

# Trade agreements and sustainability

## INNOVATIONS AND ILLUSIONS IN EU AND US AGREEMENTS

As the climate emergency deepens, governments, civil society, corporations and individuals must pursue multiple paths in order to meet or exceed the goals of the Paris Climate Agreement. The Paris Agreement is not self-enforcing, and the commitments of the signatory governments are voluntary. In contrast with the Paris Agreement, free trade agreements (FTAs) and World Trade Organization (WTO) rules can be enforceable, with dispute settlement mechanisms and the possibility of penalties, including tariffs on goods from offending countries. This disconnect opens the door to corporations offshoring polluting industries to avoid the costs of the climate transition, and conflicts between trade rules and measures to effectively reduce climate-altering emissions.

[Policymakers](#) and think tanks among others have therefore looked to trade agreements as a potential mechanism to create enforceable cross-border commitments on climate, either linked to the Paris Agreement or independent of it. Many of these proposals have originated in the European Union, where the [mere mention](#) of climate in its agreements is touted as groundbreaking. Now that the United States has [recommitted to the Paris Agreement](#) and begun a review of its trading relationships and policy, an upswell of [voices](#) have suggested that U.S. trade agreements, too, could be vehicles to address climate change. But just how suited are these agreements to this purpose?

The unfolding climate crisis requires a rethinking of trade policy to ensure that governments are free to take ambitious actions to meet their climate commitments. Recent developments in EU, U.K. and U.S. trade policy, while arguably mainly rhetorical, could indicate some first steps towards a new approach.

## THE SUSTAINABLE DEVELOPMENT CHAPTERS OF EU TRADE AGREEMENTS

Many of the EU's trade agreements include chapters on Trade and Sustainable Development (TSD), which address both labor and environmental concerns and may include specific climate-related text. The EU-Mercosur Trade Agreement, which has been approved by negotiators but not ratified by EU member states, has been held up by the European Commission as the most comprehensive of its FTAs in addressing climate change and associated environmental harm. Indeed, the Commission's Directorate-General for Trade recently asserted in a [letter](#) to the Seattle to Brussels Network responding to criticism of the EU-Mercosur agreement, "A particularly important element of this [TSD] chapter is the legally binding commitment for all Parties to effectively implement the Paris Agreement."

Yet in contrast to the politicians' soaring rhetoric, a considerable body of analysis agrees the TSD chapters are fairly useless both as written and as applied.<sup>1</sup> The environmental commitments are aspirational but vague. For example, while recent trade agreements state the Parties' support for the Paris Agreement and addressing



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climate change, these commitments do not include specific deliverables or provide any protections from trade-based challenges when countries prioritize their climate commitments over trade commitments. The TSD chapters are not subject to dispute settlement procedures outside of expert panel consultations, which can only issue advisory opinions. There are no provisions for any sanctions or consequences for non-compliance. Independent legal analyses, including from [law professors](#), the environmental NGO [ClientEarth](#) and the faith-based social justice organization [CIDSE](#), agree that the proposed EU-Mercosur agreement would be no more enforceable than prior FTAs. In the words of CIDSE, “as it currently stands, the Trade and Sustainable Development Chapter is unfit for the 21st centuries. Its declarations of intent will not be enough to protect biodiversity, to fight climate change, and to ensure that human rights are not sacrificed in favour of profits.”<sup>2</sup>

