

# Comparative Analysis of TSD Provisions for Identification of Best Practices to Support the TSD Review

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## Table of Contents

<b>1. Introduction</b>	<b>5</b>
1.1 Aims and objectives	7
<b>2. Task 2: Literature Review</b>	<b>7</b>
<b>3. Methodology</b>	<b>14</b>
3.1 Overview of tasks, methods and sources	14
<b>4. Task 3: TSD provisions and their implementation and enforcement in EU FTAs</b>	<b>18</b>
4.1 Background	18
4.2 Methodological approach	20
4.3 Results	26
<b>5. Task 4: Comparative analysis of third country FTAs</b>	<b>45</b>
5.1 Preliminary review of third countries' TSD approaches	46
5.2 Comparative analysis of scope of TSD provisions in third countries' FTAs	54
<b>6. Task 5: Review of TSD implementation and enforcement provisions</b>	<b>75</b>
6.1 Implementation provisions and practices	83
6.2 Enforcement provisions and practices	84
<b>7. Task 6: Case studies</b>	<b>86</b>
<b>References</b>	<b>92</b>
<b>Annex</b>	<b>95</b>

## List of Tables

Table 1: Study logic	17
Table 2: List of EU trade agreements selected for the comparative study	21
Table 3: Specific environmental issues explicitly addressed in EU FTAs	29
Table 4: Explicit reference to MEAs	30
Table 5: References to international labour standards	32
Table 6: Other social commitments	33
Table 7: Intergovernmental mechanisms	36
Table 8: Civil society participation in monitoring the implementation of TSD provisions	38
Table 9: Specific environmental issues covered in the third country FTAs reviewed	56
Table 10: Reference to MEAs	59
Table 11: Regulatory sovereignty and exceptions	62
Table 12: Reference to international labour instruments	65
Table 13: References to international labour standards	68
Table 14: References to other social commitments in the FTAs of third countries	71
Table 15: Regulatory sovereignty and exceptions	74
Table 16: Implementation and enforcement provisions for environmental issues in trade agreements	79
Table 17: Implementation and enforcement provisions for labour issues in trade agreements	81
Table 1a: Ratification and implementation of MEAs and labour conventions	95
Table 2a: Third-Party FTAs	102

## Abbreviations

AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
BIT	Bilateral Investment Treaty
CAFTA-DR	Dominican Republic-Central America FTA
CBD	Convention on Biological Diversity
CEC	Commission for Environmental Cooperation
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSR	Corporate Social Responsibility
DAG	Domestic Advisory Groups
DEE	Australian Department of the Environment and Energy
DESTA	Design of Trade Agreements
DFAT	Department of Foreign Affairs and Trade
DG	Directorate-General
DSM	Dispute Settlement Mechanism
EFTA	European Free Trade Association
EPA	Economic Partnership Agreement
EPI	Environmental Protection Index
EU	European Union
FAO	Food and Agriculture Organisation
FTAs	Free Trade Agreements
IEAs	International Environmental Agreements
ILO	International Labour Organization
LABPTA	Labour Provisions in Trade Agreements
MEAs	Multilateral Environmental Agreements
MNCs	Multinational Corporations
NAAEC	North American Commission on Environmental Cooperation
NAALC	North American Commission on Labour Cooperation
NAFTA	North American Free Trade Agreement
NAO	National Administration Office

NGOs	Non-governmental organisations
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
OPC	Open Public Consultation
OSINFOR	Supervision of Forest Resources and Wildlife
PTA	Preferential Trade Agreement
RBC	Responsible Business Conduct
RTAs	Regional Trade Agreements
SECO	State Secretariat for Economic Affairs
SEM	Submission of Enforcement Matter
SME	Small and Medium Enterprises
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TCA	Trade and Cooperation Agreement
TPP	Trans-Pacific Partnership
TREND	Trade and Environment Database
TSD	Trade and Sustainable Development
UN	United Nations
UNCTAD	United Nations Conference for Trade and Development
UNFCCC	United Nations Framework Convention on Climate Change
UNGP	United Nations Guiding Principles
UNIDO	United Nations Industrial Development Organisation
UK	United Kingdom
US	United States
USAID	United States Agency for International Development
USMCA	United States Mexico Canada Agreement
USTR	United States Trade Representative

# 1. Introduction

Ever since it began introducing trade and sustainable development (TSD) provisions in its trade agreements, the European Commission has favoured an evidence-based approach to sustainability issues that values consultation and input from Member States, the European Parliament and trade policy stakeholders. In July 2017, the Commission launched a debate on how to optimize the implementation and enforcement of TSD chapters in EU free trade agreements (FTAs), which culminated in the publication of a 15-Point Action Plan in February 2018. These fifteen recommendations, regrouped into four principles (Working Together, Enabling Civil Society, Delivering, and Communicating and Transparency) have influenced EU trade policy with regard to both processes and outcomes. In compliance with the terms of its 15-Point Action Plan, the Commission is currently reviewing its TSD approach and reflecting on the need to take additional measures to ensure the full and effective implementation of TSD chapters. This study is designed to inform the Commission's work by undertaking a comparative analysis and feeding best practices into the TSD review.

## 1.1 Aims and objectives

This study aims to provide a comprehensive and critical review of different approaches to TSD provisions in FTAs among a selection of non-EU countries. Its objective is to compare the scope, modalities and effects of each country's TSD model. This requires mapping out and appraising the social and environmental commitments that countries take when signing trade agreements; understanding the institutional mechanisms and targeted actors expected to promote sustainable development; and measuring the progress accomplished by the inclusion of specific TSD provisions in FTAs. Drawing from the expertise of the analytical team and its international advisory committee, the study aims to inform the Commission's ongoing TSD review with an evidence-based analysis that helps the reader assess the challenges and benefits of different provisions as well as implementation and enforcement practices. To determine the scope of this study, the team of analysts has collected data on third-country FTAs that include substantive TSD provisions and conducted a full literature review. All Tasks performed in this analysis are tailored to fit the purpose of the TSD review.

## 2. Task 2<sup>1</sup>: Literature Review

Since the North American Free Trade Agreement (NAFTA, entered into force in 1994) raised the prominence of labour and environmental issues in trade policy, TSD provisions have drawn considerable attention from scholars and policy analysts alike. What follows is a summary of the literature that aims first, to help define the objectives and structure of this TSD review and second, to discuss the methodological challenges inherent to this exercise, as well as the benefits and limits of different approaches.

For the most part, the analysis of TSD provisions in trade agreements is generally split between studies of labour or social clauses that have historically drawn greater scholarly attention, and the

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<sup>1</sup> To be noted that Task 1 was about defining in detail the scope of work and required resources.



literature on environmental provisions, which after a burst of interest in the 1990s, have recently regained prominence. Another cleavage in the literature is the divide between North American trade scholars focusing primarily on the US and/or Canadian approaches to TSD provisions on the one hand, and European trade policy experts, despite some attempts to bridge this gap. A few studies have tried to bridge this Transatlantic divide, or compared the much-discussed US, Canadian and European models to other TSD approaches in Japan, Australia, Chile, EFTA countries and others.<sup>2</sup> However, to this date, no publicly available study has sought to examine the implementation and enforcement of TSD provisions with such a wide comparative angle, covering both environmental and social standards with an in-depth analysis of institutional mechanisms and on-the-ground practices.

From a methodological standpoint, studies of TSD provisions can be divided into three main categories:

- 1) Legal analyses of the institutional design and the text of FTAs, with a focus on enforceability;
- 2) Large-n studies mapping out TSD provisions in FTAs with the aim of assessing the scope and impact on labour and environmental standards;
- 3) Case studies appraising the institutional mechanisms of specific FTAs, often relying on qualitative methods and interviews with state officials and trade policy stakeholders. These different methods have been used and at times combined to better understand the nature, the evolution and the impact of trade agreements.

### **The changing scope, diffusion and spill-over effects of TSD provisions in FTAs**

Several studies have mapped out the rapid proliferation of TSD provisions in FTAs since the beginning of the twenty-first century and their increasing reference to international standards, with a focus on labour provisions,<sup>3</sup> environmental provisions,<sup>4</sup> or both.<sup>5</sup> The enforceability of these trade agreements has evolved over “generations” or “models” of TSD provisions,<sup>6</sup> which means that

<sup>2</sup> See e.g., Aissi, J., Peels R., Samaan D. (2017). “Evaluating the effectiveness of labour provisions in trade agreements: an analytical framework”, *International Labour Review*; Bastiaens, Ida, and Evgeny Postnikov. (2017). *Greening Up: The Effects of Environmental Standards in EU and US Trade Agreements*. *Environmental Politics* 26 (5): 847–869; Myriam Oehri (2015) ‘Comparing US and EU Labour Governance ‘Near and Far’. *Journal of European Public Policy*, Vol. 22, No. 5, pp. 731–49; Jean-Baptiste Velut, “What Role for Civil Society in Cross-Regional Mega-Deals? A Comparative Analysis of EU and US Trade Policies”, *Revue Interventions économiques* [Online], 55 | 2016. Peter Draper, Nkululeko Khumalo & Faith Tigere (2017). *Sustainability Provisions in Regional Trade Agreements: Can they be Multilateralised?* RTA Exchange, International Centre for Trade and Sustainable Development (ICTSD) and Inter-American Development Bank (IDB); International Labour Organisation (2017), *Handbook on Assessment of Labour Provisions in Trade Arrangements*. Geneva: International Labour Office; International Labour Organisation (2019), *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*. Geneva: International Labour Office.

<sup>3</sup> International Labour Organisation (2017). *Handbook on Assessment of Labour Provisions in Trade Arrangements*. Geneva: International Labour Office; International Labour Organisation (2019), *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*. Geneva: International Labour Office

<sup>4</sup> Jean-Frédéric Morin & Myriam Rochette (2017). “Transatlantic Convergence of PTAs’ Environmental Clauses”, *Business and Politics*, vol. 19(4):621-658.

<sup>5</sup> Peter Draper, Nkululeko Khumalo & Faith Tigere (2017). *Sustainability Provisions in Regional Trade Agreements: Can they be Multilateralised?* RTA Exchange, International Centre for Trade and Sustainable Development (ICTSD) and Inter-American Development Bank (IDB).

<sup>6</sup> International Labour Organisation (2017). *Handbook on Assessment of Labour Provisions in Trade Arrangements*. Geneva: International Labour Office; Congressional Research Service (2020). *Labor Enforcement Issues in US FTAs*.



different countries often have different approaches depending on the period and partner with whom they signed a trade agreement. These provisions are either included as integral chapters within the body of the agreement (e.g., US-Colombia FTA), dedicated TSD chapters (e.g., EU-Korea FTA) or contained in a side agreement (e.g., Canada-Honduras FTA). The diversity of implementation and enforcement approaches included in trade agreements ranges from state-to-state dispute settlement (Trans-Pacific Partnership, TPP), criminal and civil liability (US), state-to-state consultations (EU), use of expert panels (EU), committees and joint councils (Canada) and penalty fees or sanctions (US and Canada).

Through legal analysis and process tracing, trade policy scholars have tried to understand the evolution of environmental and labour provisions and examined the processes of path-dependence and policy diffusion of these clauses, trying to trace back the origins of social and environmental clauses or how they might influence future FTAs negotiated by the same trading partners or other countries adopting similar provisions. Using the TRend and ENvironment Dataset (TREND), a fine-grained dataset of environmental provisions in preferential trade agreements, Morin et al. (2017) show that the United States has generated more new environmental standards (or legal innovations) in FTAs than any country, and contributed to the diffusion and expansion of the trade-environment nexus across the globe, as illustrated by the growing number of FTA partners adopting environmental standards as part of as well as outside the realm of US FTAs.<sup>7</sup> Using the same dataset, Morin & Rochette (2017) go further to highlight a convergence between two models: the American “competitive” approach to the trade-environment nexus and the European “cooperative” model. Thus, the US favours a one-size-fits-all approach aimed primarily at levelling the playing field with US trade partners for fear that American environmental standards might put US economic interests at a competitive disadvantage. The EU, on the other hand, tends to adapt its environmental norms in FTAs to the economic, social and environmental context of its trading partner. Analysing the evolution of FTA provisions, the authors posit a gradual convergence of models over time, illustrated by the strengthening of European Union-inspired capacity-building programmes in recent US trade agreements or the proliferation of civil society participation clauses in EU FTAs, said to be partly inspired by the North American Agreement on Environmental Cooperation (NAAEC).<sup>8</sup> Arguably, the characteristics of each trade-environment model as defined by Morin & Rochette are not always endemic to the EU or the US. For instance, the US has a long tradition in capacity-building programmes, while the EU also has had a long experience with civil society inclusion. Yet, their models contribute to the literature by showing that the US and EU models are more porous than generally understood.

As far as Canada is concerned, Michéa (2018) sees the EU-Canada Comprehensive Economic and Trade Agreement’s (CETA) TSD, labour and environment chapters as a logical convergence of the

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<https://fas.org/sqp/crs/row/IF10972.pdf>; Jean-Frédéric Morin & Myriam Rochette (2017), “*Transatlantic Convergence of PTAs’ Environmental Clauses*”, *Business and Politics*, vol. 19(4):621-658; Axel Berger, Clara Brandi & Dominique Bruhn. *Environmental Provisions in Trade Agreements: Promises at the Trade and Environment Interface*. DIE, Briefing Paper, 16/2017.

<sup>7</sup> Jean-Frédéric Morin, Joost Pauwelyn, and James Hollway. (2017). *The Trade Regime as a Complex Adaptive System: Exploration and Exploitation of Environmental Norms in Trade Agreements*. *Journal of International Economic Law* 20(2): 365–90. For a comprehensive analysis of the US approach to environmental provisions in FTAs, see Sikina Jinnah and Jean-Frédéric Morin, *Greening Through Trade*, Cambridge/London: MIT Press, 2020.

<sup>8</sup> Jean-Frédéric Morin & Myriam Rochette (2017). “*Transatlantic Convergence of PTAs’ Environmental Clauses*”, *Business and Politics*, vol. 19(4):621-658.

EU and Canadian TSD approaches; while Zini (2018) argues that Canada's labour provisions have shifted from a promotional to a more conditional model resembling the US approach to labour rights enforcement in trade agreements.<sup>9</sup> The signature of the US-Mexico-Canada Agreement (USMCA), which promises to offer stricter enforceability through a streamlined dispute settlement mechanism, confirms the latter point.<sup>10</sup>

While the question of convergence remains to be settled, the literature on the scope of TSD provisions offers two important takeaways for the present study. First, a country's approach to environmental and labour standards is hardly set in stone and, even in the case of the US, is strongly influenced by its trading partners. Thus, countries have often used TSD provisions as policy experiments that may be refined in future FTAs (including in modernised versions of the same FTA). Second, FTAs remain a powerful channel for the diffusion of social and environmental norms.<sup>11</sup> Bearing in mind the distinction between *de jure* and *de facto* standards, one must acknowledge the importance of policy diffusion as a positive impact of TSD provisions in trade agreements, with strong potential at both bilateral<sup>12</sup> and multilateral levels.<sup>13</sup>

## The impact of TSD provisions

The diffusion of TSD standards already provides evidence on the effects of TSD provisions at the level of global governance. This can take place both before and after ratification, inside and outside the trade sphere. In a large-n study crossing evidence between nearly 3,000 treaties (including 2,242 multilateral environmental agreements (MEAs) and 689 preferential trade agreements) and domestic environmental legislation across nearly 150 countries, Brandi, Blümer & Morin (2019) find that FTAs are more likely to encourage domestic environmental reforms than MEAs before the ratification of trade deals.<sup>14</sup> Using a similar quantitative method to analyse the effects of 79 trade agreements on environmental reforms, Bastiaens & Postnikov (2017) go further to argue that the design and enforcement mechanisms of TSD provisions play a key role in the timing of environmental reforms.<sup>15</sup> Their regression analysis reveals that countries that are in the process of negotiating a trade agreement with the US are more likely to improve their level of environmental protection (as measured by both Yale's Environmental Protection Index (EPI) and the total number of MEAs in force) over a three-year period. According to them, the threat of sanctions incentivises trading

<sup>9</sup> Frédérique Michéa (2018). "La modélisation des clauses sociales dans les accords commerciaux transatlantiques à la lumière de leur source", in Christian Deblock & Joël Lebullenger, *Génération TAFTA. Les nouveaux partenariats de la mondialisation*. Presses Universitaires de Rennes; Sylvain Zini, "Les clauses sociales dans les partenariats intercontinentaux : la perspective nord-américaine", in Christian Deblock & Joël Lebullenger, *ibid.*

<sup>10</sup> The USMCA's dispute settlement mechanism will be discussed in greater details in sections 3.4.2 (enforcement provisions and practices) and 3.5.1 (The US-Guatemala labour dispute and its consequences on the design of the USMCA).

<sup>11</sup> Ida Bastiaens & Evgeny Postnikov. (2017). *ibid.*; Jean-Frédéric Morin, Dominique Blümer, Clara Brandi and Axel Berger. (2019). "Explaining the Varying Frequency of PTAs' Environmental Provisions", *World Economy* 42(9): 2602-2628.

<sup>12</sup> Jean-Frédéric Morin, Dominique Blümer, Clara Brandi and Axel Berger (2019) "Explaining the Varying Frequency of PTAs' Environmental Provisions", *World Economy* 42(9): 2602-2628.

<sup>13</sup> Horn, Henrik, Petros C. Mavroidis, and André Sapir. (2010). "Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements." *World Economy* 33 (11): 1565–88; Peter Draper, Nkululeko Khumalo, and Faith Tigere, *Sustainability Provisions in Regional Trade Agreements: Can they be Multilateralised?* ICTSD 2017.

<sup>14</sup> Brandi, C, D. Blümer and JF Morin (2019). "When Do International Treaties Matter for Domestic Environmental Legislation?", *Global Environmental Politics* 19(4): 14-44.

<sup>15</sup> Bastiaens, Ida, and Evgeny Postnikov. (2017). *Greening Up: The Effects of Environmental Standards in EU and US Trade Agreements*. *Environmental Politics* 26 (5): 847–869.

partners to reform environmental laws during the negotiating process. However, little is said as to why the threat of sanctions operates less effectively once the agreement has been signed and the enforcement mechanisms are in place, which would make the risk of being punished even more tangible.

By contrast, countries that have signed FTAs with the EU are more likely to enhance their environmental performance during the implementation phase. This is because the EU's cooperative approach is conducive to a gradual learning process involving state officials and civil society organizations that can lead to domestic reforms in trading partners during the implementation phase. In short, the US sanction-based approach is more likely to have an impact *ex-ante* (before FTA ratification), while the EU's soft approach is said to yield greater results *ex-post* (after ratification). These broader trends revealed by a robust statistical analysis do not mean, however, that EU pre-ratification negotiations cannot lead to social reforms (e.g., EU-Vietnam trade negotiations), nor that the US approach excludes dialogue and civil society participation after ratification – the latter being an important feature that is often neglected in comparative studies of EU and US TSD approaches.

Other studies have also shown that pre-ratification processes have been effective in raising labour standards. Harrison argues that pressure exerted by US authorities on trade partners has resulted in legislative changes to improve labour law protections and/or led to other actions already before US FTAs with Bahrain, Columbia, Morocco, Oman, and Panama came into force.<sup>16</sup> Focusing on US trade agreements signed between 1982 and 2005, Kim (2012) also finds evidence that trade partners are more likely to adopt domestic labour reforms before ratification as opposed to after, confirming that pressure on third-party countries during the negotiating phase can lead to substantive reforms.<sup>17</sup> The success of pre-ratification reforms explains why some scholars have argued that pre-ratification conditions should be employed to push for regulatory changes beyond existing labour standard commitments.<sup>18</sup>

Relying on a mixed quantitative and qualitative approach to compare EU and US TSD provisions, Postnikov & Bastiaens conclude that labour provisions in FTAs can, indeed, have positive effects on workers' rights but, here again, stress the importance of "Preferential Trade Agreement (PTA) design."<sup>19</sup> While acknowledging the importance of institutional mechanisms, Van Den Putte (2016) argues that the impact of labour provisions seems to be more dependent on context and political will than on blanket design.<sup>20</sup> Moore & Scherrer (2017) go further to argue that enforcement is contingent upon a broad range of factors at the macro and micro level including legislation, institutions, culture and politics.<sup>21</sup>

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<sup>16</sup> J Harrison. (2019). *The Labour Rights Agenda in Free Trade Agreements*. *The Journal of World Investment & Trade*, 20, 705-725. 10.1163/22119000-12340153.

<sup>17</sup> M Kim. (2012). *Ex Ante Due Diligence: Formation of Trade Agreements and Protection of Labor Rights*. *International Studies Quarterly* 56 (4): 704–719.

<sup>18</sup> M Moore, C Scherrer. (2017). *Conditional or Promotional Trade Agreements - Is Enforcement Possible? How International Labour Standards Can Be Enforced through US and EU Social Chapters*, Friedrich Ebert Stiftung, Singapore: <https://library.fes.de/pdf-files/bueros/singapur/13446.pdf>

<sup>19</sup> Postnikov, E. and Bastiaens, I., 2014. *Does dialogue work? The effectiveness of labor standards in EU preferential trade agreements*. *Journal of European Public Policy*, 21 (6), 923–940.

<sup>20</sup> Van den Putte, L. 2016. 'The European Union's Trade-Labour Linkage Beyond the "Soft" Approach'. *Doctor of Philosophy, Netherlands: Ghent University*.

<sup>21</sup> M Moore and C Scherrer. (2017). *ibid*.

Other qualitative studies have highlighted the positive network effects inherent to dialogue and cooperation, and noted the importance of emerging transnational advocacy networks to promote and defend workers' rights, whether in the context of EU trade policy,<sup>22</sup> US FTAs<sup>23</sup> or the Canada-Chile FTA.<sup>24</sup> Some authors are at odds with the positive findings of these studies, criticizing the limits of cooperative approaches to TSD enforcement. Harrison et al. (2019) use a qualitative method relying on 121 interviews and find that the EU's TSD provisions of three trade agreements, namely the EU-Cariforum Economic Partnership Agreement (EPA) (2008), the EU-Korea FTA (2011) and the EU-Moldova Association Agreement (2014) had no positive impact on labour standards.<sup>25</sup> In another analysis of labour provisions, Harrison (2019) finds that the EU's cooperative approach has not been systematically implemented and that the 'soft' dispute resolution provisions are inadequate to resolve disputes in the event of a violation. He concludes that the absence of a threat of meaningful sanctions translates into a limited deterrent effect, against the European Commission's reluctance to invoke the dispute resolution option.<sup>26</sup>

Despite its seemingly stricter enforcement rules, the US sanction-based model has also been criticized on various grounds. A 2014 report by the US Government Accountability Office identified three main problems to the US enforcement model that had long been raised by both scholars and policy experts of US trade policy: an ineffective submission process for complaints of non-compliance; insufficient resources allocated to monitoring; inadequate accountability regarding the implementation of TSD provisions in FTAs.<sup>27</sup> Meanwhile the North American Agreement on Environmental Cooperation (NAAEC) under NAFTA has received mixed appraisals, at times praised for its innovative citizens' submissions process<sup>28</sup> or criticized for its soft cooperative approach.<sup>29</sup>

<sup>22</sup> Oehri M. (2015). 'Comparing US and EU Labour Governance 'Near and Far'. *Journal of European Public Policy*, Vol. 22, No. 5, pp. 731–49; Evgeniy Postnikov & Ida Bastiaens (2014) 'Does Dialogue Work? The Effectiveness of Labor Standards in EU Preferential Trade Agreements'. *Journal of European Public Policy*, Vol. 21, No. 6, pp. 923–40; Lore Van den Putte & Jan Orbie (2015) 'EU Bilateral Trade Agreements and the Surprising Rise of Labour Provisions'. *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 31, No. 3, pp. 263–83;

<sup>23</sup> Stillerman J. (2003). "Transnational Activist Networks and the Emergence of Labor Internationalism in the NAFTA Countries." *Peer Reviewed Articles (Sociology Commons)*, 11, available at: [http://scholarworks.gvsu.edu/soc\\_articles/11](http://scholarworks.gvsu.edu/soc_articles/11); Kay, Tamara (2005), "Labor Transnationalism and Global Governance: The Impact of NAFTA on Transnational Labor Relationships in North America," *American Journal of Sociology* 111, no. 3 (November): 715-756; Jean-Frédéric Morin & Sikina Jinnah (2018), "The untapped potential of preferential trade agreements for climate governance", *Environmental Politics* 27 (3), 541-565, 2018.

<sup>24</sup> International Labour Organisation. (2017). *Handbook on Assessment of Labour Provisions in Trade Arrangements*. Geneva: International Labour Office.

<sup>25</sup> Harrison J. et al. (2019). "Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters", *Journal of Common Market Studies* 57 (2), pp. 260–277

<sup>26</sup> Harrison J. (2019). *The Labour Rights Agenda in Free Trade Agreements*. *The Journal of World Investment & Trade*. 20. 705-725. 10.1163/22119000-12340153. The study was published before the outcome of the EU-Korea FTA, which will likely renew the literature on the EU enforcement model. See Novitz, Tonia A., *Enforceable Social Clauses in Trade Agreements with 'Bite' ? Implications of the EU - South Korea Panel of Experts Report of 20 January 2021 (May 31, 2021)*. ETUI Research Paper - Policy Brief 2021.06, Available at SSRN: <https://ssrn.com/abstract=3856982> or <http://dx.doi.org/10.2139/ssrn.3856982>

<sup>27</sup> Government Accountability Office. (2014). "Free Trade Agreements. U.S. Partners Are Addressing Labor Commitments, but More Monitoring and Enforcement Are Needed", GAO-15-160, Washington, DC.

<sup>28</sup> Markell D.L. (2005). *Governance of International Institutions: A Review of the North American Commission for Environmental Cooperation's Citizen Submissions Process*, 30 N.C. J. INT'L L. & COM. REG. 759, Available at: <https://ir.law.fsu.edu/articles/73>

<sup>29</sup> Johnson P.M., Beaulieu A. (1996). *The Environment And NAFTA: Understanding And Implementing The New Continental Law*, Island Press.



In addition to some of the above-mentioned studies, both the International Labour Organization (ILO) (2017) and the Organization for Economic Cooperation and Development (OECD)<sup>30</sup> have underlined the importance of meaningful and inclusive dialogue among different policy stakeholders, effective monitoring, as well as strong public accountability mechanisms for the implementation of labour and environmental provisions in trade agreements. Likewise, most experts agree that technical assistance and capacity building are critical tools.<sup>31</sup> This has led to suggestions that for labour provisions to be effective, they need to involve stakeholders, notably social partners, in the making and implementation of trade agreements.<sup>32</sup> This is also the case for environmental provisions. Yet, to be fully effective in improving environmental conditions, trade agreements require strong civil societies. In the previously cited study of environmental provisions in EU and US FTAs, Bastiaens & Postnikov (2017) show that a dense civil society is crucial for the effective implementation of EU FTAs, as they can help to promote environmental norms and counter the influence of organized businesses.

