

# The Trade and Sustainable Development Chapter in the EU-Mercosur Association Agreement

## Is it fit for purpose?

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## Executive summary

The Trade and Sustainable Development (TSD) Chapter of EU-Mercosur Association Agreement (EUMAA) has been widely touted by its supporters as effectively addressing the environmental and social concerns raised by EUMAA's critics. It is even argued that the TSD Chapter means that trade policy has become a tool for climate policy. This paper carefully scrutinises the claims of the TSD Chapter's proponents. In doing so, it provides answers to four questions:

1. Does the TSD Chapter reinforce countries' climate change commitments as set out in the Paris Agreement? We find it does not. This is due to (1) there being ambiguity as to what specific and actionable obligations derive from the commitments and (2) the ineffective dispute settlement mechanism for violations of the TSD Chapter.
2. Does the TSD Chapter provide a strong framework for addressing other important environmental and social issues? Again we answer in the negative because of (1) the TSD Chapter's limited scope due to which important issues are not addressed, (2) some commitments appearing not to be legally binding while others appearing vague and imprecise and (3) the weakness of the institutional structures which are set up to implement those commitments.
3. Does the TSD Chapter ensure that EUMAA itself (1) will not lead to increased environmental and social harms, including an increase in carbon emissions and (2) is a building block towards more sustainable trade? We conclude that the TSD Chapter does not include any meaningful obligations in relation to supply chains where there are significant risks of environmental and social harms occurring. Nor does it include significant commitments towards more sustainable trade in those supply chains in the future.
4. Does the TSD Chapter ensure that the effects of the Agreement are properly monitored so that we know what its effects are, and can react accordingly? We identify serious problems and deficiencies with both (1) the assessment of environmental and social impacts of EUMAA during the negotiation period and (2) the monitoring of social and environmental impacts of other EU FTAs once they have come into force. This gives rise to scepticism about whether robust and reliable monitoring of the impact of EUMAA will actually occur.

What can be done to rectify this situation? We argue that, if the reality of EUMAA and its TSD Chapter is to live up to the rhetoric of its proponents, then fundamental reform is needed. This should involve:

- The development of mechanisms for ensuring effective monitoring of the impacts of the EUMAA, both before and after it comes into force
- Proper enforcement of meaningful commitments to key international environmental and social standards.
- Action to ensure that the expanded trade which takes place through EUMAA is environmentally and socially beneficial.
- Strengthening the role of civil society bodies so that they can play a meaningful role in ensuring that EUMAA leads to improved environmental and social, as well as economic, outcomes.

These specific ideas for reform should be integrated into a more general debate on how to comprehensively and holistically integrate environmental and social objectives into all aspects of trade agreements to which the EU is a signatory, including EUMAA.

## The Importance of the TSD Chapter in EUMAA

A variety of serious concerns have been raised about environmental and social issues in connection with the EU-Mercosur Trade Agreement. The dramatic spike in deforestation<sup>1</sup> as well as Amazon forest fires in Brazil<sup>2</sup> under President Bolsonaro, just as negotiations for EUMAA were nearing their conclusion, have been the most high profile issues. There is also evidence that EUMAA itself could exacerbate such issues and create environmental problems including by increasing carbon emissions as a result of increased trade between the signatories.<sup>3</sup> Alongside this, concerns have been raised about human rights issues, including violations of the rights of indigenous peoples;<sup>4</sup> labour rights issues, including failures to ratify and effectively implement ILO Core Conventions;<sup>5</sup> and animal welfare issues, both in relation to wildlife and farmed animals.<sup>6</sup>

It has been argued that the Trade and Sustainable Development Chapter of EUMAA effectively addresses many of the environmental and social concerns identified. On climate policy and deforestation, Commission President Juncker lauded EUMAA saying that “[t]rade policy has become a tool for climate policy” and that the TSD Chapter of EUMAA contains a commitment to “effective implementation of the Paris Agreement” which “locks countries into commitments taken on stopping deforestation in the Amazon, for example.”<sup>7</sup> Such claims are amplified in a Commission policy brief which cites a pledge by Brazil to reduce its net greenhouse gas emissions by 37% and action to stop illegal deforestation; these are commitments in the Paris Agreement, it is argued, that would be effectively implemented by the TSD Chapter.<sup>8</sup>

In relation to environmental and social issues more generally, former Trade Commissioner Malmström argued that the TSD Chapter “sets high standards and establishes a strong framework to jointly address issues like the environment and labour rights.”<sup>9</sup> This framework includes the sustainable management and conservation of forests, respect for labour rights and promotion of responsible business conduct.<sup>10</sup> At the same time, it has been highlighted that EUMAA offers civil society organisations “an active role to overview

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<sup>1</sup> Umair Irfan, *Brazil's Amazon rainforest destruction is at its highest rate in more than a decade* (18 November 2019) available at <https://www.vox.com/science-and-health/2019/11/18/20970604/amazon-rainforest-2019-brazil-burning-deforestation-bolsonaro>

<sup>2</sup> BBC News website, *Amazon fires increase by 84% in one year - space agency* (21 August 2019) available at <https://www.bbc.com/news/world-latin-america-49415973>

<sup>3</sup> FERN, *The EU-Mercosur Trade Agreement - What is it, and what could it mean for forests and human rights?* (no date) available at [https://www.fern.org/fileadmin/uploads/fern/Documents/2020/The\\_EU-Mercosur\\_Trade\\_Agreement\\_explainer.pdf](https://www.fern.org/fileadmin/uploads/fern/Documents/2020/The_EU-Mercosur_Trade_Agreement_explainer.pdf)

<sup>4</sup> BBC News website, above, note 2

<sup>5</sup> CCSCS and ETUC, *Joint statement on negotiations for a bi-regional partnership agreement between the European Union and Mercosur* (25 June 2019) available at <https://www.etuc.org/en/publication/joint-statement-negotiations-bi-regional-partnership-agreement-between-european-union>

<sup>6</sup> Eurogroup for Animals, *Animal Welfare in EU-Mercosur trade negotiations*, (no date) available at [https://warwick.ac.uk/fac/soc/law/research/centres/chrp/governance/resources/sustainable-development-issues-in-the-eu-mercossur-free-trade-agreement/20180315\\_mercosur\\_-\\_position\\_paper.pdf](https://warwick.ac.uk/fac/soc/law/research/centres/chrp/governance/resources/sustainable-development-issues-in-the-eu-mercossur-free-trade-agreement/20180315_mercosur_-_position_paper.pdf)

