



Trade and Sustainable Development

Brussels, 6 October 2017

Speech by EU Trade Commissioner Cecilia Malmström

Civil Society Dialogue with EU Trade Commissioner Cecilia Malmström on Trade and Sustainable Development

Good morning, nice to meet you again in this format in Brussels.

This is a dedicated meeting on Trade and Sustainable Development. There have been, and there will be many more other events/conferences on this very important topic.

The importance of EU trade is well established. The EU is one of the biggest exporters, importers and investors. And, we pay attention to trading in a sustainable manner, even if a trade agreement cannot solve all the problems of the World.

I'd like to take the opportunity to update you on the ongoing debate on the enforcement and implementation of Trade and Sustainable Development Chapter in the EU's free trade agreements, but above all I'm here to listen to your views.

I attach particular importance to this Chapter as a critical means to set out the values-based agenda set out in the Trade for All Communication.

As you know, on the 11th of July, the Commission presented **a discussion paper on enforcement and implementation of the Trade and Sustainable Development chapters in the EU's trade agreements**. This non-paper has been published on DG Trade's website and sent to Member States and the European Parliament.

In this paper, we put forward two scenarios for improving TSD implementation:

Scenario a) move to a more assertive partnership on trade and sustainable development while maintaining the current enforcement mechanism, or

Scenario b) move towards a sanctions-based enforcement model.

And then, there's always the option to keep the status quo.

The two scenarios are not just a matter of "enforcing differently" – these are different philosophies and approaches that impact the content of the TSD Chapters, and the political feasibility of negotiating them.

They raise different questions:

- do we want to follow a multilateral approach, broad in scope, with an institutionalised involvement of civil society?, or
- do we want a bilateral approach with a narrower scope, less civil society involvement, less institutionalised, mainly preserving the status quo of labour and environmental standards and punishing failings through sanctions, which would result in a system parallel to the multilateral conventions?

This was discussed at various meetings already with Member States in TPC, in the Expert Group, in the European Parliament and with the EESC.

From a more pragmatic point of view, I think that the most fundamental issue is: **what is actually working and what isn't, and what tools do we need to address that?** We have to remember that enforcement is not an end in itself, but a means to strengthen legislation and improve effective implementation of labour and environmental standards.

Various exchanges have already taken place with EU Member States in the Council's Trade Policy Committee and the trade and sustainable development expert group.

We've also discussed it with the European Economic and Social Committee and the European Parliament [given a technical briefing for MEPs in the International Trade Committee].

And, of course, my team participated in meetings with civil society organisations in various EU capitals and engaged in discussions on TSD. These will continue in the coming weeks as well.

What we've seen in these discussions is that there are some misunderstandings on the TSD chapters:

It's important to take the time to explain what the EU does – and what it doesn't do – and what the implications of other approaches are.

Contrary to some opinions, the EU's TSD chapters are both **binding** and subject to a **dispute settlement mechanism**.

Indeed, a key element is their linkage to the multilateral system. By incorporating the key conventions – such as those of the international Labour Organization and Multilateral environmental Agreements – we're not only linked to the standards contained in these conventions, **but also to their monitoring and enforcement mechanisms**.

We have the possibility of using their monitoring mechanisms, and huge networks on the ground.

Multilateral bodies such as ILO and the UN have established mechanisms to report on and follow the implementation of the respective international conventions that we should take into account before "re-inventing the wheel".

Furthermore, many labour and environmental issues are not amendable to simple rule changes, in the way that some more commercial trade irritants are; their improvement often requires changes to laws and practices that are often deeply rooted in our partner's societies, and this also requires time. **What is therefore critical is for us to reflect on what are the best means to help our partners make these changes?** Sometimes there are constitutional issues that our partners are faced with, so it can be complicated, and these changes require time.