## THE ENVIRONMENT CHAPTERS IN U.S. FTAS

The U.S. has taken a different approach in its FTAs, but to date, its environmental commitments have been no more effective in promoting sustainable policies generally or addressing climate change specifically. The Environment Chapters in recent U.S. trade agreements include commitments to comply with some Multilateral Environmental Agreements (MEAs) to which the FTA parties have each signed on. But besides the (short) list of MEAs, the text is generally not very specific and focuses mostly on not reducing current levels of protection in domestic laws — rather than committing to increased levels of environmental ambition and enforcement. Climate is not specifically addressed. Under the negotiating objectives enacted by Congress in 2015, trade agreements may not include U.S. obligations “regarding greenhouse gas emissions.”<sup>3</sup> While that policy expired on July 1, 2021, the renegotiated North American Free Trade Agreement (the [U.S.-Mexico-Canada Agreement](#) or USMCA) reflects this prohibition, as does the rebranded “[Comprehensive and Progressive](#)” [Trans-Pacific Partnership](#) — even though the U.S. ultimately backed out of it.<sup>4</sup>

Both the Environment and Labor chapters in U.S. FTAs are subject to dispute settlement and penalties. While theoretically enforceable, in practice, they have almost never been enforced. This is [due to many factors](#) including a [lack of will](#) to bring enforcement cases, delays or obstruction in appointing dispute settlement panels, and [restrictive text that sets impossible standards](#), including the requirement that the challenged action or nonaction be sustained or recurring and “related to trade.”<sup>5</sup>

## Some potentially useful developments in the EU and U.S.

### U.S. TRADE POLICY REFORMS

Under the [Protocol of Amendment](#) to the USMCA that was negotiated by members of the House of Representatives (led by now-United States Trade Representative (USTR) Katherine Tai), some of the deficiencies of the [Environment Chapter](#) have been fixed up, at least on paper. There is new language establishing a presumption that the challenged action is related to trade and preventing the blocking of appointments to a dispute resolution panel. Other changes create an Interagency Environment Committee for Monitoring and Enforcement and establish environment-focused attachés in Mexico City to monitor compliance with the agreement. Still, the protections are weaker than those established for labor. The revised Environment Chapter does not include a rapid-response mechanism analogous to that in the Labor Chapter [Annex 31-A and 31-B]. The [Labor Chapter](#) also appears to have more robust provisions for third-party complaints. The availability of a third-party complaint process to trigger investigation and enforcement is one of the reforms widely recommended in the literature.<sup>6</sup>

The amended USMCA text provides that additional MEAs can be added to the commitments of the chapter, which means the Paris Agreement could be included. Significantly, the amended text adds a “supremacy clause” to Chapter 1, Initial Provisions and General Definitions: a “particular measure” to comply with

obligations of a listed MEA “covered agreement,” including MEAs added to the chapter in the future, takes precedence over a conflicting obligation of another part of the FTA, so long as “the primary purpose of the measure is not to impose a disguised restriction on trade” [USMCA Chapter 1, Article 1.3.1]. This is an important clarification that is intended to avoid [harmful trade skirmishes](#) under USMCA similar to those brought to the WTO by India and the U.S. over renewable energy programs.<sup>7</sup>

While [Congressional Democrats](#) are pushing to add the Paris Agreement to USMCA, the Biden administration has not yet signaled support. At a June 2021 public forum following the first meeting of the USMCA’s Environment Committee, trade officials from Canada, Mexico and the U.S. were asked if they would support adding the Paris Agreement to the chapter’s enforceable MEAs. Assistant U.S. Trade Representative for Environment and Natural Resources Kelly Milton [stated](#) that USTR is “continuing to analyze whether adding the Paris Agreement ... would in fact make a positive contribution to addressing the climate crisis.” Doug Forsyth, director general for Global Affairs Canada, expressed support for action on climate change but did not directly address the question, and Ricardo Aranda, representing Mexico’s Undersecretariat of International Trade, Secretariat of the Economy, avoided the question entirely by remaining silent.

Proposals to add the Paris Agreement to the USMCA’s Environment Chapter must reckon with the fact that the agreement’s Nationally Determined Contributions (NDCs) are not mandatory. This compares unfavorably to other MEAs listed in the chapter, such as the 1987 [Montreal Protocol](#) on Substances that Deplete the Ozone Layer, that required signatories to enact implementing laws. Thus, it is unclear whether making obligations under the Paris Agreement subject to an FTA’s enforcement mechanism would have any effect.