<sup>7</sup> “Trade policy has become a tool for climate policy. In the agreement, each of the parties ... commits itself to the effective implementation of the Paris agreement. This locks countries into commitments taken on stopping deforestation in the Amazon for example.” European Commission, *Remarks by President Juncker* (29 June 2019) available at [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_19\\_3468](https://ec.europa.eu/commission/presscorner/detail/en/speech_19_3468)

<sup>8</sup> European Commission, *EU-Mercosur Trade Agreement, Briefing on Trade and Sustainable Development* (no date) available at [https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157957.pdf](https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157957.pdf)

<sup>9</sup> “[The EU-Mercosur trade agreement] sets high standards and establishes a strong framework to jointly address issues like the environment and labour rights, as well as reinforcing sustainable development commitments we have already made, for example under the Paris Agreement.” Comment by Commissioner for Trade Cecilia Malmström in European Commission, *EU and Mercosur reach agreement on trade* (28 June 2019) available at <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2039>

<sup>10</sup> *Ibid*

the implementation of the agreement”, the implication being that this should reinforce trust that EUMAA’s social and environmental objectives would be met.<sup>11</sup>

However, politicians,<sup>12</sup> Member State Parliaments,<sup>13</sup> Member State governments,<sup>14</sup> academics<sup>15</sup> and civil society organisations<sup>16</sup> have identified weaknesses and deficiencies in the TSD Chapter which, they argue, seriously undermine the case that environmental and social issues concerns are sufficiently addressed in EUMAA. In a recent development, France and the Netherlands have united with a common proposal that calls for the EU to “raise the ambition and improve the implementation of TSD Chapters.”<sup>17</sup>

It is worth noting that effectively addressing these concerns in the EU’s trade policy, the so-called Common Commercial Policy (CCP), is not simply a question of policy preferences, but is mandated by the EU Treaties. The latter place the CCP into a larger framework of non-economic policy goals.<sup>18</sup> Specifically, the CCP must pursue the objective of fostering the sustainable economic, social and environmental development of developing countries.<sup>19</sup> Also, the CCP must make a positive contribution to developing international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development.<sup>20</sup> Such legal obligations flowing from the Treaties were acknowledged by DG Trade when it published its ‘Trade for All’ Strategy in 2015, stating “[t]he EU Treaties demand that the EU promotes its values, including the development of poorer countries, high social and environmental standards, and respect for human rights, around the world.”<sup>21</sup>

It will be up to governments in the European Council, the European Parliament as well as the parliaments of the EU Member States to assess whether the above mandate laid down by the EU Treaties is in fact met by the TSD Chapter in EUMAA and whether the TSD Chapter sufficiently addresses the various concerns around the environmental and social impacts of the agreement. In this short paper, we pose four questions about the TSD Chapter which interrogate the key claims made about it by its proponents in order to assist those discussions:

1. Does the TSD Chapter reinforce countries’ climate change commitments as set out in the Paris Agreement?

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<sup>11</sup> *Ibid*

<sup>12</sup> *Opinion of the Committee on Development for the Committee on the Environment, Public Health and Food Safety on the EU’s role in protecting and restoring the world’s forests* (2019/2156(INI)) (15 June 2020) available at [https://www.europarl.europa.eu/doceo/document/DEVE-AD-648612\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/DEVE-AD-648612_EN.pdf)

<sup>13</sup> *Motion wallonne contre l’accord commercial entre l’UE et le Mercosur* (15 February 2020) available at <https://www.lalibre.be/belgique/politique-belge/motion-wallonne-contre-l-accord-commercial-entre-l-ue-et-le-mercotur-5e3ae8abd8ad586cd5b866f8>; Eddy Wax, *Irish parliament rejects EU-Mercosur deal in symbolic vote* (7 November 2019) available at <https://www.politico.eu/article/irish-parliament-rejects-eu-mercotur-deal-in-symbolic-vote/>; NOS, *Kamer stemt tegen handelsverdrag met Zuid-Amerikaanse landen* (no date) available at <https://nos.nl/artikel/2335953-kamer-stemt-tegen-handelsverdrag-met-zuid-amerikaanse-landen.html>

<sup>14</sup> Barbara Moen, *New Austrian government will reject Mercosur deal* (1 February 2020) available at <https://www.politico.eu/article/new-austrian-government-will-reject-mercotur-deal/>

<sup>15</sup> Bard Harstad, *Trade deals could combat Brazil’s Amazon deforestation* (22 August 2019) available at <https://www.ft.com/content/5f123000-bf5e-11e9-9381-78bab8a70848>

<sup>16</sup> FERN, above, note 3

<sup>17</sup> *Non-paper from the Netherlands and France on trade, social economic effects and sustainable development* (8 May 2020) available at <https://www.permanentrepresentations.nl/documents/publications/2020/05/08/non-paper-from-nl-and-fr-on-trade-social-economic-effects-and-sustainable-development>

<sup>18</sup> Art. 205 Treaty on the Functioning of the European Union (TFEU) (and Art. 207 (1) TFEU) in combination with Art. 21 Treaty on European Union (TEU) and Art. 3(5) TEU; see also Markus Krajewski, ‘The Reform of the Common Commercial Policy’ in Andrea Biondi, Piet Eeckhout and Stefanie Ripley (eds), *EU law after Lisbon* (OUP 2012) 297

<sup>19</sup> Art. 21(2)(d) TEU

<sup>20</sup> Art. 21(2)(f) TEU

<sup>21</sup> European Commission, *Trade for All* (2015) available at [https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf), page 22

2. Does the TSD Chapter provide a strong framework for addressing other important environmental and social issues?
3. Does the TSD Chapter ensure that EUMAA itself (1) will not lead to increased environmental and social harms, including an increase in carbon emissions and (2) is a building block towards more sustainable trade?
4. Does the TSD Chapter ensure that the effects of the Agreement are properly monitored so that we know what its effects are, and can react accordingly?

