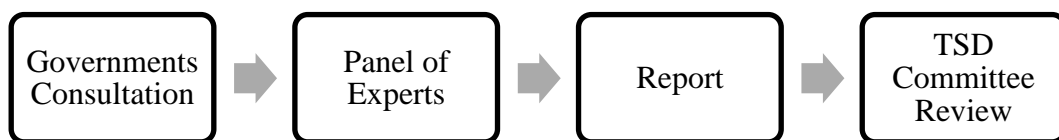
<sup>94</sup> Madelaine Moore and Christoph Scherrer, ‘Conditional or Promotional Trade Agreements – Is Enforcement Possible?’ (*Friedrich-Ebert-Stiftung in Asia* June 2017) <<https://asia.fes.de/news/conditional-or-promotional-trade-agreements-is-enforcement-possible/>> accessed April 4, 2023.

<sup>95</sup> Adinolfi (no 5) 39.

<sup>96</sup> EU-South Korea FTA [2011] art. 13.15(2); EU-Ukraine Association Agreement [2014] art. 301(2).

into account the panel of experts' report and recommendations".<sup>97</sup> In some agreements, the Party to which the recommendations are addressed may present an action plan.<sup>98</sup> In addition, the Party to which the recommendations are addressed may be required to inform the TSD Committee and/or Domestic Advisory Groups of how it intends to address the panel of experts' report.<sup>99</sup> Finally, the implementation of recommendations made by the panel of experts and the enforcement of the TSD Chapter is reviewed through regular TSD Committee meetings. This whole dispute resolution process can be illustrated in the chart 1 below.

Chart 1. Dispute Settlement Mechanism in the EU's TSD Chapter



This kind of dispute resolution process which relies on cooperation and consultation mechanism has invited a lot of criticism and debate about its effectiveness in implementing sustainability provisions.<sup>100</sup> Moreover, throughout the history of the implementation of the TSD chapter, there was only one case that reached the panel stage, namely the case of the South Korea's Ratification of the ILO Fundamental Conventions. The process of this case also took quite a long time, from the initial DAG report in 2013 to the panel report in 2021 (the case will be further analysed in the next chapter).<sup>101</sup>

The EU-UK TCA was the first bilateral trade agreement where the EU introduce temporary remedies in disputes concerning the interpretation and application of the non-regression chapters on labour and social standards and the environment and climate, which reflects the TCA's focus on level playing field. Such remedies, however, are not available for disputes involving obligations on the implementation

<sup>97</sup> EU-Singapore FTA [2011] art. 12.17(9).

<sup>98</sup> EU-Andean Community Trade Agreement [2013] art. 285(4); EU-Canada CETA [2016] art. 23.10(12) and 24.15(11).

<sup>99</sup> EU-Japan EPA [2018] art. 16.18(6); EU-Vietnam FTA [2019] art. 13.17(9).

<sup>100</sup> Moore and Scherrer (no. 89) 12.

<sup>101</sup> Maria J. García, 'Sanctioning Capacity in Trade and Sustainability Chapters in EU Trade Agreements: The EU-Korea Case' (2022) 10 Politics and Governance 58, 60.

of international agreements. Under certain conditions, the TCA also allows Parties to take appropriate rebalancing measures to address the situation in which significant divergences between the Parties in labour, social, environmental or climate protection areas have material impacts on trade or investment.<sup>102</sup>

Following the publication of “The power of trade partnerships: together for green and just economic growth” Communication, the EU began to introduce the use of trade sanctions as a measure of last resort.<sup>103</sup> This approach was first used in the recent EU-New Zealand Trade Agreement, in which the agreement allows the Parties to impose temporary remedies for specific kind of violations, which significantly undermine the goals and objectives of the Paris Agreement or when there are serious violations of the ILO's fundamental principles.<sup>104</sup>

### **3.6 Summary**

In order to establish a well-structured analytical framework for further comparative legal studies on the sustainable development provisions of the three selected EU BTAs with South Korea, Mercosur, and New Zealand, this chapter provides an overview of the four selected parameters by providing examples of their presence in recent EU's bilateral trade agreements. These parameters are elaborated based on the scope, content and level of commitment of the provisions. Social and environmental provisions analyse the similarities and differences of each agreement in setting out the obligations of each party based on international social and environmental standards. Institutional framework and civil society participation compare the forms and roles of agreed bodies and the level of involvement of civil society in these bodies. Enforcement and dispute settlement mechanism examines the likeness and otherness of the procedures agreed upon in resolving any disputes between the parties. The chart 2 below symbolises the four parameters applied to dissect comparative elements of the three selected EU's bilateral trade agreements. This systematic analytical matrix with those four synergetic parameters is employed for further thorough comparative legal analysis on the sustainable development provisions of the EU-South Korea FTA, the EU-Mercosur Trade Agreement and

---

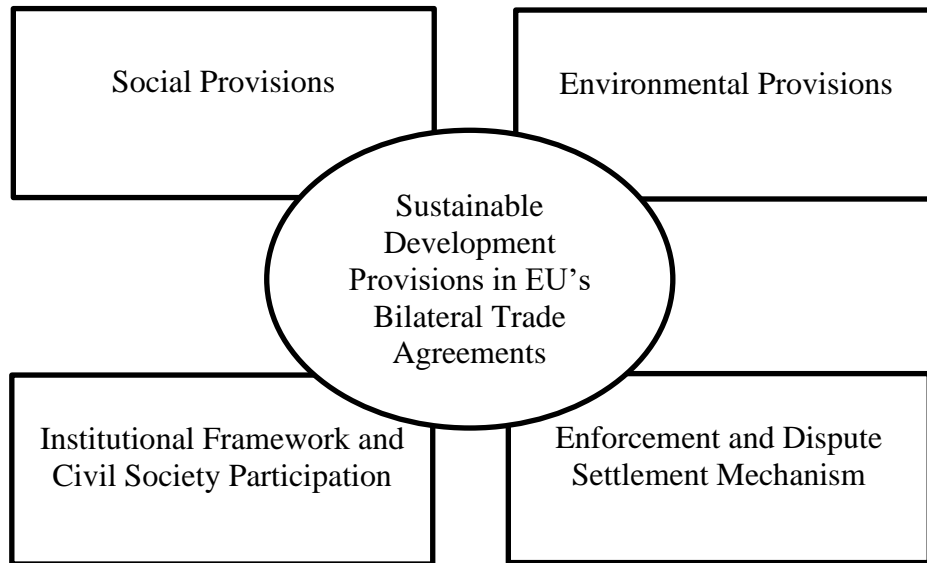
<sup>102</sup> Jean-Baptiste Velut, Daniela Baeza Breinbauer, Marit de Bruijne, et.al, “Comparative Analysis of Trade and Sustainable Development Provisions in Free Trade Agreements” (2022) LSE Consulting, 63.

<sup>103</sup> Commission, ‘The power of trade partnerships’ Communication (no 64).

<sup>104</sup> EU-New Zealand FTA [2022] art. 26.16(2).

the EU-New Zealand Trade Agreement in a coherent and consistent manner during the next chapter. Moreover, it is also worth noting that this innovative analytical matrix established in this chapter might have the potential of demonstrating a constructive model for comparative legal studies on sustainable development profiles of a broader range of BTAs.

Chart 2. Parameters used to compare the three selected agreements





# 4. Legal Analysis on the Selected EU's Bilateral Trade Agreements from a Comparative Perspective

## 4.1 Introduction

Based on the systematic analytical matrix established in chapter three, this chapter provides a comparative legal analysis on the three selected bilateral trade agreements, in particular the EU-South Korea FTA, the EU-Mercosur Trade Agreement and the EU-New Zealand Trade Agreement. As such, this chapter is dedicated to answer the second and the third sub-questions. The likeness and otherness between the selected agreements will be investigated based on parameters set up from each agreement's scope and content of sustainable development provisions. The first section provides general analysis of each agreement to present background context and an overview of each agreement. The rest of the sections dives into the comparison between the selected agreements, based on four parameters set out in the previous chapter, namely 1) social provisions; 2) environmental provisions; 3) institutional framework and civil society participation as well as 4) enforcement and dispute settlement mechanisms. A conclusion will be drawn from each comparison at the end of this chapter.

