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An EU Green Deal for trade policy and the environment:

Aligning trade with climate and sustainable development objectives

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EXECUTIVE SUMMARY

The EU is the world's largest trading bloc. It provides the biggest export market for around 80 countries; and EU Member States account for 16% of world imports and exports. Consequently, the EU has a considerable impact on third countries through trade, including the way in which international trade is conducted and how environmental and wider sustainability related aspects are addressed.

The EU sees trade as a key vehicle for supporting developing countries in their efforts to improve their socio-economic status and achieve the 2030 Sustainable Development Goals (SDGs). However, trade also has a flip side: the demand for goods by importing countries – such as the EU Member States – can lead to unsustainable levels and models of production in exporting countries. This translates into the unsustainable use of natural resources, and increased pollution and carbon emissions, further resulting in environmental and ecosystem degradation with various risks to human health and broader wellbeing. There are also issues linked with the sustainability of exports from the EU, for example the export of low-quality waste for recycling to third countries.

Most recently, environmental alarm bells have been triggered by the trade deal between the EU and the MERCOSUR countries (Brazil, Argentina, Uruguay and Paraguay) agreed in June 2019. While the EU-MERCOSUR agreement includes several commitments related to sustainable development – including commitments to comply with the Paris climate agreement and to prevent deforestation – an increasing number of experts and other civil society voices have been pointing out that the agreement lacks effective enforcement measures for these safeguard provisions.

A review of the existing evidence of the EU trade regime reveals that there is indeed cause for concern. While EU trade policy puts a great emphasis on trade being a vehicle for sustainable development, the existing evidence demonstrates that a net positive contribution of the EU trade to sustainable development – going beyond the economic and addressing also the environmental and social aspects – is as yet far from being achieved. Therefore, there is an urgent need to find ways to make EU trade and its impacts on global value chains more sustainable.

The blueprint for EU policy- and decision- making for the coming five years – [the European Green Deal](#) by the European Commission – was published in December 2019. The Deal reaffirms EU commitments to sustainability in the context of its trade policy, with a promise to continue strengthening the mainstreaming of social and environmental sustainability concerns in EU trade agreements.

Building on the review of the existing level of environmental integration in the EU trade policy regime, this policy paper explores what a truly green EU trade policy under the EU Green Deal should look like. It makes a number of recommendations for the future five-year policy trajectory, ranging from better use of the impact assessments underpinning the EU trade agreements, to key improvements in the agreements' sustainability related provisions, including their more assertive implementation. It also highlights the role that the EU's sector-

specific policy initiatives, i.e. initiatives with that have trade related implications but are not directly related to trade agreement negotiations, can have in elevating environmental standards through trade.

This paper should be read as an invitation to an evidence-based dialogue aimed at improving environmental integration in EU trade policy, providing non-trade experts a foundation to build on and enable them to join the debate. Therefore, its conclusions and policy recommendations should be considered as our contribution of food for thought for the future discussion; a discussion which we look forward to having with interested stakeholders seeking to improve the sustainability of the EU trade.

1 Introduction

*“As the world’s largest single market,
the EU can set standards that apply across global value chains.”*

– [European Green Deal](#) (2019) –

The EU is the world's largest trading bloc and the leading exporter of manufactured goods and services. It is also the biggest export market for around 80 countries; and EU Member States account for 16% of world imports and exports¹. Consequently, the EU has a considerable impact on third countries through trade, including the way in which international trade is conducted and how environmental and wider sustainability related aspects are addressed.

The stated aims of EU trade policy include ensuring that economic development, as aided through trade, goes hand in hand with the social and environmental elements of sustainable development including high labour and environmental standards². Consequently, following relevant international standards and agreements as well as enforcing national environmental and labour laws form an integral part of the EU trade agreements with its trade partners. Furthermore, encouraging sustainable trade in natural resources (e.g. agricultural products, timber and fish) is one of the stated aims of EU trade policy, as is encouraging trade that supports tackling climate change.

The EU considers trade as a key vehicle for supporting developing countries in their efforts to improve their socio-economic status and achieve the 2030 Sustainable Development Goals (SDGs).

Globally, trade is considered to have made an important contribution to poverty reduction by playing an integral role in supporting economic growth in developing countries³. According to the 2012 trade statistics, the EU imported goods worth € 860 billion from developing countries equivalent to 44% of all goods imported into the EU⁴. Compared to the US and Japan, the EU was assessed to be the largest market for imports from the LDCs receiving 59% of the LDCs total exports.

However, trade also has a flip side. The demand for goods by importing countries – such as the EU Member States – can lead to unsustainable levels of and models of production in exporting countries. This can translate into the unsustainable use of natural resources, and increased pollution and carbon emissions, further resulting in environmental and ecosystem degradation with various risks to human health and broader wellbeing. There are also issues linked with the sustainability of exports from the EU, for example the export of low quality waste for recycling to third countries⁵.

According to the Europe Sustainable Development Report 2019, most EU Member States generate large negative environmental impacts on third countries through trade, including increased nitrogen and carbon emissions, and threats to biodiversity (Figure 1.1)⁶.

¹[DG Trade](#) (2019)

² [DG Trade](#) (2019)

³ World Bank and WTO ([2015](#)) and ([2018](#))

⁴[EC](#) (2015)

⁵ [Kettunen et al.](#) (2019)

⁶ [SDSN and IEEP](#) (2019)

Figure 1.1 Negative trade-related impacts of the EU and its Member States on environmental sustainability in third countries.

Source: [SDSN](#) and [IEEP](#) (2019)



Net imported emissions of reactive nitrogen (kg/capita)

Net imports of reactive nitrogen emitted during the production of commodities. Reactive nitrogen corresponds here to emissions of ammonia, nitrogen oxides and nitrous oxide to the atmosphere, and of reactive nitrogen potentially exportable to water bodies, all of which can be harmful to human health and the environment.

Reference year: 2010 or closest year available

Source: Oita et al. (2016)

Country	Value	Rating	Trend	Country	Value	Rating	Trend
Bulgaria	-200.3	●	**	Slovenia	125.0	●	**
Ireland	-199.8	●	**	Belgium	148.3	●	**
Denmark	-115.4	●	**	Sweden	169.3	●	**
Hungary	-103.3	●	**	Cyprus	170.5	●	**
Poland	11.6	●	**	Italy	172.6	●	**
Romania	18.5	●	**	Portugal	201.2	●	**
Czech Republic	26.6	●	**	Austria	203.5	●	**
Estonia	27.8	●	**	Germany	205.4	●	**
Lithuania	32.9	●	**	Greece	215.0	●	**
Croatia	53.5	●	**	Netherlands	223.6	●	**
Latvia	60.7	●	**	Malta	255.2	●	**
Finland	74.3	●	**	Luxembourg	965.4	●	**
Spain	81.2	●	**	Slovak Republic	NA	●	**
European Union	117.6	●	**	United Kingdom	NA	●	**
France	122.4	●	**				



Imported CO₂ emissions, technology-adjusted (tCO₂/capita)

Imports of CO₂ emissions embodied in goods, measured as technology-adjusted consumption-based emissions minus production-based emissions. Technology-adjusted consumption-based accounting (TCBA) reflects the carbon efficiency of exporting sectors. If a country uses relatively CO₂-intensive technologies in its export sector, then it will have higher TCBA emissions than suggested by a simple carbon footprint.

Reference year: 2016 or closest year available

Source: Kander et al. (2015)

Country	Value	Rating	Trend	Country	Value	Rating	Trend
Luxembourg	-9.9	●	**	Portugal	0.5	●	**
Ireland	-3.4	●	**	Latvia	0.7	●	**
Estonia	-3.1	●	**	Belgium	0.7	●	**
Czech Republic	-3.0	●	**	Bulgaria	0.8	●	**
Denmark	-1.8	●	**	United Kingdom	1.0	●	**
Slovenia	-1.4	●	**	Sweden	1.0	●	**
Netherlands	-1.2	●	**	France	1.1	●	**
Malta	-0.6	●	**	Austria	1.1	●	**
Germany	-0.5	●	**	Italy	1.2	●	**
Hungary	-0.3	●	**	Lithuania	1.4	●	**
Romania	0.2	●	**	Greece	1.5	●	**
Spain	0.2	●	**	Finland	1.6	●	**
Croatia	0.3	●	**	Cyprus	1.9	●	**
Poland	0.3	●	**	Slovak Republic	2.1	●	**
European Union	0.4	●	**				



Imported biodiversity threats (per 1,000,000 population)

Number of species threatened as a result of international trade expressed per 1,000,000 people.

Reference year: 2015 or closest year available

Source: Lenzen et al. (2012)

Country	Value	Rating	Trend	Country	Value	Rating	Trend
Romania	2.1	●	**	European Union	9.3	●	**
Poland	3.3	●	**	Sweden	10.8	●	**
Hungary	3.4	●	**	Cyprus	10.9	●	**
Bulgaria	3.5	●	**	Germany	11.1	●	**
Slovak Republic	5.5	●	**	France	11.3	●	**
Czech Republic	5.8	●	**	Belgium	11.5	●	**
Italy	7.0	●	**	Denmark	12.2	●	**
Greece	7.6	●	**	United Kingdom	12.8	●	**
Croatia	7.9	●	**	Austria	13.4	●	**
Latvia	8.1	●	**	Netherlands	13.6	●	**
Lithuania	8.4	●	**	Slovenia	14.0	●	**
Estonia	8.4	●	**	Ireland	14.3	●	**
Finland	8.5	●	**	Malta	15.5	●	**
Spain	8.8	●	**	Luxembourg	61.1	●	**
Portugal	8.9	●	**				

Most recently, environmental alarm bells have been triggered by the trade deal between the EU and the MERCOSUR countries (Brazil, Argentina, Uruguay and Paraguay) agreed in June 2019. While trade negotiators on both sides of the deal claim that there are adequate environmental safeguards in place, an increasing number of civil society voices from NGOs to academic experts have been voicing concerns that the increase in trade of agricultural commodities covered by the agreement – including several goods with a known high carbon footprint – would lead to a considerable increase in greenhouse gas emissions⁷. These views are also shared by a number of the EU Member States themselves⁸. While the EU-MERCOSUR agreement also includes commitments to comply with the Paris Climate Agreement and prevent deforestation, an increasing number of experts and other members of the civil society are pointing out that the agreement lacks effective enforcement measures for these safeguard provisions⁹.

In addition to the trade in goods, a relatively recent development in EU trade policy is the expansion of the EU's interest and competence in the terms of trade in services, and also in the liberalisation of foreign direct investment¹⁰. Consequently, the scope of EU trade agreements has become much broader than trade in goods alone, with complicated possible causal impacts on the environment. For example, studies indicate that, in the absence of adequate policy and regulatory frameworks, lowering barriers for foreign investment can lead to the erosion of environmental (and social) standards in trade partner countries¹¹.

In summary, on paper EU trade policy puts a great emphasis on trade being a vehicle for sustainable development, including by supporting the delivery of global objectives for human and labour rights, environment and climate change. However, the existing evidence demonstrates that a net positive contribution of the EU trade to sustainable development – going beyond the economic and addressing also the environmental and social aspects – is as yet far from being achieved. Therefore, there is an urgent need to find ways to make EU trade and its impacts on global value chains more sustainable.

The blueprint for EU policy- and decision- making for the coming five years – [the European Green Deal](#) by the European Commission – was published in December 2019. The Green Deal reaffirms EU commitments to sustainability in the context of its trade policy, with a promise to continue strengthening the mainstreaming of social and environmental sustainability concerns in EU trade agreements. In particular, the Commission proposes to make the respect of the Paris climate agreement an essential element for all future comprehensive trade agreements. Furthermore, the Green Deal recognises that standard setting by the EU in line with its environmental and climate ambitions can, through trade, be a driver for raising standards globally. Building on this the Commission pledges to use EU's expertise in green regulation to encourage trade partners to design and adopt rules that match EU sustainability ambitions, enhancing environment protection and climate mitigation in partner countries.

In the wake of the European Green Deal, this paper examines how environmental considerations are currently integrated in the EU trade policy and takes stock on to what extent the existing measures have been successful. It also considers what opportunities there are to increase the environmental sustainability of trade through EU legislation and policies, including by using regulative measures not directly linked to the EU trade agreements. Building on these insights, the paper outlines ways forward with suggested policy recommendations for the future.

⁷E.g. [Euractiv](#) (2019), [GRAIN](#) (2019), [Politico](#) (2019), [Open letter](#) from civil society members (2019)

⁸E.g. [Guardian](#) (2019), [Politico](#) (2019), [Euractiv](#) (2019)

⁹E.g. [Cole](#) (2019), [Walsh-Führing](#) (2019) and [Voituriez](#) (2019), [Open letter from NGOs](#) (2019)

¹⁰[DG Trade](#) (2015)

¹¹E.g. [Tienhaara](#) (2011) and [Boqiong et al.](#) (2014)

2 EU trade policy and the environment

This Chapter introduces the EU Free Trade Agreements (FTAs) and explains their influence on EU trade. It outlines how environmental – and other broader sustainability concerns – are integrated in EU trade policy, particularly in negotiations between the EU and third countries. It also highlights how EU trade policy interacts with the global trade policy regime, with a number of environmental outcomes.

Free Trade Agreements (FTAs), negotiated either with individual third countries or groups of countries, have a major influence on trade between the EU and the rest of the world. At the moment the EU has trade agreements in place (fully or partly) with 85 countries, and agreements either pending to enter into force or under negotiation with 46 countries, making the EU the most productive trade negotiating authority globally¹².

