



Making trade agreements conditional on climate and environmental commitments

Mathilde Dupré*, Stéphanie Kpenou**

JUNE 2023

EXECUTIVE SUMMARY

Although the EU claims to have put its trade policy in the service of sustainable development with the inclusion of "trade and sustainable development" chapters in its bilateral agreements, the commitments they contain and their implementation have remained insufficient. This is why the Commission undertook new commitments in its 2021 trade policy review and its new strategy for trade agreements in 2022.

This note provides an overview of the implementation of these European commitments and includes a number of proposals designed to initiate a fundamental paradigm shift in trade policy.

Within the framework EU's bilateral trade agreements, it is proposed to:

- Elevate, in an effective manner, the fight against climate change and environmental protection to the status of essential elements in EU trade agreements.
- Make tariff preferences conditional on compliance with sustainability criteria for environment- and climate-sensitive products.

The key principles of the WTO's multilateral trading system should also be interpreted, or even revised, to allow states to legitimately discriminate against products on the basis of the sustainability of their production processes.

At the same time, investment protection remains a major issue. The agreements being renegotiated with Chile and Mexico, for example, provide for the protection of fossil fuel investments and are not in line with the European Commission's approach to the modernisation of the Energy Charter Treaty and the European Parliament's June 2022 resolution on the subject.

Our recent publications

NOTES & STUDIES

- Veblen Institute, FNH, Interbev, [UE-Mercosur : les dangers d'une ratification de l'accord de commerce en l'état](#), March 2013
- Veblen Institute, [A Digital Euro for a better Monetary system: The case for a public option](#), January 2023
- Veblen Institute, Communication & démocratie, [La communication commerciale à l'ère de la sobriété](#), October 2022
- Veblen Institute, RAC France, [Emplois et climat : relever le défi des reconversions professionnelles - Le cas du charbon français](#), September 2022
- Veblen Institute, [Using the European Semester for implementing the European Green Deal](#), September 2022
- Veblen Institute, [How Banking Regulation can serve the Ecological Transition](#), september 2022
- Veblen Institute, Greenpeace, [The European Commission's Trade Sustainability Impact Assessments : a critical review](#), May 2022

BOOKS

- Sizzo Mansholt, [La Lettre Mansholt \(1972\)](#), Les petits matins / Institut Veblen, mai 2023
- Cédric Philibert, [Éoliennes : pourquoi tant de haine ?](#), Les petits matins / Institut Veblen, février 2023
- Harold Levrel, Antoine Missemer, [L'économie face à la nature : de la prédation à la co-évolution](#), Les petits matins / Institut Veblen, février 2023
- Jézabel Coupey-Soubeyran, Dominique Méda, Florence Jany-Catrice, Laurence Scialom, Mathilde Dupré, [Chroniques critiques de l'économie](#), éditions Bréal, janvier 2023

MAKING TRADE AGREEMENTS CONDITIONAL ON CLIMATE AND ENVIRONMENTAL COMMITMENTS

MATHILDE DUPRÉ & STÉPHANIE KPEYOU

JUNE 2023

The Veblen Institute for Economic Reforms is a non-profit think tank promoting policies and civil society initiatives for the ecological transition. We believe the current economic model is profoundly unsustainable and should be transformed in the spirit of social justice and respect of planetary boundaries.

www.veblen-institute.org

Our work is supported by the Charles-Léopold Mayer Foundation, Funders for fair trade and the European Climate Foundation

INTRODUCTION

Trade can no longer be seen as an end in itself, with no regard to its negative impact on climate and biodiversity.

- CO₂ emissions linked to the production and marketing of traded goods and services accounted for 25% of global emissions in 2015¹.
- Between 1990 and 2013, emissions from freight transport rose by 75%. They are expected to almost triple (+ 290%) by 2050. More than 40% of this increase would be due to sea and air transport².
- The liberalisation of trade in agricultural products has significantly contributed to the “*intensification and specialisation of cropping systems and production systems*”³. This specialisation has also “*increased the ecological risk by favouring monoculture and intensification (reduced fertility and soil erosion, water pollution by pesticides and nitrates, and reduced biodiversity)*”⁴. In South America, Indonesia, Malaysia and increasingly in sub-Saharan Africa, monocultures for export are replacing savannahs, natural pastures and tropical forests⁵.

By facilitating the production and trade of polluting products, current principles of international trade contribute to the development of an unsustainable economic model.

In this respect, the CETA⁶ and the EU-Mercosur agreement⁷ illustrate the gap between the EU’s environmental and climate commitments and the content of the trade negotiations. On an international scale, one study suggests that in most countries, customs duties and non-tariff barriers are significantly lower for the most polluting industries than for clean industries. As a result, trade rules would generate a form of implicit global subsidy for CO₂ emissions from

¹ R. Cezar, T. Polge, [CO₂ emissions embodied in international trade](#), Banque de France Bulletin no. 228/1, March-April 2020; WTO, [Trade and Climate Change, The carbon content of international trade](#), Information brief no. 4, 2022

² OECD, [Aligning Policies for a Low-carbon Economy](#), 2015.

³ É. Malézieux, [La diversification dans les agricultures du Sud à la croisée de logiques d’environnement et de marché](#), CIRAD, 2005.

⁴ *Ibid.*

⁵ European Parliament, [Trade and Biodiversity](#), June 2020.

⁶ [The Sustainability Impact Assessment of CETA](#) produced in 2011 points to a number of factors that could increase GHG emissions as a result of the agreement’s implementation: methane emissions due to the size of cattle farms, increased investment in polluting industries, particularly non-conventional fossil fuels, and increased emissions from sea and air transport.

⁷ The Commission set up by the French government to assess the EU-Mercosur agreement has highlighted its harmful and widely under-estimated impact on the climate: the conclusions of the impact study commissioned by the EC do not take into account emissions from international transport or emissions due to deforestation and changes in land use. [Rapport au Premier ministre](#), Provisions and potential effects of the trade part of the Association Agreement between the European Union and Mercosur on sustainable development, September 2020.

internationally-traded goods to the tune of several hundred million dollars a year⁸, more than the annual subsidies allocated to fossil fuels.

The concessions made by governments in trade agreements limit their ability to act in the face of the climate and environmental emergency⁹.

Trade continues to be seen as an end in itself and trade policy is conducted independently of - and is often inconsistent with - other public policies. Unlike international environmental or human rights laws, the international law applicable to trade matters includes particularly effective mechanisms of enforcement and sanctions. As such, there is a *de facto* hierarchy, with trade issues taking precedence over ecological and social issues. This situation should be considered alongside governments' reluctance to adopt ambitious and restrictive environmental and social rules at international level. The EU, for example, refused to make any form of commitment under the Paris Agreement that might have a negative impact on trade¹⁰.

While an in-depth review of the EU's trade policy is necessary, the few advances that have been made are far from sufficient given the urgency of the issues at stake¹¹.

