



Joint CSO submission to the open public consultation on the Trade and Sustainable Development (TSD) Review

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

The ratification of the main human and labour rights as well as the main environmental conventions should be required before ending FTA negotiations. It is during the negotiations that the EU has more leverage to demand efforts from third countries. Additionally, the EU has a legal obligation (see art 21 TEU) to design and implement its external policies in order “to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law”. The EU trade policy should support and promote initiatives pushed by civil society and the establishment of policies in support of more sustainable economies. Furthermore, FTAs should require the ratification of international conventions and make them essential clauses of the agreement. The implementation enforcement of the fundamental International Labour Organisation (ILO) conventions, environmental conventions, such as the Paris Agreement, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) by EU Member States as well as by our trade partners constitute a key precondition to ensure safe and decent working conditions, and that trade benefits everyone.

Hence, it should be recognised that States Parties must respect and enforce human rights as stated in the Universal Declaration of Human Rights, the customary law and the international conventions to which they are part. Likewise, it should be clearly stated that investors and companies have to respect international human rights law and domestic human rights law that does not contradict international standards.

The EU should ensure that international law does not become more fragmented by avoiding the co-existence of legal regimes that rule independently and often contradict each other, as this leads to the State's risk of contravening one of its obligations (for example human rights) to comply with another (for example FTA or IPA).

The EU trade and investment policy should put at its core:

- The creation of decent jobs and the protection of fundamental and human rights, including workers' rights, women's rights and trade union rights
- The generation of living incomes and living wages
- The preservation of the environment and biodiversity
- The fight against climate change
- The safeguarding of high-quality public services
- The strengthening of Europe's industrial basis.

Through such a reform, trade can become a more effective tool to strengthen economic performance, to create decent jobs and to boost sustainable and inclusive development. The exclusive competence of the EU on external trade policy provides it with a unique and valuable tool to advance its policies and international standards.

The implementation of the TSD chapters should be based on positive incentives for trading partners that implement policies that promote labour rights and sustainable practices.

FTAs should systematically be accompanied by Sustainable Impact Assessments (SIAs) that address human and labour rights and environmental concerns, and that are conducted before and after the FTA's conclusion. To enhance the quality of ex-ante SIAs, civil society organisations should be part of the Steering Committees and their inputs should be properly taken into account, while human and labour rights experts with a proven track record should conduct the assessment. The ex-post assessment should be more detailed and offer an in-depth analysis of the impacts of the agreement on human and labour rights and the environment. Currently, SIA mainly list activities without assessing seriously their impacts on the ground. All recommendations of the EU ombudsman should be implemented.

With countries known for lacking respect for fundamental freedoms, the rule of law and access to remedies, FTAs should provide dedicated complaint mechanisms to deal with the negative impacts of the FTA. Otherwise, FTAs face the risk of contributing to the violation of labour and human rights and to environmental degradation. The complaint mechanism should be open not only to EU stakeholders but also stakeholders based in the partner country. Raising issues related to the EU and the partner country's behaviour, the mechanism should be problems solving oriented by agreeing on negotiated plans. The procedural disciplines should be defined in detail and offer specific guarantees to the petitioners, such as time-bound answers, an in-depth investigation and access to judicial review of the legal assessment.

The TSD chapters should foresee procedures and bodies that enable a continuous involvement of civil society and all stakeholders on the ground, including the establishment of independent complaint mechanisms. Citizens and Human Rights Defenders (HRDs) should be provided with a procedure that allows them to file complaints when State Parties do not respect their obligations or when the FTA turns out to negatively impact the respect of human rights.

Finally, to effectively address the violation of TSD chapters, the EU should ensure means of enforcement. Currently, labour rights and environmental protection are laid down in TSD chapters, which are often considered as less relevant chapters due to the fact that they are the only chapters in FTAs not subject to the general Dispute Settlement Mechanism (DSM). Hence, TSD chapters should be covered by the DSM, with dispute settlement not ending with recommendation to the parties, but penalties if a party does not

comply with the sentence. Penalties should consider the guarantee of non-repetition and could take the form of trade sanctions or financial penalties. The human rights clause could serve as a means of last resort to seek enforcement, is not satisfactory in the means it is currently applied as a discretionary power, without clear procedures in place.

