

## **Netherlands input for the review of the 15-point action plan on Trade and Sustainable Development**

The government of the Netherlands warmly welcomes the early review of the 15-point action plan, which was announced in the Commission's Communication on the EU Trade Policy Review.<sup>1</sup> This review is very timely considering discussions on trade agreements and sustainable development, and on the role of civil society. The current debate asks that we step up our ambition to ensure full implementation of the trade agreements we negotiate. Through this position paper, the Netherlands would like to provide input for the policy discussion, which will take place on the basis of the Commission's consultations with stakeholders and a study conducted by an external consultant. This paper sets out the position of The Netherlands on the topics that the Commission aims to include in the review.

The Netherlands would like to emphasize the importance of cooperating over time with partner countries and providing incentives to comply with TSD commitments under trade agreements. The EU should continue to capitalize on its TSD approach, and further strengthen it. The main elements of the Netherlands position can be summarized as follows:

- The EU should strengthen its information exchange and coordinate more closely on efforts and programs run by various stakeholders in third countries.
- The Netherlands proposes to strengthen the incentives for parties to implement environmental and social TSD commitments by explicitly linking tariff reductions to the implementation of specific TSD provisions. This can be done either through drawing up timelines for TSD implementation linked to specific tariff reductions including the possibility to revoke these or, as an alternative approach, by making the entry-into-force of an agreement conditional upon early implementation of certain TSD commitments.
- This approach should also be applied to trade agreements that are currently being negotiated.
- The Netherlands remains committed to including the Paris Agreement as an essential element in trade agreements.
- Furthermore, the Netherlands makes several proposals to improve the functioning of the Domestic Advisory Groups (DAGs). The Commission should play an encouraging role for DAGs to overcome organizational hurdles, draw up action plans and provide timely information. The Netherlands would welcome more coordination between DAGs, the Commission and member states and their delegations with regards to TSD implementation.

### *Setting the scene*

The Netherlands regards the early review of the 15-point action plan very timely, especially in light of the enhanced focus on environmental and social sustainability as contained in the Green Deal and Farm to Fork strategy as well as the Trade Policy Review communication. The environmental and social-economic effects of climate change and biodiversity loss are widely apparent. Building back better and focusing on sustainable and inclusive economies after the COVID-19 pandemic is therefore of the highest priority.

This year both the Conference of Parties for biodiversity and for climate change take place, providing opportunities to strengthen collective action. The Green Deal and Farm to Fork promote sustainability amongst others by setting high environmental standards within the EU. Considering that environmental sustainability is a global matter, high standards also need to be promoted at a global scale. In this regard, the Netherlands welcomes that the European Commission has proposed to include chapters about Sustainable Food Systems in trade agreements. Moreover, several political declarations were adopted recently as part of the revision of the Common Agricultural Policy. These show an enhanced interest in sustainability standards that apply to agricultural products and underline the importance of proactive engagement at multilateral level concerning the application of EU health and environmental standards. As sustainability requirements become more important within the EU, they become more important in trade policy.

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<sup>1</sup> "Trade Policy Review – an Open, Sustainable and Assertive Trade Policy" - COM(2021) 66 final.

### *Promoting rules based, open and sustainable trade*

Open and rules-based trade is key for the stability and prosperity of the EU and that of its trading partners. Trade and investment can contribute to economic growth and the resources required to achieve sustainable development goals. Moreover, trade agreements can help the uptake of sustainable standards, responsible business practices and distribution of green products and services. Trade agreements provide benefits to EU citizens as consumers, producers and employees as they facilitate access to third markets, reduce trade barriers and are a valuable contribution to multilateral trade rules. Especially in times of geopolitical tensions, they are an important tool for the EU to secure its place in the world.

Through trade agreements the EU promotes fundamental labor rights and environmental sustainability. While trade agreements are not the primary instrument to achieve global labor and environmental objectives, they should leverage what has been agreed upon in dedicated multilateral bodies. In the context of pressing environmental issues and developments, the EU needs to ensure it remains at the forefront in furthering trade policy that is conducive to open, sustainable and fair trade. This is our joint responsibility, and it is what our citizens demand from us.