The USMCA’s introduction of a “supremacy clause” could be an important step in starting to address the overriding truth of both U.S. and EU FTAs, which is the incompatibility of many of the provisions of standard trade agreements with measures to achieve climate objectives, as well as the overall impact of expanded trade increasing greenhouse gas emissions and consumption. As the Heinrich Böll Stiftung paper, [An EU Green Deal for Trade Policy and the Environment](#), put it, “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. ... 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.”

This is just as true in the U.S. context, where the vast majority of the obligations in [recent trade agreements](#) are directed at limiting “non-tariff barriers” including environmental and other protective regulations that can decrease corporate profits. Investor-state dispute settlement (ISDS), a mechanism in many FTAs that empowers corporations to sue governments over public interest laws and override domestic sovereignty, is a prime example of deeply flawed trade policy. It is well established that ISDS has been used repeatedly by corporations to [overturn policies to address climate change](#). While ISDS was phased out between Canada and the U.S. in the USMCA, it was maintained for energy-related disputes with Mexico and remains a mainstay of EU trade agreements.

The USMCA’s “supremacy clause” is an interesting and potentially useful development, but no magic bullet. It doesn’t apply to commitments in the Environment Chapter outside of the parties’ MEA obligations. It can’t fix the many flaws of that chapter, including “obligations” that lack enough substance to be meaningful (for example, the section on Sustainable Forest Management and Trade merely “recognizes the importance” of the issue, and commits only to promote *legal* trade and to exchange information about *illegal* activities) [USMCA Chapt.24.23].

## EU DEVELOPMENTS

There are also recent developments in the EU with implications for the scope and enforceability of TSD commitments. One of these is the December 2020 Trade and Cooperation Agreement (TCA) with the United Kingdom, which sought to address potential regulatory divergences and the EU's interest in maintaining a "level playing field" including with respect to labor and environmental standards that TSD chapters generally address. The TCA allows for a series of "rebalancing" measures (sanctions) which can be imposed unilaterally and rather quickly. [Some commenters](#) view this as a fundamental break with the EU's traditional approach to enforcing sustainability obligations, which as discussed above, hasn't included dispute resolution or sanctions. Opinions are mixed as to whether the required showing of impact on trade represents a [lower threshold](#) than in other EU trade agreements or whether it could be a roadblock to enforcement, just as it has been in pre-USMCA U.S. trade agreements.

The EU is also pursuing enforceable measures aimed at addressing the climate and environmental impacts of cross-border trade independent of any of the [bloc's many trade agreements](#). One policy under serious consideration is a [Carbon Border Adjustment Measure](#) (CBAM). This would tax carbon-intensive goods at the border to prevent "leakage" of emissions that would occur if corporations shift production of energy-intensive goods to countries without comparable carbon pricing and environmental standards.<sup>8</sup> The EU's CBAM proposal is a serious attempt to account for the environmental costs of trade-related carbon emissions, but the unilateral imposition of a carbon border measure raises fundamental questions of fairness, particularly in the [absence of adequate funding](#) or technology transfer for developing countries to transition to cleaner production methods.

Another EU trend is to beef up behind-the-border sustainability standards and require any trading partner to comply with its domestic standards throughout the supply chain. Examples include Timber Regulation (aimed at preventing the entry of illegally sourced timber or timber products on the EU market), Conflict Minerals Regulation (requiring due diligence systems to ensure that certain minerals are sourced from conflict free areas), and more recently, Circular Economy laws (aimed at reducing waste and promoting recycling and sustainability in product design).<sup>9</sup> These sustainability regulations place implementation responsibilities on the private sector, and effectiveness depends on due diligence requirements and enforceability.

