

TSD HANDBOOK

Implementation of the
chapter on trade and
sustainable development
in the Trade Agreement
between EU and Ecuador



This handbook was developed on the initiative of the Ministry of Production, Foreign Trade, Investment and Fisheries of Ecuador and with valuable input from the Ministries that participate in TSD implementation in Ecuador: Ministry of Labour, Ministry of Environment as well as Ministry of Foreign Affairs and Human Mobility.



This Handbook was developed in collaboration with the European Commission. It has benefitted from discussions with the Directorate General for Trade of the European Commission. The contents of this publication do not necessarily reflect the position or opinion of the European Commission.

In collaboration
with the



The National Board of Trade Sweden is the government agency for international trade, the EU internal market and trade policy. Our mission is to facilitate free and open trade with transparent rules as well as free movement in the EU internal market.

Our goal is a well-functioning internal market, an external EU trade policy based on free trade and an open and strong multilateral trading system.

We provide the Swedish Government with analysis, reports and policy recommendations. We also participate in international meetings and negotiations.

The National Board of Trade, via SOLVIT, helps businesses and citizens encountering obstacles to free movement. We also host

several networks with business organisations and authorities which aims to facilitate trade.

As an expert agency in trade policy issues, we also provide assistance to developing countries through trade-related development cooperation. One example is Open Trade Gate Sweden, a one-stop information centre assisting exporters from developing countries in their trade with Sweden and the EU.

Our analysis and reports aim to increase the knowledge on the importance of trade for the international economy and for the global sustainable development.

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Foreword

The National Board of Trade Sweden is known primarily for our work on trade developments, trade policy and the EU internal market. Fewer know that we have a growing track-record in trade-related development cooperation with countries around the world. It is in the framework of our development cooperation that the idea of this handbook has emerged.

Since 2017, the NBT has been working with Ecuador to strengthen their capacity to implement policy commitments contained in their trade agreement with the European Union. One of the fields of this cooperation has been Trade and Sustainable Development (TSD). Both for Sweden and for Ecuador, it is central that international trade and sustainability go hand in hand. TSD chapters in trade agreements are one of the instruments to pursue this objective.

In this framework, we decided to develop a hands-on manual to facilitate the implementation efforts by Ecuador, and to empower the Ministry in their leadership of the process. This initiative was embraced and supported by the European Commission.

As in all NBT's development cooperation, our ambition is to contribute to sustainable and long-term change. Developing a concrete tool in form of a TSD handbook is our way of making a limited yet lasting contribution, available to all relevant stakeholders in the public sector, the business community and the civil society. The handbook will remain in Ecuador even after our project is over.

Finally, we like synergies! We have noticed growing interest in trade and sustainable development globally. The EU is signing and negotiating a significant number of trade agreements and they all contain chapters on trade and sustainable development. By making our handbook available online, we can share the experience of Ecuador and our experience with EU's new trade partners. This will, hopefully, be an inspiration in TSD implementation beyond Ecuador.

Stockholm, August 2019

A handwritten signature in blue ink, appearing to read 'Anna Stelling', with a long horizontal flourish extending to the right.

Anna Stelling
Director-General
National Board of Trade

Recent trade agreements (TAs) negotiated by the EU systematically include provisions on trade and sustainable development (TSD) in the form of a separate chapter. The objective of these TSD chapters is to ensure that increased trade and investment supports values such as decent work, environmental protection or the fight against climate change. For the above to be true, real and lasting changes on the ground are necessary. The means to achieve this would be through the effective implementation of enhanced social and environmental standards to the direct benefit of the citizens of the trade partners.

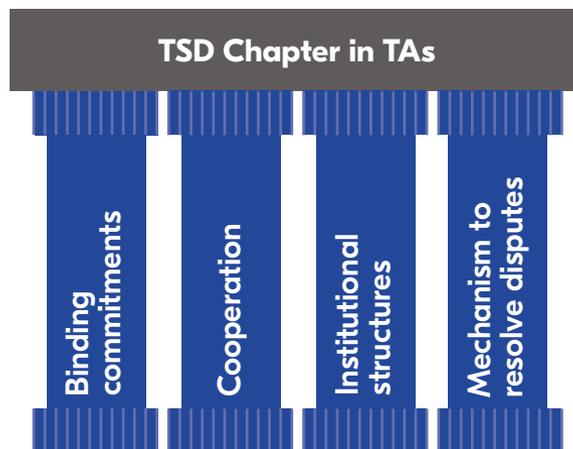
The main objective of this handbook is to facilitate the implementation of the chapter on trade and sustainable development of the TA between the EU and its Member States and Ecuador.

The handbook provides step-by-step guidelines for implementation and provides some examples and best practices developed by the EU and its trade partners in the framework of previously implemented TAs.

This handbook is part of the EU's efforts to improve the implementation of the TSD chapters in EU trade agreements, as set out in the European Commission's 15-point action plan for TSD implementation (in particular action 10).^{*} It is the first attempt to “unpack” the provisions of such chapters. Bearing in mind the pilot nature of the publication comments or suggestions are welcome.

THE APPROACH IN TSD CHAPTERS IS BASED ON FOUR PILLARS

- I** Binding commitments by the parties to effectively implement a range of multilateral environmental agreements (MEAs) and conventions of the International Labour Organisation (ILO)
- II** Thematic and cross-cutting commitments to cooperate on trade related areas such as fisheries, corporate social responsibility and responsible business conduct, etc.



