

The Consumer Voice in Europe

PUBLIC CONSULTATION ON TRADE AND SUSTAINABLE DEVELOPMENT IN EU TRADE AGREEMENTS: REVIEW OF CURRENT APPROACH

BEUC response



Contact: Léa Auffret – international@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND

Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • www.beuc.eu
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Why it matters to consumers

Trade is part of consumers' lives: many of their clothes, TVs, smartphones, food and the services they use to book their holidays would be unthinkable without it. Open trade between countries can be positive as it enhances consumer choice and can result in cheaper prices. But consumers are becoming more conscious about the impact of their shopping choices on the environment. Also, some trade rules can set conditions for how countries can regulate. For instance, when countries want to enable consumers to make the healthy and sustainable choice, they have to make sure it won't affect trade. As the EU is reflecting about the sustainable development chapters of its trade agreements, it will have to find a way for trade to serve and protect consumers, while becoming more sustainable.

QUESTION 1: The EU addresses sustainability challenges with cross-border implications in dedicated multilateral fora (e.g., on climate change and biological diversity) and via its autonomous measures (including legislative ones). Against this background, what should be the contribution of the EU trade policy to promote the transition to a greener, fairer and more sustainable economy? How should the implementation and enforcement of TSD chapters in FTAs complement and support the EU's multilateral and autonomous initiatives?

With the adoption of the European Green Deal, the EU has changed the traditional logic that trade, growth, and jobs come before environmental and societal interests. The Green Deal promotes a sustainable development in key consumption areas such as food and agriculture, energy and housing, mobility and products and advocates for changes in key underpinning areas such as sustainable finance. In the context of the trade agenda, this comes with two obligations.

First, it is important that the Commission uses multilateral and bilateral fora to consistently communicate this vision and to demonstrate credibly that all economic activity in the EU will be directed in the coming years towards preventing further climate change and environmental and social decay. To this end, BEUC welcomes that the European Commission declared to pursue a stronger international green deal diplomacy in the coming years and plans to ask in all trade deals for a binding commitment to the Paris Deal. What should be added is a similar commitment towards the UN Sustainable Development Goals by 2030.

Second, the EU as the largest single market must set ambitious standards for sustainable product development across the supply chain for key consumption areas such as consumer products, vehicles, construction materials etc.

While TSD chapters in EU trade agreements should make sure that no partner can lower today's standards or disrespect international agreements, the focus should be on creating the opportunities which enable and speed up a transition to sustainability in the EU as well as in other markets. Economic recovery programmes linked to overcoming the negative impact of the global Covid pandemic must be focused to a sustainable transition. This view is shared by 75% of respondents to the special Eurobarometer 513 published in July 2021. In this respect - besides ambitious standard setting - more transparency for consumers about the production methods and inherent characteristics of products plays an important

role. While many consumers try to avoid and better sort waste and to reduce on energy consumption, they miss key information to make the sustainable choice. *Where does the product come from? How has it been produced? How long will it last? Is it repairable? Can it be updated?*

Consumers have already some tools at their disposal to try to make the right choice. They can rely on voluntary labels such as the EU ecolabel to choose goods and services that have less impacts on the environment. Yet, as there are no compulsory, trustworthy labels which would provide for transparency on a product's sustainability across its lifecycle, consumers are in most cases not able to reward those companies who take sustainability more seriously than others. To this end, it will be important that the EU progresses with due diligence legislation which should be binding for all companies who place products on the EU market, rather than including only EU companies into the scope. Moreover, consumers have no information about whether spare parts and updates are available to repair products. To this end, the EU should swiftly implement the actions announced in the circular economy action plan.

In the food area, BEUC welcomes the European Commission's commitment, in its 2020 'Farm to Fork Strategy', to supporting the global transition to sustainable agri-food systems. We commend the EU's efforts to introduce a new Chapter on 'Sustainable Food Systems' in its future trade agreements, dealing with areas such as animal welfare, the use of pesticides, and the fight against food fraud and antimicrobial resistance. Yet, to deliver on the EU's objective of obtaining ambitious commitments from its trading partners in these areas, this chapter must go beyond cooperation and dialogue and include binding provisions – as is the case for the restrictions applying to the use of antimicrobials in animal production.

Indeed, ensuring that food that is imported into the EU complies with relevant regulations and standards is key to achieving the objectives of the EU Green Deal and Farm to Fork Strategy. A survey of European consumers on attitudes towards sustainable food published by BEUC found that consumers expect the EU to continue to lead on food sustainability, regardless of whether other world players are doing the same or not.

To achieve that, EU trade policy must ensure that trading partners wanting to export food into the EU abide by the same rules as those that apply to EU farmers and food producers, where relevant. It must also guarantee that trade will not limit the ability of the EU to become more sustainable (e.g., by introducing new production requirements) and better inform consumers (e.g., in the area of nutrition, food origin or sustainability). The new paradigm should be to make trade compliant with the Sustainable Development Goals (SDGs), not the other way around. At multilateral level, this should be addressed through the WTO reform. At bilateral level, it should be addressed in the Sustainable Food Systems and TSD chapters and other relevant chapters such as Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS).