The EU trade agreements can be divided into four general categories, depending on when and with whom they were adopted. The so called “first generation” FTAs are agreements negotiated before the 2006, typically focusing on covering only trade in goods¹³. A number of these agreements are currently undergoing a negotiation process to update their provisions (e.g. FTAs with Mexico, Chile and Morocco). In comparison, the “new generation” FTAs are comprehensive FTAs negotiated after 2006 and characterised by a much wider scope, typically going beyond tariff cuts and trade in goods to cover services and public procurement (e.g. FTAs with South Korea, Colombia, Peru, Ecuador, Central America and Canada). Within the new generation FTAs some also contain provisions on the liberalisation of investment and/or regulatory cooperation (e.g. FTAs with South Korea and Canada).

As a variation to the above, the EU also has Deep and Comprehensive Free Trade Areas (DCFTAs) with its eastern neighbouring countries (Georgia, Moldova and Ukraine) and Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific countries. These two latter types of trade agreements are explicitly embedded into existing EU foreign policy regimes, namely the Eastern Partnership of the European Neighbourhood Policy and the ACP-EU Partnership Agreement.

¹² [DG Trade](#) (2019)

¹³ [Report on the implementation of EU free trade agreements](#) (Jan 2017 – Dec 2017) (2018)

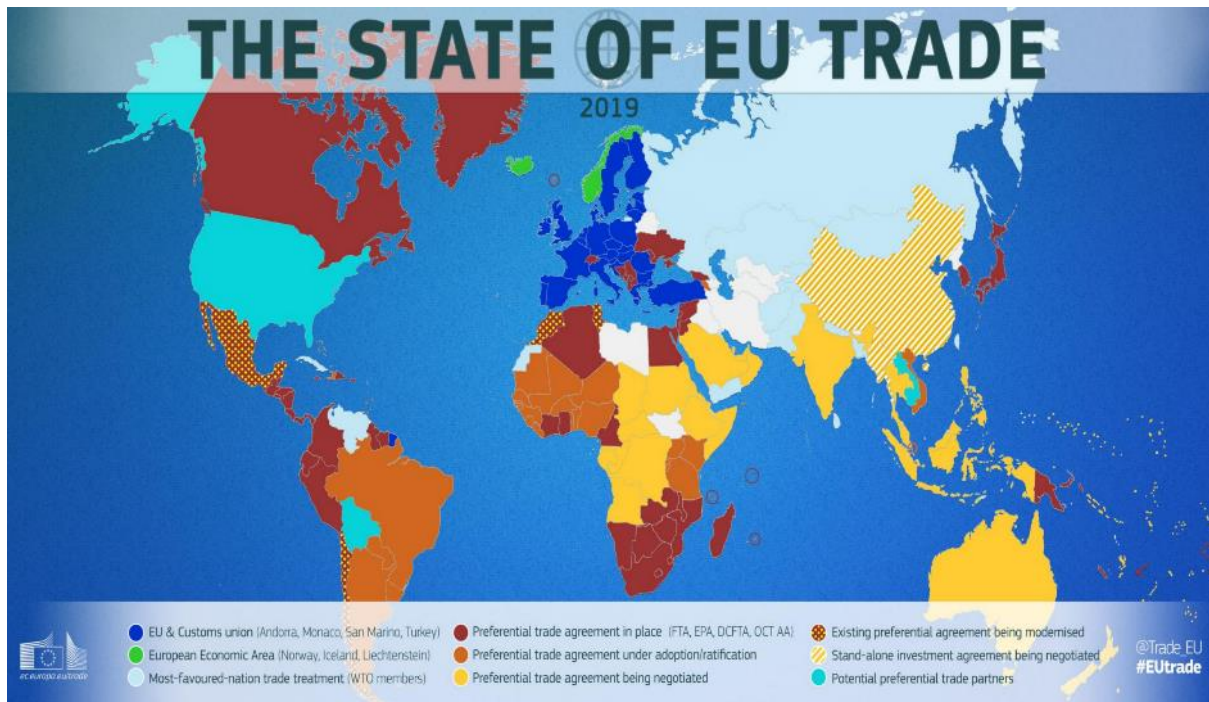


Figure 2.1 Map of EU trade agreements with third countries (DG trade 2019)

2.1 Sustainability Impact Assessments (SIAs)

Sustainability Impact Assessments (SIA) were adopted in 1999¹⁴ as a tool to improve the EU trade negotiations by assessing the potential economic, social and environmental impacts of a proposed trade agreement during the negotiation. SIAs aim to provide recommendations on the accompanying measures that need to be put in place for integrating issues of sustainable development into trade policy. They are usually prepared by external consultants and feed into the FTA negotiations both by providing an analysis of the impacts and by creating a platform for an on-going consultation and stakeholder engagement process supporting the negotiations.

The scope of SIAs vary depending on the type of trade and/or investment deal being negotiated. However, all SIAs are framed within a set methodological framework outlined by the official guidance from the Commission¹⁵. This guidance specifies that all SIAs should assess the likely environmental impacts of the relevant trade agreement in detail, exploring impacts related to changes in the overall scale of trade as well as possible changes in production and/or consumption patterns. This detailed assessment should build on the overall economic assessment (e.g. modelling) of trade liberalisation impacts on the partner countries, complementing it by supplementary models as well as qualitative analysis and case studies.

To date, the EU has completed altogether 27 SIAs with 5 SIAs currently still in process (e.g. the SIA linked to the negotiations with the MERCOSUR countries)¹⁶.

Finally, following the publication of each SIA, the Commission often publishes a position paper that constitutes the official response from the Commission to the study's findings, including

¹⁴ [Rojas-Romagosa \(2018\)](#)

¹⁵ [EU SIA Handbook](#) (2nd edition) (2016)

¹⁶ [DG Trade webpage](#) (2019)

recommendations for policy measures to be taken forward within the FTA negotiation process.

After FTAs enter into force and enough time has passed, an ex-post evaluation is conducted to analyse the observed economic, social, human rights and environmental impacts of the deals. The analysis is, again, usually carried out by external consultants, and, to date, there have been two completed evaluations – on the EU-Korea FTA¹⁷ and the EU-Mexico FTA¹⁸ (See Chapter 3 for further discussion).

2.2 Trade and Sustainable Development (TSD) Chapters

The introduction of environmental and sustainable labour provisions in FTAs has become a common feature of modern EU trade deals¹⁹. These provisions are placed in a dedicated chapter of the FTA called the Trade and Sustainable Development Chapter (TSD). The TSD Chapter was introduced for the first time in 2009 in the EU-Korea FTA and it now has a decade of implementation behind it²⁰. To date, twelve EU trade agreements include rules on trade and sustainable development with six of those twelve already at the stage of implementation: Korea, Central America, Colombia/Peru/Ecuador, Georgia, Moldova and Ukraine²¹. Similar chapters are also about to be ratified in the context of FTAs with Singapore, Vietnam and Canada.

The TSD chapters are grounded on the reaffirmation of existing international and national commitments in relation to sustainable development, with a specific reference to combating climate change and the protection of environment and labour rights.²² In general, the chapters commit parties to not lowering their social and environmental standards in order to increase their investment share or trade. The chapters also stipulate that parties will cooperate and work together in some policy areas, and exchange best practices and information on relevant topics, for instance by promoting corporate social responsibility. They can also explicitly encourage trade in products meeting certain sustainability criteria, such as contributing to the conservation and sustainable use of ecosystems and biodiversity (see Box 2.1 below for an example).

The approach of TSD chapters is based on three pillars: binding commitments by the Parties to various multilateral environmental agreements and convention from International Labour Organisation; the involvement of civil society organisations; and a dedicated process for dispute resolution to ensure compliance with the chapter's provisions²³.

Environmental commitments: The TSD provisions of FTAs commonly commit the EU and its trade partners to follow international labour and environmental standards and agreements²⁴ and laws, and not to derogate from these laws to encourage trade or investment. The TSD provisions often also commit the trade partners to sustainable trade on natural resources (e.g. timber and fish), and to combating illegal trade in threatened and endangered species. They may also encourage trade and/or investment that supports tackling climate change (e.g. renewable energy), corporate social responsibility, and wider sustainability and environment issues that both parties may agree on during negotiations.

¹⁷ [FTA EU-Korea ex post assessment](#) (2018)

¹⁸ [FTA EU-Mexico ex post assessment](#) (2017)

¹⁹ [Raess et al.](#) (2018); a workshop report for the EP INTA Committee

²⁰ [EC non-paper](#) (2017)

²¹ [DG Trade](#) (2019)

²² [Marx et al.](#) (undated)

²³ [EC non-paper](#) (2018)

²⁴ e.g. Multilateral Environmental Agreements (MEAs) such as the Paris Agreement on Climate Change and the UN Convention on Biological Diversity (CBD)

In other words, the TSD provisions are where concrete provisions for the environment – including those where a need has been identified by the assessment of impacts under the SIA – should be established, either in terms of safeguards to prevent negative impacts or modalities to support trade on environmentally sustainable products. The legal basis and type of enforcement for the provisions in the TSD Chapter can however differ from measure to measure and agreement to agreement, and thus the actual impact – and the effectiveness – of the provisions is far from being certain (See Chapter 3 below).

Box 2.1 TSD Chapter provisions from the EU-Japan FTA

The FTA between the EU and Japan is commonly considered among the existing EU trade agreements with the most specific provisions for environmental protection, including preventing backsliding on environmental standards and further enhancing the positive contribution of trade sustainable development.

In general, the TSD provisions of EU–Canada FTA share similarities in the level of detail provided in the EU–Japan FTA.

A number of examples of the provisions included in the EU-Japan FTA STD Chapter are provided below.

Environmental commitments

“The Parties shall not encourage trade or investment by relaxing or lowering the level of protection provided by their respective environmental or labour laws and regulations.” Ch16 / Art 16.2

“The Parties shall cooperate to promote the positive contribution of trade to the transition to low greenhouse gas emissions and climate-resilient development. The Parties commit to working together to take actions to address climate change towards achieving the ultimate objective of the UNFCCC and the purpose of the Paris Agreement.” Ch16 / Art 16.4

“The Parties recognise the importance of enhancing the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions. Accordingly, the Parties [xxx] shall strive to facilitate trade and investment in goods and services of particular relevance to climate change mitigation, such as those related to sustainable renewable energy and energy efficient goods and services [xxx]; shall strive to promote trade and investment in goods that contribute to enhanced social conditions and environmentally sound practices, including goods that are the subject of labelling schemes [xxx].” Ch16 / Art 16.5

“Each Party shall encourage the use of products which were obtained through sustainable use of natural resources and which contribute to the conservation and sustainable use of biodiversity, including through labelling schemes [xxx] implement effective measures, such as monitoring and enforcement measures, and awareness-raising actions, to combat illegal trade in endangered species [xxx] exchange information and consult with the other Party at bilateral and multilateral levels on matters [xxx] including trade in wildlife and natural resource-based products, the valuation, mapping and assessment of ecosystems and related services, and the access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.” Ch16 / Art 16.6

Civil society involvement

“The Parties shall convene the Joint Dialogue with civil society organisations situated in their territories [xxx] The Joint Dialogue shall be convened no later than one year after the date of entry into force of this Agreement. Thereafter, the Joint Dialogue shall be convened regularly, unless the Parties agree otherwise. [xxx]” Ch16 / Art 16.16.

Settling TSD related disputes

“A Party may request in writing consultations with the other Party on any matter concerning the interpretation and application of this Chapter. [xxx] If no solution is reached through the consultations [xxx] the Committee shall be convened promptly on request of a Party to consider the matter in question. [xxx] If, no later than 75 days of the date of the request by a Party to convene the Committee [xxx], the Parties do not reach a mutually satisfactory resolution of the matter concerning the interpretation or application of the relevant Articles of [TSD] Chapter, a Party may request that a panel of experts be convened to examine the matter. [xxx]” Ch16 / Art 16.17 and 18.

Involvement of civil society: Civil society is involved through two different platforms, established as a part of the FTA implementation, where they can play an advisory role by participating in exchanges to discuss the monitoring of the FTA implementation²⁵. These platforms are the Domestic Advisory Group (DAG) and the Civil Society Dialogue Forum (CSDF), both set up for every trade agreement at the national level of trade partner countries (Figure 2.2). Both of these platforms report to the Sub-Committee on Trade and Sustainable Development, which is the official governing body of the TSD Chapter within the FTA implementation mechanism.

The role of the DAG is to monitor the implementation of FTA TSD Chapter, including to provide advice and recommendations to the TSD Committee. DAGs are composed of civil society, social partners, businesses and other relevant groups and they usually meet on an annual basis. There are four DAGs set up to this date, corresponding with the EU FTAs with Korea, Georgia, Canada and Colombia/Peru/Ecuador²⁶.

The role of the CSDF is to facilitate direct exchange between the TSD Committee and civil society. The aim of the platform is to both inform and seek feedback from civil society on the status of the implementation of trade and sustainable development provisions. The CSDF commonly consists of the members of the DAG but in some FTAs other civil society organisations are also present.