The human rights clause should not only require the EU to envisage the suspension of parts of the FTA when violations occur, but the clause should be also mobilised to create dedicated mechanisms and problem-solving processes adapted to the situation and to promote tripartite dialogue. In other words, a more creative use of the human rights clause is needed from the EU. Regarding investment agreements, the non-involvement in human rights violations, as defined in international and domestic law, should be put as a precondition for the investor to be protected by the agreement. The exhaustion of domestic remedies should be required before being allowed to activate the dispute settlement mechanism, which should be a state-to state and not an investor-state dispute settlement mechanism.

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

The collaboration between the European Commission and the European Parliament can still be improved significantly. For example, the Commission does not consider the recommendations made by the Parliament, such as the Parliament's non-legislative resolution of 12 February 2020 on the draft Council decision on the conclusion of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam 41. This resolution calls for the EU and Vietnam to set up an independent monitoring mechanism on human rights and an independent complaints mechanism to provide affected citizens and local stakeholders with effective recourse to remedy. It further demands to address the FTA's potential negative impacts on human rights, notably through the application of the state-to-state dispute settlement mechanism to the TSD chapter. The same counts for all other resolutions that ask for having a chapter on human rights in the agreements and a more efficient dispute settlement mechanism.

Civil society and social partners have played an important role in pressing for changes, such as the setting up of the CTEO, and the initiation of the South Korea complaint.

We recommend that the ILO, the UN Special Procedures and the UN Treaties Monitoring Bodies should take a more important part in monitoring the implementation of the international conventions agreed on in FTAs. Furthermore, TSD chapters should develop deeper links with the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), promoting the ratification of its Conventions, with the OECD Guidelines for Multinational Enterprises and with the UN Guiding Principles on Business and Human Rights. Additionally, the European Commission should establish high-level meetings between the Directorate-General for Employment, the European Economic and Social Committee (EESC) and the possibly Domestic Advisory Group (DAG) presidencies. Additionally, the Commission should involve the EESC and DAGs in the oversight of projects on responsible business together with the OECD and the ILO .

The future design of FTAs should be guided by four principles. Firstly, FTAs should be democratised through closer cooperation with the European Parliament and Member States as well as civil society. This would make the decision-making process more inclusive as it opens new channels to voice interests and more actors take part in the policy-formulation process. This would mean continuing the inclusive approach towards policy-formulation, while finding a balance between legitimacy (take decisions inclusively) and efficiency (ability to take decisions) considerations.

Secondly, FTAs should be developed through the consultation of international organizations (in the EU and partner countries) in the field of labour and human rights, environmental protection and sustainable development, to enrich the policy-formulation and implementation process with experiences and evidence from the past and with the knowledge of specialised actors. Last but not least, international organizations play an important role to pinpoint policy gaps and in finding ways to fix the gaps. This would base FTAs on expertise in addition to inputs from the European Commission.

Thirdly, FTAs should be better legitimised through the involvement of representative bodies from the supranational level and the international level, leading to more transparency and political responsiveness.

Fourthly and finally, FTAs should be realised through greater cooperation between the EU institutions and Member States to ensure that the Commission fulfils its obligations to enforce its TSD commitments. In this context, there should be a constant dialogue between the Commission, the European Parliament, and the Council to monitor and report on the status of implementation.

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

To maintain the support of stakeholders, the Commission should establish consultation procedures that enable stakeholders to feed into the process in a timely manner, and that ensure concerns raised are duly and appropriately addressed. In this spirit, the Commission should also increase access to information during the negotiation of FTAs and extend the advisory role of civil society actors. The Commission should carry out an ex ante and ex post environmental, human and labour rights impact assessment that should involve the actors mentioned above both at EU and non-EU level.

DAGs were established with the primary function to monitor the implementation of TSD chapters. The involvement of DAGs, other representatives of employers as well as environmental and other non-governmental organisations leads, firstly, to informed policymaking and broad co-ownership, and secondly, to the possibility to rely on local monitoring mechanisms and to early identify violations related to environmental protection and human and labour rights.