With the largest internal market in the world, the EU has significant market power. It can negotiate with many of its partners on terms that contribute to improved market access, protection of investors and a level playing field, and that promote our values. We expect the EU to actively utilize its market power in its cooperation and negotiations with third countries on trade, in order to achieve higher sustainability standards and promote full compliance with them. This position is not something the EU can take for granted but something that it must actively maintain. The EU should maintain its focus on the fundamental labor conventions and multilateral environmental agreements as the core of its TSD approach (see below) and find an appropriate balance in expanding TSD commitments, so that trade agreements are both a vehicle for alliance building with other countries and advance sustainable development objectives. To effectively leverage trade agreements, sustainable development priorities may change per partner, especially in the implementation phase, as there are different opportunities and sustainable development issues at stake in each bilateral trading relationship and because of different degrees of economic interdependence and thus potential leverage of an agreement.

Trade policy should contribute to the sustainable development of low and middle income economies by stimulating green and inclusive growth. The EU has specific instruments that ensure both objectives go hand in hand, such as Aid for Trade programs, its Generalized Scheme of Preferences and asymmetrical trade agreements. Research suggests that the EU's approach for promoting sustainable development in trade agreements is also beneficial for its developing trading partners. There is a business case for including provisions that promote core labor standards and favor cooperation, as they have a positive effect on trade flows of manufactured goods from developing countries to developed countries<sup>2</sup>. It is important that such provisions are based on international norms countries have agreed upon, and that they leave sufficient room and time to formulate national policies in line with those norms. Analysis of trade agreements, including TSD commitments, remains important to support monitoring and evaluation of impact on a country specific basis. Involving local stakeholders in monitoring and implementation efforts, notably trade unions and NGO's, amongst others through Domestic Advisory Groups, is a crucial element in this.

The Commission's Communication on the EU Trade Policy Review highlighted the role trade policy can play to achieve sustainable development goals. The EU reconfirmed its commitment to shape global trade rules so that they support environmental and social sustainability, an ambition that the Netherlands very much supports. The EU has recently strengthened its efforts to deliver on these ambitions. The role of the Chief Trade Enforcement Officer (CTEO) in monitoring the implementation of trade and sustainable development provisions in existing trade agreements, is especially important in this regard. Promoting trade and sustainable development requires

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<sup>2</sup> [Labor clauses in trade agreements: Hidden protectionism? | SpringerLink](#)

continuous efforts and the approach that is used to ensure that these efforts have an impact on the ground, should periodically be evaluated

#### *Framework for assessing economic, social and environmental benefits*

Running economic, social and environmental impact assessment of trade agreements are an integral part of the negotiation and implementation of trade agreements. The outcomes can inform decision making processes, including the staging of various benefits and mitigation of potential trade-offs for the EU and partner countries. The Netherlands would like to underline that the expected gains in welfare and positive impacts on developing countries together with robust and effective TSD commitments should be the starting point for assessing the value of EU trade agreements<sup>3</sup>. The European Commission runs an economic impact assessment study at the opening of each trade agreement negotiation as well as a Sustainability Impact Assessment (SIA) around the time the deal is closed and about to be implemented.

While SIAs and ex post evaluations already provide many useful insights, their effectiveness can be improved. Member States need national and sectoral information which is not available in the impact assessments currently carried out by the Commission. Including such information in impact assessments could help Member States in their communication with stakeholders. The European Commission could set up a procedure to take on board Member States' sensitivities in the design of such impact assessment to the extent this is possible, including on sustainable development issues. Additionally, in order to maximize the usefulness of SIAs, they need to be available before the conclusion of negotiations and consequently be updated once the outcome of the negotiations has become clear.

#### *Focus on core labor conventions and multilateral environmental agreements*

In line with the sustainable development goals, the EU's approach to Trade and Sustainable Development (TSD) focuses on economic, social and environmental aspects of sustainable development. In its TSD chapters, parties commit amongst others to ratify and implement the fundamental principles and corresponding conventions of the International Labor Organization (ILO). Although the scope of labor commitments has somewhat expanded over time to include relevant topics such as health and safety at work and labor inspection, much of the EU's attention is directed towards the fundamental conventions. We support this approach, especially given that the fundamental rights are considered as 'enabling' rights, meaning that they create an environment that is conducive to realizing broader labor rights objectives.

