

WORKSHOP

Requested by INTA Committee



# The future of sustainable development chapters in EU free trade agreements



Policy Department for External Relations  
Directorate General for External Policies of the Union  
PE 603.877 - July 2018

EN

## WORKSHOP

# The future of sustainable development chapters in EU free trade agreements

### ABSTRACT

Sustainable development is an important part of the EU trade policy since it gets on meeting the needs of the present whilst ensuring future generations can meet their own needs. All EU FTAs include a Trade and Sustainable Development (TSD) chapter, which seeks to ensure that partners follow international requirements in the three pillars that compose sustainable development: economic, environmental and social. The adoption of the UN Agenda 2030 in 2015, which sets 17 Sustainable Development Goals and 169 targets, and the 2015 Paris agreement on climate change, have pushed the Commission to review its TSD chapter and to table a new proposal, identifying 15 action points drawn from the large debate with member states, the European Parliament as well as the civil society launched eight months before.

In order to feed the forthcoming debates within the European Union institutions, academic experts in the three dimensions of the sustainable development as well as representatives of the European Union institutions have been invited to the workshop to share their views, not only on the binding aspect of TSD provisions, but also on how various European Union policies can be worked together to achieve the best results.

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# WORKSHOP

POLICY DEPARTMENT, DG EXPO  
FOR THE COMMITTEE ON INTERNATIONAL TRADE



European Parliament

Tuesday 19.06.2018 – **15:00-17:30**

ALTIERO SPINELLI BUILDING – ROOM **1E2**

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## THE FUTURE OF SUSTAINABLE DEVELOPMENT CHAPTERS IN EU FREE TRADE AGREEMENTS



**Chair: Bernd LANGE**

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## 1. Workshop programme

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES  
POLICY DEPARTMENT



For the Committee on International Trade (INTA)

### WORKSHOP

# The future of sustainable development chapters in EU free trade agreements

Tuesday, 19 June 2018  
European Parliament, Brussels  
Room ASP 1E2  
15.00 - 17.30

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#### PROGRAMME

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**15.00**      **Welcome and introductory remarks by**

- **Bernd Lange, MEP**, Chair of the Committee on International Trade (INTA).

**15.10**      **Panel n° 1: Innovation in the social, economic and environmental pillars of sustainable development**

- Introduction and moderation by **Bernd Lange, MEP**, Chair of the Committee on International Trade (INTA).
- **Damian Raess**, PhD in Social Sciences, Professor at the World Trade Institute, University of Bern, Professor at the School of Politics, Economics and International Relations, University of Reading.
- **Evita Schmieg**, PhD in International Economics and Development, Researcher at the German institute for International and Security Affairs (SWP).
- **Trancrède Voituriez**, PhD in Economics, Director of the Global Governance Programme at the Institut du Développement Durable et des Relations Internationales (IDDRI), Professor at Sciences Po Paris.

**15.45**      **Q&A / Debate**

**16.15**            **Panel n°2: The view of EU institutions**

- Introduction and moderation by **Iuliu Winkler, MEP**, Vice-Chair of the Committee on International Trade (INTA).
- **Ewa Synowiec**, principal advisor and acting Director in charge of Trade and Sustainable Development, DG Trade, European Commission.
- **Tanja Buzek**, rapporteur for the opinion of the European Economic and Social Committee on TSD chapters in Free Trade Agreements.
- **Dumitru Fornea**, member of EU Domestic Advisory Groups (DAGs) of EU-South Korea FTA and EU-Moldova DCFTA and of the European Economic and Social Committee.

**16.45**            **Q&A / Debate**

**17.15**            **Concluding remarks by Bernd Lange, MEP**, Chair of the Committee on International Trade (INTA).

## 2. Labour (and environmental) provisions in FTAs: What do they do?<sup>1</sup>, by Dr Damian Raess (University of Bern, University of Reading)

### 2.1 Introduction

The inclusion of labour (and environmental) provisions in Free Trade Agreements (FTAs) has become a common feature of the modern trade agenda, particularly notable in North-South and North-North trade deals. By linking the benefits of enhanced market access to commitments to follow international labour and environmental standards and agreements, these provisions seek to 'maximise the leverage of increased trade and investment on issues like decent work, environmental protection, or the fight against climate change in order to achieve effective and sustainable policy change' (EU Commission services, 2018, p. 1).

What do labour (and environmental) provisions in FTAs do? Labour provisions might improve labour rights among the contracting parties. They might reduce bilateral trade flows as strengthening labour rights increases labour costs which in turn reduces comparative advantage. They might not reduce inequality, because they are currently not designed to achieve such goal. Neither would one expect labour provisions to solve the EU migration crisis by providing jobs and lifting millions out of poverty in Northern and sub-Saharan Africa. Although these all sound like reasonable expectations, in fact we still know very little about these fundamental issues.

This paper seeks to assess the effectiveness of sustainability chapters/provisions in FTAs based on the existing literature and, especially, on my own research on this topic. I will mainly focus on labor provisions. Over the past few years, I coordinated a collaborative, interdisciplinary project that explores the causes and socio-economic consequences of the inclusion and of the content of labor provisions in trade agreements. In the process of researching this subject, I generated a new dataset, LABPTA (Labour Provisions in Trade Agreements dataset; Raess and Sari, *forthcoming*), a global dataset that is the most fine-grained and comprehensive mapping of the content of labor provisions in trade agreements. In this paper I will report on the findings of two studies conducted thus far on the impact these provisions have and also outline the policy implications.

I will focus on big questions of interest to policy makers and academics alike. I will address two main questions and two cross-cutting issues (i.e., issues that apply to each of the two questions). First, what is the *social* impact of labour provisions in trade agreements? Do labour provisions reach workers and improve labour rights? Second, what is the *economic* impact of labor provisions in trade agreements? Is there a 'business case' for the inclusion of labour clauses in trade agreements? In other words, does they boost (rather than reduce) bilateral trade flows?

The two cross-cutting issues concern the design of labour provisions. On the one hand, what type of labour provisions best promote social and economic development? Is it the model based on hard sanctions or the model based on dialogue/cooperation and capacity building? On the other hand, what is the role of civil society organizations (CSOs) in the monitoring and implementation of the labor-related commitments? Specifically, does the participation of third parties -- social partners,

<sup>1</sup> I thank Céline Carrère, Marcelo Olarreaga and Dora Sari for being great co-authors and for helpful exchanges.



non-governmental organizations (NGOs), International Labour Organization (ILO), other third parties -- contribute to attain better outcomes?