The EU has long claimed that its trade policy promotes sustainable development¹². The 2011 free trade agreement between the EU and Korea was the first to include a "trade and sustainable development" (TSD) chapter¹³. Since then, such chapters have been systematically included in the EU's trade agreements. However, these commitments and their implementation remain inadequate (see Annex II):

- Due to their **limited reach**: the provisions of TSD chapters are akin to "best efforts" clauses, with the parties undertaking, for example, only to "*promote the development of international trade in such a way as to contribute to the objective of sustainable development*"¹⁴. The decision of the panel of experts constituted under the EU-Korea Agreement is a clear illustration of this¹⁵. The EU had lodged two sets of appeals. In the first, it argued that Korea had not "*made continued and sustained efforts towards ratifying the fundamental ILO Conventions*", in accordance with Article 13.4.3 of the

⁸ J. Shapiro, [The environmental bias of trade policy](#), Energy Institute WP 305, May 2020

⁹ As the IPCC points out, they may "*limit countries' ability to adopt trade-related climate policies*". IPCC Report 2022, [Mitigation of Climate Change](#), para. E.6.4, p. 48.

¹⁰ See the [document presented](#) by DG CLIMA to the Council's Trade Policy Committee on 20 November 2015

¹¹ "*While the financial sphere, following COP21, is beginning to take account of the issues and risks associated with climate risk, international trade players and regulations are still lagging behind in this area*". [Rapport au Premier ministre](#), The impact of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) on the environment, climate and health, 7 September 2017

¹² Since 2006, the EU has been asserting its determination to use trade and investment to promote genuine global sustainable development. See Council of the EU, [Renewed EU sustainable development strategy](#), Brussels, 26 June 2006.

¹³ [Free Trade Agreement between the EU and the Republic of Korea](#), Chapter 13.

¹⁴ *Ibid.*, Art. 13.1.

¹⁵ [Report](#) of the panel of experts constituted under Art. 13.15 of the EU-Korea FTA, 20 January 2021.

FTA. The group of experts decided that although the Agreement imposes an ongoing obligation on the parties to make efforts in this area, Korea had not committed itself to any specific deadline for ratifying the ILO Conventions¹⁶. This decision highlights the very limited reach of the “best efforts” obligations set out in TSD chapters.

- Due to their **scope of application**: environmental and labour issues are not yet considered independently in TSD chapters. As such, the EU-Korea agreement sets out that the provisions of the TSD chapter apply to measures adopted by the parties that affect “*trade-related aspects of labour and environmental issues*”¹⁷. On this point, the EU-Korea panel of experts gave a more open interpretation in the context of the second series of appeals brought by the EU. The EU argued that Korean legislation on trade unions and labour relations contradicted certain provisions of the TSD chapter. The panel of experts ruled that this legislation violated Article 13.4.3 of the TSD chapter, in which the parties “*commit to respecting, promoting and realising the fundamental rights at work in accordance with the obligations deriving from membership of the ILO*”. It considered that the EU’s challenge to this legislation was legitimate, even though the Korean legislation in question had no connection with trade under the Agreement. In other words, the panel interpreted the object and purpose of the FTA as being not only to facilitate trade flows, but also to ensure that the parties’ labour legislation complies with their international obligations as members of the ILO¹⁸. To strengthen TSD chapters, an open approach of this type should be expressly included in all of its agreements.
- Due to their **limited effectiveness**: the provisions of TSD chapters are not subject to the general dispute settlement mechanisms of agreements¹⁹. Experts panels make non-binding recommendations and there are no sanctions or measures to ensure that their recommendations can be implemented²⁰.

¹⁶ *Ibid*, paragraphs 278 and 291.

¹⁷ Article 13.2 of the [EU-Korea Agreement](#)

¹⁸ See paragraph 66 and 95. Following this dispute, Korea ratified three of the ILO’s four Fundamental Conventions in April 2021 (Convention 29 on Forced Labour, Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Collective Bargaining). See [EESC](#), EU-Korea DAG follows the developments in South Korea subsequent to the Report of the Panel of Experts and South Korea’s ratification of ILO conventions, 24/11/2021. Korea has also indicated that it will undertake a research project to determine what changes need to be made to its domestic legislation to avoid incompatibility with ILO Convention 105 on the Abolition of Forced Labour. [IISD](#), The “trade-related” conundrum of the EU–Korea FTA Expert Panel: Are FTAs a novel forum to enforce sustainable development goals?, October 2021.

¹⁹ See, for example, Article 16.17 of the [EU-Japan Economic Partnership Agreement](#).

²⁰ This has not prevented the EC from describing the TSD provisions as binding (EU Commission services (2017) Non-paper of the Commission services: Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs). European Commission. On this point, [the opinion](#) of the European Economic and Social Committee (EESC) of February 2018 calls for the effective enforceability of the commitments made in TSD chapters to be strengthened. The EESC believes that “*TSD chapters must be given equal weight to those covering commercial, technical or tariff issues*”. The EESC also encourages the EC to assess “*the effectiveness of an enforceable compliance mechanism that could be developed in TSD chapters*”.

CJEU Opinion 2/15 of 16 May 2017 on the draft EU-Singapore agreement: sustainable development as an integral part of the common commercial policy

In an opinion delivered on 16 May 2017²¹, the CJEU had to rule on the nature of the competences necessary for the conclusion of the EU-Singapore FTA. The key question was whether the provisions of the trade and sustainable development chapter fell within the scope of the common commercial policy and therefore within the exclusive competence of the EU. In this opinion, the Court considers the objective of sustainable development to form “*an integral part of the common commercial policy*” (para. 147). Referring to Article 60 of the Vienna Convention on the Law of Treaties (VCLT), it emphasised that “*a breach of the provisions concerning the social protection of workers and environmental protection, set out [in the TSD Chapter], authorises the other Party — in accordance with (...) Article 60(1) of the [VCLT] (...) — to terminate or suspend the liberalisation, provided for in the other provisions of the envisaged agreement, of that trade*” (para. 161). This chapter “*plays an essential role in the (...) agreement*” (para. 162), which the Court interprets as “*making liberalisation of that trade subject to the condition that the Parties comply with their international obligations concerning social protection of workers and environmental protection*” (para. 166). Thus, although this possibility is not expressly included in the EU-Singapore Agreement, the Court interprets the agreement as authorising the parties to impose trade sanctions in the event of a breach of the provisions of the sustainable development chapter. **In practice, this option, which already existed with the essential human rights clauses, has never been seriously considered, in particular because the suspension of an entire trade agreement appears, to trade policy-makers, far too radical a sanction.**

The trade policy review of 2021²² and the new strategy for trade agreements of 2022²³ undeniably mark a change, but do not yet go far enough.

- In the 2021 review, the EC restates the objective of the *European Green Deal*²⁴ to make compliance with the Paris Agreement “*an essential element in future trade and investment agreements*”²⁵.

²¹ [Opinion 2/15](#), delivered on 16 May 2017, para. 161.

