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# **The EU between unilateral sustainability approaches and bilateral trade agreements**

**Paths to better partnerships**

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- The EU's trade policy is caught between the strategic goals of supporting prosperity and competitiveness, promoting development, ensuring sustainability, and forming political alliances.
- Given current geopolitical tensions and the EU's declining significance for many trade partners, the union is striving to negotiate new trade agreements. However, its recently initiated unilateral sustainability measures along international supply chains are provoking resistance from trading partners. For instance, partners' aversion to due diligence obligations and rules on deforestation-free value chains are jeopardising new agreements.
- With its planned improvements of the sustainability chapters in trade agreements, the EU is planning individual roadmaps for the implementation of those sustainability aspects that are pursued through trade agreements. The roadmaps are meant to account for the interests and sensitivities of both partners. In addition, the EU wants to better dovetail partnership concepts that are so far separated in unilateral sustainability approaches and bilateral trade agreements.
- Individual sustainability approaches should be based on strategic partnership profiles that recognise the importance of both the EU and the respective trading partner. Said approaches should also account for the sensitivities of both sides. On this basis, options for specific partnership agreements can be investigated, as the recently agreed political agreement on the EU-Mercosur agreement shows in its first steps.
- For defining a more strategic future foreign trade policy, the EU should reflect on how to become an attractive partner, as well as how to better respect and benefit from the strengths of its partners. The EU has its own capacities and expertise, as does each of its respective partners. Primarily, the EU must be more willing to compromise in the future.

# Issues and Recommendations

The trade policy of the European Union (EU) operates in an increasingly charged field of tension marked by delineating strategic objectives. The traditional economic desiderata include promoting prosperity through trade, but conversely safeguarding ones' own competitiveness through trade policy instruments. In addition, the EU has always pursued other, partly idealistic political objectives with its trade policy. For example, it has for a long time strived to build good relations with neighbouring countries through Association Agreements. However, in the last two decades, the EU's focus has shifted to sustainable trade efforts. Respective initiatives are not only aimed at ecologically and human rights-compliant foreign trade, but also serve as a strategic antidote to actors within the EU being trade and globalisation-critical.

The resulting trade policy situation has recently been complicated by geopolitical upheavals including economic conflicts between the United States of America and China, during which both actors have introduced protective measures that influence global trade. Moreover, supply chain vulnerabilities have increased since the COVID-19 Pandemic and Russia's full-scale invasion of Ukraine. The aforementioned developments are fuelling the EU's concerns regarding its economic security – which has become an increasingly emphasised policy goal.

How can new trade policy alliances and strategic partnerships be conceived in this environment? The EU's various objectives, namely increasing prosperity and competitiveness, as well as promoting development and sustainability are often irreconcilable with building political alliances. Said conflicting objectives challenge consensus-processes both within the EU and with potential partners. This dilemma is illustrated by the complicated and partly unsuccessful negotiations on trade agreements with the USA, and most recently, with the Mercosur states. These developments take place against the backdrop of the EU's decreasing relevance as an individual export destination and broadly within global trade, both of which indicate a loss of attractiveness.

The EU's new approach toward pursuing sustainability, both domestically and internationally through unilateral measures is particularly contentious. For example, unilaterally imposed due diligence obligations along international supply chains on human and labour rights or freedom from deforestation provoke fierce resistance. Some trading partners have gone so far as to accuse the EU of neo-colonialism. The motives for the EU adopting such rules appear to be garnering further support for sustainability efforts while simultaneously increasing acceptance of new trade agreements within the EU. Nevertheless, such regulations may cause trade diversion of partner countries (so-called leakage effects) which would prove counterproductive to both the EU's strategic intentions and sustainability goals. To put it bluntly, the EU faces a difficult balancing act between unilaterally pursued sustainability and the economic, political and geostrategic necessity of searching for partners.

Currently, the EU is reconsidering if and how its competing goals can be achieved simultaneously, what priorities it needs to set, and what compromises it is prepared to make. In 2022, the EU announced an envisaged reform of Free Trade Agreements (FTA), aimed at strengthening their sustainability. These FTAs emphasised the need to develop individualised roadmaps for implementing sustainability commitments with their respective partners.

This study analyses these developments, describes the genesis of bilateral and unilateral rules on sustainability, and addresses their trade policy pitfalls. In particular, it illustrates the partnership options available to the EU in its process of geopolitical repositioning. So far, sustainability requirements in bilateral trade agreements and unilateral approaches including due diligence obligations have been insufficiently linked. Moreover, partnership approaches in both, unilateral and bilateral frames have proved inadequate. As long as this remains the case, it will be difficult to assess the interactions between bilateral and unilateral approaches on sustainability within trade relations. In addition, the current partnership models offer minimal space for geo-strategically relevant individualised partnerships.

The new text of the EU-Mercosur agreement, which was politically agreed at the end of 2024, shows the first steps towards a corresponding improvement. Accordingly, a general reorganisation of partnership in trade relations should address the following considerations:

- The EU should create individual profiles for its trade relations that take into account the mutual economic and political importance at both sides. In doing so, it should also consider the vulnerabilities posed by the partnership, which may result from alternative trade options or trade conflicts. This study highlights relevant criteria that could be incorporated into partnership profiles.
- Only through the findings of such profiles can the EU conclude how the partnership can be strengthened and how its economic and sustainability goals can be interlinked. The study addresses how partnership options can be utilised, depending on the trade agreement negotiation status related to individual partners. It further shows how options for partnerships previously pursued separately can be brought together, and above all, how incentives rather than sanctions can be backed.
- Despite the need for an individual focus, some general principles of good partnership in trade relations should be taken to heart: Such concepts include developing a common understanding of sustainability. It is important to recognise that trading partners are aware of both ecological problems and sustainable implementation strategies. Overall, the EU must become more amenable and willing to compromise. Only in this way can it offer greater market access or, conversely, accept greater market protection from its partners, both of which would facilitate trade negotiations.