There is one important caveat. While the present contribution is made in the context of an EU-level and EU-sponsored event, I shall address the questions at hand from a global perspective by using a global dataset. This means that the questions are not being answered specifically in relation to the effectiveness (or not) of sustainable development chapters in EU FTAs.

## 2.2 The Rise of Labour Provisions in Trade Agreements

Since the early 1990s, the number of FTAs containing labor provisions and the number of such agreements containing stringent forms of labor provisions has steadily increased (Figure 1). For the period 1990-2015, the cumulative number of FTAs without labour provisions (290) still exceeds the number of FTAs with any labour provisions (195). However, since the mid-2000s the rate of adoption of FTAs with comprehensive labour provisions, that is commitments to protect and/or promote labor standards found in the main part of the treaty texts, has grown faster than the rate of adoption of FTAs with either no or shallow labour provisions, the latter being defined as aspirational commitments found exclusively in the preamble or objective parts of the treaty texts.

Over the period 1990-2015, there has also been a rise in FTAs with two particular types of comprehensive labour provisions (Figure 2). The left-hand side panel shows the modest increase over time of the sanctions-based model (i.e., strong enforcement mechanisms), defined as a model providing for a dispute settlement mechanism in which independent arbitrators make rulings regarding compliance (i.e., third-party adjudication) *and* the possibility by the complaining party to unilaterally retaliate in case of non-compliance by way of trade sanctions, monetary compensation, or 'other appropriate measures'. The right-hand side panel illustrates the rapid increase since the early 2000s of the strongly institutionalized cooperation model (i.e., deep cooperation mechanisms or 'deep institutions'), defined as a model providing for the establishment a separate body in charge of the monitoring and implementation of labor-related commitments *and* the inclusiveness of the institutional mechanism through the participation of any third parties (social partners, NGOs, ILO, or other third parties).

## 2.3 The Impact on Labour Rights

One of the challenges to study the impact of labour (and environmental) provisions in trade agreements is adequate country-level historical data on the outcome variables of interest.<sup>2</sup> New, state-of-the-art labour rights (LR) indicators have recently been made available thanks to the hard work and dedication of David Kucera and Dora Sari (*forthcoming*) (both team members of the collaborative project I have been coordinating). Based on the coding of nine textual sources (from the ILO, the International Trade Union Confederation, the US State Department, and national legislation), the LR indicators measure violations of freedom of association and collective bargaining (FACB) rights at five points in time (2000, 2005, 2009, 2012, and 2015). A total of 108 issues pertaining to different violations of FACB rights are coded, yielding very detailed measures of state compliance with fundamental trade union rights. While FACB rights as fundamental labor rights are important

<sup>2</sup> According to Posso (2017: 92), child labour 'is the only labour standard for which there are adequate macroeconomic-level time-series data'. He admonishes developing countries to collect reliable statistics on all labour standards to better inform policy.

in and for themselves, as enabling rights they also play a critical role for the realization of other basic workers' rights.

Does signing a trade agreement with labour provisions reduce violations of FACB rights? The study (Sari and Raess, 2018) focuses on ex post effects, that is, effects observed during the implementation phase of the labor-related commitments agreed at the time of the signature of the FTA. The main finding is that FTAs comprising FACB-specific commitments and deep cooperation mechanisms are associated with a reduction of violations of *in law* FACB rights in developing countries (but not a decrease in violations of *in practice* FACB rights), a result which holds when the effect of FTAs with FACB-specific commitments and strong enforcement mechanisms is controlled for. In other words, FTAs with strongly institutionalized cooperation mechanisms covering commitments to protect FACB rights are effective at increasing state compliance with *in law* FACB rights, whereas a similar effect is not observed for FTAs that are strongly enforceable with respect to FACB rights.<sup>3</sup> This result is not driven by developing countries undergoing improvements in labor rights as a result of signing unilateral trade agreements such as Generalized System of Preferences (GSP) schemes that entail labour conditionality. Additional analyses suggest that the observed effect is indeed causal.

With respect to the effectiveness of the inclusion of labor standards in EU FTAs, Postnikov and Bastiaens (2014) find that the EU's soft approach focusing on dialogue works. Using a before-after research design, they estimate the effect of signing a FTA with the EU among the partner states for the period 1980-2010. They find that signing a FTA with the EU results in an increase the protection of labour rights in EU trade partners, an effect that is observed ex post. As a measure of labour rights, the authors use the worker's rights indicator by Cingranelli and Richards, a well-known and much-used measure of the extent to which workers enjoy internationally recognized rights at work as well as decent conditions of work, yet an extremely crude indicator as it is measured on a 3-point scale (with 0 indicating that worker's rights are severely restricted, 1 that they are somewhat restricted, and 2 indicates full protection).

This important result is similar but not identical to the results from our study. Most importantly, the soft mechanism of dialogue/consultation, on the one hand, and strongly institutionalized cooperation mechanisms, on the other hand, are not the same thing. While virtually all EU FTAs exhibit the soft approach in Postnikov and Bastiaens (2014), in our study only the last generation of EU FTAs starting with EU-Korea (2010) are characterized by strongly institutionalized cooperation mechanisms as per our definition. In other words, our results are unlikely to be driven just by the EU agreements in our sample.<sup>4</sup> While Postnikov and Bastiaens (2014) conclude that EU FTAs with labor standards exhibit a positive ex post effect on worker's rights, our study does not offer any conclusion about the effectiveness of labor provisions in EU FTAs.<sup>5</sup> We conducted additional analyses to see whether FTAs with cooperation-related provisions in relation to FACB rights, our measure of the soft

<sup>3</sup> In the LABPTA dataset, with the exception of US-Jordan (2000), all FTAs with strong enforcement mechanisms in relation to FACB rights are also characterized by deep cooperation mechanisms (the converse is not true, there are a number of FTAs with deep cooperation provisions that lack strong enforcement mechanisms). As such, it is more appropriate to interpret the coefficient for strong enforcement as the effect of the simultaneous presence of strong enforcement and deep cooperation mechanisms.

<sup>4</sup> For instance, almost all FTAs signed by New Zealand provide for a separate committee and the participation of third parties (and thus are characterized by deep institutions) while none includes strong enforcement provisions.

<sup>5</sup> According to LABPTA, the coding of the Bosnia & Herzegovina – EU FTA (2008) as having no labour provisions (Postnikov and Bastiaens, 2014: Appendix B, Table B.1) is erroneous. In addition, it is unclear what criteria Postnikov and Bastiaens (2014) use to delimit their sample of EU FTAs (for example, one wonders why the Cariforum – EU Economic Partnership Agreement (EPA) signed in October 2008 and which entered into provisional application in December 2008 is excluded from the analysis).

mechanism based on dialogue and consultation, are effective at reducing violations of FACB rights and find that they are not.