- III** Institutional structures to facilitate implementation of those commitments, including those involving civil society organisations in the implementation
- IV** A dedicated mechanism to resolve disputes, which involves independent experts, who make public findings regarding compliance

^{*} http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf



COLOMBIA

ECUADOR

PERU

The EU has a comprehensive Trade Agreement with Colombia and Peru which has been provisionally applied with Peru since March 2013 and with Colombia since August 2013. On 1 January 2017, Ecuador joined the Trade Agreement, after the Protocol of Accession for Ecuador had been signed by all the Parties in November 2016.

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Operative matters and timelines

Provisions in TSD chapters differ substantially from other trade liberalizing provisions in TAs. Their aim is not to liberalize trade between the parties, but rather to establish basic principles on sustainable development issues, notably labour and environment, which are relevant to trade, and to provide a framework for cooperation on such issues. Due to their specific aim and nature, these chapters require a different approach to implementation. Moreover, they require engaging a wide range of actors, both public and private, in order to promote successful implementation and achieve optimal sustainability results.

1

Setting up institutional structures in the public sector

1.1 Introduction: rationale, role and function in TSD implementation

Public sector institutions have a key role to play in implementing TSD commitments. Sustainable change is contingent on the openness and genuine engagement of state institutions and on the establishment of long-term cooperation.

The specificity of TSD chapters is that they cover a broad range of issues, which reach beyond the scope of activity of a single Ministry. Although the Ministry of Trade has a leading role in implementing the TA, including the TSD chapter, the majority of issues covered by the TSD chapter fall outside its scope of competence. It is therefore essential for the Trade Ministry to reach out to other ministries and public institutions, draw on their competence (and of their subordinate institutions) and on their relationships with international bodies working with labour and environmental issues. Only through inclusive and sustained internal dialogue and close cooperation among all relevant state actors will the Ministry of

Trade be able to work towards the successful implementation of TSD provisions.

1.2 Identifying relevant institutions – assigning responsibilities

Due to the crosscutting nature of the TSD chapter, implementing its provisions requires cooperation and coordination of a number of administrative sectors. It is thus important that the Ministry of Trade clearly assumes the leading role and becomes the hub for a close collaboration across the relevant ministries needed for the implementation process. The choice of relevant ministries and their subordinate administrative organs to involve will depend on the internal division of responsibilities within the national governmental bodies, as well as on the issues covered by the TSD chapter. Often these relationships will have been established during the negotiation process when the Ministry of Trade will have sought their input.

In general the most important public bodies relevant for the implementation of TSD provisions are the Ministry responsible for labour and social affairs and the Ministry of the Environment. Depending on the national responsibility distribution and the specific content of the TSD chapter, it may also be necessary to collaborate with other Ministries, such as Ministries responsible for foreign affairs, entrepreneurship, regional development, fisheries and marine resources, agriculture and use of natural resources, mining, nature protection etc., as well as public agencies such as export agencies.

When all relevant public institutions are identified, it is important that their tasks in the context of TSD implementation are clearly assigned, in accordance with their area of responsibility within the national administration. This can include taking up responsibility for specific elements of the implementation process, projects or cooperation initiatives.

1.3 Establishing routines for communication/information exchange and decision making

In order for the Ministry for Trade to be able to effectively manage, coordinate and assume responsibility for the process, it is important to establish efficient communication channels and routines involving all the participating institutions. Timely exchange of information also facilitates coordinated planning and implementation activities. The best way to organise such information exchange will depend on the existing traditions and resources within the public administration. One can, for example, place the Trade Ministry in the centre of the web, with the responsibility to collect and disseminate relevant information to all participating institutions. Digital information tech-

nologies can also provide efficient tools such as for example through the common information storage platform accessible by all the involved institutions.

1.4 Developing cooperation mechanisms or fora

To facilitate the participation of all state actors involved in the implementation process, as well as to create opportunities for the exchange of ideas and coordination, it may be useful to establish a regular forum for coordination and discussion. This makes it easier to prevent individual institutions from working in isolated silos, concentrating on their own focus area, without seeing the bigger picture. The implementation of the TSD chapter may also require compromises and prioritisation exercises that must build on a good overview of the whole implementation strategy.

This can take the form of regular exchanges of emails among the involved institutions. Alternatively, one can establish a meeting forum, which can serve as an opportunity to exchange information, update other institutions on ongoing activities, planning and coordination of future activities as well as resolution of potential inconsistencies or problems.

Timing and frequency of such exchanges or meetings will be set in accordance with the national administrative tradition as well as capacity and resources of the institutions. It may also have to be adjusted to the stage and requirements of the implementation process. For example, it may have to be more intense in the early stages of the process, and when there are important implementation activities ongoing. The most important is that exchanges and stocktaking exercises become regular and do not happen just around the preparation of the annual TSD meetings with the other partners of the TA.

1.5 Steps towards setting up efficient institutional structures in the public sector

- **Step 1:** identify relevant ministries/departments within the national administration as well as their subordinate institutions, which will need to be involved in TSD implementation;
- **Step 2:** assign responsibility for managing and monitoring implementation of various TSD provisions to the participating bodies/organs;
- **Step 3:** clarify the responsibilities, roles and tasks to the participating actors, and make sure that they all have an understanding for the specificity and content of the TSD provisions;
- **Step 4:** establish communication channels/reporting obligations, which will allow the Ministry responsible for trade to assume its leading

role in the process and retain an overview of the progress and developments;

- **Step 5:** create mechanisms for coordination and cooperation between the identified bodies, formalized in accordance with national administrative practice.