Accordingly, aligned partnerships at the intersection of sustainability and trade would contribute to a strategy on foreign trade policy for the EU. This is among Mario Draghi's listed demands in "The future of European competitiveness" published in autumn 2024 as a relevant element for a strong EU economic policy, referred to as well in the "Competitiveness Compass" 2025.

# EU trade policy in the context of global economic upheaval

For some time now, the EU has been in a phase of reorienting its trade policy, which can be explained both by a changed external (global) trade environment and by shifts within the EU.

## Global economic developments

Shifts in global trade flows, in national market shares and in trade policies of many players have been observed for some time. They were exacerbated by the financial crisis in 2009, the outbreak of the coronavirus pandemic in 2019 and the Russian attack on Ukraine in 2022.

Global trade volumes grew by a factor of around 45 since the adoption of the General Agreement on Tariffs and Trade (GATT) at the end of the 1940s till approximately the time of the financial crisis in 2009.<sup>1</sup> The 1990ies were characterised by a steady increase in trade averaging 9 percent per year worldwide (measured in terms of the global increase in gross exports, the sum of exports and re-exports). However, the financial crisis ushered often called as “slowbalisation”, which also affected the composition of supply chains: the share of foreign value added in gross exports in member countries of the Organisation for Economic Co-operation and Development (OECD), for instance, fell from 10 per cent in 2011 to just over 7 per cent in 2016.<sup>2</sup> Unlike trade in goods, however, trade in digital infrastructure and services continued to grow.<sup>3</sup>

Since the financial crisis, not only trade growth slowed but supply chains have changed as well: While they had grown in the previous 15 years<sup>4</sup>, some analyses show that this trend came to a halt around 2009, partly due to rising transaction and coordination costs as well as technological developments. The latter makes remote work possible and thereby site relocation less important to incur lower labour costs.<sup>5</sup> Other recent analyses however indicate still an increase in length of value chains.<sup>6</sup>

<sup>1</sup> World Trade Organization (WTO), “Evolution of Trade under the WTO: Handy Statistics”, n.d., [https://www.wto.org/english/res\\_e/statis\\_e/trade\\_evolution\\_e/evolution\\_trade\\_wto\\_e.htm](https://www.wto.org/english/res_e/statis_e/trade_evolution_e/evolution_trade_wto_e.htm) (accessed 21 August 2023).

<sup>2</sup> Galina Kolev-Schäfer and Jürgen Matthes, “Protektionismus und Abschottungstendenzen bremsen und verändern die Globalisierung”, *Wirtschaftsdienst* 101, no. 11 (2021): 845–49.

<sup>3</sup> Richard Baldwin, “The Peak Globalisation Myth: Part 4 – Services Trade Did Not Peak”, *VoxEu* (Centre for Economic Policy Research [CEPR]), 3 September 2022, <https://cepr.org/voxeu/columns/peak-globalisation-myth-part-4-services-trade-did-not-peak> (accessed 23 July 2024).

<sup>4</sup> WTO, *Global Value Chain Development Report 2021, Beyond Production* (Geneva, November 2021), xxi, [https://www.wto.org/english/res\\_e/booksp\\_e/00\\_gvc\\_dev\\_report\\_2021\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/00_gvc_dev_report_2021_e.pdf) (accessed 21 August 2023).

<sup>5</sup> Hanns Günther Hilpert, Bettina Rudloff and Paweł Tokarski, “Covid-19 und die Weltwirtschaft: Herausforderungen für Deutschland und Europa”, *Internationale Politik unter Pandemie-Bedingungen. Tendenzen und Perspektiven für 2021*, ed. Barbara Lippert, Stefan Mair and Volker Perthes, SWP-Studie 26/2020 (Berlin: Stiftung Wissenschaft und Politik, December 2020), 15–19 (15), doi: 10.18449/2020S26.

<sup>6</sup> Steven A. Altmann / Caroline R. Bastian, *DHL Global Connectedness Report 2024*, 2024, <https://www.dhl.com/content/dam/dhl/global/delivered/documents/pdf/dhl-global-connectedness-report-2024-complete.pdf> (accessed 18 February 2025), p. 69.

Also shifts in trade policy can be observed: Regional and, above all, bilateral trade agreements have increased in comparison to multilateral agreements within the framework of the World Trade Organisation (WTO). The number of bilateral and plurilateral agreements notified to the WTO rose from 22 to 360 in the period 1990 to 2020.<sup>7</sup> In particular agreements between countries of the Global South have become more frequent.<sup>8</sup>

This shift away from WTO agreements towards regional and bilateral agreements can be explained by the strengthening of actors who have long criticised Western dominance in the WTO – these include, but are not limited to the BRICS countries China, India, Brazil and South Africa. Furthermore, the USA has been weakening a key function of the WTO since 2017 by blocking the appointment of new judges for the WTO’s appeal process. In the meantime, an alternative dispute settlement procedure has been established, which serves as an interim solution for those members that accept its jurisdiction, like China but not the USA.<sup>9</sup>

Since the start of the WTO Doha Round in 2001, only a few new WTO agreements have been concluded, such as the agreement on the elimination of export subsidies of 2015, the agreement on trade facilitation of 2017 and the agreement on the elimination of fisheries subsidies defined as harmful of 2022.

In 2001 China’s accession to the WTO has exacerbated many countries’ concerns about their own competitiveness. Especially when China was granted market economy status in 2016 the previous strong protection options expired. A number of countries, above all the USA, initiated therefore new measures:<sup>10</sup> In Donald Trump’s first election campaign in 2016, it was an explicit goal to reduce the bilateral trade deficit with China, including by means of trade restrictions.<sup>11</sup> This led to frequent WTO trade disputes, particularly between China and the US, with an international impact.<sup>12</sup> The shifts and uncertainties described above are reflected in the “World Trade Uncertainty Index”, which rose from 2010 to a temporary peak in 2020.<sup>13</sup> The recent second term of Trumps presidency may aggravate this uncertainty.