The steer provided by both these civil society platforms on FTA implementation is advisory, rather than compulsory, in nature, and focused on the TSD chapter only, limiting their impact. In 2018, the Commission announced its wish to “[broaden] the substantive scope of competence of DAGs’ advice to cover the implementation of the whole agreement in future FTAs”. This approach is planned to be introduced with the EU-Mercosur and EU-Mexico FTAs, and “thereafter become part of the Commission’s standard negotiating approach”²⁷. However, it is not yet clear what kind of concrete changes, including possible improvements in the effectiveness of the TSD Chapters, might result in practice from this extension of the DAGs’ remit (See Chapter 3 below).

²⁵ [EC non-paper](#) (2017)

²⁶ [EU-Colombia/Peru/Ecuador Domestic Advisory Group](#) (2019)

²⁷ [DG TRADE news](#) (2018)



Figure 2.2 Institutional mechanisms for governing the implementation of the EU FTA Trade and Sustainable Development Chapter provisions in trade partner countries. (Source: [DG Trade](#) 2017)

Evaluation tools and research are still lacking to understand the efficiency and impact of civil society engagement in the building of FTAs. Furthermore, these platforms - although still relatively new – are criticised by various actors²⁸. Some believe the civil society dialogues are not structured and frequent enough. Others suggest creating a coordinating mechanism, such as a secretariat, to support the convening²⁹. Within the EU the EESC fulfils this role for the EU DAGs; however there is no equivalent coordinating body for the EU trade partner side. The selection procedures for who participates in the dialogues have also faced criticism on the grounds that they are not transparent or independent enough³⁰. Finally, the follow-up mechanisms and the ways in which governments take stakeholders' recommendations into consideration are unclear, which limits the scope for holding trade partner governments accountable.

Dispute resolution: The TSD provisions of EU FTAs have a dedicated mechanism to allow for seeking resolutions in case of disputes between the trade partner countries. This mechanism consists of consultations between the trade partner governments supported by, if needed, the establishment of a panel of experts (Figure 2.3).

The key thing to note is that the EU FTA TSD Chapters are not subject to enforceable dispute settlement procedures, and there are no financial penalties for non-compliance³¹. As of now, TSD Chapters are

²⁸ [Orbie, Martes, Oehri, Van den Putte](#) (2017)

²⁹ [Montoute](#) (2011)

³⁰ [Altintzis](#) (2013)

³¹ [Centre for European Reform](#) (2019)

also explicitly excluded from the scope of the general dispute settlement mechanism of EU FTAs - which typically includes binding decisions by an arbitration panel. This differential treatment of the TSD Chapter has led to concerns as to the imbalance in the way different issues are treated in FTAs³¹. See Chapter 3 for further discussion on this.

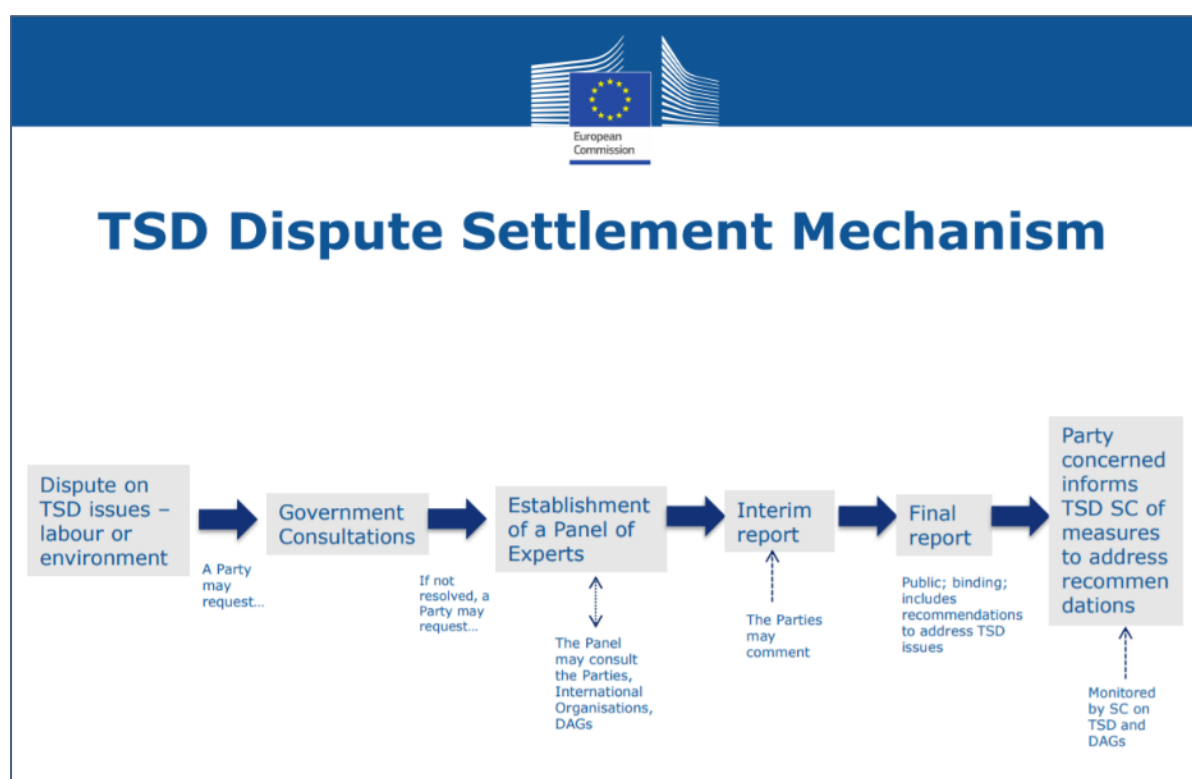


Figure 2.3 The dispute settlement mechanism for EU FTA provisions on trade and sustainable development. (Source: DG Trade 2017)

2.3 Environmental provisions of EU FTAs in the context of the global trade policy

At the global level, trade between nations is regulated by the World Trade Organisation (WTO); an intergovernmental organisation established in 1995, consisting of 123 member nations with a goal to facilitate liberalised trade and a mandate to prohibit any discrimination between trading partners. The WTO's most important tool to carry out its mandate is the Dispute Settlement Body, which has the power to rule on trade disputes and to enforce its decisions³².

Both the EU and individual EU countries have their trade ruled under the WTO with implications on the implementation of EU FTAs, including their environment and broader sustainable development related provisions.

The objectives of sustainable development and environmental protection are stated in the preamble to the agreement establishing the WTO³³. These objectives include expanding the production of and

³² Mendonça / EP Fact Sheet (2019)

³³ Marrakesh Agreement (preamble)

trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development and seeking to both protect and preserve the environment, including to enhance the means for doing so. Therefore – and in theory at least – upholding an open and non-discriminatory multilateral trading system, and safeguarding the protection of the environment and the promotion of sustainable development, are seen mutually supportive by the WTO.

Technically speaking, trade between WTO countries is regulated by the [General Agreement on Tariffs and Trade \(GATT\)](#); a legal agreement dating back to 1947 with a view to reduce barriers to international trade. Underpinning the WTO regime, the GATT provides the legal basis for decisions by countries to restrict trade based on environmental considerations, including in the interests of animal or plant life or the conservation of exhaustible natural resources³⁴. Such measures are permitted if they do not unjustifiably or arbitrarily discriminate between members with similar conditions and are not used as a disguised protectionist measure.

In summary, the global free trade regime allows governments to adopt measures to address environmental concerns linked to trade, provided this protection is not used as a 'front' to hinder free trade. The role of the WTO is to contribute to uphold such environmental safeguards while ensuring that they are not used to take trade protectionist measures.

The WTO's dispute settlement mechanism has been playing an increasingly important role in arbitrating between environmental protection and trade³⁵. However, the role – or rather reputation – of the WTO in upholding global environmental standards through arbitration remains unclear. Different EU environmental regulatory policies – such as food standards for human health and ecolabelling – have been challenged under WTO ruling, with varying outcomes. Similarly, cases brought by the EU challenging trade partner countries' restrictions on environmental grounds have also emerged (See Box 2.2 for examples). The outcomes of such WTO rulings have an obvious effect on the implementation of EU trade agreements, either by upholding or challenging environmental principles and standards that underpin EU FTAs. The WTO scrutiny will play a role also in the future, for example when it comes to the possible implementation of EU border tax for carbon as foreseen by the European Green Deal (see Chapter 5).

In addition to its role in settling disputes, the WTO also actively attempts to facilitate trade in environmental goods and services, i.e. goods and services with a dedicated purpose of environmental protection or sustainable resource management. In 2014 the WTO launched plurilateral negotiations for the establishment of the Environmental Goods Agreement (EGA)³⁶, which aims at promoting trade in several key environmental products. The EGA counts 46 participants – including the EU – and seeks to eliminate tariffs on several important environment-related products. Despite their potential, the EGA negotiations have stalled since 2016 with no clear signs of them being picked up again³⁵. From the EU perspective this means that the international trade regime offers limited support, at least at the moment, in implementing any environmental goods related aspirations of EU FTAs.

³⁴ Article 20 of GATT

³⁵ [OECD](#) (2017)

³⁶ [WTO Environmental Goods Agreement](#) (undated)

Box 2.2 Examples of EU-WTO disputes

US-EU Beef Hormone Dispute

Starting in 1989, the United States and the EU have been engaged in a long-standing trade dispute over the EU's decision to ban meat produced using hormone treatments³⁷. The case was dealt under the WTO dispute settlement proceedings and was not solved until August 2019.

Ban: The ban was decided in 1981 by the EU and concerned meat that contained artificial beef growth hormones that were approved for use in the US. Initially, the ban covered six hormones but was then amended in 2003 to permanently ban one hormone while provisionally banning the use of five others. WTO rules permit such bans – if signatories have valid scientific evidence that the ban is a health and safety measure.

Dispute: The US and Canada opposed the ban, taking the EU to the WTO Dispute Settlement Body. An earlier WTO panel decision in 1997 ruled against the EU on the grounds that the ban was inconsistent with the EU's WTO obligations under the Sanitary and Phytosanitary (SPS) Agreement because the EU had not conducted a risk assessment. In response, the EU commissioned studies and reviews to address the scientific basis of its ban on hormone-treated meat.

Ruling: The European Commission was sanctioned for introducing a public health and consumer protection policy which was apparently not sufficiently supported by scientific evidence.³⁸ Over the years, the US and the EU have attempted to resolve this dispute through a series of WTO dispute consultations, settlement panels, arbitration proceedings, and formal appeals. Following each of these reviews, the EU reaffirmed its position that there are possible risks to human health associated with hormone-treated meat, given the available scientific data.

In 2009, the EU and the US concluded a Memorandum of Understanding (MoU), revised in 2014, which provided a solution. Under the agreement, a 45,000 tonnes quota of non-hormone treated beef was opened by the EU to qualifying suppliers, which included the United States.

Final agreement: A final agreement was reached in August 2019 establishing rules of quotas and supplies. The European Commission stated that: "The agreement signed today is fully in line with WTO rules and establishes that that 35,000 tonnes of this quota will now be allocated to the US, phased over a 7-year period, with the remaining amount left available for all other exporters. The overall volume of the quota opened in 2009 remains unchanged, just like the quality and safety of beef imported into the EU, which will remain in compliance with the high European standards."³⁹

EU Retreated Tyres Trade Dispute

The case started in 2006 when the European Commission filed a case under WTO against Brazil for banning the importation of retreated tyres.

Ban: The Brazilian government decided to ban the import of retreated tyres, on the grounds that they had a shorter life, leading to a faster accumulation of waste tyres. It claimed that such accumulation would create health and environmental hazards by providing breeding grounds for mosquito-borne diseases such as dengue fever or malaria. The government also argued that it would be technologically impossible to dispose of such tyres in its vast territory without negative environmental consequences.⁴⁰

Dispute: The European Commission, on behalf of the EU as a net exporter of used tyres, complained that

³⁷ See, for a US legislators' perspective, the Congressional Research Service briefing paper "[The US- EU Beef Hormone Dispute](#)" [Dispute](#) (2015)

³⁸ [Burca and Scott](#) (2000)

³⁹ [EC Press](#) (2019)

⁴⁰ [CIEL](#) (undated)

Brazil's ban was "disguised protectionism" for that country's tyres market in violation of several GATT disciplines. A WTO Panel was established in January 2006 in order to examine the case.

Ruling: In June 2007, the WTO Panel recognised a clear linkage between the import of retreaded tyres and public health and environmental risks – associated with the increased tyre waste resulting from such imports. As such the case represented the first-ever challenge against trade restrictions imposed by a developing country for health and environmental reasons.

3 Effectiveness of EU trade policy environmental measures

This Chapter brings together the existing evidence on the effectiveness of the key EU trade policy instruments – TSD Chapter and SIAs – in addressing environmental impacts of trade in practice. It highlights the key shortcomings of the existing regime, ranging from the treatment of environmental concerns in SIAs to the limits on implementation of TSD Chapter’s environmental provisions. This paves the way for identifying opportunities for strengthening the environmental regime within EU trade in the future.

3.1 Effectiveness of EU FTAs’ sustainable development provisions

The effectiveness of TSD Chapters has come under scrutiny over recent years, not only from civil society representatives but also from the European Parliament⁴¹. One of the main points of contention is the compliance gap, fostered by the lack of institutionalisation of and accountability for enforcement of the chapters. The fact that TSD Chapters lack a mechanism for their enforcement is criticised by many and the chapters are considered to have little impact on sustainability with partnering countries and to be unable to reverse negative impacts of trade deals.