However, in practice, monitoring capacities remain limited as the primary occupation of DAGs still involve logistical and information-sharing activities. This prevents DAGs of contributing meaningfully to ensuring/monitoring sustainable development in EU trade agreements. Hence, DAGs should be extensively supported in capacity building through financial and logistical support and by institutionalizing dialogue between DAGs and European institutions, international organizations, such as the ILO and the OECD, and other relevant stakeholders.

Hence, we demand that the role of DAGs should not be limited to the TSD chapter, as is the case in most FTAs, but should cover the whole agreement as all FTA elements can have an impact on the labour, environment and human rights. Concretely, the role of DAGs should be strengthened by:

- Providing for more frequent and detailed reporting (including on the implementation of the TSD-chapter and complaints under the SEP) and require the same from trade partners. Relevant information should be shared with DAGs directly throughout the year.
- Establishing feedback procedures in which the Commission (and particularly the CTEO) officially responds to concerns and recommendations raised by DAGs. DAGs should be able to provide clear recommendations to the EC and to partner countries, and both should respond to those recommendations.

- Involving the DAGs in the annual FTA implementation report (including its dedicated chapter on TSD implementation) especially in the preparation phase. It should provide timely and comprehensive information and documentation and invite DAGs' presidencies to exchange views at the TSD Committee meetings and subsequently grant DAG presidencies time to consult with respective DAG members before submitting final views.
- Clarifying and deepening the monitoring functions of DAGs, including the priorities of DAGs as part of the EU's priorities in the implementation of TSD chapters. In case suggested priorities are not included, the Commission should justify its decision as already done in some FTAs.
- Supporting EU and non-EU DAGs with sufficient financial support and technical resources.
- Providing the right to DAGs to present the view of the DAG in meetings of the TSD Committee and other meetings between the parties of FTAs. While this is existing practice in some DAGs, other DAGs currently not enjoying this ability should request this, and the European Commission should support such requests.
- Reinforcing transparency, publishing reports of the TSD Committee and other committees, and by publishing the letters notes, recommendation and statements made by the DAGs
- Ensuring the independence and the institutionalisation of DAGs by avoiding vague wording or reference to pre-existing domestic institutions. Wording committing parties should set up DGAs that are composed of independent civil society representatives of employers, workers, and other human rights and environmental interests. Members should be designated to be part of the DAG for 3 years with the possibility for renewal and should be in charge of monitoring the implementation of TSD chapters, including the impact of other obligations on the realisation of TSD commitments. In doing this, they should issue recommendations, ask for clarification, address requests to the Chief Trade Enforcement Officer (CTEO) if needed, meet back-to-back on the same day as the TSD Committee, and participate in the agenda-setting of an annual Forum, which should be open to civil society without undue restriction.
- Securing the participation of the DAG in the dispute settlement mechanism by obliging current participants to accept and specifically answer them, and by guaranteeing the publicity of the debates, hearing, reports and conclusions.
- Extending the mandate of the CTEO to receive complaint from the civil societies of partner countries.

Question 4: In the last years the EU has focused its implementation efforts on specific priorities/partner countries. What would you highlight as the main achievements and/or shortcomings and what improvements could be considered in this regard?

We welcome a more focused and strategic approach on specific labour-related issues that partner countries face, as this helps achieve more tangible results on the ground. We suggest improving the consultation with civil society, notably the DAGs, to identify the priorities, and require a regular assessment on the progress or regression of those priorities by the Geographical Units in DG Trade. Also, EU Delegations should interact more with DAGs in EU and in partner countries to obtain input and to provide systematic feedback. Finally, concrete action plans should be developed between EU and partner countries to enforce implementation of TSD commitments. This could further strengthen the effectiveness of DAGs.

More attention should be paid to human rights. Being an essential element of FTAs, the EU should not be shy to raise concerns about human rights that are linked to the implementation of the FTA. In addition, the EU should provide necessary assistance to partner countries so that they can address the root causes of human rights violations, rather than only putting in place a system of trade agreements that punish and do not assist.

In view of the lack of precise commitments, the setting-up of clear obligations, instead of vague wording, such as “making their best efforts” and “parties will promote, constitutes the main room of improvement.

Question 5: How can synergies between TSD implementation and development cooperation be further explored? What type of supporting measures for developing partner countries would be needed?