Does this mean that FTAs with strongly enforceable labour provisions are ineffective? It is important to distinguish between *ex ante* and *ex post* effects (i.e., effects observed before or after the signing of a FTA, respectively). While to the best of my knowledge no study to date has demonstrated a positive *ex post* effect of strongly enforceable labour standards in FTAs, there is evidence that such agreements exert an influence *ex ante*. The literature has identified two mechanisms. First, Kim (2012) argues and demonstrates that trade partner states are likely to engage in *ex ante* due diligence and improve the protection of labour rights at home before they sign or even enter into negotiations for a FTA with the US. They do this to make themselves attractive as prospective trade partners, knowing that the US insists on the inclusion of stringent labour provisions in the FTA it signs. Second, labor-related pre-ratification conditionality, as practiced in recent years by the US, often leads to significant reform of domestic labour legislation (ILO, 2013). In both cases, strongly enforceable labour provisions in US FTAs hang like the sword of Damocles over the trade partners during both the negotiation and the implementation phases, thereby acting a major engine of change.

The impact of labour provisions on labour market outcomes is more mixed. An ILO study (2016) covering 260 FTAs over the period 1991-2014 finds that labour provisions are associated with higher labour force participation rates, especially among women, but have no effect on working conditions such as wages, the share of vulnerable employment or gender gaps in those outcomes. Based on a sample of 223 FTAs from 1995 to 2011, Kamata (2016) finds that FTAs with and without labour provisions do not differ in their impacts (improving or worsening) on actual working conditions (average earnings, average work hours, fatal occupational injury rate, and the number of ILO Core Conventions ratified). Dewan and Ronconi (2018) find that Latin American countries that signed FTAs with the US experienced an increase in the number of labor inspectors and inspections, suggesting that trade agreements can promote better enforcement of existing labour laws. Their analysis further suggests that the stringency of labor-related commitments together with capacity building assistance by the US government to increase enforcement make a difference.

In this section I have deliberately neglected to review the research findings of the studies employing qualitative research methods such as case studies or small-N comparisons. From the perspective of causal inference, these studies suffer from several limitations. First, the research findings are not generalizable across time and space. Second, these studies are ill-equipped to tease out the effect of variation in the design of labour provisions. Third, they do not adequately take into consideration (i.e., 'control for' in quantitative methodological parlance) the effect of confounding factors. Third, the yardstick against which impact is assessed is almost always the *improvement* of labour rights. Let me illustrate the latter two points. According to the LR indicators (Kucera and Sari, *forthcoming*), there has been a *worsening* of violations of in law FACB rights globally over the period 2000-2015. Some countries, including in Europe, have relaxed domestic labour laws regulating collective bargaining in the aftermath of the global financial crisis, arguably in an attempt to fight unemployment. Countries that have signed FTAs with labour provisions in recent years might as a result of the economic stagnation have witnessed a deterioration in their labor rights performance. It would be erroneous to attribute this negative trend to the newly signed FTA with labour provisions.

One important implication is that in the context of worldwide deterioration of labor rights, the yardstick to gauge the effectiveness of labour provisions ought to be broadened to include the potential risk of slippage in standards. In other words, signing a FTA with labour provisions might

tie a country to its existing levels of domestic labour protection, preventing a worsening of the situation. While preventing a deterioration in standards does not sell politically, it nonetheless under certain circumstances can constitute a favorable outcome traceable to the influence of FTAs with labour provisions, which should be acknowledged as such. While quantitative analyses do factor in this consideration, qualitative analyses typically do not.

## 2.4 The Impact on Trade Flows

The next study (Carrère, Olarreaga and Raess, 2017) explores the impact on bilateral trade flows of the introduction of labour protection provisions in FTAs. We are among the first to examine whether worker protection through labour clauses is a hidden source of protectionism among advanced economies and hurts the export prospects of developing countries. This idea is widespread among neoclassical trade economists (e.g., Bhagwati 1995) and government officials from developing countries, explaining their opposition to link trade and labour issues at the World Trade Organization's Singapore Ministerial Conference in 1996. Labour clauses might lead to the deterioration of market access for developing countries for two reasons. First, by raising labour costs stronger worker protection in developing countries might lead to a deterioration of their comparative advantage. Second, advanced economies might use enforceable labour standards against developing countries with poor labor rights records to withdraw trade concessions.

Using a gravity model, we find that on average the inclusion of labour provisions in FTAs does not affect bilateral trade flows.<sup>6</sup> When we disaggregate the FTAs by the level of economic development of its members, the results show that the introduction of labour provisions in North-South trade agreements increases exports of developing countries to developed countries. In addition, the impact of labour provisions is larger when they are accompanied by strong cooperation mechanisms. Labor provisions with strong enforcement mechanisms, however, do not result in a stronger impact on trade flows.

In short, we find an effect where we would expect it, namely in North-South FTAs. Against the preexisting belief, the impact of labour clauses is found to benefit Southern exports to the North. The mechanism most likely to drive the result is increased demand by concerned consumers and firms in the North for goods produced under decent working conditions. Labour clauses act as a signaling mechanism that there is adequate level of labour protection in Southern trade partner states. Labour clauses with deep cooperation mechanisms reinforce this effect by redirecting the sourcing strategies of Northern firms to trade partner countries covered by such clauses. This is because they arguably provide a stronger signal that real improvements in partner countries are occurring.<sup>7</sup> One of the reasons is that firms are indirectly (via employer associations) associated in the monitoring of labor-related commitments when social clauses are accompanied by deep cooperation, and hence they can help shape labour outcomes in partner countries and, crucially, learn about domestic labour reform undertaken on the ground.

The ILO study (2016) already mentioned investigates the same question. They also find that on average the inclusion of labour provisions in FTAs do not have an impact on bilateral trade flows. However, they find that labour provisions boost trade in South-South FTAs as well as exports from *developed* countries in North-South FTAs. These results are, if anything, rather surprising and have, in any event, yet to be explained.

<sup>6</sup> The average effect is estimated on the basis of the entire sample (North-North, North-South and South-South FTAs).

<sup>7</sup> Note that the results from the first study described above corroborate this idea.

