

# European Union and New Zealand Free Trade Agreement: promoting a global climate agenda<sup>1</sup>

## El Acuerdo de Libre Comercio entre la Unión Europea y Nueva Zelanda: promoviendo una agenda climática global

Beatriz Pérez de las Heras<sup>2</sup>

Universidad de Deusto (España)

ORCID: <https://orcid.org/0000-0003-4402-2925>

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### Abstract

All recent Free Trade Agreements (FTAs) concluded by the European Union (EU) include chapters on Trade and Sustainable Development (TSD) containing mutual commitments on labour and environmental issues. The environmental provisions refer explicitly to the multilateral agreements that each Party commits to implementing, such as the Paris Agreement on climate change. However, the lack of an effective enforcement mechanism in the event of non-compliance with the TSD provisions has undermined the credibility of sustainability commitments. The EU FTA with New Zealand marks a turning point in this trend, introducing a new model of enforcement system. In regard to climate commitments, in particular,

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<sup>2</sup> ([beatriz.perez@deusto.es](mailto:beatriz.perez@deusto.es)). Professor of European Union Law and Jean Monnet Chair on European Integration at the University of Deusto (UD). Some of her recent publications include “La participación ciudadana en el futuro de Europa: instrumentos y oportunidades para promover un espacio público europeo”, *Araucaria. Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales*, n° 45, 2020, pp. 81-102; “The ‘Fit for 55’ package: towards a more integrated climate framework in the EU”, *Romanian Journal of European Affairs*, vol.22, n°2, 2022, pp. 63-78; “Los derechos digitales en la Unión Europea: del liberalismo económico a la protección jurídica”, *Revista General de Derecho Europeo*, n° 57, 2022, pp. 117-150.

the agreement includes ambitious goals which, along with the new enforcement approach, could be extended to future EU FTAs, making a significant contribution to combating global climate change.

**Keywords:** Trade and Sustainable Development chapter, enforcement mechanism, European Union-New Zealand Free Trade Agreement, climate commitments, general dispute settlement regime, sanctions.

## Resumen

Todos los Acuerdos de Libre Comercio (ALCs) concluidos recientemente por la Unión Europea (UE) incluyen capítulos sobre Comercio y Desarrollo Sostenible (CDS) donde se recogen compromisos mutuos en materia laboral y medioambiental. Las disposiciones sobre medio ambiente mencionan expresamente los acuerdos multilaterales que cada Parte se compromete a cumplir, como el Acuerdo de París sobre cambio climático. Sin embargo, la falta de un mecanismo de ejecución efectiva en caso de incumplimiento de las disposiciones sobre CDS merma la credibilidad de los compromisos de sostenibilidad. El ALC de la UE con Nueva Zelanda representa un punto de inflexión en esta tendencia, ya que introduce un nuevo modelo de aplicación. Con respecto a los compromisos climáticos, en particular, el ACL incluye objetivos ambiciosos que, unido al nuevo enfoque de aplicación, podrían incorporarse a futuros ALCs de la UE, contribuyendo así de forma importante a la lucha global contra el cambio climático.

**Palabras-clave:** Capítulo Comercio y Desarrollo Sostenible, mecanismo de ejecución, Acuerdo de Libre Comercio Unión Europea-Nueva Zelanda, compromisos climáticos, régimen general de arreglo de diferencias, sanciones.

## 1. Introduction

The European Union (EU) has led the way in utilizing trade to promote environmental policies. Specifically, following the 2006 Global Europe Strategy (European Commission 2006), the EU launched a new generation of Free Trade Agreements (FTAs), more comprehensive in scope than previous ones. These agreements go beyond the classic fields of the World Trade Organization (WTO), that is, trade, services and intellectual property, since they also incorporate new cooperative provisions in areas such as labour standards and environmental protection, including specific chapters dedicated to trade and sustainable development (TSD) (European Commission 2021).

The first FTA to include a TSD chapter was the EU-Korea FTA. Similar

chapters can now be found in other FTAs concluded or in negotiation with countries from different regions. TSD chapters establish mutual commitments in relation to sustainable development with specific references to combating climate change and protecting the environment and the labour rights.

In this context, the EU and a growing number of its trading partners are now viewing bilateral as well as regional FTAs as important instruments, not only for strengthening cooperation on trade, but also for promoting action on climate change. Specifically, the EU's new-generation FTAs reinforce provisions related to climate change and require support for the Paris Agreement as a pre-condition for any preferential trade with the EU (Werksman and Buri 2019: 2). This trend is consistent with the European Green Deal (EGD). As a comprehensive policy framework for the EU to achieve climate neutrality in 2050, the EGD provides a clear mandate for the European Commission to green the EU's trade policy by mainstreaming social and environmental sustainability concerns (European Commission 2019). It is also in line with the EU objective of promoting sustainable development through its internal and external policies (Articles 3.3 and 21.2f of the Treaty on European Union). Finally, the EU's Trade Policy Review reaffirms the role of sustainability in its trade policy (European Commission 2021a).

New Zealand is among EU's key trade partners in the Asia Pacific region. Despite the huge geographical distance, bilateral relations between the two have gradually been strengthened in recent years, bringing them ever closer. New Zealand is also pursuing a trade policy focused on sustainable and inclusive growth (Benson and Duncan 2022: 2). This shared sensitivity on sustainable development imperatives is reflected in the bilateral FTA concluded by the two partners in June 2022 (European Commission 2022).

Beyond commercial liberalization, the FTA between the EU and New Zealand also includes a TSD chapter, in line with other FTAs recently concluded with countries in the region, such as Japan and Vietnam (Bungenberg and Hazarika 2019: 205). However, the innovative aspect of this new FTA lies in the introduction of a more effective TSD enforcement mechanism; this could open a path to more effective implementation of sustainable development values in future FTAs with other partners. With regard to environmental commitments, in particular, the new paradigm of enforcement could make a significant contribution to combatting global climate change.