While the Commission has so far steered away from negotiating for the introduction of any economic sanction mechanisms for sustainability related aspects, many stakeholders are calling for a more ambitious approach. For example, in 2018, the European Economic and Social Committee (EESC) urged the Commission to achieve more efficiency and stronger enforceability of the commitments in the TSD Chapters stating that “the TSD Chapters must be given equal weight to those covering commercial, technical or tariff issues.”⁴² Similarly, the European Trade Union Confederation (ETUC) declared that it regretted the Commission brushing away “the possibility of introducing an economic sanction mechanism in case of persistent breaches of labour rights within EU agreements”⁴³. The Eurogroup for animals called for reinforced TSD Chapters, “using a more straightforward language and listing clearer commitments”⁴⁴. The European Water movement in association with other NGOs criticised the lack of progress regarding the enforcement of TSD with provisions remaining vague and that they “cannot be properly monitored and enforced, the only possibility in case of commitment violations is still to call for a panel of experts to produce a report on the matter.”

Most existing studies looking at the effectiveness of the TSD Chapters focus on labour rights and highlight the lack of efficiency of those TSD Chapters, with clear parallels to be drawn to the environmental provisions of the chapters. In fact, both Korean and Colombian civil society representatives described TSD Chapters as ‘ornaments’ that “did nothing to help the protection but were included to create a better image for trade agreements and to make it look as though social issues are being addressed”⁴⁵. A study conducted by trade unions and academics argues that the

⁴¹ [Eurogroup for Animals, Transport & Environment, Fern and CONCORD](#) (undated)

⁴² [EESC Opinion](#) (2018)

⁴³ [ETUC](#) (2018)

⁴⁴ [Eurogroup for Animals](#) (2018)

⁴⁵ Perspectives from Labour Voices in Trade Partner countries, [workshop report](#) (2017)

existing FTAs have been shown to be unable to fully address labour rights⁴⁶. In Colombia, for instance, some areas of the economy that were opened to trade with the EU Member States and other developed countries, have seen a deterioration of labour conditions and losses of jobs (e.g. in the sugar sector)⁴⁷. It is also highlighted that due to FTAs there have been rising concerns about environmental and human rights problems caused by international and European companies active in the extractive sector in Colombia. Although with less serious allegations, similar comments are made from other partnering countries for instance on the EU-Korea FTA⁴⁵.

Explicit concerns have also been raised regarding the potential use of the dispute settlement provisions in trade agreements to undercut environmental safeguards or hinder environmental action in trade partner countries. For example, it has been argued that the investor-state dispute settlement system (ISDS), a mechanism using arbitration between states and foreign investors commonly present in modern trade agreements, could be used by the fossil fuel industry to stall action on climate change by putting a policy through ISDS in one jurisdiction with a possible deliberate purpose of delaying its adoption⁴⁸. While at present there are no known cases where an investor has taken the step of formally launching ISDS over the introduction of a carbon tax, emissions trading scheme or renewable energy incentive scheme, this could become a concern in the future, for example if a regime for EU border tax for carbon will be implemented.

The global consensus from academics and involved actors appears to be that TSD chapters should include proper monitoring processes, clear goals and effective mechanisms to address non-compliance. Otherwise commercial imperatives of the FTAs will always triumph over their sustainability related safeguards and broader aspirations.

To achieve the above, it has been suggested that the TSD Chapter should contain a more detailed action plan, with timelines and a clear attribution of responsibilities⁴⁹. An increasing number of experts are also of the opinion that, in order to be effective, the sustainability related provisions of EU trade agreements should not be dealt through a separate process (as per Figure 2.4), but that they should be part of the formal dispute settlement mechanism between the trade parties⁵⁰. Furthermore, clean supply chain initiatives and production certifications, accompanied by mechanisms that limit the entry of non-certified goods into the market, are considered as a potential future means to address unsustainable production practices in FTAs⁵¹. For example, explicit TSD Chapter provisions targeting business operators and requiring improved due diligence in addressing sustainability concerns – such as the OECD Guidance for Multinational Enterprises – are highlighted as a way forward⁵².

3.2 Strength of the underpinning sustainability assessments

As highlighted in the previous chapter, the TSD Chapters are underpinned by the analysis carried out

⁴⁶ Queen Mary University | [Working Beyond the Border Project](#), e.g. [summary of research findings](#) and outcomes of a stakeholder workshop (2017)

⁴⁷ [tni and Oidhac](#) (2016)

⁴⁸ [Tienhaara](#) (2017)

⁴⁹ [World Trade Review](#) (2019)

⁵⁰ [Voituriez](#) (2019)

⁵¹ [Walsh-Fühling](#) (2019)

⁵² [OECD](#) (2011) and [FERN](#) (2018)

in SIAs, and integrating the results of SIAs into EU trade policy is a key responsibility of the Commission. However, even if most SIAs recommendations are considered and used by the negotiators on the European Commission side, the trade negotiating parties are of course not obliged to take up and implement the recommendations⁵³. Clearer guidelines and specified objectives on how to integrate SIA recommendations in the EU's negotiating position are lacking, resulting in calls for increased accountability vis-à-vis the uptake of SIA recommendations by the EU during the negotiation process⁵⁴.

Another criticism is linked to the timing of SIAs, with the argument advanced that SIA analysis risks coming either too early in the process to accurately predict the trade liberalisation outcomes, or too late to have any real influence on the negotiations. If an SIA is conducted too early, the envisaged liberalisation might be difficult to predict and the accuracy of the SIA findings is undermined by inaccurate assumptions⁵⁵. However, some have expressed the view that SIAs should start before negotiation positions are even formulated, as otherwise important decisions will already have been taken before their impacts have been assessed⁵⁴.

Finally, the extent and depth of the treatment of environmental concerns in SIAs could be improved. While the EU SIA Guidance provides a rather comprehensive list of environmental themes that may be assessed in the SIA process – air and climate, land, water (e.g. oceans, seas and coast), biodiversity, energy, waste, transport and chemicals – the guidance provides no obligatory minimum requirements for integrating environmental aspects into the analysis⁵⁶. Furthermore, no guidance is provided as to the indicators to be used to identify and assess possible impacts.

No comprehensive evaluation of the existing EU SIAs' environmental performance is available. However, a quick review of the existing SIAs seems to indicate that while environmental aspects are integrated across all assessments the level of comprehensiveness and depth of analysis varies. For example, a recent review of the integration of biodiversity into the EU SIAs concluded that the existing approach to analysing impacts of trade on biodiversity is not adequate because it does not assess and integrate those impacts in a comprehensive or systematic manner⁵⁷. In particular, the study found that only a few SIAs systematically considered the impacts on biodiversity across all affected economic sectors. Furthermore, it was concluded that there were considerable variations – and gaps – when it came to the use of indicators between different assessments.

Once an FTA has been ratified, the European Commission uses ex-post evaluations to look for unintended effects of trade deals (i.e. not anticipated at the time of the SIA) and for evidence of causality. When looking at the ex-post evaluations of EU FTAs, the two existing evaluations underline that the link between trade and its impact on the environment is difficult to estimate – let alone verify – and that no successful methodology exists (Box 3.1). The evaluations indicate that it is not yet possible to make a clear and comprehensive validation of the environmental impacts of EU FTA implementation. To this date, no methodology to assess impacts of trade on the environment has received a scientific consensus. The evaluations both provide unclear conclusions and struggle to make a clear link between the FTAs and their impacts on environment.

The existing evidence indicates that the assessment of environmental impacts linked to EU FTAs is not (yet) able to treat the environment with the

⁵³ Reynaud (undated)

⁵⁴ Transport and Environment (2015)

⁵⁵ Mecklenburg (2018)

⁵⁶ EU SIA Handbook (2nd edition) (2016)

⁵⁷ Kettunen et al. (2018)

comprehensiveness and robustness it requires. Consequently, dedicated efforts are needed to ensure that the information underpinning EU FTA negotiations and implementation can correspond to the challenges linked to trade liberalisation.

Box 3.1 Ex post evaluations from the EU-South Korea and EU-Mexico FTA

The EU-South Korea FTA is the first of a new generation of EU trade agreements characterised by a higher level of ambition. It has been provisionally applied since 1 July 2011 and is the first trade deal concluded by the EU with an Asian country.

Mexico was the first country in Latin America to sign an Economic Partnership, Political Coordination and Cooperation Agreement (“Global Agreement”) with the EU in 1997. This agreement includes trade provisions that were later developed into an FTA which came into force in 2001. In January 2013 leaders decided “to explore the options for a comprehensive update of this Economic Partnership, Political Coordination and Cooperation Agreement between the EU and Mexico”. Negotiations were launched in June 2016.

The purpose of the ex post evaluations, carried out by external consultants for DG TRADE, was to provide an in-depth analysis of the performance of each trade deal in achieving its objectives and to use the lessons learned to improve the design and the implementation of other EU trade agreements, including the foreseen update of EU-Mexico FTA. The evaluations included an assessment of impacts on sustainable development in its economic, social and environmental dimensions, as well as impacts on human rights.

The EU-Korea FTA explicitly states that the signing Parties are “convinced of the contribution of international trade to sustainable development in its economic, social and environment dimensions, including (...) the protection and preservation of the environment and natural resources”. Evidence provided by the ex post analysis to support this claim, however, remains rather limited. The assessment states that measuring any direct causal effects of the FTA on environmental variables is complicated because the counterfactual environmental outcomes (i.e. outcomes that would have materialised without the agreement) are not possible to establish with a sufficient level of certainty. For example, the ex-post evaluation looks at many data on the impact of GHG and CO₂ emissions both in Korea, in the EU and globally, but struggles to find a correlation between the data and the trade deal.

Similarly, the ex post analysis of the EU-Mexico FTA finds that, while no significant impacts on environmental elements such as water, waste and biodiversity can be identified, this might be partly because other parallel developments such as investment in environmental technology are masking – or counterbalancing – any negative impacts. Furthermore, the assessment concludes that net impacts of the FTA on ecosystems are difficult to identify as the different sectors affected by trade liberalisation are likely to have opposing impacts (e.g. the reduced pressures by the reduction of activity in extractive industries possibly offset by increase of tourism and related pressures). Finally, while an increase in the trade in several environmental goods can be observed, it is not possible to single out the role of FTA in causing these trends.

Sources: [Ex-post evaluation of the EU-Korea FTA](#) (2018) and [Ex-post evaluation of the EU-Mexico FTA](#) (2017)

4 The transformative power of EU's sector-specific policies

Reinforcing the integration of environmental concerns into EU FTAs and their underpinning SIAs is a key avenue through which the environmental performance of EU trade policy could be improved. These endeavours can also be supported by sector-specific EU policy initiatives focused on enhancing the sustainability of resources and products within the EU market.

Sector-specific policy initiatives can influence the environmental sustainability of trade by introducing criteria and standards for products entering the EU market. These criteria and standards can then be further integrated into the EU FTAs and their TSD Chapters as a legislative or policy baseline that the trading partners should comply with.

The criteria and standards are commonly introduced by targeting the EU operators as key actors, calling for or requiring them to investigate the origins of their imports while being accountable for their practices towards relevant Member State authorities. Examples of existing EU policy initiatives that have had, or are foreseen to have, positive impacts on the sustainability of traded products globally include the EU Timber and Conflict Mineral regulations, and the EU Circular Economy Package.

Chapters 7 – 9 provide detailed case studies of these initiatives, with key insights summarised below.

EU Timber Regulation (EUTR): EUTR is an EU policy instrument that seeks to halt the trade of illegally harvested timber on the EU market. The EUTR requires EU operators to act on preventing the entry of illegally sourced timber or timber products on the EU market. It does so by obliging the operators to act with reasonable care to investigate, manage and mitigate risk within their supply chains (due diligence). To implement the Regulation, due diligence practices need to be put in place by operators to acquire information about and carry out risk assessment of timber sources outside the EU.

The EUTR applies automatically to all EU trade partner countries, across all EU FTAs, resulting in raising the environmental standards of trade by granting access to the EU market only to those operators that follow the Regulation. Consequently, in order to gain access to the EU market, the timber logging standards in trade partner countries will need to shift to align with those of the EU and EUTR, with positive impacts foreseen on livelihoods, biodiversity and environmental protection in third countries.

The EUTR came into effect in 2003 and, since coming into force in 2013, it has been implemented by all EU Member States with corresponding EU-supported initiatives in 15 trade partner countries aimed at eliminating illegal timber logging and strengthening sustainable forest governance.

EU Conflict Minerals Regulation: The EU Conflict Minerals Regulation aims to curb trade in minerals that fuel forced labour and finance armed conflict. Conflict minerals are commonly mined in politically unstable regions, sold by armed groups to fund their illegal activities and the purchase of weapons. The extraction of conflict minerals is also characterised by the lack of environmental safeguards, contributing to the environmental degradation in the relevant area.

The Regulation covers four key minerals linked to conflicts (tin, tungsten, tantalum and gold – 3TG) with an aim to ensure that EU importers source these metals responsibly from conflict-affected areas.

It works on a similar logic to the Timber Regulation, requiring EU operators to put in place due diligence systems to ensure that 3TG minerals on the EU market are sourced from conflict free areas. It builds on the EU's influence by restricting access to its markets exclusively to compliant and responsible suppliers of legally sourced 3TG minerals, thereby encouraging the uptake of sustainable, conflict-free trade practices in trade partner countries.

The EU Conflict Minerals Regulation comes into force in January 2021 and it will apply to EU importers, smelters and refiners. Its implementation will be supported by a Commission-led list of conflict-affected and high-risk areas, providing guidance for EU importers as to which regions to focus on.