## 4.2 General Analysis on EU's Bilateral Trade Agreement with South Korea, Mercosur and New Zealand

The EU-South Korea FTA was signed on October 2009 and provisionally applied from July 2011 before it was ratified by all signatories in December 2015.<sup>105</sup> The agreement was the first bilateral trade agreement between the EU and an Asian country.<sup>106</sup> In this comprehensive agreement, both parties agreed to remove more trade restrictions than any prior EU's agreement. It was also the first FTA signed by

---

<sup>105</sup> Commission, 'EU Trade Relationship with South Korea' (*EU Trade Relationships by Country/Region*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-korea\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-korea_en)> accessed 2 May 2023.

<sup>106</sup> *ibid.*

the EU that included a stand-alone chapter on Trade and Sustainable Development.<sup>107</sup> The chapter reinforces the EU's and Korea's commitment to sustainable development by including labor and environmental (including climate) protection into their bilateral economic relations.

The EU-Mercosur Trade Agreement was part of an inter-regional Association Agreement which aim to strengthen the transatlantic cooperation in the field of economics, politics and social relations.<sup>108</sup> The EU started the negotiations with the four founding members of Mercosur (Argentina, Brazil, Paraguay and Uruguay) in 2000. It took almost twenty years before it was concluded in principle on June 2019.<sup>109</sup> Despite this agreement, the ratification process has proven very challenging. Apart from economic protectionism sentiments, the deal has been widely criticised by civil society and EU member states over sustainability concerns. Sustainability Impact Analysis (SIA), which is a standard document for any EU bilateral agreement, failed to be finalized by the Commission before the agreement was signed.<sup>110</sup> Other concerns were specifically associated with the massive increase of deforestation in Amazon rainforest and the perceived lack of efforts to tackle the problems by the Brazilian ruling government.<sup>111</sup> As a result, the European Parliament, in its resolution adopted on October 2020 blocked the ratification process. However, the recent change of administration in Brazil (which has a contrasting environmental policy approach) has offered a new optimism to speed up the ratification process.<sup>112</sup>

---

<sup>107</sup> *ibid.*

<sup>108</sup> Commission, 'EU-Mercosur Trade Agreement' (*EU Trade Relationships by Country/Region*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercursosur/eu-mercursosur-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercursosur/eu-mercursosur-agreement_en)> accessed 2 May 2023.

<sup>109</sup> *ibid.*

<sup>110</sup> Amandine Van Den Berghe, 'What's going on with the EU-Mercosur Agreement' (2021) <<https://www.clientearth.org/latest/latest-updates/news/what-s-going-on-with-the-eu-mercursosur-agreement/>> accessed 6 May 2023.

<sup>111</sup> Justin Kopek, 'Back to the Negotiating Table: Renewed Prospects of an EU-Mercosur Free Trade Agreement' (2023) <<https://www.thedialogue.org/blogs/2023/04/back-to-the-negotiating-table-renewed-prospects-of-an-eu-mercursosur-free-trade-agreement/>> accessed 6 May 2023.

<sup>112</sup> Isabel Marques da Silva, Explained: 'Why the EU-Mercosur trade deal could finally be ratified this year' (2023) <<https://www.euronews.com/my-europe/2023/02/01/explained-why-the-eu-mercursosur-trade-deal-could-finally-be-ratified-this-year>> accessed 6 May 2023.

The EU-New Zealand Trade Agreement negotiations began in June 2018 and concluded in June 2022 after four years of negotiations.<sup>113</sup> The FTA negotiations expand on the parties' existing collaboration and shared values, particularly in the area of sustainability. It has been hailed as one of the most progressive EU's bilateral trade agreements to date due to both Parties' readiness to collaborate and incorporate more measures relating to sustainability and trade.<sup>114</sup> It also includes the most ambitious sustainability commitments ever in a trade deal. The agreement is the first to include the EU's new approach to the TSD chapter, as outlined in the Communication "The power of trade partnerships: working together for green and just economic growth", with a strengthened enforcement mechanism.<sup>115</sup> The agreement also include some new specific articles related to gender equality and fossil fuel subsidy reform.

### 4.3 Social Provisions

In the context of social provision, sustainable development provisions in EU's bilateral agreements are based on the concept of decent work. According to the ILO, decent work involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.<sup>116</sup>

In the general provision, all three agreements recall the importance of 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work.<sup>117</sup> With the exception of South Korea's agreement, two other agreements also recall the ILO's 2008 Declaration on Social Justice for a Fair Globalisation. All three agreements also mention all of the UN's Development Agendas. While the agreements with Mercosur and New Zealand mention Agenda

---

<sup>113</sup> Commission, 'EU-New Zealand Trade Agreement' (*EU Trade Relationships by Country/Region*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement_en)> accessed 6 May 2023.

<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*

<sup>116</sup> ILO, 'Decent Work' <<https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> accessed 8 May 2023.

<sup>117</sup> EU-South Korea FTA [2011] art.13.1; EU-Mercosur FTA [2019] art. x.2; EU-New Zealand FTA [2022] art. 19.1.

21 and 2030 Agenda, South Korea only mentions UN Agenda 21 because it was signed before the existence of the UN 2030 Agenda and its SDGs.<sup>118</sup> All selected agreements also acknowledge that sustainable development covers the three pillars of economic, social and environment and these three pillars are interdependent in nature and mutually reinforcing.

All selected agreements also oblige the parties to ratify and effectively implement the eight fundamental ILO Conventions (Conventions No. 29, No. 87, No. 98, No. 100, No. 105, No. 111, No. 138, No.182) which are based on four fundamental principles: 1) freedom of association; 2) forced labour; 3) child labour; and 4) discrimination.<sup>119</sup> The agreement with New Zealand also reflects the addition of two other fundamental conventions, namely safety and health (conventions no. C155 and C187) based on the 110th International Labour Conference in 2022.<sup>120</sup> This obligation represents the core commitment of social provision in EU bilateral trade agreements. If trade partners have not yet ratified these conventions, the provision include a commitment to make “continued and sustained” efforts towards ratification. If conventions are ratified, there is a commitment to ensure effective implementation in law and practice. The agreement with New Zealand even goes one step further as to introduce the possibility of sanctions for the violation of the fundamental ILO conventions.<sup>121</sup>

With regard to the ILO fundamental conventions, all three trade partners have different ratification status and none of the three have completed the ratifications. When concluding the agreement, South Korea has four ratifications gaps and it has triggered the dispute settlement proceeding brought forward by the EU. Only after the panel’s decision, South Korea ratified three fundamental conventions (one gap C105 not even ratified until now).<sup>122</sup> Brazil also has one convention C087 on freedom of association has yet to be ratified, while New Zealand has two conventions gap, both on freedom of association (C087) and child labour (C138).

---

<sup>118</sup> EU-Mercosur FTA [2019] art. x.1(2); EU-New Zealand FTA [2022] art. 19.1(1).

<sup>119</sup> EU-South Korea FTA [2011] art.13.4; EU-Mercosur FTA [2019] art. x.4; EU-New Zealand FTA [2022] art. 19.3.

<sup>120</sup> EU-New Zealand FTA [2022] art. 19.3(4).

<sup>121</sup> EU-New Zealand FTA [2022] art. 26.16(2).

<sup>122</sup> García (no. 96) 68.

The table 4 below provides an overview of the selected trade partners ratification status of ILO Fundamental Conventions.

Table 4. Ratification Status of ILO Fundamental Conventions<sup>123</sup>

Trade Agreements		South Korea	Mercosur				New Zealand
			Argentina	Brazil	Paraguay	Uruguay	
Conclusion of negotiation		2009	2019				2022
Freedom of Association	C087	2021	1960	x	1962	1954	x
	C098	2021	1956	1952	1966	1954	2003
Forced labour	C029	2021	1950	1957	1967	1995	1938
	C105	x	1960	1965	1968	1968	1968
Discrimination	C100	1997	1956	1957	1964	1989	1983
	C111	1998	1968	1965	1967	1989	1983
Child labour	C138	1999	1996	2001	2004	1977	x
	C182	2001	2001	2000	2001	2001	2001

In addition to the mandatory commitments on core labour rights, the three agreements also include promotions on other international social and labour standards. Among other standards, agreement with Mercosur and New Zealand also make references to minimum wage, occupational health and safety, labour inspection and rights of migrant workers.<sup>124</sup> All selected agreements also mention other social issues, such as gender equality and promotion of Corporate Social Responsibility (CSR) or Responsible Business Conduct (RBC).<sup>125</sup> Table 5 below shows the inclusion of other international labour standard and social issues.

Table 5. Inclusion of other international labour standards and social issues

Trade Agreements	Other labour/ social standards (degree of commitment)					
	Minimum wage	Occupational health and safety	Labour inspection	Rights of migrant workers	Gender equality	CSR/ RBC
South Korea (2011)	x	x	x	x	✓ (promotional)	✓ (promotional)

<sup>123</sup> ILO, 'Ratifications by Country' (*Information System on International Labour Standards*) <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11001:0::NO::>> accessed 9 May 2023.