Against this background, the purpose of this article is to analyse the scope and innovative character of the new TSD enforcement mechanism included in the FTA between the EU and New Zealand, as compared to similar mechanisms included in other EU FTAs. It also seeks to assess whether the new enforcement strategy can contribute to more effective implementation of the sustainability obligations, and in particular those related to the environment and climate

action.

The article draws on a combination of academic literature and EU institutional documents and legal instruments. The approach is mainly analytical and descriptive and some statistical data are also included. Abundant literature exists on the EU's trade tools for promoting sustainable development and policies to address global challenges, such as climate change (Postnikov 2018; Titievskaja 2019; Kettunen *et al.*, 2020). Amongst a variety of themes, scholars have analysed the new generation of FTAs concluded by the EU since 2007 and, in particular, the use of TSD chapters as policy tools for achieving environment sustainability and social wellbeing targets (Hradilová and Svoboda 2018; Marín Durán 2020). Some authors, however, find that while environmental protection provisions in these TSD chapters can bring environmental benefits, they also serve the EU's domestic economic interests (McNeill 2020). Within this existing literature, some scholars and research institutions —many of which are mentioned in this article— have specifically focused on the enforcement mechanisms provided by these TSD chapters, highlighting the lack of effective procedures to monitor compliance with the Parties' commitments (Mazzotti 2021; Bronckers and Gruni 2021). While this article builds on the insights of this academic work, its contribution lies in providing further assessment of how the new enforcement provisions introduced in the EU FTA with New Zealand might provide a benchmark for more effectively promoting climate action in future EU FTAs. With this focus, it seeks to offer a preliminary analysis, paving the way for more in-depth studies on the topic once the FTA comes into force.

The article is structured as follows. Following the Introduction, section 2 provides an overview of the EU trade tools for promoting sustainable development and, in particular, for tackling climate change, through the TSD chapters included in bilateral FTAs. It highlights how the EU has recently been reviewing its model for enforcing the obligations contained in the TSD chapters to make them more efficient. Section 3 explores the scope of the new FTA between the EU and New Zealand, while highlighting the new approach to enforceability of climate obligations. As a general preliminary assessment, the article finds that implementation of the EU-New Zealand FTA opens a path to more effective enforcement of environmental and climate commitments in future EU FTAs.

## **2. EU trade policy to tackle climate change: reviewing the current model of sustainability obligations in FTAs**

Environmental instruments in EU trade policy have evolved significantly. The EU has sought unilaterally to impose enforceable measures on trading

partners, outside of bilateral or regional agreements. One such policy is the General Scheme of Preferences Plus (GSP+), whereby the EU grants special incentives (in the form of tariff exclusion or reduction) to certain developing countries, provided the beneficiaries sign up to twenty-seven international conventions, including on environment, and commit to their effective implementation (Lebselter and Marx 2020).

Another policy requires trading partners to comply with the EU sustainability and environmental standards. Examples of this policy include the Timber Regulation—which aims to prevent illegally sourced timber or timber products entering the EU market (European Commission 2022a)—and the Conflict Minerals Regulation, which calls for due diligence requirements on the private sector, in particular, to ensure that minerals are sourced in non-conflict regions (European Commission 2022b). More recently, in February 2022, the European Commission proposed a Directive on corporate sustainability due diligence. The proposed Directive extends to the Paris Agreement, as well as other EU laws and obligations related to human rights and the environment. Most significantly, it includes an enforcement mechanism with possible sanctions and civil liabilities for non-compliance. It will be applied to both EU and non-EU companies (European Commission 2022c). Another recent measure taken by the EU is the contested Carbon Border Adjustment Mechanism (CBAM), which will be applied in a transitional phase from 1 October 2023. The CBAM will initially be applied to imports of certain goods whose production is carbon intensive (cement, iron and steel, aluminium, fertilisers, electricity and hydrogen). These are the products at most significant risk of carbon leakage if EU manufacturers shift their production to third countries with lower environmental standards (European Commission 2021b). However, the unilateral imposition of the CBAM continues to raise concerns, regarding not only its compatibility with WTO rules, but also its fairness. Specifically, it is argued that if the EU does not offer technical support and adequate funding, developing countries may not have the capacity to address its requirements. In these circumstances, the EU might fail in its goal of promoting a fair transition by supporting developing countries in their efforts to achieve sustainable development (Cooper 2021:17).

The environmental dimension is also very significant in EU trade agreements, especially, as mentioned above, the new generation of FTAs concluded as of 2006. All address environmental issues in a specific environmental chapter and mainly through a TSD chapter. These chapters are based on the premise that trade relations must not be developed at the expense of the environment or labour conditions, but should instead promote sustainable development. Environmental issues included in the TSD chapters, or in specific provisions outside these chapters, include climate change, air

pollution, sustainable management of fisheries, renewable energy, biodiversity, forest conservation and management, illegal trade in endangered species, pesticides and chemicals. The environmental provisions on these issues explicitly mention multilateral environmental agreements and specify that each party to the agreement will effectively implement these and any other protocols and amendments it may have ratified. Amongst the multilateral environmental agreements generally listed in the FTAs are the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the Montreal Protocol on Substances that deplete the Ozone Layer and the Convention on Biological Diversity (Velut *et al.* 2022: 45-52).

TSD chapters in the EU's FTAs also include provisions on domestic legislation, recognising the parties' right to regulate environmental issues and determine the level of protection, provided their laws and policies are consistent with their international commitments and that they do not reduce the level of environmental protection in order to encourage trade or investment (the non-regression provision) (Cooper 2021: 22-23).