With regard to civil society participation, Martens, Potjomkina and Orbie (2020) rely on a mixed approach of surveys (134 surveys and 18 interviews with EU and non-EU Domestic Advisory Groups or DAGs)<sup>33</sup> and case studies to assess the role of DAGs in FTAs. They conclude that DAGs' policy impact is constrained by a lack of genuine dialogue between both DAG members and DAGs and governments, which undermines civil society efforts to monitor FTAs adequately.<sup>34</sup> At stake in these studies is the institutional design of civil society mechanisms and DAGs that are allegedly ill-equipped to advance workers' rights for various reasons, including undefined purpose, inadequate resources for monitoring and/or lack of enforceability.<sup>35</sup>

Given the sheer variety of implementation and enforcement mechanisms applied under different cultural-institutional contexts, the difficulty of isolating trade factors from other political and economic determinants, as well as the contested perspectives on the effects of trade agreements, the effective implementation and enforcement of TSD provisions in FTAs remains a challenge for many states.<sup>36</sup> This makes the present comparative study of TSD implementation and enforcement practices all the more important as there is an urgent need for new evidence on best practices in this field. This literature review has shown that assessing the effectiveness of TSD provisions in FTAs requires a complex understanding of both causes and effects of social and environmental standards. With regard to the factors that can improve environmental and social standards, the design of trade agreements is of crucial importance to the effectiveness of TSD provisions.

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<sup>30</sup> Clive G., Yamaguchi S. (2018). "Assessing Implementation of Environmental Provisions in Regional Trade Agreements," OECD Trade and Environment Working Papers 2018/01, available from: <https://doi.org/10.1787/18166881>

<sup>31</sup> Congressional Research Service. (2020). Labor Enforcement Issues in US FTAs. <https://fas.org/sgp/crs/row/IF10972.pdf>

<sup>32</sup> Jordi Agustí-Panareda J., Ebert F.C., LeClercq D. (2014). *Labour Provisions in Free Trade Agreements: Fostering their Consistency with the ILO Standards System*.

<sup>33</sup> Domestic Advisory Groups are composed of representatives of civil society organisations established in member states' territories, which typically convene once a year and monitor the implementation of the sustainable development commitments.

<sup>34</sup> Martens D., Potjomkina D., Orbie J. (2020). *Domestic Advisory Groups in EU Trade Agreements: Stuck at the Bottom or Moving up the Ladder?*, Friedrich Ebert Stiftung, available at: <http://library.fes.de/pdf-files/iez/17135.pdf>

<sup>35</sup> Campling L., Harrison J., Richardson B., Smith A. (2016). "Can Labour Work Beyond the Border?" *International Labour Review*, Vol. 155, No. 3, pp. 357–82; James Harrison et al. (2019). "Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters", *Journal of Common Market Studies* 57 (2), pp. 260–277.

<sup>36</sup> ILO. (2019). *Labour Provisions in G7 Trade Agreements. A Comparative Perspective*.

As detailed in the subsequent section, this study will build upon the existing literature to examine in greater depth the intricacies of institutional mechanisms and civil society participation that are conducive to social and environmental reforms. As far as the effects of TSD provisions are concerned, the literature reveals that FTAs can affect environmental and social norms in many different ways: before and after trade agreements are signed, through treaty ratification or legislative reforms, *de facto* standards, as well as less tangible effects such as bureaucratic socialization and norm visibility.

Our contribution to the rich academic and policy literature on labour and environmental provisions in trade agreements is two-fold: First, the large selection of countries included in the comparative analysis will make it relevant not only to the EU, but also to many countries seeking to identify good practices in the implementation and enforcement of TSD provisions. Second, and in this spirit, it will provide a fine-grained picture of the institutional mechanisms under EU and third countries' FTAs, thereby providing concrete takeaways on the minutiae of TSD governance, including FTA design, budget allocation and civil society membership. This in-depth analysis will go beyond the common dichotomy between the EU cooperative approach and the US sanction-based model that has at times reduced policy debates on the potential benefits of TSD provisions. The diverse set of sources used to inform this study will be complemented with the perspectives of civil society organizations and individuals thanks to a wide-ranging consultation.

The next section discusses how this study will build upon this literature to provide a comprehensive analysis of the implementation and enforcement of TSD provisions in FTAs with the aim of identifying best practices.

### 3. Methodology

#### 3.1 Overview of tasks, methods and sources

As illustrated in the literature review, the scope and effects of TSD provisions in trade agreements have drawn considerable attention in both academic and policy spheres and been under close scrutiny by trade policy stakeholders for more than three decades. A comprehensive comparative analysis of the enforcement of social and environmental provisions across different contexts requires overcoming methodological challenges related to both scope and effects of TSD provisions.

The first set of challenges is linked to the fact that TSD provisions in third countries tend to be covered under different sections such as labour and environmental chapters and sometimes, additional social rights provisions like on trade and gender (e.g., modernized Canada-Chile trade agreement). These chapters can be subject to different levels of enforceability via different institutional mechanisms. For instance, Canada's environmental provisions are not subject to trade sanctions, while its labour provisions are. Hence, when relevant, this study dissociates the analysis of the scope and enforcement practices of labour provisions from those of environmental clauses and examines why countries might give greater prominence to certain issues over others.

The second set of challenges has to do with measuring the impacts of TSD provisions, and determining whether their effects should be assessed in the light of political reforms (domestic and/or ratification of ILO Conventions or multilateral environmental agreements (MEAs)) or *de jure* labour



rights, as opposed to socio-economic indicators or *de facto* labour rights or environmental standards. While the effects of trade on socio-economic variables can be notoriously difficult to isolate from other macroeconomic and political factors, the actual impact of labour and environmental provisions can be similarly difficult to disentangle from other factors. Not only do domestic politics play a central role in social and environmental reforms, but a variety of external factors can also lead to better social and environmental outcomes. These could come in the form of technical assistance from international organisations like the ILO or the World Bank, foreign aid programmes, diplomatic pressure unrelated to trade policy or private initiatives undertaken by multinational corporations (MNCs) to make supply chains more socially and environmentally responsible.<sup>37</sup>

To overcome these methodological issues, this study dissects and compares a total of seven different approaches to TSD provisions in the EU, US, Canada, Chile, New Zealand, Australia and Japan. It will draw on the following quantitative and qualitative tools and methods to compare practices across FTAs and their effects on third countries:

- **FTA provision datasets:** The present study will provide a comparative analysis of TSD approaches using the criteria displayed in the TSD comparative tables. Data collection will draw from two specific databases that are tailored to map out the scope, implementation and enforcement of TSD provisions: the Trade and Environment Database (TREND), a fine-grained database of environmental provisions in FTAs developed by Morin, Dür & Lechner (2018)<sup>38</sup>, and the Labour Provisions in Trade Agreements (LABPTA) developed in Raess<sup>39</sup>. These will be cross-referenced with two comprehensive datasets: the DESTA (Design of Trade Agreements) database developed by Dür, Baccini & Elsig (2014)<sup>40</sup>, and the World Trade Organization's (WTO) Regional Trade Agreements (RTA) database.
- **Legal analysis:** Data collection will be combined with a finer analysis of legal provisions so as to zoom in on specific clauses and enforcement mechanisms. This will be particularly important to analyse not only the wording of TSD provisions, but also their interpretation under specific disputes, as revealed by public submissions, rulings or *amici curiae*.
- **Data collection from official sources:** This will be used to measure resources allocated for the implementation and enforcement of TSD provisions in trade agreements. These will be studied in conjunction with the budget allocated for official development assistance (ODA) at both bilateral and multilateral levels.
- **Targeted interviews** with state officials and leading experts: these will include former and current officials from trade, labour and environmental ministries or agencies in the selected countries, civil society organizations participating in or excluded from the implementation and enforcement of TSD provisions in trade agreements, as well as policy experts from the academic and non-academic spheres.

<sup>37</sup> Burgess K. (2010). "Global Pressures, National Policies, and Labor Rights in Latin America," *Studies in Comparative International Development*, Vol. 45 Issue 2, pp. 198-224.

<sup>38</sup> Morin, JF, Dür A., Lechner, L. (2018). "Mapping the trade and environment nexus: Insights from a new dataset", *Global Environmental Politics*, vol. 18(1).

<sup>39</sup> Raess, D. and Sari, D. (2018), "Labour Provisions in Trade Agreements (LABPTA): Introducing a New Dataset", *Global Policy*, vol. 9: 451-466.

<sup>40</sup> Dür, A; Baccini L., Elsig M., (2014), *The design of international trade agreements: Introducing a new dataset*, *The Review of International Organizations*, 9 (3), 353-375.

- **A wide-ranging consultation process** which ensures a high degree of transparency and the engagement of all relevant stakeholders in the conduct of the TSD review inside the EU.
- **Official statistics measuring progress in social and environmental standards:** To the extent that causality can be notoriously hard to establish when it comes to the implementation and enforcement of specific provisions, and that tangible effects in environmental and labour standards may be rather visible in the medium to long term, statistics will be used only in conjunction with other types of evidence (e.g., policy analysis, targeted interviews). Official sources include the World Bank, ILO, United Nations Conference on Trade and Development (UNCTAD), Organisation for Economic Cooperation and Development (OECD), the Food and Agriculture Organisation (FAO), and national Institutes/Departments/Ministries of Statistics.
- **Feedback from the international advisory board of LSE Consulting.**

These methodological tools are used in accordance with the requirements and objectives of each phase of the study as detailed in the study logic (Table 1).

**Table 1: Study logic**

	Inception phase	Implementation phase	Concluding phase
<b>Objectives</b>	<ul style="list-style-type: none"> <li>▪ Fine-tuning of scope, methodology, and planning</li> <li>▪ Fine-tuning of stakeholder consultation strategy</li> <li>▪ Literature review</li> <li>▪ Overview of TSD provisions and their implementation and enforcement in EU FTAs</li> </ul>	<ul style="list-style-type: none"> <li>▪ In-depth understanding of the different scopes and institutional designs of TSD approaches in third-country FTAs</li> <li>▪ Assessment of the tangible impacts of TSD provisions on trade partners</li> <li>▪ Analysis of third countries' practical experiences and results in TSD implementation and enforcement</li> </ul>	<ul style="list-style-type: none"> <li>▪ In-depth understanding of the institutional mechanisms and strategies to overcome the challenges of TSD implementation and enforcement</li> </ul>
<b>Tasks (ToR)</b>	<ul style="list-style-type: none"> <li>▪ T1, T2, T3, T4, T5, T6, T7</li> </ul>	<ul style="list-style-type: none"> <li>▪ T4, T5, T6, T7</li> </ul>	<ul style="list-style-type: none"> <li>▪ T7 – consultation activities</li> <li>▪ Finalise all tasks (T 1-7)</li> </ul>
<b>Methodology and tools</b>	<ul style="list-style-type: none"> <li>▪ Desk research</li> <li>▪ Scoping interviews</li> <li>▪ Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>▪ Feedback from international advisory committee</li> <li>▪ Desk research</li> <li>▪ Legal analysis</li> <li>▪ Case studies</li> <li>▪ Quantitative analysis of social and environmental indicators</li> </ul>	<ul style="list-style-type: none"> <li>▪ Feedback from international advisory committee</li> <li>▪ Desk research</li> <li>▪ Results from implementation phase (T4-7)</li> <li>▪ Case studies</li> <li>▪ Quantitative analysis</li> <li>▪ Targeted interviews with experts</li> <li>▪ Stakeholder consultation with EU survey</li> <li>▪ Civil society dialogues</li> </ul>
<b>Deliverables</b>	Inception report	Interim report	Draft report and final report

**Note:** Tasks (T1 to T7) are drawn from the Terms of References. T1 = Scoping; T2 = Literature review; T3 = Analysis of TSD provisions and their implementation and enforcement in EU FTAs ; T4 = Analysis of TSD provisions in third country FTAs ; T5 = Analysis of implementation and enforcement provisions and practices in third-country FTAs; Task 6 = Case studies; Task 7 = Stakeholder consultation.

## 4. Task 3: TSD provisions and their implementation and enforcement in EU FTAs

This section provides an overview of TSD provisions in recent EU trade agreements as well as their implementation and enforcement mechanisms.

### 4.1 Background

The first TSD provisions, which contain obligations to respect labour and environmental standards, were included in the 2008 EU-Cariforum Economic Partnership Agreement (EPA) and the 2011 EU-Korea Free Trade Agreement (FTA). Since then, TSD-related provisions have been included in all EU trade agreements, usually in the form of a dedicated chapter. TSD chapters have become an integral component of the EU's 'new generation' trade agreements. Currently, the EU has negotiated 11 trade agreements with TSD provisions or chapters with several countries and regions.<sup>41</sup> These 11 agreements (see Table 2) are the ones covered in this analysis.

Other trade agreements with TSD provisions that are beyond the scope of this study include two agreements for which ratification is pending (EU-Mercosur Association Agreement and new EU-Mexico Trade Agreement to replace the existing EU-Mexico Global Agreement) and six agreements that are currently under negotiation (EU-Australia Free Trade Agreement, modernised EU-Chile Association Agreement, EU-Eastern and Southern Africa Economic Partnership Agreement, EU-Indonesia Free Trade Agreement, EU-New Zealand Free Trade Agreement, and EU-Philippines Free Trade Agreement). Moreover, the EU-China Comprehensive Agreement on Investment (CAI) does not fall within the scope of this study.

Following the adoption of the global 2030 Agenda for Sustainable Development of the United Nations, the European Commission began revising its TSD approach.<sup>42</sup> In its 2015 Communication "*Trade for all: Towards a more responsible trade and investment policy*",<sup>43</sup> it outlined a trade agenda that promotes sustainable development, human rights, and good governance in Europe and third countries. It acknowledged that, while recent EU FTAs systematically include TSD provisions, the EU would have to ensure that TSD provisions were implemented and used effectively as those FTAs enter into force. In order to achieve this goal, the European Commission committed to focus on the implementation of FTAs' sustainable development dimensions. In 2017, the Commission launched a public debate on how to better implement and enforce TSD chapters in EU FTAs,<sup>44</sup> which culminated in the release of the

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<sup>41</sup> For further information, see: <https://ec.europa.eu/trade/policy/policy-making/sustainable-development/>

<sup>42</sup> Vignarelli, M.C. (2021). 'The European Commission Trade Policy Review: The Effectiveness of Sustainable Development Chapters in EU FTAs', 6, *European Papers*, No. 1, pp. 1-5.

<sup>43</sup> European Commission. (2015). '*Trade for all: Towards a more responsible trade and investment policy*'.

<sup>44</sup> Non-paper of the Commission services. (2017). '*Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs)*', 11 July 2017. [https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155686.pdf](https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf)

Commission's 2018 TSD 15-Point Action Plan.<sup>45</sup> This Action Plan is organised into four categories of actions:

- 1) **Working together**, including with Member States and the European Parliament, and international organisations;
- 2) **Enabling civil society to play a role in implementation**, most notably by facilitating civil society's monitoring role, expanding civil society structures beyond TSD chapters, and promoting responsible business conduct;
- 3) **Delivering results under the TSD chapters**. This category includes assertive enforcement; commitments on climate change and labour; encouraging early ratification of core international agreements, reviewing the TSD implementation effectiveness, and making resources available to support TSD chapters implementation; and
- 4) **More transparency and better communication**.

Following the introduction of this Action Plan, there have been examples of EU action on sustainability issues in the context of trade agreements. During the pre-implementation phase of the EU-Vietnam trade agreement, Vietnam implemented substantive labour reforms, such as the ratification of certain ILO Conventions and the adoption of a new Labour Code aligned with international labour standards, though actual implementing regulations are still pending. Another outcome of the European Commission's actions on assertive enforcement was the ratification of three fundamental ILO Conventions following the activation by the EU of the dedicated dispute settlement mechanism under the EU-South Korea FTA.<sup>46</sup> Furthermore, the TSD provisions of recent FTAs have been strengthened, as evidenced, for instance, by the binding commitment in the FTA with Japan to ratify and effectively implement the Paris Agreement on Climate Change.

Despite these outcomes, a number of stakeholders have raised questions about the lack of effectiveness of EU TSD chapters and called for EU TSD chapters to be strengthened and enforced more effectively.<sup>47</sup> In this context, and in anticipation of the following trade policy review communication from the Commission,<sup>48</sup> in October 2020, Executive Vice-President Valdis Dombrovskis announced that the Commission would bring forward the review of the 15-Point Action Plan to 2021 (initially planned by 2023). This review intends to delve deeper into how to improve the implementation and enforcement of TSD provisions in EU FTAs.

<sup>45</sup> Non-paper of the Commission services. (2018). "Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements", 26 February 2018. [https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156618.pdf](https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf)

<sup>46</sup> See <https://ec.europa.eu/trade/policy/accessing-markets/dispute-settlement/bilateral-disputes/>

<sup>47</sup> European Parliament, 'TTIP and Labour Standards' (2016); EESC, "Next Generation Trade and Sustainable Development – Reviewing the 15-point action plan (own-initiative opinion)", available at <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/next-generation-trade-and-sustainable-development-reviewing-15-point-action-plan-own-initiative-opinion>; Mattia Colli Vignarelli, 'The European Commission Trade Policy Review: The Effectiveness of Sustainable Development Chapters in EU FTAs', (2021), 6, *European Papers*, No. 1, pp. 1-5; Demy van't Wout. "The enforceability of the trade and sustainable development chapters of the European Union's free trade agreements." *Asia Europe Journal* (2021): 1-18; Marco, Bronckers and Gruni Giovanni. "Retooling the Sustainability Standards in EU Free Trade Agreements." *Journal of International Economic Law* 24.1 (2021): 25-51.

<sup>48</sup> Communication from the European Commission: Trade Policy Review – An Open, Sustainable and Assertive Trade Policy of 18.2.2021: [https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc\\_159438.pdf](https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf)

## 4.2 Methodological approach

Using specifically developed TSD comparative tables, this study analyses the main TSD provisions of a sample of EU trade agreements. In particular, the comparative tables consider the *scope* of TSD provisions (specific issues addressed), as well as *implementation* and *enforcement* provisions. Whenever necessary, the analysis distinguishes between TSD provisions pertaining to the environment (including climate change) and TSD provisions pertaining to labour and social issues. In general, the analysis provides an overview of TSD provisions and looks for any convergences and differences between EU FTAs. When relevant, the analysis distinguishes between TSD provisions in trade agreements with developed countries and those in trade agreements with developing countries. The analysis is based on textual examinations of EU trade agreements. The analysis focused on TSD chapters, and also included some provisions in other parts of the Agreements, as indicated in Table 2 below.

Eleven EU trade agreements were selected for this study. The main selection criteria were that the EU trade agreements include TSD chapters and that they are currently in force, whether provisionally or not. They are presented in Table 2 below.



Table 2: List of EU trade agreements selected for the comparative study

Trade agreement	Date of signature <sup>49</sup>	Entry into force <sup>50</sup>	Location of TSD chapters and relevant labour, environmental, and cooperation provisions <sup>51</sup>
EU-South Korea Free Trade Agreement (FTA)	6 October 2010	<ul style="list-style-type: none"> <li>1 July 2011 (provisionally)</li> <li>13 December 2015 (full)</li> </ul>	<ul style="list-style-type: none"> <li>Chapter 13 on TSD (Articles 13.1 – 13.15). It includes provisions on labour and environmental aspects.</li> <li>Annex 13 deals with Cooperation on TSD.</li> </ul>
EU-Colombia/Peru/Ecuador Trade Agreement	26 June 2012	<ul style="list-style-type: none"> <li>1 March 2013 (provisionally – with Peru)</li> <li>1 August 2013 (provisionally – with Colombia)</li> <li>1 January 2017 (provisionally – with Ecuador)</li> </ul>	Title IX governs TSD (Articles 267 – 286). It includes provisions on labour and environmental aspects.
EU-Central America Association Agreement	29 June 2012	<ul style="list-style-type: none"> <li>1 August 2013 (provisionally – Honduras, Nicaragua; Panama)</li> <li>1 October 2013 (provisionally – Costa Rica, El Salvador)</li> <li>1 December 2013 (provisionally – Guatemala)</li> </ul>	<p>Under Part IV on Trade:</p> <ul style="list-style-type: none"> <li>Title VIII on TSD (Articles 284 – 302). It includes provisions on labour and environmental aspects.</li> </ul> <p>Under Part III on Cooperation:</p> <ul style="list-style-type: none"> <li>Title III on Social Development and Social Cohesion (Articles 41 - 48). It includes provisions on employment and social protection, indigenous peoples and other ethnic groups, vulnerable groups, gender.</li> <li>Title V on Environment, Natural Disasters and Climate Change (Articles 50 – 51).</li> <li>Title VI on Economic and Trade Development includes Article 63 on Cooperation and Technical Assistance on TSD.</li> </ul>
EU-Ukraine Association Agreement	21 March 2014	<ul style="list-style-type: none"> <li>1 November 2014 (provisionally)</li> <li>1 September 2017 (full)</li> </ul>	<p>Under Title IV on trade and trade-related matters:</p> <ul style="list-style-type: none"> <li>Chapter 13 on TSD (Articles 289 – 302).</li> </ul> <p>Under Title V on Economic and Sector Co-operation:</p> <ul style="list-style-type: none"> <li>Chapter 6 on Environment (Articles 360 – 366; Annexes XXX &amp; XXXI).</li> <li>Chapter 21 on Cooperation on employment, social policy and equal opportunities (Articles 419 – 425; Annex XL).</li> </ul>
EU-Georgia Association Agreement	27 June 2014	<ul style="list-style-type: none"> <li>1 September 2014 (provisionally)</li> <li>1 July 2016 (full)</li> </ul>	<p>Under Title IV on Trade and Trade-Related Matters:</p> <ul style="list-style-type: none"> <li>Chapter 13 on TSD (Articles 227 – 243). It includes provisions on labour and environmental aspects.</li> </ul> <p>Under Title VI on Other Cooperation Policies:</p> <ul style="list-style-type: none"> <li>Chapter 3 on Environment (Articles 301 – 306).</li> <li>Chapter 4 on Climate action (Articles 307 – 312).</li> <li>Chapter 14 on Employment, social policy and equal opportunities (Articles 348 – 354).</li> </ul>
EU-Moldova Association Agreement	27 June 2014	<ul style="list-style-type: none"> <li>1 September 2014 (provisionally)</li> <li>1 July 2016 (full)</li> </ul>	<p>Under Title V on Trade and Trade-Related Matters:</p> <ul style="list-style-type: none"> <li>Chapter 13 on TSD (Articles 363 - 379).</li> </ul> <p>Under Title IV on Economic and other sectoral cooperation:</p> <ul style="list-style-type: none"> <li>Chapter 4 on Employment, social policy and equal opportunities (Articles 31 – 37; Annex III).</li> <li>Chapter 16 on Environment (Articles 86 – 91; Annex XI).</li> <li>Chapter 17 on Climate action (Articles 92 – 97; Annex XII).</li> </ul>
EU-Canada Comprehensive Economic and Trade Agreement (CETA)	30 October 2016	21 September 2017 (provisionally)	<p>TSD provisions are found in several chapters. The main ones are:</p> <ul style="list-style-type: none"> <li>Chapter 22 on TSD (Articles 22.1 – 22.5).</li> <li>Chapter 23 on Trade and Labour (Articles 23.1-23.11).</li> </ul>

<sup>49</sup> Information found on EUR-Lex.<sup>50</sup> Information found on EUR-Lex.<sup>51</sup> This table shows where the TSD chapters are located and, where necessary, relevant labour, environmental, and cooperation provisions.

Trade agreement	Date of signature <sup>49</sup>	Entry into force <sup>50</sup>	Location of TSD chapters and relevant labour, environmental, and cooperation provisions <sup>51</sup>
			<ul style="list-style-type: none"> <li>Chapter 24 on Trade and Environment (Articles 24.1-24.16).</li> </ul>
<b>EU-Japan Economic Partnership Agreement (EPA)</b>	17 July 2018	1 February 2019 (full)	Chapter 16 governs TSD (Articles 16.1 – 16.19). It includes provisions on labour and environmental aspects.
<b>EU-Singapore Free Trade Agreement (FTA)</b>	19 October 2018	21 November 2019 (full)	Chapter 12 governs TSD (Articles 12.1 – 12.17). It includes specific sections on: <ul style="list-style-type: none"> <li>labour aspects (Section B, Articles 12.3 – 12.5).</li> <li>environmental aspects (Section C, Articles 12.6 – 12.10).</li> </ul>
<b>EU-Vietnam Free Trade Agreement (FTA)</b>	30 June 2019	1 August 2020 (full)	<ul style="list-style-type: none"> <li>Chapter 13 governs TSD (Articles 13.1 – 13.17). It includes provisions on labour and environmental aspects.</li> <li>Chapter 16 on Cooperation and capacity building includes provisions on cooperation in TSD (Article 16.2(e)).</li> </ul>
<b>EU-United Kingdom Trade and Cooperation Agreement (TCA)</b>	30 December 2020	1 May 2021 (full)	Under Part 2, Title XI is dedicated to Level playing field for open and fair competition and sustainable development. In particular, it has the following chapters: <ul style="list-style-type: none"> <li>Chapter 6 governs Labour and social standards (Articles 386 – 389).</li> <li>Chapter 7 governs Environment and climate (Articles 390 - 396).</li> <li>Chapter 8 governs Other instruments for TSD (Articles 397 – 407).</li> <li>Chapter 9 includes Horizontal and institutional provisions (Articles 408 – 411).</li> </ul>

The agreements thus cover OECD countries (Canada, Japan, South Korea, Singapore and the United Kingdom); developing countries (Central America, Colombia/Peru/Ecuador, and Vietnam); and countries that are part of the EU Eastern Partnership<sup>52</sup> and implement the Deep and Comprehensive Free Trade Areas under their Association Agreements with the EU (Georgia, Moldova and Ukraine).