Third countries would need more technical assistance in the implementation of policies for sustainable development. This includes the effective enforcement of TSD commitments through incentives, including support of capacity-building and rewards on the one hand, and effective monitoring and sanctioning on the other. It should also be used to improve the capacities of partner countries, including social dialogue facilitation, occupational health and safety standards, institutional development, and financing labour inspectorates.

Moreover, TSD flanking measures that prevent environmental degradation and labour and human rights infringement, should reflect, and target the needs of third countries. *Ex ante* and *ex post* SIA could serve to identify country-specific challenges and opportunities, followed by EU assistance in those areas where they are falling behind. Technical and financial support should be also used to support the involvement of independent civil society in monitoring and assessing the impact of the FTAs.

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

We propose to strengthen the enforceability of the TSD provisions by making the chapters eligible to the dispute settlement mechanism and by allowing the latter to be triggered by civil society. The focus should be on positive implementation, however, coupled with sanctions as a last resort, including the temporary suspension of benefits. In addition, there should be sanctions, such as the withdrawal of tariff reductions, in case of a breach of TSD commitments.

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

We welcome the creation of the CTEO, the Single Entry Point (SEP) and the launch of a complaint system for reporting market access barriers and breaches of commitments given in the context of TSD chapters and the Generalised Scheme of Preferences. However, while the creation of the CTEO is a step towards a stronger prioritisation of the enforcement dimension, it needs to be improved. We would expect the CTEO to provide timely and detailed reports to the EU institutions, including the European Economic and Social Committee, disclosing the list of cases submitted and informing about the different steps of the process. Furthermore, it should report to the appropriate DAGs as well as maintain regular contacts with stakeholders including through the Civil Society Dialogue.

This would include the relevant DAGs in the pre-notification and following phases of the procedure, equipping them with procedural rights. Each complaint should result in a final public report that sets out clearly if and how human rights have been breached and what action is to be expected from the business and/or government involved. The possibility to apply sanctions should be part of the mechanism. Also, the CTEO should be mandated to receive complaints from parties in third countries related to social and environmental impacts. Finally, the CTEO should be required to investigate cases that are submitted by a DAG. It is important for the CTEO to be transparent on which complaints will not be considered, and for what reasons. The DAGs can provide input to such prioritisation.

Furthermore, the SEP is regulated by the Operating Guidelines rather than being based on a legal instrument. The complaint mechanism should be further formalised by rules adopted through the

ordinary legislative procedure, and opened up to third countries stakeholders, including HRDs. This could be modelled after the timelines contained in the EU Trade Barriers Regulation, namely with time-limited responses, in depth investigations by the Commission and with judicial control by the European Courts of legal assessment.

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

First of all, TSD obligations are often less clear (aspirational and programmatic) and compliance therefore more difficult to assess. The expectations of the DAGs can suffer from the same vagueness and confusion. Clarity on both fronts would make easier for DAGs to set benchmarks and contribute to the realisation of the TSD chapters and a concrete action plan and benchmarks is crucial.

Civil society and particularly DAGs have struggled with the lack of proper information and reporting from both EU and partner countries. Hence, more reporting is necessary from the EC and from partner countries and the annual FTA implementation report should involve DAGs in its preparation phase. To provide better reporting (and to assist in implementation) the EU can resort to the EU delegations in partner countries.

Transparency is key for Social Partners to be able to contribute to the oversight of FTAs. Minutes of meetings should be consistently published in the relevant websites. Civil Society Dialogue meetings are an important channel; however, they must improve towards a more structured follow-up.

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

There needs to be a targeted approach based on country priorities, sustainability considerations and human rights priorities. Remedies should be put in place to ensure effective enforcement of human rights, labour rights and environmental commitments.

Sanctions in the case of a breach of TSD provisions could include a (temporary) withdrawal of tariff reductions. In case of a serious breach of TSD commitments, the EU should be allowed to suspend the whole or parts of the trade agreement. This can be topped up with specific trade restrictions or the withdrawal of trade preferences. Furthermore, fines for companies and compensation the local population should be part of the remedies if infringements on human and labour rights are linked to the implementation of the FTA.