1.6 Examples/experiences /best practices

Experience has shown that some main elements are key for an effective and timely implementation of TSD chapters. See box 1.

Box 1

Key for an effective implementation of TSD chapters

- 1. Clear coordinating role of the Trade Ministry:** best practices show that it is crucial that the Trade Ministry takes up a clear and pro-active coordinating role. A big challenge of TSD commitments is that they are not traditionally considered to be core trade issues. However it is important that the Ministry of Trade has knowledge and expertise of these trade-related issues. To move implementation forward and to take up an active and efficient coordination role the Ministry of Trade benefits greatly from having internal expertise on TSD issues.
- 2. Effective involvement of other line ministries (with clear ownership of the file):** it is important that the line ministries, for example Labour and Environment Ministries feel directly responsible for the implementation of the TA. For this it helps to have a clearly spelled out work plan with clear attributions. The experience shows that the more concrete the work plan and the clearer the priorities, the easier it is to involve line ministries. It is also important to take time to discuss the interplay between the activities/initiatives to be set up under the TA and those to be implemented under other multilateral settings, which are often directly the responsibility of line ministries.
- 3. Clear working methods, notably:** (a) clear objectives and agenda; (b) regular meetings (within and across ministries), (c) good planning and rolling calendar with long-term strategic view, (d) clear assignment of roles and responsibility (within all ministries involved).

2

Setting up institutional structures in the civil society

2.1 Introduction: rationale, role and function in TSD implementation

Civil society organisations encompassing *inter alia* non-governmental organisations, business federations, interest groups and labour market partners, have a pivotal role to play in the implementation and monitoring of the TSD chapter. Including such stakeholders as early as possible in the process, preferably from the negotiation phase of the agreement, establishes a platform for dialogue, and allows for better anchoring of TSD issues in the national civil society landscape. Building on this involvement, a structured and constructive dialogue with domestic civil society organisations can be effectively put in place throughout the entire TSD implementation process.

In the process of implementing the TSD provisions, civil society organisations can contribute with their unique knowledge of the local context, interest and concerns. This can be done through submitting advice, comments and suggestions in the implementation process as well as through voicing concerns and criticism in case of shortcomings or problems. This

empowerment of civil society organisations in the monitoring of the TSD chapter allows them to fully play a key role as source of early warning about potential problems and a channel for constructive suggestions for improvement.

For this, it is important that the implementation of the TSD chapter is accompanied by the setting up of a platform for discussion and cooperation for domestic civil society organisations representing various TSD relevant interests, ranging from environmental and climate concerns, through labour market and social interests, to issues of regional development and gender equality. Such a platform would allow stakeholders to discuss priorities, which can ultimately facilitate the decision making process at the governmental level. In sum, civil society stakeholders can help mobilise efforts to implement the TSD Chapter.

The crucial role of engagement of stakeholders from the civil society in the implementation of the TSD chapter as well as its monitoring has been acknowledged and accommodated within the institutional structure and enforcement processes under the chapter. In order to facilitate the civil society's advisory and monitoring role, TSD chapters envisage the use of pre-existing domestic mechanisms and/or the crea-



tion of dedicated bodies referred to as Domestic Advisory Groups (DAGs).

2.2 Establishing/adjusting institutional structures for dialogue and consultations – establishing Domestic Mechanisms

2.2.1 Role and functions

The Domestic Mechanisms are key institutions for facilitating the effective involvement of civil society organisations in the process of implementing TSD chapter and in its monitoring.

Their function is to constitute a platform for consultation with domestic civil society representatives with regard to labour and environment trade-related and sustainable development issues. Through these mechanisms, they can submit opinions and make recommendations on the implementation of TSD chapter, including on their own initiative, with use of the respective internal channels of the parties.

2.2.2 Establishment and composition

In the Trade Agreement between EU and Ecuador, civil society consultations can be based on existing groups and structures. They can also be created specifically for the purpose of TSD implementation.

Therefore partner countries should assess whether to use existing mechanisms or to establish a new body. This decision will hinge on a reflection of whether the composition and function of the existing mechanisms are fit to meet the needs of the TSD Chapter. The EU has established new mechanisms specific to the TSD Chapter (Domestic Advisory Groups).

Experience has shown that the effective implementation of the TSD chapter requires a well-functioning dedicated Domestic Mechanism. While this should be independent bodies close collaboration and interaction with the governmental structures responsible for implementation is also important. The Domestic Mechanism can be an important asset if it allows establishing a platform for constructive dialogue and long-term stable relationships based on mutual trust, transparency and openness that are needed for the effective implementation of the TSD chapter. It is important that the Domestic Mechanism is built on the balanced representation of key organisations in



the areas relevant for TSD implementation: labour, environment and sustainable development. The objective of including a diverse range of participants is to take stakeholders' interests out of their silos, make them aware of other legitimate interests to consider in the process of TSD implementation, promoting dialogue and openness. A participatory and inclusive process with all relevant interests involved results in a more mature, grounded and balanced civil society stakeholders' contribution to TSD implementation. The continuous exchange of information and balancing of interests will facilitate civil society organisations' participation in governmental consultations. It will also facilitate anchoring governmental decisions pertaining to TSD implementation as it will allow all relevant civil society stakeholders to develop an understanding of the complexity of the issues at stake and to engage themselves in a process of balancing and assessing of different interests.