## A RENEWED FOCUS ON SUPPLY CHAINS

In creating unilateral obligations on trading partners outside of mutually agreed upon FTAs, these EU regulations have the advantage of being broadly applicable regardless of where the goods come from. However, a disadvantage is the lack of a ready enforcement mechanism, in contrast to FTAs which typically include state-to-state dispute settlement and potential penalties. As we have detailed, the enforceability of environmental obligations in both EU and U.S. FTAs has been ineffective by design, but that could be addressed — as the example of the USMCA reforms suggests.

Currently, the success of the EU's non-FTA sustainability measures largely depends on supply chain oversight. [Disappointment with past outcomes](#) has led to an effort by the European Parliament to require comprehensive oversight of supply chains in an across-the-board proposed directive on corporate due diligence and sustainability. This [directive](#) specifically lists as within its scope obligations under the Paris Agreement, among many other EU laws and international treaties and agreements. Enforcement would be by EU Member States, and companies breaching due diligence rules would face civil liability unless they can show that they acted with all due care. Sanctions could include temporary or indefinite bans from public procurement or state aid, including export credit agencies' support and loans, as well as asset seizures and other administrative sanctions. Parliament's proposal is a recommendation to the European Commission, which is preparing its own legislative [proposal on supply chain due diligence](#) for publication sometime in 2021.

In the U.S. there is also a new focus on supply chains. President Biden’s [Executive Order](#) on supply chain resilience mandated a review across multiple government departments and addressed climate and trade implications. Federal agencies are currently reviewing comments from industry and civil society, [including IATP](#). It is too early to know whether this review will result in regulatory action or legislation comparable to the proposed EU supply chain directives. To date, much of the U.S. supply chain discussion has been about national security and avoiding disruptions in the production of semiconductors or medicines. Climate concerns are at least part of the conversation, though, with USTR Tai [highlighting](#) use of clean energy throughout the supply chain as an “essential ... element of delivering on our commitment to address the full range of practices that compromise the climate.”

## THE ELEPHANT IN THE ROOM

Completely reimagining free trade agreements to be “climate friendly” is no easy task, whether from a political or technical standpoint. Likewise, implementing a carbon tax fairly or ensuring that every link of a supply chain meets sustainability standards — whether as part of an FTA or as a “behind the border” standard — is really complicated. Potentially, any one of these policies could run into further complications and be blocked by the “elephant in the room” — the rules of the WTO. One idea gaining traction is to advance a [climate waiver at the WTO](#) that would exclude from challenge any climate related policies or programs that fit the definitions of climate programs established at the United Nations Framework Convention on Climate Change. In addition to the environmental exceptions set forth in [Article XX](#) of the General Agreement on Tariffs and Trade (GATT), Article IX:3 of the WTO agreement allows for waivers from normal rules of trade liberalization under “exceptional circumstances” if agreed to by three-quarters of the members. A climate waiver probably isn’t imminent, however. It is precisely because of [ongoing WTO disfunction](#), with multiple negotiations at a standstill and the U.S. repeatedly blocking appellate panels, that many countries turned to negotiating bilateral and multilateral FTAs as an alternative.

## A WORK IN PROGRESS

Figuring out how to address a worldwide climate crisis using institutions and instruments developed in the past century isn’t easy. IATP has called for a [complete overhaul](#) of trade policies to realign with 21st century realities, including addressing the climate emergency. The German NGO PowerShift has authored a comprehensive [roadmap for anchoring climate](#) and environmental protection in EU trade agreements. These proposals recognize that reforms to the environment and sustainability chapters in otherwise business-as-usual free trade agreements will fail to address the ways that FTAs in their totality are fundamentally inconsistent with addressing climate change and promoting more sustainable trade.

To date the track record of the environment and sustainable development chapters in both U.S. and EU trade agreements has been poor. The USMCA Environment Chapter changes, including shifting the burden of proof on whether a matter is “trade related” and the insertion of a limited “supremacy clause,” do improve enforceability and could be built upon. Likewise, the EU’s proposed supply chain due diligence reforms, if enacted and enforced, offer a mechanism to prevent and account for trade related climate harms. Combined, these two approaches would be even more effective. Ultimately, it would be far better to include more enforceable provisions directly in the global Paris Agreement or to adapt the WTO to effectively implement climate commitments. In the meantime, we need to use every tool available, even where imperfect, to move climate ambition to climate action.

