

Trade and sustainable development chapters in CETA

SUMMARY

The EU-Canada Comprehensive Economic and Trade Agreement (CETA), signed in October 2016, is currently at the ratification stage. This agreement, concluded between like-minded trade partners, represents the new generation of EU free trade agreements (FTAs), and contains chapters covering sustainable development.

The inclusion by the EU of sustainable development chapters in FTAs concluded with its partners plays a role in ensuring that trade and investment liberalisation does not lead to a deterioration in environmental and labour conditions. In keeping with this trade policy practice, developed over the years, trade-related sustainability provisions, including labour and environmental considerations, are grouped in three chapters (Chapters 22 to 24) within CETA.

CETA has only partially exceeded the dialogue-only approach contained in earlier EU trade agreements and has maintained the exclusion of trade and sustainable development (TSD) chapters from the scope of the state-to-state dispute settlement (SSDS) procedure. It also maintains an ad hoc two-stage dispute resolution mechanism already found in the EU-South Korea FTA. However, this mechanism does not include sanctions and focuses on mutually agreed solutions to problems. This choice by the EU is due to the still strongly cooperative nature of the TSD chapters.

On CETA please refer also to the 'International Agreements in Progress' briefing on the Comprehensive Economic and Trade Agreement with Canada by Wilhelm Schöllmann.



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Background

Evolution of EU TSD chapters

Although references to the principle of sustainable development in EU FTAs appeared in the [1990s](#), EU law has evolved to strengthen provisions relating to sustainable development. For instance, while the early European Community (EC) agreements (such as association agreements and FTAs) contained voluntary dialogue and cooperation-only provisions, under the [EU-Cariforum Economic Partnership Agreement](#) (EPA) the rules on social and environmental dialogues were reinforced into fully fledged commitments. For example, Article 73 of the EU-Cariforum EPA introduced an obligation not to lower environmental, labour and other social standards in order to attract foreign direct investment (FDI). The EU-Cariforum EPA also for the first time introduced a monitoring provision (Article 195 of the EU-Cariforum EPA). The EU-Chile Association Agreement was the first (or one of the first) to introduce a SSDS mechanism within the FTA, however from the very beginning dialogues on social and environmental issues were excluded from the scope of the SSDS. Later, the [EU-South Korea FTA](#) was the [first](#) EU agreement to contain a separate TSD chapter addressing labour and environmental issues. Since the EU-South Korea FTA the organisation of [civil society meetings](#) has also become a standard attribute of EU FTAs. It further introduced an ad hoc two-stage process to deal with disputes under the TSD chapter: first consultation and then the setting up of a panel of experts to help to find a solution. However, mainly because of [EU opposition](#), the TSD chapters are not yet inserted within the scope of the SSDS mechanism, and there are no sanctions for violation of the rules.

The European Parliament on trade and sustainable development

In general the European Parliament has expressed itself in favour of stronger trade and sustainable development provisions in EU common commercial policy, including the EU agreements. In particular, in its 2010 [resolution](#) on human rights and social and environmental standards in international trade agreements, the European Parliament called for three main improvements to the sustainable development chapters negotiated in bilateral trade agreements:

- (1) the introduction of a complaints procedure open to the social partners,
- (2) the possibility of appeal to an independent body to settle disputes relating to social and environmental problems speedily and effectively, such as panels of experts selected by both parties on the basis of their expertise in human rights, labour law and environmental law, and whose recommendations would have to form part of a well-defined process, with implementing provisions, and
- (3) recourse to a dispute settlement mechanism on an equal footing with the other parts of the agreement, with provision for fines to improve the situation in the sectors concerned, or at least a temporary suspension of certain trade benefits provided for under the agreement, in the event of an aggravated breach of these standards.