## 2.5 The Effectiveness of Environmental Provisions

Environmental issues such as fisheries conservation, endangered species, forest governance and trade in environmental goods are increasingly regulated in FTAs. According to the TREND dataset on environmental provisions found in 630 trade agreements signed between 1947 and 2016 (Morin, Dür and Lechner, 2018: Figure 1), the most frequent provisions are exceptions to trade for the conservation of natural resources and similar exceptions for the protection of the health and life of plants or animals, found in almost half of the FTAs, followed by reference to environmental institutions and agreements as well as the right to technical barriers to trade related to the environment. Many norms such as the commitment to invest in climate adaptation, the exclusion of water from trade, and the requirement to ratify the Rotterdam Convention on hazardous chemicals and pesticides appear only in a handful of trade agreements.

To paraphrase Morin *et al.* (2018: 123), a number of recent studies have pioneered the analysis of environmental provisions in FTAs, but they have only analysed a small number of FTAs, have not provided a systematic mapping of environmental provisions in FTAs, or have looked at non-trade issues in general. Just like for labour provisions, a new generation of studies that systematically examines the causes and consequences of environmental provisions in FTAs is underway. Not unlike the area of labour, a major issue for scholars working in this area is that it is hard to find good measures of environmental protection.

Two studies examine the impact of environmental provisions in FTAs on pollution. Both find that contracting parties of FTAs with environmental provisions have lower levels of pollution, measured as carbon dioxide (CO<sub>2</sub>) emissions (Baghdadi, Martinez-Zarzoso and Zitouna, 2013) and the concentration of fine particulate matter (PM2.5) (Zhou, Tian and Zhou, 2017). Moreover, both papers find evidence that FTAs with environmental provisions induce pollution convergence among the signatory countries. While Zhou *et al.* (2017) find that environmental cooperation provisions facilitate the convergence of PM2.5 concentrations between contracting parties, Baghdadi *et al.* (2013) find that emissions converge more rapidly for FTAs including strong enforcement mechanisms (such as the North American Free Trade Agreement, NAFTA). The latter result needs to be taken with a pinch of salt because the effect appears to be estimated on the basis of a single agreement (NAFTA) and because the authors do not seem to disentangle the effects of provisions with strong enforcement from the effects of cooperation provisions (environmental provisions in NAFTA appear to be characterized by deep cooperation mechanisms as well).

Finally, Bastiaens and Postnikov (2017) focus on the impact of environmental provisions in FTAs on environmental policy reform. They argue that the sanction model epitomized by the US approach incentivizes partner states to reform during the negotiation phase (*ex ante* effect), whereas the policy dialogue model illustrated by the EU is predicted lead to reform in the implementation phase (*ex post* effect). Based on an analysis of US and EU FTAs with environmental provisions on developing countries' environmental policy reform, measured with the Environmental Performance Index (which includes air quality, water and sanitation, health, water resources, agriculture, forests, fisheries, biodiversity and habitat, and climate and energy), the authors find support for their expectations.



## 2.6 Conclusion and discussion

Using brand new, high quality data on the design of labour provisions in trade agreements (LABPTA dataset) as well as on outcomes variables of interest (LR indicators), thereby paving the way for a new generation of scholarship that investigates the effect of detailed design features of labour provisions in FTAs, my research carried out in collaboration with colleagues suggests that FTAs with strongly institutionalized labor-related cooperation provisions are a 'win-win' outcome in North-South relations. Developing country exports benefit from the introduction of labour provisions accompanied by deep cooperation mechanisms in North-South FTAs. At the same time, developing countries that sign into FTAs with deep cooperation see improvements (or smaller deterioration) in their in law FACB rights. Developed countries should endorse cooperation provisions since the greater trade they engender is associated with "fairer trade" (as a result of better worker protection in developing countries), thereby helping to level the playing field for workers and businesses at home.

It is worth stressing that the 'win-win' outcome observed ex post is triggered by, and restricted to, a particular design of labour clauses characterized by the involvement of key stakeholders, most importantly the social partners, in the monitoring and implementation of treaty-based commitments via a permanent, specialized committee. Such institutional set-up empowers those actors who hold critical expertise and provides a bottom-up approach to problem-solving where stakeholders through sustained dialogue, cooperation and capacity building are able to achieve the desired effects. In contrast, strongly enforceable labour provisions in FTAs do not contribute to favorable socio-economic outcomes in the implementation phase (ex post effects).

None of the reviewed studies from the literature on the impact of labour and environmental provisions in FTAs contradicts the above findings. Overall, these studies suggest that sustainability provisions, especially the model based on dialogue and consultation, do at best contribute to achieve some (modest) positive outcomes and at worst do not harm socio-economic developments. Regarding the role of strongly enforceable provisions through third party adjudication and unilateral sanctions, the so-called sanctions model, any evidence concerning the ex post effectiveness of this model has yet to be produced. The ruling in the US-Guatemala case where the arbitration panel found that the litigants could not prove that the labour rights violations were trade-related and thus actionable under the agreement only reinforces this conclusion.

My studies have put to the test three widely held beliefs about the role of labour provisions in FTAs: 1) they amount to protectionism in disguise benefiting developed countries; 2) they are ineffective in protecting workers; and 3) only FTAs with strongly enforceable labour standards are effective. The verdict is clear: these ideas are incorrect.

In terms of policy implications, the lesson number one is that labour clauses are trade-enhancing in North-South relations to the benefit of developing countries. Government officials and employers in developing countries should take note of the business case for the inclusion of labour provisions in FTAs and should stop opposing the trade-labour linkage on protectionist grounds. Instead, they should see this agenda as an opportunity, embrace it wholeheartedly, and cooperate in earnest. The lesson number two is that labour provisions with strongly institutionalized cooperation best promote labour rights. Based on the best empirical evidence currently available, trade unions and NGOs in the EU (and beyond) should refrain from demanding for hard sanctions. There is room to further strengthen the approach based on cooperation and trade unions and NGOs should work with renewed determination towards that goal as it is paying off. In this sense the 15 concrete

actions proposed by the EU Commission in its non-paper (EU Commission services, 2018) is a significant step in the right direction. Implementing these measures would amount to a significant revamp of the EU's approach, giving it considerably more bite.

One risk associated with the multiplication of fora to supervise the implementation of sustainability-related commitments for a growing number of FTAs is institutional overlap and inefficiency, together with overstretched staff and the lack of adequate resources. In this context, country-level coordination among the big players would be desirable. Coordination appears most feasible when the big countries have the same trade partners and when they follow a similar approach. In this respect, New Zealand and the European Union -- and perhaps the European Free Trade Association (EFTA) if it can be convinced to strengthen its institutional framework -- seem to be ideal partners. For instance, they could cooperate more closely in the case of Korea as both have trade agreements with this country. In any case, as the EU and New Zealand embark on negotiations over their own trade agreement, the coordination of their trade policy in third parties they share is something they ought to consider.