²² [Trade Policy Review - an Open, Sustainable and Assertive Trade Policy](#), COM (2021) 66 final, 18 February 2021

²³ [The power of trade partnerships: together for green and just economic growth](#), COM (2022) 409 final, 22 June 2022.

²⁴ “*The Commission will propose to make the respect of the Paris agreement an essential element for all future comprehensive trade agreements*”, EC Communication, [The European Green Deal](#), COM(2019)640 final, 11 December 2019. This idea originally stems from the French government’s CETA action plan drawn up in 2017 after the commission to assess CETA delivered its report on the EU-Canada trade agreement. The [report](#) by French experts already referred to this measure (see p. 15)

²⁵ [Trade Policy Review 2021](#) *op. cit.*

- The new 2022 strategy proposes to “further align TSD enforcement with the general state-to-state dispute (SSDS) settlement”²⁶ and to “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”²⁷. However, sanctions are only envisaged as a last resort, i.e. only when a “panel finds a party in breach of its TSD commitments, and the latter does not bring itself into compliance within the arranged time period”²⁸. Furthermore, the EC has no plans to include a complaints and sanctions mechanism in all its trade agreements. Instead, it advocates a “tailored” approach for each agreement, depending on the trading partner concerned.

The “essential element” approach already exists with respect to human rights in economic partnership agreements²⁹, but the clauses are rarely activated, a fact criticised by various NGOs³⁰. Instead, the adoption of alternative “restrictive measures” under the Common Foreign and Security Policy (CFSP)³¹ has become common practice. The French panel of expert’s report on the EU-Mercosur agreement stresses that the effectiveness of essential human rights clauses “has been limited by the preference for incentives over the threat of sanctions”³². Another example is the Generalised System of Preferences (GSP), currently under review,

²⁶ [The power of trade partnerships](#) *op. cit.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ It is possible to take “appropriate measures” in the event of human rights violations, particularly under the Cotonou Agreement with the African, Caribbean and Pacific (ACP) countries. These measures include the suspension of development aid and/or technical cooperation in response to very serious violations of democracy and human rights (Article 96). See also [the economic partnership agreement between the EU and the CARIFORUM States of 2008](#), which refers to the “essential and fundamental” elements of the Cotonou Agreement, namely human rights, democratic principles, the rule of law and good governance.

³⁰ FIDH, Vietnam Committee on Human Rights, “[Vietnam: crackdown on civil society intensifies](#)”, Briefing paper for the 10th EU-Vietnam human rights dialogue, 6 April 2022; Human Rights and Democracy Network, “[Recommendations for the revision of the European Union \(EU\) Guidelines on human rights dialogues with third countries](#)”, December 2020; “EU ‘ignoring’ its Human Rights Clause”, Politico, 17 March 2004. The NGOs criticise the EU for not enforcing the clause on respect for human rights as essential elements with sufficient firmness. For example, no benchmark has been established to judge whether countries are respecting human rights. The NGOs also point to the lack of effectiveness of human rights dialogues, which have failed to bring about significant changes when they should be focused on results, concrete cooperation and more active participation by civil society.

³¹ “This may include the freezing of funds and economic resources, restrictions on admission, arms embargoes, embargoes on equipment that might be used for internal repression, other export restrictions, import restrictions and flight bans”. [How and when the EU adopts sanctions](#) <https://www.consilium.europa.eu/en/policies/sanctions/>

³² [Rapport au Premier ministre](#), *op. cit.*, p. 14 and 15: “the effectiveness of the “human rights and democracy” clause has been limited by the preference for incentives over the threat of sanctions. Political dialogue, as the “preferred form of preventive action”, and any “reporting procedures” aimed at making public a partner’s misconduct, have proved limited in impact, particularly in Africa”; because “human rights” clauses have done little to advance these values and practices in the hundred or so countries around the world covered by agreements with the EU”.

which was introduced by European regulations³³ and is therefore based on a unilateral approach. Under this mechanism, the EU conditionally grants a number of developing countries a reduction in customs duties on certain products³⁴. Under the GSP, the EC can temporarily suspend the tariff preferences of a beneficiary country, in particular in the event of serious and systemic violation of certain fundamental conventions on human rights and workers' rights, as it did in the case of Cambodia, which had its duty-free access withdrawn for certain textile products in response to serious human rights violations³⁵. The latest version includes the Paris Agreement as one of the international conventions covered by the GSP conditionality system.

This approach, making the Paris Agreement an essential element, can be found in the **Trade and Cooperation Agreement between the EU and the United Kingdom**, which has been in force since 1 January 2021³⁶ - and was therefore negotiated before the EU's new strategy - , and in the **Free Trade Agreement between the EU and New Zealand**, negotiations for which were concluded on 30 June 2022³⁷. In these agreements, however, the possibility for a party to suspend or terminate the agreement due to a violation of the Paris Agreement as an essential element is only envisaged as a last resort (see Table 1 below, p. 10).

Chapter 26 of the EU-New Zealand Agreement also provides, for the first time, for a uniform dispute settlement mechanism that also applies to breaches of TSD obligations. In the event of serious violations of multilateral labour standards and agreements or of the Paris Agreement, it will be possible, as a last resort, to impose trade sanctions in the event of failure to comply with the recommendations of the panel's final report within the deadlines set by the latter (see Table, Annex II).

This note sets out proposals, based on a concept of conditionality, for a genuine paradigm shift in trade policy.

Within the framework of EU trade agreements:

- Elevate, in an effective manner, the fight against climate change and environmental protection to the status of essential elements in EU trade agreements.
- Make tariff preferences conditional on compliance with sustainability criteria for environment- and climate-sensitive products.

³³ The GSP rules of origin are set out in Articles 37 and 41 to 58 of [Commission Delegated Regulation \(EU\) 2015/2446](#) of 28 July 2015 and Articles 60 and 70 to 112 of [Commission Implementing Regulation \(EU\) 2015/2447](#) of 24 November 2015). The current GSP framework expires at the end of 2023.

³⁴ See the list of products covered <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0978&from=EN#page=50>

³⁵ European Commission, press release, [Cambodia loses duty-free access to the EU market](#), August 2020.

³⁶ In addition to the Paris Agreement, the agreement also describes the principles of democracy, the rule of law, respect for human rights, and countering the proliferation of weapons of mass destruction as essential elements. See Articles 771, 763(1), 764(1) and 765(1) of the [Trade and Cooperation Agreement between the EU and the United Kingdom](#).

³⁷ The Paris Agreement and the principles of democracy and the rule of law, respect for human rights and countering the proliferation of weapons of mass destruction are essential elements of the EU-New Zealand Trade Agreement. See Article 27.4(3) of the [Trade Agreement](#), and Articles 2(1) and 8(1) of the Partnership.

Reviewing the key principles of the multilateral trading system:

- Interpret the key principles of WTO law in such a way as to allow states legitimately to discriminate against products on the basis of the sustainability of their production processes.