Another element included in the TSD chapters is the Parties' commitment to promoting corporate guidance and responsible business conduct, in line with international guidelines issued by the UN and the OECD. To ensure transparency, these provisions also contain mechanisms for civil society oversight. In the case of the EU, civil society is represented by domestic advisory groups (DAGs) and committees of the EU's European Economic and Social Committee. They usually convene annually to conduct a dialogue on the sustainable development aspects of the FTA (European Commission 2023).

One particularly important element of the TSD chapters is the mechanism for settling disputes arising out of implementation of the provisions. The general dispute settlement procedures established in the FTAs are based on those of the WTO, which allows the EU to take temporary retaliatory measures against the offending country (e.g. by raising tariffs or suspending trade concessions in the event of non-compliance with an arbitration ruling). However, the TSD chapters contain a separate mechanism, which is only applicable to disputes concerning the specific provisions included therein. Generally speaking, they always include two steps: a state-to-state consultation and an expert panel procedure (Kettunen *et al.* 2020: 14-15).

Specifically, all EU FTAs require the parties to resort first to government consultations whenever a dispute arises on matters concerning the TDS provisions. If the dialogue between governments does not resolve the disagreement, an expert panel may be convened to issue a report with recommendations and advisory opinions. Following the panel's report, the party to which the recommendations are addressed may submit an action plan (e.g. the EU-Canada CETA) or report how it intends to address the panel of

experts' recommendations (EU-Japan EPA; EU-Vietnam FTA). In some FTAs, advisory bodies or civil society organisations have an opportunity to submit observations as part of this procedure (e.g. EU-Canada CETA, EU-Vietnam FTA) (Velut *et al.* 2022: 62).

However, there is no provision for sanctions or consequences for non-compliance with the TSD provisions and, in particular, with the panel's recommendations. This dispute settlement scheme has been widely criticized by stakeholders and scholars. There is growing consensus that the current mechanism weakens the credibility of the sustainability commitments, although they have the same legal status as the other FTA chapters, which are subject to the general dispute settlement mechanism. Moreover, the EU has recently proposed a Directive on mandatory sustainability requirements on EU firms and their foreign providers, which would allow for the possibility of sanctions (see above). It seems incongruous that such requirements and penalties should be specifically provided for private companies, while remaining overly vague or sanction-free when applied to governments (Bronckers and Gruni 2021: 36-37).

Various authors have recently posited new arguments for and against introducing a sanction-based model in TSD chapters. Some argue that sanctions in respect to labour and environmental standards are inoperable and inappropriate, since it is difficult to estimate the damage caused by their infringement (Marín Durán 2020: 1063). Other scholars convincingly advocate adding sanctions as a complement to dialogue and cooperation in the promotional approach followed by the EU on sustainability commitments (Bronckers and Gruni 2021: 37-39).

The discussion as to whether it is more advisable to revise the current model without substantially questioning it or to introduce a sanctions-based model, basically extending the FTA general dispute mechanism to TSD chapters, has also been raised among EU institutions (Mazzoti 2021:8). In 2017, the European Commission launched a public debate on ways of improving enforcement of TSD chapters. This resulted in the adoption of the 15-Point Action Plan on Trade and Sustainable Development, which includes four categories of action. One of these consists of delivering results under the TSD chapters through assertive enforcement, commitments on climate change and labour, encouraging early ratification of core international agreements, reviewing the TSD implementation effectiveness and making resources available to support implementation of these chapters (Velut *et al.* 2020: 40).

Application of the Action Plan has had a number of results for sustainability issues within the framework of trade agreements. An example is the ratification by South Korea of three ILO conventions, as a result of the dispute settlement procedure activated for the first and (so far) only time by the EU within the



context of a FTA. Another outcome was the binding commitment included in the FTA with Japan to ratify and implement the Paris Agreement (Velut *et al.* 2022: 40). However, the European Commission's Action Plan largely preserves the traditional promotional approach, without providing for the introduction of sanctions to enforce TSD chapters. More recently, stakeholders, EU Member States and the European Parliament have all called for TSD chapters to be enforced more effectively, urging the EU to move to a sanction-based model (Mazzoti 2021:9).

Outside the context of the GSP, the EU has no track-record of imposing trade sanctions in response to violations of sustainability standards (Bronckers and Gruni 2021:40; Velut *et al.* 2022:63). However, the current crisis in the WTO and its dispute settlement mechanism has recently led the EU to consider taking trade countermeasures in the event of treaty infringement by its trading partners. This is one of the aims of the amended Trade Enforcement Regulation (EU) 654/2014, which provides the European Commission with the power to take unilateral retaliatory measures if a trading partner attempts to hinder the WTO dispute settlement. It does not, however provide the Commission with the same powers if a FTA partner fails to comply with its sustainability commitments (Bronckers and Gruni 2021: 40)

Thus, the trend continues to be for a lack of effective enforcement in the event of non-compliance with TSD provisions. This situation might be set to change, however with the entry into force of the EU-UK Trade and Cooperation Agreement (TCA) in May 2021 (TCA, 2021). Title XI of the TCA ("Level Playing field for open and fair competition and sustainable development") provides for a collaborative procedure based on a panel of experts in the event of disputes concerning the interpretation and application of Chapter 6 on labour and social standards and Chapter 7 on the environment and climate (Articles 409 and 410). However, if the panel's final report is not duly complied with, temporary sanctions —such as compensation or suspension of trade obligations— could be applied against the respondent (complained-against) Party, under Articles 750 and 751 of the TCA. Nevertheless, disputes concerning the multilateral international instruments on labour, environmental and climate matters, identified in Chapter 8, are excluded from the application of temporary remedies (Velut *et al.* 2022: 63).