The coronavirus pandemic and the Russian full invasion of Ukraine have added to this already increasing global trade uncertainty. The pandemic has led to supply chains being perceived as vulnerable, especially supply chains for medical products that considered as strategic in this context of crisis. Countries utilised various new mechanisms to secure their own supply, ranging from import diversification and export restrictions to monitoring approaches and stockpiling. Overall, global supply chains recovered quickly after initial slumps – albeit with differences between sectors and varying developments in individual countries.<sup>14</sup>

The Russian attack on Ukraine has focussed attention on another threat to supply chains – foreign security.<sup>15</sup> As a consequence, many countries started to reduce their dependence on Russia for important raw materials such as gas or grain. Therefore, different approaches were chosen, such as the diversification of suppliers or the expansion of own production.

In addition to these longer-term, global economic developments and acute shocks, the climate effect has an international impact on trade and policy. Many players have initiated climate-related and other ecological policies that are accompanied by measures to ensure competitiveness, e.g. by standards at the border. These can have consequences for other players. In addition, climatic induced natural disaster events can have a direct impact on production and trade: In the case of agricultural goods, droughts and floods affect harvests, which quickly leads to price

<sup>7</sup> WTO, *RTA Tracker*, n.d., <https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx> (accessed 21 August 2023).

<sup>8</sup> WTO, “Regional Trade Agreements”, n.d., [https://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](https://www.wto.org/english/tratop_e/region_e/region_e.htm) (accessed 21 August 2023).

<sup>9</sup> “Multi-Party Interim Appeal Arbitration Arrangement (MPIA)”, n.d., [https://wtoplurilaterals.info/plural\\_initiative/the-mpia/](https://wtoplurilaterals.info/plural_initiative/the-mpia/) (accessed 21 August 2023).

<sup>10</sup> Ferdi De Ville, Simon Happersberger and Harri Kalimo, “The Unilateral Turn in EU Trade Policy? The Origins and Characteristics of the EU’s New Trade Instruments”, *European Foreign Affairs Review* 28 (2023), Special Issue: 15-34.

<sup>11</sup> “What Is the US-China Trade War?” *South China Morning Post*, 13 April 2020, <https://www.scmp.com/economy/china-economy/article/3078745/what-us-china-trade-war-how-it-started-and-what-inside-phase> (accessed 23 July 2024).

<sup>12</sup> Linda Gorman, “How the US-China Trade War Affected the Rest of the World”, *The NBER Digest* (Cambridge, MA: National Bureau of Economic Research [NBER], April 2022), 3, <https://www.nber.org/digest/202204/how-us-china-trade-war-affected-rest-world> (accessed 21 August 2023).

<sup>13</sup> “World Uncertainty Index”, n.d., <https://worlduncertaintyindex.com/data/> (accessed 23 July 2024).

<sup>14</sup> Andreas Baur and Lisandra Flach, “Die Globalisierung als Sündenbock? Internationale Lieferketten in der Corona-Pandemie”, *Ifo Schnelldienst* 75, no. 1 (2022): 3–8 (3f.).

<sup>15</sup> Gabriel Felbermayr, “Krieg mit anderen Mitteln”, *Wirtschaftsdienst* 103, no. 13 (2023): 5–14, <https://www.wirtschaftsdienst.eu/inhalt/jahr/2023/heft/13/beitrag/krieg-mit-anderen-mitteln.html> (accessed 21 August 2023).

increases in agricultural markets with limited capacity to adjust. Such events can also damage international transport routes and thereby trade, for example when port facilities are flooded.<sup>16</sup> In early 2024, a lack of water in the Panama Canal shifted trade between the USA and Asia via alternative routes such as the Suez Canal. As a result, the damage caused by the security threat posed by the Houthi attacks has increased due to this increase in the volume of traffic.<sup>17</sup>

## Changes in EU trade policy

With 45 ratified free trade agreements (FTAs) with over 70 countries, the EU is one of the players with the most FTAs.<sup>18</sup> Almost as many agreements have either not yet been ratified, their negotiations have been suspended or have just started.<sup>19</sup> Most of the EU's agreement partners are developing countries, some of which have been subject to substantial unilateral EU tariff concessions for decades. Despite the growth in bilateral agreements of the EU, more than 75 per cent of European trade takes place outside these agreements, in other words under WTO rules.<sup>20</sup>

Over time, the EU's agreements have become increasingly comprehensive in terms of issues covered. Especially sustainability has increasingly been integrated.<sup>21</sup> However, sustainability issues in particular relate to sensitive issues for actors such as states or social groups, for example when it comes to food production conditions. On the EU side, these different sensitivities can make it difficult to negotiate and finally conclude new trade agreements if they complicate finding majorities.

For many newer and political sensitive issues in FTAs, time-consuming national (and in some Member States, sub-national) ratification is necessary due to shared competences between the EU and its Member States.<sup>22</sup> This process was even strengthened for some sustainability aspects in 2009 by the "Common Approach on the use of political clauses in agreements with third countries". This is intended to ensure that EU values and security interests are systematically taken into account in all international agreements, including trade agreements.<sup>23</sup> One example are human rights and the fundamental principles of democracy referred to in the so-called political part of a trade agreement.

The traditional trade part of a European FTA, on the other hand, falls under the exclusive competence of the EU as "EU only", unless it also contains aspects that justify shared competence.<sup>24</sup> In order to support an early start for the trade aspects the "EU-only"-part often is applied provisionally. The long-running national ratification processes for the full and possibly the so-called mixed agreement – consisting of a political and a trade part – will continue in parallel. A new model is the "Chile model", according to which the trade part is separated from the overall agreement

<sup>16</sup> Bettina Rudloff, "(K)ein Schiff wird kommen: Maritimer Nahrungstransport als vernetzte kritische Infrastruktur der EU", *Maritime kritische Infrastrukturen. Strategische Bedeutung und geeignete Schutzmaßnahmen*, ed. Daniel Voelsen, SWP-Studie 3/2024 (Berlin: Stiftung Wissenschaft und Politik, February 2024), 37–47, doi: 10.18449/2024S03.