## 1 Does the TSD Chapter reinforce countries' climate change commitments as set out in the Paris Agreement?

The TSD Chapter of EUMAA contains an obligation on each party to 'effectively implement' the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.<sup>22</sup> But this commitment does not provide significant added value in terms of ensuring that the parties continuously decrease their CO2 emissions and cease deforestation or that increased trade on the basis of EUMAA will not lead to a rise of CO2 emissions and deforestation. This is due to (1) there being ambiguity as to what specific and actionable obligations derive from the commitment to 'effectively implement' the UNFCCC and Paris Agreement and (2) the weak dispute settlement mechanism for violations of the TSD Chapter.

Pursuant to the obligation in the TSD Chapter on each party to 'effectively implement' the UNFCCC and the Paris Agreement, a withdrawal from the Paris Agreement by any of the parties to EUMAA would constitute a violation of the TSD Chapter.<sup>23</sup> There is much ambiguity, however, as to what other specific and actionable obligations derive from the commitment to effectively implement the UNFCCC and Paris Agreement.

It is important to note here that the Paris Agreement does not strictly oblige parties to achieve a certain level of CO2 reduction or to cease deforestation. The Paris Agreement is to be understood as a political document that aims to create a dynamic of cooperation and self-commitment and during its negotiations the parties were very deliberate about the bindingness or non-bindingness of each of the provisions in seeking a balance between ensuring effectiveness of the agreement and having the broadest possible participation.<sup>24</sup> This is reflected - for example - with respect to the parties' Nationally Determined Contributions (NDCs), which is a communication of the extent of each party's intended CO2 reduction. Here, the Paris Agreement sets out binding and enforceable procedural requirements (such as preparing, communicating and maintaining successive NDCs as well as providing the information necessary for clarity, transparency and understanding, when communicating NDCs<sup>25</sup>). However, the parties do not have 'obligations of result' to actually achieve the CO2 reduction or other targets communicated in their NDCs.<sup>26</sup> When it comes to deforestation, the Paris Agreement contains some carefully drafted provisions, such as that the "Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases [...] including forests" and that "Parties are encouraged to take action to implement and support [...] the existing framework [...] for [...] activities relating to reducing emissions from deforestation

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<sup>22</sup> Art. 6(1)+(2) of the TSD Chapter of EUMAA

<sup>23</sup> Art. 6(1)+(2) of the TSD Chapter of EUMAA

<sup>24</sup> Daniel Bodansky, 'The Legal Character of the Paris Agreement' (2016) 25 *Review of European, Comparative & International Environmental Law* 149

<sup>25</sup> Art. 4.2 + Art. 4.8 Paris Agreement

<sup>26</sup> Benoit Mayer, 'International Law Obligations Arising in relation to Nationally Determined Contributions' (2018) 7 *Transnational Environmental Law* 259

and forest degradation [...]”<sup>27</sup> Such provisions are lacking in prescriptive force, and are instead declarative and recommendatory in nature.

Therefore, it should be clarified what the commitment to effectively implement the UNFCCC and the Paris Agreement in the TSD Chapter entails and, in particular, whether it is limited to only the strictly binding procedural requirements of the Paris Agreement or also involves actually achieving the mitigation targets in the NDCs communicated by the parties.

The effectiveness that would be gained by clarifying the parties’ climate change commitments, however, would currently still be hampered by the weak dispute settlement mechanism of the TSD Chapter. The TSD Chapter is not covered by the general dispute settlement mechanism of the EU-Mercosur Trade Agreement, but instead there is a chapter-specific dispute settlement mechanism. According to the latter, disputes are examined by a Panels of Experts who, unlike under the general dispute settlement mechanism, cannot impose sanctions for non-compliance. Even if the Panel of Experts were to find a violation of the TSD Chapter, if its recommendations are not implemented, the dispute resolution mechanism foresees no further steps to ensure its recommendations are followed.<sup>28</sup> In practice, this means that once EUMAA is in force, even if a party to EUMAA were to withdraw from the Paris Agreement, contrary to the opinions of some commentators,<sup>29</sup> the terms of EUMAA mandate the other party to keep providing preferential access to its market, with no possibility of full or even partial suspension of the market access commitments it made under EUMAA.<sup>30</sup>

In its Opinion 2/15, the Court of Justice of the EU (CJEU) presented a possibility to strengthen enforcement of the TSD Chapters on the basis of the rule of customary international law codified in Article 60(1) of the Vienna Convention on the Law of Treaties (VCLT). According to Article 60(1) VCLT, a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. The CJEU held that pursuant to Article 60(1) VCLT, “a breach of the provisions concerning social protection of workers and environmental protection, set out in [the TSD] chapter, authorises the other Party [...] to terminate or suspend the liberalisation, provided for in the other provisions of the envisaged agreement, of that trade.”<sup>31</sup> Although the European Commission has positively acknowledged this finding of the CJEU,<sup>32</sup> it later stated that consultations it undertook “showed divergent points of view on the application of trade sanctions, with a majority of voices supporting the current model for enforcing TSD Chapter [...]” and that “the absence of consensus of a sanctions-based model makes it impossible to move to such an approach.”<sup>33</sup> The Commission thus appears unwilling to use the tool that the CJEU presented to strengthen enforcement of the TSD Chapters.

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<sup>27</sup> Art. 5.1 Paris Agreement

<sup>28</sup> Smith, Harrison, Campling, Richardson, Barbu, ‘Free Trade Agreements and Global Labour Governance: The European Union’s Trade-Labour Linkage in a Value Chain World’ (Forthcoming, Routledge 2020)

<sup>29</sup> “The EU-Mercosur FTA is based on the most ambitious climate commitments ever put into a trade agreement, and the consequences of Brazil leaving the Paris Agreement would be automatic suspension of the FTA.” in Chris Horseman, *Cañas: EU can’t afford to walk away from Mercosur trade agreement*, available at <https://borderlex.eu/2019/12/18/canas-eu-cant-afford-to-walk-away-from-mercotur-trade-agreement/>

<sup>30</sup> Notably, other recent non-EU FTAs, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), subject social and environmental provisions to the general dispute settlement mechanism and therefore allow punitive measures in case of violations of such provisions, see Art. 2.23 of the CPTPP, available at <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/20.aspx?lang=eng>