Some of the above recommendations have been introduced into the agreements since the conclusion of the EU-South Korea FTA. The first recommendation has not been fully implemented, although the social partner dialogue has become a cardinal point of TSD chapters in EU FTAs via the introduction of the civil society forum and the establishment of civil society advisory groups. The second point has been introduced via the creation of the ad hoc two-stage dispute settlement procedure, which includes an appeal to an independent expert panel. Regarding the third point, requesting recourse to the SSDS

mechanism with sanctions, EU agreements still exclude the application of SSDS to TSD chapters. In a 2016 [resolution](#) on the implementation of the 2010 recommendations on social and environmental standards, human rights and corporate responsibility, the EP reiterated the request to have SSDS applied to TSD chapters in EU trade agreements. The 2016 resolution also highlighted that commitments should include the ratification and implementation of ILO conventions and international environmental agreements. The EP further reiterated the need for advisory groups to be involved at various stages of negotiating and implementing EU trade agreements and stressed that these groups must be fully independent. In particular, the EP noted the criticisms voiced with respect to the follow-up to the advisory groups' deliberations. Consequently, it requested that the Commission set up a reporting system on the activities of the advisory groups; respond to their concerns; and make logistical provision for the effective implementation of TSD chapters.

Focusing on [CETA](#), in its [resolution](#) on EU-Canada trade relations adopted in June 2011, the EP recommended that the Commission should take as ambitious an approach to sustainable development as it does to trade. In particular, it should be focused on increasing 'the level of obligations towards labour, the scope of the environment chapter and the way to address Multilateral Environmental Agreement (MEA) issues as well as the enforcement mechanism'. The EP also recommended that the Commission support and promote initiatives in the areas of climate change, human rights, social and environmental standards and corporate social responsibility.

Content of the CETA chapters relating to trade and sustainable development

Regulatory autonomy and the balance between trade and societal issues under CETA

Both the EU and Canada have traditionally [negotiated](#) provisions tackling trade-related labour and environmental issues in their FTAs. While Canada generally deals with these areas in side-agreements attached to the FTAs, such as in the North American Free Trade Agreement (NAFTA) model,¹ the EU policy is to incorporate labour and environmental considerations into its agreements, as part of a broader sustainable development framework. CETA follows the EU approach, dealing with the provisions on labour rights and environment as an integral part of the agreement, grouped under three chapters (Chapters 22 to 24).

Chapter 22 of CETA concerns trade and sustainable development. It serves as a framework chapter establishing institutional rules for the subsequent two chapters dealing with trade and labour (Chapter 23) and trade and environment (Chapter 24). The objective of the chapter is given in Article 22.1, which stipulates: 'The Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, and reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations'. The parties make the commitment 'to review, monitor and assess the impact of the implementation of this Agreement on sustainable development' in their territories, and additionally they may carry out joint assessments (Article 22.3(3)). Furthermore, the agreement establishes the Committee on Trade and Sustainable Development (CTSD), an intergovernmental body made up of high level officials of the parties. The CTSD is to meet on an ad hoc basis and monitor the

implementation of Chapters 22 to 24 and the review of the impact of the agreement on sustainable development (Article 22.4).

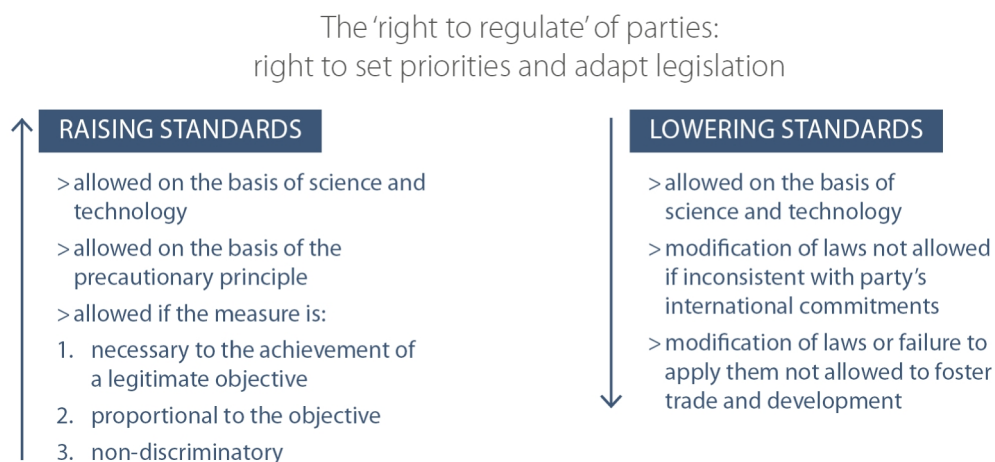
Beyond the provisions in Chapter 22, Chapters 23 and 24 introduce concrete obligations specific to them that are quite similar. Chapters 23 and 24 contain: commitments on regulatory dialogue, articles reaffirming the parties' international commitments and provisions protecting the parties' right to regulate.