## ENDNOTES

1. See bibliography at the end of this article.
2. LEGAL OPINION AND PROPOSALS ON EU-MERCOSUR AGREEMENT, May 3, 2021, <https://www.cidse.org/2021/05/03/legal-opinion-and-proposals-on-eu-mercosur-agreement/>.
3. The negotiating objectives established in the “Bipartisan Congressional Trade Priorities and Accountability Act of 2015,” commonly referred to as the Trade Promotion Act (TPA) or “fast track,” were amended by Section 914(b) the Trade Facilitation and Trade Enforcement Act of 2015 to specifically prevent climate-related obligations. The amended negotiating priorities include paragraph (15) “to ensure that trade agreements do not establish obligations for the United States regarding greenhouse gas emissions measures, including obligations that require changes to United States laws or regulations or that would affect the implementation of such laws or regulations, other than those fulfilling the other negotiating objectives in this section.”
4. Australian Government Department of Foreign Affairs and Trade, “CPTPP text and associated documents,” <https://www.dfat.gov.au/trade/agreements/in-force/cptpp/official-documents> (accessed September 16, 2021). The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), which was built off the U.S. model with an environment chapter subject to dispute settlement, fails to address climate change. The toothless section on climate (Article 20.15: Transition to a Low Emissions and Resilient Economy) does not mention the words “climate change” nor the relevant global treaty, the Paris Agreement. It includes general environmental commitments but does not specifically list any MEAs subject to its enforcement provisions and as in all trade agreements, includes other obligations that exacerbate the climate emergency.
5. See, e.g., Environmental Investigation Agency, Briefing, Failure to Enforce Environmental Obligations of Peru FTA (2015), <https://eia-global.org/press-releases/failure-to-implement-and-enforce-key-us-peru-fta-provisions> and Congressional Research Service, Labor Enforcement Issues in U.S. FTAs (updated 2020), <https://crsreports.congress.gov/product/pdf/IF/IF10972>.
6. USMCA limits the right to invoke environmental consultations in Article 24.9 or dispute settlement in Article 24.32 to complaining parties that are parties to the covered agreement. [Article 24.8(i)] However, “any person of a Party” may file a submission with the Secretariat asserting that a Party is failing to effectively enforce its environmental laws. The Secretariat “may” consider the submission if certain criteria are met and if so, must determine within 30 days “whether the submission merits a response” from the Party. [Article 24.27] The Labor Chapter in contrast requires that each party “shall consider matters raised by” public submissions “on matters related to this Chapter” and shall provide a “timely response”. [Article 23.11]
7. In this series of trade challenges, the WTO rejected India’s holding up its commitments under the United Nations Framework Convention on Climate Change as justification for its solar energy measures. India then lodged a successful challenge to U.S. state programs designed along the same lines.
8. Porterfield, Matthew C., Border Adjustments for Carbon Taxes, PPMs, and the WTO (2019). University of Pennsylvania Journal of International Law, Vol. 41, Issue 1, p. 1 (2019), Available at SSRN: <https://ssrn.com/abstract=3529661>.
9. Kettunen et al. “An EU Green Deal for trade policy and the environment: Aligning trade with climate and sustainable development objectives.” In cooperation with Heinrich Böll Stiftung. IEEP Brussels/London. 2020, pages 32045. [https://ieep.eu/uploads/articles/attachments/9c951784-8c12-4ff5-a5c5-ee17c5f9f80b/Trade%20and%20environment\\_FINAL%20\(Jan%202020\).pdf](https://ieep.eu/uploads/articles/attachments/9c951784-8c12-4ff5-a5c5-ee17c5f9f80b/Trade%20and%20environment_FINAL%20(Jan%202020).pdf) (accessed July 1, 2021).

