



# The Trade and Sustainable Development Chapters in the New Generation of the EU FTAs

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## EU FTAs TSD Chapters

The EU currently has **42 preferential trade agreements** in place with **74 partners**.

The **new generation of free trade agreements (FTAs)** concluded by the EU after the Lisbon Treaty, include **trade and sustainable development chapters** implementing international labour conventions and environmental provisions: **Canada, Central America, Colombia, Peru, and Ecuador, Georgia, Japan, Moldova, Singapore, South Korea, Ukraine, the United Kingdom and Vietnam**. In addition, another six EU trade agreements that are awaiting ratification include sustainable development chapters: **Chile, China, Kenya, Mercosur, Mexico and New Zealand**.



## Common Features of the EU TSD Chapters

### *Substantive provisions (open provisions, susceptible of extension)*

- 1) common element of context and objects, indications of the international hard and soft law sources
- 2) Right to regulate
- 3) Commitment not to worsen and to adequately enforce environmental and labour laws to get market access and investments
- 4) Commitment to improve the levels of protection
- 5) Commitment not to use non-trade values as protectionist tools
- 6) Corporate sociale responsibility

### *Institutional provisions*

- 1) Governance
- 2) Dispute settlement



# Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part

## CHAPTER THIRTEEN TRADE AND SUSTAINABLE DEVELOPMENT

### *Article 13.1*

#### **Context and objectives**

1. Recalling Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002 and the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work, the Parties reaffirm their commitments to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.



## Article 13.1 Context and objectives

2. **The Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development.**

They underline the **benefit of cooperation** on trade related social and environmental issues as part of **a global approach to trade and sustainable development.**

3. The Parties recognise that it is **not their intention in this Chapter to harmonise the labour or environment standards of the Parties**, but to strengthen their trade relations and cooperation in ways that promote sustainable development in the context of paragraphs 1 and 2.



## Article 13.2 Scope

2. The Parties stress that environmental and labour standards should **not be used for protectionist trade purposes**. The Parties note that their **comparative advantage** should in no way be called into question.



## Article 13.3

### Right to regulate and levels of protection

Recognising **the right of each Party to establish its own levels of environmental and labour protection**, and to adopt or modify accordingly its relevant laws and policies, each Party **shall seek to ensure that those laws and policies provide for and encourage high levels of environmental and labour protection**, consistent with the internationally recognised standards or agreements referred to in Articles 13.4 and 13.5, and **shall strive to continue to improve those laws and policies.**



## Article 13.7

### Upholding levels of protection in the application and enforcement of laws, regulations or standards

1. A Party shall not fail **to effectively enforce its environmental and labour laws**, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.
2. **A Party shall not weaken or reduce the environmental or labour protections afforded in its laws to encourage trade or investment**, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws, regulations or standards, in a manner affecting trade or investment between the Parties.



## Article 13.4

### Multilateral labour standards and agreements

3. The Parties, in accordance with the **obligations deriving from membership of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86<sup>th</sup> Session in 1998**, commit to respecting, promoting and realising, in their laws and practices, **the principles concerning the fundamental rights**, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

e) a safe and healthy working environment (consensus reached by the ILO Conference in June 2022)



## Article 13.4

### Multilateral labour standards and agreements

The Parties reaffirm the commitment to effectively implementing the ILO Conventions that Korea and the Member States of the European Union have ratified respectively. **The Parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions as well as the other Conventions that are classified as ‘up-to-date’ by the ILO.**



# Article 13.10

## Trade and Investment Favouring Sustainable Development (EU – Vietnam FTA)

2. ... the Parties ...

(d) recognise that **voluntary initiatives** can contribute to the achievement and maintenance of high levels of environmental and labour protection and complement domestic regulatory measures; therefore **each Party** shall, in accordance with its domestic laws or policies, **encourage the development of, and participation in, such initiatives, including voluntary sustainable assurance schemes such as fair and ethical trade schemes and eco-labels;**



## Article 13.10 Trade and Investment Favouring Sustainable Development (EU – Vietnam FTA)

... and

(e) in accordance with their domestic laws or policies agree **to promote corporate social responsibility**, provided that measures related thereto are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade; **measures for the promotion of corporate social responsibility include, among others, exchange of information and best practices, education and training activities and technical advice**; in this regard, **each Party takes into account relevant internationally agreed instruments that have been endorsed or are supported by that Party, such as the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, the United Nations Global Compact and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy**