The scope of TSD chapters in EU FTAs is mostly focused around environmental and labour laws. They should address sustainability in all its dimensions. For instance, it is unclear if domestic regulations related to sustainable consumption and production such as circular economy and information to consumer would fall under 'environmental law' in the right to regulate articles of the TSD chapters. We therefore recommend broadening the scope of these articles by adding sustainability laws to environmental and labour laws. This could provide a greater level of clarity in case of dispute settlement. This should also be clarified in the article defining the objectives of the TSD chapters.

The ratification of the Paris Agreement will become an essential clause of new EU trade agreements. This is positive. A similar reasoning should be applied to ensure that parties will commit to achieve the SDGs and not prevent each other's from doing so.

QUESTION 2: What have been the main benefits of closer collaboration of the European Commission with the European Parliament, with the Member States, other relevant EU institutions and bodies and international organizations on the implementation and enforcement of TSD chapters? How should these partnerships be shaped going forward?

Trade and sustainable development is a cross cutting issue. To address it properly in EU trade agreements, it will be important to break the silos within institutions, among services covering different policy areas. Relevant DGs in the Commission must be involved as from the initial stages to define together with DG Trade TSD provisions and oversee the implementation and enforcement of TSD chapters. The same reasoning should apply between EU member States ministries and committees of the European Parliament.

QUESTION 3: How do you see the role and contribution of DAGs and/or other representatives of employers, trade unions, environmental and other non-governmental organisations in the monitoring of the implementation of TSD chapters? How can they better contribute to the monitoring of the implementation of TSD chapters?

From our experience in the CETA DAG, we have identified several obstacles to NGOs' contribution to this debate.

NGOs do not have the resources to dedicate a staff member to participate to a DAG or several DAGs. Very often, NGO staff are not working exclusively on trade or sustainability but have a portfolio of several policy files. If the EU wants to benefit from a meaningful contribution of public interest groups in the definition and implementation of TSD chapters, it should financially support the relevant groups.

Moreover, the Commission should ensure that its experts tasked to debrief the DAGs will be able to reply in detail to general and technical questions of members. This is important to ensure that DAG members will be able to adequately monitor the implementation of the TSD chapters.

The possibility for DAG chairs to present their work and recommendations to the Council and the Parliament is a positive initiative that should be maintained. Such interventions should be made public and promoted to ensure that civil society organisations not members of DAG have the opportunity to hear from the DAG chairs and see how they interact with EU institutions.

QUESTION 6: In view of the objectives and the broad scope of the provisions of TSD chapters of EU FTAs, how do you evaluate the suitability and effectiveness of the current dedicated dispute settlement mechanism for TSD?

The first time that the EU used the dispute settlement system in a free trade agreement to complain about a violation of a trade and sustainable commitment was in 2019, with South Korea, regarding workers' rights. The EU complained that South Korea had not ratified key international labour organization (ILO) conventions, despite agreeing to do so 9 years before in its trade deal with the EU.

The positive aspect of the ruling that came out is that arbitrators of the panel considered that Korea should have delivered on its commitments even if there is no direct impact on trade. But the panel also found that Korea made some efforts to comply with its commitments. This shows that TSD chapters must contain very clear language to ensure proper implementation and avoid any issues of interpretation in case of a dispute. We call

on the Commission to consider this very carefully when exploring the possibility to add direct references to sustainability in the TSD chapters of EU trade agreements, such as mention of the UN sustainable development goals.

The fact that South Korea did not respect its commitments to the EU after almost a decade shows that the threat of a dispute resolution is not sufficient to ensure enforcement. That is why we recommend the EU to condition trade preferences, such as quotas, on our partners respecting their environmental, sustainable development goals and labour rights commitments. The removal of preferences would intervene if no amicable solution has been found during the mediation process.

The EU should incorporate a suspension clause related to TSD commitments. Any serious injury to the environment and labour rights from trading partners, that could not be solved through dialogue, should trigger a suspension of the whole agreement. The Chief Trade Enforcement Officer should make sure that the removal of trade preferences and, if necessary, a full suspension, will happen in a timely manner.

QUESTION 7: The European Commission has created the Chief Trade Enforcement Officer and the Single-Entry Point in 2020. What in your opinion is their distinct contribution to the implementation and enforcement of the EU's TSD chapters?

On paper, the creation of the position of the CTEO and of the Single-Entry Point tool is very positive, notably for NGOs like consumer groups willing to bring cases of non-compliance to the Commission. But it will be difficult in practice for consumer groups and other public interest groups to bring complaints.

Indeed, complaints must relate to TSD or market access commitments. As explained above, TSD chapters do not cover today all sustainability measures that can relate to consumers' daily life. This is already limiting the ability of consumer groups to bring non-compliance cases to the Commission. Our members are national consumer organisations. They research and test to what extent products and services, included imports, comply with EU rules. They have a wealth of data about food in breach of EU law or products sold online by foreign sellers that do not comply with basic EU product safety measures. This data shows a clear problem of enforcement of EU FTAs. Nevertheless, a complaint related to a technical barrier to trade (TBT), or a sanitary and phytosanitary (SPS) commitment of an EU trading partner would not be considered admissible through the single-entry point. Therefore, we recommend extending the scope of the Single-Entry Point to SPS and TBT commitments.