Moreover, the EU asks partner countries to restate their commitment to the Paris Agreement on climate change and the underlying framework agreement as well as to other multilateral environmental agreements (MEAs) to which they are party. The fight against climate change is a core value that needs to be shared between the EU and its partners. It is necessary to build strong links between bilateral trade agreements and climate commitments. Most, but not all partner countries have ratified MEAs and their protocols. The Netherlands therefore asks the Commission to explore what the added value would be of explicitly committing to ratification and implementation of a list of MEAs<sup>4</sup>. TSD chapters also reference other multilateral environmental conventions and environmental topics, one of which being biological diversity. The need for more ambitious action in this area should be reflected in future EU trade agreements. Parties should be encouraged to affirm their commitment to implement the Global Biodiversity Framework that is currently under negotiation.

The EU has been promoting gender-sensitive trade policies to ensure trade liberalization can reach everyone. Together with like-minded trading partners like Canada, the EU is implementing a work plan on trade and gender. A modernized association agreement with Chili should include specific provisions on trade and gender, as both parties are committed to promoting trade and gender. Agreements that have been ratified and are being implemented underpin fundamental ILO-conventions that are relevant for advancing women's rights and SDG5. The EU should continue to

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<sup>3</sup> The government of the Netherlands has embraced the seven principles the Socio-economic Board has proposed as a means to assess EU trade agreements

<sup>4</sup> [Retooling the Sustainability Standards in EU Free Trade Agreements by Marco Bronckers, Giovanni Gruni :: SSRN](#)

reinforce gender in its trade agreements, by enhancing cooperation between parties, underpinning multilateral commitments, conducting systematic research and encouraging participation of relevant civil society organizations.

Finally, the COVID-19 pandemic has highlighted the need for corporate social responsibility and fair and sustainable value chains. Trade agreements can encourage states to coordinate, cooperate and exchange best practices. To this end parties should work on the basis of specific work plans. Trade agreements should be coherent with responsible business conduct policies and provide an opportunity to discuss the EU's approach to responsible business conduct with partner countries, taking into account that the EU will present a proposal for mandatory due diligence by the end of 2021.

It is relevant to consider the scope of TSD provisions because resources to work on their implementation may be limited. Considering that TSD chapters already cover a broad range of topics, some TSD topics have to be prioritized over others. We continue to support an approach that balances ambition, realism and pragmatism. Expanding the material scope of TSD provisions should be done on a case by case basis, if there is a clear opportunity to capitalize on additional topics in a specific trading relationship. For example, if a trading partner has an interest or experience in the area of trade and fossil fuel subsidies or trade and circular economy, this should be included in the agreement/chapter with the aim of cooperating on these topics.

#### *Sound implementation, monitoring and enforcement*

The TSD obligations are legally binding and TSD chapters have a dispute mechanism which can lead to a report by a panel of experts. If the panel concludes that a party has not lived up to its commitments, parties are expected to come to an agreement on how to address this. To add to this mechanism, the Netherlands proposes to explicitly link the implementation of scheduled tariff reductions to the implementation of certain TSD commitments, including the possibility to revoke these tariff reductions in case of regression. In the context of the ongoing evaluation, the Netherlands is open to discuss other options adding to the enforcement of TSD provisions in future trade agreements. This discussion should be held, taking into account the input from stakeholders, the Council and the upcoming report that has been commissioned.

The EU's approach to TSD is based on the assumption that changes in the area of labor and environment take time, and require deep and long term cooperation. Through continuous dialogue and by setting up bodies that monitor implementation efforts, also involving local stakeholders, the EU aims to encourage trade partners to live up to their commitments. The Commission currently makes use of its own 'country priorities' to ensure implementation of certain TSD provisions. This approach is welcome as it helps to target the use of resources towards priorities that can have the most positive impact. It suits the approach aimed at long term cooperation. Moreover, it may help streamline the focus with the priorities of member states and stakeholders. However, there is room to improve awareness of country priorities amongst stakeholders and to identify potential areas where enhanced efforts are relevant. This could be done, for example, by creating an overview of relevant projects and relating them to the Commission's priorities.