I. MAKE COMPLIANCE WITH ENVIRONMENTAL AND CLIMATE COMMITMENTS AN ESSENTIAL ELEMENT OF EU TRADE AGREEMENTS

The aim is to include provisions in EU trade agreements defining compliance with climate and environmental commitments as an essential element, so that a breach of these commitments could justify the termination or suspension of the agreement, in whole or in part, under international law³⁸.

Elevating climate commitments and certain environmental obligations to the status of essential elements in trade agreements can help ensure trade and non-trade issues are addressed on equal terms. For this proposal to be fully effective, a number of points need to be clarified, in particular:

- Define what constitute “essential elements”
- Define a scale of sanctions for violations of essential elements

1.1 Clarify the definition of “an act or omission that materially defeats the object and purpose of the Paris Agreement”, or a “material breach”

Beyond the obligation to ratify the Paris Agreement, these material breaches must be interpreted as restricting the possibility of leaving the Agreement. At present, the unilateral withdrawal of a State from the Paris Agreement has no impact on the trade benefits linked to the trade agreements to which it is a party³⁹.

³⁸ See the [Vienna Convention on the Law of Treaties](#), 1969. Articles 44 and 60. See in particular Article 60(1): “A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part”

³⁹ The withdrawal of the United States from the Paris Agreement, announced in 2017, illustrated that countries can avoid their climate obligations by unilaterally withdrawing from a treaty. Article 28 of the Paris Agreement states that a Party may withdraw from the Agreement three years after its entry into force (which took place on 4 November 2016). Withdrawal takes effect one year after notification of withdrawal has been filed. As a result, the United States officially withdrew from the Paris Agreement in November 2020, only to re-join on 19 February 2021 by decision of President Biden. Le Monde, 19 February 2021, [Les États-Unis ont réintégré l’Accord de Paris, et cela peut accélérer la lutte contre le dérèglement climatique](#).

There is also the older example of Canada’s withdrawal from the Kyoto Protocol: Le Monde, [Canada leaves the Kyoto Protocol](#), 13 December 2011.

But “material breaches” should also cover cases of States’ non-compliance with their climate commitments.

- **Failure to revise the nationally determined contribution (NDC) upwards should be considered grounds for suspending all or part of the trade agreement**⁴⁰. For example, Brazil’s commitments under the Paris Agreement have been revised downwards⁴¹. In its 2020 NDC, Brazil committed to reducing its emissions by 1.2 billion tonnes of CO₂ equivalent by 2030 (i.e. a 43% reduction based on 2005 emissions). However, the country backtracked in its latest NDC of April 2022, contravening the principle of progression and upward revision of NDCs. A turnaround such as this should result in the suspension of the commercial benefits of trade agreements for as long as this situation persists.
- **Failure to meet** the objectives set out in the **NDC could also lead to** suspension of all or part of the agreement, depending on the degree of deviation from the trajectory recorded.

To avoid this kind of synchronisation of climate and trade commitments creating an incentive to limit the scope of the commitments made under NDCs, the essential clause could be supplemented by a joint roadmap containing other relevant indicators reflecting the contribution expected from a country.⁴²

Furthermore, “the UNFCCC and its subsequent agreements such as the Kyoto Protocol and the Paris Agreement are based on the principle that countries have to account for production-based emissions, meaning for those emissions that originate in their own country, not for those emissions they import”.⁴³ Commitments to reduce consumption-related GHG emissions should also be included in the roadmap⁴⁴.

⁴⁰ UNEP’s 2022 report on the gap between the emission reductions needed and the emission reductions promised points to the inadequacy of the measures being taken to tackle the climate crisis. Without ambitious new policies, governments are heading for global warming of 2.8°C above pre-industrial levels by the end of the century. “Collectively, the G20 members are not on track to achieve their new or updated NDCs. Based on current policies scenario projections in independent studies, there is an implementation gap, defined as the difference between projected emissions under current policies and projected emissions under full implementation of the NDCs”. UNEP, [2022 Emissions Gap Report](#), Executive Summary.

⁴¹ European Parliament, Briefing, [International progress on Climate Action. Brazil’s climate change policies. State of play ahead of COP 27](#), October 2022.

⁴² [CAN Europe’s Position on Trade and Trade Policy](#), September 2020

⁴³ *Ibid.*

⁴⁴ This has prompted the French High Council for the Climate to state that “to ensure that France cannot be suspected of reducing its national emissions through increased reliance on imports – thereby shifting the burden of reduction onto its trading partners – imported emissions must fall”, Haut Conseil pour le Climat, [Maîtriser l’empreinte carbone de la France](#), Executive Summary, 6 October 2020.

1.2 Integrate other multilateral environmental agreements (MEAs) as an essential element of trade agreements

In its 2022 new strategy for trade agreements, the European Commission is already considering extending this clause to the Convention on Biological Diversity:

“Building on the development of the future robust Global Biodiversity Framework, in particular with regard to setting biodiversity targets and appropriate mechanism for international reporting and monitoring, the Commission will evaluate the possibility of including the Convention on Biological Diversity in this new approach.”⁴⁵

In other words, the EC seems to want to limit the approach solely to MEAs with robust monitoring mechanisms⁴⁶. This has now been achieved with the Kunming-Montreal Global Biodiversity Framework adopted in December 2022 at COP 15 of the Convention on Biological Diversity.

Closer monitoring of government obligations to protect biodiversity: the Kunming-Montreal Global Biodiversity Framework

The Kunming-Montreal framework sets out a strategy for achieving 4 key objectives by 2050⁴⁷ and 23 targets by 2030⁴⁸. The framework provides a number of mechanisms for implementing the objectives: a more robust mechanism for planning, monitoring, reporting and reviewing implementation; the financial resources needed for implementation; and strategic frameworks for capacity development and technical and scientific cooperation. The planning and monitoring mechanisms include the following:

- Revised or updated national biodiversity strategies and action plans;
- National indicator reports as part of the Kunming-Montreal Global Framework monitoring;
- An overall analysis of the information contained in the National Biodiversity Strategies and Action Plans (NBSAPs);
- An overall review of collective progress and voluntary peer reviews
- Information on the commitments of non-state actors to the Kunming-Montreal Global Framework.

⁴⁵ See in Communication [The power of trade partnerships](#), footnote 30.

⁴⁶ See UNEP, [Compliance mechanisms under selected MEAs](#), 2007. In this study, UNEP conducts a comparative analysis of the control mechanisms of 19 MEAs (selected for their global reach, widespread ratification and subject matter representing different sectors of environmental management).

⁴⁷ In particular, the integrity, connectivity and resilience of all ecosystems are maintained, enhanced, or restored, substantially increasing the area of natural ecosystems; the human induced extinction of known threatened species is halted and the extinction rate and risk of all species are reduced tenfold and the abundance of native wild species is increased to healthy and resilient levels; biodiversity is sustainably used and managed; and the monetary and non-monetary benefits from the utilization of genetic resources and digital sequence information on genetic resources, and of traditional knowledge associated with genetic resources, are shared fairly and equitably

⁴⁸ These include the restoration of 30% of degraded ecosystems; financial aid of \$20 billion a year from 2025 and \$30 billion from 2030 for developing countries; and halving the risks associated with pesticides.