The exception that the TCA provides with regard to TSD enforcement is probably due to the singular relationship between the EU and UK. Nevertheless, it demonstrates that labour and environmental obligations are considered to have the same level of importance as other engagements in the trade agreement. Most importantly, these provisions pave the way for EU FTAs to include the same mechanism for resolving all disputes related to application of the agreement, including the TSD chapter. This shift in the EU's approach



was confirmed by the European Commission in its Communication of 22 June 2022, “The power of trade partnership: together for green and just economic growth” (European Commission 2022d). The new approach has been included for the first time in the EU-New Zealand FTA, with a broader scope than the EU-UK TCA’s.

### **3. The EU-New Zealand FTA: a new approach to enforceability of climate provisions**

Trade cooperation has been a major issue in relations between the EU and New Zealand since they were first officially regulated in 1999. Both are founding members of the WTO and support its rules for an open and liberalised trade system. Both partners promote social, economic and environmental objectives as main pillars of their trade policy. These shared views and values are reflected in the FTA concluded between them. Beyond trade liberalization and market access, the EU-New Zealand FTA could become a benchmark for what trade can do for sustainable development and, in particular, for climate action.

#### **3.1. The EU and New Zealand: asymmetric, but increasingly close trade partners**

In recent years, trade and economic relations between the EU and New Zealand have been built on sectoral agreements. These include the mutual recognition agreement signed in 1998, which aims to facilitate trade in industrial products by reducing technical barriers. Other similar instruments are the Veterinary Agreement, signed in 1996 to simplify trade in animal products, and the Customs Cooperation Agreement, signed in 2017, which sets a comprehensive set of rules for customs cooperation. In addition to trade, the EU-New Zealand Partnership Agreement on Relations and Cooperation —signed in 2016 and in force since July 2022— confirms the increasingly comprehensive nature of bilateral relations between the two, fostering cooperation on a wider range of areas, such as education and culture, science and innovation, counter-terrorism, migration and judicial cooperation (Majchrowska 2019: 106).

Geographically isolated from its export markets, New Zealand is a trade-dependent economy. With a population of 4.8 million, it has more than 600,000 people employed in direct export sectors or in sectors supporting exports. Consequently, trade is critical to the country’s economy. The New Zealand economy is highly dependent on the export of agricultural products and it is the world’s twelfth-largest agricultural exporter by value. New Zealand

is also the leading sheep meat and dairy exporter and the second-largest wool exporter. Exports of non-agricultural goods account for 38% of the country's total exports, including forestry products, refined petroleum, fish products, clothing and electronics (NZ Foreign Affairs and Trade 2023).

The EU is an important destination market for New Zealand. Bilateral trade between the two partners amounted to €7.8 billion in 2021. However, the mutual importance of the two partners is significantly asymmetric. The EU is New Zealand's third-largest trading partner, representing 11.5% of total trade, after China and Australia. By contrast, New Zealand was the EU's forty-ninth largest trading partner in goods in 2021, accounting for just 0.2% of the Union's total trade in goods. New Zealand's exports to the EU mainly consist of agricultural products, while trade in the opposite direction is largely in manufactured goods. Thus, there is also a significant difference in the nature of the products exchanged. Top New Zealand exports to the EU include sheep and goat meat, wine and fruit, butter, cheese, beef, wool and silk. In return, EU exports are dominated by transport equipment, machinery and chemicals (Figure 1).