EU Circular Economy Package: With the pressures on and competition over natural resources increasing, the EU has committed to shift from a linear to circular model for using resources. To achieve this, the EU is in the process of putting in place and implementing an extensive policy framework, called the EU Circular Economy Package, intended to reform the EU's resource use and waste policies to comply with a more sustainable, circular model. The policy package aims to stimulate the EU transition to a circular economy with the ambition of boosting competitiveness, generating jobs and fostering sustainable growth.

From the perspective of trade, the implementation of the EU Circular Economy Package presents an opportunity to improve environmental standards, both within the EU and globally⁵⁸. This is envisaged particularly through improving – and harmonising – the definitions, standards and criteria for recyclable waste and secondary raw materials within the EU and encouraging the uptake of such standards at a global scale through trade. In other words, the EU's push to implement clear and appropriately stringent standards and criteria within its own territory will be an important factor determining the quantity and quality of recyclable waste and secondary raw material exiting and entering the EU through trade. This in turn is likely to encourage EU trade partner countries to match their criteria and standards with those of the EU, resulting in the elevation of standards globally.

The Circular Economy Package was proposed in 2014, first presented in 2015 and is foreseen to be updated in 2020⁵⁹. The updated and expanded package puts the development of standards and criteria at the heart of EU policy action, including through adoption of a sustainable products policy to support the circular design of all products based on a common methodology and principles. It also envisages setting minimum requirements to prevent environmentally harmful products from being placed on the EU market, while considering legal requirements to boost the market for secondary raw materials.

While the trade related impacts of the Conflict Minerals Regulation and Circular Economy Package remain to be seen, the experiences linked to the implementation of the Timber Regulation demonstrate that sector-specific EU initiatives can have a positive impact on the environmental standards of trade globally.

Dedicated initiatives in 15 trade partner countries to support sustainable timber extraction and trade, corresponding to the implementation of EUTR requirements, indicate that access to the EU market can provide an important incentive for improving environmental standards globally through trade. It is also clear that the impact of standards can be enhanced by effective enforcement by the EU Member States. For example, the rejection of a timber shipment from Myanmar by German authorities, when the operator was unable to provide evidence of negligible risk, has since led the Myanmar authorities to

⁵⁸ [Kettunen et al. \(2019\)](#)

⁵⁹ [European Green Deal](#) (Dec 2019)

pledge to improve the traceability and legality standards of timber to comply with the EUTR in order to maintain their access to the EU market (See Chapter 7 for more information).

Lessons learned from implementing the EUTR also highlight, however, that support to the trade partner countries in complying with the EU requirements is a key to success. The establishment of dedicated collaboration agreements with third countries to eliminate illegal extraction of timber and associated trade have played an integral role in enabling timber exporting countries to comply, as has the dedicated EU financial assistance to support the implementation of these agreements (See Chapter 7 for further information).

Furthermore, a harmonised implementation of the initiatives across all EU Member States seems also to be important for their effectiveness. Uneven enforcement across the EU can result in non-compliant Member States allowing the entry of non-compliant products into the EU single market, within which they can then be traded freely; and it is likely that less compliant producers would target their products at ports of entry with weaker enforcement standards.

Finally, given that the implementation of criteria and standards is placed on the shoulders of operators, there is a need to ensure the effectiveness of the due diligence system. This includes confirming that all relevant operators within the value chain are required to demonstrate due diligence and that their compliance is effectively monitored by the Member State authorities.

5 Conclusion and recommendations: towards a better environmental integration and standards in trade

“The Commission will continue to work on new standards for sustainable growth and use its economic weight to shape international standards that are in line with EU environmental and climate ambitions.”

– [European Green Deal](#) (2019) –

5.1 Trade under the European Green Deal

The EU is in a strong position to promote more sustainable production and sourcing of the commodities globally through trade. Building on its significant purchasing power it can push for better environmental standards not only within the EU but also in the EU trade partner countries.

True to this potential, the EU has been actively promoting trade as a tool that fosters sustainability both globally and within trade partner countries. The 2019 [European Green Deal](#), forming the blueprint for EU policy- and decision making for the coming five years, unequivocally reconfirms this role and objective of the EU trade policy.

However, as this policy paper demonstrates, the effectiveness of the EU’s endeavours in practice leaves a lot of room for improvement, and the European Commission has faced wide criticism when it comes to the implementation of sustainable development components within its trade deals. The different existing tools, despite their potential to improve FTAs’ sustainability aspects, are struggling to bring in clear objectives and roadmaps for parties to reach sustainability objectives.

As a response to these criticisms, in 2018 the Commission published a dedicated TSD Action Plan to improve the implementation and enforcement of the EU FTAs’ sustainability related provisions⁶⁰. The action plan envisages, among other things, improving stakeholder involvement in the implementation of the TSD Chapter, supported by dedicated guidance and resources. The action plan also foresees a more “assertive enforcement” of TSD Chapter provisions, including stepping up monitoring efforts and a timely activation of the arbitration panel where warranted.

However, while many civil society stakeholders suggest introducing an economic sanction mechanism in cases of persistent breaches of labour and environmental rights within EU trade agreements, the Commission has so far steered away from that possibility. Both the 2018 TSD Action Plan and the trade related element of the 2019 EU Green Deal foresee no new tools to be implemented to help to enforce the sustainability provisions of FTAs, including those potentially leading to trade sanctions due to environmental non-compliance. Furthermore, neither of the documents suggest explicit action on improving the environmental scope of SIA and a more stringent integration of their findings into the negotiated FTAs.

⁶⁰ [EC non-paper](#) (2018)

Nevertheless, the new trade Commissioner Phil Hogan has been given a clear mandate to improve the performance of EU trade policy in delivering sustainable development objectives; a mandate that he has pledged to deliver⁶¹.

In tune with the trade Commissioner's agenda, as set out in his mission letter from President von der Leyen, the European Green Deal foresees a number of concrete future developments linked to trade and the environment, including making the respect of the Paris climate agreement an essential element for all future comprehensive trade agreements and the appointment of a Chief Trade Enforcement Officer to step up efforts to enforce the TSD Chapter commitments.

The most encouraging recent development, however, has perhaps been the recent dispute between the EU and Korea on labour rights. In July 2019, the EU moved to a dispute settlement over workers' rights in South Korea⁶². After formal government consultations held in January 2019, and some more recent efforts to find a solution, the parties moved to a second phase of arbitration procedure and the EU requested a panel to address its long-standing concerns on labour standards in Korea. If sanction measures are taken under this dispute, the procedure could change the political power of the TSD provisions, sending a clear message to future partners that the EU is committed to a more rigorous implementation of the sustainability chapters of its FTAs.

As highlighted in this policy paper, sector-specific initiatives that have no direct association with the FTA negotiation process have the potential to steer trade related environmental standards. Building on this potential, the EU Green Deal explicitly envisages the EU using its environmental standard-setting to encourage corresponding action in trade partner countries. In particular, the Deal commits the Commission to take measures – including regulatory measures – to promote imported products and value chains that do not involve deforestation and forest degradation. In practice this means the development of EU standards and criteria for sustainably sourced products originating from third countries, building on the lessons learned from the existing EU sector-specific instruments (e.g. the EU Timber Regulation). Furthermore, and as identified earlier in this policy paper, the future implementation of both the EU Conflict Minerals Regulation and Circular Economy Package provide concrete opportunities for elevating the standards for more sustainably sourced and circularly used materials beyond the EU⁶³.

5.2 International trade regime and the environment

The future role of the WTO in supporting – or hindering – the EU's ambitions remains unclear. While limited information is available assessing the WTO's environmental record, the general view seems to be that the WTO secretariat is becoming increasingly environmentally aware. In fact the lack of ambitious environmental measures under the international trade regime stems from the limited interest of the WTO member countries rather the organisation itself⁶⁴.

However, with the WTO dispute settlement system in paralysis and negotiations for a global Environmental Goods Agreement stalled since 2016, it seems unlikely that the WTO will be in a position to take a proactive role in elevating the sustainability aspects of trade in the imminent future⁶⁵. In the

⁶¹ [Mission letter for the Trade Commissioner](#) (2019), [European Parliament](#) (2019) and [European Parliament](#) (2019)

⁶² [EC News](#) (2019)

⁶³ [Kettunen et al.](#) (2019)

⁶⁴ [Neymayer](#) (2010)

⁶⁵ The US has been blocking the replacement of any of the members of the WTO appellate body since 2017; [Politico](#) (2019), [Euractiv](#) (2019) and [Politico](#) (2017)

interim, the EU has made it clear that it will strengthen its bilateral action against trade partner countries that adopt illegal trade measures. This will be achieved by amending the EU's trade enforcement regulation, allowing the EU to sanction countries that are violating WTO rules⁶⁶. It is unclear, however, whether this increased assertiveness will in any way have an impact on environmental and broader sustainability related violations under the EU FTAs. Some recent cases launched by the EU certainly have had little to do with sustainability, being rather focused on promoting exports of European products with a high environmental footprint – from steel and cars to frozen french fries – or simply focused on securing unfettered access to scarce resources rather than their preservation⁶⁷.

What is clear, however, is that environmentally linked trade measures taken by the WTO members have been steadily increasing over the past decades indicating greater interest – and perhaps need – from the member countries to address trade related environmental concerns (Figure 5.1). While detailed analysis of the “environmental legitimacy” of these notifications (i.e. scrutinising whether they are based on true environmental concerns or trade protectionist motives) is not available, it seems only likely that the tendency of trade partner countries to undertake environmentally related trade measures will continue in the future.

In this context, one of the most interesting future developments will be to see whether the Commission's promised proposal of an EU border tax for carbon will become to fruition⁶⁸ and, if so, what the response within the international trade regime will be. The stated purpose of such a mechanism is to ensure that the price of imports to the EU within certain key trade sectors (e.g. the extractive industries such as cement and steel) reflects accurately their carbon content, thus preventing carbon leakage from the EU to third countries. However, many experts believe that such a tax would be interpreted by trade partner countries as a protectionist measure, seeking to protect the EU's carbon-intensive industries against foreign competition, therefore leading it to be challenged under the WTO regime⁶⁷. Certainly, the EU border tax for carbon will not reach environmental objectives by default and therefore its pros and cons need to be very carefully considered.

Finally – and more fundamentally – both the existing evidence and current trade negotiations confirm that trade agreements are still primarily designed to minimise negative impacts on, rather than proactively contribute to, environmental sustainability and the related social wellbeing. Environmental regulations and social safeguards are still seen as obstacles to the trade agenda, rather than the underpinnings that enable trade policy to deliver the stated promise of trade as a tool for sustainability. This becomes clear, for example, when reviewing existing EU FTAs and trying to find explicit references to compliance with relevant EU regulations such as the EU Timber Regulation. Therefore, the overall chilling impact that trade liberalisation is known to have on the domestic ratcheting of standards and policy reforms may well cancel out any potential that the EU regulations have for elevating standards in partner countries. It is, therefore, likely that before this fundamental paradigm of trade liberalisation shifts, the sustainability potential of trade, for the distribution of low-carbon technologies, supporting green procurement and trade in environmentally sustainably products, and ratcheting up environmental standards worldwide, remains just a potential. It remains to be seen whether the transformation promised by the EU Green Deal will be able to turn this potential into a reality.

⁶⁶[Euractiv](#) (2019)

⁶⁷[Charveriat and Kettunen](#) (2019)

⁶⁸[European Green Deal](#) (2019)

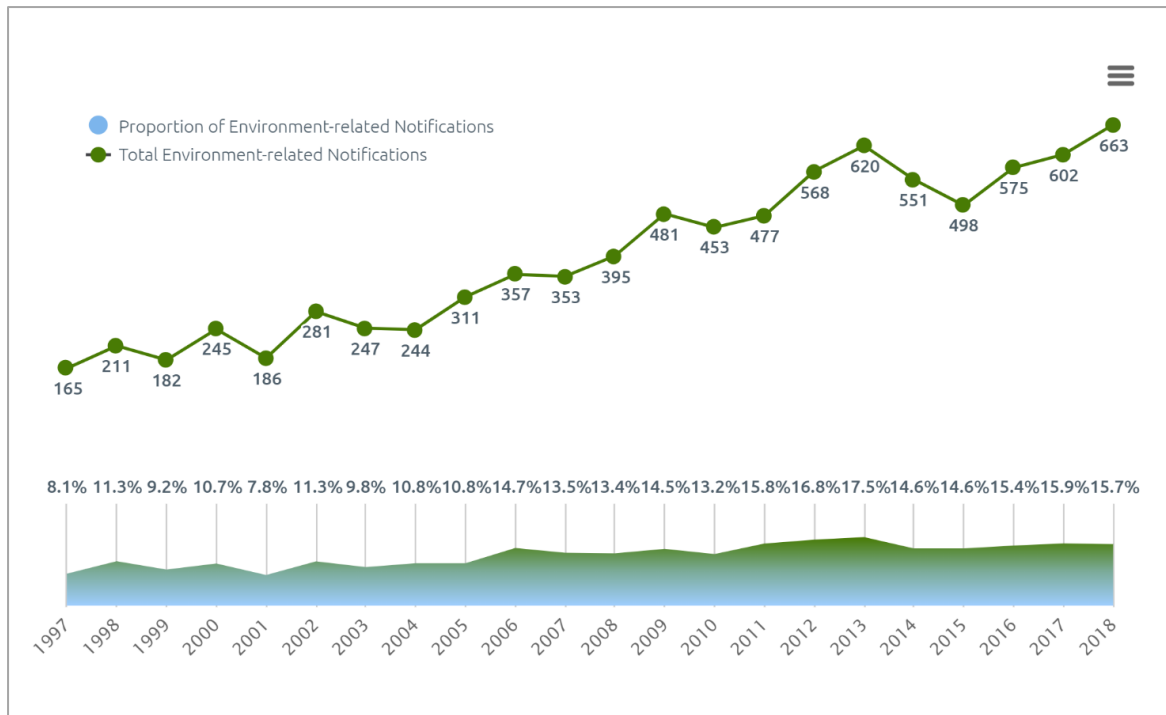


Figure 5.1 Environment-related notifications submitted to the WTO. Notifications are a transparency obligation requiring WTO member governments to report trade measures to the relevant WTO body if the measures might influence other members. (Source: [WTO 2019](#))

5.3 Policy recommendations

Building on the insights of this policy paper, the following key recommendations for improving the environmental performance of the EU trade policy under the EU Green Deal have been identified.