<sup>124</sup> EU-Mercosur FTA [2019] art. x.4(10); EU-New Zealand FTA [2022] art. 19.3(8) and 19.3(9).

<sup>125</sup> EU-South Korea FTA [2011] art.13.4(2), 13.6 (2); EU-Mercosur FTA [2019] art. x.13(f), x.11(1); EU-New Zealand FTA [2022] art. 19.4, 19.12(1).

Mercosur (2019)	✓ (promotional)	✓ (promotional)	✓ (promotional)	✓ (promotional)	✓ (promotional)	✓ (promotional)
New Zealand (2022)	✓ (promotional)	✓ (obligatory)	✓ (obligatory)	x	✓ (promotional/ dedicated article)	✓ (promotional)

Although the three agreements show similarities in making references, the level of commitment agreed in each agreement varies significantly from one another. For instance, reference on occupational health and safety as well as labour inspection in agreement with Mercosur is only on promotional basis.<sup>126</sup> Meanwhile, the same provisions found in agreement with New Zealand has obligatory nature.<sup>127</sup> Furthermore, the agreement with New Zealand provides a specific stand-alone article dedicated to gender equality under the name “Trade and Gender Equality”, which set out extensive measures to promote and advance women economic empowerment in the parties’ trade and investment relationship, while the other two agreements merely “recognise the importance” of gender equality as a basis for further cooperation activities.<sup>128</sup>

#### 4.4 Environmental Provisions

In the general provision on context and objectives, all three agreements make a reference to the 1992 Rio Declaration on Environment and Development.<sup>129</sup> The agreement with Mercosur includes recognition of Common but Differentiated Responsibilities (CBDR) principle, reflecting the different level of development between the parties.<sup>130</sup> The agreement with New Zealand also highlights the urgent need to address climate change as outlined in the Intergovernmental Panel on Climate Change Special Report on Global Warming of 1.5°C.<sup>131</sup>

The three selected agreements also refer to Multilateral Environment Agreement (MEA) under the UNFCCC framework, with EU-South Korea FTA refer to 1997

<sup>126</sup> EU-Mercosur FTA [2019] art. x.4(10).

<sup>127</sup> EU-New Zealand FTA [2022] art. 19.3(9).

<sup>128</sup> EU-South Korea FTA [2011] art.13.4(2); EU-Mercosur FTA [2019] art. x.13(f); EU-New Zealand FTA [2022] art.19.4.

<sup>129</sup> EU-South Korea FTA [2011] art.13.1(1); EU-Mercosur FTA [2019] art. x.1(2); EU-New Zealand FTA [2022] art.19.1(1).

<sup>130</sup> EU-Mercosur FTA [2019] art. x.1(5).

<sup>131</sup> EU-New Zealand FTA [2022] art.19.1(4).

Kyoto Protocol while the other two agreements refer to 2015 Paris Agreement, which superseded Kyoto Protocol as the principal regulatory instrument governing the global response to climate change.<sup>132</sup> The agreement with Mercosur and New Zealand also mention other MEAs, such as the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer and the 1992 Convention on Biological Diversity (CBD). All three agreements reaffirm the parties commitment to effectively implement the MEAs that they have ratified and entered into force.<sup>133</sup> The table 6 below exhibit the references of MEAs that are referred in each agreement.

Table 6. Explicit references of MEAs

Trade Agreements	UNFCCC	Paris Agreement	Kyoto Protocol	Montreal Protocol	CBD	CITES
South Korea (2011)	✓	Irrelevant <sup>134</sup>	✓	x	x	x
Mercosur (2019)	✓	✓	x	x	✓	✓
New Zealand (2022)	✓	✓	x	✓	✓	✓

With regard to the commitments under MEAs, the agreement with New Zealand also binds the parties to effectively implement the Paris Agreement’s Nationally Determined Contributions (NDC).<sup>135</sup> Within the framework of the UNFCCC, NDC is non-binding as such, since there is no obligation for parties to implement or achieve it.<sup>136</sup> Therefore, the fact that bilateral trade agreement obliges parties to implement NDC is a major breakthrough in advancing global environmental protection. The agreement with New Zealand also provides the possibility of trade

<sup>132</sup> EU-South Korea FTA [2011] art.13.5(3); EU-Mercosur FTA [2019] art. x.5(2); EU-New Zealand FTA [2022] art.19.6(2).

<sup>133</sup> EU-South Korea FTA [2011] art.13.5(2); EU-Mercosur FTA [2019] art. x.5(3); EU-New Zealand FTA [2022] art.19.5(2).

<sup>134</sup> The agreement was concluded before the Paris Agreement.

<sup>135</sup> EU-New Zealand FTA [2022] art.19.6(2).

<sup>136</sup> Daniel Bodansky, ‘Paris Agreement: Introductory Note’ United Nations Audiovisual Library of International Law <[https://legal.un.org/avl/pdf/ha/pa/pa\\_e.pdf](https://legal.un.org/avl/pdf/ha/pa/pa_e.pdf)> accessed 9 May 2023.

sanction in the case of violation which results from “any action or omission that materially defeats the object and purpose of the Paris Agreement”.<sup>137</sup>

In addition to the MEAs related obligations, the agreements also included several commitments in specific environmental areas. These commitments are set forth in dedicated articles, which regulate promotional cooperation between parties in the environmental field. Table 7 displays specific articles on environmental areas that are included in environmental provisions.

Table 7. Specific articles on environmental areas

Trade Agreements	Biodiversity	Forest	Fisheries & aquaculture	Climate change	Trade for Sustainable Development	Responsible management of supply chains	Fossil fuel subsidy reform
South Korea (2011)	x	x	x	x	✓	x	x
Mercosur (2019)	✓	✓	✓	✓	✓	✓	x
New Zealand (2022)	✓	✓	✓	✓	✓	✓	✓

It is apparent that the agreement with South Korea contains the simplest environmental commitments among other agreements. Eventhough the articles have similar titles, they have different level of commitments. The article on trade for sustainable development in the agreement with South Korea and Mercosur only binds the parties to strive to facilitate and promote trade and foreign direct investment in environmental goods and services.<sup>138</sup> The agreement with New Zealand is more concrete on activities and actions to facilitate sustainable development through trade and investment, with the addition of an annex containing non-exhaustive list of specific environmental goods and services of which the trade will be liberalised.<sup>139</sup>

<sup>137</sup> EU-New Zealand FTA [2022] art.26.16(2).

<sup>138</sup> EU-South Korea FTA [2011] art.13.6; EU-Mercosur FTA [2019] art. x.12.

<sup>139</sup> EU-New Zealand FTA [2022] art.19.11 and Annex 19.



On articles related to biodiversity, in addition to the measures aiming to tackling illegal wildlife trade, conservation and sustainable use of the CITES-listed species specified under the agreement with Mercosur, the agreement with New Zealand adds up by including explicit provisions recognising the knowledge and practices of indigenous and/or local communities in the contribution the conservation and sustainable use of biological diversity.<sup>140</sup> The agreement with New Zealand also includes a new article on fossil fuel subsidy reform which has never been stated in any previous EU's bilateral trade agreements.<sup>141</sup> In this article, the Parties recall the role fossil fuel subsidies play in the climate crisis and their need to be phased out. The Parties also recognise that fossil fuel subsidies distort markets, disadvantage renewable and clean energy and are inconsistent with the goals of the Paris Agreement.<sup>142</sup>

#### **4.5 Institutional Framework and Civil Society Participation**

This part will investigate the institutional frameworks that have been established by the three selected EU's bilateral trade agreements in each's sustainable development provisions. As analysed in the previous chapter, the institutional framework established and developed is centered on three bodies, namely the Sub-Committee on Trade and Sustainable Development, the Domestic Advisory Group (DAG) and the Civil Society Forum.

All selected agreements establishes Sub-Committees on Trade and Sustainable Development, which consists of senior government officials from the parties. The agreement with South Korea states that the Sub-Committee meet within the first year of implementation and thereafter as necessary to oversee the implementation of TSD chapter.<sup>143</sup> The agreement with Mercosur expands it's functions with more concrete tasks, such as to establish rules of procedures, to facilitate and to monitor the implementation (including cooperation activities), to carry out tasks regarding consultation and to make recommendations to the Trade Committee.<sup>144</sup> With regard

---

<sup>140</sup> EU-Mercosur FTA [2019] art. x.7; EU-New Zealand FTA [2022] art.19.8.