<sup>17</sup> Winand von Petersdorff-Campen, "Wie die Dürre am Panamakanal den Welthandel gefährdet", *Frankfurter Allgemeine Zeitung*, 15 November 2023, <https://www.faz.net/aktuell/wirtschaft/panamakanal-wie-die-duerre-den-welthandel-gefaehrdet-19316354.html> (accessed 23 July 2024).

<sup>18</sup> Andreas Baur and Lisandra Flach, "Protectionism on the Rise? New Challenges for EU Trade Policy", *EconPol Forum* 24, no. 5 (2023): 32-35 (33), <https://www.cesifo.org/DocDL/econpol-forum-2023-5-flach-baur-single-market.pdf> (accessed 21 November 2023).

<sup>19</sup> European Commission (EC), "Negotiations and Agreements", n.d., [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/negotiations-and-agreements\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/negotiations-and-agreements_en) (accessed 21 August 2023).

<sup>20</sup> Tomasz Gonciarz / Thomas Verbeet, *Significance of Most-Favoured-Nation Terms in Global Trade: A Comprehensive Analysis*, 15 January 2025, [https://www.wto.org/english/res\\_e/reser\\_e/ersd202502\\_e.pdf](https://www.wto.org/english/res_e/reser_e/ersd202502_e.pdf) (accessed 18 February 2025), p. 18.

<sup>21</sup> As third generation of FTAs in Patrick Leblond and Crina Viju-Miljusevic, "CETA as the EU's First Third-Generation Trade Agreement: Does It Act Like One?", *Perspectivas – Journal of Political Science* 27 (2022), Sonderheft: 106–20 (109f.), doi: 10.21814/perspectivas.4496.

<sup>22</sup> Maria Helena Guimarães, "EU FTAs and Divided Sovereignty: Transformative Shifts in Trade Authority", *Perspectivas – Journal of Political Science* 27 (2022), Special Issue: 121-32, doi: 10.21814/perspectivas.4500.

<sup>23</sup> Council of the European Union, *Common Approach on the Use of Political Clauses* (Brussels, 25 April 2013), <https://data.consilium.europa.eu/doc/document/ST%2010491%202009%20REV%201%20EXT%202/EN/pdf> (accessed 23 July 2024).

<sup>24</sup> In individual cases, a decision on the character of an agreement as 'EU only' or mixed is difficult and is also subject to political debate between the actors involved at EU and Member State level. See Fachbereich Europa des Deutschen Bundestags, *Sachstand: Das Verfahren zum Abschluss von Handelsabkommen durch die EU* (Berlin, 4 May 2023), <https://www.bundestag.de/resource/blob/957072/70d0014de569506a0cdf8f90e72848e2/EU-6-020-23-pdf-data.pdf> (accessed 21 August 2023).



and ratified by the European Parliament. Once the overall agreement has been ratified, it replaces the already started separated trade part.<sup>25</sup>

In addition to this division of competences between the EU and national levels, the voting rules in the Council of Ministers are a relevant factor for a successful conclusion on the EU side. The political association part of an agreement requires unanimity, while the trade part requires only a qualified majority. This requires at least 55 per cent of member states representing at least 65 per cent of the EU population. Despite the possibility of outvoting states critical of the trade part of an FTA, unanimity is still preferred to ensure broad political support for a trade agreement.

The distribution of competences and standing voting increase the number of actors and subsequently raise the likelihood of clashing interests in the Council of Ministers and national parliaments. Sustainability issues frequently spark criticism which can lead to the outright rejection of an agreement. Such criticisms can be voiced by national governments, representatives of civil society, or by individual sectors of the economy. A commonly cited reason is the fear of suffering competitive disadvantages compared to increased imports, which are assumed to be subject to lower sustainability requirements. Highlights of civil society criticism of trade agreements in the past have been protests against agreements with Canada and the US, which in the case of a US agreement even led to the cancellation of negotiations.<sup>26</sup> Currently, and especially in the context of sustainability, there is resistance within Europe to the EU-Mercosur agreement. While the Netherlands and Luxembourg are notably critical, this pushback is especially evident from the French and Austrian governments. Most recently in November 2024, Poland announced that it would join France in opposing a deal,<sup>27</sup> and was ultimately supported by Italy. All in all, a European majority in favour of the agreement is not assured.<sup>28</sup> The main reason cited for this resistance is increasing competitive pressure on the agricultural sector by anticipated increasing imports. There are also concerns that Mercosur farmers would be subject to fewer sustainability commitments than domestic farmers. Civil society actors in the EU are particularly concerned about the sustainability risks posed by the agreement's export incentives on the Mercosur side, which could lead to increased deforestation and subsequent climate damages. Potential inequities are also criticised, as the agreement could pose risks for vulnerable actors such as indigenous peoples or small-scale farmers in Mercosur countries.<sup>29</sup>

In recent years, the EU has been pursuing ambitious sustainability goals through the use of trade policy measures. The EU strived to become an international leader in sustainability and climate policy compared to the US.<sup>30</sup> Conversely, it used sustainability levers in trade agreements to counteract the loss of internal acceptance for the trade policy practised. By emphasising sustainability in its 2015 trade strategy ("Trade for all"), the EU has responded to increasing public criticism: the description of globalisation as a risk to sustainability and distributive justice. The EU's most recent trade strategy from 2021 ("An open, sustainable and determined trade policy") emphasises the EU's ability to introduce more rules on sustainability, while enforcing existing ones. The new guiding principle of "open strategic autonomy" defined in this strategy symbolises a conflict of objectives: on the one hand, there is the goal of introducing new trade agreements and opening up trade. On the other hand, there is the objective of autonomous and independent trade measures. The EU is also pursuing strategic autonomy with more recent industrial policy

<sup>25</sup> Thomas Fritz, *Das EU-Mercosur-Abkommen. Steckbrief zum Ratifizierungsverfahren und zu zentralen Kritikpunkten*, Factsheet (Radolfzell: Deutsche Umwelthilfe, April 2021), [https://www.duh.de/fileadmin/user\\_upload/download/Projektinformation/Naturschutz/Soja/Factsheet\\_Mercosur\\_Soja.pdf](https://www.duh.de/fileadmin/user_upload/download/Projektinformation/Naturschutz/Soja/Factsheet_Mercosur_Soja.pdf) (accessed 21 August 2023).