CETA, like many other trade agreements, contains provisions reaffirming the existing international commitments of the parties. For example, Chapter 23 includes the commitment to respect and implement the core labour standards taken up by the 1998 International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and the promotion of objectives included in the ILO's Decent Work Agenda. Although the parties make a commitment to make sustained efforts to ratify the [ILO core conventions](#), no explicit reference is made to any ILO convention and ratification is not required (the provision is closer to a best effort obligation, no obligation of result). Canada has to date [ratified](#) seven of the eight ILO core conventions. The [Joint Interpretative Instrument](#), issued by the EU, its Member States and Canada in October 2016, states that Canada has launched the ratification process for the remaining convention. Chapter 24 includes a commitment to the effective implementation of the multilateral environmental agreements applicable to the parties. Article 24.9 states the parties' intention to facilitate and promote trade and investment in environmental goods and services, and the chapter contains provisions on trade in forest products (Article 24.10) and on trade in fisheries and aquaculture products (Article 24.11).

An enforcement obligation entailing procedural obligations (inter alia the obligation to make available administrative and judicial proceedings to persons with a legally recognised interest to bring a claim of an infringement of a right under the law) is included under Article 23.5 for the trade and labour chapter and Article 24.6 for the trade and environment chapter.

Both chapters include a provision protecting the parties' right to regulate (Article 23.2 and Article 24.3).

Figure 1 – The right to regulate and change regulatory standards in CETA's TSD chapters



Source: EPRS.

The right to regulate includes the right of the parties to set their own priorities and modify and adapt their legislation. The right to regulate is limited in two ways when it comes to lowering standards. First, parties cannot modify their laws in ways inconsistent with their international commitments including those of CETA. Second, CETA incorporates two

articles (Article 23.4 for labour and Article 24.5 for environment) on 'Upholding levels of protection' that introduce an obligation 'not [to] waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law and standards [environmental law], to encourage trade or the establishment, acquisition, expansion or retention of an investment in its territory'. These commitments were reiterated in the [Joint Interpretative Instrument](#) issued by the EU, its Member States and Canada in October 2016 to clarify their commitments in CETA. Articles 23.4 and 24.5 further stipulate that a party shall not 'through a sustained or recurring course of action or inaction, fail to effectively enforce its labour law and standards [environmental law] to encourage trade or investment'.

The latter obligation to uphold the level of protection shows that both parties have similar interests in maintaining a high level of labour and environmental regulation, and in preventing trade from undermining their standards. In the EU-South Korea FTA, this obligation was introduced jointly with a clause stressing that environmental and labour standards should not be used for protectionist trade purposes (Article 13.2 of the EU-South Korea FTA); such a clause was not inserted in CETA, showing the different concerns of Canada and South Korea with respect to labour and environmental standards.² In previous agreements, such as the EU-Cariforum EPA, the obligation to uphold the level of protection was put forward as a recommendation and not as an obligation (Article 193 of the EU-Cariforum EPA). An obligation not to lower environmental, labour and other social standards was introduced only with respect to FDI under Article 73 of the EU-Cariforum EPA.

Regulatory modifications that may affect trade must still rely on existing relevant scientific and technical information and related international standards, guidelines or recommendations.³ However, CETA incorporates for the first time the precautionary principle, thus allowing for the adoption of cost-effective measures to prevent potential hazards even where there is a lack of full scientific certainty (see table 1).

Table 1 – The precautionary principle introduced in Chapters 23 and 24

Trade and labour chapter (Article 23.3(3))	Trade and environment chapter (Article 24.8(2))
'The Parties acknowledge that in case of existing or potential hazards or conditions that could reasonably be expected to cause injury or illness to a natural person, a Party shall not use the lack of full scientific certainty as a reason to postpone cost-effective protective measures.'	'The Parties acknowledge that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'

Source: EPRS.

Notwithstanding the right to regulate, parties may continue to challenge a trade restrictive measure if it violates the requirements in Article 28.3. Article 28.3 is the General Exception rule, incorporating Article XX of the General Agreement on Tariffs and Trade (GATT) with respect to trade in goods, and sets out a similar exception rule for trade in services. Thus, the General Exception rule follows the WTO approach and allows for the adoption of trade restrictive measures providing they are:

- (1) necessary to pursue one of the legitimate public policy objectives mentioned, and
- (2) proportionate to the objective they need to achieve;
- (3) measures must not meanwhile discriminate between countries where similar conditions prevail (i.e. non-discriminatory measures).

