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## How to make TSD chapters more effective?

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With the publication of a non-paper in July 2017 the European Commission addressed the discussion on Trade and Sustainable Development (TSD) chapters in EU free trade agreements (FTAs). This briefing is first going to show the main constraints related to the effectiveness of TSD chapters and after that explain how possible improvements would look like.

### Main constraints to effectiveness

In general, the chapters are missing a clear action plan with time frames to encourage effective implementation. The ratification of the four ILO core conventions and their implementation is often not achieved. The freedom of association in South Korea is for example restricted and trade unionists get criminalised. The chapters do rely only on soft mechanisms for enforcement and exclude hard

measures such as sanctions. Enforcement via dialogue and cooperation relies on the willingness to implement and requires a functioning civil society capable of pressuring for political will.

The EU's approach follows a one-size fits all rational. However, the level of civil society engagement and political and economic circumstances in the trade partner countries can largely affect the impact of TSD provisions. Some trade partners' civil societies are not developed enough to engage in the dialogue and complaint mechanism of the chapters. Trade unions are marginalized or cannot build on an established tradition of unionizing. This is problematic since the monitoring and enforcement of the chapters is based on an active civil society. Political unwillingness

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towards civil society engagement is further hampering effectiveness. Domestic advisory groups face capacity problems in financial resourcing and in some cases even lack meetings.

### How to increase effectiveness

Good knowledge of the country specific issues is necessary to identify the key concerns and constraints to effective implementation. Based on this knowledge *a clear action plan and roadmaps* could be used to foster implementation and increase public pressure by setting measurable targets. The *ILO can be involved* in the monitoring by relying on their expertise and system for information gathering.

Civil society can be strengthened by establishing the *TSD committees at an earlier stage* already during the sustainability impact assessment which gives them more time to learn about the procedures and can add more insights on the core issues in the country. It might further show the need for additional *capacity building programs* to enable civil society engagement but also effective labour inspections. *Budgetary and administrative support* is needed for civil

society meetings to increase their effectiveness and funds could be made available for additional impact studies. An *ex-post sustainability impact assessment* improves the monitoring.

The policy space ahead of the conclusion of an agreement opens possibilities to set conditions such as the ratification of the essential ILO conventions. U.S. examples for *pre-ratification conditionality* have proven effective for example in the cases of Bahrain, Colombia, Morocco, Oman, Panama and Peru. Enforcement via dialogue and cooperation relies strongly on the *willingness to implement and on a functioning civil society* capable of pressuring for political will. In the absence of these conditions and without a mechanism to arbitrate and punish violations, the TSD chapters lack enforceability. A change to a *sanction-based enforcement* approach could increase compliance already by the *threat* of sanctions but could still have the imposing of sanctions as a last resort.

Continuing with the soft approach requires to seriously *implement the cooperative structures* as outlined in this paper.

Table

Ways to improve effectiveness	
Action Plan	Introduce country roadmaps & clear action plans with time frames
Pre-ratification conditionality	Use the policy space before the ratification
Enforcement	Strengthen cooperative structures & introduce penalties for non-compliance
Monitoring & Implementa-tion	Strengthen civil society by capacity building and early involvement & Conduct an ex-post sustainability impact assessment & Provide budgetary and administrative support for DAGs

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