<sup>26</sup> Henner Gött, "Legitimation durch den, den es angeht?" – Die Einbindung der Zivilgesellschaft in die transatlantische Regulierungszusammenarbeit aus demokratischer Perspektive", *Freihandel vs. Demokratie. Grundsätze transnationaler Legitimation: Partizipation, Reversibilität, Transparenz*, ed. Sinthiou Buszewski, Stefan Martini and Hannes Rathke (Baden-Baden: Nomos, 2016), 199–218, doi: 10.5771/9783845266046.

<sup>27</sup> Aleksandra Krzysztozek and Laurent Geslin, "Polen und Frankreich: Gemeinsam gegen das Mercosur-Abkommen", *Euractiv*, 27 November 2024, <https://www.euractiv.de/section/europa-kompakt/news/polen-und-frankreich-gemeinsam-gegen-das-mercosur-abkommen/> (accessed 2 December 2024).

<sup>28</sup> Bruno Theodoro Luciano and Cairo Gabriel Borges Junqueira, "Beyond Parliamentary Ratification: The Role of National and Subnational Parliaments in EU-Mercosur Trade Negotiations", *Journal of European Integration* 45, no. 4 (2023): 665–82.

<sup>29</sup> Thomas Fritz, *EU-Mercosur-Abkommen verhindert eine nachhaltige wirtschaftliche Entwicklung in Südamerika* (Berlin, July 2023), [https://www.brot-fuer-die-welt.de/fileadmin/mediapool/downloads/fachpublikationen/sonstige/Studie\\_EU-Mercosur-Abkommen\\_verhindert\\_Entwicklung.pdf](https://www.brot-fuer-die-welt.de/fileadmin/mediapool/downloads/fachpublikationen/sonstige/Studie_EU-Mercosur-Abkommen_verhindert_Entwicklung.pdf) (accessed 23 July 2024).

<sup>30</sup> De Ville, Happersberger and Kalimo, "The Unilateral Turn in EU Trade Policy?" (see note 10).

approaches to economic security. Other countries, such as the US, China, and Japan, have historically been more engaged in developing such methods.<sup>31</sup>

The EU is increasingly choosing unilateral measures over bilateral trade agreements to enforce sustainability internationally. This strategy creates new conflicting objectives. Unilateral measures are easier to decide on than agreements, as they do not require complex negotiations with the trading partner, and do not involve the aforementioned internal EU coordination risks. However, they make it more difficult to conclude new agreements with trading partners, as they are affected by unilateral measures but disregarded in their creation. This may reduce their acceptance of bilateral agreements.

<sup>31</sup> Elvire Fabry, Nicolas Köhler-Suzuki, Pascal Lamy and Marco Sibona, *Shields Up: How China, Europe, Japan and the United States Shape the World through Economic Security*, Policy Paper, no. 298 (Paris: Jacques Delors Institute, February 2024), [https://institutdelors.eu/wp-content/uploads/2024/02/PP298\\_Comparing\\_Economic\\_Security\\_Strategies\\_Fabry\\_Kohler-Suzuk\\_Lamy\\_Sibona\\_EN.pdf](https://institutdelors.eu/wp-content/uploads/2024/02/PP298_Comparing_Economic_Security_Strategies_Fabry_Kohler-Suzuk_Lamy_Sibona_EN.pdf) (accessed 23 July 2024).

# Unilateral approaches on sustainability on the rise

There is no clear definition of a unilateral trade measure. The term 'unilateral' refers to the number of actors involved in the decision-making process as opposed to plurilateral or multilateral approaches. Alternatively, 'autonomous trade measures', focuses more explicitly on sovereignty within the political decision-making process. The trade effect of such measures depends on whether they unilaterally facilitate (e.g. tariff dismantling) or impede trade (e.g. by importing standards).

## Shortcomings of trade agreements as a bilateral alternative

Besides multilateral agreements currently very difficult to reach, bilateral agreements are an alternative to unilateral measures. Sustainability here is mainly addressed in Trade and Sustainable Development chapters (TSD). Since the EU signed an Economic Partnership Agreement (Cariforum EPA) with Caribbean countries including a TSD chapter in 2008, a total of fourteen of its signed trade agreements now contain such a chapter<sup>32</sup> In addition to the Cariforum EPA, the agreements with South Korea, the Andean region (Peru, Colombia, Ecuador), Singapore, Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama), Georgia, Ukraine, Moldova, Canada, Japan, Vietnam, the UK, New Zealand and Kenya. The agreement between the EU and Mercosur, which was concluded for the first time in 2019, also contains a chapter on development cooperation. This was supplemented by an extensive annex following the political agreement in 2024. As well the agreement with Australia contained a TSD chapter, but overall negotiations on the agreement were terminated shortly before its conclusion in 2023.

All of these agreements differ in terms of the scope of sustainability aspects covered, their enforceability and possible protection or compensation in case of violations of agreed sustainability rules.<sup>33</sup>

<sup>32</sup> Katerina Hradilová and Ondrej Svoboda, "Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness", *Journal of World Trade* 52, no. 6 (2018): 1019-42 (1022), doi: 10.54648/trad2018044.

<sup>33</sup> J. B. Velut et al, *Comparative Analysis of Trade and Sustainable Development Provisions in Free Trade Agreements* (London: London School of Economics and Political Science [LSE], February 2022), Table 2, <https://www.lse.ac.uk/business/consulting/assets/documents/TSD-Final-Report-Feb-2022.pdf> (accessed 21 August 2023).