<sup>141</sup> EU-New Zealand FTA [2022] art.19.7.

<sup>142</sup> *ibid.*

<sup>143</sup> EU-South Korea FTA [2011] art.13.12.

<sup>144</sup> EU-Mercosur FTA [2019] art. x.14.

to cooperation, Mercosur's agreement sets out an extensive list of activities in the form of capacity building under article "Working together on trade and sustainable development".<sup>145</sup> This reflects the nature of the north-south technical assistance cooperation and confirms the application of the CBDR principles.

The three agreements also establishes Domestic Advisory Groups (DAG) as a monitoring mechanism to involve civil society, though with different nature. The main DAG's role is to advise the implementation of the agreement. South Korea's agreement sets out a broad and general provision on the role of DAG, which meet annually and consists of independent representative organisations of civil society in a balanced representation of environment, labour and business organisations.<sup>146</sup> The DAG provision in Mercosur's agreement has similar characteristics but different scope of work. The DAG's role is not only dedicated to sustainable development provisions, but also to the whole agreement.<sup>147</sup> Similarly, New Zealand's agreement also envisages the establishment of a DAG with the scope of work for the whole agreement. New Zealand's agreement also include a special provision which require the participation of Māori representatives in its DAG.<sup>148</sup>

Similar approach also corresponds with the Civil Society Forum commitments. South Korea's agreement provides that Civil Society Forum as a dialogue mechanism between each parties' DAGs where they meet annually. The participant of this dialogue will be selected by each parties' DAGs among their members.<sup>149</sup> Mercosur's agreement expands the scope of this forum to cover the whole agreement, not only for sustainable development provisions.<sup>150</sup> New Zealand's agreement also envisage similarly with the expanded scope of work and the mandatory participation of Māori representatives. Furthermore, New Zealand's agreement also expand the participants list to include not only DAGs members, but also all independent civil society organisations established in the territories of the Parties.<sup>151</sup>

---

<sup>145</sup> EU-Mercosur FTA [2019] art. x.13.

<sup>146</sup> EU-South Korea FTA [2011] art.13.12-14.

<sup>147</sup> EU-Mercosur FTA [2019] art. x.14.

<sup>148</sup> EU-New Zealand FTA [2022] art.24.6.

<sup>149</sup> EU-South Korea FTA [2011] art.13.13.

<sup>150</sup> EU-Mercosur FTA [2019] art. x.15.

<sup>151</sup> EU-New Zealand FTA [2022] art.24.7.

To summarise this comparative analysis, table 8 shows the differences between the selected bilateral trade agreements in the context of institutional framework. The provisions has expanded over time and also differs one another reflecting different parties nature and specificities.

Table 8. Differences of institutional framework established by the agreements

Institutional Bodies	South Korea	Mercosur	New Zealand
Sub-Committee	Broad and basic provision.	<ul style="list-style-type: none"> <li>• Expanded list of tasks.</li> <li>• Extensive cooperation on capacity building.</li> </ul>	Expanded list of tasks.
DAG	Basic role of DAG for TSD chapter.	Expanded scope to include the whole agreement.	<ul style="list-style-type: none"> <li>• Expanded scope to include the whole agreement.</li> <li>• Mandatory Māori representation.</li> </ul>
Civil Society Forum	<ul style="list-style-type: none"> <li>• Basic role of the Forum for TSD chapter.</li> <li>• Participation based on DAG's membership.</li> </ul>	<ul style="list-style-type: none"> <li>• Expanded scope to include the whole agreement.</li> <li>• Participation based on DAG's membership.</li> </ul>	<ul style="list-style-type: none"> <li>• Expanded scope to include the whole agreement.</li> <li>• Mandatory Māori representation.</li> <li>• Expanded participation to all CSOs.</li> </ul>

## 4.6 Enforcement and Dispute Settlement Mechanism

Since the first time the provision for sustainable development was materialised in the form of a stand-alone Trade and Sustainable Development chapter, all EU's dispute resolution mechanisms for such provisions have been excluded from a general State to State Dispute Settlement (SSDS) which applies to all other commitments in the agreement.<sup>152</sup> Instead, dispute settlement for sustainable development provisions have been based on mechanisms of cooperation, dialogue and consultation. The previous chapter has described in detail the procedure set out by the agreement, which includes three stages, starting from the consultation stage regarding alleged violations of commitments to the implementation of the decision of the panel of experts.

<sup>152</sup> Hradilová and Svoboda (no 25) 1035.

Such a mechanism is contained in the agreement with South Korea and Mercosur.<sup>153</sup> Any possible disputes will be resolved primarily by discussion between the parties. The panel of expert's finding of non-compliance would not certainly impose any obligations on the violating party.<sup>154</sup> The panel has the authority to make only recommendations that the parties are not required to follow. Instead, the parties are tasked to "discuss appropriate measure" in the event of non-compliance while taking into account the final report. Although the conciliatory process is required, the panel's recommendations do not have to be followed in order for the issue to be resolved.<sup>155</sup>

In the history of the implementation of the TSD chapter, only one case has ever reached the panel stage, which is South Korea's Ratification of the ILO Fundamental Conventions.<sup>156</sup> As early as 2013, the failure of the Korean government to ratify was signaled by the EU and Korean DAGs, as well as the civil society forums.<sup>157</sup> In the following years, civil society continued to bring up this issue and asked DG Trade to take action to address the problem under the TSD Chapter mechanisms. The European Parliament also published a resolution in 2017 urging the Commission to begin consultations with the Korean government.<sup>158</sup> After several meetings with insufficient progress, the Commission initiated panel proceeding in December 2018, which concluded with the panel's report in 2021.

The panel's report confirmed that the requirement for both parties to make "continued and sustained efforts towards ratifying the fundamental ILO Conventions" is a legally binding.<sup>159</sup> The Panel further observes that although Korea has undertaken "tangible, but slow, efforts" to ratify the fundamental ILO Conventions since 2017, these efforts have been "less than optimal".<sup>160</sup> The Panel

---

<sup>153</sup> EU-South Korea FTA [2011] art.13.16; EU-Mercosur FTA [2019] art. x.15.

<sup>154</sup> Adinolfi (no 5) 40.

<sup>155</sup> *ibid.*

<sup>156</sup> Panel of Experts Proceeding Constituted under Article 13.15 of the EU-Korea FTA, 'Report of the Panel of Experts' [2021] 77 <[https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc\\_159358.pdf](https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc_159358.pdf)> accessed 11 May 2023.

<sup>157</sup> Blot et al. (no 78) 24.

<sup>158</sup> Parliament, 'Implementation of the EU-Korea Free Trade Agreement' Resolution P8\_TA (2017)0225640 <[https://www.europarl.europa.eu/doceo/document/TA-8-2017-0225\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0225_EN.html)> accessed 10 April 2023.

<sup>159</sup> Panel of Experts (no 150) 73.

<sup>160</sup> *ibid* 76.

also expects the ratification process “to be completed in an expeditious manner”.<sup>161</sup> Since the Expert Panel’s decision, Korea has made progress by ratifying three core ILO conventions. However, Korea has yet to ratify a fourth ILO convention on the abolition of forced labour, which leaves open the question about when or whether Korea will ratify this convention. This demonstrates the weakness of the dispute settlement mechanism based on consultation and dialogue. The complaining party has no other recourse if the party chooses to disregard the Panel's decision.

Meanwhile, the EU-New Zealand trade agreement completely removes the articles related to dispute settlement set out in the previous TSD Chapter. The agreement introduces the possibility of sanctions for actions or omissions which materially defeat the object and purpose of the Paris Agreement and for the violation of the fundamental ILO conventions. In particular, the complaining party may request the establishment of a panel. The panel is expected to present a report, which will be open to comments from the parties and then a final report that ultimately determines the commitment’s breach and address the violating party with mandatory recommendations. Complaining party may take temporary measures if the recommendations are not executed within a reasonable period of time.<sup>162</sup>

Table 9 provide a summary on the comparative elements in dispute settlement mechanism of the three selected bilateral trade agreements.

	<b>South Korea</b>	<b>Mercosur</b>	<b>New Zealand</b>
<b>Dispute Settlement Mechanism</b>	Based on dialogue and consultation approach.	Based on dialogue and consultation approach.	Introduce the possibility of trade sanction for the violation of Paris Agreement and ILO fundamental conventions.