Finally, the full potential of some EU FTAs to effectively enforce labour standards has not been utilized, and few, if any, people seem to realise. According to the LABPTA dataset, some EU FTAs are characterized by strong enforcement mechanisms. This holds for instance for the Cariforum – EU EPA (2008). This agreement grants the parties the right to refer a complaint to third party adjudication and while it explicitly excludes the suspension of trade concessions as a possible retaliation measure in case of non-compliance it allows for the unilateral imposition of other 'appropriate measures'. The genie is out of the bottle; it is up to EU-level officials and stakeholders to come up with innovative ideas to give content to this instrument. In doing so, it would be wise to keep in mind what sustainability provisions do (and don't do).

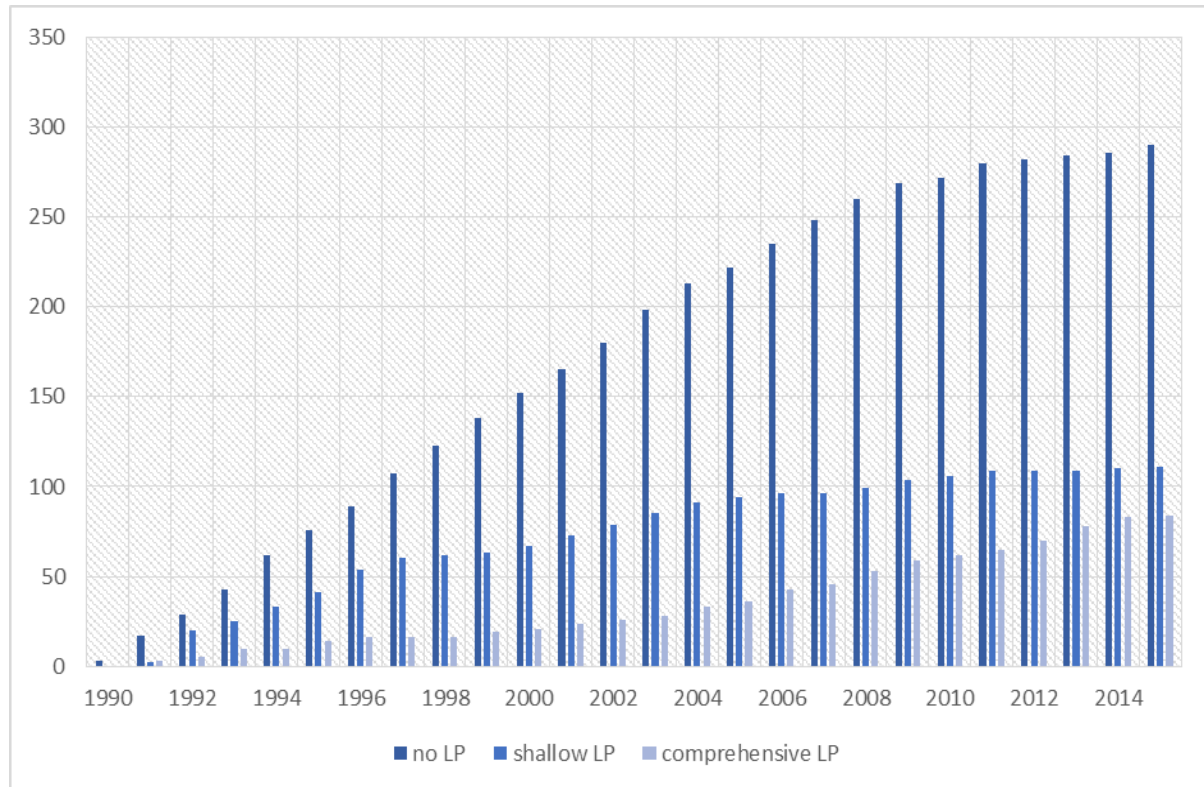
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## Charts and figures

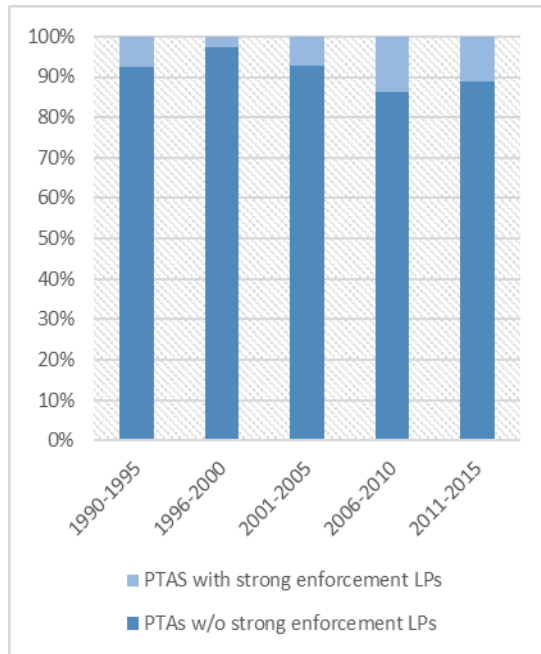
Figure 1. Cumulative number of PTAs with no labor provision (LP), shallow LPs, and comprehensive LPs



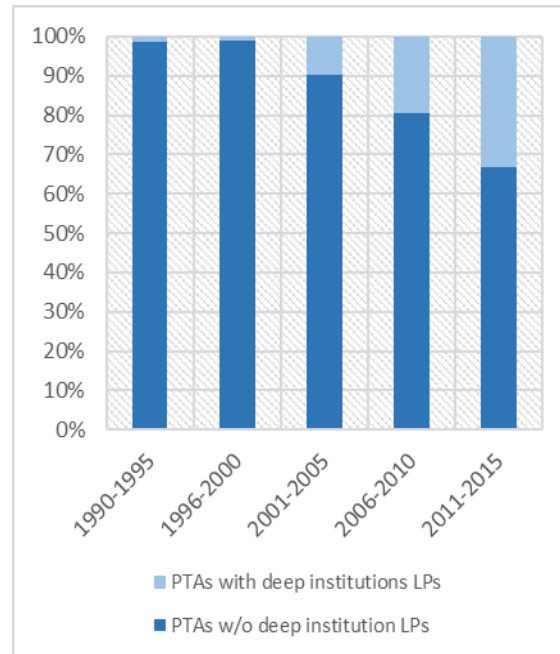
Source: LABPTA dataset (Raess and Sari, *Global Policy*, forthcoming, Fig. 2)