**Figure 1. EU trade with New Zealand. Product grouping 2021**

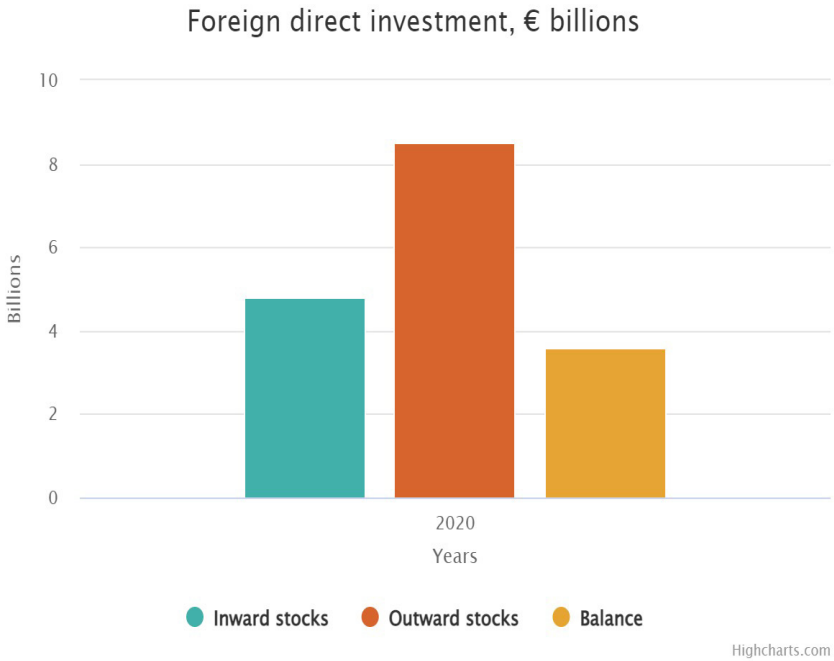
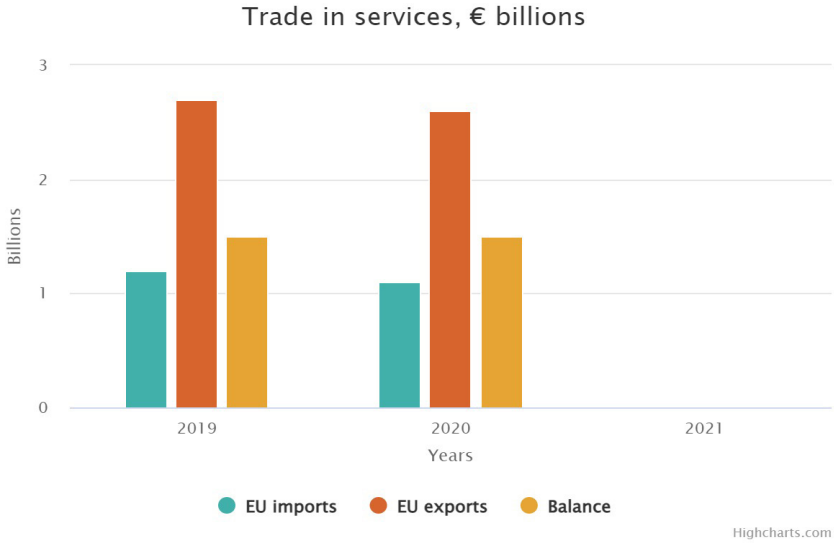
SITC Rev. 4 Product Groups	Imports			Exports		
	Value Mio €	% Total	%	Value Mio €	% Total	%
		Extra-EU			Extra-EU	
Total	2,304	100.0	0.1	5,476	100.0	0.3
Primary products	1,541	66.9	0.2	773	14.1	0.2
- Agricultural products (Food (incl. Fish) & Raw Materials)	1,488	64.6	0.9	698	12.8	0.3
- - Food	1,243	53.9	0.9	646	11.8	0.4
- - - of which Fish	124	5.4	0.5	18	0.3	0.3
- - - Other food products and live animals	1,119	48.6	1.0	628	11.5	0.4
- - Raw materials	246	10.7	1.0	52	1.0	0.1
- Fuels and mining products	52	2.3	0.0	75	1.4	0.0
- - Ores and other minerals	12	0.5	0.0	8	0.1	0.0
- - Fuels	0	0.0	0.0	42	0.8	0.0
- - - of which Petroleum and petroleum products	0	0.0	0.0	35	0.7	0.0
- - Non ferrous metals	40	1.7	0.1	25	0.5	0.1
Manufactures	698	30.3	0.1	4,620	84.4	0.3
- Iron and steel	1	0.1	0.0	41	0.7	0.1

- Chemicals	201	8.7	0.1	887	16.2	0.2
- - of which Pharmaceuticals	41	1.8	0.0	502	9.2	0.2
- Other semi-manufactures	77	3.4	0.1	415	7.6	0.3
- Machinery and transport equipment	185	8.0	0.0	2,682	49.0	0.3
- - Office and telecommunication equipment	21	0.9	0.0	81	1.5	0.1
- - - Electronic data processing and office equipment	5	0.2	0.0	33	0.6	0.1
- - - Telecommunications equipment	11	0.5	0.0	42	0.8	0.1
- - - Integrated circuits and electronic components	5	0.2	0.0	6	0.1	0.0
- - Transport equipment	37	1.6	0.0	1,042	19.0	0.3
- - - of which Automotive products	3	0.1	0.0	744	13.6	0.4
- - Other machinery	126	5.5	0.1	1,553	28.4	0.4
- - - Power generating machinery	5	0.2	0.0	246	4.5	0.6
- - - Non electrical machinery	77	3.3	0.1	1,047	19.1	0.4
- - - Electrical machinery	45	1.9	0.0	260	4.8	0.2
- Textiles	5	0.2	0.0	70	1.3	0.3
- Clothing	4	0.2	0.0	33	0.6	0.1
- Other manufactures	225	9.8	0.1	493	9.0	0.2
- - of which Scientific and controlling instruments	180	7.8	0.4	167	3.1	0.2
Other products	37	1.6	0.1	34	0.6	0.1
Other	28	1.2	n.a.	49	0.9	n.a.

Source: data based on European Commission, Directorate-General for Trade. “European Union, Trade in Goods with New Zealand”, 2022.

Services are also a key element in trade relations. The most significant in both directions are tourism and transport. In 2020, the EU exported €2.6 billion worth of services to New Zealand, while New Zealand exported services to the EU to a total value of €1.1 billion. As regards investment, the EU also registered a surplus in 2020, with foreign direct investment stocks of €8.5 billion, while New Zealand’s investment in the EU came to €4.8 billion (Figure 2).

Figure 2. EU-New Zealand trade in services and direct investment



Source: European Commission. “EU trade relations with New Zealand. Facts, figures and latest developments”, 2022.

Besides their bilateral relationship, both the EU and New Zealand have concluded a number of regional and FTAs with countries in the Asia Pacific region. New Zealand has FTAs with China and South Korea. It has also concluded regional agreements with Australia and the Association of Southeast Asian Nations (ASEAN). The country recently joined two other regional agreements, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP), which came into force in 2018 and 2020 respectively (NZ Foreign Affairs and Trade 2023). As a result of these trade alliances, Asia has become a very important region for New Zealand's trade relations. The EU has also concluded FTAs with Asian countries in recent years, such as Japan, Vietnam, South Korea, and Singapore. FTA negotiations are currently ongoing with other countries in the region, including Australia, Indonesia and India (European Commission 2023a). The FTA concluded with New Zealand now provides the EU with the opportunity to extend trade relations to countries that have concluded FTAs with New Zealand but with which the EU itself has not (Parry 2022: 1). In addition, it has the potential to promote a new model of FTA in areas of sustainable development and climate action.