<sup>31</sup> Opinion 2/15 (16 May 2017), EU:C:2017:376, para. 161

<sup>32</sup> Parliamentary questions (22 August 2017), *Answer given by Ms Malmström on behalf of the Commission*, available at [https://www.europarl.europa.eu/doceo/document/P-8-2017-004848-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/P-8-2017-004848-ASW_EN.html)

<sup>33</sup> Non paper of the Commission services, *Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements* (26 February 2018) available at [https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156618.pdf](https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf)

The absence of sanctions, alongside a range of other limitations, such as the lack of role for civil society bodies further elaborated in section 2, means that it cannot be seen as a credible enforcement mechanism.<sup>34</sup> Only one case has ever been initiated, against Korea, in relation to labour rights issues, which is ongoing,<sup>35</sup> and there is scepticism about the degree to which this process will influence the protection of workers - both in law and in practice - in Korea.<sup>36</sup>

## 2 Does the TSD Chapter provide a strong framework for addressing other important environmental and social issues?

The TSD Chapter in EUMAA contains a range of other environmental and social obligations beyond the climate change commitments discussed above. But the idea that this might amount to a 'strong framework' is undermined by (1) its limited scope due to which important issues are not addressed, (2) some commitments appearing not to be legally binding while others appear vague and imprecise and (3) the weakness of the institutional structures which are set up to implement those commitments.

First, the TSD Chapter is limited in scope. For instance it only includes environmental and labour issues. It therefore misses the opportunity to provide guarantees that trade and investments are conducted in conformity with international human rights obligations, including the protection of the rights of indigenous peoples.<sup>37</sup> Even on issues that are included, there are gaps. For instance, on forests, the focus is largely on logging and sustainable management of forests. Issues of land allocation, land use and the rights of third parties which are vital for ensuring forest-based products are not causing deforestation or forest degradation are not included.<sup>38</sup>

Second, the commitments which *are* included are not necessarily meaningful. A significant number of the TSD Chapter's environmental provisions are preambular statements ("The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems [...]"), reaffirmations of pre-existing commitments ("[...] each Party reaffirms its commitments to promote and effectively implement, multilateral environmental agreements (MEAs), [...] to which it is a party") or best endeavour clauses ("Each Party shall strive to improve its relevant laws and policies so as to ensure

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<sup>34</sup> Harrison et al, 'Labour Standards Provisions in EU Free Trade Agreements: Reflections on the European Commission's Reform Agenda' (2019) 18 *World Trade Review* 645

<sup>35</sup> European Commission, *EU-Korea dispute settlement over workers' rights in Korea enters next stage* (19 December 2019) available at <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2095>

<sup>36</sup> Miriam-Lena Horn, *The EU's toothless trade policy* (27 January 2020) available at <https://www.ips-journal.eu/regions/global/article/show/the-eus-toothless-trade-policy-4027/>; Smith et al, above, note 28

<sup>37</sup> On indigenous peoples, EUMAA merely contains a commitment for the parties to the agreement to promote the inclusion of forest-based local communities and indigenous peoples in the supply chains of forest products, for which they should give their "prior informed consent." Respect for Human Rights is referred to in the Interregional Framework Convention between the EU and Mercosur but only in a light touch manner in the preamble and as basis for cooperation, see Interregional Framework Convention between the EU and Mercosur, available at <https://op.europa.eu/en/publication-detail/-/publication/79b6183e-977b-446f-af3a-6930dbbcf8b9/language-en>

<sup>38</sup> Making the same points about the EU-Indonesia FTA see ClientEarth, *Improving the proposed forestry provisions in the EU-Indonesia FTA* (20 June 2018) available at <https://www.documents.clientearth.org/library/download-info/improving-the-proposed-forestry-provisions-in-the-eu-indonesia-fta/>. See also FERN, *The EU-Mercosur Trade Agreement: What is it, and what could it mean for Forests and Human Rights?* (May 2020) available at [https://www.fern.org/fileadmin/uploads/fern/Documents/2020/The\\_EU-Mercosur\\_Trade\\_Agreement\\_explainer.pdf](https://www.fern.org/fileadmin/uploads/fern/Documents/2020/The_EU-Mercosur_Trade_Agreement_explainer.pdf)

high and effective levels of environmental [...] protection”).<sup>39</sup> Such types of provisions do not create binding legal obligations.<sup>40</sup>

The TSD Chapter also contains a wealth of commitments to cooperate or exchange information (“The Parties [...] may work together on *inter alia* the promotion of the conservation and sustainable management of forests [...]”). Cooperative activities between parties to a trade agreement on environmental and labour issues can certainly be a constructive endeavour, however, it is questionable how significant the commitments to cooperate or exchange information will turn out to be in practice. This is because they remain general and undefined, with no specification of details on the form of cooperation as well as its aims, priorities and intensity.<sup>41</sup> There is - moreover - a lack of a transparent funding framework for cooperative activities.<sup>42</sup>

Other environmental commitments in the TSD Chapter of EUMAA that can be said to create legal obligations tend to be phrased broadly and imprecisely, and as a result the degree to which they are likely to give rise to meaningful action is significantly reduced. To provide an example, in a provision on Trade and Biodiversity the parties recognise the importance of the conservation and sustainable use of biological diversity consistent with, among other treaties, the Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Here, parties have committed to “implement effective measures leading to a reduction of illegal trade in wildlife.”<sup>43</sup> This provision is subject to a number of ambiguities, such as what constitutes an effective measure and how much of a reduction would satisfy the requirements of this provision.

Other labour commitments in the TSD Chapter also create significant ambiguity. For instance, the commitment to “make continued and sustained efforts towards ratifying the fundamental ILO Conventions” replicates the language of the EU-Korea FTA.<sup>44</sup> Arguably, the delay in taking action in the case of Korea discussed above, is partly as a result of the difficulty of creating accountability in relation to procedural obligations which do not demand a definitive outcome.

Finally, there are also serious weaknesses with the institutional structures which are set up to implement all of these commitments. The same limitations in relation to the dispute settlement mechanism identified in relation to question 1 above, also apply to other environmental as well as labour commitments in the TSD Chapter.