Figure 2 – Overview of commitments under TSD chapters in CETA

DIALOGUE AND COOPERATION PROVISIONS	PROVISIONS ON INTERNATIONAL COMMITMENTS	THE RIGHT TO REGULATE
<ul style="list-style-type: none"> > commitment to dialogue > civil society involvement > general cooperation provisions on labour and environmental issues listing possible cooperation methods and topics > provisions on cooperation on specific issues (only in the environment chapter: trade in forest products, trade in fisheries and aquaculture products) > cooperation in international fora (ILO, United Nations Environmental Programme, OECD, etc.) 	<ul style="list-style-type: none"> > reaffirms international commitments > best ('sustained') efforts to ratify further ILO conventions > measures must respect international commitments of parties > efforts toward reducing obstacles to trade and investment for goods and services particularly relevant to climate change mitigation and in particular trade and investment in renewable energy and related services 	<ul style="list-style-type: none"> > reaffirms right to regulate > upholds the level of protection > cannot deregulate to promote trade and investment > measures must respect Article XX GATT requirements (non-discriminatory, necessary to pursue legitimate objective) > precautionary principle > proper implementation and enforcement mechanism > transparency rule

Source: EPRS.

Involvement of civil society

In recent years, negotiations leading up to the conclusion of EU trade agreements have raised considerable public debate, and there have been a number of calls from civil society groups for more transparency. In a [communication](#) published in October 2015, [Trade for all: Towards a more Responsible Trade and Investment Strategy](#), the European Commission recognised the need for enhanced transparency and for stronger engagement with the EP, the Member States and civil society. The practice of giving the EP access to consolidated documents prior to the finalisation of the draft agreement text began only after 2014 with the TTIP negotiations.⁴ At that time, the CETA negotiations had already been concluded and the draft negotiated text publicly circulated. However, civil society consultations took place both before and after the start of negotiations. Before the CETA negotiations began, a web-based consultation was undertaken by the Commission in February and March 2008 in the form of a questionnaire. A similar public consultation was carried out by Canada in March and April 2008. After the start of the negotiations, consultations took place via civil society meetings and stakeholder workshops. Finally, a Trade Sustainability Impact Assessment ([Trade SIA](#)) was published in 2011.

Furthermore, there are a number of binding obligations to involve civil society in CETA. The Joint Interpretative Instrument issued by the EU, its Member States and Canada in October 2016 states that 'Commitments related to trade and sustainable development (...), are subject to dedicated and binding assessment and review mechanisms. (...) The EU and its Member States and Canada are committed to seeking regularly the advice of stakeholders to assess the implementation of CETA'. In particular, the Committee on Trade and Sustainable Development (CTSD) is asked to present updates on the implementation of the agreement to the joint Civil Society Forum (hereafter referred as Forum) established by Article 22.5. The Forum is to be convened once a year unless otherwise agreed. The Forum should be composed of representatives of civil society organisations established in the parties' territories, including the participants of the domestic advisory committees (DAGs) referred to in Chapters 23 and 24. It should provide for balanced representation of the various interests, including but not limited to: independent representative employers, unions, labour and business organisations,

environmental groups, as well as other relevant civil society organisations as appropriate. The Forum's objective is focused solely on promoting a dialogue on the sustainable development aspects of CETA.

Furthermore, Chapters 23 and 24 provide for the establishment and consultation of DAGs (Article 23.8(4) and Article 24.13(5)). These advisory groups are called upon to express views and give advice on issues relating to the sustainable development chapters and to submit opinions and recommendations on their own initiative. These groups must again provide a balanced representation of domestic independent civil society. The EU DAGs usually consist of up to 15 members, including three members of the European Economic and Social Committee (EESC) and a maximum of 12 representatives of non-EESC civil society organisations. Beyond these 12 members other organisations may become observers or can share the seat with one of the DAGs members.⁵ The EESC is required to provide the secretariat for all the EU DAGs under EU trade agreements concluded since the EU-South Korea FTA. The frequency of the DAG-meetings and the procedure to appoint DAG-members is not specified in CETA. Each party decides in its domestic law the procedures to follow for appointing their DAGs. In the framework of the EU DAGs, the practice has been to appoint the 12 non-EESC members through an open call for interest.⁶ The EU has some horizontal rules for appointing [expert groups](#). They do not however apply to joint entities instituted by EU international agreements. It should be noted that the EU [applied](#) these rules when setting up expert advisory groups during trade agreement negotiations for TTIP.