In addition to the Paris Agreement and the Convention on Biological Diversity, other multilateral environmental agreements could be integrated as essential elements of trade agreements. If it is not possible to do so for the more than 250 MEAs in force⁴⁹, what selection criteria should be used?

The Jacques Delors Institute suggests using the following selection criteria⁵⁰:

- The MEA must address an urgent global environmental crisis
- The MEA must have been ratified by a large majority of states (3/4 of all states)
- The MEA must be relevant to all trading partners.
- There needs to be a link between the MEA and trade.

On the basis of these criteria, 5 additional agreements could be included in future EU trade agreements as essential elements: the Convention on Biological Diversity (1992), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989), the Stockholm Convention on Persistent Organic Pollutants (2001), and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998)⁵¹.

1.3 Include clauses in trade agreements that set out graduated sanctions depending on the seriousness of the contravention of essential elements.

Non-performance clauses must define a scale of appropriate measures that can be taken to penalise breaches of the essential elements. The threat of significant sanctions is a factor that encourages compliance with international environmental law. These sanctions could take the following forms:

- **The temporary withdrawal of tariff preferences on products linked to the breach.**
- **Suspension (partial or total) of the trade agreement.**
- **Termination of the trade agreement.** This possibility exists in the field of human rights. For example, Article 28(7) of the EU-Canada Strategic Partnership Agreement recognises that *“a particularly serious and substantial violation of human rights or non-proliferation, as defined in paragraph 3, could serve as grounds for the termination of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) in accordance with Article 30.9 of that Agreement”*.

With regard to the Paris Agreement, if a trading partner decided to withdraw from it, the EU should be able to suspend the entire trade agreement with that partner. If a partner deviates from its GHG emissions trajectory, partial or complete suspension should be possible,

⁴⁹ https://www.wto.org/french/tratop_f/envir_f/envir_matrix_f.htm

⁵⁰ Europe Jacques Delors, [Make-or-break: Including Multilateral Environmental Agreements as “essential elements” in EU Free Trade Agreements](#), December 2022

⁵¹ *Ibid.*

depending on the deviation observed, until the partner returns to the correct trajectory. In the event of a serious violation, suspension should be triggered automatically, on the basis of a report by a panel of climate experts - in other words, without having to wait for a joint decision by the two parties to the agreement.

These sanctions should be graduated according to a predefined “scale”. In the event of an overall increase in emissions or a refusal to increase climate commitments, the entire trade agreement could be automatically suspended. If emissions are not reduced sufficiently, more targeted trade sanctions could be introduced, particularly on the most GHG-emitting goods and services. In all cases, it is important that these sanctions are automatic once the offence has been committed. Otherwise, there is a risk that political and diplomatic considerations will take precedence and delay or even prevent the application of the sanction. A provision of this kind would not only help to make the Paris Agreement truly binding but also to ensure that large corporations, the main beneficiaries of trade agreements, are more closely involved in the fight against climate change.

If the trading partner in question does not take any steps to remedy the situation, it should be possible to terminate the agreement.

The implementation of the trade agreement must also be conditional on meeting climate finance commitments to the Global South. At present, governments are not obliged to record their financial commitments in international law. While the Paris Agreement provides that *“developed country Parties shall provide financial resources to assist developing country Parties”* and that *“such mobilization of climate resources should represent a progression beyond previous efforts”*, each country remains free to make its own commitments to achieve the internationally agreed target. And at this stage, the commitment by developed countries to mobilise US\$100 billion a year by 2020 has not yet been met⁵². States must declare the amount of funding implemented every two years, but there is no sanction mechanism if commitments are not met. To make these commitments more binding, they could be set out in joint declarations attached to trade agreements, with monitoring every two years and possible trade sanctions in the event of deviations. For example, a temporary increase in customs duties could enable collection of the sums needed to fill the climate finance gap and allocate them to combatting climate change in the Global South.

⁵² This is a commitment made in 2009 by developed countries at COP 15 in Copenhagen.

Table 1. Paris Agreement as an essential element of the EU/United Kingdom and EU/New Zealand Agreements

	EU/United Kingdom Trade and Cooperation Agreement	EU/New Zealand trade agreement
Paris Agreement as an essential element	- acts or omissions that would materially defeat the object and purpose of the Paris Agreement (Articles 764(1) and 771 ⁵³).	- acts or omissions that materially defeat the object and purpose of the Paris Agreement (Articles 19.6 and 27.4(3) ⁵⁴).
Fulfilment of obligations described as essential elements	(Art. 772) In the event of a serious and substantial failure to fulfil any of the obligations that are defined as essential: - Seek a “timely and mutually acceptable solution” within the Partnership Council. - In the absence of a mutually acceptable solution within 30 days, either party may terminate or suspend the operation of all or part of the Agreement or of any supplementing agreement. Priority given to measures that least disturb the functioning of the FTA and any supplementing agreement.	(Art. 27.4(3) of the Trade Agreement + Art. 54 of the EU/NZ Partnership Agreement ⁵⁵). In the event of a particularly serious and substantial violation of the essential elements: - Seek an “amicable solution” within the Joint Committee, within 30 days. - If unsuccessful, consultations at ministerial level (within 15 days) - In the absence of a solution, option to take appropriate measures (i.e. partial or total suspension or termination) that are proportionate and comply with international law. Priority is given to those that least disturb relations between the parties.
Limitations	Acts and omissions that materially defeat the object and purpose of the Paris Agreement” - not otherwise defined - may justify partial or total suspension or termination (in the case of EU/NZ agreements). But these options are only considered as a last resort. Only once the procedures provided have been exhausted may a party may consider taking proportionate measures, with priority given to those that least disrupt the operation of the agreements. These agreements do not define what type of measure would be appropriate for a particular failure to meet the commitments of the Paris Agreement. This is why, in order for the possibility of sanctions to be real (and therefore binding), sanctions must be automatic, applied according to a predefined scale based on the nature and degree of failure.	

⁵³ In the [EU/United Kingdom Trade and Cooperation Agreement](#), the Paris Agreement is enshrined as an essential element under Title II, “Basis for Cooperation”.

⁵⁴ In the [EU / New Zealand Trade Agreement](#), the Paris Agreement is raised as an essential element in Chapter 19 on TSD, as well as in the Final Provisions (Chapter 27) in a provision relating to “Fulfilment of obligations”.

⁵⁵ Before concluding their trade agreement, the EU and New Zealand concluded a Partnership in 2017 that contains a number of economic rules and rules on cooperation. The partnership agreement came into force in July 2022.

1.4 Establish complaints mechanisms in trade agreements

The creation of a Chief Trade Enforcement Officer and the establishment of a single entry point whereby EU citizens, EU-based NGOs and EU Member States can file a complaint alleging a violation of TSD commitments is a step in the right direction. The fact that only EU citizens and organisations based in the EU can file a complaint remains a serious limitation, as pointed out by the European Ombudsman⁵⁶.