## 4.7 Summary

Sustainable development provisions in the EU’s bilateral trade agreements establishes a set of legal frameworks that govern parties to implement sustainable development principles. In line with the contextual arguments set out in the chapter two, the commitments set out in the agreements have developed over time and each

<sup>161</sup> *ibid* 77.

<sup>162</sup> EU-New Zealand FTA [2022] art.26.16.

agreement has different level of commitments according to the challenges and priorities of each. The agreement with South Korea provides the basic foundation of commitments for the sustainable development provisions. The agreement with Mercosur then expanded to a higher level of complexity and adapted to its character as developing countries. Finally, the agreement with New Zealand represents a more advanced level with more binding commitments and the possibility to apply limited trade sanctions as a mean of last resort. Table 10 below summarises the comparative analysis of sustainable development provisions on the three selected agreements. More importantly, the comparative legal studies on the sustainable development provisions of the three representative EU's BTAs with South Korea, Mercosur, and New Zealand serve as an analytical basis in order to shed new light on broader legal challenges and the policy outlook to deliver sustainable development through EU's BTAs, which is further elaborated in the next chapter.

Table 10. Comparative Analysis on the Sustainable Development Provisions of the Selected EU's Bilateral Trade Agreements

Parameter		EU-South Korea	EU-Mercosur	EU-New Zealand
<b>Social</b>	Likeness	Obligation to ratify and effectively implement the eight fundamental ILO Conventions.		
	Otherness	Other labour/ social standards include gender equality (promotional) and CSR (promotional).	Other labour/ social standards include occupational health and safety (promotional), labour inspection (promotional), minimum wage (promotional), rights of migrant workers (promotional), gender equality (promotional) and CSR (promotional).	<ul style="list-style-type: none"> <li>• Other labour/ social standards include occupational health and safety (obligatory), labour inspection (obligatory), minimum wage (promotional), rights of migrant workers (promotional), gender equality (promotional), CSR (promotional).</li> <li>• Include a specific article on Trade and Gender Equality.</li> </ul>
<b>Environment</b>	Likeness	Reaffirm commitments to effectively implement the MEAs that they have ratified.		
	Otherness	Specific article include: Trade for Sustainable Development.	<ul style="list-style-type: none"> <li>• Obligation to effective implementation of Paris Agreement.</li> <li>• Specific article include: Biodiversity, Forest, Fisheries &amp; aquaculture, Climate change, Trade for Sustainable Development, Responsible management of supply chains.</li> </ul>	<ul style="list-style-type: none"> <li>• Obligation to effective implementation of Paris Agreement and its NDC.</li> <li>• Specific article include: Biodiversity, Forest, Fisheries &amp; aquaculture, Climate change, Trade for Sustainable Development, Responsible management of supply chains, Fossil fuel subsidy reform.</li> </ul>

<b>Institutional Framework and Civil Society Participation</b>	Likeness	Established Sub-Committee on Trade and Sustainable Development, the Domestic Advisory Group (DAG) and the Civil Society Forum.		
	Otherness	<ul style="list-style-type: none"> <li>• Basic provision on Sub-Committee.</li> <li>• DAG for TSD chapter.</li> <li>• Civil Society Forum for TSD chapter and participation is based on DAG's membership.</li> </ul>	<ul style="list-style-type: none"> <li>• Expanded tasks for Sub-Committee and extensive cooperation on capacity building.</li> <li>• DAG for the whole agreement.</li> <li>• Civil Society Forum for the whole agreement and participation is based on DAG's membership.</li> </ul>	<ul style="list-style-type: none"> <li>• Expanded tasks for Sub-Committee.</li> <li>• DAG for the whole agreement and mandatory Māori participation.</li> <li>• Civil Society Forum for the whole agreement, mandatory Māori participation and participation for all CSOs.</li> </ul>
<b>Enforcement and Dispute Settlement Mechanism</b>	Likeness	Established dispute settlement mechanism to resolve any disagreement between the parties.		
	Otherness	Based on dialogue and consultation approach.	Based on dialogue and consultation approach.	The possibility to use trade sanction for the violation of Paris Agreement and ILO fundamental conventions.



# 5. Challenges for the EU's Bilateral Trade Agreements to Deliver Sustainable Development in its Trading Partners

## 5.1 Introduction

Based on the key findings from the comparative legal studies on the sustainable development provisions of the three representative EU's BTAs in the previous chapter, this chapter further investigates some of the evolving legal challenges faced by sustainable development provisions in EU's bilateral trade agreements, and eventually sheds light on the future outlook in this regard. Some of these challenges include: 1) Lack of Enforceability; 2) Ineffective Monitoring Mechanism; and 3) Socio-Political Challenges Prior to Ratification. Corresponding to these challenges, this study also provides several possible solutions to overcome them, among others: 1) Strengthening Enforcement Mechanism; 2) Reinforcing the Role of Civil Society; and 3) Adopting Pre-Ratification Commitments. Accordingly, this chapter answer sub-questions 4 and 5 of this study.

## 5.2 Evolving Legal Challenges

### 5.2.1 Lack of Enforceability

Sustainable development provisions in EU's bilateral trade agreement have long been associated with insufficient mechanisms to enforce agreed commitments.<sup>163</sup> This insufficiency is due to several reasons. First of all, non-committal wording continues to be a major problem.<sup>164</sup> This can be seen, for instance, in the “make continued and sustained efforts” clauses that is attributed to ratification of ILO fundamental conventions in Korea's and Mercosur's agreement, which represent “best efforts” clauses. Despite the fact that agreements require the trading partners

---

<sup>163</sup> Moore and Scherrer (no. 89) 10.

<sup>164</sup> Blot et al. (no 78) 7.

to uphold their commitments, there are no clauses that outline the consequences of failing to implement the commitments.

Another reason is related to the dispute settlement mechanism. Most of TSD chapters do not offer a further mechanism to resolve the disputes if either party refuses to follow with the decision of an expert panel.<sup>165</sup> There is no penalty or trade sanction available as a consequence of noncompliance to the panel's decision. This is apparent in the South Korea's ILO fundamental conventions ratification case. The fact that New Zealand's agreement has introduced the possibility of trade sanction is commendable.<sup>166</sup> However, it can only be applied to a very limited circumstances, which are the violations related to ILO fundamental conventions and Paris Agreements.

### **5.2.2 Ineffective Monitoring Mechanism**

To monitor the implementation of agreed commitments, EU's bilateral trade agreements have established a set of institutional frameworks. In addition to Sub-Committee consisting of government representatives, civil society participation is key in identifying lack of progress on social and environmental commitments related trade agreement implementation. This mechanism establishes a structure for civil society dialogue horizontally (between DAGs) in the form of Civil Society Forum, as well as vertically (between DAGs and their own governments).<sup>167</sup> However, a study by Martens, Potjomkina and Orbi on DAG reveals that the DAG have experienced difficulties fulfilling its primary task of overseeing the implementation of the TSD provisions.<sup>168</sup>

These difficulties are particularly apparent in trade partners' DAGs and mainly because of two main reasons. First, weak vertical communication channels due to lack of interactions between the governments and DAGs resulting in insufficient information sharing on the implementation of trade agreements.<sup>169</sup> This subsequently undermines governments' accountability toward DAGs. Second, lack

---

<sup>165</sup> Bronckers and Gruni (no 84) 36.

<sup>166</sup> Eline Blot and Susanna Li, "Post FTA Briefing: EU-New Zealand" (2023) Institute for European Environmental Policy (IEEP) 6.

<sup>167</sup> Blot et al. (no 78) 13.

<sup>168</sup> Deborah Martens, Diana Potjomkina, and Jan Orbie, "Domestic Advisory Groups in EU Trade Agreements: Stuck at the Bottom or Moving up the Ladder?" (Friedrich Ebert Foundation, 2020) 13.

<sup>169</sup> *ibid* 23.

of resources for DAG members to conduct research and participate meaningfully to the process.<sup>170</sup> Some areas in the field of sustainable development (especially environment) require sophisticated expertise to properly carry out the monitoring function.

Underrepresentation in DAGs is also the main issue, which is caused by limitations in terms of financial and expertise aspects, as well as a lack of motivation.<sup>171</sup> Stakeholders do not feel encouraged to participate in the meetings due to their perception that their concerns are not being properly addressed. This is partly because previous issues raised in such meetings have not been adequately resolved, as exemplified by the EU-Korea dispute settlement case.