The DAGs, as well as the Forum, may submit any observations to the CTSD on the follow-up to action plans to implement reports of the Panel of Experts in case of disputes connected with the implementation of the chapters on labour or environment (Article 23.10(12) and Article 24.15(11)).

In addition to the direct civil society involvement mentioned above, Chapter 22 contains a rule on transparency as a measure to promote public participation and make information public (Article 22.2). This article is further reinforced by articles on public information and awareness under Chapters 23 and 24 (Article 23.6 and Article 24.7), which clearly state that parties should 'encourage public debate with and among non-state actors as regards the development and definition of policies that may lead to adoption of labour law and standards [environmental law] by its public authorities'. These articles require the provision of information and the necessity to take steps to inform stakeholders. In Article 24.7 (on environment), clear reference is made to domestic stakeholders. Article 23.6 (on labour) does not make any explicit mention of domestic stakeholders; however, here the requirement could logically be interpreted as including at least the delivery of information to any employer, worker or representative that is affected by the labour law or standard in question (though the latter provision could still lead to different interpretations). The transparency and public information awareness articles are further implemented by a requirement (under Article 22.4) that the CTSD make public any decision or report adopted, present updates to the Civil Society Forum and report annually on these communications, and, finally, issue annually a report on any matter that it addresses.

Figure 3 – Overview of commitments regarding the involvement of civil society

CONSULTATIVE FRAMEWORKS	DISPUTES	TRANSPARENCY REQUIREMENTS
<ul style="list-style-type: none"> > Civil Society Forum (normally convened at least once per year) > DAGs: submit advice and opinions on issues related to the chapter 	<ul style="list-style-type: none"> > DAGs' advice can be sought during consultations > DAGs and Civil Society Forum can submit observations to the Committee on Trade and Sustainable Development with regard to follow-up and implementation of a panel of experts report 	<ul style="list-style-type: none"> > making information public > writing annual reports on activities > raising awareness and promote public debate

Source: EPRS.

The special nature of the dispute settlement mechanism for the sustainable development chapters in CETA

Sustainable development provisions in EU FTAs have always been excluded from the general dispute settlement mechanism introduced in these agreements, leading to doubts concerning their enforceability. Although substantive provisions have evolved and strengthened beyond dialogue provisions only, the EU has systematically refused to cover the trade and development chapters under the dispute settlement mechanism. Outside of the SSDS procedure, an ad hoc procedure for dispute settlement has been created within the TSD chapters and a development toward a strengthening of the procedure in the event of disputes can be observed. Indeed, the dialogue- and cooperation-only provisions of the early EC agreements (such as the Euro-Mediterranean agreements or the EU-Chile Association Agreement) have developed into a monitoring provision under the EU-Cariforum EPA (Article 195 of the EU-Cariforum EPA). The EU-South Korea FTA introduced the innovation of the two-stage process: consultation (Article 13.14 of the EU-South Korea FTA) and the setting up of a panel of experts to help find a solution (Article 13.15 of the EU-South Korea FTA).