A complaints mechanism targeting companies and governments could be incorporated into all trade agreements to tackle breaches of climate and environmental commitments⁵⁷. These mechanisms should allow for the active participation of stakeholders. EU FTAs should require each party to establish or designate a competent and independent authority/body to deal with complaints from individuals and businesses. These mechanisms should be based on rigorous procedural requirements: full examination of the complaint, compliance with certain deadlines, etc. If a complaint is not considered to be sufficiently well-founded, the organisation should justify why it has not taken action. Finally, this complaints mechanism should enable the competent body to adopt an enforcement action plan, which, if not adhered to, could trigger the suspension of certain trade preferences.

The rapid response mechanism of the United States-Mexico-Canada Agreement (USMCA)

This mechanism is designed to ensure that freedom of association and the right to collective bargaining are respected. The first step is for a country to submit a request for review to the other country in order to determine whether there is a denial of rights and to try to remedy the problems identified. The latter has 45 days to remedy the situation. If no negotiated solution emerges, a panel of experts can be set up to assess the complaints. It must make a decision within 30 days.

If workers' rights are violated in a company, it may be subjected to sanctions: suspension of tariff benefits for products manufactured in the target company, penalties, or even refusal of entry for goods from repeat offenders.

The mechanism is based on a fast-track procedure, with the entire process lasting no more than 148 days.

The mechanism appears to be fairly effective, with 8 cases to date.

The USMCA does not deal with environmental issues in the same way. Environmental disputes are covered by the Chapter on Dispute Settlement (Chapter 31), but the Agreement makes no provision for an expedited review of potential breaches of environmental commitments.

⁵⁶ [Closing note on the Strategic Initiative concerning how the European Commission ensures respect for human rights in the context of international trade agreements \(SI/5/2021/VS\)](#).

⁵⁷ [Veblen Institute, ClientEarth, Eurogroup for Animals, FNH, EEB, Fern, Making TSD chapters more effective, Joint contribution to the EU's Trade and Sustainable Development \(TSD\) Review](#).

1.5 Include an ex-post control system and a review and revision clause in trade agreements⁵⁸.

Firstly, EU FTAs should provide for a rigorous and independent *ex-post* control system to:

- Assess the environmental and social impacts of the FTA's trade provisions
- Review the effectiveness/implementation of the provisions of the TSD chapter.

Secondly, EU FTAs should include a review and revision clause providing that, where the *ex-post* control process shows (1) negative impacts of trade provisions on the environment, human rights or animals, or (2) that the environmental or social provisions are not effective, steps are then taken to address these problems, either by revising the text of the agreement or by adopting any other appropriate measure (e.g. suspension of trade preferences).

II. MAKE TARIFF PREFERENCES CONDITIONAL ON COMPLIANCE WITH SUSTAINABILITY STANDARDS FOR ENVIRONMENT- AND CLIMATE-SENSITIVE PRODUCTS

Tariff preferences should be made conditional on effective compliance with sustainability criteria for all the most sensitive products from a climate and biodiversity protection point of view.

This approach was already suggested in the Sustainability Impact Assessment on the EU-Mercosur agreement, published in 2009⁵⁹. The report recommended that *“the opening of quotas on sensitive products from an environment/biodiversity perspective should be conditional on compliance with a series of sustainability criteria”*. An unofficial Franco-Dutch document (*“Trade, social economic effects and sustainable development”*) from 2020⁶⁰ again recommended that parties *“introduce staged implementation of tariff reduction linked to the effective implementation of TSD provisions and clarify what conditions countries are expected to meet for these reductions, including the possibility of withdrawal of those specific tariff lines in the event of a breach of those provisions”*.

Tariff conditionality clauses have been included in certain trade agreements:

- Under the EU-Mercosur Agreement, tariff liberalisation for shell eggs is conditional on compliance with the relevant EU animal welfare standards for laying hens. However, the volumes traded in these products appear to be fairly negligible. Furthermore, the text as it stands does not make the granting of tariff preferences conditional on

⁵⁸ *Ibid.*

⁵⁹ [Final overview trade SIA EU-Mercosur Final Report](#), March 2009

⁶⁰ [Non-paper from the Netherlands and France on trade, social economic effects and sustainable development](#)

compliance with European production standards in terms of environmental protection, health and, in the case of other livestock products, animal welfare⁶¹.

- In the EU-New Zealand agreement, access to the bilateral beef quota is conditional on compliance with a sustainability criterion that excludes cattle reared in feedlots⁶². But this clause does not seem relevant in the New Zealand context, where cattle are not finished in feedlots.

This type of approach should be applied in all EU trade agreements, targeting the most environment-sensitive goods. **The agreements should establish criteria for granting preferential tariffs for products presenting the highest risks to the climate and biodiversity.** The list of sensitive products would depend on each agreement. It could be carried out by means of a health and environmental impact study specifically dedicated to this issue, in consultation with the stakeholders and civil society organisations concerned.

Under the EU-Mercosur Agreement, for example, there is a significant difference in standards for pesticides. Almost 30% of the active substances authorised in Brazil are not approved in the EU because of the risks they pose to the environment and health⁶³. The development of “mirror measures”⁶⁴ upstream of the implementation of the agreement would enable this difference in standards to be corrected. But until such time as pesticide mirror measures are actually implemented and applied across the board⁶⁵, this issue should be the subject of mirror clauses to be introduced as a condition of pricing. In addition, as the finishing of cattle in feedlots has increased significantly in Mercosur countries, tariff advantages should only target meat from cattle reared exclusively on pasture⁶⁶.

⁶¹ Veblen Institute, FNH, Interbev, [EU - Mercosur: the dangers of ratification as it stands](#), March 2023.

⁶² EU-New Zealand Agreement, [Annex 2-A Tariff elimination schedules](#), Section C Tariff rate quotas of the EU, para. 21(b): “*This paragraph applies to originating goods classified in the following tariff lines: 0201, 0202, 0206 10 95, 0206 29 91, 0210 20 10, 0210 20 90, 0210 99 51, 0210 99 59, 1502 10 90, ex 1502 90 90 (beef only), and 1602 50,1 to product from animals that have been raised under New Zealand’s pastoral farming conditions. For greater certainty, this does not include commercial feedlots.*”

⁶³ [Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes](#), A/HRC/45/12/Add 2, p. 7.

⁶⁴ In other words, measures incorporated into European legislation that make access to the EU market conditional on compliance with certain essential European standards, particularly in terms of sustainability, the environment, health and animal welfare. Applied to pesticides, these mirror measures would prohibit the introduction to the European market of food products treated with substances banned by European regulations (or at least containing residues of these substances).