In the great majority of agreements, the TSD objectives (labour, environment and cross-cutting) are covered by a dedicated single TSD chapter. Only the EU-Canada CETA (with three chapters: TSD, labour and environment) and the EU-UK Trade and Cooperation Agreement (TCA) have a different structure (the TCA has a *sui-generis* structure because of the unprecedented nature of the relationship). While environmental and social provisions are typically included in the TSD Chapter, many agreements, especially with developing countries, also include additional provisions on cooperation on the environment and social matters. In general, the analysis focused on the provisions in the TSD chapters and, where applicable, the labour and environmental chapters. Any deviation from this approach, in particular to include relevant provisions with TSD objectives from other chapters of EU trade agreements, is explicitly indicated in the discussion of the results (Section 4.3).

An overview of the relevant tables and the results are presented in Section 4.3.1. The tables should be interpreted as follows: a checkbox indicates that an EU trade agreement contains

<sup>52</sup> [https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/eastern-partnership\\_en](https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/eastern-partnership_en). These Agreements call for the approximation of the Partnership countries' legislation with specific EU legal instruments: see section 4.2.3.1 for further information.

relevant TSD provision(s) that cover(s) the category at stake; a blank cell indicates that no relevant TSD provisions were identified for the category.<sup>53</sup>

#### 4.2.1. Scope of TSD provisions

The analysis breaks down the scope of TSD provisions between labour and environmental provisions in terms of the following categories:

**1) Specific environmental issues covered by EU FTAs:** The overview of the specific environmental issues in the TSD provisions, including environmental provisions outside the TSD chapter of the 11 EU Agreements under review, covered climate change, renewable energy, air pollution, ozone layer, biodiversity, fisheries, forest conservation, illegal trade in endangered species, genetic resources, including traditional knowledge, pesticides and/or chemicals.

**2) Explicit reference to multilateral environmental agreements (MEAs):** We examined whether the TSD provisions, including environmental provisions outside the TSD chapter, of the 11 EU Agreements under review explicitly mention certain MEAs. This analysis looked at explicit mentions of specific agreements, but not at obligations on the Parties to uphold all MEAs that the Parties have committed to, without explicitly mentioning them. The following MEAs were selected based on the topic they cover and whether the EU is a Party to them:

##### Climate change and ozone-layer protection

- United Nations Framework Convention on Climate Change (UNFCCC);<sup>54</sup>
- Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol);<sup>55</sup>
- Paris Agreement;<sup>56</sup>
- Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol);<sup>57</sup>

##### Biological Diversity

- Convention on Biological Diversity (CBD);<sup>58</sup>

<sup>53</sup> It should be noted, however, that further to references to specific MEAs and ILO conventions, the majority of EU TSD chapters commit the parties to the effective implementation of MEAs and ILO conventions, which either party has ratified. For example: EU-Vietnam Free Trade Agreement, Chapter 13, Article 4(4) and Chapter 13, Article 5(2); EU-Singapore Free Trade Agreement Chapter 12, Section B, Article 12.3(3) and Chapter 12, Section C, Article 12.6(2); EU-Japan Economic Partnership Agreement, Chapter 16, Article 16.3(3) and Chapter 16, Article 16.4(2)

<sup>54</sup> United Nations Framework Convention on Climate Change, adopted on 9 May 1992, entered into force on 21 March 1994.

<sup>55</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted on 11 December 1997, entered into force on 16 February 2005.

<sup>56</sup> Paris Agreement, adopted on 12 December 2015, entered into force on 4 November 2016.

<sup>57</sup> Montreal Protocol on Substances that Deplete the Ozone Layer, adopted on 16 September 1987, entered into force on 1 January 1989.

<sup>58</sup> Convention on Biological Diversity, adopted on 22 May 1992, entered into force 29 December 1993.

- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol);<sup>59</sup>
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);<sup>60</sup>

#### Waste management

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention).<sup>61</sup>

**3) Environmental regulatory sovereignty and exceptions.** An overview is provided of provisions on environmental regulatory sovereignty and exceptions on trade-related measures for the conservation of natural resources and for plant and animal life in the 11 EU Agreements examined. The category of environmental regulatory sovereignty entails a declaration on sovereignty over environmental regulation. This can include sovereignty in determining its own environmental policies based on State priorities, e.g. right to regulate provisions. Exceptions refer to exceptional restrictions on trade-related measures.

**4) Reference to international labour standards.** The analysis provides an overview of the specific international labour standards explicitly referred to in the TSD provisions, including labour provisions outside the TSD chapter, of the 11 EU Agreements under review. These include internationally recognised labour standards, such as the right to organise and collectively bargain, the elimination of forced labour, the abolition of child labour, non-discrimination among workers, minimum wage, occupational health and safety, labour inspection, and the rights of migrant and contingent workers.

**5) Explicit reference to international labour instruments.** It was examined whether the TSD provisions, including labour provisions outside the TSD chapter, of the 11 EU Agreements under review explicitly mention specific international labour instruments, namely the ILO 1998 Declaration on Fundamental Principles and Rights at Work, the ILO Fundamental Conventions, and ILO Decent Work Agenda.

**6) Other social commitments.** The review looked for explicit references to other social commitments, namely gender/women's rights and Corporate Social Responsibility (CSR)/Responsible Business Conduct (RBC), in the TSD provisions, as well as in labour and social provisions outside the TSD chapter. References to specific CSR/RBC instruments were identified, such as the OECD Guidelines on Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.

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<sup>59</sup> Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, adopted on 29 October 2010, entered into force on 12 October 2014.

<sup>60</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, adopted on 3 March 1973, entered into force on 1 July 1975.

<sup>61</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted on 22 March 1989, entered into force on 5 May 1992.

**7) Labour regulatory sovereignty.** The review examined whether the TSD provisions refer to the Parties' right to regulate in the public interest, particularly in labour or social matters.

An overview of the relevant tables and the results are presented in Section 4.3.1.

#### *4.2.2. TSD provisions on implementation*

The study collects and analyses the main EU FTAs provisions on implementation. Generally speaking, this step aims to understand whether and how EU trade agreements establish legal, institutional, and policy mechanisms and procedures to ensure the implementation of environmental, labour, and social commitments under TSD provisions. To the extent that environmental and labour provisions in EU FTAs are subject to similar implementation procedures, they were treated as TSD provisions under the same table, unlike for other countries that often apply different institutional mechanisms to labour and environmental linkages.

More specifically, the analysis of TSD provisions in EU trade agreements focuses on the following three categories:

- 1) Intergovernmental mechanisms.** This category looked for TSD provisions on intergovernmental mechanisms. In particular, the focus was on provisions calling for regulatory cooperation (including information exchange), harmonisation and/or approximation of domestic measures, technical assistance and capacity building, and joint scientific cooperation. Provisions establishing intergovernmental committees to work on TSD implementation were also covered.
- 2) Role of international organisations.** This category looked at whether the TSD provisions of EU FTAs call for international organisations, such as the ILO, multilateral environmental organisations or MEAs bodies, to assist in the implementation of environmental, labour, and social provisions, as well as the type of assistance required (i.e., collaboration; guidance; advice).
- 3) Civil society participation.** The study examines whether the TSD provisions call for civil society participation at the level of each Party (e.g., via DAGs) and/or transnational level (e.g., transnational civil society meetings; civil society dialogues). The analysis also determined whether EU FTAs require civil society participation in consultation processes organised in the context of impact assessments, as well as whether public submissions on TSD matters or TSD provisions implementation are permitted.

The relevant tables and results are presented in Section 4.3.2.

#### *4.2.3. TSD provisions on enforcement*

Similarly, the review collected and analysed the main EU FTAs provisions on the enforcement of TSD provisions. More specifically, this step aimed to understand which enforcement mechanisms EU FTAs use to fulfil their environmental, labour, and social goals under TSD provisions. As in the previous section, environmental and labour issues were treated as TSD provisions under the same table where relevant. Here again, the TSD tables were populated

with the identified TSD provisions on enforcement, and this was used for a thematic analysis of enforcement provisions and practices, focusing on the following three categories:

- 1) Nature of commitments.** This category explored whether EU FTAs include commitments such as provisions on non-derogation from domestic labour and environmental laws, as well as commitments to ratify and implement ILO Conventions and MEAs. Where necessary, TSD provisions that impose binding commitments were distinguished from those that encourage best-endeavour or cooperation.
- 2) Dispute settlement mechanisms (DSMs).** This category investigated how EU trade agreements attempt to resolve disputes arising from the implementation of TSD provisions (and/or environmental, labour, or social provisions). First, the study explores whether the EU trade agreements establish specific DSMs for non-compliance with TSD provisions. Second, when EU trade agreements establish specific DSMs, we identified the key features of those DSMs, namely government consultation and panels of experts. Government consultation refers to the process by which Parties consult each other to resolve disputes arising from the application of TSD provisions. Panel of experts refers to the process in which a panel is appointed whereby experts are to settle a dispute involving the respect/enforcement of TSD provisions.
- 3) Sanctions and/or remedies.** This category examined whether the selected EU trade agreements included potential sanctions and/or remedies if a Party fails to comply with TSD provisions (and/or environmental, labour, and social provisions) or with the decision taken under the DSM procedures.

The results are presented in Section 4.3.3.

#### *4.2.4. TSD provisions in practice*

In addition to the overview of the TSD provisions in the 11 EU FTAs, Section 4.3.4 provides an overview of their implementation in practice, drawing on published Commission documents. This examination of implementation and enforcement provisions helps inform the comparative analysis conducted in the following sections.

### **4.3 Results**

Section 4.3 provides the results of the analysis under Task 3. It presents the review of TSD provisions in the 11 EU FTAs agreed for analysis: Section 4.3.1 covers the scope of the provisions; Section 4.3.2 then reviews provisions on implementation; finally, Section 4.3.3 addresses provisions for enforcement. These three sections provide overview tables for the 11 EU agreements, together with summary text (in all the tables, the agreements are listed chronologically by date of signature; please see Table 2 above for details on the dates of signature and entry into force). Subsequently, Section 4.3.4 presents an overview of information on the implementation and enforcement of TSD provisions, gathered from published Commission documents.



#### 4.3.1. Scope of TSD provisions

##### **Specific environmental issues covered by EU FTAs**

All EU FTAs include a commitment to effectively implement MEAs (i.e., the MEAs to which they are Parties and/or specific MEAs listed in the TSD provisions).

Climate change is addressed in all of the selected EU trade agreements, whether in the TSD chapter or an environmental chapter. Some trade agreements may have a chapter dedicated to climate action (e.g., EU-Moldova Association Agreement). Renewable energy is also covered in all of the selected EU trade agreements, whether in the TSD or environmental chapters. Some provisions on renewable energy, for example, refer to the Parties' commitment to facilitate the removal of obstacles to trade or investment in goods and services of particular relevance to climate change mitigation, such as sustainable renewable energy (e.g., EU-Georgia Association Agreement; EU-Singapore FTA). Similarly, all 11 EU FTAs cover fisheries and forest conservation.

Ten EU FTAs address the issue of biodiversity protection, and 9 EU FTAs cover illegal trade in endangered species. In addition, 9 agreements include provisions on genetic resources, including traditional knowledge. It should be noted that 3 of those 9 agreements include genetic resources provisions in their intellectual property chapter rather than the TSD chapter. Provisions on genetic resources sometimes refer to the knowledge and practices of indigenous and local communities (e.g., EU-Colombia/Peru/Ecuador Trade Agreement; EU-Central America Association Agreement).

Seven EU FTAs include provisions on pesticides and/or chemicals. These provisions may refer to the Parties' commitment to ratify and/or implement the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade<sup>62</sup> (see EU-Colombia/Peru/Ecuador Trade Agreement; EU-Central America Association Agreement) or cooperation to deal with environmental issues resulting from pesticides and/or chemicals (see Association Agreements with Eastern Partnership countries). The EU-Canada CETA refers to chemicals when defining 'environmental law' and includes several commitments with regards to environmental law (i.e., non-derogation from environmental law; enforcement of environmental law). Similarly, the EU-UK TCA includes chemical substances in its definition of 'environmental levels of protection', and then includes several commitments to ensure certain environmental levels of protection (e.g., non-regression from environmental levels of protection).

Five EU FTAs include provisions on air pollution and/or the ozone layer.<sup>63</sup> Air pollution is generally addressed through cooperation among the Parties. This is true for the three Association Agreements/DCFTAs with Eastern Partnership countries, as well as the EU-

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<sup>62</sup> *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, adopted on 10 September 1998, entered into force on 24 February 2004.

<sup>63</sup> *The EU-Canada CETA was excluded from this list because it does not refer explicitly to air pollution. However, under Chapter 24 on Trade and environment, Article 24.1 defines environmental law as 'a law, including a statutory or regulatory provision, or other legally binding measure of a Party, the purpose of which is the protection of the environment, including the prevention of a danger to human life or health from environmental impacts, such as those that aim at (a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants, [...]'. Pollutants or environmental contaminants could potentially refer to air pollution.*

Central America Association Agreement. Moreover, provisions on the ozone layer may refer to the Parties' commitment to implement the Montreal Protocol on Substances that Deplete the Ozone Layer (e.g., EU-Colombia/Peru/Ecuador Trade Agreement) or to the Parties' cooperation to address ozone layer depletion (e.g., EU-Central America Association Agreement).

Table 3 below provides an overview of the specific environmental issues addressed in the 11 EU trade agreements.

**Table 3: Specific environmental issues explicitly addressed in EU FTAs**

Trade agreement	Climate change	Renewable energy	Air pollution	Ozone layer	Biodiversity	Fisheries	Forest conservation	Illegal trade in endangered species	Genetic resources <sup>64</sup> incl. traditional knowledge	Pesticides and/or chemicals
EU-South Korea FTA	✓	✓			✓	✓	✓		✓	
EU-Colombia/Peru/Ecuador Trade Agreement	✓	✓		✓	✓	✓	✓	✓	✓	✓
EU-Central America Association Agreement	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EU-Ukraine Association Agreement	✓	✓	✓		✓	✓	✓		✓	✓
EU-Georgia Association Agreement	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EU-Moldova Association Agreement	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EU-Canada CETA	✓	✓			✓	✓	✓	✓		✓
EU-Japan EPA	✓	✓			✓	✓	✓	✓	✓	
EU-Singapore FTA	✓	✓				✓	✓	✓		
EU-Vietnam FTA	✓	✓			✓	✓	✓	✓	✓	
EU-UK Trade and Cooperation Agreement	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

<sup>64</sup> The category ‘Genetic resources, including traditional knowledge’ does not include references to genetically modified organisms.

### Explicit reference to MEAs

Of the 11 EU trade agreements reviewed, 10 agreements refer to the UNFCCC and/or the Kyoto Protocol, and 4 EU FTAs mention the Paris Agreement. The trade agreements contain different types of commitments, such as reaching the objectives of the UNFCCC and its Kyoto Protocol (e.g., EU-South Korea FTA), implementing the UNFCCC and the Paris Agreement (e.g., EU-UK Trade and Cooperation Agreement), or cooperating on the implementation of the UNFCCC, the Kyoto Protocol, and the Paris Agreement (e.g., EU-Vietnam FTA). It should be noted that 5 EU trade agreements were signed prior to the Paris Agreement and thus cannot include specific references to this instrument. However, for the majority of these 5 agreements, the commitment to effectively implement the Paris Agreement is covered by the general commitment to effectively implement all MEAs that each Party has ratified. Three EU FTAs refer to the Montreal Protocol.

The Convention on Biological Diversity (CBD) is covered in 9 EU trade agreements. In 2 of those agreements, references to the CBD can be found in the intellectual property chapter (e.g., EU-South Korea FTA; EU-Ukraine Association Agreement). Furthermore, the CBD's Nagoya Protocol is addressed in 2 EU FTAs, and the CITES is mentioned in 9 EU agreements. Finally, 2 EU FTAs refer to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

In general, references to MEAs in EU FTAs contain similar commitments, such as to ratify specific MEAs, to implement the MEAs in question in the Parties' laws and practices, or to cooperate in the implementation of the MEAs or in relevant international fora. A more detailed analysis of the commitments to ratify MEAs can be found in Section 4.3.3. Table 4 below provides an overview of explicit reference to MEAs in the 11 EU trade agreements.

**Table 4: Explicit reference to MEAs**

Trade agreement	UNFCCC & Kyoto Protocol	Paris Agreement	Montreal Protocol	CBD	Nagoya Protocol	CITES	Basel Convention
EU-South Korea FTA	✓	Not relevant <sup>65</sup>		✓			
EU-Colombia/Peru/Ecuador Trade Agreement	✓	Not relevant <sup>66</sup>	✓	✓		✓	✓
EU-Central America Association Agreement	✓	Not relevant <sup>67</sup>	✓	✓		✓	✓
EU-Ukraine Association Agreement	✓	Not relevant <sup>68</sup>		✓			
EU-Georgia Association Agreement	✓	Not relevant <sup>69</sup>		✓		✓	
EU-Moldova Association Agreement	✓	Not relevant <sup>70</sup>		✓		✓	

<sup>65</sup> The EU-South Korea FTA existed prior to the Paris Agreement.

<sup>66</sup> The EU-Colombia/Peru/Ecuador Trade Agreement was prior to the Paris Agreement.

<sup>67</sup> The EU-Central America Association Agreement was prior to the Paris Agreement.

<sup>68</sup> The EU-Ukraine Association Agreement was prior to the Paris Agreement.

<sup>69</sup> The EU-Georgia Association Agreement was prior to the Paris Agreement.

<sup>70</sup> The EU-Moldova Association Agreement was prior to the Paris Agreement.

Trade agreement	UNFCCC & Kyoto Protocol	Paris Agreement	Montreal Protocol	CBD	Nagoya Protocol	CITES	Basel Convention
EU-Canada CETA						✓	
EU-Japan EPA	✓	✓		✓		✓	
EU-Singapore FTA	✓	✓				✓	
EU-Vietnam FTA	✓	✓		✓	✓	✓	
EU-UK Trade and Cooperation Agreement	✓	✓	✓	✓	✓	✓	

### ***Environmental regulatory sovereignty and exceptions***

All of the EU FTAs examined in this study include TSD provisions recognising the Parties’ right to determine their own levels of environmental protection and to modify their environmental laws and policies accordingly, provided they do not lower their environmental standards to encourage trade or investment, and provided their laws and policies are consistent with each Parties’ international commitments.<sup>71</sup> Moreover, exceptions for the conservation of natural resources and for plant and animal life can be found in all EU FTAs (however, such provisions are found in chapters on exceptions rather than in TSD chapters). Such exceptions can apply to trade, service, or investment-related measures.

### ***Reference to international labour standards***

All EU FTAs refer to internationally recognised core labour standards as defined in the fundamental ILO Conventions, including freedom of association, the right to organise and collectively bargain, the elimination of forced labour, the abolition of child labour, and worker non-discrimination. Among other standards, 7 agreements refer to occupational health and safety (e.g., EU-Ukraine Association Agreement; EU-Singapore FTA), while 4 EU FTAs contain TSD provisions addressing the rights of migrant and contingent workers (e.g., EU-Vietnam FTA). The EU-Canada CETA and the EU-UK TCA both mention a minimum wage and labour inspection. See Table 5 below.

<sup>71</sup> As all 11 FTAs reviewed contain these provisions, a table is not provided.

**Table 5: References to international labour standards**

<i>Trade agreement</i>	<i>Internationally-recognised labour standards</i>	<i>Freedom of association</i>	<i>Right to organise and collectively bargain</i>	<i>Elimination of forced labour (e.g., slavery)</i>	<i>Abolition of child labour</i>	<i>Non-discrimination among workers</i>	<i>Minimum wage</i>	<i>Occupational health and safety</i>	<i>Labour inspection</i>	<i>Rights of migrant and contingent workers</i>
EU-South Korea FTA	✓	✓	✓	✓	✓	✓				
EU-Colombia/Peru/Ecuador Trade Agreement	✓	✓	✓	✓	✓	✓		✓		✓
EU-Central America Association Agreement	✓	✓	✓	✓	✓	✓		✓		
EU-Ukraine Association Agreement	✓	✓	✓	✓	✓	✓		✓		
EU-Georgia Association Agreement	✓	✓	✓	✓	✓	✓		✓		
EU-Moldova Association Agreement	✓	✓	✓	✓	✓	✓		✓		
EU-Canada CETA	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EU-Japan EPA	✓	✓	✓	✓	✓	✓				
EU-Singapore FTA	✓	✓	✓	✓	✓	✓		✓		
EU-Vietnam FTA	✓	✓	✓	✓	✓	✓				✓
EU-UK Trade and Cooperation Agreement	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓



### ***Explicit reference to international labour instruments***

All the 11 FTAs reviewed refer to ILO's 1998 Declaration on Fundamental Principles and Rights at Work, as well as the ILO Fundamental Conventions.<sup>72</sup> They typically include commitments to meet the objectives, ratify and/or implement those instruments. Most EU FTAs refer to the ILO Decent Work Agenda by requiring or allowing Parties to reach its objectives. The section on Nature of Commitments contains a more detailed description of those commitments.

### ***Other social commitments***

All EU FTAs include CSR/RBC commitments. While earlier agreements tend to favour provisions in which the Parties seek to facilitate and promote trade in goods subject to CSR schemes (e.g., EU-South Korea FTA), more recent agreements generally promote CSR/RBC (e.g., EU-Colombia/Peru/Ecuador Trade Agreement), as well as relevant international instruments, including the OECD Guidelines for MNEs, the UN Global Compact, and the ILO Tripartite Declaration of Principles concerning MNEs and Social Policy. The EU-UK TCA includes an article dedicated to trade and responsible supply chain management that requires the Parties to support the adherence, implementation, follow-up, and dissemination of various international instruments, including the UN Guiding Principles on Business and Human Rights.<sup>73</sup> Eight agreements refer to gender.

**Table 6: Other social commitments**

<i>Trade agreement</i>	<i>Gender</i>	<i>Promotion of CSR/RBC</i>
EU-South Korea FTA	✓	✓
EU-Colombia/Peru/Ecuador Trade Agreement		✓
EU-Central America Association Agreement	✓	✓
EU-Ukraine Association Agreement	✓	✓
EU-Georgia Association Agreement	✓	✓
EU-Moldova Association Agreement	✓	✓
EU-Canada CETA		✓
EU-Japan EPA		✓
EU-Singapore FTA	✓	✓
EU-Vietnam FTA	✓	✓

<sup>72</sup> As all 11 FTAs reviewed contain these provisions, a table is not presented.

<sup>73</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 406.

Trade agreement	Gender	Promotion of CSR/RBC
EU-UK Trade and Cooperation Agreement	✓	✓

### ***Labour regulatory sovereignty***

All the EU FTAs include a domestic right to regulate in labour and social matters, and provisions on non-derogation from domestic labour laws to promote trade or investment.<sup>74</sup>

#### ***4.3.2. TSD provisions on implementation***

##### ***Intergovernmental mechanisms***

All the EU FTAs reviewed call for regulatory cooperation between the Parties on environmental, and labour and social issues. A close examination of the provisions on regulatory cooperation indicates that this usually includes activities such as the exchange of information on, for example, the Parties' respective situations regarding ratification and implementation of labour conventions and/or MEAs. Regulatory cooperation may also include technical exchanges or sharing of best practices. Three EU FTAs (i.e., Association Agreements with Georgia, Moldova, and Ukraine) call for the approximation of domestic environmental and labour measures. They provide for the approximation of Ukrainian, Georgian, and Moldavian legislation with specific EU legal instruments in the fields of employment, social policy, and the environment.

Six EU FTAs include technical assistance and capacity-building provisions in labour matters, while three EU FTAs include such provisions in environmental matters. All EU FTAs signed with Eastern Partnership and developing countries include provisions on technical assistance and capacity building in the labour sector. Three EU trade agreements with developing countries call for technical assistance and capacity building in the environmental area (i.e., EU-Central America Association Agreement, EU-Colombia/Peru/Ecuador trade agreement, and EU-Vietnam FTA). The EU-Central America Association Agreement, for example, explicitly recognises the importance of cooperation and technical assistance in the fields of trade and labour as well as trade and environment in achieving the TSD chapter's objectives.<sup>75</sup>

All EU FTAs establish an intergovernmental committee to assist in the implementation of TSD provisions. Depending on the terms of the agreement, such a body may be referred to as a committee,<sup>76</sup> sub-committee,<sup>77</sup> or board.<sup>78</sup> Intergovernmental committees generally deal with both environmental and labour issues, and they are made up of high-level representatives from each Party's administration responsible for labour, environmental, and trade matters. They can perform a variety of functions, such as identifying actions to achieve TSD objectives, making recommendations for the proper implementation of TSD provisions, identifying areas of cooperation, assessing the impact of the agreement on labour and the environment, and resolving specific issues that arise from

<sup>74</sup> As all 11 FTAs reviewed contain these provisions, a table is not presented.

<sup>75</sup> For example, EU-Central America Association Agreement, Title VI, Article 63(1).

<sup>76</sup> For example, EU-Canada CETA, Chapter 22, Article 22.4(1).

<sup>77</sup> For example, EU-Colombia/Peru/Ecuador Trade Agreement, Title IX, Article 280.

<sup>78</sup> For example, EU-Central America Association Agreement, Title VIII, Article 294(2), and EU-Singapore Free Trade Agreement, Chapter 12, Section D, Article 12(15)2

the application of TSD provisions. In some agreements, they may receive and consider public submissions on TSD matters (e.g., EU-Colombia/Peru/Ecuador Trade Agreement).

Joint scientific cooperation is often foreseen in environmental matters (in 8 EU FTAs). The EU-Canada CETA provides that cooperation “*shall take place through actions and instruments that may include technical exchanges, exchanges of information and best practices, research projects, studies, reports, conferences and workshops.*” (Article 24.12.2). In some EU FTAs, provisions may expressly refer to areas of international environmental law. For example, in the EU-Japan EPA, reference is made to cooperation on “*trade-related aspects of the international climate change regime, including on means to promote low-carbon technologies, other climate-friendly technologies and energy efficiency*” (Article 16.12 (h)). Please see the table 7 below for details.

Table 7: Intergovernmental mechanisms

<i>Trade agreements</i>	<i>Regulatory cooperation<sup>79</sup></i>	<i>Harmonisation and/or approximation of domestic measures</i>	<i>Technical assistance and capacity-building (environment)</i>	<i>Technical assistance and capacity-building (labour)</i>	<i>Intergovernmental committee</i>	<i>Joint scientific cooperation</i>
EU-South Korea FTA	✓				✓	
EU-Colombia/Peru/Ecuador Trade Agreement	✓		✓	✓	✓	
EU-Central America Association Agreement	✓		✓	✓	✓	✓
EU-Ukraine Association Agreement	✓	✓		✓	✓	✓
EU-Georgia Association Agreement	✓	✓		✓	✓	✓
EU-Moldova Association Agreement	✓	✓		✓	✓	✓
EU-Canada CETA	✓				✓	✓
EU-Japan EPA	✓				✓	✓
EU-Singapore FTA	✓				✓	
EU-Vietnam FTA	✓		✓	✓	✓	✓
EU-UK Trade and Cooperation Agreement	✓				✓	✓

<sup>79</sup> This category includes cooperation activities, such as information exchange.