2.2.3 Identifying and engaging relevant actors

Identifying relevant actors to participate in Domestic Mechanism is of great importance for its future role and to the contribution it can give to TSD implemen-

The Domestic Mechanism built on the balanced representation of key organisations in the areas relevant for TSD implementation



tation and monitoring. It is, firstly, a question of identifying all relevant interests which should be represented in the domestic implementation process, and, secondly, identifying the most relevant organisations representing these interests.

The Ministry of Trade can facilitate this process.

The effort should be considered a long-term investment in the TSD implementation process. The exercise of mapping the existing civil society organisations and assessing their relevance for TSD implementation can be a complex one. In this effort, the Trade Ministry can cooperate with other line Ministries that have their own networks based on their existing consultation structures and their previous experiences with stakeholder consultations. Ultimately, the methods to establish membership should be based on bottom-up, peer-review processes led by the civil society organisations themselves.

Where participatory governance traditions are not yet well established, and where the knowledge of links between trade and sustainable development is limited, the process of outreach and awareness raising may take some time. For this, transparency is an important consideration as it is key for the credibility of the mechanism and to help attract the stakeholders that represent all relevant specific interests in TSD related topics. In some cases participation of civil society organisations may need to be facilitated for example through making available funding for covering costs of participation, or through facilitating remote participation with help of IT tools (e.g. via videoconference). This is a valuable long-term investment, as it will promote future cooperation with the stakeholders in TSD implementation and make it more efficient.

Finally, as noted above the Domestic Mechanism should be able to function autonomously from the governmental structures. However, in an initial phase, their organisation and functioning may need to be supported and facilitated by the public sector. This is the case especially in partner countries where participatory governance traditions are not yet well established and where the civil society organisations are new and fragmented. Still it is crucial to ensure the independence of the civil society organisations that form part of the Domestic Mechanism.

2.2.4 Rules of constitution and procedure

The procedures for the constitution and consultation of Domestic Mechanisms should follow domestic rules and regulations, reflecting the freedom that parties have to use or adjust existing structures in a way that fits their national circumstances, context and administrative tradition. Some countries have chosen to establish the group through a formal administrative act, while for others this has not been necessary. Once established, it is important that the group agree on its rules of procedure.

2.3 Establishing routines for communication/information exchange/meetings

It is also important to establish efficient communication channels and routines between the Trade Ministry and the Domestic Mechanism. The timely exchange of information facilitates the planning and implementation of joint activities. The practical organisation of such information exchanges will be contingent on the existing traditions and resources within the public administration as well as those of the civil society representatives and their constituencies.

Establishing a regular meeting schedule facilitates contribution of the Domestic Mechanism to the implementation process, and creates opportunities for regular exchange of ideas and closer coordination.

Timing and frequency of such meetings can be adjusted in accordance with the intensity of work as well as the capacity and resources of domestic mechanism and of the involved institutions. Nonetheless it is important to sustain some regularity; ideally four meetings per year.

2.4 Examples/experiences/ best practices

Different countries have chosen different ways to implement the provisions on domestic civil society consultation. Often this involves establishing new groups whose main function is to fulfil the objectives of the domestic mechanisms set out in the TSD chapter. For these, some countries have chosen to establish a group informally, while others have chosen to establish the group following an official formal administrative decision. The latter clearly takes more time. For this agreement it is possible to rely on existing consultative groups to fulfil the functions set out in the TSD chapter. In such cases the groups are generally linked to the Ministry of Labour and of Environment. Initial experience suggests that the establishment of specific groups works best as the agendas of existing groups are often already very full and so discussion of the TSD chapter may not happen or be very brief. Furthermore where existing groups are chaired by government representatives the independence of the groups can be called into question. Some countries have found that the consultative groups can provide useful inputs in other processes, such as negotiations with trade partners other than the EU.

In the case of the EU, a Domestic Advisory Group (DAG) with the task of advising on the implementation of TSD commitments has been created for each Trade Agreement that has been implemented since 2012. The first DAG to be constituted was the EU-Korea Domestic Advisory Group as part of the implementation of the Trade Agreement between South Korea and the EU, the first EU agreement to include a chapter dedicated to TSD. The agreement entered into force in July 2011 and the first meeting of its DAG was held in May 2012.

The EU DAGs meet regularly through the year (3-4 times) with the support of the European Economic and Social Committee. Their members participate in the joint session organised yearly back-to-back with the meetings of the TSD subcommittees. The membership of the EU DAGs reflects the aim to establish a balanced representation of interests related to TSD issues. They are made up of independent representative organisations of civil society from environment, labour and business organisations as well as other relevant stakeholders. This is achieved by having three sub-groups per DAG: one for employers, one for trade unions and one for non-governmental organisations (which includes stakeholders engaged on environmental issues, human rights, etc.). The European Commission is invited to all EU DAG meetings and is asked to provide regular updates of the state of play of TSD implementation of the different agreements.

The membership of the EU DAGs reflects the aim to establish a balanced representation of interests related to TSD issues



3

Establishing representation in the TA institutions

TSD chapters foresee the creation of a number of institutions, both governmental and non-governmental to facilitate, manage and monitor the implementation of its provisions. The effective functioning of these institutions is of crucial importance for the constructive cooperation between the parties and for the successful enforcement of TSD commitments.