Figure 2. Share of PTAs with strong enforcement and deep institutions LPs in total PTAs per five-year windows

A. Strong enforcement



B. Deep institution



Source: LABPTA dataset (Raess and Sari, *Global Policy*, forthcoming, Fig. 12)

## Speaker's presentation

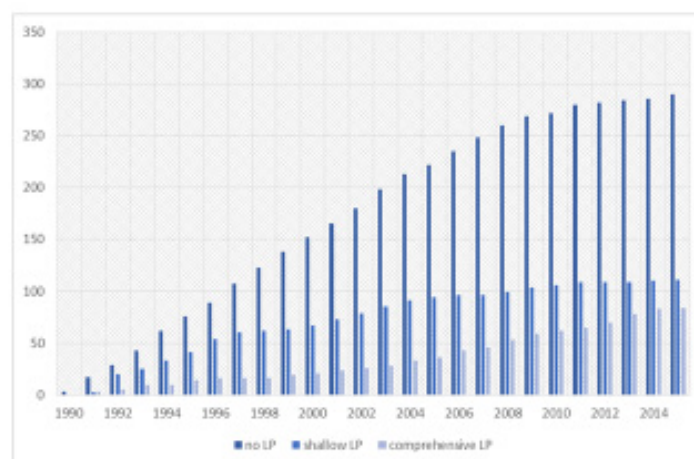


### Labour (and environmental) provisions in FTAs: what do they do?

Damian Raess  
Assistant Professor

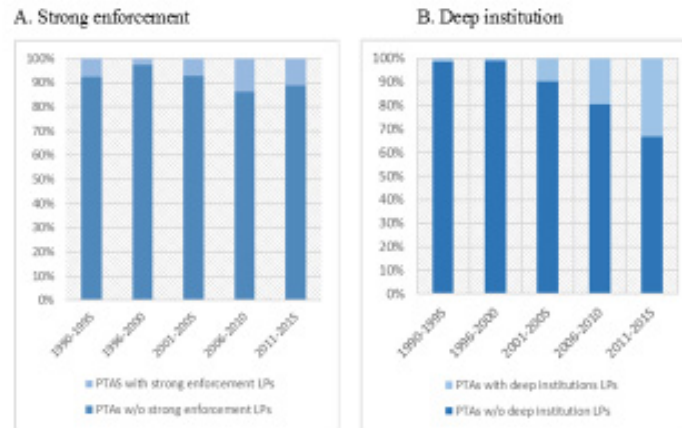
Workshop on The future of sustainable development chapters in EU FTAs  
European Parliament, Brussels  
19<sup>th</sup> June 2018

Figure 1. Cumulative number of PTAs with no labor provision (LP), shallow LPs, and comprehensive LPs



Source: LABPTA dataset (Raess and Sari, *Global Policy*, forthcoming, Fig. 2)

Figure 2. Share of PTAs with strong enforcement and deep institutions LPs in total PTAs per five-year windows



Source: LABPTA dataset (Raess and Sari, *Global Policy*, forthcoming, Fig. 12)

3

## Impact on labour rights?

### Study 1: Sari and Raess (2018)

- Research interest: effect of different types of labour provisions (LPs) in FTAs on labour rights, especially role of deep cooperation provisions
- Freedom of association (FA) and collective bargaining (CB) rights
  - Labour Rights (*in law and in practice*) Indicators (Kucera & Sari 2018)
- Key findings:
  - Deep cooperation mechanisms are effective at improving state compliance with *in law* FACB rights
  - Strongly enforceable LPs (e.g. US & Canada FTAs) are not effective

### Other findings:

- Similar but not identical: EU's soft, no-sanctions approach works (Postnikov & Bastiaens 2014)
- Pre-ratification conditionality (ILO 2013) and *ex ante* due diligence (Kim 2012) shaped by US FTAs

4

## Economic impact (i.e. trade flows)?

Study 2: Carrère, Olarreaga and Raess (2017)

- Research question: does the introduction of LPs in FTAs increase or decrease bilateral trade flows?
- Not a priori clear whether LPs reduce or boost bilateral trade flows
  - Deterioration in comparative advantage of *low-income* countries?
  - Increase in demand for goods produced with higher labour standards in *high-income* countries?
- Key findings:
  - Introduction of LPs has on average no impact
  - Exports of *low-income* countries benefit from LPs in *North-South FTAs*
  - The impact is larger when LPs accompanied by deep cooperation mechanisms (no similar effect for strongly enforceable LPs)

Other findings:

- LPs in FTAs do not harm or divert trade on average (ILO 2016)

5

## Effectiveness of environmental provisions?

- Understudied
  - Studies use crude measures of environmental provisions (EPs) in FTAs
- 1) Pollution, key findings:
    - Contracting parties of FTAs with EPs have lower levels of pollution (Baghdadi *et al.* 2013; Zhou *et al.* 2017)
    - FTAs with EPs lead to emissions convergence between contracting parties (Baghdadi *et al.* 2013), especially if accompanied by environmental cooperation provisions (Zhou *et al.* 2017)
  - 2) Environmental policy reform, key findings (Bastiaens & Postnikov 2017):
    - US FTAs associated with *ex ante* environmental policy improvements in partner countries
    - EU FTAs associated with *ex post* improvements

6

## Conclusion

- Labor (and environmental) provisions with deep cooperation mechanisms in FTAs are a “win-win” outcome in North-South relations

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### 3. 'Innovation in the social pillars of sustainable development', by Dr Evita Schmieg (German institute for International and Security Affairs - SWP)

The EU is following the 'soft approach' with its TSD chapters in FTAs. This approach could achieve the following so far:

- Strengthening civil society processes. In Columbia the pressure to put in place the Domestic Advisory Group has been strengthening civil society and the mechanism of exchange between civil society and the government. The exchange between European trade unions / civil society and those in Colombia had been instrumental.
- A strengthened civil society is the precondition for long-term successful change in support of more sustainability, since this has to be built on a change in norms, attitudes and institutions *in the partner countries*.

Overall, demanding the setting in place of DAGs has been very helpful, but the functioning of DAGs should be strengthened (I referred to my written contribution).

However, current European TSD chapters are too weak to bring about an improvement of the labour situation in the partner countries in the short term. This would imply **some changes in the approach**. An improved European approach should combine successful instruments of the EU, US and Canada with new ideas.