There are also serious issues with the civil society bodies (known as ‘Domestic Advisory Groups’ (DAGs)) which the TSD Chapter in EU FTAs requires are created for both the EU and its trade partners.<sup>45</sup> These are envisaged as playing an important role in overseeing the implementation of the agreement, and have a particular focus on the environmental and social commitments. Experience of previous agreements suggests serious problems and deficiencies are likely. Constituting these bodies can take a long time (six

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<sup>39</sup> Sophia Paulini, ‘Robust, comprehensive and binding? – A critical analysis of selected environmental provisions in the chapter on trade and sustainable development of three EU Free Trade Agreements’ (Working Paper 2018)

<sup>40</sup> UNEP and IISD, *A Sustainability Toolkit for Trade Negotiators: Trade and investment as vehicles for achieving the 2030 Sustainable Development Agenda* (no date) available at [www.iisd.org/toolkits/sustainability-toolkit-for-trade-negotiators/3-environmental-provisions/3-1-binding-or-non-binding-commitments/#jump](http://www.iisd.org/toolkits/sustainability-toolkit-for-trade-negotiators/3-environmental-provisions/3-1-binding-or-non-binding-commitments/#jump)

<sup>41</sup> See Harrison et al, above, note 34, page 644

<sup>42</sup> Making the point about the importance of a dedicated funding stream see Harrison et al, above, note 34, page 651

<sup>43</sup> Art. 7(2)(b) of the TSD Chapter of EUMAA

<sup>44</sup> Art. 4(4) of the TSD Chapter of EUMAA

<sup>45</sup> The current draft of the TSD Chapter of EUMAA contains placeholders for ‘civil society mechanisms’. In the next draft published, which will have undergone legal scrubbing, these will likely be replaced with the concept of domestic advisory groups, as is the case for other EU FTAs.

years for the EU-CARIFORUM Agreement), and they have then been undermined by unclear aims and objectives and various operational failings.<sup>46</sup>

Moreover, civil society bodies are side-lined in the dispute settlement mechanism under the TSD Chapters of EU FTAs. Civil society bodies are unable to initiate a claim under the TSD Chapter. They also lack the institutional authority to request the Commission to properly investigate alleged breaches of social, environmental and human rights obligations. Recognising these problems, the draft final Sustainability Impact Assessment report on EUMAA recommends “strengthening the role of DAGs by allowing them to bring up complaints to the TSD subcommittee.”<sup>47</sup> Currently there is not even a formal obligation of the Commission to respond to concerns raised by civil society bodies, which has been argued to “[undermine] accountability to civil society.”<sup>48</sup> The labour dispute under the EU-Korea FTA referred to above took years of concerted civil society pressure in relation to clear and egregious labour rights issues until the Commission was prepared to initiate consultations.<sup>49</sup>

The specific limitations of DAGs as bodies capable of monitoring the sustainability impacts of EUMAA are discussed under question 4 below.

### **3 Does the TSD Chapter ensure that EUMAA (1) will not lead to increased environmental and social harms, including an increase in carbon emissions and (2) is itself a building block towards more sustainable trade?**

EUMAA is designed to increase production and trade in goods in both the EU and Mercosur countries. Academics and various civil society actors have raised concerns that increases in production and trade as a result of EUMAA could lead to a range of serious environmental and social problems.<sup>50</sup>

Across all sectors, there are concerns about increased CO<sub>2</sub> emissions as a result of increased transport between the EU and Mercosur countries.<sup>51</sup> The primary focus of traded goods is on agricultural products traded from Mercosur countries to the EU. In particular, there are concerns about increased deforestation and associated impacts on the rights of indigenous peoples (e.g. as a result of increased soya, beef, sugar

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<sup>46</sup> Harrison et al, note 34; Jan Orbie, Deborah Martens and Lore Van den Putte, *Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation* (CLEER PAPERS 2016/3); Jan Orbie, Deborah Martens, Myriam Oehri and Lore Van den Putte, ‘Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements’ (2016) 1 *Third World Thematics: A TWQ Journal* 526-546

<sup>47</sup> LSE Consulting, *Sustainability Impact Assessment in Support of the Association Agreement Negotiations between the European Union and Mercosur* (Draft Final Report, July 2020) available at [https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc\\_158889.pdf](https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc_158889.pdf), page 102

<sup>48</sup> Denise Prévost and Iveta Alexovičová, ‘Mind the Compliance Gap: Managing Trustworthy Partnerships for Sustainable Development in the European Union’s Free Trade Agreements’ (2019) 6 *International Journal of Public Law and Policy* 236 - 269

<sup>49</sup> ClientEarth, *A Formal Complaint Procedure for a More Assertive Approach towards TSD Commitments*, available at <https://www.documents.clientearth.org/wp-content/uploads/library/2017-10-27-a-formal-complaint-procedure-for-a-more-assertive-approach-towards-tds-commitments-version-1.1-ce-en.pdf>

<sup>50</sup> E.g. Kettunen et al., *An EU Green Deal for trade policy and the environment: Aligning trade with climate and sustainable development objectives* (IEEP 2020) available at [https://ieep.eu/uploads/articles/attachments/9c951784-8c12-4ff5-a5c5-ee17c5f9f80b/Trade%20and%20environment\\_FINAL%20\(Jan%202020\).pdf?v=63748123099](https://ieep.eu/uploads/articles/attachments/9c951784-8c12-4ff5-a5c5-ee17c5f9f80b/Trade%20and%20environment_FINAL%20(Jan%202020).pdf?v=63748123099), page 8; Mathilde Dupré; *Un accord perdant-perdant. Analyse préliminaire de l'accord de commerce entre l'UE et le Mercosur* (Institut Veblen, 19 November 2019) <https://www.veblen-institute.org/Un-accord-perdant-perdant-Analyse-preliminaire-de-l-accord-de-commerce-entre-l.html>

<sup>51</sup> See Luciana Ghiotto and Javier Echaide, *Analysis of the agreement between the European Union and the Mercosur* (December 2019) available at <http://www.db.zs-intern.de/uploads/1579162016-2020StudyMercosurGreens.pdf>

and bioethanol production<sup>52</sup>), increased carbon emissions from methane and other greenhouse gases (from deforestation as well as use of fertilisers and manure) and increased use of pesticides (e.g. 74% of the pesticides used in Brazil's sugar cane farms are banned in Europe<sup>53</sup>). Going in the other direction, agricultural trade in products such as cheese and skimmed milk powder are expected to increase from the EU to Mercosur countries. One study of eight commodities traded in both directions found that the agreement could lead to an increase of 8.7 million tonnes of carbon emissions per year (more than the city of Lisbon, Portugal).<sup>54</sup>