The operationalisation of the TSD chapter requires the parties to establish, arrange for and facilitate the functioning of the following institutions and functions:

3.1 Contact Point (Article 280.1)

Each party is required to designate an office and official within its administration to serve as a **contact point** to the other parties for the purposes of facilitating implementation and channelling communication related to the TSD chapter.

Contact points are typically established within the relevant national authorities (usually within the Trade Ministry). Since their role is primarily to coordinate and facilitate communication between the parties, the

choice of a concrete national authority, and a specific unit within it, should be based on the same reasoning as was presented in section 1 on setting up institutional structures in public sector. Hence, the role should be given to the body/unit, which is the central authority in the national administrative structure for the purpose of TSD implementation.

Upon designation of a national contact point, in order to facilitate future communication, the information about the designated office should be clearly communicated to the other parties of the agreement. (In case of multiparty regional agreements such as the one between the EU, Ecuador, Colombia and Peru, contact points can additionally function as facilitators of deeper regional cooperation on trade and sustainable development issues, serving as platforms for regional dialogue and coordination of TSD implementation.)

In almost every case contact points are appointed within Ministries of Trade or in the case of the EU the Directorate General for Trade. They generally establish internal contact points in other Ministries relevant to the TSD chapter. Often this involves rebuilding networks that were established during



negotiation of the agreement; as two or more years can pass between the end of negotiations and the entry into force of a trade agreement the persons in these networks for negotiation may often have moved on. An important function of the contact point beyond written communication with his or her counterpart is to organise video conferences with the counterpart for inter-sessional follow-up, also involving other Ministries. Finally, though not a formal function of the contact point he or she will often also be the main interlocutor within the Ministry with the TSD civil society consultation mechanism.

3.2 TSD Sub-committee (Article 280.2)

The parties should establish a Sub-committee on Trade and Sustainable Development (TSD Sub-committee), which is composed of high level representatives from the national administration of each party, responsible for labour, environmental and trade matters. The TSD Sub-committee should meet within the first year from when the agreement enters into force, and as necessary afterwards. It is an established prac-

tice to convene a meeting of the TSD Sub-committee once a year. This is often done in conjunction with the convening of other Sub Committees in a cluster.

The purpose of the TSD Sub-committee is to oversee the implementation of the TSD chapter, including cooperation activities undertaken on the basis of its provisions, as well as to discuss related matters of common interest. The work of the TSD Sub-committee should be based on dialogue, effective cooperation, aiming to the full implementation of commitments and initiatives under the TSD chapter and seeking mutually satisfactory solutions to any difficulties that may arise. The TSD Sub-committee applies rules of procedure and adopts its decisions by consensus.

In its work, the TSD Sub-committee should promote transparency and public participation. To this end, it is required to report on the matters related to the implementation of the TSD chapter and make recommendations to the Trade Committee.¹ It shall also remain open to receive and consider inputs, comments and views from the public on matters related to the TSD chapter.

The TSD Sub-committee is expected to fulfil the following functions:

¹ Unless otherwise decided by the Sub-committee.

- a) To carry out the follow-up of the TSD chapter and to identify actions for the achievement of the objectives of the chapter;
- b) To submit to the Trade Committee, when it deems appropriate, recommendations for the proper implementation of the TSD chapter and for making the best use of the opportunities it offers;
- c) To identify areas of cooperation and verify the effectiveness of implementation of cooperation under the TSD chapter;
- d) To assess, when it deems appropriate, the impact of the implementation of the entire agreement on labour and the environment;
- e) To resolve matters within the scope of application of the TSD chapter including fulfilling its function within the system of resolution of disputes between the parties, which will be developed further in section 3.5.1.

The location of the TSD Sub-Committee meeting is set by the rules of procedure agreed by the Trade Committee. The host is responsible for providing adequate facilities for the meeting, including translation services though each Party finances its participation.

It is crucial to have a clear work programme for the TSD committee and to ensure that there is regular inter-sessional follow up. It is also important to ensure that there is adequate interaction with civil society consultation mechanisms.

3.3 Domestic Mechanism (Article 281) – see part 2.2

3.4 Dialogue with Civil Society (Article 282)

In connection with the yearly meeting, the TSD Subcommittee arranges a session with civil society organisations and the public at large, in order to carry out a dialogue on matters related to the implementation of the chapter.

Considering the important role that the civil society has in the implementation and monitoring of the TSD provisions, as was presented in section 2 above, these meetings constitute a crucial element of a constructive dialogue between the public sector institutions responsible for TSD implementation, and the civil society as well as the public at large. This is also an opportunity for the civil society organisations and representatives of the public from all parties to the agreement to meet and discuss TSD implementation.

Moreover, such a meeting serves as an opportunity for civil society organisations representing different types of interests to engage in a dialogue on the planning and prioritising of activities, as well as on the assessment of the implementation of TSD commitments. That is why it is of great importance to promote a balanced representation of relevant interests through facilitating the participation of all stakeholders active in the areas covered by the TSD chapter in the joint public sessions.