### ***Role of international organisations***

All EU FTAs call for international organisations, such as the ILO, or MEA bodies, to assist in the implementation of environmental, labour, and social provisions.<sup>80</sup> Several agreements require Parties to take into account the activities of international organisations in order, for instance, 'to promote greater cooperation and coherence' between the work of the Parties and those organisations.<sup>81</sup> Parties may establish cooperative arrangements with international organisations 'to draw on their expertise and resources to achieve the objectives of' labour and/or environmental provisions.<sup>82</sup>

The role of international organisations is found in the context of DSMs. During government consultations, all EU FTAs allow, or exceptionally require, Parties to seek information or views from international organisations. Parties may also be required to consider the activities of international organisations.<sup>83</sup> In most EU trade agreements, a panel or group of experts, usually tasked with examining matters that have not been satisfactorily addressed through consultations, should seek information and advice from international organisations.<sup>84</sup>

### ***Civil society participation***

All EU FTAs include provisions for civil society participation in monitoring the implementation of TSD and/or environmental, and labour and social provisions at the national and transnational levels.

The majority of EU FTAs call for civil society participation in assessing the agreement's environmental, labour, and social impacts. The EU-Canada CETA and the EU-UK TCA explicitly call for the views of stakeholders to be taken into account when assessing the potential economic, social and environmental impacts of trade actions. The EU trade agreements with South Korea and the Eastern Partnership countries include a commitment to assess the impact of TSD chapter implementation on sustainable development through the Parties' respective participative processes and institutions.

All EU FTAs allow the general public or specific elements of civil society to submit comments and views on TSD matters or the implementation of TSD provisions. Public submissions can be made to the Parties themselves or the institutional mechanisms established under the TSD provisions.

For instance, under the EU-South Korea FTA, the views, opinions, or findings of the Civil Society Forum, a transnational civil society forum, can be submitted to the Parties directly or

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<sup>80</sup> As this is the case for all 11 FTAs reviewed, a table is not presented.

<sup>81</sup> For example, EU-Canada CETA, Chapter 23, Article 23.8(6).

<sup>82</sup> For example, EU-Canada CETA, Chapter 23, Article 23.7(3).

<sup>83</sup> EU-Moldova Association Agreement, Title V, Chapter 13, Article 378(3).

<sup>84</sup> EU-Georgia Association Agreement, Title IV, Chapter 13, Article 242(3).

through the DAGs.<sup>85</sup> The EU-Colombia/Peru/Ecuador Trade Agreement provides that the Sub-committee on TSD shall be open to receive and consider inputs, comments or views from the public on matters related to the TSD title.<sup>86</sup> Furthermore, submissions may come from members of the general public or civil society bodies established under the TSD provisions. Under the EU-Central America Association Agreement, the Civil Society Dialogue Forum may express its views and opinions in order to promote dialogue on how to better achieve TSD objectives.<sup>87</sup> Moreover, advisory groups on TSD, which are domestic groups comprised of civil society actors and local public authorities, can be tasked with expressing views and making recommendation on trade-related aspects of sustainable development.<sup>88</sup>

Public submissions can be part of those bodies' tasks or come from their own initiative (e.g., EU-Moldova or EU-Ukraine Association Agreement<sup>89</sup>). The EU-Canada CETA states in its Chapter on Trade and Environment that each Party shall be open to receive and shall give due consideration to public submissions on trade and the environment matters, including communications on implementation concerns. Furthermore, through specific consultative mechanisms, each Party shall inform its respective civil society organisations of those communications.<sup>90</sup> In some agreements, public submissions are indicated for specific aspects of TSD provisions. For example, the EU-UK TCA provides that the Parties must consider the views from representatives of workers, employers and CSOs for cooperation on trade-related aspects of labour policies and measures.<sup>91</sup> Moreover, they will consider views from the public or interested stakeholders for the definition and implementation of cooperation activities on trade-related aspects of environmental policies and measures.

**Table 8: Civil society participation in monitoring the implementation of TSD provisions**

<i>Trade agreements</i>	<i>Monitoring of implementation at national level</i>	<i>Monitoring of implementation at transnational level</i>	<i>Participation in impact assessment</i>	<i>Public submission on TSD</i>
EU-South Korea FTA	✓	✓	✓	✓
EU-Colombia/Peru/Ecuador Trade Agreement	✓	✓	✓	✓
EU-Central America Association Agreement	✓	✓		✓
EU-Ukraine Association Agreement	✓	✓	✓	✓
EU-Georgia Association Agreement	✓	✓	✓	✓

<sup>85</sup> *EU-South Korea FTA, Chapter 13, Article 13.13(3).*

<sup>86</sup> *EU-Colombia/Peru/Ecuador Trade Agreement, Title IX, Article 280(7).*

<sup>87</sup> *EU-Central America Association Agreement, Part IV, Title VIII, Article 295(2).*

<sup>88</sup> *For example, EU-Central America Association Agreement, Part IV, Title VIII, Article 294(4).*

<sup>89</sup> *Articles 277(3) and 299(5) respectively*

<sup>90</sup> *EU- Canada CETA, Chapter 24, Article 24.7(1).*

<sup>91</sup> *EU-UK CTA, Part 2, Title XI, Chapter 8, Articles 399(9) and 400(7).*

Trade agreements	Monitoring of implementation at national level	Monitoring of implementation at transnational level	Participation in impact assessment	Public submission on TSD
EU-Moldova Association Agreement	✓	✓	✓	✓
EU-Canada CETA	✓	✓	✓	✓
EU-Japan EPA	✓	✓	✓	✓
EU-Singapore FTA	✓	✓	✓	✓
EU-Vietnam FTA	✓	✓	✓	✓
EU-UK Trade and Cooperation Agreement	✓	✓	✓	✓

#### 4.3.3. TSD provisions on enforcement

##### **Nature of commitments**

All of the EU FTAs contain binding provisions on non-derogation from domestic laws<sup>92</sup>, implying an obligation not to derogate from domestic environmental and labour law or to lower levels of protection to encourage trade or investment. The EU-UK TCA contains explicit provisions on enforcement of non-regression from levels of protection (or non-derogation) in its labour and environment chapters.<sup>93</sup> Under its labour chapter, each Party shall have in place and maintain a system for effective domestic enforcement and an effective labour inspection system. It must also ensure the availability of administrative and judicial proceedings, as well as provide for appropriate and effective remedies. Similar provisions are found in the EU-Canada CETA.<sup>94</sup> In relation to non-regression from environmental protection levels, the EU-UK TCA requires cooperation on the effective monitoring and enforcement of environmental and climate law.

All the EU FTAs contain commitments regarding the ratification and/or implementation of ILO Conventions and MEAs (see Table 1a in the annex, which summarises the specific provisions for this and other elements of enforcement).

First, most EU FTAs have provisions on ratification of MEAs. In six EU FTAs, the Parties commit to exchange information of their respective situations and progress toward ratification of MEAs, generally on a regular basis (e.g., EU-Moldova Association Agreement; EU-Japan EPA). In addition, five EU trade agreements require or allow Parties to cooperate in promoting the ratification of MEAs that are relevant or have an impact on trade (e.g., EU-South Korea

<sup>92</sup> As these provisions are found in all Agreements, they are not presented in the table.

<sup>93</sup> EU-UK TCA, Part 2, Title XI, Chapter 6, Article 388 and Chapter 7, Article 395.

<sup>94</sup> EU-Canada CETA, Chapter 23, Article 23.5 and Chapter 24, Article 24.6.



FTA; EU-Singapore FTA). In labour matters, all EU FTAs include provisions for ratification of international labour conventions. Seven EU FTAs require their Parties to exchange information on their respective situations and progress in ratifying priority ILO Conventions, other ILO Conventions classified as up-to-date, or other relevant international instruments (e.g., EU-Georgia Association Agreement). Six EU FTAs require Parties to make continued and sustained efforts to ratify the fundamental ILO Conventions, as well as other ILO Conventions (including up-to-date and priority conventions), if they have not already done so (e.g., EU-South Korea FTA). Parties must consider ratification of remaining ILO Conventions and/or other up-to-date conventions in 5 EU trade agreements (e.g., EU-Ukraine Association Agreement). Parties to four EU FTAs may also cooperate in exchanging views and best practices, as well as sharing experience, on promoting ratification of fundamental, priority, and other up-to-date ILO Conventions (e.g., EU-Singapore FTA).

Second, all EU FTAs include provisions on the implementation of international labour and environmental conventions. In environmental matters, under all the EU trade agreements, the Parties commit to effectively implementing MEAs in their laws and practices. In addition, under some agreements, the Parties may cooperate in exchanging views and best practices on promoting the effective implementation of relevant MEAs in a trade context.<sup>95</sup> In the EU-Canada CETA, they commit to consult and cooperate, including through information exchange, on the implementation of MEAs to which they are Parties.<sup>96</sup> Recent EU FTAs include commitments to effectively implement the UNFCCC and the Paris Agreement (e.g., EU-Japan EPA; EU-Singapore FTA; EU-Vietnam FTA; EU-UK TCA).

The Parties to the majority of EU FTAs commit to effectively implementing the ILO Conventions that they have ratified, or the fundamental ILO Conventions. The EU-UK TCA goes a step further by committing its Parties to implementing the European Social Charter. Furthermore, eight EU FTAs include a commitment by the Parties to respect, promote and realise, or effectively implement selected fundamental rights principles or the internationally recognised core labour standards in the Parties' laws and practices, in accordance with the Parties' ILO membership obligations and the 1998 ILO Declaration (e.g., EU-Moldova Association Agreement). These principles and/or standards include freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. Parties to several EU FTAs may cooperate to promote the effective implementation of ILO Conventions, including through the exchange of views and best practices. Other references include the promotion of the ILO Decent Work objectives Agenda in the Parties' labour laws and practices (e.g., EU-Canada CETA), as well as efforts towards the effective implementation of the fundamental ILO Conventions (e.g., EU-Singapore FTA).

Several EU FTAs also cite the Parties' commitment to cooperate in negotiations on future labour and/or environmental agreements that are of trade interest. The EU-Georgia

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<sup>95</sup> *EU-Georgia Association Agreement, Title IV, Chapter 13, Article 239(e)*.

<sup>96</sup> *EU-Canada CETA, Chapter 23, Article 24.4*.

Association Agreement, for example, states that the Parties ‘commit to cooperate on the development of the future international climate change framework under the UNFCCC and its related agreements and decisions’.<sup>97</sup>

Beyond the core TSD provisions on enforcement, all EU agreements contain references to “essential elements” clauses, covering human rights and thus core labour standards. In the case of the EU-UK TCA and future negotiations, the respect of the Paris Agreement is also identified as an essential element. Essential element clauses are usually included in the political Framework/Partnership Agreements. The trade agreements refer to those clauses.

### ***Dispute settlement mechanisms (DSMs)***

All the EU trade agreements include specific DSMs for issues arising from the application and/or implementation of the TSD provisions, as well as related labour and environmental provisions (e.g., non-compliance). They always include two steps: State-to-State consultation (also known as government consultations) and the panel or group of experts’ procedure.

In the event of disagreement on matters covered by TSD provisions, all EU FTAs require their Parties to, first, have recourse to government consultations. In some agreements, Parties may be permitted to request that the relevant TSD intergovernmental committee consider the matter (e.g., EU-Vietnam FTA).

If the dispute is not resolved during the government consultation, a panel (or group) of experts may be convened to assist the Parties in resolving the dispute. This panel will present a report containing recommendations, which must usually be published within a certain timeframe by the Parties. After the panel of experts has delivered its report, Parties may be required to ‘make their best efforts to accommodate’ the panel of experts’ advice or recommendations (e.g., EU-South Korea FTA; EU-Ukraine Association Agreement)<sup>98</sup> or to ‘discuss appropriate measures to be implemented taking into account the panel of experts’ report and recommendations’ (e.g., EU-Georgia and EU-Moldova Association Agreements; EU-Singapore FTA).<sup>99</sup> In some agreements, the Parties or the Party to which the recommendations are addressed may present an action plan (e.g., EU-Colombia/Peru/Ecuador Trade Agreement; EU-Central America Association Agreement; EU-Canada CETA).<sup>100</sup> Furthermore, the Party to which the recommendations are addressed may be required to inform the TSD committee (e.g., EU-Central America Association Agreement)<sup>101</sup>

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<sup>97</sup> *EU-Georgia Association Agreement, Title IV, Chapter 13, Article 230(4).*

<sup>98</sup> *EU-South Korea FTA, Article 13.15(2) ; EU-Ukraine Association Agreement, Article 301(2).*

<sup>99</sup> *EU-Georgia Association Agreement, Article 243(8); EU-Moldova Association Agreement, Article 379(8); EU-Singapore, Article 12.17(9).*

<sup>100</sup> *EU-Colombia/Peru/Ecuador Trade Agreement, Article 285(4); EU-Central America Association Agreement, Article 301(3) ; EU-Canada CETA, Article 23.10(12) and Article 24.15(11).*

<sup>101</sup> *EU-Colombia/Peru/Ecuador Trade Agreement, Article 285(4).*

and/or domestic advisory groups (e.g., EU-Japan EPA; EU-Vietnam FTA)<sup>102</sup> of how it intends to address the panel of experts' report.

In all EU FTAs, the TSD committee is in charge of monitoring the implementation of the panel of experts' recommendations or the measures that the Party has determined. In some agreements, advisory bodies or civil society bodies are permitted to submit observations to the TSD committee in this regard (e.g., EU-Moldova Association Agreement; EU-Canada CETA; EU-Vietnam FTA).<sup>103</sup>

### **Sanctions and remedies**

EU trade agreements generally exclude provisions on trade sanctions and/or remedies, such as compensation, for non-compliance with or failure to implement TSD provisions. However, the EU-UK TCA is an exception, as it allows temporary remedies in disputes concerning the interpretation and application of the TCA's chapters on labour and social standards, as well as the environment and climate (non-regression areas).<sup>104</sup> Temporary remedies are not available for disputes involving the application of other instruments for TSD.<sup>105</sup> Furthermore, under certain conditions, the EU-UK TCA allows Parties to take 'appropriate rebalancing measures' to address the situation in which significant divergences between the Parties in labour, social, environmental or climate protection areas have material impacts on trade or investment.<sup>106</sup>

#### *4.3.4. Implementation and enforcement provisions in EU FTAs in practice: a brief overview from Commission documents*

This section presents a brief overview of practice concerning EU Agreements in force, focusing on implementation and enforcement provisions for trade and sustainability development. It is based on a review of Commission documents. This section intends to provide a summary based on the information in these documents: it is not intended to present a complete view. Specifically, information is taken from the European Commission's reports on implementation of EU trade agreements between 2017 and 2019 as well as the staff working documents supporting these reports<sup>107</sup>.

<sup>102</sup> EU-Japan EPA, Article 16.18(6); EU-Vietnam FTA, Article 13.17(9).

<sup>103</sup> EU-Moldova Association Agreement, Article 379(8); EU-Canada CETA, Articles 23.10(12) and 24.15(11); EU-Vietnam FTA, Article 13.17(9).

<sup>104</sup> EU-UK TCA, Part 2, Title XI, Chapter 6, Article 389(2); Part 2, Title XI, Chapter 7, Article 396(2); Part 2, Title XI, Chapter 9, Article 410(2) & (3); Part 6, Title I, Chapter 3, Articles 749 & 750.

<sup>105</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 407(2).

<sup>106</sup> EU-UK TCA, Part 2, Title XI, Chapter 9, Article 411.

<sup>107</sup> The following documents were consulted:

- Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of EU trade agreements 1 January 2019 - 31 December 2019, COM(2020) 705 final, 12.11.2020. available at: [https://ec.europa.eu/transparency/documents-register/api/files/com\(2020\)705\\_0/de0000000013388?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/com(2020)705_0/de0000000013388?rendition=false)

The regular practical implementation of provisions in the TSD chapter occurs through *intergovernmental mechanisms*. TSD sub-committees provide a regular forum for intergovernmental exchange between Parties on progress towards implementation of the TSD chapter. There are regular meetings of these intergovernmental committees for all the FTA agreements studied.

Provisions for the participation of *civil society* in the implementation of the TSD Chapter are included in all the FTAs studied. This is achieved in practice through the establishment of civil society institutions and regular meetings of these groups. This includes the DAGs, established in each partner country and in the EU, who provide advice and recommendations on implementation at national level. The establishment of civil society forums creates a space for civil society participation in implementation at transnational level. Moreover, under each agreement, DAGs from the EU and from the partner country or countries meet typically once

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- Commission Staff Working Document individual reports and info sheets on implementation of EU free trade agreements accompanying the document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on implementation of EU trade agreements 1 January 2019 - 31 December 2019, COM(2020)705, 12.11.2020. available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=swd\(2020\)263&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=swd(2020)263&lang=en)
  - European Commission, 2019 Report on implementation of EU free trade agreements 1 January 2018 - 31 December 2018, 2019. available at: [https://trade.ec.europa.eu/doclib/docs/2019/october/tradoc\\_158387.pdf](https://trade.ec.europa.eu/doclib/docs/2019/october/tradoc_158387.pdf)
  - Commission Staff Working Document individual reports and info sheets on implementation of EU free trade agreements accompanying the document report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on implementation of free trade agreements 1 January 2018 - 31 December 2018, SWD/2019/370 final, 14.10.2019. available at: <https://eur-lex.europa.eu/legal-content/en/txt/?qid=1571409827886&uri=celex:52019sc0370>
  - Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on implementation of free trade agreements 1 January 2017 - 31 December 2017, COM(2018) 728 final. 31.10.2018, available at: [https://ec.europa.eu/transparency/documents-register/api/files/com\(2018\)728\\_0/de00000000119821?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/com(2018)728_0/de00000000119821?rendition=false)
  - Commission Staff Working Document individual reports and info sheets on implementation of EU free trade accompanying the document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on implementation of free trade agreements 1 January 2017 - 31 December 2017. available at: [https://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=fmb&cl=en&language=en&doc=swd\(2018\)454/f2&cote=swd&coteid=10102&year=2018&number=454&version=f2&direction\\_gen=trade](https://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=fmb&cl=en&language=en&doc=swd(2018)454/f2&cote=swd&coteid=10102&year=2018&number=454&version=f2&direction_gen=trade)
  - Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on implementation of free trade agreements 1 January 2016 - 31 December 2016, SWD(2017)364, 09.11.2017. available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=com\(2017\)654&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=com(2017)654&lang=en)
  - Commission Staff Working Document country reports and info sheets on implementation of EU free trade agreements accompanying the document report from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on implementation of free trade agreements 1 January 2016 - 31 December 2016, SWD(2017)364, 09.11.2017. available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=swd\(2017\)364&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=swd(2017)364&lang=en)

a year. The opportunity for wider civil society to participate in the transnational implementation of the TSD Chapters is provided by the annual civil society forum, which is usually open to non-DAG members (in the case of the EU-Vietnam FTA, this requires agreement of the DAGs of both Parties). DAGs from the EU and from partner countries theoretically meet annually<sup>108</sup> although this has sometimes only happened several years following the agreement, as with Ukraine (first time in 2019).

The EU has provided *capacity building* to help the establishment of DAGs in partner developing countries, as in Colombia, Ecuador, Peru and Vietnam.

The use of a *dispute settlement mechanism* recently occurred under the EU-South Korea FTA: the case is described in the box below.

### Use of an expert panel under the EU's agreement with South Korea

Following lack of progress by South Korea in its commitments to “*respect and realise in their laws and practices*” the fundamental ILO principles and rights at work, notably the freedom of association, and to ratify outstanding ILO Conventions, the EU requested consultations with South Korea in December 2018<sup>109</sup>. After this was unsuccessful in achieving progress, the EU took recourse to requesting the establishment of a panel of experts in July 2019<sup>110</sup>, the next step in the DSM process. The panel of experts was established at the end of 2019. A hearing with the panel of experts was due to take place in April 2020 but cancelled due to the COVID-19 pandemic, and was finally held in October 2020. In December 2020, the South Korean government submitted to the National Assembly of Korea (parliament) draft laws allowing for ratification of three of the four outstanding fundamental ILO Conventions as well as reforms on freedom of association. The panel report, published in January 2021, found that South Korea should adjust labour laws to be consistent with the TSD Chapter in the FTA<sup>111</sup>. South Korea ratified three fundamental ILO Conventions on 20 April and they entered into force on 20 April 2021 (No. 29 on Forced Labour, No. 87 on Freedom of Association and Protection of the Right to Organise and No. 98 on Right to Organise and Collective Bargaining). South Korea also adopted amendments to the Trade Union and Labour Relations Adjustment Act, which entered into force 6 July 2021. At a meeting of the TSD Sub-committee in April 2021, the South Korea authorities explained progress in implementing the recommendations from the panel of experts report and outlined plans for a research project for a path to ratifying the final fundamental ILO Convention (No. 105 on Abolishment of Forced Labour)<sup>112</sup>.

<sup>108</sup> <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1870>

<sup>109</sup> [https://trade.ec.europa.eu/doclib/docs/2018/december/tradoc\\_157586.pdf](https://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157586.pdf)

<sup>110</sup> [https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_157992.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_157992.pdf)

<sup>111</sup> [https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc\\_159358.pdf](https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc_159358.pdf)

<sup>112</sup> [https://trade.ec.europa.eu/doclib/docs/2021/may/tradoc\\_159567.pdf](https://trade.ec.europa.eu/doclib/docs/2021/may/tradoc_159567.pdf)

## ***International Organisations***

Finally, *International Organisations* have played a role in the implementation of provisions in the TSD chapters as partners in technical assistance and capacity-building projects. International organisations involved in the delivery of technical assistance projects have included the ILO, OECD, Office of the High Commissioner for Human Rights (OHCHR), United Nations Industrial Development Organization (UNIDO) and Food and Agriculture Organization (FAO) of the UN. For example, in the case of the ILO, projects in Colombia, Ecuador and Peru assist in furthering labour inspection, and projects in El Salvador and Guatemala support tripartite consultation mechanisms. Umbrella projects such as the Trade for Decent Work project<sup>113</sup>, signed in 2018, support ILO assistance in a range of partner countries. The ILO also holds meetings with the EU to discuss implementation of ILO Conventions by trade partners.

## **5. Task 4: Comparative analysis of third country FTAs**

This section provides a comprehensive and multidimensional picture of the scope of TSD provisions in the selected third-country FTAs with four objectives in mind: 1) identifying the evolution and specificities of each country's definition of TSD provisions; 2) comparing the scope of these provisions across countries; 3) understanding the different scope between labour and environmental provisions; 4) understanding best practices and avoidable pitfalls that are relevant to the EU's TSD approach and its 15-Point Action Plan on TSD. The section will be divided into two subsections, where the first provides an overview of different countries' approaches to TSD provisions. Thereafter, the second will consist of a comparative analysis examining key aspects of FTA provisions, with a focus on their scope, levels of enforceability and the modalities and effects of pre-ratification processes. When relevant, our analysis will distinguish between TSD provisions applied in FTAs with developed countries from those implemented in developing or emerging countries.

While the consideration of all main FTA partners is important to discuss the evolution of the scope of TSD provisions and its logic, the analysis will zoom in on a selection of trade agreements based on three criteria:

- **Deep integration:** our selection of FTAs is based on coverage of deep integration RTAs, with more comprehensive commitments on TSD provisions, which reflect the different approaches and trends of non-EU countries.
- **Recency:** most recent agreements logically reflect the lessons that different countries have drawn from their experience of TSD provisions. For instance, the USMCA's dispute settlement mechanism reflects lessons learned from the failure of the US-Guatemala labour dispute.

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<sup>113</sup> [https://www.ilo.org/global/standards/WCMS\\_697996/lang--en/index.htm](https://www.ilo.org/global/standards/WCMS_697996/lang--en/index.htm)



- **Explanatory value:** because of their specificities and/or the characteristics of the trading partners involved, some FTAs can illustrate the costs and benefits of certain legal innovations or specific institutional mechanisms – some of which will be discussed at greater length in the five case studies (Task 6). For instance, the modernized Chile-Canada trade agreement can provide an interesting starting point for an analysis of trade and gender linkages.

Older-generation agreements are included in this analysis for the sake of providing not only a comprehensive picture of the alternative existing approaches, but also to account for the dynamic evolution over time of the TSD policy of main trading partners.

As explained earlier, the study will not incorporate bilateral investment treaties (BITs) because the scope and enforceability of TSD provisions in BITs differ substantially from FTAs and make them less relevant to the EU's ongoing TSD review. The overview of TSD approaches will be followed by a fine-grained comparative study using the criteria displayed in the TSD comparative tables. Data collection for this section draws from the aforementioned databases on FTA provisions (TREND, LABPTA, DESTA and Deep Trade Agreements).

## 5.1 Preliminary review of third countries' TSD approaches

This section will present an overview of the seven selected countries' approaches to environmental and labour provisions in trade agreements, focusing on scope, implementation and enforcement. To do so, it will rely on data analysis, interviews with state officials, desk research and stakeholder consultation. The concise description below will be developed to provide details on the characteristics of each approach, on which our comparative analysis will draw in the next section.