### **5.2.3 Socio-political Challenges Prior to Ratification**

This challenge is specifically associated with the agreement with Mercosur which has gone through a long process of negotiation but has been stuck with the ratification process. After all, in the absence of successful ratification, commitments that have been agreed upon in the negotiations cannot be implemented, especially those related to the sustainable development provisions. This challenge also holds socio-political dimension, given the influence of regime changes in trade partner countries (in this case Brazil) on shifting policy priorities, which threaten to undermine the implementation of sustainability principles enshrined in the agreement.<sup>172</sup>

The agreement has come under intense scrutiny from civil society and EU member states over its lack of sustainability guarantees. Some EU countries, have voiced their reluctance to ratify the deal unless stronger environmental protections are put in place.<sup>173</sup> From the outset of the negotiations, a variety of serious concerns have been raised about environmental and human rights issues in connection with the agreement. These concerns include increases in deforestation and carbon emissions, loss of biodiversity and challenges for the protection of the rights of local communities and indigenous peoples.

---

<sup>170</sup> *ibid* 18.

<sup>171</sup> *ibid* 25.

<sup>172</sup> Gerardo Caetano, 'Analysis and foresight of the European Union-Mercosur Association Agreement' (2022) Occasional paper FC/EU-LAC (4) EN 12.

<sup>173</sup> Van Den Berghe (no 105).

Another issue that have been raised by the civil society is the Commission's failure in providing Sustainability Impact Assessment (SIA) before the conclusion of the agreement. Although its publication is not a mandatory for the Commission, the document provides an in-depth analysis of the potential economic, social, human rights, and environmental impacts of ongoing trade negotiations. It is supposed to be completed before any trade negotiations conclude, but final assessment for the agreement with Mercosur was only published two years after the conclusion of negotiation.<sup>174</sup>

## **5.3 Proposed Recommendations**

### **5.3.1 Strengthening Enforcement Mechanism**

Sustainable development provisions must move away from the current "best effort" clauses toward obligations of results, together with systems to evaluate how well they are put into practice.<sup>175</sup> It is also important to combine the legally binding nature of international norms with a stronger enforcement mechanism that could have two aspects: on one hand, sanctions based on any infringements and failures to respect the agreement and on the other, incentives to abide by and enforce the agreed commitments.<sup>176</sup>

Enforceable dispute settlement mechanism, such as agreed under New Zealand's agreement also need to be scaled up encompassing other areas of commitments. For instance, essential commitments in the field of environment need to be broadened beyond the Paris Agreement. The EU should seek concrete commitments from its trade partners to address other environmental priorities related to the SDGs, such as biodiversity conservation, sustainable forest management and sustainable production and consumption.

In addition, the EU can take valuable lessons from other agreements. The US-Mexico-Canada Agreement (USMCA) features an innovative facility-specific Rapid Response Mechanism (RRM). This mechanism provides for faster enforcement of certain social obligations such as workers' free association and

---

<sup>174</sup> Van Den Berghe (no 21) 2.

<sup>175</sup> Eline Blot, 'Reflections on the New Approach to the TSD Chapters for Greener Trade' (2023) Institute for European Environmental Policy (IEEP) AISBL 7.

<sup>176</sup> Bronckers and Gruni (no 84) 46.

collective bargaining rights at the facility (factory) level.<sup>177</sup> The RRM has on-site verification capacity with specialised panels as it was designed to address and remedy factory-level freedom of association violations in a more immediate manner than state to state dispute settlement's inability to enforce domestic laws.<sup>178</sup>

### **5.3.2 Reinforcing the Role of Civil Society**

To encourage stakeholder participation in the DAG process, a viable solution would be to establish a system of accountability for the governments. This could be accomplished by implementing a formal feedback procedure in which the government agency is required to respond to concerns raised by DAG members within a designated timeframe.<sup>179</sup>

It is essential that DAGs possess adequate resources for their logistical support, capacity building and functioning, which in turn can incentivise stakeholders to join the DAGs. To tackle resource constraints, the Commission could alleviate financial limitations by providing funding to organisations. This will enable DAG members to conduct studies on social or environmental issues they deem problematic.<sup>180</sup> This would also motivate policymakers to consider DAG's contributions more seriously, thereby increasing their political significance. On the other hand, neglecting this aspect could reduce civil society's interest and dedication to participating in the process, exacerbating existing criticisms of their involvement in EU's bilateral trade agreement negotiation and implementation.<sup>181</sup>

To further strengthen the monitoring efforts and encourage civil society participation, the EU could initiate a complaint mechanism through some form of a dedicated citizen-driven accountability mechanism. This mechanism has been introduced in the USMCA in the form of Submission on Enforcement Matters (SEM), which allows citizens of the contracting parties to file complaints alleging that a party has failed to effectively enforce its environmental laws.<sup>182</sup> More

---

<sup>177</sup> Velut et al. (no 97) 16.

<sup>178</sup> *ibid* 20.

<sup>179</sup> Blot et al. (no 78) 33.

<sup>180</sup> *ibid* 15.

<sup>181</sup> Martens et al. (no 162) 42.

<sup>182</sup> Anne-Catherine Boucher, 'The USMCA Contains Enhanced Environmental Protection Provisions but Will They Lead to Substantive Environmental Protection Outcomes?' (2020) American Bar Association Publication <[https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/ierl/20201120-the-usmca-contains-enhanced-environmental-protection-provisions/](https://www.americanbar.org/groups/environment_energy_resources/publications/ierl/20201120-the-usmca-contains-enhanced-environmental-protection-provisions/)> accessed 13 May 2023.

extensive involvement of civil society can also serve as a “soft enforcement” mechanism. Allowing private parties to have a meaningful role in enforcement would also put more pressure on governments to seriously address sustainability commitments.

### **5.3.3 Adopting Pre-Ratification Commitments**

Policy changes taken by trading partner countries are external factors that are difficult for the EU to anticipate. To mitigate these conditions, the EU can use pre-ratification commitments in binding partner countries to carry out domestic legal reform whether this relates to labour or environmental standards, before the agreement is finalized or ratified. Pre-ratification commitments would commit parties to implement certain national policy frameworks pertaining to sustainability. This will give signal to EU trade partners that tangible efforts on sustainability are central to EU trade.<sup>183</sup>

Drawing inspiration from the US trade agreement, the practice of pre-ratification conditionality has been frequently used by the US.<sup>184</sup> This strategy involves using trade negotiations to push for changes in domestic labour law in trading partners. Through this approach, the US has been successful in securing significant concessions before trade agreements went into effect, whether in the labour (domestic reforms, ratification of ILO conventions) or environmental field (domestic reforms and implementation of multilateral environmental agreements). A concrete example of such a process is in the 2009 US-Peru FTA and its dedicated Annex on Forest Sector Governance that was approved before the agreement was ratified, in response to the crisis of illegal logging in Peru.<sup>185</sup>

These arrangements has also been argued particularly effective especially with developing countries, which may be more inclined to undertake domestic reforms to gain access to the lucrative US market.<sup>186</sup> This example highlights the significant impact that trade negotiations with a large market such as the EU can have on third

---

<sup>183</sup> Blot (no 169) 5.

<sup>184</sup> Velut et al. (no 97) 30.

<sup>185</sup> *ibid* 25.

<sup>186</sup> *ibid* 18.

countries, which potentially catalyzing domestic reforms in sectors relevant for sustainable development.

## 5.4 Summary

Sustainable development provisions in EU’s bilateral trade agreements are often perceived lack of enforceability due to weak language and dispute settlement mechanism that is less assertive towards violations of agreed commitments. To resolve this issue, this study proposes to more assertive clauses, utilising an enforceable dispute resolution mechanism similar to New Zealand’s agreement while expanding its scope and introducing a Rapid Response Mechanism (RRM) as a fast-track mechanism for specific violations. There are also challenges in monitoring the implementation, particularly in civil society’s involvement due to lack of vertical communication between the government and civil society and lack of resources faced by the civil society. This study proposes to build a more measurable feedback procedure, help strengthen civil society resources and introduce a citizen complaint monitoring mechanism to address this challenge. Additionally, socio-political challenges can hinder the ratification when partner countries undergo policy changes that contradict agreed commitments. The use of pre-ratification commitments can ensure compliance with core commitments, rapidly secure sustainability commitments and reduce political sentiment that could interfere with ratification process. Table 11 below summarises the challenges and proposed recommendations.