Proceedings of the Dialogue should be guided by the principles of openness and transparency. Summary reports of the sessions should be made publicly available. Moreover, in order to achieve wide and balanced representation of stakeholders in the sessions,

it is essential to communicate the timing and agenda of the planned session to the relevant organisations in due time. It has to be considered that non-governmental organisations often work with limited resources and under budgetary constraints. That is why it needs to be made clear well in advance that a concrete session is going to cover issues of their interest, in order to clarify the relevance of the session for their organisation as well as allow for mobilisation of resources and for preparation. The participation of civil society organisations may have to be additionally facilitated for example through making available funding to cover costs of participation, or through facilitating remote participation with help of IT tools (e.g. via videoconference or webstreaming). Senior officials are in charge of calling for the public civil society dialogue, hosting it and intervening as the main interlocutors to establish a meaningful dialogue with the participants. However, the use of neutral moderator can be a best practice to adopt as it would ensure a more “ordered” discussion allocating sufficient time to all the main issues and guaranteeing that a maximum number of stakeholders can have a say.

3.5 Building preparedness for solving disputes

Under EU TAs, the implementation of TSD commitments is ensured through monitoring by dedicated governmental bodies (TSD Sub-committee and Trade Committee) as well as the civil society structures (Domestic Mechanism and Dialogue with Civil Society). Where a party fails to comply with a commitment, the other party(ies) can resort to the mechanism established under the TSD chapter. This includes in the first place governmental consultations. In case that fails, the recourse to a procedure with an independent panel of experts is also foreseen, which leads to the adoption of a public report with recommendations.

In accordance with the character and logic of the TSD chapter as a platform for collaboration and establishment of a long-term relationship between the parties on TSD issues, the guiding objective of this system is to arrive at a mutually satisfactory solution at the earliest possible stage of the dispute. Hence, resolving potential disputes through consultations



and arriving at a solution in a conciliatory manner is the most desirable scenario. If, however, the results of the consultative actions are not satisfactory and if compliance concerns persist, proceedings based on the panel of experts should be launched without hesitation, and appropriate follow-up to recommendations made by the panel has to be ensured.

Therefore the implementation of the TSD chapter also requires building preparedness to participate in all phases of dispute resolution, which includes: (a) nomination of experts to the panel, (b) establishment of the rules of procedure of the group of experts, as well as (c) establishment of domestic administrative procedures in the case of a dispute.

- (a) As far as nomination is concerned, although each party nominates their experts, they have to act independently without taking instructions from any of the parties. At the entry into force of the agreement the parties should submit to the Trade Committee a list of at least 15 persons with expertise on TSD issues, of which at least five are not nationals of any party, and who should be available to serve as chairperson of the Group of Experts. The list must be endorsed by the parties at the first meeting of the Trade Committee.
- (b) At the entry into force of the agreement, the parties should submit to the Trade Committee the rules of procedure for the Group of experts. The rules of procedure should be adopted at the Trade Committee's first meeting.
- (c) The domestic administration should be prepared to engage in governmental consultations whenever a dispute arises and a written request is submitted by the other party. The overarching objective is to resolve the matter through conciliatory means, dialogue and consultations. However, there is a limited period of 90 days before a party can request for a panel of experts

to be convened. The Ministry of Trade will have to act swiftly in order to reply and engage in the first phase of governmental consultations. The Trade Ministry should also be prepared to convene or participate in a TSD Sub-committee meeting if necessary. To that end and to make optimal use of the time available for consultations, the Ministry may benefit from having established the necessary procedure in the case of dispute (identifying institutions, persons, procedures and internal deadlines). It may also be useful to prepare in advance a list of potential experts, organisations and contact persons within these organisations, who can be requested to provide assistance and expertise in case a dispute arises.

3.5.1 Governmental consultations (Article 283)

A party to the agreement may at any time request consultations with another party regarding any matter of mutual interest arising under the TSD chapter. In case of the agreement between the EU and the three Andean countries, the consultations are foreseen to be applicable between the EU and one of the Andean countries. This implies that a signatory Andean country may not request consultations with another signatory Andean party.

The first phase of governmental consultations is done through a written procedure, where a party requesting consultations delivers a written request to the contact point of the other party. The requested party is expected to reply to this requested expeditiously.

The consulting parties should make every attempt and effort to arrive at a mutually satisfactory resolution of the matter through dialogue and consultations. In the course of this process, where relevant and subject to the agreement of both consulting parties, they

may resort to external expertise. They can, for example, seek information and views of any person, organisation or body that may contribute to the examination of the matter at hand, including the international organisations with specific competence for labour and environmental matters, such as the ILO and bodies under the MEAs relevant for the TSD chapter.²

If the parties do not manage to resolve the matter at this stage, and one of the parties deems that it requires further discussion, it may request that the TSD Sub-committee be convened to consider the matter. This is done by delivering a written request to the contact point of the other consulting party. The TSD Sub-Committee should convene promptly and make all the effort to agree on a resolution of the matter. The conclusions of the sub-committee shall be made public, unless it decides otherwise.

The TSD Sub-Committee should regularly publish reports describing the outcome of completed consultation procedures. When it deems appropriate, it should also publish reports about ongoing consultations.

3.5.2 Group of experts/panel of experts (Article 284)

In cases when the issue at hand cannot be satisfactorily resolved through governmental consultations, and unless the consulting parties agree otherwise, a consulting party may, after 90 days of the delivery of a request for consultations, request that a group of experts should be convened to examine the matter in question.