### 5.1.1. Australia

Australia long separated trade from sustainability issues such as environment and social protection, and even today, does not systematically include TSD provisions in its FTAs.<sup>114</sup>

Australia first incorporated labour and environmental provisions in its FTA with the United States (2005). Because environmental or labour issues were not a source of tension between the US and Australia, their bilateral FTA provided limited scope for binding trade social and environmental linkages, requiring simply that each party enforce its respective environmental laws and cooperate on sustainability issues through cooperation and consultation. The Australia-Japan FTA (entered into force in 2015) did not include separate chapters on labour and the environment, nor did Australia's agreement with Indonesia, which entered into force

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<sup>114</sup> Draper P., Khumalo N. and Tigere F. (2017). *Sustainability Provisions in Regional Trade Agreements: Can they be Multilateralised?*, Available at: <http://e15initiative.org/publications/sustainability-provisions-in-regional-trade-agreements-can-they-be-multilateralised/>



in 2020.<sup>115</sup> Its trade agreement with Peru (2020), however, includes chapters on labour and environment, which will be reviewed in this study.<sup>116</sup>

Although Australia's TSD institutional and policy framework for environmental provisions is less formalized than the EU's, the Australian Department of the Environment and Energy (DEE) has, in the past, addressed trade-related environmental issues by helping the Department of Foreign Affairs and Trade (DFAT) design a specific environment chapter (e.g., US-Australia FTA, TPP) and/or by advising trade negotiators on chapters directly impacting the environment, among which government procurement, services, technical barriers to trade (TBT) and sanitary and phyto-sanitary (SPS) measures.<sup>117</sup> In a sense, Australia's promotional approach to trade and environment in the US-Australia FTA dovetailed with the EU's proclivities for consultation and cooperation. The much greater social and economic disparities between TPP countries (with Australia and lower-middle income and middle-income countries like Vietnam and Malaysia), however, meant that TSD issues would be subject to a different approach reflecting not only strong US influence in the negotiations and its proclivity for stricter enforcement mechanisms, but also a compromise between multiple trading partners (Canada, Chile, Japan and New Zealand) with different practices and experiences in this policy sphere. In many regards, TPP's TSD chapters both build upon the framework developed by the US over the past two-and-a-half decades of FTA negotiations, while innovating in several regards. TPP's environment chapter calls for high levels of environmental protection and the effective enforcement of environmental laws. Member countries pledge to work on global challenges, including climate change, illegal wildlife trade, protection of biological diversity, fisheries (over-fishing and illegal fishing), and protection of the ozone layer.<sup>118</sup> TPP refers to internationally recognised labour rights, includes provisions for labour inspection, and states that there cannot be derogations from labour laws for special trade areas such as export processing zones. Moreover, TPP creates a Labour Council, refers to cooperation with international organisations, and establishes domestic stakeholder groups. This agreement will be closely examined as well as other Australian FTAs containing TSD provisions.

### 5.1.2. Canada

Given its joint negotiations with the United States under successive trade agreements, namely NAFTA, TPP and the USMCA, Canada has also occupied a central role in the strengthening of trade linkages pertaining to labour rights and environmental protection. Over the past few years, the Trudeau government has also sought to develop a policy framework for a "progressive trade policy," framed as a safeguard against the rise of populism in the West to maintain a system of open trade while responding to calls for greater fairness at home. In many ways, the scope of Canada's progressive policy agenda converges with the TSD

<sup>115</sup> Available at: <https://www.dfat.gov.au/trade/agreements/in-force/iacepa/iacepa-text/Pages/default>

<sup>116</sup> Available at: <https://www.dfat.gov.au/trade/agreements/in-force/pafta/full-text/Pages/fta-text-and-associated-documents>

<sup>117</sup> Australia Government. Department of the Environment and Energy, "Trade and the Environment". Available at: <https://www.environment.gov.au/about-us/international/trade>.

<sup>118</sup> Available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptppg/sectors-secteurs/environnement-environnement.aspx?lang=eng>

approach promoted by the EU, including the protection of labour and environmental standards, and their shared commitment to an open and transparent decision-making process encouraging dialogue with civil society. It also includes commitments to policies targeting women, indigenous peoples, youth and SMEs.<sup>119</sup>

As with the United States, the development of labour provisions in early Canadian FTAs (e.g., with Chile and Costa Rica) built upon NAFTA's experiment under the North American Agreement on Labour Cooperation. Confronted to the shortcomings of NAFTA's public submission process in the labour sphere, Canada sought to expand the scope and strengthen the enforcement of labour provisions in FTAs, starting with the Canada-Peru trade agreement, whose model was duplicated in subsequent FTAs (Colombia, Jordan, Panama, Honduras, South Korea). The Canadian model can be described as a hybrid model combining cooperative mechanisms and the threat of trade sanctions in the event of non-compliance. While widely influenced by Washington's TSD approach, TPP partly reflected this dual approach. On the one hand, 'cooperative labour consultations' remain the first step in the case of a dispute settlement on labour issues. On the other, TPP includes provisions for sanctions – including the suspension of its benefits – as a last resort. Yet again, Canada has signed "peace clauses" with Vietnam in a side letter, under which benefits would not be suspended in the event of disputes in the first three years after the agreement's entry into force.<sup>120</sup> EU-Canada CETA also reflects this preference for cooperation and arguably represents a compromise between the EU and Canadian approaches to TSD enforcement.<sup>121</sup> While labour standards have occupied a central role in Canada's trade policy debates, as illustrated by a recent country-wide consultation,<sup>122</sup> the Canadian "progressive trade policy agenda" has underlined two priorities that distinguish the Canadian approach from other TSD approaches: women's rights and indigenous peoples. First, Canada has recently included a gender chapter in two of its FTAs (the modernized Canada-Chile FTA and the modernized Canada-Israel FTA) and included gender provisions in others (e.g., CETA).<sup>123</sup> Second, while falling short of negotiating a chapter on indigenous rights in the USMCA, Canada included several provisions referring to the rights of aboriginal peoples, including a general exception for Indigenous

<sup>119</sup> Ciuriak D. (2018). "Canada's Progressive Trade Agenda: NAFTA and Beyond", C.D. Howe Institute, Commentary 516, available from:

[https://www.cdhowe.org/sites/default/files/attachments/research\\_papers/mixed/Final%20June%2011%20Commentary\\_516.pdf](https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Final%20June%2011%20Commentary_516.pdf) ; Stéphane Paquin and Hubert Rioux, "L'agenda progressiste et les accords commerciaux de nouvelle génération", *Revue Interventions économiques* [Online], 65 | 2021, Online since 01 December 2020, connection on 26 June 2021. URL: <http://journals.openedition.org/interventionseconomiques/12297>; DOI: <https://doi.org/10.4000/interventionseconomiques.12297>

<sup>120</sup> ILO. (2019). *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*. Available at: [https://www.ilo.org/global/publications/books/WCMS\\_719226/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_719226/lang--en/index.htm)

<sup>121</sup> Zini S. (2020). "Le Canada et le commerce progressiste en matière de droits des travailleurs. Origines et impacts", *Revue Interventions économiques* [Online], 65 | 2021, Online since 01 December 2020, connection on 26 June 2021. URL: <http://journals.openedition.org/interventionseconomiques/12561>; DOI: <https://doi.org/10.4000/interventionseconomiques.12561>

<sup>122</sup> Zini, S., Boulanger E., Rioux M. (2021). *Vers une politique commerciale socialement responsable dans un contexte de tensions commerciales*. Québec : Presses de l'Université du Québec.

<sup>123</sup> Government of Canada, "Trade and gender in free trade agreements: The Canadian approach" <https://www.international.gc.ca/trade-commerce/gender-equality-egalite-genres/trade-gender-fta-ale-commerce-genre.aspx?lang=eng>

Peoples Rights, as well as references in the environment and SME chapters (chapters 24 and 25). Other FTAs like CETA and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) also contain references to indigenous people.<sup>124</sup>

### 5.1.3. Chile

While Chilean FTAs negotiated in the early 2000s do not include a TSD chapter, the US-Chile FTA includes an environment chapter which outlines obligations and creates an Environment Affairs Council to discuss environmental issues that may occur between both countries. The FTA also includes a labour chapter, which details three key provisions requiring both countries to protect workers and enforce relevant domestic laws. Moreover, current negotiations for the modernisation of the EU-Chile Association Agreement include discussions on novel sustainability provisions including on gender equality.

The 2002 EU-Chile Association Agreement, in its FTA part, included for the first time a reference to labour standards within the chapter on social cooperation, but Chile negotiated its first FTA with labour provisions in 1997 with Canada. Since then, the country's approach to including labour provisions has been successful in many ways. Almost half of the FTAs concluded by Chile include labour provisions, including with the US, Canada, China, Colombia, Panama, Peru, and Turkey. However, in contrast to a common desire for labour provisions reflected by numerous developing countries, Chile initially hesitated to include such obligations. While fears of abusing labour provisions for protectionism led to initial reluctance, the adoption of such measures became intertwined with the domestic transition to a democratic regime. The country provides a notable case study where external pressures for labour protection from the initial Canadian FTA led to domestic reforms, and eventually led labour matters and civil society needs to become important domestic policies for the Chilean government. Thereafter, Chilean trade policy has prioritized labour provisions, while remaining flexible in the obligations contained. These include those outlined by the ILO Declaration on Fundamental Principles and Rights at Work, respect for decent work, and the requirement to enforce national legislations designed to fulfil such obligations (ILO, 2017).

While Chile has consistently recognized the importance of labour commitments, the country adopts certain measures to overcome implementation challenges. These include dialogue, knowledge exchange, and dispute resolution. Mechanisms to settle disputes differ across Chile's trade agreements, and while sanctions are not typically part of Chilean trade policy,

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<sup>124</sup> Goff P.M. (2021)., "Bringing Indigenous Goals and Concerns into the Progressive Trade Agenda", *Revue Interventions économiques* [Online], 65 | URL: <http://journals.openedition.org/interventionseconomiques/12777>; DOI: <https://doi.org/10.4000/interventionseconomiques.12777>; see also Schwartz R. (2020). *Developing a Trade and Indigenous Peoples Chapter for International Trade Agreements*. In John Borrows and Risa Schwartz (editors). *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements*. Cambridge: Cambridge University Press, pp. 248-273.

the country has concluded some FTAs which include them at the desire of the trading partner (e.g., US, and Canada).<sup>125</sup>

#### 5.1.4. Japan

Already in 1995, the Japanese Ministry of Environment issued a policy statement on harmonising environmental and trade policies<sup>126</sup>. Environmental provisions are seen in several agreements. Japan's 2005 agreement with Mexico includes text on environmental measures in investment and on development cooperation for environment.<sup>127</sup> Its 2011 agreement with India includes provisions on sustainable development, in particular on environment, while social issues are only mentioned in the preamble and labour issues are not mentioned.<sup>128</sup> Japan's 2011 free trade and economic partnership agreements with Peru covers sustainability issues in separate joint statements on trade and environment and on trade and biodiversity;<sup>129</sup> this is also the approach used in the Japan-Chile trade agreement.<sup>130</sup>

On labour issues, six of Japan's 18 agreements in force – including CPTPP – contain labour provisions; these include its Economic Partnership Agreements with Switzerland (2008), the Philippines (2006) and Mongolia<sup>131</sup> (2016), where labour provisions are included in the investment chapters.<sup>132</sup> Japan's agreements refer broadly to labour laws but only one – the 2006 agreement with the Philippines – refers specifically to internationally established rights. In 2016, Japan issued a development strategy on gender equality and women's empowerment, though these issues were not tied specifically to its trade agreements.<sup>133</sup> Japan's 2020 agreement with the UK contains a chapter on trade and sustainable development that covers a range of issues including labour standards as well as environmental topics such as biodiversity, forestry and fisheries.<sup>134</sup>

#### 5.1.5. New Zealand

New Zealand has sought to include environmental provisions in its FTAs, based on a 2001 declaration on environment and trade agreements, which calls for trade and environmental policies to be mutually supportive but states that governments should have flexibility on

<sup>125</sup> International Labour Organisation. (2017). *Handbook on Assessment of Labour Provisions in Trade Arrangements*. Geneva: International Labour Office.

<sup>126</sup> George C. (2014). *Environment and Regional Trade Agreements: Emerging Trends and Policy Drivers*, OECD Trade and Environment Working Papers 2014/02

<sup>127</sup> Available at: <https://www.mofa.go.jp/region/latin/mexico/agreement/index.html>

<sup>128</sup> Draper P., Khumalo N. and Tigere F. (2017). *Sustainability Provisions in Regional Trade Agreements: Can they be Multilateralised?* <http://e15initiative.org/publications/sustainability-provisions-in-regional-trade-agreements-can-they-be-multilateralised/>

<sup>129</sup> Available at: <https://www.mofa.go.jp/policy/economy/fta/peru.html>

<sup>130</sup> ILO, *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*, 2019. Available at: [https://www.ilo.org/global/publications/books/WCMS\\_719226/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_719226/lang--en/index.htm)

<sup>131</sup> <https://www.mofa.go.jp/policy/economy/fta/mongolia.html>

<sup>132</sup> ILO, *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*, 2019. Available at: [https://www.ilo.org/global/publications/books/WCMS\\_719226/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_719226/lang--en/index.htm)

<sup>133</sup> International Labour Organisation (2019), *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*. Geneva : International Labour Office.

<sup>134</sup> Available at: <https://www.gov.uk/government/publications/ukjapan-agreement-for-a-comprehensive-economic-partnership-cs-japan-no12020>

environmental regulation ‘in accordance with national circumstances’.<sup>135</sup> Its broader approach to TSD provisions has become gradually institutionalized over the past decade. New Zealand’s 2009 FTA with Malaysia includes side agreements on labour and environment.<sup>136</sup> The New Zealand-Malaysia agreement on environmental cooperation mirrored in many regards the EU’s cooperative and consultative approach to trade linkages. With the New Zealand-Korea FTA (2015), trade linkages gained greater prominence. Instead of addressing environmental issues in a side agreement or on an ad-hoc basis in various provisions like SPS, TBT or investment, New Zealand committed to “an integrated approach to sustainable development” that dealt with TSD issues on par with other FTA chapters. Its 2015 FTA with Korea contains a chapter on environment that refers to the importance of multilateral environment agreements, though it does not require ratification or implementation of specific agreements (Art. 16.3). It also calls for the sustainable management of fisheries. It includes the right to regulate on environment in its investment chapter. The agreement does not contain, however, a chapter on labour. With regard to the implementation of TSD provisions, New Zealand’s shift from an exhortatory approach to stakeholder consultation (“Each Party may, where appropriate, provide an opportunity for its domestic stakeholders to submit views or advice”) and to a stricter commitment to seek external advice (“Each party shall provide an opportunity for its domestic stakeholders to submit views or advice”) is of particular interest to this study. In addition, New Zealand reasserted its cooperative and consultative approach to sustainability issues by explicitly stating that environmental issues are not subject to dispute settlement mechanisms.<sup>137</sup> With regard to labour standards, New Zealand’s 2011 agreement with Hong Kong included a side agreement on labour cooperation, as well as TPP.<sup>138</sup>

In many regards, TPP’s environment chapter builds upon the framework developed by New Zealand over the past two-and-a-half decades of FTA negotiations. However, it innovates with regard to scope, implementation and enforcement, which led the Ministry of Foreign Affairs and Trade (MFAT) to declare that “*TPP’s labour and environment outcomes are the most comprehensive New Zealand has achieved in a Free Trade Agreement.*”<sup>139</sup>

#### 5.1.6. Switzerland

Switzerland has committed to including specific provisions on social and environmental aspects of trade within new or updated FTAs since 2010, when it drafted the first template TSD chapter with other members of the European Free Trade Association (EFTA). Thereafter, members updated the template between 2017 and 2020 to include additional provisions on various issues and further develop its dispute resolution mechanism. Beyond general

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<sup>135</sup> George C. (2014). *Environment and Regional Trade Agreements: Emerging Trends and Policy Drivers*, OECD Trade and Environment Working Papers 2014/02

<sup>136</sup> Available at: <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/nz-malaysia-free-trade-agreement/>

<sup>137</sup> See: <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/nz-korea-free-trade-agreement/>

<sup>138</sup> ILO, *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*, 2019. Available at: [https://www.ilo.org/global/publications/books/WCMS\\_719226/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_719226/lang--en/index.htm)

<sup>139</sup> New Zealand Ministry of Foreign Affairs and Trade, “*Transpacific Partnership. Labour and Environment*,” undated, available at: [https://www.tpp.mfat.govt.nz/assets/docs/TPP\\_factsheet\\_Labour-and-Environment.pdf](https://www.tpp.mfat.govt.nz/assets/docs/TPP_factsheet_Labour-and-Environment.pdf).



principles on social and environmental protection, the new template includes new provisions on protecting workers' rights, climate protection, sustainable management of natural resources, preserving biodiversity, sustainable management of marine resources, sustainable agriculture, sustainable supply chains, responsible business conduct, and inclusive economic development/equal opportunities. Moreover, the new template revises mechanisms to monitor compliance with sustainability regulations (SECO, 2021).

With regard to protecting workers' rights, EFTA members commit to implementing the ILO's principles of the fundamental rights at work and its Decent Work Agenda. The new provisions add requirements on social security, occupational health, fair wages, and implementing a labour monitoring system. Moreover, the updated chapter outlines procedures to ensure effective remediation of any disputes that may arise. On climate protection, additional provisions align the goals of Switzerland's FTAs with those of the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. Similarly, the revised template prioritizes sustainable management of trade in forestry products, fish, and wildlife to decrease greenhouse gas emissions. Beyond committing to effective implementation of forestry governance, the updated provisions commit EFTA members to employing certification schemes to identify products from sustainably managed forests. In order to align itself with the EU's Timber Regulation, Switzerland requires importers of timber to prove proper due diligence and provide details on the type and origin of timber (SECO, 2021).

Furthermore, the new template actively applies the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) with the aim of conserving biodiversity, but also reducing the spread of invasive species through trade. On marine resources, updated provisions detail requirements to curb illegal and unreported fishing. Suggested measures include national catch certification schemes, such as Switzerland's 2017 requirement to monitor the origin of imported fish products. On a related note, the chapter's new provisions on sustainable agriculture highlight the need for dialogue and reporting on sustainable food systems. Finally, the last two updates align the template text with instruments for responsible business to ensure inclusive economic development such as the OECD Guidelines for Multinational Enterprises, ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the UNGP on Business and Human Rights (SECO, 2021).

Finally, Switzerland has established an FTA Joint Committee to monitor the country's implementation of sustainability regulations by collecting information from federal offices as well as civil society. Most notably, Switzerland's revised chapter includes a panel of experts as a new mechanism for dispute settlement, which draws on recognised experts to draft public, implement, and monitor recommendations (SECO, 2021)<sup>140</sup>.

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<sup>140</sup>[https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/Freihandelsabkommen/nachhaltigkeit.html](https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Freihandelsabkommen/nachhaltigkeit.html)

### 5.1.7. *The United States*

The US has been a driving force for trade linkages since NAFTA raised the prominence of both labour and environmental issues in trade policymaking. The scope, implementation and enforcement of labour and environmental provisions in trade agreements have been central to the stormy debates on trade liberalization over the past thirty years. As a result, US trade negotiating objectives regarding environmental and social issues have expanded over successive trade reforms (most notably the Bipartisan Trade Promotion Authority Act of 2002), while US trade agreements have progressively given greater consideration to the scope and enforcement of labour and environmental standards. TSD provisions in the US model have therefore shifted from side agreements (NAFTA) to dedicated labour and environmental chapters (US-Jordan FTA), first being subject to specific enforcement procedures, before being subject to the agreement's state-to-state dispute settlement mechanism *on par* with commercial provisions. The US TSD model has three central features that continue to nurture both academic and policy debates on the implementation and enforcement of labour and environmental provisions in FTAs: 1) the importance of pre-ratification processes; 2) the ability of civil society actors to file complaints for a country's failure to enforce its labour and environmental obligations under an FTA; 3) the potential use of trade sanctions as an enforcement tool.

The enforcement of labour rights is embedded in the pre-ratification requirements, which include reforms in labour laws and practices before the agreement is in place. As discussed in the literature review, Washington has sought to maximize its economic leverage to foster domestic labour reforms with many of its negotiating partners, including Mexico, Bahrain, Columbia, Morocco, Oman, Panama, Cambodia, Vietnam and Malaysia.<sup>141</sup> The scope of labour provisions has evolved from an emphasis on the enforcement of domestic labour laws to the reference to international labour standards, including the 1998 Declaration on Fundamental Principles and Rights at Work, as well as acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health in the USMCA, the latest FTA ratified by Washington as of 2021. With regard to enforcement, the US experience provides important takeaways when it comes to public submissions by non-state actors (20 reviews issued by the US Department of Labour's Office of Trade and Labour Affairs),<sup>142</sup> their modalities and effects. Finally, the mixed record of the US sanction-based model, acknowledged by a 2014 Governmental Accountability Office report,<sup>143</sup> invites further inquiry into the inner workings of its dispute settlement mechanism.

Likewise, the US approach to trade-environment linkages offers important insights into the challenges and promises of implementing and enforcing environmental provisions in FTAs. While environmental questions have been arguably less prominent than labour rights, they have likewise had implications beyond US trade politics. As explained in the literature review,

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<sup>141</sup> *The cases of TPP and the Cambodia Textile Trade Agreement will be examined in section 3.5.*

<sup>142</sup> Villarreal A., Cimino-Isaacs, C.D. (2021). "USMCA: Labour Provisions", *Congressional Research Service*.

<sup>143</sup> Government Accountability Office. (2014). "Free Trade Agreements. U.S. Partners Are Addressing Labor Commitments, but More Monitoring and Enforcement Are Needed", GAO-15-160, Washington, DC.



the US has played an important role in the diffusion of trade-environment norms in FTAs. For instance, NAFTA's environmental side agreement has been shown to be especially influential in other countries' FTA design.<sup>144</sup> Of particular interest is the North American Commission on Environmental Commission (NACEC)'s Submission of Enforcement Matter (SEM) process, which allows civil society organizations to file complaints for non-compliance with environmental obligations under NAFTA. Other significant features of the US approach to the trade-environment nexus include the expanded scope of environmental provisions in TPP, duplicated in the USMCA (e.g., biodiversity, marine resources and fisheries) as well as new institutional reforms to improve the SEM process under the USMCA (e.g., shorter timeline, additional funding).<sup>145</sup> The comparative study will indicate the key takeaways from the US case in the expanded overview of the US TSD model, the comparative analysis of TSD models performed and in some of *the case studies examined below*.

## 5.2 Comparative analysis of scope of TSD provisions in third countries' FTAs

Building upon the analytical framework, the cross-country analysis of TSD provisions in this section is centred on scope and pre-ratification processes. With regard to scope, this analysis closely scrutinizes the coverage of these provisions. For labour provisions, one carefully examines references to ILO Conventions (Fundamental Conventions, Decent Work and the 2030 Agenda for Sustainable Development) and explicit references to the protection of human rights, as well as specific language on Corporate Social Responsibility (CSR) and Responsible Business Conduct (RBC) (Table 4).

For environmental provisions, the analysis examines references to trade-related MEAs and the main policy spheres associated with the trade-and-environment nexus (Table 5). This overview of TSD provisions will be followed by a thematic analysis of the evolution of the scope of TSD provisions in third countries' FTAs. For certain specific issues of particular relevance to the EU, such as climate change, the study will zoom in on certain provisions to provide a more fine-grained perspective on the scope of TSD provisions (Table 6). The analysis of pre-ratification processes will examine the formal and informal practices that each country has undertaken to promote labour or environmental reform *ex ante*. Here, the researchers will rely on the analysis of official sources (e.g., memoranda of understanding, side letters, labour action plans) and targeted interviews with government officials who participated in the negotiations (e.g., trade and labour negotiators who participated in CPTPP negotiations with Vietnam and Malaysia).

The following table illustrates the scope of the specific environmental issues covered by third countries. By design and scope, different countries incorporate different environmental provisions. However, the recent USMCA appears to be the most extensive, covering all the

<sup>144</sup> Jean-Frédéric, M., Pauwelyn, J., Hollway J. (2017). *The Trade Regime as a Complex Adaptive System: Exploration and Exploitation of Environmental Norms in Trade Agreements*. *Journal of International Economic Law* 20(2): 365–90. For a comprehensive analysis of the US approach to environmental provisions in FTAs, see Jinnah S., Jean-Frédéric M. (2020). "Greening Through Trade", Cambridge/London: MIT Press.

<sup>145</sup> Boucher A.C. (2020). "The USMCA Contains Enhanced Environmental Protection Provisions but Will They Lead to Substantive Environmental Protection Outcomes", American Bar Association, [https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/ierl/20201120-the-usmca-contains-enhanced-environmental-protection-provisions/](https://www.americanbar.org/groups/environment_energy_resources/publications/ierl/20201120-the-usmca-contains-enhanced-environmental-protection-provisions/)

categories listed. This is followed by the CPTPP, which is also extensive, except that it does not have provisions on climate change. Other recent agreements concluded by Australia and New Zealand with Korea include similar provisions, namely climate change, renewable energy, biodiversity, fisheries, forest conservation and illegal trade in endangered species. Few agreements include provisions related to genetic resources, pesticides and chemicals, namely those by the US and Canada.

**Table 9: Specific environmental issues covered in the third country FTAs reviewed**

	<i>Climate change</i>	<i>Renewable energy</i>	<i>Air pollution</i>	<i>Ozone layer</i>	<i>Biodiversity</i>	<i>Fisheries</i>	<i>Forest conservation</i>	<i>Illegal trade in endangered species</i>	<i>Genetic resources incl. traditional knowledge</i>	<i>Pesticides and chemicals</i>
<b>USMCA 2018</b>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>CPTPP 2018</b>	No	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Australia-Peru 2018</b>	✓	✓	No	No	✓	No	No	No	No	No
<b>Switzerland-Georgia 2016</b>	✓	✓	No	✓	No	✓	✓	✓	No	No
<b>New Zealand-Korea 2015</b>	✓	✓	No	✓	✓	✓	✓	✓	No	No
<b>Australia-Korea 2015</b>	✓	✓	No	No	✓	✓	✓	✓	No	No
<b>Japan-Mongolia 2015</b>	✓	No	No	No	No	No	No	No	No	No
<b>New Zealand-Taiwan 2013</b>	✓	No	✓	✓	✓	No	✓	✓	No	No
<b>Switzerland-Central America 2013</b>	✓	✓	No	No	✓	✓	✓	No	No	No
<b>New Zealand-Hong Kong 2010</b>	No	No	✓	No	✓	No	No	No	No	✓
<b>Canada-Panama 2010</b>	No	No	No	No	✓	No	No	✓	No	No
<b>New Zealand-Malaysia 2009</b>	✓	No	No	No	✓	✓	✓	No	No	No
<b>Canada-Jordan 2009</b>	No	✓	No	No	No	No	No	No	No	No

	<i>Climate change</i>	<i>Renewable energy</i>	<i>Air pollution</i>	<i>Ozone layer</i>	<i>Biodiversity</i>	<i>Fisheries</i>	<i>Forest conservation</i>	<i>Illegal trade in endangered species</i>	<i>Genetic resources incl. traditional knowledge</i>	<i>Pesticides and chemicals</i>
<b>US-Panama 2007</b>	No	No	No	No	No	No	No	✓	No	No
<b>Japan-Thailand 2007</b>	No	✓	No	No	No	✓	✓	No	No	No
<b>US-Peru 2006</b>	No	✓	✓	No	✓	No	✓	✓	No	✓
<b>Chile-Colombia 2006</b>	No	✓	No	No	✓	✓	✓	No	No	No
<b>CAFTA-DR 2004</b>	No	No	No	No	✓	No	No	✓	No	No
<b>US-Chile 2003</b>	No	No	No	✓	✓	No	No	✓	No	✓
<b>Canada-Chile 1996</b>	No	No	✓	No	✓	✓	✓	✓	No	✓
<b>NAFTA 1994</b>	No	No	✓	No	✓	No	No	✓	No	✓

Table 10 provides an overview of the MEAs in the selected countries. Canadian FTAs refer to three key agreements including the Montreal Protocol, Basel Convention and CITES, with the recent exception of CPTPP which refers to the CBD convention. While US trade agreements mostly refer to seven MEAs, including CITES and Montreal Protocol, New Zealand and Chile do not include specific references to key agreements. Instead, the two countries tend to include them through general references to environmental institutions and their respective agreements—with the exception of Chile’s agreements with the US and Canada which refer to the Montreal Protocol, CITES and the Basel Convention. Others, like Japan, refer to specific agreements such as the UNFCC and Kyoto Protocol. Table 10 indicates the different commitments that each country prioritises, with the most common being CITES, appearing across the agreements concluded by Switzerland, Australia, US and Canada.