<b>Evolving Legal Challenges</b>	<b>Proposed Recommendations</b>
Lack of Enforceability	Strengthening Enforcement Mechanism
Ineffective Monitoring Mechanism	Reinforcing the Role of Civil Society
Socio-Political Challenges Prior to Ratification	Adopting Pre-Ratification Commitments

## 6. Summary and Conclusions

This study provides a legal analysis on the role of sustainable development provisions in the EU's bilateral trade agreements in achieving sustainability. Through comparative legal method, this study analyses sustainable development provisions in three EU's bilateral trade agreements, in particular agreements with South Korea, Mercosur and New Zealand. The study seeks to answer whether, how and to what extent sustainable development provisions in the EU's bilateral trade agreements can demonstrate a constructive model in achieving sustainability of trading partners. To answer this main research question, a series of research sub-questions has been structurally formulated, categorised into three tiers of sub-questions based on contextual, past and present and future bound.

With a coherent and integrated approach, this study begins by laying down a contextual groundwork upon which the argumentative framework is constructed. A matrix of analysis is then developed, with the underlying parameters serving as the foundation for comparing the three selected bilateral trade agreements. This comparison reveals both similarities and differences in each agreements' commitments of sustainable development provision. Further, the comparison also displays legal challenges contained in such provisions. Conclusively, the study investigates these evolving legal challenges and provides recommendations to address them.

Chapter two explores the first sub-question about the implications of EU's sustainable trade policy to its bilateral trade agreements. The EU's Founding Treaties and the development of its trade policies has provided a strong mandate to include sustainable development provisions in bilateral trade agreements. There are three implications of EU's sustainable trade policies on its bilateral trade agreements regime. Firstly, all bilateral trade agreements have to include sustainable development provisions. Secondly, these provisions evolve and improve systematically in line with the development of the EU's sustainability



policies. Thirdly, each agreement has its own unique set of provisions reflecting its specific priorities, needs and challenges.

Chapter three partially answers the second sub-question on how do the EU's bilateral trade agreements work in supporting sustainable development in other jurisdictions. This chapter offers a comprehensive overview and justifications of the four types of commitments outlined in sustainable development provisions, accompanied by examples from recent EU's bilateral trade agreements. These four commitments, namely: 1) social provisions; 2) environment provisions; 3) institutional framework and civil society participation; and 4) enforcement and dispute settlement mechanism. More importantly, this chapter tentatively builds up a systematic analytical matrix with synergetic parameters based on those four commitments, which serves as an upstream-step and fundamental pillar for further comparative legal studies on the sustainable development provisions of the three representative EU BTAs with South Korea, Mercosur, and New Zealand in chapter four. In addition, it is also worth noting that this innovative analytical matrix established in this chapter might have the potential of demonstrating a constructive model for comparative legal studies on sustainable development profiles of a broader range of BTAs.

In chapter four, the second and third sub-questions are conclusively answered regarding sustainable development provisions in the EU's bilateral trade agreements. These agreements establish a set of legal frameworks that govern parties to implement sustainable development principles, with commitments evolving over time and varying among agreements based on different characteristics, priorities, and challenges. While all agreements have similarities in setting out core commitments related to international labour and environmental standards, the level of obligations differs. The agreement with South Korea provides the basic foundation of commitments for the sustainable development provisions. The agreement with Mercosur then expanded to a higher level of complexity and adapted to its character as developing countries. Finally, the agreement with New Zealand represents a more advanced level with more binding commitments and the possibility to apply limited trade sanctions as a mean of last resort.

Finally, chapter five answer sub-question 4 and 5 on the evolving legal challenges of EU's bilateral trade agreements to deliver sustainability for the EU's trading partners and how to address those challenges. There are three main challenges that have been identified, namely 1) Lack of enforceability; 2) Ineffective monitoring mechanism; and 3) Socio-political challenges prior to ratification. Corresponding to these challenges, this study also sheds new light on the future outlook through providing several possible recommendations to overcome them, among others: 1) Strengthening enforcement mechanism; 2) Reinforcing the role of civil society; and 3) Adopting pre-ratification commitments.

In conclusion, sustainable development provisions in EU's bilateral trade agreement have, to a certain extent, demonstrated a constructive model in achieving sustainability of trading partners. These agreements establish a legal framework that bind the parties to implement international social and environmental standards. Moreover, it also demonstrate that bilateral approach can also be utilized to further strengthen countries' commitments to upholding sustainability principles in their bilateral economic activities. Nonetheless, the framework still has many challenges so that it can only be applied to a limited extent. Very few legal cases arising from these provisions reflect its lack of enforceability. Despite these difficulties in establishing a proper legal framework to regulate sustainability, it represents a step in the right direction toward developing a mechanism in pushing for a more sustainable practice. Further empirical studies are necessary to evaluate its effectiveness in achieving sustainable development goal.

# Bibliography

## Official Publications

### International

Brundtland, G. H, *Report of the World Commission on Environment and Development: Our Common Future* (United Nations General Assembly document 1987) A/42/427 54 para 1.<<http://www.un-documents.net/ocf-ov.htm>> accessed 4 April 2023.

International Labour Organization, ‘ILO Declaration on Social Justice for a Fair Globalization’ (*Social Justice Declaration: ILO Declaration on Social Justice for a Fair Globalization* August 13, 2008) <[https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS\\_099766/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang--en/index.htm)> accessed April 29, 2023.

United Nations Conference on Environment & Development: Agenda 21. (Rio de Janeiro, 3-14 June 1992) 31 ILM 874 <[https://sustainabledevelopment.un.org/content/documents /Agenda21.pdf](https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf)> accessed 4 April 2023.

United Nations General Assembly Transforming Our World: the 2030 Agenda for Sustainable Development (adopted 21 October 2015) A/RES/70/1 <[https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable %20Development%20web.pdf](https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf)> accessed 14 April 2023.

World Bank and WTO, *The Role of Trade in Ending Poverty* (2015) <<https://openknowledge.worldbank.org/handle/10986/22081>> accessed 16 April 2023.

WTO, Doha Ministerial Declaration, WT/MIN(91)/DEC/a, 20.11.2001, Art. 6 and Preamble, <[http://www.wto.org/ english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)> accessed 22 April 2023.

## European Union

Commission, ‘A Balanced and Progressive Trade Policy to Harness Globalisation’ Communication COM(2017) 492 final. 3 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:492:FIN>> accessed 21 April 2023.

— —, ‘The European Green Deal’ Communication COM(2019) 640 final <<https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=COM%3A2019%3A640%3AFIN>> accessed 9 April 2023.

— —, ‘The power of trade partnerships: together for green and just economic growth’ Communication COM(2022) 409 final < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0409>> accessed 24 April 2023.

— —, ‘Trade for All: Towards a more responsible trade and investment policy’ (Communication) COM(2015) 497 final <<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52015DC0497>> accessed 9 April 2023.

Commission services, ‘Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements’, 26 February 2018 <[https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156618.pdf](https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf)> accessed 9 April 2023.

Parliament, ‘Implementation of the EU-Korea Free Trade Agreement’ Resolution P8\_TA (2017)0225640 < [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0225\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0225_EN.html)> accessed 10 April 2023.

## Literature

Adinolfi G, ‘A Cross-Cutting Legal Analysis of the European Union Preferential Trade Agreements’ Chapters on Sustainable Development’, in Beverelli C, Kurtz J and Raess D, *International Trade, Investment, and the Sustainable Development Goals: World Trade Forum* (Cambridge University Press 2020)

Araujo BAM, *The EU Deep Trade Agenda: Law and Policy* (Oxford University Press 2016)

Berger A, Brandi C, Morin JF, and Schwab J, ‘The Trade Effects of Environmental Provisions in Preferential Trade Agreements’, in Beverelli C, Kurtz J and Raess D, *International Trade, Investment, and the Sustainable Development Goals: World Trade Forum* (Cambridge University Press 2020)

Bhat P I, *Idea and Methods of Legal Research* (Oxford University Press 2019)

Blot E, ‘Reflections on the New Approach to the TSD Chapters for Greener Trade’ (*IEEP AISBL* February 9, 2023) <<https://ieep.eu/publications/reflections-on-the-new-approach-to-the-tds-chapters-for-greener-trade/>> accessed April 7, 2023

— — and Li S, ‘Post FTA Briefing: EU-New Zealand’ (2023) Institute for European Environmental Policy (IEEP)

— —, Oger A, Harrison J, ‘Enhancing sustainability in EU Free Trade Agreements: The case for a holistic approach’ (2022) Institute for European Environmental Policy (IEEP)

Boucher AC, ‘The USMCA Contains Enhanced Environmental Protection Provisions but Will They Lead to Substantive Environmental Protection Outcomes?’ (2020) American Bar Association Publication <[https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/ierl/20201120-the-usmca-contains-enhanced-environmental-protection-provisions/](https://www.americanbar.org/groups/environment_energy_resources/publications/ierl/20201120-the-usmca-contains-enhanced-environmental-protection-provisions/)> accessed 13 May 2023