Beyond agriculture, the deal has been trumpeted by EU automobile manufacturers who are set to benefit from tariff free access to Mercosur countries and as a result obtain an expansion of their market.<sup>55</sup> But those EU manufacturers are also fighting against tougher emissions targets on cars being set by the EU to combat climate change. This raises questions about the environmental impact of this expanded trade and whether manufacturers fighting against tougher emission targets domestically should be rewarded with increased access to overseas markets.<sup>56</sup> EUMAA also prevents the use of export restrictions by Mercosur countries on raw materials needed by EU industry, such as iron ore. To make sure that EU industry retains low-priced access to these raw materials, EUMAA bans taxes and duties on exports. But there are concerns that some of these supply chains also involve serious human rights issues (as exemplified by the Brumadinho dam disaster<sup>57</sup>) and so this raises questions about whether guarantees of access to markets should be accompanied by obligations to ensure those supply chains operate responsibly.<sup>58</sup>

Despite this wide range of social and environmental issues raised across various supply chains whose trade is expanded by EUMAA, the TSD Chapter does not include any meaningful obligations that decrease the risks of environmental and social harms occurring. The importance of responsible management of supply chains is recognised in the TSD Chapter for achieving sustainable development outcomes.<sup>59</sup> But commitments in relation to responsible supply chains are limited to encouraging voluntary uptake of corporate social responsibility or responsible business practices by companies. The parties are supposed to create a 'supportive policy framework' for the effective implementation of principles and guidelines like the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. But there is no detail on how this will be achieved or how progress will be monitored. Such commitments have been criticised in other agreements as "restricted in scope, vigour, and potential future

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<sup>52</sup> See FERN, above, note 3, page 4; Thomas Fritz, *Risk to Climate Protection and Human Rights* (26 June 2020) available at <https://www.cidse.org/2020/06/26/eu-mercrosur-agreement-risks-to-climate-protection-and-human-rights/>, pages 13-16

<sup>53</sup> GRAIN, *EU-Mercosur trade deal will intensify the climate crisis from agriculture* (25 November 2019) available at <https://www.grain.org/en/article/6355-eu-mercrosur-trade-deal-will-intensify-the-climate-crisis-from-agriculture>; More generally on the risks posed by EUMAA on relation to pesticides see Thomas Fritz, above, note 52, page 18

<sup>54</sup> This figure was calculated on the basis that all increased trade would be met by increased production. Calculations are also based on the situation when the FTA's transition periods are completed. See GRAIN, above, note 53; Arguing this may be an underestimate see Thomas Fritz, above note 52, page 17

<sup>55</sup> ACEA, *Auto maker welcome conclusion of EU-Mercosur trade deal*, available at <https://www.acea.be/press-releases/article/auto-makers-welcome-conclusion-of-eu-mercrosur-trade-deal>; Luciana Ghiotto and Javier Echaide, above, note 51

<sup>56</sup> DW, *Auto industry pushes back against tougher EU emissions targets*, available at <https://www.dw.com/en/auto-industry-pushes-back-against-tougher-eu-emissions-targets/a-45349822>

<sup>57</sup> Gram Slattery and Marta Nogueira, *Brazil's Vale dam disaster report highlights governance shortcomings* (21 February 2020) available at <https://www.reuters.com/article/us-vale-disaster/brazils-vale-dam-disaster-report-highlights-governance-shortcomings-idUSKBN20F2Q6>

<sup>58</sup> Thomas Fritz, above note 52, page 24

<sup>59</sup> Art. 11 of the TSD Chapter of EUMAA

impact.”<sup>60</sup> At best, they have led to discussions on corporate social responsibility, co-operative activities between various stakeholders and projects to learn from good practices elsewhere.<sup>61</sup>

Other than brief mention of conflict minerals, the TSD Chapter does not include any reference to specific supply chains where there are concerns about environmental or social harms occurring (e.g. soya beans, automobiles etc.), let alone mandate that action is taken to monitor those supply chains and address harms identified (e.g. through human rights due diligence measures, green supply chain management processes etc.). This is despite recognition by the Trade Commissioner Phil Hogan that due diligence can strengthen the sustainability of supply chains and his acknowledgment of the strong trade dimension involved in the Commission’s preferred model of mandatory, horizontal due diligence legislation in the future.<sup>62</sup> Such an approach is not currently reflected in the text of EUMAA and so is not a strong platform for concerted action to effectively address critical social and environmental impacts of individual supply chains, including those that will be expanded as a result of the liberalisation commitments in the agreement.

The importance of a supply chain or ‘global value chain’ (GVC) approach to international trade agreements is increasingly widely recognised. For instance, Pascal Lamy has stated that: “Any discussion today of international trade and investment policy that fails to acknowledge the centrality of GVCs would be considered outmoded and of questionable relevance.”<sup>63</sup> The TSD Chapter does not currently engage with GVCs/supply chains in such a way that it meets this test. It therefore fails to ensure that EUMAA is a building block towards more sustainable trade, nor does it include any meaningful obligations that decrease the risks of environmental and social harms occurring across a range of different supply chains.

## **4 Does the TSD Chapter ensure that the effects of the Agreement are monitored so that we know what its environmental and social effects are, and can react accordingly?**

An absolute bare minimum commitment of EUMAA should be to monitor its environmental and social impacts, so that policymakers, as well as the general public, can understand where it is causing problems, and then action can be taken to address that situation. But there have been serious problems and deficiencies with both (1) the assessment of environmental and social impacts of EUMAA during the negotiation period and (2) the monitoring of social and environmental impacts of other EU FTAs once they have come into force. This gives rise to scepticism about whether robust and reliable monitoring of the impact of EUMAA will actually occur.

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<sup>60</sup> See Harrison et al, above note 34, page 644 which argues “...despite the focus on cooperative activities in the text of the TSD chapters, such provisions have not been systematically implemented through relevant EU instruments. Further, no systematic evaluation of the cooperative activities conducted under the TSD chapters has taken place.” It goes on to argue that “Activities [to promote responsible supply chains] have largely focused on encouraging voluntary corporate social responsibility initiatives, which are restricted in scope, vigor, and potential future impact.”