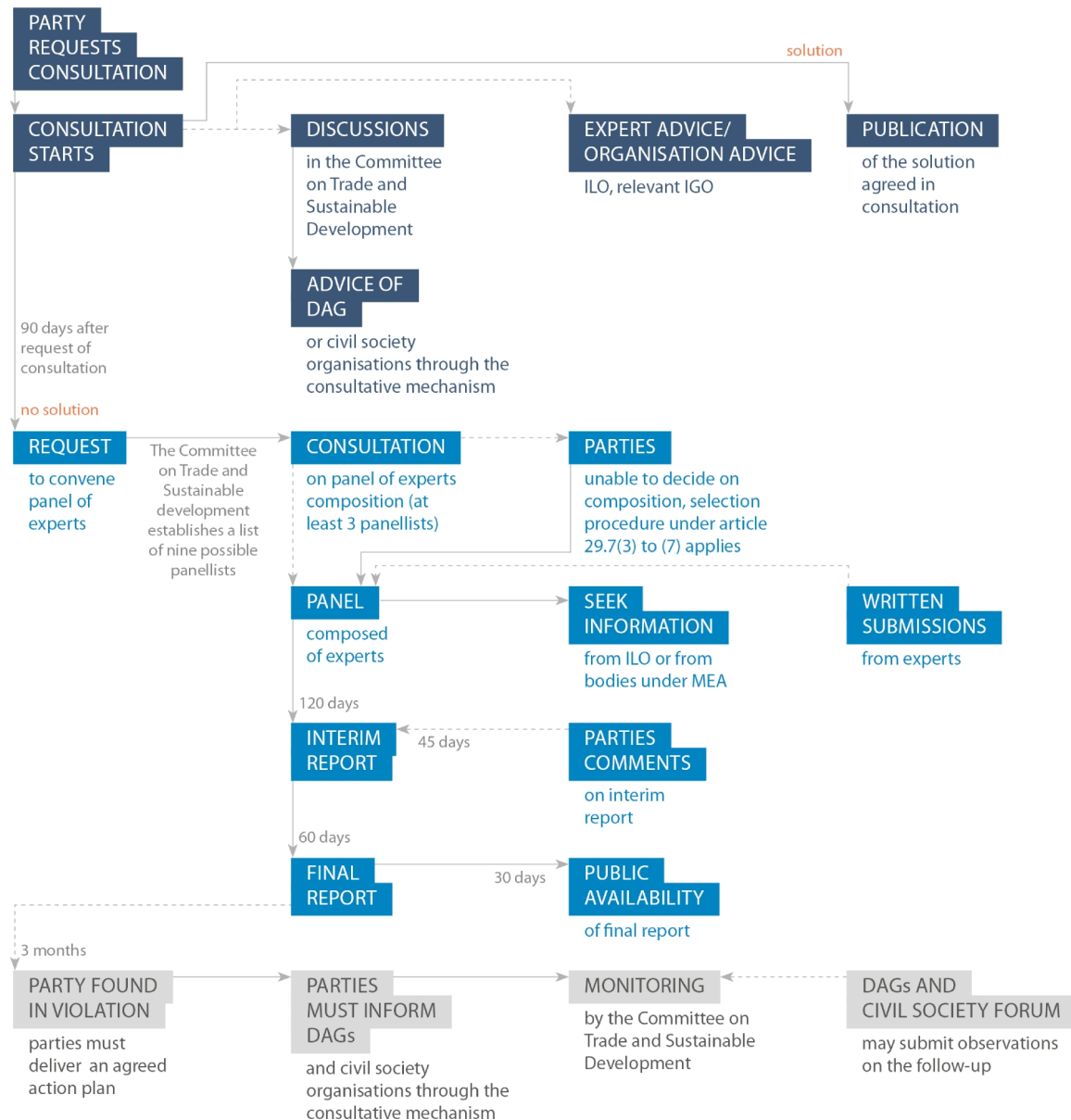
CETA has taken over this legacy and institutes a government consultation procedure, through the Committee on Trade and Sustainable Development, and an independent review mechanism, based on a Panel of Experts for both chapters on labour and on environment, under Articles 23.9 and 23.10, and Articles 24.14 and 24.15. The Panels of Experts should seek information from the ILO (Article 23.10(9)) or from relevant bodies established under the multilateral environmental agreements (Article 24.15(9)). In both chapters the Panel of Experts may refer to expert advice from persons with specialised knowledge (Article 23.10(10) and footnote to Article 24.15(9) referring to Rule 42 of [Annex 29-A on Arbitration](#)). The panel shall deliver its final reports to the parties, which should make them publicly available. The Committee on Trade and Sustainable Development must oversee the follow-up of the final report and of the panel's recommendations. The civil society organisations, through the consultative mechanisms referred to in Articles 23.10(12) and 24.13(5), and the Civil Society Forum may submit observations to the Committee on Trade and Sustainable Development in this regard.

The dispute settlement framework as established does not provide for any sanctions and the Panel of Experts needs to find a mutually agreed solution, i.e. the Panel of Experts is not there to issue a judgement on either of the parties or to determine a violation but simply to find a shared solution to the problem. It is therefore not a proper dispute settlement framework, though the recommendations and the report are binding (and their implementation monitored).