We suggest a series of improvements to strengthen TSD chapters to live up fully to their legally binding commitments which are the following:

- We consider the ratification and implementation of the eight ILO Core Labour Standards, as well as compliance of up-to-date ILO conventions and instruments such as the Forced Labour Protocol and ILO Conventions on health and safety at work, are a pre-condition for entering in trade negotiations. The same for core Human rights conventions as CCPR and CESR. However, if a partner country faces specific difficulties to ensure compliance with ratified instruments and the ratification process it must demonstrate through a binding roadmap how this will be achieved in a timely manner. We call the European Commission to establish clear, transparent and binding roadmaps in the pre-negotiating phase, focusing on the implementation of a legal and policy framework to guarantee freedom of association and the right to collective bargaining along with strict labour inspections leading to penalties if workers are mistreated.

- Primacy of social and human rights throughout trade agreements – every part of trade and investment agreements (such as sections on investment protection or service listing) be consistent with human rights commitments. It is crucial that there are commitments to the Decent Work agenda (which include the ILO core conventions) and the Sustainable Development Goals that relate to Decent Work. [The ILO Centenary Declaration for the Future of Work of 21 June 2019 should also be taken in account].
- Trade unions and civil society organizations from EU and partners countries should be able to submit complaints through this mechanism (or SEP) for violations against workers' rights and of human rights.
- Ensure adequate resources are provided to enable trade unions and civil society organizations from EU and partners countries to be involved in monitoring labour and human rights commitments in agreements and post a Labour and Human Rights Attachés in EU Missions.

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

Disadvantages could be created if additional remedies are not carefully planned with a proper and timely ex ante sustainability, human and rights and environmental impact assessment and if they do not involve civil society consultation in their setting up. There should also be possibility to address this in ex post sustainability, human rights and environmental impact assessment and it should also be triggered in case disadvantages are reported by either party to the agreement.

However, more mechanisms for effective enforcement of TSD commitments are needed and as the objective is of sustainable development for both partners, they have to be carefully designed to work for sustainable development for both EU and partner countries. In fact, there is a need to involve more partners on the ground, that includes the EU delegations.

If carefully designed, we see only advantages in introducing remedies for the enforcement of TSD chapters since this would not impede the Commission to remain engaged and cooperate with the other partner. On the contrary, it would give an incentive to improve the situation on the ground as sanctions would be lifted.

Question 11: Are there remedies used by other countries that you think should be considered?

In 2019, the United States, Mexico and Canada updated NAFTA to create United States–Mexico–Canada Agreement (USMCA) which contains, amongst others, a Rapid-Response Labour Mechanism (RRM) to strengthen worker rights and unions in Mexico. The mechanism allows the review of factory-specific labour grievances and could ultimately result in import restrictions on the plant's products. In May 2021, FL-CIO, the largest labour federation of the United States, petitioned the United States Trade Representative Office (USTR) to review allegations that an auto parts factory of Tridonex, a subsidiary of Cardone Industries, in the city of Matamoros denied workers collective bargaining and free association rights. In August 2021, USTR and Tridonex announced that an agreement was found, marking the first time that the RRM was successfully used in response to an RRM petition.

The Rapid-Response Enhanced Labour Enforcement is in response to the existing State-to-state dispute settlement not being effective to ensure that U.S. trading partners live up to their labour commitments. In recognition of this concern, it has been established a new and enhanced labour-specific enforcement mechanism that:

- Takes immediate effect upon entry into force of the agreement;

- Provides for facility-based enforcement of labour obligations in the agreement within a rapid timeframe;
- Covers all manufactured goods and all services traded between the United States and Mexico;
- Requires verification of compliance by independent labour experts; and
- Leads to penalties on goods and services that are not produced in compliance with the freedom of association and collective bargaining obligations.

Other innovations include the establishment of rules of evidence (rules that will help the United States successfully litigate labour, environmental, and other fact-intensive disputes), creating a presumption that a labour violation affects trade and investment and will require the other government to prove otherwise, strengthened monitoring and reporting, the establishment of key benchmarks for Mexico's labour reform implementation process (failure to comply with these benchmarks will lead to enforcement action under the agreement).