### **3.2. The bilateral FTA: ambitious climate commitments and uniform system of dispute settlement**

After four years of talks, negotiations between the EU and New Zealand on a comprehensive FTA were completed on 30 June 2022. Following legal review and translation into all official EU languages, the FTA is currently awaiting final signature. In accordance with Article 218. 2°-6a of the Treaty on the Functioning of the EU (TFEU), the text will then be sent to the European Parliament for its consent, after which the Council will take the decision to conclude the FTA and publish it in the OJEU. Finally, once it has been ratified by New Zealand, the FTA will enter into force. This could take place in 2024.

In terms of impact, the commercial liberalization provided by the FTA is expected to have significant effects for both partners, especially for New Zealand, as the EU is its fourth largest trading partner. It is estimated that the elimination of tariffs on agricultural and seafood products will save New Zealand's exporters \$100 million per year upon entry into force of the FTA, rising to \$ 110 million after seven years (NZ Foreign Affairs and Trade 2022:1). EU exporters will also benefit from immediate tariff removal, saving European companies over €140 million per year (European Commission 2022e:1).

Specifically, 91% of current New Zealand exports to the EU will enter the Union duty-free once the FTA enters into force. This figure will rise to 97% after seven years. New Zealand products such as kiwifruit, honey, onions,

wine, fish, apples, mussels and squid will all benefit from this immediate tariff elimination. Only the export of certain agricultural goods that compete directly with European products (mutton and lamb, beef, butter, cheese and milk powder) will continue to be subject to tariff rate quotas. However, the volume of these quotas will gradually increase over the seven years of FTA implementation and the tariff rates will eventually be reduced or eliminated (Parry 2022: 8).

Once the FTA enters into force, New Zealand will also remove tariffs on imports of EU goods. These include industrial products, such as cars and motor vehicle parts, machinery, chemicals, clothing, pharmaceuticals, shoes and textiles, all of which are currently subject to tariffs ranging between 5% and 10%. The elimination of tariffs will also benefit EU food and drink exports, such as pork, wine and sparkling wine, chocolate, sugar confectionery and biscuits, and pet food, which are currently subject to a 5% tariff (European Commission 2022e: 1).

Both partners have agreed to protect products with a geographical indication (GI) identifying them as originating in one of the parties or a region thereof, where a given quality or other specific characteristics of the product is essentially attributable to its geographical origin. Specifically, Annex 18-B of the FTA lists the products with GIs in each of the partners. For the EU, this includes a long list of almost 2000 goods, among which are wines and spirits, Comté and Queso Manchego cheeses and Kalama olives. In the case of New Zealand, however, the list only includes 23 wines and spirits, such as Marlborough and Central Otago wines.

The FTA also contains provisions on trade in services, with sector-specific regulatory provisions on delivery services, telecommunications, financial services and international maritime transport services. The agreement also provides for cooperation between the partners on government procurement and digital trade (European Commission 2022e: 3).

In line with other FTAs recently concluded by the EU, this agreement with New Zealand includes a chapter on “Trade and Sustainable Development” (Chapter 19). The chapter contains commitments on labour, environmental and climate matters. Specifically, the TSD chapter has a broad range of commitments and ambitious outcomes on climate change. These commit the EU and New Zealand to effectively implementing the Paris Agreement, “including commitments with regard to National Determined Contributions” (Article 19.6). It is well known that under the Paris Agreement the National Determined Contributions (NDCs) are voluntary commitments established individually by each Party, mainly in terms of mitigation, according to their respective circumstances and capabilities (Viñuales 2015:5; Lemoine-Schonne 2016:39). However, in the framework of the EU-New Zealand FTA, both

partners agree to make their respective NDCs legally binding. Cooperation on climate-related matters includes carbon pricing and measures related to the transition to a low-carbon and circular economy. There are also provisions on trade and biological diversity, sustainable management of natural resources, forestry, fisheries, aquaculture, ocean governance and the promotion of responsible business conduct. (European Commission 2022e: 7).

Under this TSD chapter, both partners commit to work on fossil fuel subsidy reform, including cooperation on reform policies in the WTO. Notably, Chapter 19 also contains commitments to support trade and investments in low-carbon goods and services. Under this specific section, both partners commit to removing tariffs on green goods and services related to the protection of the environment, such as renewable energy (e.g. wind turbines, solar panel elements). These goods are considered to contribute to achieving environmental and climate goals by preventing or minimising damage to air, water and soil. An indicative list of these goods and services is given in Annex 19 to the FTA (“Green goods and services”).

Thus, the TSD chapter includes a broad range of commitments related to the environment and, in particular, to climate change, and obliges the EU and New Zealand to effectively implement them. With regard to enforcement of the TSD chapter, the agreement’s general dispute settlement will be applied for the first time in any of the EU’s FTAs. This is perhaps the most innovative element of the EU-New Zealand FTA, since it breaks with the EU’s traditional collaborative approach to the enforcement of TSD chapters. Indeed, Chapter 26 (“Dispute Settlement”) of the FTA introduces a fundamentally new approach when it provides that “The Chapter applies, subject to paragraph 2, to any dispute between the Parties concerning the interpretation of application of this Agreement and of the Sanitary Agreement” (Article 26. 2). Paragraph 2 lays down the exceptions to the application of Chapter 26, which do not include the TSD chapter. Consequently, it introduces a uniform system of dispute settlement. Specifically, the mechanism includes the establishment of a three-member panel of independent experts on the matter of the dispute. The panel is expected to deliver a first interim report and, after receiving the Parties’ comments, a final report, which may eventually confirm the breach and set out mandatory recommendations for the respondent Party (Ceretelli 2022: 2).