Bronckers M and Gruni G, ‘Retooling the Sustainability Standards in EU Free Trade Agreements’ (2021) 24 *Journal of International Economic Law*

Caetano G, ‘Analysis and foresight of the European Union-Mercosur Association Agreement’ (2022) Occasional paper FC/EU-LAC (4) EN

García MJ, ‘Sanctioning Capacity in Trade and Sustainability Chapters in EU Trade Agreements: The EU–Korea Case’ (2022) 10 *Politics and Governance*

Hoekman B, ‘Benefits and Costs of the Trade Targets for the Post-2015 Development Agenda’ (Copenhagen Consensus Centre 2014)

Hradilová K and Svoboda O, ‘Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness’ (2018) 52 *Journal of World Trade*

Jinnah S and Morin JF, *Greening through Trade: How American Trade Policy Is Linked to Environmental Protection Abroad* (The MIT Press 2020)

Martens D and Orbi J, 'Domestic Advisory Groups in EU Trade Agreements : Stuck at the Bottom or Moving up the Ladder?' (Friedrich Ebert Foundation, 2020) <<https://biblio.ugent.be/publication/8690502>> accessed April 5, 2023

Moore M and Scherrer C, 'Conditional or Promotional Trade Agreements – Is Enforcement Possible?' (Friedrich Ebert Foundation in Asia, June 2017) <<https://asia.fes.de/news/conditional-or-promotional-trade-agreements-is-enforcement-possible/>> accessed April 4, 2023

Morin JF, Dür A and Lechner L, 'Mapping the Trade and Environment Nexus: Insights from a New Data Set' (2018) 18 *Global Environmental Politics*

Nilsson M, Griggs D and Visbeck M, 'Policy: Map the Interactions between Sustainable Development Goals' (2016) 534 *Nature* 320

Roberts A, 'Conceptualizing Comparative International Law', in Anthea Roberts and others (eds), *Comparative International Law* (New York, 2018)

Van Den Berghe A, 'EU-Mercosur Agreement: Governance Issues in EU's Trade Decision Making' (ClientEarth June 2021) <<https://www.clientearth.org/latest/documents/eu-mercosur-associationagreement-governance-issues-in-the-eu-trade-decision-making-process/>> accessed 17 April 2023

Velut JB, Baeza-Breinbauer D, De Bruijne M, Garnizova E, Jones M, Kolben K, Oules L, Rouas V, Tigere Pittet F, Zamparutti T, 'Comparative Analysis of Trade and Sustainable Development Provisions in Free Trade Agreements' (LSE Consulting, 2022)

## **Online sources**

Bodansky D, 'Paris Agreement: Introductory Note' United Nations Audiovisual Library of International Law <[https://legal.un.org/avl/pdf/ha/pa/pa\\_e.pdf](https://legal.un.org/avl/pdf/ha/pa/pa_e.pdf)> accessed 9 May 2023

Commission, 'EU-Mercosur Trade Agreement' (*EU Trade Relationships by Country/Region*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement_en)> accessed 2 May 2023

— —, 'EU-New Zealand Trade Agreement' (*EU Trade Relationships by Country/Region*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement_en)> accessed 6 May 2023

— —, 'EU Position in World Trade' (*Trade*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-positionworldtrade\\_en#:~:text=Facts%20and%20figures%20on%20the%20EU's%20position%20in%20global%20markets&text=The%20EU%20is%20the%20world's,of%20manufactured%20goods%20and%20services](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-positionworldtrade_en#:~:text=Facts%20and%20figures%20on%20the%20EU's%20position%20in%20global%20markets&text=The%20EU%20is%20the%20world's,of%20manufactured%20goods%20and%20services)> accessed April 25, 2023

— —, 'EU Trade Relationship with South Korea' (*EU Trade Relationships by Country/Region*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-korea\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-korea_en)> accessed 2 May 2023

— —, 'Sustainable Development in EU Trade Agreements' (*Trade*) <[https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements\\_en](https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements_en)> accessed April 26, 2023

— —, 'Trade Agreement between the EU and New Zealand' (*EU Trade Relationships by Country/Region*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement_en)> accessed 8 April 2023

— —, 'EU-Trade Relations with South Korea' (*EU Trade Relationships by Country/Region*) <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-korea\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-korea_en)> accessed 8 April 2023

Da Silva IM, 'Explained: Why the EU-Mercosur trade deal could finally be ratified this year' (2023) <<https://www.euronews.com/my-europe/2023/02/01/explained->

why-the-eu-mercosur-trade-deal-could-finally-be-ratified-this-year> accessed 6 May 2023

ILO, ‘Decent Work’ <<https://www.ilo.org/global/topics/decent-work/lang-en/index.htm>> accessed 8 May 2023

— —, ‘Ratifications by Country’ (*Information System on International Labour Standards*) <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11001:0::NO:::>> accessed 9 May 2023

Klajn M, ‘Discourse Analysis’ (*Leiden Law Method Portal* December 10, 2020) <<https://www.leidenlawmethodsportal.nl/topics/discourse-analysis>> accessed 16 April 2023

Kopek J, ‘Back to the Negotiating Table: Renewed Prospects of an EU-Mercosur Free Trade Agreement’ (2023) <<https://www.thedialogue.org/blogs/2023/04/back-to-the-negotiating-table-renewed-prospects-of-an-eu-mercosur-free-trade-agreement/>> accessed 6 May 2023

Ministry of Foreign Affairs and Trade of New Zealand, ‘EU Delegation Supports Swift Ratification of NZ-EU FTA’ (October 2022) <<https://www.mfat.govt.nz/assets/Trade/MFAT-Market-reports/EU-delegation-supports-swift-ratification-October-2022.pdf>> accessed 18 April 2023

National Board of Trade Sweden, ‘Trade and Social Sustainability: An Overview and Analysis’ (*kommerskollegium* 2017) <<https://www.kommerskollegium.se/globalassets/publikationer/rapporter/2017/publ-trade-and-social-sustainability-webb.pdf>> accessed 22 April 2023

United Nations, *World Economic Situation and Prospects 2022* <[https://www.un.org/development/desa/dpad/wpcontent/uploads/sites/45/WESP2022\\_ANNEX.pdf](https://www.un.org/development/desa/dpad/wpcontent/uploads/sites/45/WESP2022_ANNEX.pdf)> accessed April 16, 2023

Van den Berghe A, ‘What’s going on with the EU-Mercosur Agreement’ (2021) <<https://www.clientearth.org/latest/latest-updates/news/what-s-going-on-with-the-eu-mercosur-agreement/>> accessed 6 May 2023



World Trade Organization (WTO), 'Regional Trade Agreements: An Introduction' (*Regional trade agreements and the WTO*) <[https://www.wto.org/english/tratop\\_e/region\\_e/scope\\_rta\\_e.htm](https://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm)> accessed 15 April 2023

— —, 'Regional Trade Agreements: Facts and Figures' (*Regional trade agreements and the WTO*) <[https://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm#:~:text=As%20of%201%20December%202022,the%20GATT%20or%20the%20WTO%3F&text=Access%20the%20most%20up%20to,notified%20to%20the%20GATT%2FWTO.](https://www.wto.org/english/tratop_e/region_e/region_e.htm#:~:text=As%20of%201%20December%202022,the%20GATT%20or%20the%20WTO%3F&text=Access%20the%20most%20up%20to,notified%20to%20the%20GATT%2FWTO.)> accessed 16 April 2023

# Cases

Opinion 2/15 of the Court ‘Pursuant to Article 218(11) TFEU Free Trade Agreement between the European Union and the Republic of Singapore’ (Full Court) [2017] ECLI:EU:C:2017:376 <<https://curia.europa.eu/juris/document/document.jsf?docid=190727&doclang=en>> accessed 27 April 2023

Panel of Experts Proceeding Constituted under Article 13.15 of the EU-Korea FTA, ‘Report of the Panel of Experts’ [2021] 77 <[https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc\\_159358.pdf](https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc_159358.pdf)> accessed 11 May 2023

WTO Panel Report ‘United States - Restrictions on Imports of Tuna’ [1991] DS21/R -39S/155, <[https://www.wto.org/english/tratop\\_e/dispu\\_e/gatt\\_e/91tuna.pdf](https://www.wto.org/english/tratop_e/dispu_e/gatt_e/91tuna.pdf)> accessed 25 April 2023