### Box 1: Mirror clauses as unilateralism in principle?

During its Council Presidency in 2022, France put forward the proposal to offset the disadvantages of the Green Deal for European farmers. Therefore it was proposed to formulate corresponding requirements for imports, called mirror clauses.<sup>34</sup> To date, France has cited mirror clauses as a prerequisite for supporting trade agreements. Poland and Austria are also favourably inclined towards mirror clauses.<sup>35</sup> As of now there is no concrete approach as to how this vaguely discussed idea could be implemented in practice. An assessment by the European Commission commissioned by the Council and the European Parliament of a case-by-case approach is always necessary if the possibilities of applying mirror clauses are to be explored.<sup>36</sup>

In autumn 2024, the strategic dialogue on the future of EU agriculture – set up by Commission President von der Leyen to find a consensus between civil society and the agricultural sector – proposed a possible alternative to disputed mirror clauses: it states that indicators should first be defined to enable comparable sustainability measurements for European farms. A harmonised European benchmark would be developed on this basis.<sup>37</sup> In a subsequent step, deviations in imports at the border could in principle be equalised in a similar way to the CBAM. However, numerous methodological questions remain unanswered – for example, how different sustainability dimensions can be summarised in one standard.

Established trade principles, such as those of the WTO, indicate possible starting points and limits for operationalizing mirror clauses:

(1) In the case of production standards, GATT Articles I (most-favoured-nation treatment) and III (national treatment) permit trade restrictions if different standards lead to different products (such as in terms of size or composition).<sup>38</sup> However, whether production standards without a direct link to the product justify different products is the subject of numerous WTO disputes. Mirror clauses are often discussed precisely for the latter complex production standards, such as animal husbandry, which complicates the WTO legitimisation of mirror clauses.

(2) Reciprocity in trade agreements refers to the mutual offer of concessions that are regarded as equivalent, for example in customs negotiations. A transfer of this approach to mirror clauses would assume EU standards to be stricter than those of partners. Following the style of the EU debate this symbolizes a type of concession to the partner. Accordingly, the partner would have to make a positive offer such as increased market access for the EU. Understanding mirror clauses in the context of the principle of reciprocity would require to exchange on possible mutual benefit instead of unilaterally setting a standard.

(3) In the case of mutual recognition, countries commit to provide evidence of equivalent animal welfare standards, for example in the area of animal health. This in turn requires a prior bilateral understanding on what is recognised as equivalent. Furthermore, this applies only to clearly defined individual requirements and not as a general automatism, as is often formulated in the debate on mirror clauses.

(4) According to the rebalancing mechanism in the trade agreement between the EU and the United Kingdom – or with Mercosur in the recently politically agreed new text – individual deviations in standards can be offset by the trading partner. The decisive factor, however, is that a reference standard was jointly agreed, which makes deviations identifiable in the first place. In the case of the EU and the UK, the harmonised level during the UK's EU membership can serve as such a reference standard. There is also a jointly agreed procedure for deciding on compensation and no unilateral behaviour, as suggested in the political debate on mirror clauses.

<sup>34</sup> Pascal Lamy, Geneviève Pons, Isabelle Garzon and Sophia Hub, *A Narrow Path for EU Agri-Food Mirror Measures?* Policy Paper (Brussels: Europe Jacques Delors, April 2022) (online, accessed 21 August 2023).

<sup>35</sup> Agence Europe, *EU Member States Divided on Usefulness of Mirror Clauses for Imported Products* (Brussels, 15 February 2022) (online, accessed 24 July 2024).

<sup>36</sup> European Commission, *Application of EU Health and Environmental Standards to Imported Agricultural and Agri-Food Products*, Report (Brussels, 3.6.2022) (online, accessed 26 September 2024).

## Different levels of sustainability coverage

Labour rights are quite strongly specified, making it easier to operationalise corresponding references in trade agreements compared to environmental provisions. To date, 147 countries, including the EU member states, have ratified all eight of the International Labour Organization (ILO) old core labour standards.<sup>39</sup> However, there are deficits regarding the two newer core standards.<sup>40</sup> A total of 82 (ILO 155) and 69 (ILO 187) countries have not ratified them, including EU countries – Germany has also not yet ratified the Occupational Safety and Health Convention.<sup>41</sup>

Compared to labour rights, the more fundamental human rights are covered to a lesser extent in EU trade agreements. In addition, references to human rights are typically found not only in the TSD chapter, but also in others.

In the case of environmental provisions, there is quite a large variance in coverage in trade agreements, which can be explained by a shorter history of international consensus-building than in the case of labour rights; first conventions on the latter have existed for almost a century. Furthermore, the implementation options and the impact of environmental regulations depend heavily on local natural conditions, which explain different national regulatory developments. Out of a total of over 250 multilateral environmental agreements (MEAs) that are in force the WTO only describes 15 as relevant to trade.<sup>42</sup>

Apart from these references to existing internationally adopted sustainability regimes, trade agreements list a set of other, rather loose dialogue formats, often outside the TSD chapters. These focus often on the topics like timber and forest protection, sustainable fisheries, biodiversity, animal welfare and sustainable food systems.<sup>43</sup>

## Weak enforceability of sustainability in trade agreements

International agreements in general are difficult to enforce. This applies all the more to sustainability provisions within trade agreements, especially after negotiations have been concluded.

*Before an agreement is concluded, its final adoption can be made dependent on the trading partner ratifying certain sustainability requirements. Such an option has hardly been utilised to date – for instance in the negotiations of the FTA between the EU and Vietnam, when the European Parliament made its own ratification of the agreement conditional on Vietnam gradually ratifying an ILO core labour standard.*<sup>44</sup>

<sup>37</sup> Strategic Dialogue on the Future of EU Agriculture, *A Shared Prospect for Farming and Food in Europe*, Final Report, September 2024 (online, accessed 2 December 2024).