We call on the European Commission to duly consider the proposals made jointly by France and the Netherlands to improve and reform the Trade and Sustainable Development chapters in EU FTAs, notably the staged implementation of tariff reduction linked to the effective implementation of TSD provisions and the possibility to withdraw specific tariff lines in the event of a breach of those provisions. Furthermore, we call on the Commission to learn from the US-Mexico-Canada (USMCA) agreement, which includes a new approach to labour dispute settlement that allows imposing remedies directly on a non-compliant company.

Green agenda

The TPR Communication calls for trade policy to become a pillar of the EU green agenda and proposes concrete steps to take this forward, including by promoting climate and sustainability considerations in the WTO, seeking climate neutrality commitments from G20 partners, and making the respect of the Paris Agreement on Climate Change an essential element in all future agreements. The TPR Communication also highlights other aspects of the European Green Deal such as biodiversity - the European Commission has developed a new methodology for assessing the impacts of trade liberalisation on biodiversity and ecosystems, which will contribute to further improve the sustainability impact assessments and ex-post evaluations of the EU trade agreements - and circular economy, and the important role of the implementation and enforcement of TSD chapters to support the green transition and promote responsible and sustainable value chains. The review will explore how to make this contribution the most effective.

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

The TSD chapters should promote agroecology and organic farming by establishing criteria for sustainable production entitled to trade privileged or preferential tariffs and by introducing an open sustainable agriculture and forestry adjustment mechanism.

The EU should promote fair and ethical trade supply chains through a proactive implementation of TSD chapters. The inclusion of dedicated clauses for responsible management of supply chains in the TSD Chapters should be included in all past and future trade agreements. This is linked also to the promotion of sustainable goods and services, for which we call for the promotion of fair and ethical schemes that protect the environment, guarantee decent work conditions and integrated principles of responsible business conduct.

However, agreements must integrate obligations for human rights and environmental supply chain due diligence and should integrate State's obligation to protect human rights, including by ensuring the private sector under its jurisdiction respect the International Bill of human rights.

Moreover, EU trade policy should be designed in a way that guarantees that national governments have room for manoeuvre to ensure a just transition towards a circular and carbon-neutral economy. In the same vein, EU trade policy should be combined with further efforts to clean and decarbonise international transport.

Finally, the European Commission and the EU Member States should ensure the proper implementation of the EU timber regulation to combat illegal logging.

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

To begin with, ILO conventions should not only be ratified, but also effectively implemented as part of the commitments. Thus, the conclusion of FTAs should be conditioned on the protection of human and workers' rights and linked to responsible business conduct and sustainable corporate governance.

Moreover, TSD chapters should include binding provisions, mandating parties to put in force and enforce labour laws through national law and international conventions. These provisions should then fall under the general dispute settlement mechanism. Last but not least, the participation of trade unions in the implementation of labour provisions should be ensured across the entire FTA, while institutionalising a close cooperation between the EU, partner countries and the ILO.

We believe that respect of labour commitments should be the main focus of TSD implementation. The ratification, implementation and enforcement of the ILO Conventions on freedom of association and collective bargaining, together with all ILO fundamental and up-to-date conventions and the ILO Decent Work agenda, by the EU Member States as well as by our trade partners, constitute a key precondition to ensure safe and decent working conditions, and that trade benefits everyone. The EU should use its global trade network to ensure a more even implementation of social and labour standards by both investors and governments. Bilateral trade agreements have a particularly important leverage that needs to be used effectively before their conclusion and throughout their implementation and enforcement. The leverage to secure ratifications of core ILO Conventions remains the highest during the negotiations and before their conclusion

At international level, we call on the EU and its Member States to secure more effective and binding international instruments, in particular by stepping-up support for a UN Binding treaty on business and human rights and work towards the establishment of an ILO Convention on decent work in supply chains.

The EU must also commit to include a gender dimension in its trade policy by ensuring the respect of international labour standards regarding gender equality and rights of women workers at work. We call for the respect of ILO Convention 100 on Equal Remuneration; Convention 111 on Discrimination in Respect of Employment and Occupation (which promotes non-discrimination in the workplace); Convention 183 on Maternity protection; and Convention 190 on Violence and Harassment.