⁶⁵ In its [report](#) on the application of European health and environmental standards to imported agricultural and agri-food products (June 2022), the European Commission recognises the political relevance and legal feasibility of “*autonomous measures relating to environmental or ethical aspects of the process or production methods of imported products [or that] (...) reflect demands of European consumers (...)*”. The EC recommends the adoption of such measures on a case-by-case basis in European sectoral legislation. However, the EU has not yet defined an overall framework covering a large number of pesticides and toxic substances for this purpose, nor set a precise timetable for effectively filling the current regulatory gap. It has only proposed mirror measures on environmental grounds for [two neonicotinoids](#).

⁶⁶ Veblen Institute, FNH, Interbev, [UE/Mercosur](#), *op. cit.*

In addition, for future agreements, the timetable for implementing the trade benefits offered to partners could be progressive and linked to the implementation of climate commitments. Certain tariff reductions or the opening up of certain quotas could, for example, become effective in proportion to the progress made on environmental measures such as the upward reassessment of climate commitments, the end of fossil fuel subsidies or the adoption of a long-term carbon neutrality strategy.

III. INTERPRET THE KEY PRINCIPLES OF WTO LAW IN SUCH A WAY AS TO ALLOW STATES TO LEGITIMATELY DISCRIMINATE AGAINST PRODUCTS ON THE BASIS OF THE SUSTAINABILITY OF THEIR PRODUCTION PROCESSES

Measures that discriminate between goods on the basis of the sustainability of their production process are a tool that the EU is increasingly using to combat global warming, environmental degradation and the loss of biodiversity⁶⁷. These measures have already been widely criticised by the relevant WTO committees⁶⁸.

Under WTO law, measures based on PPMs are not prohibited per se. They are authorised if they comply with non-discrimination requirements, and the issue therefore revolves around the definition of non-discrimination obligations. But according to the current interpretation of WTO law, even measures that are neutral as to the origin of the products can be considered to affect, *de facto*, competition conditions between like imported and domestic products and/or between imported products of different origin.

There is an urgent need to remedy the current uncertainty regarding the room for manoeuvre available to governments to take ambitious environmental and climate measures:

- **The principle of non-discrimination should be clarified** to ensure that environmental and climate measures that have a *de facto* negative impact on the competition conditions of imported products compared to domestic products are not considered discriminatory if the impact in question is the result of a non-protectionist regulatory distinction.
- In the absence of any relevant international consensus, **States should have sufficient autonomy to define sustainability criteria on which to base their environmental protection and climate change mitigation measures**, in accordance with the precautionary principle.

⁶⁷ An EU market ban on products containing residues of clothianidin and thiamethoxam ([Commission Regulation \(EU\) 2023/334](#) of 2 February 2023); border carbon adjustment mechanism ([final act](#), adopted on 10/05/2023), Regulation on imported deforestation ([final act](#), adopted on 16/5/2023)

⁶⁸ See, for example, [the analysis](#) of job document JOB/TE/78 presented by India and supported by other Member States, such as Brazil, Uruguay, Paraguay, Colombia, Nicaragua, Kenya, China and Russia (“Concerns on Emerging Trends of Using Environmental Measures as Protectionist Non-Tariff Measures”)

ANNEX I: ADDITIONAL MEASURES

- **Exclude from the agreements goods and services that are harmful to the climate and biodiversity**
- **Ensure that trade agreements comply with the precautionary principle** by recognising its binding status in the preambles and including it in the general chapter (using wording aligned with the CJEU's interpretation). Doing so would make the precautionary principle a guiding principle for the interpretation and implementation of all trade agreements.
- **Include as a preamble the primacy of the new multilateral social and environmental agreements⁶⁹** in order to guarantee that they will prevail in the event of any contradiction with commitments made by the Parties in trade and investment agreements.
- **Change the objectives of regulatory cooperation to give priority to the fight against climate change, the protection of the environment and human rights**, and guarantee genuine democratic control over the whole system.
- **Put an end to the dispute settlement mechanism between States and foreign investors⁷⁰.**
- **Authorise local content clauses** to encourage the development of the renewable energy industry and technology transfer.
- **Authorise subsidies for renewable energies and abolish subsidies for fossil fuels.** Provide that subsidies for fossil fuels or subsidies that encourage the over-exploitation of natural resources (e.g. over-fishing) can be challenged on the sole grounds that they hinder the energy transition or the introduction of effective natural resource management policies.
- **Announce a target for reducing emissions from international transport**, as a minimum with a coalition of willing countries, including countries with which the EU is conducting

⁶⁹ ILO Conventions, the Universal Declaration of Human Rights and international environmental protection agreements (the United Nations Framework Convention on Climate Change, the Paris Agreement, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol, the Convention on Biological Diversity, the Cartagena Protocol on Biosafety, the CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on the Conservation of Migratory Species of Wild Animals), the Cartagena Protocol on Biosafety, the CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on the Conservation of Migratory Species of Wild Animals and the International Plant Protection Convention (IPPC)).

⁷⁰ At the very minimum, investment protection agreements or chapters should be reformed on the basis of the new approach set out in the European Parliament Resolution of 23 June 2022 on the future of the EU's international investment policy ([2021/2176\(INI\)](#)), which calls for the exclusion of investments in the fossil fuel sector or in any other activity that leads to human rights violations or environmental degradation; measures to protect the climate and biodiversity in existing agreements and future negotiations, accompanied by a revision aimed at a narrower definition of the investments covered and a tightening of protection standards solely to national treatment.

bilateral negotiations, and develop specific rules on freight transport in terms of environmental standards.

- **Regulate the extraterritorial activities of private actors to prevent the international activities of our national companies from undermining the implementation of multilateral environmental conventions in third countries.** This could take the form, for example, of a carbon tax on profits generated by direct investment abroad, aimed at limiting carbon-intensive activities that might affect the ability of third countries to meet their NDC targets as defined under the Paris Agreement⁷¹.

ANNEX II - EXAMPLE OF TRADE AND SUSTAINABLE DEVELOPMENT PROVISIONS IN FIVE TRADE AGREEMENTS

⁷¹ Transport and Environment, Trade Justice Movement, [Can trade and investment policy support ambitious climate action?](#), November 2017



Veblen Institute for Economic Reforms

	EC commitments (2021 , 2022)	EU-Mercosur ⁷² <i>Political agreement on the text in June 2019</i>	EU-Chile <i>Interim Trade Agreement</i> ⁷³	EU-Australia <i>Initial text proposals submitted by the EU</i> ⁷⁴	EU-Mexico <i>“Agreement in principle” on trade aspects (April 2018)</i>	EU-New Zealand <i>Negotiations concluded on 30 June 2022</i>
Scope of TSD provisions	Include a specific chapter on sustainable food systems	<u>TSD Chapter</u> Multilateral labour standards and agreements, MEAs, climate change, biodiversity, sustainable forest management, sustainable fisheries and aquaculture, responsible supply chain management	<u>TSD Chapter</u> Responsible business conduct and supply chain management; governance and MEAs; climate change; forests, wildlife and biodiversity; sustainable fisheries and aquaculture. Multilateral labour standards and agreements	<u>TSD Chapter</u> Multilateral labour standards and agreements, governance and MEAs, climate change, biodiversity, forests, sustainable fisheries and aquaculture, responsible business conduct and supply chain management	<u>TSD Chapter</u> Multilateral labour standards and agreements, MEAs, climate change, biodiversity, sustainable forest management, management of marine biological resources and aquaculture, responsible	<u>TSD Chapter</u> Multilateral labour standards and agreements, gender equality, MEAs and international environmental governance, climate change, fossil fuel subsidy reform, biodiversity, forests, sustainable fisheries and aquaculture, trade and investment

⁷² A February version of the addendum to the EU-Mercosur agreement prepared by the European Commission was [leaked](#) last March. This first draft of the “joint declaration” does not address any of the environmental, climate or health threats that will materialise if the agreement is ratified. See the analysis by the Veblen Institute, [EU-Mercosur agreement: a draft interpretative declaration that resolves nothing](#).