<sup>38</sup> Emily Rees, *Mirror, Mirror on the Wall, Who Has the Fairest Clauses of Us All? Stress-Testing the Application of Mirror Clauses to Pesticides*, Policy Brief, no. 3/2022 (Brussels: European Centre for International Political Economy [ECIPE], March 2022) (online, accessed 24 July 2024).

<sup>39</sup> Convention 29 – Forced Labour (1930); Convention 105 – Abolition of Forced Labour (1957); Convention 87 – Freedom of Association and Protection of the Right to Organise (1948); Convention 98 – Right to Organise and Collective Bargaining Convention (1949); Convention 100 – Equal Remuneration (1951); Convention 111 – Discrimination (Employment and Occupation) (1958); Convention 138 – Minimum Age (1973); Convention 182 – Worst Forms of Child Labour (1999).

<sup>40</sup> Convention 155 – Occupational Safety and Health (1981); Convention 187 – Promotional Framework for Occupational Safety and Health (2006). China, for example, has not ratified three core standards, one of which is one of the new ones (187).

<sup>41</sup> International Labour Organization (ILO), “Ratification by Convention”, <https://normlex.ilo.org/dyn/normlex/en/f?p=1000:12001> (accessed 2 December 2024).

<sup>42</sup> WTO Regular Matrix on Trade-Related Measures in Environmental Agreements: WTO, *Matrix on Trade-Related Measures Pursuant to Selected Multilateral Environmental Agreements*, 19 March 2021, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/CTE/W160R9.pdf&Open=True> (accessed 21 August 2023).

<sup>43</sup> Jan Hagemeyer et al, *Trade Aspects of the EU-Mercosur Association Agreement*, INTA-EP-Study (Brussels, November 2021), 82, [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653650/EXPO\\_STU\(2021\)653650\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653650/EXPO_STU(2021)653650_EN.pdf) (accessed 21 August 2023).

<sup>44</sup> Netzwerk Gerechter Welthandel, *EU-Vietnam-Abkommen: 68 Organisationen der Zivilgesellschaft fordern die EU-Abgeordneten auf, die neuen Handels- und Investitionsabkommen nicht zu ratifizieren*, 12 February 2020, <https://www.gerechter-welthandel.org/2020/02/12/eu-vietnam-abkommen-68-organisationen-der-zivilgesellschaft-fordern-die-eu-abgeordneten-auf-die-neuen-handels-und-investitionsabkommen-nicht-zu-ratifizieren/> (accessed 21 August 2023); in relation to ILO Convention 98, see Marco Bronckers and Giovanni Gruni, “Retooling the Sustainability Standards in EU Free Trade Agreements”, *Journal of International Economic Law* 24, no. 1 (2021): 25-51 (27), doi: 10.1093/jiel/jgab007.

After the conclusion of an agreement, the possibilities for enforcement are reduced and are predominantly of a negative nature:

Sanctions are envisaged in trade agreements as a possible result of a dispute settlement procedure. Accordingly, agreed tariff concessions can be suspended as a sanction if part of the agreement has been breached. However, TSD chapters in EU agreements have so far been excluded from dispute settlement procedures, meaning that violations of agreed sustainability provisions do not result in sanctions. An alternative is a dialogue-based mediation process, which does not result in sanctions. Civil society representatives are involved on a large scale, which can contribute to a widely accepted end result.<sup>45</sup> A corresponding procedure with South Korea for violation of the ILO standard on the freedom of association ultimately led to the implementation of this standard. In contrast, a corresponding procedure with Ukraine due to the export ban on timber, which violates the trade agreement with the EU, had hardly any impact. Regardless of the procedure, this can be explained by the start of the pandemic and the outbreak of war. The EU's recently concluded agreements with New Zealand and Kenya permit for the first time for sanctions in case of violating some ILO core labour standards or the Paris Climate Agreement.<sup>46</sup>

The “essential elements” of the political part of EU trade agreements offer a fundamental possibility for a different type of sanctions. It is often not defined which specific provisions fall under “essential elements”, but existing trade agreements also refer to sustainability issues in this context.<sup>47</sup> These include human rights and the Paris Climate Agreement.<sup>48</sup> Violations of essential elements can result in very different responding measures. They must be considered suitable, appropriate and need to comply with international law. Measures range from dialogue to the suspension of the entire agreement.<sup>49</sup>

Unlike sanctions, tariff incentives reward compliance with sustainability agreements. To date, the EU has only used this approach with economically weak partner countries from the Global South as part of the Generalised Scheme of Preferences (GSP). Under the GSP, the EU offers partners the opportunity to export to the EU at zero duty or unilateral tariff reductions. As a prerequisite, eligible countries must comply with a set of sustainability requirements. These demands partially differ from those in the TSD chapters of agreements with other EU partners or even go beyond them.<sup>50</sup> In the case of a violation, the incentives can be suspended. This has occurred so far only in four cases of serious violations against Sri Lanka, Belarus, Myanmar/Burma, and Cambodia.<sup>51</sup> To date, no such incentive mechanisms have been formulated in EU agreements with economically strong partners. The political agreement with the Mercosur states of 2019 includes a limited exception to that status quo. It made it possible for an increased access to the EU market for eggs so long as Mercosur countries comply with European husbandry rules for laying hens.<sup>52</sup> The new political agreement from late 2024 broadens the scope of incentives through a yet-to-be-defined list of sustainable and forest-protecting products for which more market access to the EU can be agreed.<sup>53</sup>

<sup>45</sup> Marc Jütten, *Trade and Sustainable Development in EU Free Trade Agreements*, Briefing (European Parliamentary Research Service [EPRS], November 2023), 3, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754613/EPRS\\_BRI\(2023\)754613\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754613/EPRS_BRI(2023)754613_EN.pdf) (accessed 29 July 2024).