## Article 13.12 Institutional mechanism

1. Each Party shall designate an office within its administration which shall serve as a **contact point** with the other Party for the purpose of implementing this Chapter.
2. The **Committee on Trade and Sustainable Development** established pursuant to Article 15.2.1 (Specialised Committees) shall comprise senior officials from within the administrations of the Parties.
3. The Committee shall meet within the first year of the entry into force of this Agreement, and thereafter as necessary, to oversee the implementation of this Chapter, including cooperative activities undertaken under Annex 13.
4. Each Party shall establish a **Domestic Advisory Group(s)** on sustainable development (environment and labour) with the task of advising on the implementation of this Chapter.
5. **The Domestic Advisory Group(s) comprise(s) independent representative organisations of civil society in a balanced representation of environment, labour and business organisations as well as other relevant stakeholders.**



## Article 13.13

### Civil society dialogue mechanism

1. Members of Domestic Advisory Group(s) of each Party will meet at a **Civil Society Forum** in order to conduct a dialogue encompassing sustainable development aspects of trade relations between the Parties. The Civil Society Forum will meet **once a year** unless otherwise agreed by the Parties.

The Parties shall agree by decision of the Committee on Trade and Sustainable Development on the operation of the Civil Society Forum no later than one year after the entry into force of this Agreement.



## Article 13.14

### Government consultations

1. **A Party may request consultations** with the other Party regarding any matter of mutual interest arising under this Chapter, including the communications of the Domestic Advisory Group(s) referred to in Article 13.12, by delivering a written request to the contact point of the other Party. **Consultations shall commence promptly after a Party delivers a request for consultations.**

2. The Parties shall make **every attempt to arrive at a mutually satisfactory resolution of the matter.** *The Parties shall ensure that the resolution reflects the activities of the ILO or relevant multilateral environmental organisations or bodies so as to promote greater cooperation and coherence between the work of the Parties and these organisations.*

Where relevant, subject to the agreement of the Parties, they can seek **advice** of these organisations or bodies.



## Article 13.14 Government consultations

3. If a Party considers that **the matter needs further discussion**, that Party may request that the **Committee on Trade and Sustainable Development be convened** to consider the matter by delivering a written request to the contact point of the other Party. **The Committee shall convene promptly and endeavour to agree on a resolution of the matter**. The resolution of the Committee shall be made **public** unless the Committee otherwise decides.
4. The Committee may **seek the advice** of either or both Domestic Advisory Group(s) and each Party may seek the advice of its own Domestic Advisory Group(s). A **Domestic Advisory Group** of a Party may **also submit communications on its own initiative** to that Party or to the Committee.



## Article 13.15 Panel of experts

1. Unless the Parties otherwise agree, a Party may, **90 days after the delivery of a request for consultations** under Article 13.14.1, request that **a Panel of Experts** be convened to examine the matter that has not been satisfactorily addressed through government consultations. The Parties can make submissions to the Panel of Experts. **The Panel of Experts should seek information and advice from either Party, the Domestic Advisory Group(s) or international organisations** as set out in Article 13.14, as it deems appropriate. The Panel of Experts shall be convened **within two months** of a Party's request.



## Promotional approach to the enforcement of TSD Chapters

2. ... Unless the Parties otherwise agree, the Panel of Experts shall, **within 90 days** of the last expert being selected, present to the Parties **a report. The Parties shall make their best efforts to accommodate advice or recommendations of the Panel of Experts on the implementation of this Chapter.** The implementation of the recommendations of the Panel of Experts shall be monitored by the Committee on Trade and Sustainable Development. The report of the Panel of Experts shall be made available to the Domestic Advisory Group(s) of the Parties.