As part of the innovative character of the FTA, Chapter 26 provides for the possibility of trade sanctions in the event of the respondent Party’s failing to comply with the final report after a “reasonable period of time” (Art. 26.14). Sanctions can take the form of compensation to be paid by the respondent Party or suspension of the application of other FTA obligations. In both cases, any sanctions must be temporary and proportionate. However, the most noticeable feature is that for the first time in an EU FTA, the possibility of applying



sanctions is extended to cases of infringement of the TSD chapters (Ceretelli 2022: 2; Parry 2022: 9). Specifically, Article 26.16 provides for application of sanctions in the event of serious violations of “multilateral labour standards and agreements” and the adoption of “any action or omission that materially defeats the object and purpose of the Paris Agreement”. In this respect, it should again be highlighted that the Paris Agreement does not provide any enforcement mechanism, beyond the mandatory report that each party is required to provide to track progress in achieving its NDC (Weikmans, van Asselt, Timons Roberts 2021). However, in the framework of the EU-New Zealand FTA, this multilateral treaty on climate change becomes not only legally binding, but also enforceable, through the general dispute settlement procedure.

The EU-NZ FTA therefore marks a significant paradigm shift in the EU approach to the enforcement of TSD chapters (Ceretelli 2022:3). The new approach is in line with the Commission’s intention, set out in its Communication of June 2022, “to extend the general state-to-state dispute settlement compliance stage to the TSD chapter”, as well as “the possibility to apply trade sanctions in cases of failure to comply with obligations that materially defeats the object and purpose of the Paris Agreement on climate change or in instances of non-compliance with the ILO fundamental principles and rights at work” (European Commission 2022d: 12; Ceretelli 2022: 3).

The new enforcement system for sustainable trade obligations is now likely to be extended to future EU FTAs and those currently being negotiated, such as the FTAs with Australia, Indonesia, India and Mercosur. This could be an opportunity for the EU to negotiate strong mutual commitments on climate change, similar to those in the agreement with New Zealand, and use FTAs to raise the ambitions of the trading partners’ NDCs for effective implementation of the Paris Agreement. The EU and New Zealand have demonstrated that they share a common sensitivity on sustainable development and, in particular, environmental sustainability. However, the EU may not meet with the same receptive attitude to these issues amongst other trade partners. The final outcome of the EU’s new TSD enforcement approach for FTAs to be concluded in the coming years therefore remains to be seen.

#### **4. Conclusion**

The EU has gradually been taking steps to address environmental protection and social sustainability concerns in its trade relations with third countries. All recent EU FTAs include TSD chapters in this regard. The Trade Policy Review adopted in 2021 reaffirms the role of sustainability in the EU trade policy, in line with the EGD and its promise to improve the sustainable

development considerations in EU FTAs.

Despite these developments, the effectiveness of TSD chapters continues to be questioned. In particular, the non-committal language used has constituted an important limitation. This has been observed particularly with regard to environmental cooperation. Trade partners commit to complying with their obligations under multilateral environmental agreements (such as the Paris Agreement) but there is no provision in the TSD chapters setting out the consequences of non-compliance with or withdrawal from any of these agreements. In relation to this matter, another contested issue is the lack of effective enforcement of TSD chapters. These limitations highlight the fact that environmental and social concerns have previously been viewed as secondary objectives in EU FTAs.

The latest internal review of this approach resulted in the European Commission's Communication on "The power of trade partnerships: together for green and just economic growth", published in June 2022. In this strategic document, the European Commission establishes the EU's intention to make sustainable development a primary goal of its trade policy.

The first example of the EU's shift in approach was seen in the FTA with New Zealand, concluded a few days after the publication of the European Commission's Communication. As noted above, the agreement includes not only more ambitious commitments —particularly with regard to environment and climate action— but also action-oriented measures to address any possible issues of non-compliance that may arise. Thus, the EU-New Zealand FTA extends the general dispute settlement regime to disagreements related to the TSD chapter. More significantly, it provides for the possibility of imposing temporary trade sanctions in the event of non-compliance with the expert panel's final report. It is particularly significant that sanctions can be imposed in the event of any action or omission that contravenes the Paris Agreement on climate change.

The EU-New Zealand FTA thus reflects the partners' common sensitivity and strong commitment on climate action. Specifically, the new enforcement strategy for the TSD chapter paves the way for more effective implementation of sustainable development commitments and, in particular, climate action.

It remains to be seen how the new approach will evolve in future EU FTA negotiations. For the moment, it provides impetus for the EU to demand change from its trading partners. The EU could use future FTAs to raise the ambitions of its trading partners' NDCs and contribute significantly to achievement of the goals of the Paris Agreement.

## References:

- Bungenberg, M. and Hazarika, A., “EU Trade and Development Policy in Asia: Promoting Core EU Values”, in San Bilal and Bernard Hoekman (eds.), *Perspectives on the Soft Power of EU Trade Policy*, CEPR Press, London, 2019, pp. 203-217.
- Bronckers, M. and Gruni, G., “Retooling the Sustainability Standards in EU Free Trade Agreements”, *Journal of International Economic Law*, Vol. 24, n.1, 2021, pp. 25-51.
- Ceretelli, C., “EU-New Zealand FTA: Towards a New Approach in the Enforcement of Trade and Sustainable Development Obligations”, *Blog of the European Journal of International Law*, 27 December 2022. Available at: <https://www.ejiltalk.org/category/international-environmental-law/?pagenum=2>
- Cooper, D., “Incorporating Climate Change in Free Trade Agreements: Prospects for an EU/UK-NZ FTA”, University of Otago, October 2021.
- European Commission, “The European Green Deal”, COM (2019) 640 final, 11 December 2019.
- European Commission, “Sustainable Development. What is Sustainable Development?”, 2021. Available at: <https://ec.europa.eu/trade/policy/policy-making/sustainable-development/>
- European Commission, “Trade Policy Review. An Open Sustainable and Assertive Trade Policy”, COM (2021) 66 final, 18 February 2021a.
- European Commission, “Carbon Border Adjustment Mechanism: Questions and Answers” 2021b. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_3661](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3661)
- European Commission, “EU-New Zealand Trade Agreement”, 2022. Available at: [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement_en)
- European Commission, “Timber Regulation”, 2022a. Available at: [https://environment.ec.europa.eu/topics/forests/deforestation/illegal-logging/timber-regulation\\_en](https://environment.ec.europa.eu/topics/forests/deforestation/illegal-logging/timber-regulation_en)
- European Commission, “Conflict Minerals Regulation. The Regulation Explained”, 2022b. Available at: [https://policy.trade.ec.europa.eu/development-and-sustainability/conflict-minerals-regulation\\_en](https://policy.trade.ec.europa.eu/development-and-sustainability/conflict-minerals-regulation_en)
- European Commission, “Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM (2022) 71 final, 23 February 2022c.
- European Commission, “The Power of Trade Partnerships: Together for Green and Just Economic Growth”, COM (2022) 409 final, 22 June 2022d.