**Table 10: Reference to MEAs**

	<i>UNFCCC</i>	<i>Paris Agreement</i>	<i>Montreal Protocol</i>	<i>CBD</i>	<i>Nagoya Protocol</i>	<i>CITES</i>	<i>Basel Convention</i>	<i>MARPOL</i>
<b>USMCA 2018</b>	No	No	✓	No	No	✓	No	✓
<b>CPTPP 2018</b>	✓	✓	No	✓	No	✓	No	No
<b>Australia-Peru 2018</b>	✓	No	No	✓	No	✓	No	No
<b>Switzerland-Georgia 2016</b>	General references to MEAs	No	No	No	No	No	No	No
<b>Korea-New Zealand 2015</b>	General references to MEAs	No	No	No	No	No	No	No
<b>Japan-Mongolia 2015</b>	General references to MEAs	No	No	No	No	No	No	No
<b>Australia-Korea 2014</b>	General references to MEAs	No	No	No	No	No	No	No
<b>New Zealand-Taiwan 2013</b>	General references to MEAs	No	No	No	No	No	No	No
<b>Switzerland-Central America 2013</b>	No	No	No	✓	No	✓	No	No
<b>New Zealand-Hong Kong 2010</b>	General references to MEAs	No	No	No	No	No	No	No
<b>Canada-Panama 2010</b>	No	No	✓	✓	No	✓	✓	No



	<i>UNFCCC</i>	<i>Paris Agreement</i>	<i>Montreal Protocol</i>	<i>CBD</i>	<i>Nagoya Protocol</i>	<i>CITES</i>	<i>Basel Convention</i>	<i>MARPOL</i>
<b>New Zealand-Malaysia 2009</b>	General references to MEAs	No	No	No	No	No	No	No
<b>Canada-Jordan 2009</b>	Other references to MEAs	No	✓	No	No	✓	✓	No
<b>US-Panama 2007</b>	No	No	✓	No	No	✓	No	✓
<b>Japan-Thailand 2007</b>	✓	No	No	No	No	No	No	No
<b>US-Peru 2006</b>	No	No	✓	No	No	✓	No	✓
<b>Chile-Colombia 2006</b>	General references to MEAs	No	No	No	No	No	No	No
<b>CAFTA-DR 2004</b>	General references to MEAs	No	No	No	No	No	No	No
<b>US-Chile 2003</b>	General references to MEAs	No	✓	No	No	No	No	No
<b>Canada-Chile 1996</b>	No	No	✓	No	No	✓	✓	No
<b>NAFTA 1994</b>	No	No	✓	No	No	✓	✓	No

Almost all of the agreements listed in Table 11 include a provision on the right to determine the level protection, except for agreements concluded by Japan. Most of the selected FTAs include non-derogation provisions, apart from those negotiated by Australia and New Zealand. Exceptions for natural resources as well as plant and animal life appear, but not across all agreements. General environmental exceptions for investment do not seem to be included in most agreement. Rather, FTAs tend to include provisions with the obligations not to waive or derogate from environmental standards to encourage investment. General exceptions for procurement purposes appear in most of the FTAs, except for agreements concluded by Japan and some of the early agreements concluded by Canada. None of the FTAs listed in the table contain provisions on subsidies as exceptions for environmental measures.

**Table 11: Regulatory sovereignty and exceptions**

	<i>Right to determine level of protection</i>	<i>Non-derogation from domestic laws</i>	<i>Exception for the conservation of natural resources</i>	<i>Exception for plant and animal life</i>	<i>Investment: general exception on environmental purposes</i>	<i>Procurement: all exceptions for environmental purposes</i>	<i>Subsidies: all exceptions for environmental purposes</i>
<b>USMCA 2018</b>	✓	✓	✓	✓	No	✓	No
<b>CPTPP 2018</b>	✓	✓	✓	✓	No	✓	No
<b>Australia-Peru 2018</b>	✓	No	No	No	✓	✓	No
<b>Switzerland-Georgia 2016</b>	✓	✓	✓	✓	✓	✓	No
<b>Korea-New Zealand 2015</b>	✓	No	✓	✓	✓	✓	No
<b>Japan-Mongolia 2015</b>	No specific provision	✓	No	No	No	No	No
<b>Australia-Korea 2014</b>	✓	✓	✓	No	No	✓	No
<b>New Zealand-Taiwan 2013</b>	✓	No	✓	✓	No	✓	No
<b>Switzerland-Central America 2013</b>	✓	✓	No	✓	No	✓	No
<b>New Zealand-Hong Kong 2010</b>	✓	No	✓	✓	No	✓	No
<b>Canada-Panama 2010</b>	✓	✓	✓	✓	No	✓	No

	<i>Right to determine level of protection</i>	<i>Non-derogation from domestic laws</i>	<i>Exception for the conservation of natural resources</i>	<i>Exception for plant and animal life</i>	<i>Investment: general exception on environmental purposes</i>	<i>Procurement: all exceptions for environmental purposes</i>	<i>Subsidies: all exceptions for environmental purposes</i>
<b>New Zealand-Malaysia 2009</b>	✓	No	✓	✓	No	✓	No
<b>Canada-Jordan 2009</b>	✓	✓	✓	✓	No	No	No
<b>US-Panama 2007</b>	✓	✓	✓	✓	No	✓	No
<b>Japan-Thailand 2007</b>	No	✓	No	No	No	No	No
<b>US-Peru 2006</b>	✓	✓	✓	✓	No	✓	No
<b>Chile-Colombia 2006</b>	✓	No	✓	✓	No	✓	No
<b>CAFTA-DR 2004</b>	✓	✓	✓	✓	No	✓	No
<b>US-Chile 2003</b>	✓	✓	✓	✓	No	✓	No
<b>Canada-Chile 1996</b>	✓	✓	✓	✓	No	No	No
<b>NAFTA 1994</b>	✓	✓	✓	✓	No	✓	No

One of the most important labour provisions that appears across most RTAs is the reaffirmation and commitment to implement the ILO core labour standards from the eight conventions contained in the Declaration on Fundamental Principles and Rights at Work. This provision is most common in agreements concluded by the US, Canada, Chile, Switzerland, New Zealand, and Japan. However, not all of them have ratified the eight conventions. For example, the US has only ratified two ILO Conventions, No. 105 on the Elimination of Forced Labour and No. 182 on Worst Forms of Child Labour, which appear in agreements such as the USMCA and the FTA with Panama. As a result, most US FTAs do not include commitments to enforce the conventions themselves. A few agreements also do not include references to the Declaration, including the New Zealand-Taiwan FTA, Japan-Mongolia FTA, Canada-Chile FTA and NAFTA. The ILO Decent Work Agenda does not feature in agreements concluded by New Zealand, Australia and some of early agreements concluded by the US, Canada and Chile.

**Table 12: Reference to international labour instruments**

	<i>ILO 1998 Declaration on Fundamental Principles and Rights at Work</i>	<i>ILO Fundamental Conventions</i>	<i>Commitment to ratify ILO Conventions</i>	<i>Commitment to implement ILO Conventions</i>	<i>ILO Decent Work Agenda</i>
<b>USMCA 2018</b>	✓	✓	No	✓	No
<b>CPTPP 2018</b>	✓	No	No	No	✓
<b>Australia-Peru 2018</b>	✓	✓	No	✓	No
<b>Switzerland-Georgia 2016</b>	✓	✓	✓	✓	✓
<b>Korea-New Zealand 2015</b>	✓	✓	No	✓	✓
<b>Japan-Mongolia 2015</b>	No	No	No	No	No
<b>Australia-Korea 2014</b>	✓	No	No	No	No
<b>New Zealand-Taiwan 2013</b>	No	No	No	No	No
<b>Switzerland-Central America 2013</b>	✓	✓	No	✓	✓
<b>New Zealand-Hong Kong 2010</b>	✓	No	No	No	No
<b>Canada-Panama 2010</b>	✓	✓	✓	✓	✓

	<i>ILO 1998 Declaration on Fundamental Principles and Rights at Work</i>	<i>ILO Fundamental Conventions</i>	<i>Commitment to ratify ILO Conventions</i>	<i>Commitment to implement ILO Conventions</i>	<i>ILO Decent Work Agenda</i>
<b>New Zealand-Malaysia 2009</b>	✓	No	No	✓	✓
<b>Canada-Jordan 2009</b>	✓	✓	No	✓	✓
<b>US-Panama 2007</b>	✓	✓	✓	✓	✓
<b>Japan-Thailand 2007</b>	No provisions on labour				
<b>US-Peru 2006</b>	✓	✓	No	✓	No
<b>Chile-Colombia 2006</b>	✓	✓	No	✓	No
<b>CAFTA-DR 2004</b>	✓	✓	No	✓	No
<b>US-Chile 2003</b>	✓	✓	No	✓	No
<b>Canada-Chile 1996</b>	No	✓	No	✓	No
<b>NAFTA 1994</b>	No	No	No	No	No



Across the board, most FTAs concluded by Chile, Canada, the US, Switzerland, New Zealand and Australia include reference to core labour standards such as freedom of association, the elimination of child labour, collective bargaining, the elimination of forced labour and the right to non-discrimination (see Table 13). On the one hand, most FTAs by Canada and the US go a little further and expand their commitments to occupational safety and health, right to strike, fair wages, labour inspections and protection of migrant workers. In addition, Canada, and the US include specific obligations regarding public awareness of labour legislation and ensuring access to justice, remedies and procedural guarantees. On the other hand, New Zealand and Australia incorporate occupational safety and health, but exclude any reference to labour inspections, fair wages, and rights of migrant workers. Switzerland incorporates the core labour standards, but does not extend to fair wages, migrant workers' rights, or occupational safety and health. While Japanese FTAs contain no specific references to the core labour standards, they tend to make general commitments not to lower labour standards.

**Table 13: References to international labour standards**

	<i>Freedom of association</i>	<i>Right to organize and collectively bargain</i>	<i>Elimination of forced labour (e.g. slavery)</i>	<i>Abolition of child labour</i>	<i>Non-discrimination among workers</i>	<i>Right to strike</i>	<i>Minimum wage</i>	<i>Occupational health and safety</i>	<i>Labour inspection</i>	<i>Rights of migrant and contingent workers</i>
<b>USMCA 2018</b>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>CPTPP 2018</b>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Australia-Peru 2018</b>	✓	✓	✓	✓	✓	No	No	No	No	No
<b>Switzerland-Georgia 2016</b>	✓	✓	✓	✓	✓	No	No	No	No	No
<b>Korea-New Zealand 2015</b>	✓	✓	✓	✓	✓	No	No	✓	No	No
<b>Japan-Mongolia 2015</b>	General provisions	No	No	No	No	No	No	No	No	No
<b>Australia-Korea 2014</b>	✓	✓	✓	✓	✓	No	No	✓	No	No
<b>New Zealand-Taiwan 2013</b>	✓	✓	✓	✓	✓	No	No	✓	No	No
<b>Switzerland-Central America 2013</b>	✓	✓	✓	✓	✓	No	No	No	No	No
<b>New Zealand-Hong Kong 2010</b>	No	No	No	No	No	No	No	No	No	No
<b>Canada-Panama 2010</b>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

	<i>Freedom of association</i>	<i>Right to organize and collectively bargain</i>	<i>Elimination of forced labour (e.g. slavery)</i>	<i>Abolition of child labour</i>	<i>Non-discrimination among workers</i>	<i>Right to strike</i>	<i>Minimum wage</i>	<i>Occupational health and safety</i>	<i>Labour inspection</i>	<i>Rights of migrant and contingent workers</i>
<b>New Zealand-Malaysia 2009</b>	✓	✓	✓	✓	✓	No	No	✓	No	✓
<b>Canada-Jordan 2009</b>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>US-Panama 2007</b>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Japan-Thailand 2007</b>	No provisions on labour									
<b>US-Peru 2006</b>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Chile-Colombia 2006</b>	✓	✓	✓	✓	✓	✓	✓	✓	No	No
<b>CAFTA-DR 2004</b>	✓	✓	✓	✓	No	✓	✓	✓	✓	✓
<b>US-Chile 2003</b>	✓	✓	✓	✓	✓	✓	✓	✓	No	✓
<b>Canada-Chile 1996</b>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>NAFTA 1994</b>	✓	✓	✓	✓	✓	✓	✓	✓	No	✓

Most of the FTAs concluded by Canada incorporate references to gender, whereas the US only started incorporating gender references after the FTA with Panama. Other countries including Switzerland, New Zealand, Australia and Chile have no such references at all. Similarly, rights of indigenous people also do not feature in most of the FTAs except for the recently concluded USMCA and the Canada-Panama FTA. Promotion of corporate social responsibility is common among Swiss FTAs, as well as more recently concluded FTAs by the US, Canada, and Australia. However, apart from the CPTPP, neither Chile, Japan, nor New Zealand reference CSR across their FTAs.

**Table 14: References to other social commitments in the FTAs of third countries**

	<i>Gender</i>	<i>Rights of indigenous peoples</i>	<i>Promotion of corporate social responsibility/responsible business conduct</i>
USMCA 2018	✓	✓	✓
CPTPP 2018	✓	No	✓
Australia-Peru 2018	No	No	✓
Switzerland-Georgia 2016	No	No	✓
Korea-New Zealand 2015	No	No	No
Japan-Mongolia 2015	No	No	No
Australia-Peru 2014	No	No	No
New Zealand-Taiwan 2013	No	No	No
Switzerland-Central America 2013	No	No	✓
New Zealand-Hong Kong 2010	No	No	No
Canada-Panama 2010	✓	✓	✓

New Zealand-Malaysia 2009	No	No	No
Canada-Jordan 2009	✓	No	✓
US-Panama 2007	✓	No	No
Japan-Thailand 2007	No provisions on labour		
US-Peru 2006	✓	No	✓
Chile-Colombia 2006	No	No	No
CAFTA-DR 2004	✓	No	No
US-Chile 2003	No	No	No
Canada-Chile 1996	✓	No	No
NAFTA 1994	No	No	No

With the exception of Japan, which tends to make general references to labour across its FTAs, the majority of the selected countries include provisions on regulatory sovereignty (see Table 15). Similarly, most FTAs include labour obligations to not derogate from, or waive, national labour laws to encourage trade or investment. However, while Japan, as well as a few US and Canadian agreements, incorporate labour provisions within the text of its investment chapters, most agreements negotiated by the other selected countries do not refer to labour provisions in the body of their investment chapters. Moreover, only two agreements by the US and Canada incorporated references to human rights in their investment chapters. Despite these similarities, there are distinctions in the approaches applied by the different states.



**Table 15: Regulatory sovereignty and exceptions**

	<i>Right to regulate</i>	<i>Non-derogation from domestic laws</i>	<i>Reference to labour protection in investment chapter</i>	<i>Reference to human rights protection in investment chapter</i>
<b>USMCA 2018</b>	✓	✓	✓	✓
<b>CPTPP 2018</b>	✓	✓	No	No
<b>Australia-Peru 2018</b>	No provision	✓	No	No
<b>Switzerland-Georgia 2016</b>	✓	✓	No	No
<b>Korea-New Zealand 2015</b>	✓	✓	No	No
<b>Japan-Mongolia 2015</b>	No provision	✓	✓	No
<b>Australia-Korea 2014</b>	✓	✓	No	No
<b>New Zealand-Taiwan 2013</b>	✓	✓	No	No
<b>Switzerland-Central America 2013</b>	✓	✓	No	No
<b>New Zealand-Hong Kong 2010</b>	✓	No	No investment chapter	No investment chapter
<b>Canada-Panama 2010</b>	✓	✓	✓	✓
<b>New Zealand-Malaysia 2009</b>	✓	No	No	No
<b>Canada-Jordan 2009</b>	✓	✓	No investment chapter	No investment chapter
<b>US-Panama 2007</b>	✓	✓	No	No
<b>Japan-Thailand 2007</b>	No provisions on labour	No provisions on labour	No	No
<b>US-Peru 2006</b>	✓	✓	✓	No
<b>Chile-Colombia 2006</b>	✓	✓	No	No
<b>CAFTA-DR 2004</b>	✓	✓	No	No
<b>US-Chile 2003</b>	✓	✓	No	No
<b>Canada-Chile 1996</b>	✓	No	No	No
<b>NAFTA 1994</b>	✓	No	No	No

## 6. Task 5: Review of TSD implementation and enforcement provisions

This section builds upon the overview of other countries' TSD approaches and the comparative analysis of the scope of TSD provisions performed under Task 4 to zoom in on the institutional design pertaining to implementation and enforcement. Here, the first objective will be to map out the different institutional mechanisms related to TSD and determine which are more common in third-country FTAs. To do so, the analysts will rely on a multidimensional analytical framework.

The methods for this comparative analysis draw from those used in Task 4. For data collection, they rely on the TREND database as well as the Labour Provisions in Trade Agreements (LABPTA) dataset. This preliminary data collection will be refined through legal analysis of TSD provisions in FTAs.

The framework will serve as a basis for two thematic analyses. The first will focus on implementation provisions examining the role played by intergovernmental cooperation, the modes of participation of civil society organisations, the role, if any, of international organizations like the ILO and the review mechanisms designed to assess the impact of a trade agreement and its TSD provisions. The second will present central features of enforcement mechanisms by looking successively at the level of enforceability, the submissions of non-compliance, the characteristics of dispute settlement mechanisms and the use of trade sanctions. These two sections will be primarily comparative in nature, but, for explanatory purposes, will use textboxes to zoom in on a type of provisions or the institutional TSD design of a specific FTA. Examples of such focus points include a textbox on the implementation provisions pertaining to trade and gender (Chile-Uruguay FTA, modernised Chile-Canada FTA). As often as is necessary, the analysis will make clear distinctions between the language of labour provisions and the text of environmental and human rights provisions to the extent that they may not always entail the same implementation and enforcement mechanisms. In addition to legal analysis and desk research, interviews with selected regional experts will also feed into our discussion to highlight particular provisions and cases to provide a purposeful discussion informing the EU's TSD review.

These two thematic discussions on the implementation and enforcement of TSD provisions across countries will set the ground for an empirical analysis of the effects of these institutional mechanisms. To assess the effectiveness of FTA provisions, the analysts borrow from the OECD's methodological toolbox to distinguish between output, outcomes and impact.<sup>146</sup> Outputs are understood as the direct products of TSD provisions, such as the creation of an intergovernmental committee or the publishing of an impact assessment of a specific trade agreement. Outcomes refer to short-term or medium-term effects of outputs, whether they be tangible (e.g., labour, human rights, or environmental reform) or intangible (increased visibility of an environmental norm, formation of a sustainable network of policy experts). Impacts

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<sup>146</sup> OECD. (2010). *Glossary of Key Terms in Evaluations and Results Based Management*. OECD, 2002, re-printed in 2010. See <https://www.oecd.org/dac/results-development/what-are-results.htm>

consist of long-term effects (positive or negative) brought by TSD provisions, such as the effective improvement of freedom of association and collective bargaining.

This section will be central to the study and will be designed to reveal the advantages and disadvantages of different approaches to TSD provisions and identify good practices. It will be structured around the analytical framework used in the previous section and will be divided into the following focus points with an emphasis on policy outcomes. First, the study of implementation practices will assess the concrete social and environmental effects of: intergovernmental cooperation, civil society participation (including non-business and business actors), the role of international organizations, as well as mechanisms designed to evaluate FTA implementation (and more specifically TSD provisions). Second, the analysis of enforcement practices will focus on other countries' concrete experiences of public submissions of non-compliance complaints, TSD-related disputes and the potential use or threat of trade sanctions with an emphasis on the concrete effects (or lack thereof) of these practices on social and environmental standards.

This two-pronged analysis will rely on the selection of FTAs. To conduct this ambitious comparative, multi-sectoral and cross-cutting analysis, the analysis will rely on a methodological toolbox that includes:

- **Data collection from official sources** to measure resources allocated to enforcement mechanisms by national governments;
- **Targeted interviews** with state officials and leading experts, including in developing countries. While a list for developed countries is attached in Annex I, the analytical team has compiled a list of experts in developing countries (e.g., Peru, Colombia, Vietnam, Central America etc.) after agreeing on selected FTAs. Moreover, the team's advisory board has provided a list of independent experts as well as those from the Chilean Ministry of Social Development, Ministry of Justice and Human Rights, Ministry of Economy, Development, and Tourism and the Canadian International Development Agency, Department of Foreign Affairs and International Trade, and the Ministry of International Cooperation. The team will also reach out to contacts at the US Agency for International Development, Trade and Development Agency, Department of Commerce, as well as the Swiss Agency for Development and Cooperation, the Japanese Ministry of International Trade and Industry, the Fair Trade Commission, the Australian Human Rights Commission, Department of Foreign Affairs and Trade, and the New Zealand Ministries of Foreign Affairs, Trade, and Social Development;
- **A wide-ranging consultation process**, which ensures a high degree of transparency and the engagement of all relevant stakeholders in the conduct of the TSD review inside and outside the EU. The Open Consultation Process (OPC) has been designed in partnership with DG TRADE and draws on the team's experience conducting numerous stakeholder consultations for DG TRADE. A full chapter with further details on the OPC will be provided in the interim report.
- **Official statistics measuring progress in social and environmental standards** (e.g. World Bank, ILO statistics, FAO, human rights indexes etc.).

As discussed in the literature review, the causal effects of TSD provisions on environmental and social standards can be hard to disentangle from other macro-economic factors. Thus, the social and environmental indicators will be used sparsely and carefully connected to discussion with field experts.

This section will build upon the overview of other countries' TSD approaches and the comparative analysis of the scope of TSD provisions to zoom in on the design of trade agreements pertaining to implementation and enforcement. The analysis will focus on the implementation and enforcement provisions and practices of four countries: the US, Canada, Chile and New Zealand. The first objective requires mapping out the different institutional mechanisms related to TSD issues and determine which are more common in third-country FTAs. To offer a more fine-grained picture of each country's approach, one separates environmental provisions from those focusing on labour and social rights. The analytical team relies on its TSD comparative tables to review the selected third countries' TSD models, as illustrated by the design of their most relevant trade agreements. To fill in the TSD matrix, data is collected from several databases that have coded the provisions of international trade agreements, including the Trade and Environment Database (TREND Analytics),<sup>147</sup> the World Bank's Deep Trade Agreements database<sup>148</sup>, and the Design of Trade Agreements (DESTA) database (Tables 7 and 8).<sup>149</sup>

The following TSD matrix provides an overview of the implementation and enforcement provisions (environmental Table 18 and labour Table 19) of the TSD approaches. The matrix zooms in on a selection key trade agreements from the selected countries based on three criteria:

- **Recency:** most recent agreements logically reflect the lessons that different countries have drawn from their experience of TSD provisions. For instance, the USMCA's dispute settlement mechanism reflects in many the lessons learned from the failure of the US-Guatemala labour dispute.
- **Explanatory value:** because of their specificities and/or the characteristics of the trading partners involved, some FTAs can illustrate the costs and benefits of certain legal innovations or specific institutional mechanisms – some of which will be discussed at greater length in the five case studies (Task 6). For instance, the modernized Chile-Canada trade agreement can provide an interesting starting point for an analysis of trade and gender linkages.
- **Representation:** the agreements in the two TSD matrix are listed in their chronological order starting with the most recent agreements to the first agreements that contained TSD provisions. They were selected because they have been concluding comprehensive agreements on labour and the environment.

Under implementation, this section will focus on a comparative analysis of the key elements included in FTAs such as intergovernmental institutions, civil society participation and the role of international organisations. While under enforcement mechanisms, this section will conduct

<sup>147</sup> <https://klimalog.die-gdi.de/trend/index.html>

<sup>148</sup> <https://datatopics.worldbank.org/dta/table.html>

<sup>149</sup> <https://www.designoftradeagreements.org/>

a comparative analysis of the main tools under enforceability, dispute settlement and sanctions and other remedies. Data collection for this section draws from the aforementioned databases on FTA provisions (TREND, LABPTA, DESTA and Deep Trade Agreements). The full selection of the FTAs concluded by all four countries is attached to the report in the Annex.