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

By making the commitments in the TSD chapters more concrete and enforceable, TSD chapters would contribute to building a fairer and more resilient trade system. Going back to business as usual is not an

option. Rather the EU regulation needs to improve the global value chain, tackle unbalances of power and guarantee that all actors within the supply chain receive a living wage. That is the only way to a socially just and fair economic recovery.

The EU should prioritise the enforcement of ILO conventions and labour and human rights as well as the eradication of practices that contribute to biodiversity degradation and deforestation.

A ban on products made involving forced and child labour, for example, can be an initial action, but this is not the end solution. The EU must engage with its partner countries to address the root causes of these problems, in particular the lack of living incomes and living wages, which are often linked to abusive purchasing practices. The drafting of TSD Chapters must take into account that the access to just and favourable remuneration is a human right, and that living incomes and living wages are a pre-condition to the enjoyment of other human rights. This implies that concrete steps shall be undertaken to achieve these objectives as part of the TSD Chapters.

Furthermore, The EU must ensure that all of its imports comply with high environmental standards and do not have adverse impacts overseas (e.g. Commodities associated with deforestation).

While the EU should restrict imports that would worsen its global environmental footprint, it also should not export goods to countries that would not be acceptable on its own market. A step in that direction has already been taken under the EU Chemicals Strategy for Sustainability, which commits to ensuring that hazardous chemicals banned in the EU are not produced for export.

Developing a legal framework that ensures responsible and sustainable supply chains both in the EU and abroad will constitute an important building block towards more sustainable trade.

Implementation and enforcement of TSD chapters can complement and support the EU's multilateral and autonomous initiatives.

Furthermore, on 23 July 2019, the European Commission adopted an EU Communication on Stepping up EU Action to Protect and Restore the World's Forests. In this Communication, the European Commission made it clear that they want to use several means to reduce deforestation and they are acknowledging that multiple actions are needed. The complementarity and support between TSD chapters in FTAs and other's EU initiatives is well reflected in the priority three of the Communication 'Strengthen international cooperation to halt deforestation and forest degradation and encourage forest restoration'. On one hand, it says that the Commission will Strengthen cooperation on policies and actions to halt deforestation, forest degradation and restore forests in key international fora, including the Food and Agriculture Organization (FAO), G7/G20, the UN Framework Convention on Climate Change (UNFCCC), the UN Forum on Forests (UNFF), the Convention on Biological Diversity (CBD) and on the other hand it says that the Commission will 'Promote trade agreements that include provisions on the conservation and sustainable management of forests and further encourage trade of agricultural and forest-based products not causing deforestation or forest degradation. The Commission will also explore possibilities to provide incentives to trade partners to address deforestation. It will engage with trading countries to step-up implementation and enforcement of relevant provisions in the EU trade agreements and will draw lessons from these experiences.'

Finally, as a follow up of this Communication, the Commission has decided to develop an autonomous initiative through the adoption of a Regulation to minimise the risk of deforestation and forest degradation associated with commodity imports in the EU.

Those different tools and instruments show that the Commission's ambition to tackle deforestation but also shows the synergies among those, but more can be done on the efficiency of TSD chapters.

As the main instruments of EU external policy, free trade agreements (FTAs) provide for an essential space for building consensus with trade partners on environmental issues and an opportunity for the EU to promote and support the achievement of sustainability objectives at global level.

It will therefore be key that TSD chapters reflect as much as possible this level of ambition by integrating more substantive obligations towards Parties to halt deforestation.

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

We welcome the introduction of the proposal on a chapter on the sustainable food systems in the context of the modernization of some association agreements. Considering the points expressed above in relation to TSD chapters and how to improve them, it is crucial that from the outset, that future sustainable food systems chapters consider past experiences and avoid reiterating some patterns that impede effective implementation. In this sense, sustainable food systems chapters should:

- Be binding and subject to the same dispute settlement mechanism as other parts of the trade agreement.
- Establish real enforceable commitments and not only refer to processes. The creation of contingency plans between EU and partner countries can be a good starting point but it needs to contain concrete enforceable commitments. It must also include reference to living incomes and living wages of small farmers and producers and not only focus on environment and animal welfare.
- Should be drafted in accordance with the current work of the Commission under the F2F strategy, specially aligned with the upcoming proposal for a legislative framework for sustainable food systems.