There is reason to believe that the EU's approach to trade and sustainable development based on deep cooperation is valuable and leads to positive results. This approach should therefore not be abandoned, but rather built upon where necessary and possible with incentives to comply with TSD provisions. The Netherlands proposes to strengthen both the 'carrot' and 'stick' approach to TSD implementation. Mechanisms in trade agreements that include specific commitments and dedicated institutional arrangements to monitor implementation (e.g. regular dialogue) seem to bear fruit when it comes to states respecting labor rights<sup>5</sup>. TSD designs that establish designated fora for parties and stakeholders to monitor provisions on freedom of association and collective bargaining are related to positive outcomes. An explanation for this might be that these provisions lead to transfer of knowledge and resources that strengthen the capacity of bureaucracies and the role of social partners, and that this is achieved through persuasion in other cases. This would underscore that additional instruments, such as Aid for Trade programs, are highly relevant and

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<sup>5</sup> [https://www.peio.me/wp-content/uploads/2016/12/PEIO10\\_paper\\_63.pdf](https://www.peio.me/wp-content/uploads/2016/12/PEIO10_paper_63.pdf)

can enable changes on the ground. An approach that balances the need for cooperation with incentives to comply is thus needed.

It is uncertain whether these conclusions can be extended to other labor and environmental provisions in trade agreements. As implementation and enforcement of environmental provisions have only recently gained more attention, there is a need to further evaluate the effects of these clauses in EU agreements. There continues to be room to build on these findings about labor provisions and to experiment with alternative approaches in new agreements. We therefore urge the Commission to consider the following suggestions.

The EU should draw up more detailed work plans that include timelines with its partners. This can help in monitoring progress, holding trading partners accountable and asking them to deliver on their promises. The EU – South Korea case underlined that TSD provisions bind both parties to respect, promote and realize fundamental ILO-conventions. This is good news, as it means that TSD provisions strengthen existing labor commitments. But it also illustrates that without a specific timeline that is agreed upon, the continuous efforts parties have to put into implementation and ratification remain rather undefined.

In the 15-point action plan, the Commission planned to step up efforts to address TSD early in the negotiation phase and put resources into encouraging early ratification and implementation. The EU could explore whether there is room to further capitalize on early adoption, while respecting the EU's internal procedures and mandates. States are likely to improve their labor laws in accordance with the fundamental conventions in the phase preceding the actual conclusion and implementation of relevant provisions<sup>6</sup>. This can be explained by the fact that states have an interest to appeal to a potential negotiation partner. Using the phase before signing or negotiating to leverage the implementation of labor and environmental objectives might be effective across TSD topics. The EU and its member states should consistently be signaling the importance of TSD provisions. The Netherlands will continue to support these efforts in its own diplomatic contacts at various levels. The EU should consider making certain changes with regards to sustainable development conditional upon ratification of an agreement.

Furthermore, the EU could incentivize effective implementation by explicitly linking tariff reduction to TSD commitments. The EU should introduce staged implementation of tariff reduction linked to the effective implementation of specific TSD provisions. Parties should clarify what conditions countries are expected to meet in order for these tariff reductions to take effect. The design of linking tariff reductions to TSD implementation, should be country specific. Such staged implementation should include the possibility of withdrawal of those specific tariff lines in the event of a retro-active breach of those conditions. This approach would allow the EU to bear the fruits of its cooperative approach, while strengthening the incentive for enforcement. The Netherlands asks the Commission to explore this option with regards to trade agreements that are currently being negotiated and have not been concluded.

The Paris Agreement and its legally binding obligations should be an essential element in comprehensive and future trade and political framework agreements, including those being currently negotiated. The inclusion of essential elements in European agreements contributes to the promotion of the values and political principles on which the EU's external relations are founded. The EU would thus send a strong political signal to its partners and civil societies by demonstrating that it now wishes to negotiate trade agreements only with partners that are wholeheartedly committed to combating climate change. The Commission should, in line with the recent trade policy communication and Green Deal, take the lead in this.