⁷³ The interim agreement covering the liberalisation of trade and investment will, in principle, expire when the advanced framework agreement enters into force.

⁷⁴ The first round of negotiations took place in July 2018, the last in April 2023.

	EC commitments (2021, 2022)	EU-Mercosur⁷² <i>Political agreement on the text in June 2019</i>	EU-Chile <i>Interim Trade Agreement⁷³</i>	EU-Australia <i>Initial text proposals submitted by the EU</i> ⁷⁴	EU-Mexico <i>“Agreement in principle” on trade aspects (April 2018)</i>	EU-New Zealand <i>Negotiations concluded on 30 June 2022</i>
			Chapter on cooperation on sustainable food systems⁷⁵		management of supply chains Chapter on Cooperation on animal welfare and antimicrobial resistance⁷⁶	for SD, responsible business conduct and supply chain management Chapter on sustainable food systems⁷⁷ . Animal welfare chapter⁷⁸
Essential elements	Paris Agreement	X	X	X	X	Paris Agreement

⁷⁵ The objective of the chapter is to establish close cooperation to engage in the transition towards sustainable food systems (Art. 7.1.). The chapter includes provisions for cooperation on specific aspects of sustainable food systems, such as the sustainability of the food chain and the reduction of food loss and waste, the fight against food fraud throughout the food chain, animal welfare, the fight against antimicrobial resistance and the reduction of the use of fertilisers and chemical pesticides for which a risk assessment has shown that they cause unacceptable risks for health or the environment (Art. 7.2)

⁷⁶ The objectives of the chapter “are to provide a framework for dialogue and cooperation with a view to enhancing the protection and welfare of animals and reaching a common understanding concerning animal welfare standards, and to strengthen the fight against the development of antimicrobial resistance”.

⁷⁷ The aim is “to establish close cooperation to jointly engage in the transition towards sustainable food systems” (Art. 7.1). “Cooperation may include exchange of information, expertise and experiences, as well as cooperation in research and innovation” (Art. 7.4)

⁷⁸ The objective of the chapter is to “enhance cooperation between the Parties on animal welfare of farmed animals with a view to facilitating trade between the Parties” (Art. 8.1). “The Parties shall make best endeavours to cooperate in international fora to promote the development and implementation of science-based animal welfare standards. (...). The Parties shall exchange information, expertise and experiences in the field of animal welfare related to the treatment of animals on the farm, during transport and at slaughter or killing” (Art. 8.2).

	EC commitments (2021, 2022)	EU-Mercosur⁷² <i>Political agreement on the text in June 2019</i>	EU-Chile <i>Interim Trade Agreement⁷³</i>	EU-Australia <i>Initial text proposals submitted by the EU</i> ⁷⁴	EU-Mexico <i>“Agreement in principle” on trade aspects (April 2018)</i>	EU-New Zealand <i>Negotiations concluded on 30 June 2022</i>
TSD dispute resolution	<p>Align the enforcement of TSD chapters with the general dispute settlement system</p> <p>Extend the compliance phase to disputes relating to TSD chapters</p> <p>Possible application of temporary and proportionate trade sanctions if a panel finds that a party is in breach of its TSD commitments, and if that party fails to comply within the prescribed timeframe.</p>	<p>Specific dispute settlement mechanism for breaches of the TSD chapter (consultations, panel of experts)</p> <p>No sanctions mechanism.</p> <p>No implementation of panel recommendations.</p>	<p>Specific dispute settlement mechanism for breaches of the TSD chapter (consultations, panel of experts)</p> <p>No sanctions mechanism.</p> <p>No implementation of panel recommendations.</p>	<p>Specific dispute settlement mechanism for breaches of the TSD chapter (consultations, panel of experts)</p> <p>No sanctions mechanism.</p> <p>No implementation of panel recommendations.</p>	<p>Specific dispute settlement mechanism for breaches of the TSD chapter (consultations, panel of experts)</p> <p>No sanctions mechanism.</p> <p>No implementation of panel recommendations.</p>	<p>General dispute settlement mechanism</p> <p>Consultations, Panel.</p> <p>Obligation of rapid compliance. In the event of disagreement over the measures taken to achieve compliance, the complaining party may ask the initial panel to decide.</p> <p>Possibility of suspending the obligations of the agreement if <u>the panel’s decision on compliance</u>: (i) finds a violation of labour agreements and</p>

	EC commitments (2021, 2022)	EU-Mercosur⁷² <i>Political agreement on the text in June 2019</i>	EU-Chile <i>Interim Trade Agreement⁷³</i>	EU-Australia <i>Initial text proposals submitted by the EU</i> ⁷⁴	EU-Mexico <i>“Agreement in principle” on trade aspects (April 2018)</i>	EU-New Zealand <i>Negotiations concluded on 30 June 2022</i>
						standards; (ii) finds that the party complained against is responsible for an act or omission that materially defeats the object and purpose of the Paris Agreement. Temporary and proportionate suspension measures, which can be challenged by the respondent before the initial panel of experts.
Protection of foreign investments and Investor/State dispute settlement	European Parliament Resolution (2021/2176(INI) ⁷⁹ TPR 2021 : the EC will advocate the creation of a multilateral	No investment protection component	Sections C and D of Chapter 10 of the Advanced Framework Agreement ⁸⁰ - No exclusion of fossil fuel investments from	No investment protection component	- No exclusion of fossil fuel investments from the scope of protection - Investment court system	No investment protection component

⁷⁹ See supra, footnote n°70

⁸⁰ These provisions are not yet applicable and will be once the interim agreement expires and the advanced framework agreement comes into force.

	EC commitments (2021, 2022)	EU-Mercosur⁷² <i>Political agreement on the text in June 2019</i>	EU-Chile <i>Interim Trade Agreement⁷³</i>	EU-Australia <i>Initial text proposals submitted by the EU⁷⁴</i>	EU-Mexico <i>"Agreement in principle" on trade aspects (April 2018)</i>	EU-New Zealand <i>Negotiations concluded on 30 June 2022</i>
	investment court within UNCITRAL		the scope of protection - Investment court system			