## ANNOTATED BIBLIOGRAPHY

Bronckers, Marco and Gruni, Giovanni. “Retooling the Sustainability Standards in EU Free Trade Agreements”. *Journal of International Economic Law*, Volume 24, Issue 1 (March 2021): 25–51. <https://doi.org/10.1093/jiel/jgab007>. This legal article argues the EU’s weak approach to sustainability in its FTAs needs to be revised, and labor and environmental standards tightened with compliance subject to regular dispute settlement between governments. It discusses the implications of a panel ruling in January 2021 in the long-standing EU–Korea labor dispute, which in theory made sustainability requirements more enforceable. It argues that sanctions must be added to the EU’s toolbox, going beyond trade retaliation, and that private stakeholders should become more involved in monitoring and enforcement, both at the international and at the domestic level.

ClientEarth. Briefing: Governance Issues in the EU-Mercosur Association Agreement. June 2021. <https://www.clientearth.org/latest/latest-updates/news/what-s-going-on-with-the-eu-mercosur-agreement/> (accessed July 1, 2021) Includes analysis of failure to conclude sustainability impact statement in timely manner, and the lack of transparency in climate and deforestation provisions.

Eurogroup for Animals, Transport & Environment, Fern and CONCORD. “From CETA TO JEEPA – The Variations in the ‘Trade and Sustainable Development’ Provisions in EU Free Trade Agreements”. (2018). [https://www.transportenvironment.org/sites/te/files/publications/2018\\_09\\_TSD\\_analysis\\_o.pdf](https://www.transportenvironment.org/sites/te/files/publications/2018_09_TSD_analysis_o.pdf) (accessed July 1, 2021). *Provides detailed charts comparing the relevant text in the different EU FTAs.*

European Parliament. Committee on International Trade Workshop. “The future of sustainable development chapters in EU free trade agreements.” (2018). [https://www.europarl.europa.eu/RegData/etudes/IDAN/2018/603877/EXPO\\_IDA\(2018\)603877\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2018/603877/EXPO_IDA(2018)603877_EN.pdf). *Reports on available studies suggesting that sustainability provisions based on dialogue and consultation (as in the EU’s FTAs) may contribute to some modest positive outcomes. Concludes that the U.S. experience does not provide evidence that the alternative model of strongly enforceable provisions through third party adjudication and unilateral sanctions is effective, citing the ruling in the U.S.-Guatemala case where the arbitration panel found that the litigants could not prove that the labor violations were trade-related and thus actionable.*

European Parliament. European Parliamentary Research Service. “Using trade policy to tackle climate change.” by Jana Titievskaia. PE 642.231. October 2019. [https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/642231/EPRS\\_ATA\(2019\)642231\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/642231/EPRS_ATA(2019)642231_EN.pdf). *Briefing concludes the current form of EU trade agreements “does not necessarily lead to an increase in the level of compliance with climate commitments”. Reviews WTO issues and “climate waiver.”*

Gantz, David A. and Puig, Sergio. Blog EJIL:Talk! “The Scorecard of the USMCA Protocol of Amendment.” *European Journal of International Law*. December 23, 2019. <https://www.ejiltalk.org/the-scorecard-of-the-usmca-protocol-of-amendment/>. *Discusses the changes to USMCA wrought by the Protocol of Amendment.*

Hailes, Oliver et al. EDITORIAL: “Climate change, human health and the CPTPP.” *The New Zealand Medical Journal*, Vol 131 No 1471: March 9, 2018. [https://www.researchgate.net/publication/323664461\\_Climate\\_change\\_human\\_health\\_and\\_the\\_CPTPP](https://www.researchgate.net/publication/323664461_Climate_change_human_health_and_the_CPTPP). *Provides detail on how climate change is addressed (or not) in the Comprehensive and Progressive Trans-Pacific Partnership.*