#### *Cooperation with stakeholders*

In its 15-point action plan, the Commission set out a number of activities to better coordinate work of member states in Brussels, partner countries, the European Parliament and other relevant bodies. With regards to cooperation with the Council, ad hoc and thematic expert sessions are a valuable means to better coordinate the work of institutions in Brussels (and Geneva). It is beneficial that capitals receive detailed updates, as these can contribute to improved coordination of diplomatic efforts. During the COVID-19 pandemic meetings were held digitally. This seems to

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<sup>6</sup> Moonhow, Ex Ante Due Diligence: Formation of PTAs and Protection of Labor Rights, 2012

have lowered the barrier for organizing thematic meetings, during which specific topics have been explored in more detail. It is desirable to adopt a hybrid approach in the long term, so that regular physical meetings can be complemented with more ad hoc thematic digital meetings.

There is room to further improve the information exchange between stakeholders that play a role in implementation of the agreement and relevant international institutions, such as the ILO. The Commission's efforts to ensure and monitor sound implementation of TSD provisions are supported by a network of stakeholders. The recently launched Single Entry Point, through which EU-based stakeholders can address potential breaches of TSD commitments, further streamlines this process. Moreover, it provides a framework for complainants to deliver a valuable and focused contribution. In addition, streamlined information exchange between EU delegations, the Commission and representations of member states in partner countries and capitals may help produce complementary information when needed. The Commission could explore whether it can play a facilitating role in coordinating information exchange both various stakeholders, themselves, as well as between the stakeholders and the Commission.

There is room to further improve the functioning of domestic advisory groups (DAGs). The purpose of these meetings with civil society are at least threefold: they strengthen the role of civil society in their respective countries, they facilitate effective implementation, and they advise their respective governments. Firstly, the dialogue that is held between various stakeholders has an intrinsic value in itself. Having a platform to directly exchange views with their national government can empower certain actors. Moreover, sharing information, for example about obstacles and opportunities in implementation, can improve the monitoring of the agreement. In addition, DAG members can communicate their views with the national authorities of member states. It should be noted that the last objective may mean that there is no consensus within DAGs about advising governments or issues statements. Communications from members of the DAGs to the Commission should be taken into account in the Commission's implementation efforts. In addition, DAG members indicated several possibilities to improve their functioning<sup>7</sup>. There seems to be room to announce meetings more in advance. Logistical arrangements are prerequisite for all the objectives mentioned above. Moreover, they would prefer working on the basis of a better defined program. This could help to evaluate the work of the DAGs and to focus and pool together their efforts. They see room to improve interactions with officials. The Netherlands would like to ask the Commission to explore whether meeting more often would cater to the demand of DAGs. DAG members also play a role in making such improvements, for example they may draw up their own priority areas or use those of the Commission as a basis to determine priorities. There is a facilitating role for the Commission in helping to make improvements. The Netherlands asks the Commission to look into the possibility to organize an event with all EU-DAGs with the aim of sharing best practices.

#### *Transparency and communication*

The accessibility of documents such as reports, work plans and statements with regards to TSD implementation should be improved. While these are currently available on the Commission's website, they are not displayed very prominently. The Netherlands asks the Commission to explore the possibility of an interactive world map that indicates the status of trade negotiations, including the status of TSD implementation. Visitors of the EU's website could from there discover implementation activities. Moreover, the Commission could provide a link to information about the DAGs.

It is relevant to note that TSD provisions are not the only means to advance sustainable development through trade agreements. Lowering tariffs on environmental friendly goods, enabling investments and service delivery may also contribute to this. Moreover, parties can agree to cooperate on setting ambitious standards in trade agreements. This may be relevant for example in the area of circular economy and recycled or upcycled goods, where little standards exist. The Netherlands encourages the Commission to continue working, in close cooperation with member states, on all relevant aspects of trade agreements for sustainable development.

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<sup>7</sup> [17135.pdf \(fes.de\)](#)