Based on these discussions and feedbacks, I see the following picture emerging. We are also discussing on this with a network of progressive partner countries. Trade and sustainable development is a **high priority**. Nobody questions this. Everyone is also keen for us to do better in implementation. Some are putting forward a wide range of ideas.

I **hear concerns** about:

- the functioning of the Domestic Advisory Groups and the way they interact with the government bodies, or their representativeness.
- communication and transparency of TSD activities;
- the handling of non-compliance issues (indeed, we have never used all available tools in the enforcement mechanisms, including dispute settlement);

We also hear that dealing with reports from stakeholders on the wrongdoings of third countries.

On the design of our system, we **hear broad support** for our system, in particular the role our agreements give to civil society, the link we make to multilateral instruments and the wide scope of the EU TSD chapter.

But when it comes to the question of sanctions, I hear diverging views, which can be divided into three groups:

1. **Some say that it's too early** to make an assessment or draw conclusions – we need to gain more experience with the current system before considering changing policy.
2. **We hear opposition** to the introduction of sanctions with a variety of comments, such as:
 - *We should use existing tools* including dispute settlement **and strengthen work with international bodies.**
 - *The US/Guatemala case on labour* suggests that trade sanctions are inappropriate in the context of a trade agreement.
 - *From the climate change perspective*, trade sanctions applied to the Paris agreement would be very detrimental for efforts to implement it as it represents a delicate balance between the interests of the signatories.
 - *Then there is the third country perspective* with doubts that third countries will accept sanctions and implications for the scope of obligations that they will be willing to accept; meaning we would have to narrow down the scope of our TSD chapter.
 - *Finally, there is also the development angle*, where experience suggests that sanctions are ineffective and are inconsistent with development efforts to effect systemic change;

These are some of the arguments raised by those opposed to sanctions.

3. The third group are those who **support sanctions** – here we see different types of supporters:
 - There is a divergent of views on the *scope of provisions* to which sanctions should be applied. Should they only apply to labour? Or only to the environment? Or to the entire chapter? Or should they only apply to the provisions dealing with non-lowering of standards? It is difficult to assess the impact of any of this.
 - Whilst most who favour sanctions would see this as *an add-on* to the existing system, they are generally silent about what the impact would be on the scope of commitments our partners would then be ready to enter into, or to the potential emergence of a parallel system to the ILO monitoring and enforcement actions.
 - The request to apply the State to State Dispute Settlement to the TSD chapter would put a question about the role of civil society in enforcement.

Not many written contributions were received yet. Maybe this will increase, and the inputs received so far present a mixed picture. I'll try to sum them up:

- They want the EU to do better with TSD implementation and some suggest already solutions,
- The monitoring tools should be used better,
- Enforcement should be actually used when warranted,
- There are diverging views on sanctions
- Some say it is still too early to draw conclusions
- There are different views within constituencies – not excluding hybrid solutions, meaning proposals drawing on both options

However, a **clear picture of shortcomings** that requires improvement has also appeared:

- There's a need for logistical support to help the civil society mechanisms function better. **So the Commission will launch a three-million euro project to "Support civil society participation in the implementation of EU trade agreements" through the Partnership Instrument.**
- There's also a need for a more transparent and streamlined reporting mechanism on TSD implementation issues.
- Thirdly, we need a systemic approach to respond to issues raised by the DAGs.
- Fourthly, we need a more focused dialogue with partner countries on the basis of country priorities. This would make for better monitoring of TSD issues and more focused cooperation.
- And, finally, we need a more assertive use of existing enforcement mechanisms – in other words, government consultations, panel of experts, etc.

As for the next steps, we're still in the listening mode, waiting for inputs, based on our non-paper presented the 11 July.

This is what we have heard so far. I will have further discussions with Ministers later this month and there are a several more events foreseen as part of this process. After that, I will take stock to determine the most appropriate course of action – much really depends on the type of comments we receive.

Thank you very much for your attention.

I am now looking forward to hearing your comments and questions.