Harrison, James and Paulini, Sophia. “The Trade and Sustainable Development Chapter in the EU-Mercosur Association Agreement: Is it fit for purpose?” ClientEarth. July 2020. <https://www.documents.clientearth.org/wp-content/uploads/library/2020-07-15-the-trade-and-sustainable-development-chapter-in-the-eu-mercosur-association-agreement-ext-en.pdf> (accessed July 1, 2021). *A well-written, clear and concise analysis of the effectiveness of the EU-Mercosur Association Agreement’s sustainability provisions. The paper finds that the TSD Chapter does not reinforce countries’ climate change commitments as set out in the Paris Agreement due to (1) ambiguity about actionable obligations and (2) an ineffective dispute settlement mechanism for violations. It also concludes the TSD Chapter does not provide a strong framework for addressing other important environmental and social issues due to limited scope; non-binding, vague and imprecise commitments; and the weakness of the institutional structures to implement commitments. The paper also discusses the lack of meaningful obligations in relation to supply chains. It argues that fundamental reform is needed and provides a roadmap for that reform.*

Hoffman, Rhea Tamara and Krajewski, Markus. “Legal opinion and proposals regarding a possible improvement or renegotiation of the draft EU-Mercosur Association Agreement.” CIDSE. May 2021. <https://www.cidse.org/2021/05/03/legal-opinion-and-proposals-on-eu-mercosur-agreement/> (accessed July 1, 2021). *The legal opinion recommends the parties renegotiate the EU-Mercosur TSD Chapter with binding obligations and an effective dispute settlement system and incorporate international treaties and conventions as binding obligations. Detailed recommendations for an improved TSD Chapter with binding obligations and an effective dispute settlement system are set out in Annex 1 of the article.*

Hradilova, Katelina and Svoboda, Ondřej. “Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness”. *Journal of World Trade* 52, no.6 (2018); 1019-1042. [https://www.researchgate.net/publication/330352591\\_Sustainable\\_development\\_chapters\\_in\\_the\\_EU\\_free\\_trade\\_agreements\\_Searching\\_for\\_effectivenessuyi](https://www.researchgate.net/publication/330352591_Sustainable_development_chapters_in_the_EU_free_trade_agreements_Searching_for_effectivenessuyi). *Compares the dispute settlement framework of the EU’s TSD chapters with that of the labor and environment chapters in U.S. FTA. Includes analysis of the EU-Korea dispute over enforceability of the TSD chapter in that agreement, and the Guatemala labor case brought pursuant to CAFTA by the U.S. Concludes that the EU’s approach to enforceability based on cooperation and dialogue isn’t particularly effective although it has built capacity of civil society in Korea. Concludes that the EU should not follow the U.S. in making sustainability provisions subject to state-to-state dispute settlement because that approach has also been ineffective.*

Kettunen et al. “An EU Green Deal for trade policy and the environment: Aligning trade with climate and sustainable development objectives.” In cooperation with Heinrich Böll Stiftung. IEEP Brussels/London. 2020. [https://ieep.eu/uploads/articles/attachments/9c951784-8c12-4ff5-a5c5-ee17c5f9f80b/Trade%20and%20environment\\_FINAL%20\(Jan%202020\).pdf](https://ieep.eu/uploads/articles/attachments/9c951784-8c12-4ff5-a5c5-ee17c5f9f80b/Trade%20and%20environment_FINAL%20(Jan%202020).pdf) (accessed July 1, 2021). *Concludes that while EU trade policy emphasizes trade as a vehicle for*

sustainable development, evidence demonstrates little net positive contribution to sustainable development, and argues there is an urgent need to find ways to make EU trade and its impacts on global value chains more sustainable.