2 As mentioned on Article 270 of the Agreement.



Written procedure through contact points

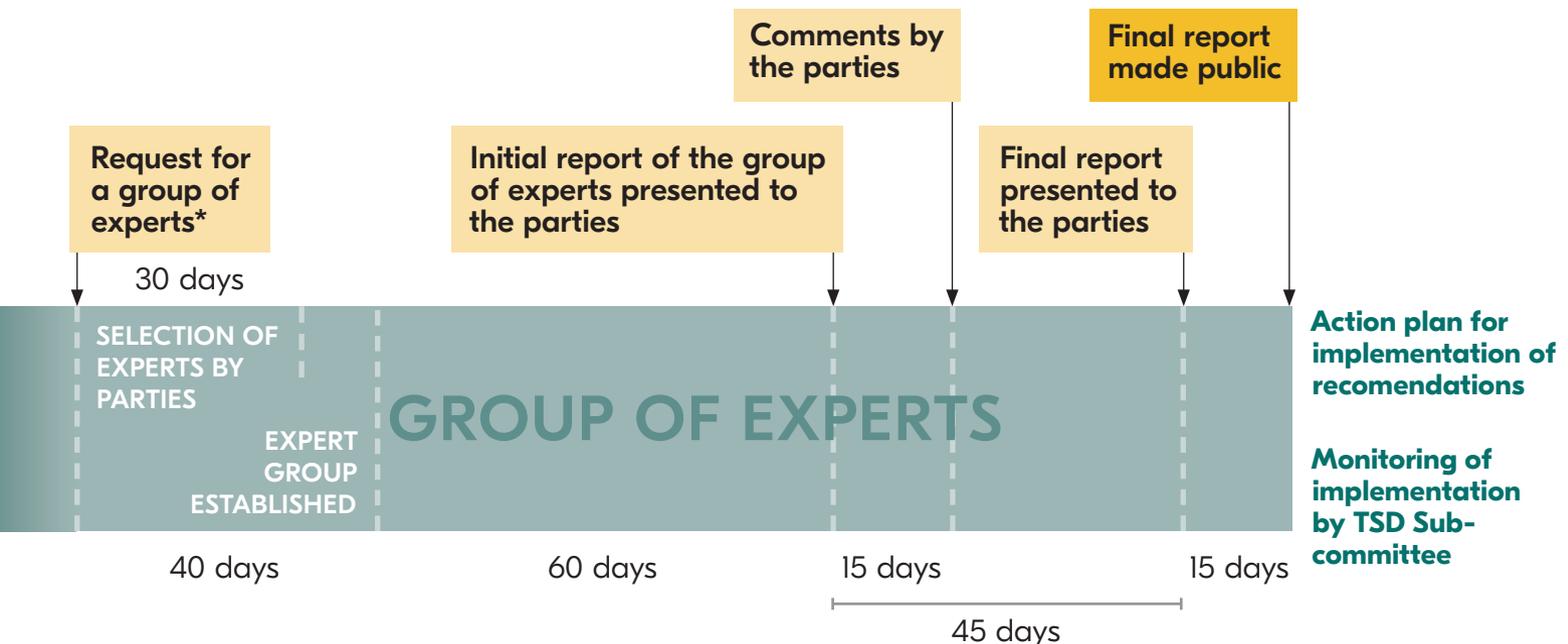
3.5.2.1 Establishment of the Group of Experts

To this end, each party to the dispute selects one expert from the list of experts within 30 days of the receipt of the request. The parties may also agree to appoint experts not included in the list, if deemed necessary. This may be the case for example if the dispute concerns a specific technical matter which requires involvement of specialist expertise. If one of the parties fails to select an expert within the given time period, the other party should select from the list of experts a national of the party that has failed to make a selection. The two selected experts agree on the chairperson who is not a national of any of the conflicting parties. In case of disagreement, the chairperson should be selected by lot. The group of experts should be established within 40 days after the request for its establishment has been received.

3.5.2.2 Proceedings of the Group of Experts

The objective of the group of experts' proceedings is to determine whether a party has fulfilled its obligations under the TSD chapter. In order to arrive at its decision the Group of Experts:

- Receives submissions by the parties to the dispute;
- May request and receive written submissions or any other information from organisations, institutions and persons with relevant information or specialist knowledge, including written submissions or information from the relevant international bodies such as the ILO and bodies under MEAs on matters concerning the international conventions and agreements relevant for the dispute;



* After 90 days from delivery of a request for consultations

Within 60 days after the last expert is selected, the group of experts should present to the parties an **initial report** to the parties that contains its preliminary conclusions on the matter at issue in the dispute.

The parties may submit written comments on the initial report within 15 days following its presentation.

After examining the written comments, the group of experts adopts a **final report**, where it may reconsider or adjust the initial report. The final report should address any arguments presented by the parties to the procedure in their written comments. The final report should be presented to the parties within 45 days from the date in which the initial report was presented. The parties should release a non-confidential version of the final report to the public within 15 days of its issuance.

The final report should include recommendations on how to address the disputed issue and guarantee compliance with TSD provisions. The party to the procedure should inform the TSD sub-committee of its intentions as regards the recommendations of the group of experts, including presentation of an action plan to implement these recommendations.

The TSD sub-committee will monitor implementation of the determined measures.³

³ All time limits pertaining to the proceedings of the group of experts may be extended upon agreement between the parties.



4

Cooperation mechanisms

The TSD chapter functions as a platform for the facilitation of various forms of cooperation between the parties on issues relevant to TSD. Different forms of cooperation can be envisaged varying in terms of the scope of participants as well as content and breadth of activities. Cooperation arrangements described in this section do not constitute a closed and exhaustive list of possibilities. The aim of the sections below is to describe various patterns of cooperation which can be established under the TSD chapter, and to give illustrative examples based on practices enacted under other EU TAs currently implemented.