Table 16: Implementation and enforcement provisions for environmental issues in trade agreements

Trade agreement	IMPLEMENTATION PROVISIONS									ENFORCEMENT PROVISIONS									
	Intergovernmental mechanisms					Role of IOs	Civil society participation in implementation			Enforceability			Dispute settlement mechanism				Sanctions and remedies		
	Regulatory Cooperation activities	Harmonization of domestic environmental measures	Technical assistance and capacity-building	Intergovernmental committee	Joint scientific cooperation	Role in implementation of environmental provisions	Participation in implementation at national level	Participation in implementation at transnational level	Participation in impact assessment	Commitment to ratify MEAs	Non derogation from domestic laws	Commitment to Implement MEAs	Specific DSM for environmental provisions	Public submission for non-compliance	State-to-state consultation	Panel of experts	Legal arbitration	Suspension of benefits or trade sanctions for failure to enforce	Remedies of compensation for failure to enforce
USMCA 2018	✓	✓	✓	✓	✓	✓	✓	✓	No	No	✓	✓	✓	✓	✓	✓	✓	✓	✓
CPTPP 2018	✓	✓	✓	✓	✓	✓	✓	✓	No	No	✓	✓	✓	✓	✓	✓	✓	✓	✓
TPP 2015	✓	✓	✓	✓	No	✓	✓	✓	No	No	✓	✓	✓	✓	✓	✓	✓	✓	✓
New Zealand-Korea 2015	No	✓	No	✓	✓	✓	✓	✓	✓	No	No	✓	✓	✓	✓	No	No	No	✓
New Zealand-Taiwan 2013	✓	✓	No	✓	✓	No	✓	No	No	No	No	✓	No	No	✓	✓	No	No	✓
Canada-Panama 2011	✓	No	✓	✓	✓	No	✓	No	No	No	✓	✓	✓	✓	✓	✓	✓	✓	✓

	Regulatory Cooperation activities	Harmonization of domestic environmental measures	Technical assistance and capacity-building	Intergovernmental committee	Joint scientific cooperation	Role in implementation of environmental provisions	Participation in implementation at national level	Participation in implementation at transnational level	Participation in impact assessment	Commitment to ratify MEAs	Non derogation from domestic laws	Commitment to implement MEAs	Specific DSM for environmental provisions	Public submission for non-compliance	State-to-state consultation	Panel of experts	Legal arbitration	Suspension of benefits or trade sanctions for failure to enforce	Remedies of compensation for failure to enforce
New Zealand-Hong Kong 2010	✓	No	No	✓	✓	✓	✓	No	No	No	No	✓	No	No	No	No	No	No	No
New Zealand-Malaysia 2009	✓	✓	No	✓	✓	✓	✓	No	No	No	No	✓	No	No	✓	✓	No	No	No
Canada-Jordan 2009	✓	No	No	✓	No	No	✓	✓	✓	No	✓	✓	✓	✓	✓	✓	✓	✓	✓
US-Panama 2007	No	No	✓	✓	✓	No	✓	✓	No	No	✓	✓	✓	✓	✓	✓	✓	✓	No
US-Peru 2006	No	✓	✓	✓	✓	✓	✓	✓	No	No	✓	✓	✓	✓	✓	✓	✓	✓	No
Chile-Colombia 2006	✓	No	No	✓	✓	No	✓	No	No	No	No	✓	No	✓	✓	✓	No	No	No
CAFTA DR 2004	No	No	✓	✓	✓	No	✓	✓	✓	No	✓	✓	✓	✓	✓	✓	✓	✓	No
Chile-US 2003	✓	No	✓	✓	✓	No	✓	✓	No	No	✓	✓	✓	✓	✓	✓	✓	✓	No
Canada-Chile 1996 (modernised)	✓	✓	✓	✓	✓	No	✓	✓	No	No	✓	✓	✓	✓	✓	✓	✓	✓	✓
NAFTA 1994	No	✓	✓	✓	✓	✓	✓	✓	No	No	✓	✓	✓	✓	✓	✓	✓	✓	✓

Source: TREND dataset, Deep Trade Agreements dataset, DESTA.



Table 17: Implementation and enforcement provisions for labour issues in trade agreements

Trade agreement	IMPLEMENTATION PROVISIONS								ENFORCEMENT PROVISIONS									
	Intergovernmental mechanisms				Role of IOs	Civil society participation in implementation			Enforceability			Dispute settlement mechanism				Sanctions		
	Cooperation activities (information exchange, joint research)	Harmonization of domestic labour measures	Technical assistance and capacity-building	Intergovernmental committee	Role in implementation of labour provisions	Participation in implementation at national level	Participation in implementation at transnational level	Participation in impact assessment	Non-derogation from domestic laws	Commitment to ratify ILO Conventions	Commitment to implement ILO Conventions	Public submission for non-compliance	State-to-state consultations	Specific DSM for labour provisions	Panel of experts	Legal arbitration	Suspension of benefits or trade sanctions for failure to enforce	Remedies of compensation for failure to enforce
USMCA 2018	✓	✓	✓	✓	✓	✓	✓	No	✓	No	✓	✓	✓	✓	✓	✓	✓	✓
CPTPP 2018	✓	No	✓	✓	✓	✓	✓	No	✓	✓	✓	✓	✓	✓	✓	✓	✓	No
TPP	✓	No	✓	✓	✓	✓	✓	No	✓	✓	✓	✓	✓	✓	✓	✓	No	✓
Korea-New Zealand 2015	✓	No	✓	✓	✓	✓	No	No	✓	No	✓	No	✓	No	✓	No	No	No
New Zealand-Taiwan 2013	✓	No	✓	No	No	✓	✓	No	✓	No	✓	No	✓	No	✓	No	No	No
New Zealand-Hong Kong 2010	✓	No	No	No	No	✓	No	No	No	No	✓	No	✓	No	✓	No	No	No
Canada-Panama 2010	✓	No	No	✓	✓	✓	No	No	✓	✓	✓	No	✓	✓	✓	✓	✓	✓

	Cooperation activities (information exchange, joint research)	Harmonization of domestic labour measures	Technical assistance and capacity-building	Intergovernmental committee	Role in implementation of labour provisions	Participation in implementation at national level	Participation in implementation at transnational level	Participation in impact assessment	Non-derogation from domestic laws	Commitment to ratify ILO Conventions	Commitment to implement ILO Conventions	Public submission for non-compliance	State-to-state consultations	Specific DSM for labour provisions	Panel of experts	Legal arbitration	Suspension of benefits or trade sanctions for failure to enforce	Remedies of compensation for failure to enforce
New Zealand-Malaysia 2009	✓	No	No	✓	No	✓	No	No	No	No	✓	No	✓	No	✓	No	No	No
Canada-Jordan 2009	✓	✓	✓	✓	✓	✓	No	No	✓	✓	✓	✓	✓		✓	✓	✓	No
US-Panama 2007	✓	No	✓	✓	✓	✓	No	No	✓	✓	✓		✓	✓	✓	✓	No	✓
US-Peru 2006	✓	No	✓	✓	No	✓	No	No	✓	✓	✓	No	✓	✓	✓	✓	No	✓
Chile-Colombia 2006	No	No	No	✓	No	✓	✓	No	✓	No	No	No	No	No	No	No	No	No
CAFTA-DR 2004	✓	No	✓	✓	No	✓	No	No	✓	✓	✓	No	✓	✓	✓	✓	No	✓
US-Chile 2003	✓	No	✓	✓	No	✓	No	No	✓	✓	✓	No	✓	✓	✓	✓	No	✓
Canada-Chile 1996	✓	No	✓	✓	✓	✓	No	No	No	✓	✓	✓	✓	✓	✓	✓	✓	✓
NAFTA 1994	No	No	✓	✓	No	✓	No	No	No	No	No	✓	✓	✓	✓	✓	✓	No

Source: TREND dataset, Deep Trade Agreements dataset, DESTA, LABPTA, WTO RTA database

## 6.1 Implementation provisions and practices

In congruence with the study of TSD provisions in EU FTAs, the analytical team will conduct a fine-grained comparative analysis of implementation provisions in third countries' FTAs to reveal the extent to which other TSD approaches may allow to address some of the policy challenges identified in the previous chapter. Here, the data analysis displayed in the TSD matrix will be complemented with rigorous legal analysis of specific provisions.

The analysis will confront the design of institutional mechanisms with the actual implementation of provisions pertaining to environmental, labour and social standards. Its aim is to identify “good” or “best” practices as well as policy trade-offs to guide the Commission’s ongoing TSD review. In line with the review, particular attention will be devoted to the following provisions:

- **Intergovernmental mechanisms:** Intergovernmental mechanisms consist of formal institutional schemes through which national governments implement TSD provisions under a specific FTA. They can take various forms and operate at various stages of negotiations. Depending on trade linkages, they may involve different regulatory agencies beyond trade institutions (e.g., environmental, energy, labour agencies or ministries). Pre-ratification processes, such as Memoranda of Understanding or targeted action plans, technically precede the implementation of FTAs but are, in practice, very similar to the type of targeted intergovernmental cooperation that can take place after FTA ratification and can be interpreted as an incentive-based form of implementation. Other intergovernmental mechanisms include regulatory cooperation, regulatory harmonization or mutual recognition, joint research programmes designed to collect data on specific phenomena (e.g., North American Agreement on Environmental Cooperation), as well as technical assistance and capacity-building programmes. These mechanisms will be examined in depth with particular attention to the design of these mechanisms, the inclusion (or exclusion) of civil society participants, transparency or confidentiality rules, e.g., regarding the publication of minutes of their meetings or annual reports. Our analysis will be careful to differentiate different types and modalities of assistance stemming from different government agencies or international organizations, so as not to overestimate the extent and modalities of trade-related programs.
- **The role of International Organisations** in implementing environmental, labour and social provisions: An international organisation can play a direct or indirect role in the implementation of TSD provisions. First, it can provide technical assistance to help negotiating countries to ratify international conventions or agreements before or after FTA ratification. Second, it can be associated with capacity-building programs for targeted programs (e.g., the eradication of child labour). Third, and more rarely, it can play a role in monitoring activities in collaboration with governments and civil society actors, as revealed by the ILO’s monitoring activities in the US-Cambodia Textile Trade Agreement (see case study 5).
- **Civil society participation:** The comparative study will assess the different institutional channels, modalities and stages of the trade policy process through which civil society actors participate in TSD implementation, with the aim of overcoming policy challenges and

identifying best practices. Building upon the literature on civil society inclusion,<sup>150</sup> one will address the following questions: who participates? Who doesn't and why? How do they participate? And most importantly, to what effect?

The comparative study will begin by taking a close look at how stakeholder selection might differ from one TSD model to another, and/or from one agreement to another. Comparing variables such as membership and selection criteria, the analysis will reveal not only who is included in the policy process (e.g., type of NGOs, unions, presence of business associations etc.) but also who is excluded and why. Second, trade policy processes will be mapped out through schematic analysis for a selection of trade agreements in order to reveal the latest trends in TSD models and/or the takeaways from a specific institutional design. This will include a discussion of pre-ratification processes shedding light on the role that civil society actors might play at early stages (e.g., the role of unions in CPTPP's labour consistency plans). One will also determine whether FTAs require civil society participation in consultation processes organised in the context of ex-ante impact assessments. Furthermore, the analysis will examine whether the TSD provisions call for civil society participation at the national or transnational level (e.g., transnational civil society meetings; civil society dialogues). Finally, it will discuss the effects that civil society mechanisms may have on the implementation of TSD provisions, distinguishing between de jure and de facto standards.

Some facets of civil society inclusion may require additional comparative tables on specific aspects such as membership or funding. Here again, the main goal will be to identify good practices and potential pitfalls or policy trade-offs. The thematic discussions will be primarily comparative in nature but, for explanatory purposes, may use textboxes to zoom in on a type of provisions or the institutional TSD design of a specific FTA. Examples of such focus points include a textbox on the implementation provisions pertaining to trade and gender (included in the Chile-Uruguay FTA, and modernised Chile-Canada FTA). As often as is necessary, the analysis will make clear distinctions between the language of labour provisions and the text of environmental and human rights provisions to the extent that they may not always entail the same implementation and enforcement mechanisms.

As discussed in the literature review, the analytical team will rely on previously cited mixed methods to isolate the causal effects of different TSD enforcement provisions and practices.

## 6.2 Enforcement provisions and practices

In this section, the report will focus on enforcement provisions and practices of labour and environmental provisions in the trade agreements of four countries. The US, Canada, Chile, and New Zealand. The US, Canada, and Chile have long included labour and environmental provisions in their agreements. New Zealand is a signatory of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which includes comparatively extensive enforcement provisions and procedures, and has only recently begun a larger discussion about how it would include labour and environmental issues in its FTAs. This has been part of a process through a "Trade for All" advisory board and report. New Zealand's general approach to trade, labour, and environmental issues, which is more consonant with the extant EU approach, can serve as an interesting foil and comparator to

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<sup>150</sup> Fung, A. (2006). "Varieties of Participation in Complex Governance". *Public Administration Review*, Special Issue, pp. 66-75.

the other three countries, which have adopted models that draw more on sanctions and dispute settlement as tools for compelling compliance.

The *de-jure* enforcement provisions in the FTAs will be collected through analysis of individual FTAs entered into by each country. When appropriate, it will be noted how the specific provisions have changed and evolved. Importantly, the analysis will also include policy and political background context on the reason for those changes. The broader policy and political context will be analysed using data collected through both secondary and primary research, but also interviews with key policymakers and stakeholders. The background analysis, which informs policy and legal choices, can help inform best practices for labour and environmental provisions in the European context.

This section will then proceed to analyse the implementation of those enforcement provisions. What implementation means in a given country context depends specifically on the processes and institutions that are established by the labour and environmental provision text. Analysis will examine what kinds of dispute settlement and/or consultation processes have been triggered in different FTAs, including *inter alia* through public submissions, complaints, consultations, and arbitration. The public submission process will be described and analysed, and the report will include the specific requirements and processes of the public submission process, as well as the substantive standards used to determine if the complaint will be advanced to dispute settlement procedures. The broader view of these enforcement provisions and practices will establish a foundation for the more in-depth case studies undertaken under Task 6 of the report. The report will include the number of complaints, a discussion of the nature and subject of the complaints, including the identity of the complainants, as well as the resolution of those complaints. Interviews of relevant actors will be conducted for select cases that are deemed instructive by the research team. The broader view of these enforcement provisions and practices will establish a foundation for the more in-depth case studies undertaken under Task 6 of the report.

Finally, to the extent possible, this section will analyse to what degree enforcement provisions and practices have had an impact on environmental and labour rights compliance in signatory countries. Data and evidence will be collected from available academic research and case studies. Because causation is notoriously difficult to establish and measure in these situations, the report will use a case study and narrative method. It will be helpful to draw on the narratives collected in interviews with key stakeholders. This will help paint a broader holistic picture of how and when improvements or backsliding might have occurred, and how enforcement provisions and practices have functioned as drivers for compliance. For example, it might be that the enforcement provisions served not only as a legal stick, but also as an implicit threat during country-to-country consultations that could be used to compel compliance by trading partners.

Similar to the analysis in the implementation section, to assess the effectiveness of labour and environmental provisions, one will borrow from the OECD's methodological toolbox to distinguish between output, outcomes and impact. Outputs are understood as the direct products of TSD enforcement provisions, such as the consultations or reports by governmental agencies. Outcomes refer to short-term or medium-term effects of outputs, such as increased labour or environmental enforcement, or changes in laws. Impacts consist of long-term effects (positive or negative) brought by TSD provisions, such as the effective enforcement of freedom of association and collective bargaining rights.

## 7. Task 6: Case studies

Based on discussions with DG TRADE, the analytical team has selected five case studies:

- The US-Guatemala labour dispute: procedural challenges to the sanction-based model – to be developed by Dr Kevin Kolben;
- Trilateral cooperation for environmental justice: the North American Commission on Environmental Cooperation (NACEC) and the Sumidero Canyon II case – to be developed by Ms Daniela Baeza Breinbauer;
- Canada’s first public submission under the Canada-Colombia Agreement on Labour Cooperation – to be developed by Ms Virginie Rouas;
- A merger of TSD approaches: the CPTPP and its consistency plans – to be developed by Dr Kevin Kolben;
- How far can pre-ratification processes go and how long can they hold? Environmental reforms in the US-Peru Trade Agreement – to be developed by Dr Jean-Baptiste Velut.

Below one can find preliminary overviews of each case study, along with their informative value to the TSD Review.

### 7.1 The US-Guatemala labour dispute: procedural challenges to the sanction-based model

In 2007, the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) and six Guatemalan unions collaborated to bring a complaint against the Guatemalan government for having failed to “effectively enforce” its labour laws, specifically with respect to freedom of association, rights to organize and bargain collectively, and acceptable conditions of work.<sup>151</sup> The complaint brought under Dominican Republic-Central America FTA (CAFTA-DR) by the US against Guatemala was the first trade and labour submission that the US Department of Labour accepted other than complaints brought under the North American Agreement on Labour Cooperation (NAALC). It remains the only submission outside of the NAALC, which is now defunct, that proceeded through the entire enforcement and dispute settlement process. A process that took about nine years. During the process, the parties suspended the consultations and agreed to a labour law enforcement plan. However, the US determined that the Guatemalan government did not abide by the enforcement plan, and proceedings continued. In 2017, an arbitral panel found in favour of the Guatemalan government, determining that the US was unable to show that the actions of Guatemala in question were “sustained or recurring,” and “in a manner affecting trade.” These were the legal standards agreed to by the Parties, with the burden of proof falling on the plaintiff to demonstrate that the violations of labour law met these standards. The response of the US government and of various stakeholders was negative. In response, the USMCA’s labour chapter made it a rebuttable presumption that a measure in question affects trade and investment, unless it can be demonstrated otherwise by the respondent country. In addition, the USMCA included a novel special investigatory and dispute settlement process that specifically addresses freedom of association violations in

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<sup>151</sup> *Public Report of Review of Office of Trade and Labour Affairs U.S. Submission 2008-01 (Guatemala), Jan 16, 2009, p.4.*



specific workplaces. The development of this instrument is in part a result of the weaknesses of the institutions in the US-Guatemala case.

This case study is particularly helpful as a study of a “legalistic” approach to enforcement and dispute settlement. It provides the first full-scale observation of how a labour complaint in a trade agreement proceeds. In this case, the complaint went through a prima facie review by the US Department of Labour, was approved, proceeded to consultations, was advanced to an arbitral panel, was subject to negotiation to avoid further arbitration, which failed, and finally after 9 years resulted in an arbitral decision, which resulted in a status quo result that left many stakeholders interested in using trade to improve working conditions, including Guatemalan stakeholders, dissatisfied.

The case study will review the legal arguments based on the FTA’s text that led to a decision in favor of Guatemala. But to better understand the ways in which the dispute proceeded, its background political context, the reasons for the alleged failure of Guatemala to adhere to the Enforcement Plan, and how it led to changed text in the USMCA, the report will draw on interviews with key stakeholders in the United States Trade Representative, the Department of Labour, Guatemalan government, as well as labour organizations in the US and, if feasible, Guatemala.

**Explanatory value and methodology:** The US-Guatemala dispute is an important test case for the US “sanction-based” approach to the enforcement of TSD provisions. The analysis will therefore delve into the minutiae of this dispute to examine the wording of TSD provisions (especially Article 16.2.1a of the DR-CAFTA), the design of public submission processes (e.g. burden of investigation imposed on the complaint), the resources allocated to the arbitrary panel etc. To better understand the lessons to draw from this case, a subsection of this case study will discuss the extent to which the design of the USMCA’s labour provisions and its “Rapid Response Labour Mechanism” have sought to address some of the shortcomings of the US enforcement model. To do so, this case study will rely on legal analysis and interviews with experts and stakeholders.

## **7.2 Trilateral cooperation for environmental justice? The North American Commission on Environmental Cooperation (NACEC) and the Sumidero Canyon II case**

**Summary:** In 2011, the Comité Pro-Mejoras de la Ribera Cahuaré, a community organization based in the Chiapas region in Mexico filed a submission under NAFTA’s environmental side agreement (NAAEC) asserting that the Mexican government was failing to effectively enforce its environmental laws with regard to the extracting activities of a limestone quarry operating in the Sumidero Canyon National Park. In its submission (which followed a first incomplete submission in 2010), the nongovernmental organization claimed that the company’s operations were not only causing damage to the canyon and affecting biodiversity in a protected area but also impairing air quality, leading to respiratory health problems in the community of Ribera Cahuaré. In 2012, the North American Commission on Environmental Commission (CEC) requested a response from the Mexican government, which advised against further investigation on the matter. The CEC’s independent Secretariat decided that the matter justified the publication of a “factual record” written by independent experts, which was submitted for comments to the three NAFTA members, before being published in 2015. The CEC’s report cited several studies that confirmed that the factory was causing harm to both human health and the environment. The final report was presented to the



National Human Rights Commission which recommended the closure of the company. At the end of 2019, the company finally closed its doors after more than fifty years of operations in the region.

**Explanatory value and methodology:** This case study is an important example of the potential benefits, as well as the concrete challenges of public submission processes for the enforcement of environmental provisions in FTAs. It is of particular interest on several grounds that are particularly relevant to the TSD review: the absence of sanctions in the NAAEC, the independence of the Secretariat vis-à-vis Parties to the agreement; the empowering effects that the CEC can have on civil society organizations; and the linkages between trade, the environment and human rights.

Here, the study will first detail the enforcement mechanisms foreseen under NAFTA's environmental side agreement (NAAEC). Then it will present a detailed analysis of the CEC's Submission of Enforcement Matter (SEM) process that will build upon the comparative analysis performed in Task 5. It will then offer a thorough analysis of the case, mapping out the different institutional actors (supranational, national, local) and policy stakeholders (community organizations, private actors) involved in this case, taking into consideration the complex political factors that led to the closure of the limestone factory to assess the extent to which it was caused by the case. The Civil Society response will likewise be crucial to assess the extent to which the sequence of events were satisfactory or not from a stakeholder perspective—considering feedback on the process such as satisfaction with speed of enforcement, and depth of implementation. Finally, and similarly to the US-Guatemala case study, the analytical team will also assess - to the extent possible - whether the outcome influenced environmental enforcement provisions contained within the new US-Mexico agreement. To do so, it will rely on legal analysis, desk research and interviews with North American experts on the case, including at the CEC.

### **7.3 Canada's first public submission under the Canada-Colombia Agreement on Labour Cooperation**

Canada's trade agreements allow stakeholders to file complaints for non-compliance with labour laws in one of the Parties to the agreement. This is the case in the Canada-Colombia FTA and its side agreement on labour cooperation. Aside from the public submissions filed under NAFTA's labour and environmental side agreements, no other Canadian trade agreement had been used by stakeholders until 2016, when the Canadian Labour Congress and five Colombian labour organisations filed a public submission accusing the Colombian government of failing to comply with its commitments under the Canada-Colombia trade agreement, including its obligations to protect freedom of association and the right to collective bargaining, as well as the enforcement of domestic labour laws. The case was accepted by the Canadian National Administration Office (NAO) for review in July 2016, which issued its report six months later, confirming "serious and systemic precarious labour conditions for Colombia workers," before requesting consultations at the ministerial level.

This case study will be prepared through legal analysis, desk research and interviews with North American experts on the case, including at the CEC. In order to better understand the strengths and shortcomings of the Canadian model, a brief analysis of the US-Colombia Labour Action Plan will be conducted.

**Explanatory value and methodology:** To this day, no in-depth study has been published describing the impact that Canada's submission process might have had on its training partner. The case of Colombia is also particularly interesting to the extent that it comes on the heels of years of bilateral cooperation to help improve the enforcement of workers' rights, not only by Canada, but also by the US (US-Colombia Labour Action Plan) and by the EU. This case can therefore show whether the Canadian model of cooperation and sanction can yield greater results than the US sanction-based model. It should also shed light on the nature of the Canadian submission process outside of NAFTA on key topics including: the relatively short period between the NAO review and the publication of its report; the resources allocated to such disputes at the NAO; the communication strategy (or lack thereof) with civil society stakeholders.

#### 7.4 A merger of TSD approaches? The CPTPP and its consistency plans

**Summary:** The Trans-Pacific Trade Partnership, later renamed Comprehensive and Progressive Agreement for Trans-Pacific Trade Partnership after the Trump administration withdrew from the agreement, was once described as containing "the strongest labour provisions of any trade agreement in history" (USTR, 2016). As discussed under Tasks 4 and 5, the CPTPP's labour and environmental provisions went further than the TSD commitments that Australia, New Zealand, the US, Japan, Canada and Chile had made in previous trade negotiations. Yet, a major part of its innovative TSD design was not to be found within the text of the agreement, but rather in the side "consistency plans" negotiated with some of the countries with the most serious records of human rights and labour rights violations: Vietnam, Malaysia and Brunei. These consistency plans outlined the political reforms that each country needed to adopt before they could join the CPTPP. Thus, Vietnam's consistency plan focused on freedom of association and the right to collective bargaining, protection against employment discrimination and forced labour; Malaysia's reform agenda was also designed to address freedom of association, along with the rights of migrant workers; while Brunei was asked to stop interfering with union registration, end child labour, protect migrant workers and put in place a minimum wage.

**Explanatory value and methodology:** These three labour consistency plans constitute three case studies in one to understand the impact that trade negotiations can have at the pre-ratification phase under different cultural and political systems. Through legal analysis, process-tracing based on desk research and targeted interviews with experts and former officials, this analysis will help to understand the extent to which these reforms actually took place and whether the protection of workers' rights in these countries has shifted from de jure to de facto standards. In this prospect, the minutiae of pre-ratification processes will be scrutinised with an emphasis on the timeline of negotiations and reforms and the framework established for monitoring during the negotiating phase. The analysis will also discuss the future of the CPTPP labour consistency plans, i.e. whether or not they continue to be enforced and under what conditions. This is also an important case to determine whether Vietnam's recent labour reforms were driven by TPP negotiations, the prospect of ratifying the EU-Vietnam FTA, or both. In the latter case, this could provide evidence that TSD reforms can be most impactful when trade negotiations are conducted not as part of an "FTA race" but as parallel or joint approaches by TSD advocates like the US, Canada, New Zealand, Japan, Chile and EU.

## 7.5 How far can pre-ratification processes go and how long can they hold? Environmental reforms in the US-Peru Trade Agreement

**Summary:** On May 10, 2007, the new Democratic majority in the US Congress negotiated a bipartisan agreement with the Republican administration of George W. Bush with the aim of promoting “fully enforceable labour and environmental standards in [US] trade agreements.”<sup>152</sup> Although covering a very wide scope with regard to trade-negotiating objectives, the so-called “May 10 Agreement” drew a list of very specific provisions to revise the US-Peru FTA negotiated by the Bush administration a few years earlier, with a focus on strengthening its environmental provisions. Preceding the US ratification of the agreement, these reforms entailed not only strict compliance with MEAs, including CITES, but also clear prescriptions for the drafting of a far-reaching, non-reciprocal annex on forest sector governance that went beyond any FTA ever negotiated by the US. Capitalizing on its bargaining leverage, the US government managed to negotiate a targeted side agreement under which the Peruvian government agreed, among other concessions, to reform its prosecution procedures to deter the harvest and trade of timber products, increase the ranks of its enforcement personnel, especially in national parks and indigenous regions, strengthen its monitoring system under CITES, and improve the management of forestry concessions. Once the agreement went into force (2009), the Peruvian government proceeded to fulfil its obligations under the US-Peru FTAs.<sup>153</sup> More than ten years later, however, the implementation and enforcement of the agreement is under question, as illustrated by the US government requesting consultations with its Peruvian counterpart in early 2019 for a failure to comply with the forest governance provisions of the US-Peru FTA – and more specifically its obligation to preserve the independency of its Agency for the Supervision of Forest Resources and Wildlife (OSINFOR).<sup>154</sup>

**Explanatory value and methodology:** This case study is important as it illustrates the promises and the limitations of far-reaching environmental reforms negotiated during the pre-ratification phase. It also sheds light on the distinction between output, outcome and impact, and on the challenges of monitoring the implementation of trade-induced domestic reforms over time. Finally, this case study is instructive in the advisory role that civil society groups can play – or not – at different stages of the trade policy process. In this case, non-business stakeholders were partly consulted during the first phase of negotiations undertaken by the Bush administration and the Peruvian government of Alan García, before being excluded – especially indigenous communities – from the rapid drafting of the annex on forest sector governance. Additionally, civil society groups were also empowered by the inclusion of specific language relating to the importance of public participation in enforcement. To study both the process and outcomes of these pre-ratification processes, one will rely first, on a fine-grained analysis of the legal provisions of the US-Peru FTA and its annex on forest sector governance (output); second, on a study of the series of Peruvian domestic reforms (outcomes) *ex-ante* and *ex-post*, relying partly on desk research and interviews with state officials in both the US and Peru; and third, on an assessment of deforestation and

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<sup>152</sup> US Ways & Means Committee, « May 10th Agreement », Trade Resource Center, available from: <https://waysandmeans.house.gov/media-center/tpp-focus>

<sup>153</sup> Peinhardt C., Kim A.A., Pavon-Harr, V. (2019). Deforestation and the United States–Peru Trade Promotion Agreement. *Global Environmental Politics*, 19 (1): 53–76.