These policy recommendations should not be considered as comprehensive, but rather as food for thought for future discussion; a discussion which we look forward having with all interested stakeholders seeking to improve the sustainability of the EU trade.

Sustainability Impact Assessments (SIAs):

- Improving the treatment of environmental concerns in the context of EU SIAs, including more systematic and in-depth treatment of all relevant environmental aspects (climate, water, biodiversity, circular use of resources etc.) across all sector sectors affected by trade liberalisation.
- Improving the assessment of environmental impacts of EU trade agreements *ex post*, including by supporting research to develop better methods and tools for assessment.
- Update or complement the official EU SIA Guidance Handbook with more explicit guidance for assessing environmental impacts while simultaneously ensuring adequate resources for third parties carrying out the assessments, to improve the extent and robustness of environment related analysis.

EU Free Trade Agreements (FTAs):

- For existing agreements, improve the implementation of FTA TSD Chapters by taking forward without delay the foreseen trade and sustainable development related actions under the Green Deal, including allocating dedicated resources for their delivery.
- For future agreements, integrate environmental and sustainability provisions into the sector specific Chapters of FTAs, rather than just the TSD Chapter, thereby improving their mainstreaming.
- For existing agreements, ensure all commitments to abide by international Multilateral Environmental Agreements referred to in FTAs are operationalised, including the Convention for Conserving Biological Diversity (CBD).
- For future agreements, improve the enforcement of TSD provisions in the context of FTA implementation, including through integrating implementation of the TSD Chapter under the more stringent overall FTA dispute settlement mechanism.
- Given the limitations of SIAs, use the precautionary principle as an underlying approach for both integrating environmental concerns into EU FTAs and implementing these concerns.
- For EU trade in general, improve the monitoring of EU's trade related environmental and broader sustainability related footprint on third countries, including adopt dedicated indicators for this under the annual SDG framework monitoring by Eurostat.
- For EU trade in general, operationalising environmental conditionality for new trade negotiations, including refraining from trade agreements with developed countries that do not have an effective carbon price (achieved through e.g. taxation or cap and trade).

Sector-specific standards:

- Improve the implementation of existing sector-specific policy instruments supporting the uptake of environmental standards in the context of trade, including – but not limited to – the EU Timber Regulation and the EU Conflict Minerals Regulation, e.g. by supporting the implementation and enforcement of due diligence measures by both the Member State operators and authorities.
- Ensure that the criteria and standards adopted under the EU Circular Economy Package are fit for purpose to also raise global standards and facilitate the circular economy at a global scale, including through early engagement with key trade partner countries to support co-development and future uptake of the standards (e.g. African countries, as foreseen in the Green Deal).
- Proceed without delay to develop EU regulatory measures for imported products and value chains that contribute to deforestation and forest degradation, as foreseen by the Green Deal, building on the lessons learned from the existing EU sector-specific instruments (e.g. the EU Timber Regulation).

International trade regime:

- Continue supporting the multilateral trade regime, including using diplomatic efforts to address the impasse in the negotiations for the Environmental Goods Agreement.
- Explore potential for plurilateral negotiations on green public procurement, including identifying barriers to the take up of low-carbon technologies, starting with a coalition of the willing.
- In the absence of a well-functioning WTO dispute mechanism, use an assessment of needs and opportunities to adopt a more assertive bilateral measures with trade partner countries to address violations linked to the environmental and broader sustainability related provisions of EU

FTAs.

- Work towards reaching a common understanding on subsidies which, while in principle trade distorting, can improve environmental outcomes of trade, and/or introducing a moratorium on raising trade disputes which concern subsidies that are positive for the environment; while supporting adoption of a credible roadmap for progressive banning of environmentally harmful subsidies.
- Proceed with care with the possible adoption of the EU border tax for carbon, carefully considering its pros and cons and net environmental impacts.

CASE STUDIES

6 Improving the standards of timber trade through the EU Timber Regulation

6.1 Introduction

The **EU Timber Regulation** (EUTR) is an EU policy instrument that seeks to halt the trade of illegally harvested timber on the EU market. The damage caused by illegal logging is three-fold, posing significant risks to economic, environmental and cultural aspects of society.

Illegal logging is a highly pervasive issue, and its existence has adverse effects on international progress towards the United Nations Sustainable Development Goals (SDGs). In some regions of the world, 50-90% of timber which is harvested and traded is done so illegally⁶⁹. Combined with the growth in global demand for timber products, these developments have elevated the recognition of the importance of EUTR on the EU's policy agenda.

Forests play a significant role in providing a variety of important ecosystem functions, including by regulating the water cycle and soil conditions, and plays an essential role in the global climate system. Rapid rates of illegal logging have accelerated deforestation and degradation, which alone were responsible for 20% of global greenhouse emissions⁷⁰. The prevention of deforestation has been cited by the IPCC as one of the most effective and robust options for climate change mitigation⁷¹.

Furthermore, forests provide unique habitats for 80% of global terrestrial biodiversity, and illegal forestry is threatening their existence⁷². The degradation of forests causes fragile forest ecosystems to break down, resulting in habitat loss, and declining biodiversity. Consequently, deforestation is a significant contributor to the accelerating loss of biodiversity.

Forests also support the livelihoods of 1.6 billion people and are valued sites of spiritual significance. Illegal logging is known to be a source of conflict between indigenous communities, rooted in competition for land-rights and resources. Furthermore, as unregistered deforestation evades tax payments, national state governments subsequently acquire significantly less tax revenue to invest back into services for the state.

A study by WWF in 2008 identified that 19% of wood imports in the EU came from illegal logging. Between 2018 – 2019, the EU imported 2.75 million metric tonnes of tropical timber products from third countries, where there is a risk of illegal logging practices⁷³. Therefore, the mandatory standards

⁶⁹ [WWF](#) (2019)

⁷⁰ [Regulation No 995/2010](#) (2010)

⁷¹ [WRI](#) (2019)

⁷² [WWF](#) (2019)

⁷³ [FLEGT Independent Market Monitor](#) (2019)

established by the EUTR are a critical instrument to grants access to the EU market to legally sourced timber products exclusively.

6.2 How does the EU Timber Regulation work?

The EUTR came into effect in 2003 and since coming into force in 2013, has been implemented by all 28 Member States. The EUTR is a component of the wider EU effort to reduce deforestation; the [EU Forest Law Enforcement Governance and Trade Action Plan](#) (FLEGT).

The aim of the EUTR is to halt the entry of illegally harvested timber into the EU market. Its implementation builds on the principles of self-regulation, placing strong emphasis on compliance efforts within the timber industry.

Under the EUTR, European operators are held accountable for timber products brought into the EU. The EUTR makes three main requirements of European operators, including a prohibition of illegally sourced timber or timber products on the EU market, due diligence, and the maintenance and regular evaluation of the due diligence system used.

Under the due diligence system, operators are required to use adequate information about timber products in order to carry-out a risk assessment, and to use this to implement the necessary risk mitigation measures. Operators must conduct their evaluation in alignment with a specific risk assessment criterion provided by the Regulation. These assessments must be performed using information on: source of the timber, tree species, country of origin and/or harvest, quantity of harvest, concession of harvest, and details of the relevant supplier and trader⁷⁴. However, the aforementioned information may not be sufficient to make a clear assessment, and so additional criteria can be utilised if it further assists to determine the timber's legal status. Where a risk is identified, operators are obligated to mitigate this risk appropriately.

The EUTR details that timber certified with a CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) permit or a FLEGT Licence are seen to be compliant with the requirements of the EUTR⁷⁵.

The Regulation also sets out mandatory procedures for EU businesses and traders to assess and mitigate the risk that timber-based products originate from an illegal source and requires EU traders to comply with traceability obligations. This means that traders and business operators must retain detailed records of who supplied them the timber and to whom they have supplied timber to. These details can be requested by competent authorities within a 5-year period.

The Regulation applies to all illegally sourced timber, which the European Commission defines as “harvested in contravention of the applicable legislation in the country of harvest”⁷⁶. Illegally sourced timber can be characterised by a range of activities linked not only to logging but also broader supply chain⁷⁷ (Box 7.1)

⁷⁴ [Leipolda et al.](#) (2016)

⁷⁵ [EU Timber Regulation](#) (2013)

⁷⁶ [Fishman and Obidzinski](#) (2015)

⁷⁷ [Brack](#) (2005)

The EUTR applies to a specific list of timber-based products including paper, pulp, flooring, plywood, fuel wood and any solid wood products. However, it is important to note that the Regulation does not apply to ‘timber that is being bought or sold by private individuals for their own personal use’⁷⁸.

Box 7.1 Illegal activities associated with timber trade (Source: [Brack 2005](#))

<p>Illegal logging</p> <ul style="list-style-type: none"> • Logging in breach of contractual obligations (e.g. without an environmental impact assessment). • Illegally obtaining concessions through, for example, corrupt means. • Logging nationally protected species without explicit permission. • Logging outside concession boundaries. • Logging in prohibited or protected areas, such as steep slopes or river catchments. • Removing under-sized or over-sized trees. • Laundering illegal timber through a concession. • Use of old log permits or licences to collect illegally felled timber to ‘sanitize’ illegal timber. <p>Timber smuggling</p> <ul style="list-style-type: none"> • Log import/export in defiance of trade restrictions and/or national control measures. • Unauthorized or unreported movements across State boundaries. • Avoidance of CITES restrictions. <p>Misclassification</p> <ul style="list-style-type: none"> • Under-grading and misreporting harvest. • Under-valuing exports. • Misclassification of species to avoid trade restrictions (e.g. mahogany) or higher taxes. <p>Transfer pricing</p> <ul style="list-style-type: none"> • Nil profit accounting and manipulating revenue flows for services to avoid revenue. <p>Illegal processing</p> <ul style="list-style-type: none"> • Processing, for instance, at unlicensed facilities. <p>Grand corruption</p> <ul style="list-style-type: none"> • Characterized by long-term, strategic alliances with a high level of mutual trust. For example, companies providing support to senior politicians, political parties or major components of the State’s apparatus to: <ul style="list-style-type: none"> • obtain or extend concession or processing licences; • avoid prosecution or administrative intervention for non-compliance with national legislation; • negotiate favourable terms of investment, i.e. tax holidays or non-collection of statutory duties, etc. <p>Petty corruption</p> <ul style="list-style-type: none"> • Shorter-term, more tactical, employer–employee relationship, facilitated by and may develop into grand corruption. Most obvious as graft given to or solicited by junior officials to: <ul style="list-style-type: none"> • falsify harvest declarations; • avoid reporting restrictions; • overlook petty infringements; • ignore logging or laundering of logs from proscribed areas.
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The EUTR is implemented at national level by individual Member States following their national procedures. To enforce the EUTR, Member States nominate competent national authorities who are responsible for the application of the Regulation, and periodically check operators’ compliance with the requirements. Monitoring operators has a prominent role within the EUTR, including the verification of operator compliance with due diligence systems, which undergo secondary checks by competent authorities. Monitoring organisations also ensure that the appropriate risk assessments and mitigation procedures are followed by operators.

Operators and traders are subject to penalties, whose severity is set by each Member States⁷⁹. It is the responsibility of monitoring organisations to notify competent authorities of operators’ failure to comply with the due diligence system. The value of each penalty should be proportionate to the scale of environmental damage, the value of timber-products, or the economic detriment of the infringement. However, penalties may involve seizure of the illegal timber and immediate suspension of the operators’ authorisation to trade within EU markets in future. As such, severe penalties have

⁷⁸ [EU Timber Regulation](#) (2013)

⁷⁹ [Eurostat](#) (2019)

the potential to halt imports from ‘high-risk’ sources, as they incentivise operators to eliminate any trace of risk within their supply chain. For example, in March 2018, a British timber company received a fine of £4,000 for failing to ensure that their timber-products were harvested from legal sources⁸⁰. The wood in question had already been assigned FSC certification, highlighting the importance of thorough due diligence assessment, as certification does not guarantee legality.

The EUTR applies automatically to all EU trade partner countries, across all EU FTAs, thereby raising the environmental standards of trade by granting access to the EU market only to those operators that are in compliance with the Regulation. In order to gain access to the EU market, the timber logging standards in trade partner countries will need to shift to align with those of the EU and EUTR, with foreseen positive impacts on livelihoods, biodiversity and environmental protection in third countries.