4.1 Bilateral/regional

The most common and easy form of cooperation mechanisms under the TSD chapter is through engaging on a **bilateral** basis, namely between the EU and the other trade partner. This often takes a form of common projects, exchange of knowledge and best practices as well as engaging in a dialogue on a specific TSD issue.

It is also possible to follow an extended bilateral cooperation between the EU and a number of countries in the same region. Such **regional cooperation**

initiatives can be appropriate when partners in the same region face similar challenges and may require similar type of support and capacity building, or if they offer opportunities for similar type of synergy generating activities. Regional cooperation can, in itself, take various forms: the same type of action can be undertaken in a number of regional partners on an individual basis, or activities can be implemented jointly with the regional partners. The latter type can create an added benefit of promoting dialogue between the trade partners in the region, and encourage mutual learning.

4.2 Jointly with multilateral structures/institutions

Due to the specific character of TSD provisions, which build on references to multilateral instruments in the field of environment and labour, cooperation with the institutions and bodies established by these instruments is an important part of the implementation process. This concerns in particular the International Labour Organisation (ILO) as well as organs and bodies of Multilateral Environmental Agreements (MEAs).

4.3 Examples/experiences/ best practices

There are several examples of cooperation initiatives that have been put in place over the years to assist the effective implementation of TSD commitments.

These initiatives can take up several forms:

Studies

- Under the EU – Korea trade agreement, a comparative study of implementation of ILO Convention 111 on non-discrimination in the workplace was undertaken in Korea and several EU Member States.

Dialogue/workshops

- In 2017 the EU and Colombia had a close dialogue on certain aspects of implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
- In 2017 an EU mission on Circular Economy was organised to strengthen ties between EU and Colombian institutions in the field of environment, as well as to support the establishment of partnerships between European and Colombian businesses, especially SMEs.
- Also in Colombia a seminar was organized in March 2018 on the use of mercury in gold mining and a 2 day workshop on responsible mining and the EU's Conflict Minerals Regulation.
- In Peru a workshop on labour conflict resolution was held in 2017.

Some of these initiatives are implemented in cooperation with international organisations:

- In the context of EU-Central America trade agreement, two events were organised in close partnerships with international organisations namely the ILO and the OECD on responsible business practices in 2017 in Costa Rica and in 2018 in Guatemala.
- Projects in cooperation with ILO are ongoing in El Salvador and Guatemala to strengthen the implementation of the ILO fundamental conventions, which focus on the freedom of association, the right to collective bargaining, non-discrimination and elimination of child labour.
- A project is being developed in partnership with the ILO on labour inspection in Colombia.

5

Monitoring and reporting

5.1 Internal

The Ministry of Trade, as the institution responsible for coordination of TSD implementation, should establish a system for periodical overview of progress in implementation. Because a large proportion of the implementation activities will be conducted by other institutions (other Ministries or their subordinate bodies), it is necessary for the Ministry of Trade to establish a system which foresees regular update of information from the relevant institutions, and allows the Ministry to intervene in or support actions by the partner institutions if necessary. Such monitoring is also a basis from gathering information necessary for the Ministry of Trade to prepare an update on progress ahead of each TSD Sub-Committee meeting.

A possible way of organising this process is through structured dialogue with the relevant public institutions engaged in TSD implementation as well as with the civil society. The most efficient practical approach is through using the established TSD structures described above in sections 1 and 2.

Similarly on the EU side, while DG Trade has the overall lead, other Directorates General responsible for areas such as environment, climate change, labour

and development cooperation have an important role in implementation and in reviewing progress in this regard. In the case of the EU, the Member States also are an important source of support for implementation as well as for information on implementation in the EU and in the partner country. The TSD Sub-Committees are an opportunity to report on progress and challenges and monitor overall progress.

5.2 External

The ILO and Multilateral Environmental Agreements have their own monitoring mechanisms. Reports by the Secretariats or subsidiary bodies are important inputs to assess progress in implementation of the multilateral commitments of the Parties in the TSD Chapter in the fields of labour and environment. Here also a good flow of information between the technical units responsible for the conventions and agreements and the Trade contact points and other actors is essential. The recommendations arising from such reports can play an important part in priority-setting by the Parties under the TSD Chapter.

The European Commission has a general policy of regularly evaluating its legislation and major policy



initiatives. This policy also applies to trade agreements. They are generally evaluated by independent consultants, who produce a report. This report then forms the basis for an official report by the European Commission. Such an evaluation is foreseen for the EU agreement with Colombia and Peru in 2019.

5.3 By the civil society

Last, but not least, the civil society plays an important role in monitoring of TSD implementation. This is in particular enacted through the dedicated civil society structures: Domestic Mechanisms and Civil Society Dialogue, described above in sections 2.2 and 3.4. In the framework of those institutions, stakeholders have an opportunity to submit comments, advise and criticism in the course of implementation, as well as submit a complaint in case of an alleged failure to implement by a party.

A continuous and constructive dialogue with civil society can allow the government to react to and, if necessary, address any early warnings shortcomings identified. It can also help determine if the concern is indeed covered by the TSD Chapter or is beyond its scope. Conversely a closed approach risks the issue escalating and becoming hard to manage.

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