QUESTION 8: Is the level of transparency and available information on the implementation and enforcement of TSD chapters sufficient for civil society to follow and to contribute to these processes? Where do you see gaps? Do you have suggestions to address them?

The EU has improved its transparency policy in relation to trade, including on TSD chapters. However, it would be useful for civil society organisations that are not member of the DAGs to have access to the key conclusions of DAGs meetings, including the update from the Commission. The EESC and the Commission should set up a DAGs website containing agendas and minutes of DAGs meetings. Information about DAG to DAG meetings would also be very important to share to the public.

When DAGs update Parliament and Council about their work, video sessions should be made available online.

QUESTION 9: Do you think EU TSD chapters need additional remedies to ensure enforcement? If so, what type of remedies would be effective in contributing to sustainable development? Would there be a need for a targeted approach (i.e., adapted to the nature of commitments or for specific sustainability priorities)?

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QUESTION 10: Do you see any disadvantages with the introduction of additional remedies for the enforcement of TSD chapters, including their impact on the cooperation and engagement on the ground?

The US have adopted enforcement tools going beyond the EU's approach, notably when it comes to sanctions. The US approach did not deter their trading partners from entering into negotiations with them. It did not affect their level of cooperation with their partners either. The EU should therefore not be shy to adopt a more ambitious path when it comes to enforcing TSD provisions in its FTAs.

QUESTION 12: Are there any key additional environmental or climate commitments that should be covered by TSD chapters? What areas should the EU prioritise in TSD implementation, and what actions do you think should be pursued to make progress on those priorities?

TSD chapters should include a clear commitment to achieve the United Nations Sustainable Development Goals (SDGs). They should enshrine the right to maintain and adopt new sustainability measures.

In order to do so, trade impact assessments should evaluate the effects on the ability of the EU to achieve the SDGs in addition to the environmental impacts. Negotiating mandates and the general objective of EU trade agreements should indicate that trade commitments must be compliant with the Paris Agreement and the SDGs. Moreover, chapters related to sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT) and trade and sustainable development (TSD) in EU trade deals should contribute to achieve the SDGs. Finally, the general exceptions of EU trade agreements should refer to measures contributing to achieve the SDGs and comply with the Paris Agreement.

QUESTION 13: Are there any key additional labour rights that should be covered by TSD chapters? What areas should the EU prioritise in TSD implementation, and what actions do you think should be pursued to make progress on those priorities?

An area that should be included systematically in TSD chapters should be due diligence, especially as the EU is about to introduce mandatory requirements. This is important from a labour rights perspective but also key to achieve the United Nations Sustainable Development Goals.

Indeed, this would contribute to achieve the SDG 'responsible consumption and production'. The upcoming EU legislative initiative should introduce mandatory due diligence requirements for all companies operating or placing products and services on the EU market, including for financial institutions.

The requirements must be applicable throughout the entire value chains of products and services and be therefore applicable to business operations inside and outside the EU. Particular attention should also be paid to environmental and climate change impacts, for instance by stipulating that companies' strategies are in line with the Paris climate objective of limiting temperature increase to 1.5 degrees Celsius. Companies should be held liable for harm arising out of their operations.

Future EU legislation must therefore foresee a civil liability for companies failing their due diligence obligations, as well as effective administrative fines imposed by public authorities. Victims must have access to justice before courts of the member states and to receive remedy. Additionally, public authorities need to be properly staffed and trained to detect and sanction violations of due diligence obligations, such as the failure to identify/address/prevent/mitigate any adverse impacts in a companies' own operations or of a third-party business relationship. For more information, please refer to the [consumer checklist for a due diligence legislation](#).

QUESTION 14: How can the implementation of EU TSD chapters contribute to a greener, socially just and more resilient post-Covid-19 global economic recovery? What areas should the EU prioritise in TSD implementation and what actions do you think should be pursued to make progress on those priorities?

As explained in question 1, the EU should prioritise the inclusion of sustainability in all its dimensions in the implementation and enforcement of the TSD chapters. A greater focus should be given to the achievement of the United Nations Sustainable Development Goals through the implementation of the TSD chapters.

QUESTION 15: Are there any other important topics not covered by the questions above that the TSD review should address?

The success of the sustainability's efforts of the EU in trade policy and in general will depend upon its ability to lead the WTO reform. The EU must adopt a bolder approach there. As long as some countries will be allowed, under WTO law, to challenge EU sustainability, climate and labour rules by arguing that they create 'obstacles to trade', the EU's green ambition will remain at risk. Even the best model of TSD chapters will not be able to remedy this. The EU must take a holistic approach and use the momentum of the WTO reform to preserve its climate and sustainability plans. It's time for trade rules to comply with the sustainable development goals.

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