There are a few cases of positive correlation between implementation of the EUTR and strengthened forest governance in non-EU timber exporting countries. For example, in 2017 the Swedish Court ruled that Myanmar failed to meet the EUTR standards to mitigate the high-risk associated with illegally harvested teak⁸⁰. Similarly, a recent teak shipment from Myanmar was seized and rejected by Germany when the operator was unable to provide evidence of negligible risk. Notably, Myanmar authorities have since pledged to improve the traceability and legality standards of timber harvested for export to comply with the EUTR and maintain their access to the EU timber markets.

6.3 Key lessons learned EUTR strengths and weaknesses

Following its implementation in 2013, a review of the Regulation’s effectiveness by the European Commission in 2016 revealed that the EU is on track to achieve its objectives to combat illegal logging, but some obstacles remain.

Compliance: The Commission review in 2016 details that the number of non-compliant EU member states has reduced from 18 in 2014 to only four by the following year. The evaluation identifies that an increasing number of EU operators have begun to ensure the legality of their timber sources, and there is notable improved awareness amongst EU consumers.

A further review of the Regulation was completed in 2017, whereby the Commission created an Implementation Report. The results of this demonstrated clear progress since the introduction of the Regulation but stated that continuous efforts were required in future to ensure the Regulation is implemented across all EU Member States.

The EUTR implementation has also suffered from an unsynchronised implementation process across the EU. Despite the adoption of the EUTR, not all EU Member States have successfully demonstrated enforcement of their EUTR obligations⁸¹. For example, the Commission found that Belgium had failed to carry out a sufficient number of timber checks since the Regulation entered into force in 2013. Belgium has been requested to take action to ensure they conform fully to the Regulation’s rules and would face financial penalties within the European Court of Justice⁸². Since this warning, Belgium has

⁸⁰ [ClientEarth](#) (2018)

⁸¹ E.g. [WWF](#) 2019

⁸² [ClientEarth](#) (2018)

made significant improvements to EUTR implementation. Fourteen operators have since been inspected, whereby four notices of remedial action have been identified⁸³.

The 2017 review also finds out that penalties in case of noncompliance differ in severity across the EU. Penalties to EU traders and business operators can be administrative or criminal, with breaches of the EUTR punishable by imprisonment in 15 countries or by fines of up to \$1m in Belgium, Estonia, Germany and the UK. This imbalance creates an incentive for some companies to relocate their operations to Member States with weaker legislation and lax enforcement to avoid the penalties associated with breaching the Regulation⁸⁴. Harmonisation of legislative penalties would facilitate synchronised implementation of the Regulation.

Scope: While the EUTR covers a significant number of timber products its scope has been considered inadequate in order to achieve the aims of the Regulation. The scope of products is not exhaustive; despite being a timber-based product, for example, printed paper is omitted from the regulation. Therefore, it is plausible that illegally sourced timber could still enter the EU market through this loophole. A study by WWF found that 67% of potential wood products have been omitted under the EUTR and can be traded from illegal sources, despite the Regulation⁸⁵.

Given the above, the Commission has been advised to consider expanding the scope of products, to include items such as instruments, tools, all wooden furniture, charcoal, toys and printed material. Without a unified approach to all timber-based products, the omission of certain products in the EUTR annex could be an obstacle to EUTR in reaching its core objective.

Due diligence: The due-diligence system that operates under the EUTR is risk-based, requiring EU timber importers and domestic producers to investigate the origin of the wood they acquire. Tropical wood species fall predominantly into the high-risk category and are increasingly likely to be illegally harvested. EUTR compliant importers must therefore perform a vigorous level of due diligence to ensure that tropical wood is not harvested from illegal sources⁸⁶. However, the requirement to perform 'increased due diligence' for these high-risk products is subjective, and as yet there is no explicit guide on how to distinguish between high or low risk timber. This uncertainty can create burdens on wood importers, whilst granting an advantage to European domestic producers.

Further weaknesses of the EUTR stem from the narrow due diligence requirements, which apply only to entities that first place timber products on the EU market and not to entities that engage in trading products that have already entered in the EU. In other words, the trade of imported timber-products between the EU countries is currently unregulated, creating opportunities for illegal timber – once it has managed to enter the EU market – to continue circulating. This will be important for the Commission to address in future to avoid inconsistent implementation⁸⁶.

Support to trade partner countries: The EU's efforts to eliminate the trade in illegal timber is supported within the broader FLEGT framework, which engages tropical timber exporting countries in bilateral trade agreements. The cornerstone of the FLEGT Action Plan is the Voluntary Partnership Agreement (VPA), which is designed to facilitate EU collaboration with third countries to eliminate illegal timber and associated trade, and to strengthen sustainable forest governance. The EU will negotiate the country's existing national legal framework to develop a robust a system verifies the

⁸³ [UNEP-WCMC](#) (2018)

⁸⁴ [Leipolda et al.](#) (2016)

⁸⁵ [WWF](#) (2019)

⁸⁶ [ClientEarth](#) (2018)

legality of timber products⁸⁷. Under the EUTR, timber-products that meet the required conditions are assigned the FLEGT licence and are automatically verified to enter the EU market.

FLEGT VPAs are key instruments in addressing the global aspect of illegal timber trade. The VPAs increase the role of development cooperation and supports timber-producing countries, outside of the EU to mitigate the negative impacts of illegal logging. Whilst it is voluntary to negotiate a VPA, it becomes legally binding post ratification, and the country's compliance is in theory mandatory.

There are currently fifteen countries that are negotiating or have ratified a VPA with the EU; Cameroon, Central African Republic, Ghana, Indonesia, Liberia, Republic of Congo, Côte d'Ivoire, Democratic Republic of Congo, Gabon, Guyana, Honduras, Laos, Malaysia, Thailand and Vietnam⁸⁸. The uptake of these VPAs is promising, as the EU received up to 83% of tropical wood imports from these FLEGT-VPA countries in 2017, and helps to secure legally sourced timber for the EU market.

EU collaboration beyond VPAs: The EU also collaborates beyond the established VPAs and has engaged with China extensively by collaborating with them on the Bilateral Coordination Mechanism. This mechanism allows China and the EU to share information and evaluate policies and legal frameworks in order to halt illegal logging and trade⁸⁹. The BCM forms a strong foundation for future EU-China cooperation for forest governance and broader opportunities to collaborate in future. The EU is keen to enhance cooperation between Africa, China and the EU, particularly as Liberia has become China's biggest timber trade partner. The EU advises that China cooperates closely with African exporter countries, as increased collaboration with FLEGT-VPA countries will reduce the likelihood of illegal timber entering China's markets.

6.4 Conclusions

The EUTR has the potential to be a highly effective tool to prevent illegal logging globally, in granting access only to compliant exporting countries beyond the EU. However, consistent and high levels of implementation of the EUTR across all EU Member States seems imperative to its effectiveness. Compliant countries that operate under the Regulation and enforce the strict requirements placed on them by the Regulation are at risk of being at a competitive disadvantage as a result. Non-compliant EU Member States that enable the circulation of illegally sourced timber products undermine the efforts of the EUTR; ensuring that all Member States impose dissuasive fines and penalties will galvanise cooperation from those who are not following the Regulation's obligations.

There are calls for the Commission to implement more stringent measures, to prevent illegally sourced timber from entering EU markets in the form of products currently not listed under the Regulation. There are further issues with implementation as the need for improved compliance and clarification for due diligence systems that require further attention for resolution. Annual amendments to combined nomenclature may also result in an expansion of the scope of the Annex in future reviews.

Following two reviews of the progress of the EUTR, in 2013 and in 2017, the Commission has plans to continue its cooperation with the EU Member States to guide and facilitate the implementation of the EUTR. It also plans to facilitate communication and will continue to explore additional tools to improve the EUTR implementation. The Commission is also preparing a trade analysis of trends to identify species, products and trade routes to which competent authorities should pay special attention to in

⁸⁷ [WWF](#) (2019)

⁸⁸ [Eurostat](#) (2019)

⁸⁹ [EU FLEGT Facility](#) (2018)

order to address these shortcomings. The European Commission will continue to negotiate further VPAs, to strengthen the fight against unsustainable and illegal forestry practice.

7 Improving the standards of trade in minerals through the EU Conflict Minerals Regulation

7.1 Introduction

The EU Conflict Minerals Regulation aims to curb the trade of minerals that fuel forced labour and which finance armed conflict, and to ensure that EU importers source tin, tungsten, tantalum and gold (3TG) responsibly from conflict-affected areas.

Conflict minerals are commonly mined in politically unstable regions, sold by armed groups to fund their illegal activities and the purchase of firearms weapons⁹⁰. The profit generated by the sale of these illegal minerals is estimated at USD \$185 million annually⁹¹. The illicit extraction of these valuable minerals is often accompanied by forced labour and exploitative labour conditions. As a result, armed groups often violate the human rights of local populations and use child labour, sexual violence and forced resettlement, as means to preserve control over their interests⁹². The extraction is also characterised by the lack of environmental safeguards, contributing to the environmental degradation in the area.

The associated revenue received by armed groups from these high-risk minerals enables the continuation of conflict and violence, and the increased role of supply chain transparency is imperative to break this link. As these minerals are often found in the manufacture of mobile phones and jewellery, EU consumers become linked to conflicts occurring outside the union.

Toleration of the illegal trade of minerals directly undermines sustainable development progress in already conflict-affected countries. The EU Conflict Mineral Regulation is intended to contribute to both the social and environmental sustainability, and peace and stability of relevant trade partner countries.

7.2 How does the EU Conflict Minerals Regulation work?

The EU Conflict Minerals Regulation comes into force on 1st January 2021 in line with guidance provided by the OECD, who have outlined well-established rules to curb the trade of conflict minerals. The OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas is a collaborative government initiative to help cultivate increased transparency within mineral supply chains.

The aim of the Regulation is to ensure that all imports of tin, tungsten, tantalum and gold meet international responsible sourcing standards. The Regulation will apply to EU importers, smelters and refiners to break the nexus between conflict and the illegal exploitation of minerals.

⁹⁰ [European Commission](#) (2017)

⁹¹ [European Parliament](#) (2014)

⁹² [Council of the European Union](#) (2017)

The Regulation will explicitly require approximately 1,000 mineral importing EU companies to comply and exercise strong and transparent due diligence⁹³. EU importers will be required to ensure that their supply chain does not interact with conflict or the adverse impacts thereof.

The detailed requirements of due diligence practice is outlined in the OECD Guidance document, which provides a five-step framework for EU companies to follow⁹⁴. These five steps include: establishing strong company management systems; identifying and assessing risk in supply chain; designing and implementing a strategy to respond to identified risks; carrying out an independent third-party audit of supply chain due diligence; and reporting annually on supply chain due diligence.

Exercising due diligence: As with the EUTR (Chapter 7), due diligence is an active ongoing commitment made by EU companies to act with reasonable care to investigate, manage and mitigate risk within their supply chains. The assessment of the potential risk associated with the source of the conflict informs the mitigating measures taken to prevent their sourcing decisions from contributing to adverse impacts⁹⁵.

In order to thoroughly fulfil their due diligence obligations, EU 3TG importers must be able to provide supporting documentation of the following information: country of origin, quantity, date of extraction, name of mineral, address and name of suppliers, location of processing, and taxes/fees/royalties paid. Each entity must be able to demonstrate that a due diligence system that is consistent with the OECD Guidance or an alternative European Commission approved system has been followed⁹⁶. In order to improve transparency, all policies and procedures followed must be publicly available for external review.

Addressing different elements of the supply chain: The mineral supply chain is complex, and it involves a multi-step process, whereby a variety of players are present at each stage (Figure 8.1). The mineral supply chain progresses through these main stages; extraction, transport, trading, processing, smelting, refining, alloying, manufacturing and sale of product⁹⁷. EU 3TG importers will be subject to the Regulation regardless of the origin country of extraction.

The EU Regulation does not, however, have a synchronised approach to the requirement for supply chain due diligence, as distinctions in responsibility can be identified between upstream and downstream companies⁹⁷.



⁹³ [European Commission](#) (2017)

⁹⁴ [OECD](#) (2016)

⁹⁵ [European Commission](#) (2017)

⁹⁶ [Squire Patton Boggs](#) (2017)

⁹⁷ [OECD](#) (2016)

Figure 7.1 Mineral supply chain and relevant stakeholders impacts by the due diligence requirement (Source: European Commission 2019)

OECD Guidance defines upstream companies as miners, traders and refiners, smelter or mineral re-processors⁹⁸. These entities must comply with mandatory standards to comply with a strict due diligence system, as this is the most high-risk area of the supply chain.

Downstream companies process the minerals into a finished product ready for sale to other entities. They fall into two sub-categories: importing metal stage companies (traders) have a mandatory obligation to follow due diligence reporting and assessment procedures while the operating stage companies (component producers, manufacturers and consumers) have no formal obligations, but the Regulation expects reporting to ascertain transparency regarding their due diligence.

The European Commission has committed to collate a white list of verified and compliant smelters to help EU importers navigate this responsibility. Under the regulation, EU importers must identify and verify that due diligence requirements are met throughout their complex supply chains, and the white list is designed to guide EU importers to compliant smelters. The creation of a white list of compliant smelters is likely to influence supply-chain decisions made by downstream traders, as engaging exclusively with pre-verified compliant smelters is resource-efficient.

In addition, the assessment of which regions can be categorised as high-risk is a subjective judgment and is not static. Therefore, the European Commission will provide an expert list of conflict-affected and high-risk areas which will be regularly updated and will provide a non-exhaustive list of regions for EU importers to focus on.