**1. Demands to partner countries need to include specific reform steps and progress has to be verified and assessed.**

This implies to go deeply into the political processes and institutional change that is taking place in partner countries. It is a really challenging task. Mechanisms should be coherent with what other trade partners do demand. Ideal would be a common approach of large trade partners.

**2. Ex ante conditionality has proven to be useful to achieve immediate progress.**

The EU should demand the ratification of ILO core labor standards before agreements are ratified and enter into force, since this creates a strong incentive.

**3. Sanctions:**

**a) Trade sanctions are not suited** to improving the labour situation, but, in contrast, they do worsen the situation of workers in partner countries.

**b) Financial sanctions / a financial triggering mechanism:** In the case of non-compliance of a partner country with the labour clauses of a FTA, financial sanctions could help to achieve two objectives: First, the funds could directly be used to improve the situation of labour. Second, such a mechanism would force partner governments to deal with labour issues in their budgetary processes and that is something that could strengthen ownership. The expression 'financial sanctions' might, however, be misleading, since the idea is not to impose a fine or fee but rather to create a mechanism that would lead automatically to improving the labour situation in partner countries. Also with a view to better acceptance by negotiating partners it might be useful to find a more technical expression. For both, trade as well as financial sanctions, there is so far no experience in their



effectiveness. We are working on the hypothesis that sanctions might work as an incentive to implement reform.

**4. Change needs financial support / development co-operation.**

Typically, non-compliance with environmental and labour standards is rooted in basic development problems like limited administrative capacities, inadequate enforcement of legislation and weak institutional infrastructure. It is therefore not enough to *demand* partners to change the situation, but they need *financial and technical support* to carry through reform processes. Development has a long standing experience in influencing internal policies. Trade policy should build on that experience.

**5. Final conclusion: TSD chapters are only a second best solution.**

Trade today is not sustainable. But this is, however, not a defect of trade policy or a mistake of trade policy negotiators or wrong agreements. The reason behind is that production and consumption patterns do not reflect the true costs to society. Trade cannot remedy the situation but only provide incentives to work towards more sustainability in a limited sphere. The broader objective of coming to overall sustainability should not be lost sight of.

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## Speaker's presentation

### Background to the presentation

My presentation is based on research on the impact of labour clauses in free trade agreements carried through during the last year, based on theoretical analysis as well as a case study in Colombia including interviews with different stakeholders in the country. The objective was to find out whether at all FTA are suitable instruments to strengthen the labor situation in partner countries, and if this was the case, how should labor clauses be designed to make sure to achieve this beneficial effect.

### Conclusions on TSD chapters in trade agreements

**1. FTA are a suitable instrument to improve the labour situation in partner countries.**

The ILO in a comprehensive study on the labor provisions in 76 out of more than 260 FTAs in 2016 concluded that the combination of technical cooperation, verification mechanisms and civil society participation has contributed to improving the labour rights situation in various sectors. This has been confirmed by the experience in Colombia, where about half of the measures required by the US Action Plan have now been implemented.

BUT ... success depends on crucial factors ...

**2. The existence of conditionality and sanctions can increase the leverage.**

Especially *ex ante* conditionality can play a useful role since it builds up much more political pressure to really implement. An example might be demanding a partner country to ratify the ILO Core Labour Standards *before* a Free Trade Agreement enters into force. This instrument has often been used by the US, e.g. in the case of Colombia asking for the establishment of a labour ministry.

The effect of sanctions, on the other hand, is unclear. The effect of trade sanctions can especially be doubted. Apart from being a lengthy and complicated instrument, trade sanctions in no way can contribute to improving the labour situation in partner countries.

Financial sanctions, however, might be useful to reach the objectives. e.g. in the case of the Colombia/Canada Labour Agreement, not complying with the provisions can lead to financial sanctions of up to 15 million USD / year. The funds will be used to the benefit of workers in the country.

*The European Union should consider to also use the instruments of ex ante conditionality and financial sanctions as part of its TSD approach.*

**3. Large trade partners (EC) should demand coherent policy packages and build on the experience of development policy.**

Different bilateral trade agreements should not come up with diverging requirements on a country's internal politics. Especially in the case of large trading nations, there is a danger that they will seek to use such agreements to enforce their own labour and environmental standards in the weaker partner country. Such a constellation can be avoided if the requirements are based on internationally agreed standards.

Also, trade partners should coordinate with one another over issues where they demand that their counterparts change internal policies. Great challenges arise for the often weak administrations in developing countries where a country concludes bilateral trade

agreements with several different parties, each generating different requirements concerning political reforms, reporting systems and associated verification mechanisms.

To contribute to reform of internal policy is a traditional field of development co-operation. It is therefore important that future trade policy avoid repeating the mistakes that development cooperation is only just learning to overcome. In 2005 the donor countries adopted the Paris Declaration on Aid Effectiveness. In essence it provides for recipient countries to define their own development strategies (ownership). The role of the donors is to support these strategies and coordinate and simplify their own processes.

*In the area of labour standards the EU should therefore continue to base its demands on agreements concluded under the auspices of the ILO.*

*With regard to specific requirements towards partner countries policies, the EU and other trade partners should coordinate their requirements and verification processes.*

*A coherent approach is easiest to follow if trade partners draw on the expertise of international organizations (ILO) and grant them a central role also in implementation.*

#### **4. Change needs financial support / development co-operation.**

Limited administrative capacities, inadequate enforcement of legislation and weak institutional infrastructure are all typical development problems that hamper efficient governance. Often external support is required in order to realize far-reaching reforms and consistent implementation of legislative initiatives, including in the area of labour.

*The EU should therefore give financial and technical support for sustainable change in partner countries and use instruments and experience of development cooperation.*

#### **5. Dialogue mechanisms are extremely important to achieve long term change**

Norms and institutions must change if society is to progress. Effective political process needs functioning institutions for stakeholder dialogue as well as a willingness to compromise.

The EU approach demanding partner countries to involve civil society in dialogues about trade policy and social and environmental standards is a crucial instrument to bring about such change.

*The EU should continue and strengthen its approach to improve dialogue mechanisms in partner countries. Complaint mechanisms can play an important role in that regard. The National Contact Points for the OECD Guidelines for Multinational Enterprises might be an interesting instrument to follow up further.*

*The EU should support different forms of dialogue in partner countries and the functioning of Domestic Advisory Groups (DAGs).*

*The EU should, however, build its approach on existing structures and institutions in partner countries also with regard to dialogue processes and avoid building up parallel structures. There is no one size fits all approach.*

#### **6. The implementation of labour provisions has to be controlled.**

Political pressure to actually implement labour clauses is generated above all through concrete demands and agreements, along with verification of their realization. However, to really assess process with regard to internal policies is very demanding. Verification demands resources and time – also from the partner country.