Finally under both Article 23.11 and Article 24.16, parties may have recourse to good offices, conciliation and mediation to solve their disputes on labour and environment issues if the ad hoc procedure within Chapters 23 and 24 fails to deliver a solution. Again those are alternative dispute resolution mechanisms that try to find mutually acceptable solutions; they do not therefore provide for a dispute settlement with sanctions.

Under Article 23.11, a review of implementation of the labour chapter as well as the review of the dispute settlement provisions is possible, and can also lead to recommendations for a revision of the provisions. Those recommendations must be proposed by the Committee on Trade and Sustainable Development to the CETA joint committee following the amendment procedure under Article 30.2. Although the chapter on environment (Article 24.16) does not seem to provide the same possibility for revision of the mechanism, the Committee on Trade and Sustainable Development (Article 24.13) is still in charge of overseeing the implementation of the chapter and of discussing any matter that could arise within its scope.

Figure 4 – The two-stage ad hoc framework for dispute resolution in CETA's TSD chapters



Source: EPRS.

Criticism and recommendations

One of the main points of criticism of the TSD chapters included in the FTAs concerns the lack of enforceability of the labour and environmental provisions. Enforceability is ensured only via the two-stage dispute settlement mechanism specific to these chapters. As there are currently no sanctions foreseen in the case of violations of provisions, some critics call into question the effective protection of [labour rights](#) and the [environment](#). It should be noted that CETA does not provide for sanctions because [the EU opposed this](#), while Canada would have been in favour of a sanction mechanism. The opposition of the EU to the application of the normal SSDS mechanism to the sustainable development chapters could be explained by the EU's fear that this could be used against its own legislation or against measures that are more restrictive. During a parliamentary debate on EPAs with West African countries, Trade Commissioner Cecilia Malmström [replied](#): 'Sustainability and human rights are indeed key to all our trade agreements. ... You know that the way for the European Union is to start with dialogue, not with sanctions, because if you start with sanctions, those who will suffer are not the regime – the authorities; it is the ordinary people who benefit from the contacts. The EU model is to start with dialogue, try to set up different forums, engage with civil society'.

What effect the cooperation and monitoring mechanism will have on the implementation of the agreement has yet to be seen. For example, it remains unclear how the recommendations of the [Panel of Experts](#) and the [civil society representatives](#) will be followed up. As mentioned above, the CTSD must monitor implementation of the action plan agreed by the parties to implement the report of the Panel of Experts. However, while the DAGs must be informed of the action plan agreed by the parties, it seems that they may submit observations to the CTSD on the follow-up to the report only.

As a 2016 [study](#) of the Centre for the Law of EU External Relations notes, the institutional set-up and the functioning of the civil society monitoring mechanisms in the agreements differ significantly. Despite this variety there are some common concerns, for instance, regarding the selection procedure for civil society representatives taking part in the DAGs. Indeed it is for the parties to the agreement to decide their selection procedures for civil society representatives. For example, at the beginning of the implementation of the EU-South Korea FTA, [doubts](#) were raised as to whether the selected Korean civil society organisations were representative and independent. The above-mentioned 2016 [study](#) also notes that in general, it is difficult to assess the impact of civil society participation, and existing evaluations of civil society involvement diverge greatly.

Another [study](#) points out that comparing the eligibility condition within the generalised system of preferences (GSP and GSP+) with the TSD chapters of bilateral agreements, the latter are less effective. This is explained by the fact that FTAs are weaker in terms of ratification, requirements, enforcement and monitoring. With respect to incentives and sanctions, the study refers to the conditionality embedded in the GSP+ arrangements. The study goes on to state that no monitoring mechanism has been introduced in TSD chapters while there is one for GSP+ (nevertheless, as mentioned above, in CETA, monitoring is one of the tasks of the CTSD). Finally, the study considers the non-lowering clause and the more elaborate governance dimension of EU FTAs, including institutionalised civil society involvement, to be an improvement with respect to the GSP framework. Another [study](#) dealing with the sustainable development clauses of EU FTAs with ASEAN countries points out that compared with the hardening sustainable

development conditions for additional GSP benefits, more flexibility can be detected in the sustainability clauses of the FTAs concluded with some ASEAN member countries.