<sup>61</sup> Smith et al, above, note 28, page 144. See also European Commission, *Introductory Remarks by Commissioner Phil Hogan at OECD Global Forum on Responsible Business Conduct* (19 May 2020) available at [https://ec.europa.eu/commission/commissioners/2019-2024/hogan/announcements/introductory-remarks-commissioner-phil-hogan-oecd-global-forum-responsible-business-conduct\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/hogan/announcements/introductory-remarks-commissioner-phil-hogan-oecd-global-forum-responsible-business-conduct_en)

<sup>62</sup> See European Commission, *Ibid*

<sup>63</sup> Lamy, P. (2013) ‘Foreword’, in Elms, D. K. and Low, P. (eds.) *Global Value Chains in a Changing World*. Geneva: World Trade Organization, pages xv–xviii

The European Commission concluded the trade negotiations with Mercosur without having completed its own Sustainability Impact Assessment (SIA) process.<sup>64</sup> In June 2019, the EU and Mercosur countries reached a political agreement on the trade part of EUMAA, while only the first phase of the SIA process (out of three) was completed. Four months later, a draft interim report (second phase of the SIA) was published. The final version of the interim report was issued only in February 2020. This report was criticised by academics and civil society actors, including for its overly optimistic approach to measuring environmental impacts and for marginalising a range of key social and environmental issues including the potential impact of EUMAA on deforestation and indigenous peoples' rights.<sup>65</sup> Five environmental and human rights organisations have brought a complaint of maladministration to the European Ombudsman on the grounds that the negotiating process was not based on updated and appropriate data, nor informed by a proper analysis of the potential environmental and social impacts of the proposed trade agreement. As a result, the complainants argue, the Commission failed to ensure sound, evidence-based, and transparent policy choices during negotiations. At the same time, they argue there is no guarantee that EUMAA will not lead and/or contribute to social, economic, environmental degradation and human rights violations in the EU and the Mercosur countries.<sup>66</sup>

On 8 July 2020, the European Ombudsman decided to open an inquiry and requested the Commission to reply to the concerns raised by the complaints.<sup>67</sup> On the same day, the European Commission published the Final Draft Report of the SIA, highlighting in their press release the report's finding that the agreement would have no impact on global greenhouse gas emissions and that further deforestation could be avoided.<sup>68</sup> But this interpretation of the findings fails to sufficiently interrogate whether there is the policy framework in place that makes such an outcome look credible. The report recognises that EUMAA will boost demand in Europe for various agricultural products including beef soy and sugar and acknowledges this could lead to further deforestation.<sup>69</sup> It is further recognised that current policies on deforestation, particularly in Brazil, exacerbate these risks. Great reliance is placed on the potential of the TSD Chapter, when combined with countries' domestic policy commitments, to mitigate against any negative impacts.<sup>70</sup> But the absence of effective dispute settlement to enforce environmental obligations, disempowered civil society mechanisms and inadequate ex-post monitoring processes are recognised as deficiencies of the TSD Chapter which undermine its capacity to achieve such outcomes.<sup>71</sup> No proposals are made by the Commission for how these issues will be addressed. Instead the focus is on the 'importance' of the

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<sup>64</sup> The Commission's Handbook for trade sustainability impact assessment (2nd edition, 2016, page 9) states that "SIAs are trade-specific and independent ex ante assessments carried out by external consultants *simultaneously* with major trade negotiations. They assess in depth the potential economic, social, human rights and environmental impacts of the agreement under negotiation. SIAs *help to steer the trade negotiations* by feeding them with evidence on an ongoing basis" (emphasis added). Available at [https://trade.ec.europa.eu/doclib/docs/2016/april/tradoc\\_154464.PDF](https://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154464.PDF)

<sup>65</sup> See Luciana Ghiotto and Javier Echaide, above, note 51, page 8; ClientEarth, Fern and Conservation International, *Joint Reply to the Draft Interim Report of the Sustainability Impact Assessment in support of the EU-Mercosur Association Agreement* (30 October 2019) available at <https://www.documents.clientearth.org/library/download-info/clientearth-fern-and-conservationinternational-jointreply-to-the-draft-interim-report-of-the-sustainability-impact-assessment-of-the-eumercosur-trade-agreementoctober-30-2019/>; See also the Contribution of the Veblen Institute for Economic Reforms and Fondation Nicolas Hulot to the Draft Interim Report of the Sustainability Impact Assessment in support of the EU-Mercosur Association Agreement (29 October 2019) available at [https://www.vebleninstitute.org/IMG/pdf/institut\\_veblen\\_fnh\\_comments\\_on\\_sia\\_291019.pdf](https://www.vebleninstitute.org/IMG/pdf/institut_veblen_fnh_comments_on_sia_291019.pdf)

<sup>66</sup> ClientEarth, Fern, Veblen Institute, La Fondation Nicolas Hulot pour la Nature et l'Homme and International Federation for Human Rights, *Formal Complaint submitted to the European Ombudsman* (16 June 2020) available at <https://www.clientearth.org/we-take-action-against-the-eu-for-failing-to-consider-environmental-and-social-impacts-of-south-american-trade-deal/>

<sup>67</sup> Client Earth, *European Ombudsman: Commission must answer questions over failure to consider environmental, social impacts of South American trade deal* (10 July 2020) <https://www.clientearth.org/press/european-ombudsman-commission-must-answer-questions-over-failure-to-consider-environmental-social-impacts-of-south-american-trade-deal/>

<sup>68</sup> European Commission, *European Commission publishes draft Sustainability Impact Assessment for the Trade part of the EU-Mercosur Association Agreement* (8 July 2020) available at <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2164>

<sup>69</sup> LSE Consulting, above, note 47, pages 90-93

<sup>70</sup> *Ibid*, page 99

<sup>71</sup> *Ibid*, page 99

commitments made under the TSD Chapter in relation to the Paris Agreement (see section 2 above for an explanation of the weaknesses of these commitments).<sup>72</sup>

The likelihood of the inadequacy of the ex-post monitoring process in EUMAA is further increased when considering how similar processes have operated in other recent EU FTAs. The European Commission has commissioned ex-post evaluations to assess the economic, social, human rights and environmental impacts of the EU-Korea FTA and the EU-Mexico FTA.<sup>73</sup> But it has been observed that “the evaluations both provide unclear conclusions and struggle to make a clear link between the FTAs and their impacts on environment.”<sup>74</sup> More fundamentally, unlike for *ex ante* SIAs, there does not appear to be any settled methodology for how to conduct such *ex post* evaluations.<sup>75</sup> The civil society organisations, who are supposed to play an active role in the implementation of the agreement, could work to improve upon these *ex post* monitoring processes, as identified in the Final Draft Report of the SIA on EUMAA.<sup>76</sup> But they currently have inadequate resources to investigate sustainable development issues, and the issues they do identify are often not acted upon by inter-governmental committees.<sup>77</sup> Significant financial and structural empowerment would therefore be needed for CSOs to be capable of playing an effective monitoring role.