- European Commission, “Key Elements of the EU-New Zealand Trade Agreement”, 2022e. Available at: [https://policy.trade.ec.europa.eu/news/key-elements-eu-new-zealand-trade-agreement-2022-06-30\\_en](https://policy.trade.ec.europa.eu/news/key-elements-eu-new-zealand-trade-agreement-2022-06-30_en)
- European Commission, “Domestic Advisory Groups”, 2023. Available at: [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/transparency-eu-trade-negotiations/domestic-advisory-groups\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/transparency-eu-trade-negotiations/domestic-advisory-groups_en)
- European Commission, “Overview of FTA and other Trade Negotiations”, 2023a. Available at: <https://ec.europa.eu/chafea/agri/en/content/overview-fta-and-other-trade-negotiations>
- Hradilová, K. and Svoboda, O., “Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness”, *World Trade Review*, Vol. 52, n. 6, 2018, pp. 1019-1042.
- Kettunen, M. et. al., “An EU Green Deal for Trade Policy and the Environment: Aligning Trade with Climate and Sustainable Development Objectives”, *Report*, Institute for European Environmental Policy, 2020.
- Lebzelter, Th. and Marx, A., “Is EU GPS+ fostering Good Governance? Results from a New GPS+ Compliance Index”, *Journal of World Trade*, Vol. 54, n. 1, 2020, pp. 1-30.
- Lemoine-Schonne, M., “La flexibilité de l’Accord de Paris sur les changements climatiques”, *Revue Juridique de l’Environnement*, Vol. 41, n.1. 2016, pp. 37-55.
- Marín Durán, G., “Sustainable Development in EU Free Trade Agreements: Emerging Compliance Issues”, *Common Market Law Review*, Vol. 57, n. 4, 2020, pp. 1031-1068.
- McNeill, J., “Exporting Environmental Objectives or Erecting Trade Barriers in Recent EU Free Trade Agreements?”, *Australian and New Zealand Journal of European Studies*, Vol.12, n. 1, 2020, pp. 40-52.
- Majchrowska, E., “EU-New Zealand Relations. Towards a New Trade Agreement”, *Teka of Political Science and International Relations*, Vol. 14, n. 2, 2019, pp.103-118.
- Mazzoti, P., “Stepping up the Enforcement of Trade and Sustainable Development Chapters in the European Union’s Free Trade Agreements: Reconsidering the Debate on Sanctions”, *European Law Institute Paper* (winning paper of the 2021 ELI Young Lawyers Award), 2021.
- New Zealand Foreign Affairs and Trade, “NZ-EU FTA – Key Outcomes”, 2022. Available at: <https://www.beehive.govt.nz/sites/default/files/2022-07/NZ%20EU%20FTA%20-%20Explainer.pdf>
- New Zealand Foreign Affairs and Trade, “NZ Trade Policy”, 2023. Available at: <https://www.mfat.govt.nz/en/trade/nz-trade-policy/>
- Parry, M., “EU-New Zealand Free Trade Agreement. Climate and labour commitments with sanctions”, *EPRS Briefing*, September 2022.

- 
- Postnikov, E., “Environmental Instruments in Trade Agreements: Pushing the Limits of the Dialogue Approach”, in Camilla Adelle, Katja Biedenkopf and Diarmuid Torney, *European Union External Environmental Policy: Rules, Regulation and Governance Beyond Borders*, Palgrave MacMillan, London, 2018, pp. 59-79.
  - Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJEU L149 of 30 April 2021, pp. 50-2539.
  - Titievskaia, J., “Using Trade Policy to Tackle Climate Change”, *EPRS At a glance*, October 2019.
  - Velut, JB. *et al.*, “Comparative Analysis of Trade and Sustainable Development Provisions in Free Trade Agreements”, *Report*, London School of Economics and Political Science, 2022.
  - Viñuales, J.E., “The Paris Climate Agreement: an initial examination”, *C-EENRG Working Papers*, n. 6, 2015, pp. 3-17.
  - Weikmans, R., van Asselt, H., Timmons Roberts, J., “Transparency requirements under the Paris Agreement and their (un)likely impact on strengthening the ambition of national determined contributions (NDCs)”, in W. Pieter Pauw and Richard J.T. Klein (eds.), *Making Climate Action more Effective*, Routledge, London, 2021, pp. 107-122.
  - Werksman, J., and Buri, I., “European Union Trade and Climate Change Policy: Pursuing a “cooperative Approach” to Promoting the Implementation of the Paris Agreement”, 2019. Available at: [https://envirocenter.yale.edu/sites/default/files/files/CoolHeads\\_Werksman.pdf](https://envirocenter.yale.edu/sites/default/files/files/CoolHeads_Werksman.pdf)