Kotsonis, Totis. Briefing Paper: “TCA dispute resolution mechanisms and subsidy control commitments.” UKTPO. June 2021. <https://blogs.sussex.ac.uk/uktpo/files/2021/06/BP58.pdf> (accessed July 1, 2021). *Reviews the level playing field commitments in the EU-UK Trade and Cooperation Agreement, describing the dispute resolution mechanisms and analyzing the effectiveness of the unilateral trade defense measures.*

Lamprecht, Fredrik Erixon Philipp. “The Role of Trade Policy in Promoting Sustainable Agriculture.” European Centre for International Political Economy. Brussels, Belgium. January 2020. <https://ecipe.org/publications/sustainable-agriculture/>. *This paper reviews nine European FTAs and compares different approaches and text, with the goal of providing background for the development of Norwegian trade policy and to protect higher Norwegian standards, for example on pesticides.*

PowerShift – Verein für eine ökologisch-solidarische Energie- & Weltwirtschaft e. V. “Anchoring climate and environmental protection in EU trade agreements.” April 2020. <https://power-shift.de/wp-content/uploads/2020/05/Anchoring-climate-and-environmental-protection-in-EU-trade-agreements-web.pdf> (accessed July 13, 2021). *A thorough report with detailed analysis and many specific recommendations from an EU perspective. Provides a useful roadmap for major changes to FTA development and content.*

U.S. Government. Congressional Research Service. “USMCA: Amendment and Key Changes.” Updated January 30, 2020. <https://crsreports.congress.gov/product/pdf/IF/IF11391>. *Reviews the changes to USMCA to address congressional concerns about the enforceability of environmental provisions, the amendments to USMCA revised the environment chapter to expand the coverage, enforcement, and monitoring functions of the agreement.*

U.S. Government. Congressional Research Service. “USMCA Protocol of Amendment: Key Labor Changes.” January 8, 2021. <https://crsreports.congress.gov/product/pdf/IF/IF11308>. *Reviews key changes to USMCA to address congressional concerns about the effectiveness of labor provisions, including panel blocking in dispute settlement, the burden of proof, a new rapid response mechanism to provide for an independent panel investigation of denial of certain labor rights at “covered facilities,” and other provisions.*

U.S. Government. Office of the U.S. Trade Representative. USMCA Protocol of Amendment Text. <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Protocol-of-Amendments-to-the-United-States-Mexico-Canada-Agreement.pdf> (accessed July 1, 2021). *Explains “Protocol of Amendment” changes to the Environment Chapter negotiated by Congress after the USMCA text had been agreed to by negotiators.*

Van der Loo, Guillaume. “‘Mixed’ feelings about the EU–Mercosur deal: How to leverage it for sustainable development.” European Policy Centre. April 2021. <https://epc.eu/en/Publications/Mixed-feelings-about-the-EUMercosur-deal-How-to-leverage-it-for-sustainable-development> (accessed July 13, 2021). *Reviews alternative for modifying the EU-Mercosur Agreement, short of renegotiation or changing the basic structure of the agreement, to improve the effectiveness of the sustainability commitments. Discusses possible additional legal instruments for strong monitoring and implementation procedures using the joint association agreement bodies, and a joint declaration as was agreed to for CETA.*

Voituriez, Tancrede and Laurans, Yann. “Greening trade agreements: A roadmap to narrow the expectations gap.” IDDRI. September 2020. <https://www.iddri.org/sites/default/files/PDF/Publications/Catalogue%20iddri/Etude/STO420-trade%20agreements.pdf> (accessed July 1, 2021). *Argues that the poor environmental performance of EU FTAs lies as much in the absence of clear deliverables in the sustainable development chapters as in the lack of sanction mechanisms. It recommends transforming the EU FTA model into a “performance-based vehicle” with clear environmental objectives and deliverables, and a detailed action plan. In contrast with other analysis, IDDRI does not suggest eliminating investor state dispute settlement in order to protect environmental policy, but rather including “a specific investment treaty or investment chapter explicitly designed to perform on environmental accounts.”*