All of these problems and deficiencies in current monitoring processes raise serious concerns about the likely monitoring of the actual impact of the EU-Mercosur FTA. Without such monitoring processes, policymakers and the general public will not know what the effect of EUMAA has been in practice. Action to address negative impacts will not then be possible.

## Concluding thoughts

According to the European Commission, “[t]he EU-Mercosur agreement is based on the premise that trade should not happen at the expense of the environment or labour conditions; on the contrary, it should promote sustainable development.”<sup>78</sup> The above analysis shows that this assertion has not been realised in the TSD Chapter of EUMAA.

The TSD Chapter does not significantly reinforce countries’ climate change commitments as set out in the Paris Agreement. Nor does it provide a strong framework for addressing other important environmental and social issues. The chapter neither ensures against EUMAA itself increasing environmental and social harms, nor is itself a building block towards more sustainable trade. It does not even ensure that the effects of the Agreement are properly monitored so that we know what its effects are, and can react accordingly. We therefore have to conclude that the TSD Chapter is not fit for purpose. This should not be a surprise, given the significant criticism which the TSD Chapter has received in relation to EUMAA specifically as well as in relation to previous trade agreements where similar chapters have also been found wanting once they come into force.

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<sup>72</sup> European Commission, above, note 68

<sup>73</sup> See European Commission, *Ex Post Evaluations*, available at [https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/ex-post-evaluations/index\\_en.htm](https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/ex-post-evaluations/index_en.htm)

<sup>74</sup> Kettunen et al., above, note 50, page 21

<sup>75</sup> *Ibid.* See also Harrison et al, above, note 34, “the provisions contained in TSD chapters regarding the monitoring and assessing of the ‘sustainability’ impacts of the agreement itself, ... have not been properly operationalized”

<sup>76</sup> LSE Consulting, above, note 47, page 102

<sup>77</sup> Harrison et al, above, note 34, page 645

<sup>78</sup> European Commission, *EU-Mercosur Trade Agreement, Trade and Sustainable Development* (no date) available at [http://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157957.pdf](http://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157957.pdf)

So what should be done to rectify this situation? There is a need to go beyond recent debates about reform to the TSD Chapters which have focused narrowly on the question of enforcement and whether stronger sanctions are required.<sup>79</sup> The absence of sanctions attached to the dispute settlement process, alongside a range of other problems with its design, does mean that it cannot be seen as a credible enforcement mechanism. However, we find that a much more fundamental reform of the current approach to trade and sustainable development is required to ensure that all of the parties who are signatories to EUMAA are genuinely committed to achieving social and environmental outcomes as well as to ensure that EUMAA itself is a building block towards more sustainable trade.

This reform process should involve:

- **The development of mechanisms for ensuring effective monitoring of the impacts of the EUMAA, both before and after it comes into force** - The EU and its trade partners should work to better understand the impacts of EUMAA on environmental and social outcomes, including the differential impacts of trade in particular supply chains. This will involve devising more appropriate methodologies for assessing environmental and social impacts and ensuring impact assessment processes are operationalised in such a way that their findings affect policy outcomes.
- **Proper enforcement of meaningful commitments to key international environmental and social standards** - The EU and its trade partners should develop mechanisms for ensuring that all parties demonstrate (in practice as well as in law) their commitments to key international environmental and social standards (e.g. to reducing carbon emissions, ensuring protection against deforestation and protecting the rights of indigenous peoples) both before and after EUMAA comes into force. This should include ensuring that commitments are specific and time-bound, that there are concrete steps agreed towards their fulfilment and that they are then ultimately enforced through a credible dispute settlement process. At the same time, where partner countries lack sufficient financial resources to make good on their commitments, the EU should contribute finances to allow commitments to be fulfilled.
- **Action to ensure that the expanded trade which takes place through EUMAA is environmentally and socially beneficial** - Careful consideration should be given to where expanded trade through EUMAA is environmentally and socially beneficial. In areas of trade where there is no way of ensuring this, the parties should refrain from granting preferential access with respect to those goods and services. Where access is granted, specific action should be taken, targeted at the environmental and social issues in particular supply chains. This should ensure that producers and suppliers who benefit from increased and preferential access to markets as a result of EUMAA are also committed to environmentally and socially responsible production and trade.
- **Strengthening the role of civil society bodies** so that they can play a meaningful role in (1) monitoring whether the parties are living up to their social and environmental commitments in practice, (2) assessing whether EUMAA itself is having detrimental environmental and social outcomes and (3) ensuring that where they find problems, action is taken by the parties to tackle the issues identified.

These specific ideas for reform should be integrated into a more general debate on how to comprehensively and holistically integrate environmental and social objectives into all aspects of trade agreements to which the EU is a signatory, including EUMAA. The longstanding criticisms of TSD chapters from a wide range of actors, combined with the emergence of other approaches to sustainable trade policy

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<sup>79</sup> European Commission, *Non-paper of the Commission services Trade and Sustainable Development (TSD) Chapters in EU Free Trade Agreements (FTAs)* (11 July 2017) available at [http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155686.pdf](http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf)

(e.g. the Agreement on Climate Change, Trade and Sustainability (ACCTS)<sup>80</sup>) make such a debate long overdue.

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<sup>80</sup> Ronald P. Steenblik and Susanne Droege, *Time to ACCTS? Five countries announce new initiative on trade and climate change* (25 September 2019) available at <https://www.iisd.org/blog/time-accts-five-countries-announce-new-initiative-trade-and-climate-change>

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