EU Member States are responsible for monitoring the compliance levels of EU 3TG importers. Member State authorities will check for compliance periodically, examining documents and audit reports, and carrying out annual spot checks. If an infringement is discovered, the Member State will order the company to address the problem by a specified deadline and must follow up to ensure that appropriate action was taken.

7.3 Learning from the U.S. Mineral Regulation

Under Section 1502 of the US Dodd-Frank Act, the US implemented legislation to combat the trade of conflict minerals, which entered into force in 2014. As with the EU Regulation, the central elements of the US Dodd-Frank Act are rooted in mandatory due diligence and supply chain transparency. However, notable modifications were made when the approach underlying the US legislation was transposed to the EU, rooted in the emergence of several unintended negative consequences of the implementation (Figure 8.2).

⁹⁸ OECD (2013)

	US conflict minerals law (2010)	EU conflict minerals regulation (2017)
Geographic scope	DRC and surrounding countries	All conflict-affected and high-risk areas across the globe
Applicability to companies	Upstream and downstream companies	Importers of 3TG into the EU
Approach	Compliance-based approach (in original version it was required to declare products 'conflict-free')	Risk-based approach, in line with OECD guidance
Enforceability	Mandatory	Mandatory for large importers, voluntary for smaller importers

Figure 7.2 Main difference between the US and EU legislation on conflict minerals, with the latter learning from the implementation of the former. (Source: Koch and Burlyuk, 2019)

The implementation of the US Dodd-Frank Act has been labelled by some as damaging the US economy. In terms of the conflict minerals section, many small businesses struggled financially to meet their compliance costs and to stay afloat in alignment with the Regulation. Considering this, the EU made an exemption for entities importing under a specified volume threshold in order to grant smaller businesses some relief from the strict requirements of the Regulation. However, this places an expectation on small businesses to exercise voluntary compliance, which (due to the associated cost), seems unlikely. To support this, the Commission proposed that it would monitor the EU gold market to ensure that this exemption does not create an entry point for illegally sourced minerals to enter the market⁹⁹. The feasibility of this approach will become clearer once the Regulation comes into force.

In terms of scope, the proposed EU Conflict Minerals Regulation is an improvement on the US legislation, as it endeavours to tackle a much broader geographical scope due to its inclusion of high-risk or conflict-affected regions. The US Dodd Frank Act is restrictive in comparison, as it specifically labels the Democratic Republic of Congo and its adjoining territories as its target. The targeted approach had a detrimental effect on ores extracted by artisanal miners as the credibility of the Great Lakes region became tarnished by the US legislation.

7.4 Potential strengths and weaknesses

Although the EU Regulation is yet to come into force in 2021, it clearly indicates progress, with EU trade policy being used as an instrument to redress the balance of human rights. The EU Conflict Minerals Regulation can play a critical role in preventing violations of human rights in high-risk areas and politically unstable regions. The regulation of illegal extraction can act as a catalyst for progress towards sustainable development and achievement of the SDGs – including environmental sustainability – which is imperative to address exploitative conditions, conflict and to ensure peace.

The EU Regulation builds on the influence that the EU has to restrict access to its markets exclusively to compliant and responsible suppliers of legally sourced 3TG minerals, thus encouraging the uptake of sustainable, conflict-free trade practices. The introduction of the European Commission's white list of verified smelters will provide a significant incentive to smelters to ensure their compliance with due diligence mechanisms in order to gain a competitive advantage and be included on the list. The list is likely to form the foundation to inform downstream entities of which smelters are compliant with the

⁹⁹ Squire Patton Boggs (2017)

Regulation already.

If EU importers identify an adverse risk within their supply chain, they are obliged to consult with a number of third parties and stakeholders to determine their risk mitigation strategy. The risk of illegality within the supply chain will be significantly minimised if importers opt to engage with the white listed smelters.

Despite the lessons learned through the US conflict mineral legislation, the strengths and weaknesses of the corresponding EU Regulation will only be apparent when it enters into force in 2021.

The decision that the EU regulation will not span the entirety of 3TG supply chains has been highlighted by critics as a key weakness. Downstream companies involved in the operating stage of mineral processing have no legal requirements to carry out mandatory due diligence. 3TG mineral imports are treated as conflict-free once they have been imported by a responsible importer¹⁰⁰. This places a disproportionate administrative and financial burden on the point of importation, which does not filter through to the rest of the supply chain.

In addition, downstream companies in the operating stage do not have any legal obligation to check their minerals. It is unclear why due diligence requirements do not permeate throughout the supply chain to the sale of the products. This more stringent approach would help to identify cases where illegal cases of 3TG have entered the EU market via a loophole, despite the Regulation.

Regarding enforcement, it is each EU Member State's responsibility to enforce the Regulation via auditing, spot checks, annual reporting. However, it is possible that they will not have the available resources to prioritise this responsibility, resulting in delayed and/or ineffective implementation.

If an infringement is identified, the sanction appears relatively weak, and currently there is no tangible threat for non-compliant entities to incentivise positive action in future to rectify their non-compliance. Furthermore, the Regulation itself only requires mandatory due diligence reporting and assessment but it does not, in fact, require companies to stop using these illegal sources.

7.5 Conclusions

Although the EU Conflict Minerals Regulation has been designed to combat social injustice arising from conflict mineral trade, it is important to recognise the positive impact that it can also have on the environment. Unregulated mining activities are a considerable contributor to global deforestation¹⁰¹. Vast clearing of forest areas allows access to mining sites, and facilitates the establishment of supporting infrastructure to transport the minerals to traders and smelters. Therefore, an effective implementation of the Conflict Minerals Regulation has the potential to contribute to decreasing the rate of deforestation globally.

¹⁰⁰ [The Guardian](#) (2014)

¹⁰¹ [Espejo et al.](#) (2018)

8 Improving the standards of recyclable waste through the implementation of the EU circular economy policy

8.1 Introduction

In a world with a growing human population, the extraction of resources to support an economic model that takes up, uses and discards material in a linear fashion is no longer possible. According to the Global Resources Outlook (2019) the annual global extraction of materials tripled between 1970 and 2017¹⁰². This upwards trend is expected to continue, posing significant challenges and risks to sustainability worldwide. About half of total greenhouse gas emissions and over 90% of biodiversity loss and water stress have been estimated to be caused by resource extraction and processing of materials, fuels and food.

The EU has identified this challenge and, admitting that its resource use remains too linear and dependent on new materials extracted, has committed to shift to a circular economic model¹⁰³. Consequently, an EU Circular Economy Package was proposed in 2014 and revised and presented in 2015. The aim of the package is to stimulate the transition of the EU to a circular economy within the ambition to boost competitiveness, generate jobs and foster sustainable growth¹⁰⁴. The set of measures included in the package represent the main political initiative on the circular economy in the EU.

From a trade perspective, the implementation of the EU Circular Economy Package presents an opportunity to improve environmental standards for trade, both within the EU and globally. This is particularly through improving – and harmonising – the definitions, standards and criteria for recyclable waste and secondary raw materials within the EU and encouraging the uptake of such standards at a global scale through trade. Furthermore, there are also opportunities to better regulate waste shipments for treatment outside the EU.

8.2 EU policy framework for circular economy

The EU Circular Economy Package introduced four legislative proposals on waste while revising several existing EU regulations (e.g. waste, landfill, packaging, end-of-life products, and electric waste). The adoption of the package also resulted in the introduction of new or revised targets, including a EU-wide targets for recycling 65% of municipal waste by 2035 and 70% of packaging waste of by 2030, and a binding landfill target set at a maximum of 10% of municipal waste to be landfilled by 2035.

The package includes a Circular Economy Action Plan; a set of 54 actions aimed at closing the loop for resource use and supporting the achievement of the UN Sustainable Development Goals (SDGs). All actions are divided based on the stage of products' life cycle they are relevant to (production, consumption, waste management, market for secondary raw materials) as well as on five priority areas

¹⁰²[Global Resources Outlook](#) (2019)

¹⁰³ A view most recently reaffirmed in the [European Green Deal](#) (Dec 2019)

¹⁰⁴EC (2016) [Circular Economy Package](#)

(plastics, food waste, critical raw materials, construction and demolition, biomass and bio-based products). Additional measures relate to innovation, investment and monitoring processes. The action plan included several separate concrete policy elements including, for example an EU plastics strategy and related legislative proposal curbing down single-use plastics¹⁰⁵ and a monitoring framework for the circular economy implementation¹⁰⁶.

8.3 EU circular economy policy as a driver for global standards¹⁰⁷

The movement of products along a global value chain implies that they will be subject to regulations and standards (e.g. on recycling and re-use) that differ across geographic areas, such the EU and its trade partner countries. Such often substantial differences represent an obstacle for trade in recyclable and secondary raw material, hindering efficient material circularity both within the EU and between the EU and third countries. Similarly, the lack of harmonised common definitions for end-of-life products, non-hazardous waste, or secondary raw material, hampers circularity efforts.

Building on the above – and looking at it from another angle – the EU’s push to implement clear and appropriately stringent standards and criteria within its own territory will be an important factor determining the quantity and quality of recyclable waste and secondary raw material going out and coming in to the EU through trade. This in turn encourages EU trade partner countries to match their criteria and standards with those of the EU, resulting in the elevation of standards globally.

The main measures within the EU Circular Economy Action Plan which present important elements in relation to definitions, standards and criteria for recyclable waste and secondary raw material include the following:

Improving product standards: The measures in the EU eco-design working plan promote the reparability, durability, recyclability and energy efficiency of products¹⁰⁸. These can be considered as key criteria for circular economy ‘compatible’ products, e.g. products traded under EU FTAs. Consequently, clarifying and mainstreaming eco-design criteria for circular economy within the EU (e.g. through labelling) can help to facilitate their active promotion in the context of EU trade as part of the EU FTA TSD Chapters’ provisions on facilitating trade in environmental goods and services.

Improving criteria for recyclable waste and secondary raw material: Within the actions related to markets for secondary raw materials, the development of quality standards on the treatment of waste and on secondary raw materials will be crucial to a sustainable, functioning global market for secondary raw materials. The EU’s rules on end-of-life waste are not fully harmonised, making it difficult to define when waste becomes a new product. Better clarification on which substances are hazardous and which are not is also required as well as more information on the presence of such substances. When finalised and adopted, these EU standards could also help to set a benchmark for corresponding standards in its trade partner countries.

¹⁰⁵ [EC](#) (2018) and [EC](#) (2019)

¹⁰⁶ [Eurostat](#) (2018)

¹⁰⁷ Analysis building on [Kettunen et al.](#) (2019)

¹⁰⁸ [EC](#) (2016)

Examples of potential improvements to the existing standards include: harmonised standards for recycled waste helping to ensure safer utilisation and trade of secondary raw materials; improved transparency on the treatment of waste providing more knowledge on waste treatment once exported abroad leading to better quality of treatment; and common specifications on chemicals composition ensuring more transparency on chemical content of products, clarifying possibilities for their recycling and reuse.

Better regulation of waste shipments for treatment outside the EU: The Circular Economy Action plan foresees stepping up the enforcement of the EU Waste Shipment Regulation that regulates the shipment of waste as secondary raw material to third countries. Recent studies have reported severe violations of the Regulation by the Member States, for example highlighting illegal exports of electronic waste from the EU to third countries¹⁰⁹. Consequently, improving the implementation of the regulative framework linked to the quality of EU exports can play a significant role in improving the environmental sustainability and performance of EU trade.

8.4 Conclusion and way forward

The EU circular economy policy framework can support a shift from linear to circular economy not only in the EU but also globally. More sustainable use of resources supported by standards for durable and recyclable products, recyclable waste and secondary raw materials can be supported by trade rules established between the EU and third countries.

The blueprint for the new European Commission – the European Green Deal – foresees that in March 2020 the Commission will adopt a new circular economy action plan aiming to help modernise the EU's economy and draw benefits from the opportunities of the circular economy domestically and globally¹¹⁰. One aim set for the new policy framework is to stimulate the development of lead markets for climate neutral and circular products, in the EU and beyond.

The updated and expanded EU circular economy action plan puts the development of standards and criteria into the heart of EU policy action. It foresees the adoption of a sustainable products policy to support the circular design of all products, based on a common methodology and principles. Furthermore, it aims to set minimum requirements to prevent environmentally harmful products from being placed on the EU market, while considering legal requirements to boost the market of secondary raw materials.

In conjunction with the above, a number of trade policy related actions are required to enable EU's trade policy to be mutually supportive with the circular economy agenda¹¹¹:

The EU Sustainability Impact Assessments (SIAs) which underpin all EU FTAs already play a role in assessing the contributions of the agreements to resource efficiency objectives and promoting sustainable production and consumption. However, they still lack a proper and explicit consideration of circular economy related aspects. More explicit and in-depth integration of circular economy

¹⁰⁹ [Efface project](#) (2015) and [BAN](#) (2018)

¹¹⁰ [European Green Deal](#) (Dec 2019)

¹¹¹ [Kettunen et al.](#) (2019)

considerations into EU SIAs would be beneficial to strengthen trade's role in advancing sustainable circular economy agenda.

Similarly, the potential of EU FTAs themselves could be further utilised. This would include ensuring the integration of circular economy aspects into the agreements' Trade and Sustainable Development Chapters (TSD) and, ideally, integrating circular economy as an underpinning criterion of all sector specific provisions covered by the FTA (forestry, agriculture etc.)