## Korea - Labor Commitments Panel Report, January 2021

**Korea – Labour Commitments:** request from civil society through the **European Parliament** “failure of the EU to act in this case, in light of the overwhelming evidence of the breach of Article 13, would undermine the effectiveness of Sustainable Development Chapters in EU’s trade Agreements, and of the EU trade policy in general”

Group of experts on the respect by Korea of **the principle of freedom of association** ( trade unions): involvement of civil society. The question “be referred to **consultative bodies** established under Article 13.12 of the EU-Korea FTA for continued consultations”

Group of experts: Cooperation approach of the parties with civil society and stakeholders for the full implementation and appropriate interpretation of sustainability issues



in **Korea - Labor Commitments**, there were several memoirs presented by civil society, with respect to which the **Group of experts expressed "full regard"**, even without specifically referring to or identifying precisely the amicus curiae in the text of the report where the Panel took them into consideration for its case analysis



## Korea - Labor Commitments Panel Report, January 2021

Korea did not violate the **obligation under art. 13.4.3, “to ‘make continued and sustained efforts’ towards ratification of the core ILO Conventions”** . The legal **standard** imposed by the EUFTAS provision has been respected by Korea, it **“does not impose an obligation of result but of effort”** - even if **slow**, the **Korean commitment is tangible** “the Panel is of the view that Korea’s efforts for the past three years satisfy the legal threshold of the provisions” .

The Panel “finds **that the ordinary meaning of ‘commit to’ ... is ‘to bind oneself to a course of action’** ... **this represents a legally binding obligation of commitment** to respecting, promoting and realising the obligations arising from membership of the ILO and the 1998 ILO Declaration in relation to the principles concerning the fundamental rights”



## New Developments

The **2019 EU-Japan Economic Partnership Agreement** is the first trade agreement ever to include commitments to implementing the **UN Framework Convention on Climate Change**, as well as the **Paris Agreement**

**COM(2022) 409 final, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - The power of trade partnerships: together for green and just economic growth, Brussels, 22.6.2022**

strengthen the enforcement of TSD commitments in future agreements; involve the DAGs in monitoring the compliance stage; extend the possibility to apply trade sanctions in cases of failure to comply with obligations that materially defeats the object and purpose of the Paris Agreement on Climate Change or in serious instances of non-compliance with the ILO fundamental principles and rights at work.



# EU-New Zealand FTA, signed on 9 July 2023

first agreement to integrate **the new TSD approach**.

**a dedicated trade and gender equality article**

in instances of **serious violations of core labour and climate commitments**, namely **the ILO fundamental principles and rights at work, and of the Paris Agreement**, sanctions can be applied - these sanctions may take the form of compensation by the party who is complained against, or also suspension of 'the application of obligations under the covered provisions'

***none of the other provisions in the TSD chapters are subject to sanctions***

**DAGs advise on all aspects of the agreement**, and their activity is not limited to the TSD chapter, as was the case in previous EU FTAs (except the EU-UK Trade and Cooperation Agreement)



# The EU Single Entry Point

## Chief Trade Enforcement Officer Single Entry Point -

<https://trade.ec.europa.eu/access-to-markets/en/content/single-entry-point-0>



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR TRADE

Directorate F – Enforcement, Market access, SMEs, Legal affairs and Technology  
Unit F1 – Single entry point on Enforcement, Market access and SMEs

### COMPLAINT

relating to alleged violations of commitments stemming from free trade agreements (FTA) concluded by the European Union or Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences (GSP) and repealing Council Regulation (EC) No 732/2008<sup>1</sup>



# Operating guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and Arrangements (December 2023)

## Who can submit a complaint

### For TSD or GSP complaints:

- a. EU Member States
- b. **Entities having their registered office, central administration or principal place of business within the Union**
- c. **Industry associations of EU companies**
- d. **Associations of EU employers**
- e. **Trade unions** or trade union associations formed in accordance with the laws of any **EU Member State**
- f. **EU Domestic Advisory Groups (DAGs) formed in accordance with EU trade agreements (for TSD complaints)**
- g. **NGOs formed in accordance with the laws of any EU Member State**
- h. **Citizens or permanent residents of an EU Member State**



## CNV Internationaal v. Colombia and Peru (May 2022)

### *First Complaint filed under the SEP procedures*

CNV Internationaal (The Netherlands), also on behalf of two trade unions from Colombia and Peru

Infringement of the TSD Chapter of the EU FTA with Colombia, Peru, and Ecuador

Sub-contracted workers in local mining companies owned by the Swiss multinational Glencore

Colombia: coal

Peru: minerals (zinc, copper, tin, silver and lead)

Violations of articles 267, 269, 271 and 277 of the TSD Chapter

Article 271, para. 3: «The Parties agree to promote best business practices related to **corporate social responsibility**»





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