Some [critics](#) also mention the fact that the CETA TSD chapters are largely 'aspirational and programmatic' and that the legal obligations are merely procedural, such as consultation and review requirements. Nonetheless, as noted earlier, the TSD chapters contain some substantive requirements such as the rule 'upholding levels of protection'. Other critics have also pointed out that Canada has not ratified the fundamental [ILO Convention No 98](#) (collective bargaining), and that although the parties undertake to strive for the ratification of fundamental labour rights conventions not yet ratified, the agreement does not require the parties to actually ratify them. As mentioned previously, the [Joint Interpretative Statement](#) on CETA mentions that Canada has launched the process for the ratification of ILO Convention No 98.

Another cause for [criticism](#) was fear of the potential impact of CETA on the right to regulate and the ability to challenge measures as 'non-tariff barriers' and concern about how the investment protection provisions might alter the regulatory right of the State. On the first issue on 'non-tariff barriers', it should be mentioned that CETA incorporates GATT law on this aspect. The fact that CETA does not contain a proper dispute settlement procedure will probably mean that most of these environmental disputes will be dealt with by the WTO dispute settlement body. On the second issue, though CETA reaffirmed the right to regulate in the investment chapter and tries to provide a strict definition of the context where indirect expropriation and a breach of fair and equitable treatment (FET) can be claimed, it remains possible that governments could be liable to pay compensation.⁷ Discussing the issue of regulatory power as part of a McGill University panel on the impact of CETA on the environment, two out of [three experts](#) highlighted that CETA does not constrain parties in their regulatory choices and that they did not expect it to affect the environment negatively (request to uphold the level of standards of protection and not to waive protection standards to favour trade and investment). At the same time, the experts considered CETA to be a missed opportunity, as cooperation remains voluntary and the chapters remain vague. The third expert considered CETA to represent progress with respect to other EU agreements. Indeed, as already mentioned, CETA introduces the precautionary principle for the first time and it introduces a number of specific cooperation objectives (see Chapter 24 on trade and environment).

In its April 2016 [opinion](#) on the Commission communication 'Trade for all: Towards a more responsible trade and investment policy', the European Economic and Social Committee (EESC) noted that greater civil society involvement is needed from the start of trade agreement negotiations and that 'balanced, structured and reinforced Domestic Advisory Groups (DAGs)' are needed to monitor the implementation process. It also asked for provision to be made within the agreements for joint EU and partner country DAG meetings, with a widened mandate, as well as for adequate funding for civil society participation. Echoing the EP, the EESC recommended that agreements' SSDS mechanisms should also cover the TSD chapters, and it regretted the lack of any detailed assessment of these chapters and their monitoring. As the number of civil society monitoring bodies is rising with the growing number of trade agreements, it is becoming difficult to achieve balanced representation of each civil society group in the DAGs. Therefore, the EESC considers capacity building and better promotion among civil society actors to be key. Furthermore, in its October 2016 assessment of civil society advisory mechanisms in EU FTAs, the EESC, among others, considered that the current method for appointing the DAGs fails to achieve adequate representation.⁸

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Endnote

¹ See the NAFTA side agreements: on [Environmental Cooperation](#) and [on Labor Cooperation](#).

² Newly high-income countries, such as South Korea, and emerging countries can perceive Western countries' social and environmental standards as potentially protectionist. Whereas for developed Western countries, interested in promoting further social and environmental standards, articles providing for general exceptions in FTAs (similar to or incorporating GATT Article XX) were the means to ensure that trade agreements still allowed the introduction of such social and environmental measures.

³ This is specified in Chapter 23 for measures implementing health protection and workers' safety (Article 23.3(3) and under Article 24.8 with respect to environmental legislation). The latter is in line with WTO law.

⁴ Prof. Mauer, *Comparative study on access to documents (and confidentiality rules) in international trade agreements*, Directorate General for External Policy Department, 2015 (Administrator responsible: Roberto Bendini).

⁵ EESC internal document.

⁶ EESC internal document.

⁷ For details see forthcoming EPRS publication on this subject.

⁸ EESC document, reference number EESC-2016-00418-01-06-TCD-TRA, *EESC evaluation of civil society advisory mechanisms in EU free trade agreements (FTAs)*

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