*The EU should – coherent with possible approaches of trade partners – be specific with regard to reform action to be taken under TSD chapters in FTAs and coordinate verification processes with trade partners.*

**7. Cooperation among European institutions should be improved.**

The Colombia agreement is a case in point. Even though the TSD chapter of the trade agreement was complemented with a resolution EP that specified the EU's demands, during implementation the two approaches were not seen together.

*The overall European approach could be strengthened by a more co-operative and better coordinated approach of all European Institutions.*

**8. Final conclusion: TSD chapters are only a second best solution and the long term objective must not be lost sight of.**

Labour clauses in FTAs are only a second-best solution, because modern trade is simply not sustainable. That is not a defect of trade policy, trade policy negotiators or the agreements in question, but the logical consequence of patterns of production and consumption based on prices that fail to reflect the true costs to society. The international Sustainable Development Goals identify first steps of change needed.

*The long-term goal of sustainable production and consumption must not be lost sight of!*

#### 4. 'Trade and sustainable development: Taking stock of policy debates and reform proposals', by Dr Tancrède Voituriez (Institut du Développement Durable et des Relations Internationales - IDDRI, Sciences Po Paris)

The presentation by Tancrède Voituriez debated the two options for TSD Chapter reform laid down in European Commission non-paper in 2017. In his presentation, he intended to show that these two options were unsatisfactory in their current state. In particular, the existence or lack of sanctions is a question with real symbolic and political significance weight, but it tends to exaggerate the importance of legal mechanisms that have previously proved so difficult to apply that they are rarely used. In addition to the two Commission options, Tancrède Voituriez suggest a third approach, which is structured by the following principles and provisions.

1. The fundamental issue underlying the debates and proposals concerning the strengthening or integration of environmental provisions in bilateral trade agreements (BTAs) is that of the desired outcome. What is the EU intending to achieve by reforming the TSD? What exactly does it expect from environmental and climate provisions in BTAs? This is the first question the EU must address.
2. There are two answers to this question. The first entails "greening growth" – making trade cleaner, in short. The overall "climate neutrality" of trade arrangements is in line with this approach. The second is radical and aims to ensure BTAs support environmental and climate protection and therefore the changes required within our economies ("growing green"), which are the main justification for negotiating a BTA. The environmental and climate emergency advocate in favour of this second type of answer.
3. The underlying rule of logic is the following: BTAs, which are inconsistent with the multilateralism advocated by the EU, are only acceptable to the EU if they are a social and environmental best bid in relation to the business-as-usual scenario offered by the WTO. No BTA should be negotiated with countries that have not signed and ratified MEAs deemed to be fundamental by the EU – including the Paris Agreement. Withdrawal from these agreements suspends the BTA. Concerning the application of Multilateral Environmental Agreements, an approach comparable to that of the Generalised System of Preferences "+" (GSP+) should be encouraged and extended to all BTAs. Otherwise, the WTO multilateral conditions for market access prevail.

As highlighted during the exchanges with the room, this approach reverses the current priority of the EU which is move forward on bilateral trade agreements. It rings the alarm bell on the state of the multilateral trading system and pinpoints to the risk of overloading BTAs with sanction mechanisms for provisions sometimes poorly related with trade flows, making it difficult to trigger the envisaged mechanism in case of infringement. Tancrède Voituriez concluded by saying that ex ante conditionality should be preferred to in itinere or ex post sanction-based mechanisms whose applicability remains elusive.

## Speaker's presentation

# The future of sustainable development chapters in EU free trade agreements

Tancrède Voituriez  
([tancrede.voituriez@iddri.org](mailto:tancrede.voituriez@iddri.org))

Tuesday, 19 June 2018  
European Parliament, Brussels



For the Committee on International Trade (INTA)

## My main take-aways

1. Before choosing among different reform options for TSD chapters, the fundamental issue at stake is that of the desired outcome. **A TSD for what?**
2. The rule of logic should be that BTAs are acceptable to the EU if and only if they are a **social and environmental best bid** vis à vis multilateral MFN/WTO agreements.
3. A **GSP+ approach deeply revised and extended to BTAs** on a case-by-case basis

## A burning issue particularly for the EU

- Looming trade wars in a context where the champion of trade openness is no longer the US but China, while our TSD collective preferences remain much closer to the US than to China.
- Growing demand in public opinion, according to polls, for the use of EU trade policies as a stick more than a carrot, and for levelling the playing field with third countries with different environmental and social standards.
- After almost a decade of implementation of the TSD chapter, it is possible to take a step back and look at evidence. And evidence is rather mixed. Reforms are unescapable.

## Navigating the TSD Chapter reform options

- Two options on the table, laid out by EC (2017) non paper. One rather conservative following a carrot approach, the second one more radical favouring the stick approach and the use of mandatory trade sanctions in case of violation of TSD chapter provisions.
- Both have “+” and “–” :

*(-) The conservative approach does not respond to the environmental crisis*

*(-) The sanction-based approach oversells the applicability and effectiveness of sanction mechanisms – particularly in the case of climate change*

## A possible third way?

1. Make clear first what the EU is intending to achieve by reforming the TSD chapter.
2. A TSD for what? Two possible answers
  - Make trade more sustainable – something like *greening growth*
  - Ensure that BTAs support environmental and climate action and therefore support the changes required within our economies. Permitting and even triggering these changes become the main justification for a BTA – something like *growing green*.

## A possible third way?

3. A reminder: BTAs are inconsistent with the multilateralism advocated by the EU. The rule of logic should be that BTAs are acceptable to the EU if and only if they are a **social and environmental best bid** in relation to the business-as-usual scenario offered by the WTO.
4. This rule determines the partners with which the EU can consider negotiating BTAs. No BTA should be negotiated with countries that have not signed and ratified MEAs deemed to be fundamental by the EU – including the Paris Agreement. **Withdrawal from these agreements should suspend the BTA.**

## A possible third way?

5. EU hence should offer conditions for accessing its market in more favourable terms than MFN only to countries abiding by EU collective preferences deemed relevant for its relationships with the bilateral trade flows considered. Otherwise the WTO MFN-rule based system should prevail.

*“(GSP+) à la carte” extended to BTAs.*



## Miscellanies

### **The future of sustainable development chapters in EU free trade agreements**

Tuesday, 19 June 2018  
European Parliament, Brussels



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