<sup>154</sup> United States Requests Consultations Regarding Peru's Environmental Obligations Under Bilateral Trade Agreement. (2019). *American Journal of International Law*, 113(2), 400-404. doi:10.1017/ajil.2019.11

biodiversity trends, building upon the mixed methods used by Peinhardt et al. (2019), including satellite imagery, deforestation data (FAO) and targeted interviews with stakeholders and state officials.<sup>155</sup>

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<sup>155</sup> Peinhardt C., Kim A.A., Pavon-Harr, V. (2019). *ibid.*

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## Annex

**Table 1a: Ratification and implementation of MEAs and labour conventions**

Trade agreements	Commitment to ratify MEAs	Commitment to implement MEAs	Commitment to ratify labour conventions	Commitment to implement labour conventions
<b>EU-South Korea FTA</b>	Cooperation to promote the ratification of MEAs with an impact on trade <sup>156</sup>	Commitment to the effective implementation of MEAs in Parties' laws and practices <sup>157</sup>	Make continued and sustained efforts towards ratifying the fundamental ILO Conventions and other up-to-date ILO Conventions <sup>158</sup>	In accordance with their ILO membership obligations and the 1998 ILO Declaration, commitment to respecting, promoting and realising, in the Parties' laws and practices, the principles concerning the fundamental rights <sup>159</sup> Commitment to effectively implementing the ILO Conventions that Korea and the EU Member States have ratified respectively <sup>160</sup>
<b>EU-Colombia/Peru/Ecuador Trade Agreement</b>		Commitment to effectively implement in their laws and practices specific MEAs <sup>161</sup>	Exchange of information on the Parties' respective situation and advancements regarding the ratification of priority ILO Conventions and other up-to-date ILO Conventions <sup>162</sup>	Commitment to the promotion and effective implementation in the Parties' laws and practice and in their whole territory of internationally recognised core labour standards as contained in the fundamental ILO Conventions <sup>163</sup>
<b>EU-Central America Association Agreement</b>	Ensure the ratification of the amendment to Article XXI of CITES and the Rotterdam Convention <sup>164</sup>	Commitment to effectively implement in their laws and practice specific MEAs <sup>165</sup>	Exchange of information on the Parties' respective situation and advancements as regards	Commitment to effectively implement in the Parties' laws and practice the fundamental ILO Conventions contained in the ILO Declaration of

<sup>156</sup> EU-South Korea FTA, Chapter 13, Article 13.11; Annex 13, Point 1(c).

<sup>157</sup> EU-South Korea FTA, Chapter 13, Article 13.5(2).

<sup>158</sup> EU-South Korea FTA, Chapter 13, Article 13.4(3).

<sup>159</sup> The following fundamental rights are listed: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

<sup>160</sup> EU-South Korea FTA, Chapter 13, Article 13.4(3).

<sup>161</sup> EU-Colombia/Peru/Ecuador Trade Agreement, Title IX, Article 270(2). This provision cites the following MEAs: the Montreal Protocol, the Basel Convention, the Stockholm Convention on Persistent Organic Pollutants, CITES, the CBD, the Cartagena Protocol on Biosafety to the CBD, the Kyoto Protocol to and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Article 270(3) provides that the Trade Committee may recommend the extension of the application of paragraph 2 to other MEAs following a proposal by the Sub-committee on TSD.

<sup>162</sup> EU-Colombia/Peru/Ecuador Trade Agreement, Title IX, Article 269(4).

<sup>163</sup> EU-Colombia/Peru/Ecuador Trade Agreement, Title IX, Article 269(3).

<sup>164</sup> EU-Central America Association Agreement, Part IV, Title VIII, Article 287(3) & (4).

<sup>165</sup> EU-Central America Association Agreement, Part IV, Title VIII, Article 287(2) & (4). These provisions cite the following MEAs: the Montreal Protocol the Montreal Protocol, the Basel Convention, the Stockholm Convention on Persistent Organic Pollutants, CITES, the CBD, the Cartagena Protocol on Biosafety to the CBD, the Kyoto Protocol to and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

Trade agreements	Commitment to ratify MEAs	Commitment to implement MEAs	Commitment to ratify labour conventions	Commitment to implement labour conventions
			the ratification of the other ILO Conventions <sup>166</sup>	Fundamental Principles and Rights at Work of 1998 <sup>167</sup>
<b>EU-Ukraine Association Agreement</b>		Commitment to the effective implementation in the Parties' laws and practices of the MEAs to which they are party <sup>168</sup>	Consider ratification and implementation of other up to date ILO Conventions <sup>169</sup>	<p>Promote and implement in the Parties' laws and practices the internationally recognised core labour standards<sup>170</sup></p> <p>Commitment to effectively implement the fundamental and priority ILO Conventions that the Parties have ratified and the 1998 ILO Declaration</p> <p>Consider ratification and implementation of other up to date ILO Conventions<sup>171</sup></p>
<b>EU-Georgia Association Agreement</b>	<p>Regular exchange of information on the Parties' situation and advancements regarding MEAs ratifications<sup>172</sup></p> <p>Parties may cooperate in exchanging views and best practices on promoting the ratification of MEAs of relevance in a trade context<sup>173</sup></p>	<p>Commitment to effectively implement in the Parties' law and practice the MEAs to which they are party<sup>174</sup></p> <p>Parties may cooperate in exchanging views and best practices on promoting the effective implementation of MEAs of relevance in a trade context<sup>175</sup></p>	<p>Consider ratification of the remaining ILO priority and other up-to-date conventions</p> <p>Regular exchange of information on the Parties' respective situation and developments in this regard<sup>176</sup></p> <p>Parties may cooperate in exchanging views and best practices on promoting the ratification of fundamental, priority and other up-to-date ILO Conventions<sup>177</sup></p>	<p>In accordance with their ILO membership obligations and the 1998 ILO Declaration, commitment to respecting, promoting and realising in the Parties' laws and practices and in their whole territory the internationally recognised core labour standards, as embodied in the fundamental ILO Conventions<sup>178</sup></p> <p>Commitment to effectively implement in the Parties' law and practice the fundamental, the priority and other ILO</p>

<sup>166</sup> EU-Central America Association Agreement, Part IV, Title VIII, Article 286(3).

<sup>167</sup> EU-Central America Association Agreement, Part IV, Title VIII, Article 286(2).

<sup>168</sup> EU-Ukraine Association Agreement, Title IV, Chapter 13, Article 292(2).

<sup>169</sup> EU-Ukraine Association Agreement, Title IV, Chapter 13, Article 291(3) & (4).

<sup>170</sup> EU-Ukraine Association Agreement, Title IV, Chapter 13, Article 291(2). The following fundamental rights are listed: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

<sup>171</sup> EU-Ukraine Association Agreement, Title IV, Chapter 13, Article 291(3).

<sup>172</sup> EU-Georgia Association Agreement, Title IV, Chapter 13, Article 230(3).

<sup>173</sup> EU-Georgia Association Agreement, Title IV, Chapter 13, Article 239(e).

<sup>174</sup> EU-Georgia Association Agreement, Title IV, Chapter 13, Article 230(2).

<sup>175</sup> EU-Georgia Association Agreement, Title IV, Chapter 13, Article 239(e).

<sup>176</sup> EU-Georgia Association Agreement, Title IV, Chapter 13, Article 229(4).

<sup>177</sup> EU-Georgia Association Agreement, Title IV, Chapter 13, Article 239(e).

<sup>178</sup> EU-Georgia Association Agreement, Title IV, Chapter 13, Article 229(2). The provisions cites: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

Trade agreements	Commitment to ratify MEAs	Commitment to implement MEAs	Commitment to ratify labour conventions	Commitment to implement labour conventions
				<p>Conventions they ratified<sup>179</sup></p> <p>Parties may cooperate in exchanging views and best practices on promoting the effective implementation of fundamental, priority and other up-to-date ILO Conventions<sup>180</sup></p>
<p><b>EU-Moldova Association Agreement</b></p>	<p>Regular exchange of information on the Parties' situation and advancements as regards ratifications of MEAs<sup>181</sup></p> <p>Parties may cooperate in promoting the ratification of MEAs of relevance in a trade context<sup>182</sup></p>	<p>Commitment to effectively implement in the Parties' law and in practice the MEAs to which they are party<sup>183</sup></p> <p>Parties may cooperate in promoting the effective implementation of MEAs of relevance in a trade context<sup>184</sup></p>	<p>Consider the ratification of the remaining ILO priority and other up-to-date conventions<sup>185</sup></p> <p>Parties may cooperate in promoting the ratification of fundamental, priority and other up-to-date ILO Conventions<sup>186</sup></p>	<p>In accordance with their ILO membership obligations and the 1998 ILO Declaration, commitment to respecting, promoting and realising in the Parties' laws and practices and in their whole territory the internationally recognised core labour standards, as embodied in the fundamental ILO Conventions<sup>187</sup></p> <p>Commitment to effectively implement in the Parties' law and in practice the fundamental, the priority and other ILO Conventions they ratified<sup>188</sup></p> <p>Parties may cooperate in promoting the effective implementation of fundamental, priority and other up-to-date ILO Conventions<sup>189</sup></p>
<p><b>EU-Canada CETA</b></p>	<p>Commitment to consult and cooperate, including through information exchange on each Party's respective views on becoming a party to additional MEAs.<sup>190</sup></p>	<p>Commitment to effectively implement in the Parties' law and practices, in their whole territory, the MEAs to which they are party.</p>	<p>Make continued and sustained efforts to ratify the fundamental ILO Conventions if the Parties have not yet done so.</p>	<p>Commitment to respect, promote and realise the fundamental principles and rights at work in accordance with ILO membership obligations</p>

<sup>179</sup> *EU-Georgia Association Agreement, Title IV, Chapter 13, Article 229(3).*

<sup>180</sup> *EU-Georgia Association Agreement, Title IV, Chapter 13, Article 239(e).*

<sup>181</sup> *EU-Moldova Association Agreement, Title V, Chapter 13, Article 366(3).*

<sup>182</sup> *EU-Moldova Association Agreement, Title V, Chapter 13, Article 375.*

<sup>183</sup> *EU-Moldova Association Agreement, Title V, Chapter 13, Article 366(2).*

<sup>184</sup> *EU-Moldova Association Agreement, Title V, Chapter 13, Article 375.*

<sup>185</sup> *EU-Moldova Association Agreement, Title V, Chapter 13, Article 365(4).*

<sup>186</sup> *EU-Moldova Association Agreement, Title V, Chapter 13, Article 375.*

<sup>187</sup> *EU-Moldova Association Agreement, Title V, Chapter 13, Article 365(2). The provisions cites: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.*

<sup>188</sup> *EU-Moldova Association Agreement, Title V, Chapter 13, Article 365(3).*

<sup>189</sup> *EU-Moldova Association Agreement, Title V, Chapter 13, Article 375.*

<sup>190</sup> *EU-Canada CETA, Chapter 23, Article 24.4.*

Trade agreements	Commitment to ratify MEAs	Commitment to implement MEAs	Commitment to ratify labour conventions	Commitment to implement labour conventions
		Commitment to consult and cooperate, including through information exchange on the implementation of MEAs to which a Party is party. <sup>191</sup>	Exchange of information on their situations and advances regarding the ratification of the fundamental as well as priority and other ILO Conventions that are classified as up to date by the ILO <sup>192</sup>	and the 1998 ILO Declaration <sup>193</sup>  Ensure that the Parties' labour law and practices promote specific objectives of the ILO Decent Work Agenda <sup>194</sup>  Commitment to effectively implement in the Parties' law and practices in their whole territory the fundamental ILO Conventions that they have ratified respectively <sup>195</sup>
<b>EU-Japan EPA</b>	Exchange of information on the Parties' situation and advancements regarding ratification, acceptance or approval of, or accession to, MEAs, including their amendments, which each Party considers appropriate to be bound by. <sup>196</sup>	Commitment to effectively implement in the Parties' law, regulations and practices the MEAs to which they are party.  Exchange of information on implementation of MEAs  Commitment to effectively implement the UNFCCC and the Paris Agreement. <sup>197</sup>  Cooperate on trade-related aspects of MEAs, including through the exchange of views and information on the implementation of CITES and through technical and customs cooperation. <sup>198</sup>	Make continued and sustained efforts on its own initiative to pursue ratification of the fundamental ILO Conventions and other ILO Conventions which each Party considers appropriate to ratify.  Exchange of information on the Parties' situations as regards the ratification of ILO Conventions and Protocols, including the fundamental ILO Conventions. <sup>199</sup>	Respect, promote and realise in the Parties' laws, regulations and practices the internationally recognised principles concerning the fundamental rights at work  Commitments to effectively implement in the Parties' laws, regulations and practices ILO Conventions ratified by the Parties. <sup>200</sup>
<b>EU-Singapore FTA</b>	Parties may initiate cooperative activities of mutual benefit in area of cooperation with a view to promoting the ratification	Effectively implement, in the Parties' respective laws, regulations or other measures and practices in their territories, the MEAs to which they are party.	Make continued and sustained efforts towards ratifying the fundamental ILO Conventions, and information exchange in this regard.	In accordance with ILO obligations and the 1998 ILO Declaration, commitment to respect, promote and effectively implement the principles concerning the

<sup>191</sup> EU-Canada CETA, Chapter 23, Article 24.4.

<sup>192</sup> EU-Canada CETA, Chapter 23, Article 23.3(4).

<sup>193</sup> EU-Canada CETA, Chapter 23, Article 23.3(1). The provisions cites: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

<sup>194</sup> EU-Canada CETA, Chapter 23, Article 23.3(2). The following objectives are cited: health and safety at work, establishment of acceptable minimum employment standards for wage earners, and non-discrimination in respect of working conditions.

<sup>195</sup> EU-Canada CETA, Chapter 23, Article 23.3(4).

<sup>196</sup> EU-Japan EPA, Chapter 16, Article 16.4.

<sup>197</sup> EU-Japan EPA, Chapter 16, Article 16.4.

<sup>198</sup> EU-Japan EPA, Chapter 16, Article 16.12.

<sup>199</sup> EU-Japan EPA, Chapter 16, Article 16.3.

<sup>200</sup> EU-Japan EPA, Chapter 16, Article 16.3.

Trade agreements	Commitment to ratify MEAs	Commitment to implement MEAs	Commitment to ratify labour conventions	Commitment to implement labour conventions
	of MEAs with relevance to trade. <sup>201</sup>	<p>Commitment to effectively implement the UNFCCC, its Kyoto Protocol, and the Paris Agreement.<sup>202</sup></p> <p>Parties may initiate cooperative activities, such as cooperation with a view to promoting the effective implementation of MEAs with relevance to trade.<sup>203</sup></p>	<p>Consider the ratification of other ILO Conventions, taking into account domestic circumstances, and information exchange in this regard.<sup>204</sup></p> <p>Parties may initiate cooperative, such as the exchange of views on the promotion of the ratification of fundamental ILO Conventions and other conventions of mutual interest, as well as on the effective implementation of ratified conventions.<sup>205</sup></p>	<p>fundamental rights at work.<sup>206</sup></p> <p>Commitment to effectively implementing the ILO Conventions that the Parties have ratified.</p> <p>Make continued and sustained efforts towards effectively implementing the fundamental ILO Conventions, and information exchange in this regard.</p> <p>Consider the effective implementation of other ILO Conventions, taking into account domestic circumstances, and information exchange in this regard.<sup>207</sup></p> <p>Parties may initiate cooperative, such as the exchange of views on the promotion of the ratification of fundamental ILO Conventions and other conventions of mutual interest, as well as on the effective implementation of ratified conventions.<sup>208</sup></p>
EU-Vietnam FTA	In the Committee on Trade and Sustainable Development and on other occasions, exchange of information and experiences on the Parties' respective situation and progress with regard to the ratification of MEAs or their amendments. <sup>209</sup>	<p>Commitment to effectively implement in the Parties' domestic law and practice the MEAs to which they are a party.<sup>211</sup></p> <p>Commitment to effectively implementing the UNFCCC, the Kyoto Protocol, and the Paris Agreement.</p>	<p>Make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO Conventions.</p> <p>Consider the ratification of other ILO up-to-date conventions, taking into</p>	In accordance with ILO obligations and the 1998 ILO Declaration, commitment to respect, promote and effectively implement the principles concerning the fundamental rights at work. <sup>217</sup>

<sup>201</sup> EU-Singapore FTA, Chapter 12, Article 12.10.

<sup>202</sup> EU-Singapore FTA, Chapter 12, Article 12.6.

<sup>203</sup> EU-Singapore FTA, Chapter 12, Article 12.10.

<sup>204</sup> EU-Singapore FTA, Chapter 12, Article 12.3(4).

<sup>205</sup> EU-Singapore FTA, Chapter 12, Article 12.4.

<sup>206</sup> EU-Singapore FTA, Chapter 12, Article 12.3(3). The provision cites: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

<sup>207</sup> EU-Singapore FTA, Chapter 12, Article 12.3(4).

<sup>208</sup> EU-Singapore FTA, Chapter 12, Article 12.4.

<sup>209</sup> EU-Vietnam FTA, Chapter 13, Article 13.5(3).

<sup>211</sup> EU-Vietnam FTA, Chapter 13, Article 13.5(2).

<sup>217</sup> EU-Vietnam FTA, Chapter 13, Article 13.4(2). The provision cites: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

Trade agreements	Commitment to ratify MEAs	Commitment to implement MEAs	Commitment to ratify labour conventions	Commitment to implement labour conventions
	Parties may work together in sharing experience on promoting the ratification and implementation of MEAs of relevance to trade. <sup>210</sup>	<p>Cooperate on the implementation of the UNFCCC, the Kyoto Protocol and the Paris Agreement.<sup>212</sup></p> <p>Adopt and implement appropriate effective measures consistent with the Parties' commitments under international treaties leading to a reduction of illegal trade in wildlife.<sup>213</sup></p> <p>Parties may work together in sharing experience on promoting the ratification and implementation of MEAs of relevance to trade.<sup>214</sup></p>	<p>account its domestic circumstances.</p> <p>Exchange of information with regard to the ratifications of fundamental and other ILO Conventions.<sup>215</sup></p> <p>Parties may work together in sharing experience on promoting the ratification and implementation of fundamental, priority and other up-to-date ILO Conventions.<sup>216</sup></p>	<p>Commitment to effectively implement in the Parties' domestic laws and regulations and practice the ILO Conventions they ratified.<sup>218</sup></p> <p>Parties may work together in sharing experience on promoting the ratification and implementation of fundamental, priority and other up-to-date ILO Conventions.<sup>219</sup></p>
<b>EU-UK Trade and Cooperation Agreement</b>	Exchange of information on the Parties' situations regarding the ratification and implementation of MEAs, including their protocols and amendments and each Party's respective views on becoming a party to additional MEAs. <sup>220</sup>	<p>Commitment to effectively implement the MEAs, protocols and amendments ratified by the Parties in their law and practices.<sup>221</sup></p> <p>Commitment to effectively implement the UNFCCC and the Paris Agreement.<sup>222</sup></p> <p>In line with relevant MEAs, including CITES, implement effective measures to combat illegal wildlife trade, including with respect to third countries.<sup>223</sup></p>	<p>Make continued and sustained efforts to ratify the fundamental ILO Conventions if the Parties have not yet done so.<sup>224</sup></p> <p>Exchange of information on the Parties' situations and progress regarding the ratification of ILO Conventions or protocols classified as up-to-date by the ILO and of other relevant international instruments.<sup>225</sup></p>	<p>In accordance with the ILO Constitution and the 1998 ILO, commitment to respect, promote and effectively implement the internationally recognised core labour standards, as defined in the fundamental ILO Conventions.<sup>226</sup></p> <p>Commitment to implementing all the ILO Conventions ratified by the Parties and the different provisions of the European Social Charter.<sup>227</sup></p> <p>Continue to promote, through its laws and</p>

<sup>210</sup> EU-Vietnam FTA, Chapter 13, Article 13.14(1)(d).

<sup>212</sup> EU-Vietnam FTA, Chapter 13, Article 13.6.

<sup>213</sup> EU-Vietnam FTA, Chapter 13, Article 13.7(3)(a).

<sup>214</sup> EU-Vietnam FTA, Chapter 13, Article 13.14(1)(d).

<sup>215</sup> EU-Vietnam FTA, Chapter 13, Article 13.4(3).

<sup>216</sup> EU-Vietnam FTA, Chapter 13, Article 13.14(1)(d).

<sup>218</sup> EU-Vietnam FTA, Chapter 13, Article 13.4(4).

<sup>219</sup> EU-Vietnam FTA, Chapter 13, Article 13.14(1)(d).

<sup>220</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 400(3).

<sup>221</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 400(2).

<sup>222</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 401(2).

<sup>223</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 402.

<sup>224</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 399(3).

<sup>225</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 399(4).

<sup>226</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 399(2). The provision cites: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

<sup>227</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 399(5).



Trade agreements	Commitment to ratify MEAs	Commitment to implement MEAs	Commitment to ratify labour conventions	Commitment to implement labour conventions
				<p>practices, the ILO Decent Work Agenda and in accordance with relevant ILO Conventions and other international commitments.<sup>228</sup></p> <p>Cooperation in trade-related aspects of implementation of fundamental, priority and other up-to-date ILO Conventions.<sup>229</sup></p>

<sup>228</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 399(6). The provision cites: decent working conditions for all, with regard to, inter alia, wages and earnings, working hours, maternity leave and other conditions of work; health and safety at work, including the prevention of occupational injury or illness and compensation in cases of such injury or illness; and non-discrimination in respect of working conditions, including for migrant workers.

<sup>229</sup> EU-UK TCA, Part 2, Title XI, Chapter 8, Article 399(8).

**Table 2a: Third-Party FTAs**

United States	Canada	New Zealand	Chile
USMCA 2018	Modernized Chile FTA 2019	CPTPP 2018	Modernized Canada FTA 2019
Korea 2007	CPTPP 2018	Korea 2015	CPTPP 2018
Panama 2007	USMCA 2018	Taiwan 2013	Indonesia 2017
Peru 2006	Ukraine 2016	Chinese Taipei 2013	Argentina 2017
Oman 2006	CETA 2016	Hong Kong 2010	Uruguay 2016
Colombia 2006	Korea 2014	Malaysia 2009	Pacific Alliance 2014
Bahrain 2005	Honduras 2013	ASEAN 2009	Thailand 2013
CAFTA-DR 2004	Panama 2010	AANZFTA 2009	Hong Kong 2012
Morocco 2004	Jordan 2009	China 2008	Vietnam 2011
Australia 2004	Peru 2008	Trans Pacific Strategic Economic Partnership 2005	Malaysia 2010
Singapore 2003	Colombia 2008	Thailand 2005	Turkey 2009
Chile 2003	Costa Rica 2001		Japan 2007
Jordan 2000	Chile 1996		Colombia 2006
US-Cambodia Textile Trade Agreement	Israel 1996		Trans Pacific Strategic Economic Partnership 2005
NAFTA 1994	NAFTA 1994		China 2005
			US 2003
			Korea 2003
			Mexico 1998
			Canada 1996



## Links to FTAs

Australia-Korea FTA - <https://www.dfat.gov.au/trade/agreements/in-force/kafta/official-documents/Pages/full-text-of-kafta>

Australia-Peru FTA - <https://www.dfat.gov.au/trade/agreements/in-force/pafta/full-text/Pages/fta-text-and-associated-documents>

Japan-Mongolia FTA - [https://www.mofa.go.jp/a\\_o/c\\_m2/mn/page3e\\_000298.html](https://www.mofa.go.jp/a_o/c_m2/mn/page3e_000298.html)

Canada-Chile FTA - <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/index.aspx?lang=eng>

Canada-Jordan FTA <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/jordan-jordanie/fta-ale/index.aspx?lang=eng>

Canada-Panama FTA - <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/panama/fta-ale/index.aspx?lang=eng>

CPTPP – <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources/>

Chile-Colombia FTA - [http://sice.oas.org/Trade/CHL\\_COL\\_FTA/CHL\\_COL\\_ind\\_s.asp](http://sice.oas.org/Trade/CHL_COL_FTA/CHL_COL_ind_s.asp)

NAFTA – <http://sice.oas.org/trade/nafta/naftatce.asp>

New Zealand-Hong Kong FTA - <https://www.mfat.govt.nz/assets/Trade-agreements/Hong-Kong-China-CEP/NZ-HK-CEP.pdf>

New Zealand-Korea FTA - <https://www.mfat.govt.nz/assets/Trade-agreements/Korea-NZ-FTA/NZ-Korea-FTA-consolidated-text.pdf>

New Zealand-Malaysia FTA - <https://www.mfat.govt.nz/assets/Trade-agreements/Malaysia-NZ-FTA/mnzfta-text-of-agreement.pdf>

Switzerland-Central America FTA - <https://www.efta.int/media/documents/legal-texts/free-trade-relations/central-america/EFTA-Central-America-free-trade-agreement.pdf>

Switzerland-Georgia FTA 2016 - <https://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/georgia/EFTA-Georgia-FTA-Main-Agreement.PDF>

US-CAFTA DR - <https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text>

US-Chile FTA – <https://ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text>

US-Panama FTA - <https://ustr.gov/trade-agreements/free-trade-agreements/panama-tpa/final-text>

US-Peru FTA - <https://ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text>

USMCA - <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>