<sup>46</sup> EU, *Together for Green and Just Growth. Sustainability in the EU-New Zealand Trade Agreement*, EU-New Zealand Trade and Sustainable Development Factsheet, June 2022, <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/e104ea5a-5ed6-4655-b2fd-62cb7b3e81bc/details> (accessed 2 December 2024).

<sup>47</sup> Lorand Bartels, *Assessment of the Implementation of the Human Rights Clause in International and Sectoral Agreements* (Brussels, May 2023), [https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/702586/EXPO\\_IDA\(2023\)702586\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/702586/EXPO_IDA(2023)702586_EN.pdf) (accessed 23 July 2024).

<sup>48</sup> Ibid; Jana Titievskaia, *Sustainability Provisions in EU Free Trade Agreements. Review of the European Commission Action Plan*, Briefing (EPRS, November 2021), 11, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698799/EPRS\\_BRI\(2021\)698799\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698799/EPRS_BRI(2021)698799_EN.pdf) (accessed 24 July 2024).

<sup>49</sup> Ionel Zamfir, *Human Rights in EU Trade Agreements. The Human Rights Clause and its Application*, Briefing (EPRS, July 2019), 8, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS\\_BRI\(2019\)637975\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS_BRI(2019)637975_EN.pdf) (accessed 23 July 2024).

<sup>50</sup> EC, “Generalised Scheme of Preferences (GSP)”, n.d., <https://trade.ec.europa.eu/access-to-markets/en/content/generalised-scheme-preferences-gsp> (accessed 21 August 2023).

<sup>51</sup> Bettina Rudloff, *Sustainable International Value Chains: The EU's New Due Diligence Approach as Part of a Policy Mix*, Research Division EU/Europe, Working Paper 2 (Berlin: Stiftung Wissenschaft und Politik, June 2022), 4, [https://www.swp-berlin.org/publications/products/arbeitspapiere/Rudloff\\_The\\_EUs\\_new\\_due\\_diligence\\_approach\\_as\\_part\\_of\\_a\\_policy\\_mix\\_WP.pdf](https://www.swp-berlin.org/publications/products/arbeitspapiere/Rudloff_The_EUs_new_due_diligence_approach_as_part_of_a_policy_mix_WP.pdf) (accessed 21 August 2023).

<sup>52</sup> Hagemeyer et al, *Trade Aspects of the EU-Mercosur Association Agreement* (see note 43).

<sup>53</sup> EC, “Annex to Trade and Sustainable Development Chapter (New)”, para. 40, at: [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercotur/mercotur-agreement/text-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercotur/mercotur-agreement/text-agreement_en) (accessed 20 December 2024).

## Little protection and compensation in case of violating sustainability provisions

A breach of rules by a trading partner can result in various types of harm. Such types of harm include reduced trade flows, loss of competitiveness or, if sustainability regulations are breached, harm of human rights or to the environment. Existing compensation mechanisms in trade agreements have so far been limited to competitive harm. This can occur, for example, when trading partners lower sustainability requirements in order to produce and export more cost-effectively. The resulting harm to sustainability, on the other hand, is generally not covered in such agreements.

Protecting competition in trade agreements can take different forms:

Safeguarding through a defined minimum standard for sustainability was first introduced in American trade agreements through so-called non-regression clauses. They are intended to prevent parties of the agreement to achieve a competitive advantage by reducing standards after the agreement was concluded.<sup>54</sup> The EU also utilises such a clause:<sup>55</sup> Ensuring a level playing field became particularly important in the context of Brexit: the cooperation agreement between the EU and the United Kingdom (UK) takes the idea of non-regression further. It allows for compensation in the event that the sustainability standards between the partners change and diverge so much that they have an impact on trade and competition. This rebalancing approach should be limited in time and scope to the damage caused in each case and is determined in a dispute settlement procedure. The political agreement reached at the end of 2024 on the EU-Mercosur Agreement contains such a rebalancing mechanism as well. This offers in principle a possibility of compensation if measures taken by one party limit the benefits of the agreement (see Box 3, page 33). However, the interpretation of the circumstances under which this is possible is not clear.<sup>56</sup>

Safeguard clauses are another protection option. They allow for protection tariffs against rising imports resulting from the liberalisation agreed in the FTA. If respective tariffs are to be levied, import-related damage must generally be proven. However, this protection does not explicitly refer specifically to those damages resulting from non-compliance with sustainability commitments. Such impacts are only addressed indirectly if an increase in imports is linked to sustainability risks during the production of imported goods or if their consumption causes damage to sustainability in the import market.

<sup>54</sup> Andrew D. Mitchell and James Munro, "An International Law Principle of Non-Regression from Environmental Protections", *International and Comparative Law Quarterly* 72, no. 1 (2023): 35-71, <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/an-international-law-principle-of-nonregression-from-environmental-protections/DFB6236C0504491E00B4174EE6D13186> (accessed 31 July 2024).

<sup>55</sup> Bronckers and Gruni, "Retooling the Sustainability Standards" (see note 44).

<sup>56</sup> Mathilde Dupré and Stéphanie Kpenou, "Key Insights into the Final EU-Mercosur Agreement", In Short (Paris: Veblen Institute, 12 December 2024), <https://www.veblen-institute.org/Key-Insights-into-the-Final-EU-Mercosur-Agreement.html> (accessed 20 December 2024).

## Unilateral instruments and the special case of due diligence obligations

### General economic and environmental approaches: public implementation at centre

Leveraging unilateral measures to increase sustainability is not new for the EU, as demonstrated by long-standing unilateral tariff concessions granted to countries in the Global South.<sup>57</sup> Since 2019, however, there has been an increase in unilateral measures, many of which are aimed at protecting competition and economic security<sup>58</sup> – such as the Anti-Coercion Instrument (ACI).<sup>59</sup> In the same period, around ten unilateral measures specifically on sustainability were introduced as well, some by the EU, others by individual Member States (see Annex 3, page 42f).

The carbon border adjustment mechanism (CBAM) can be seen as the EU's first unilateral measure on sustainability. The corresponding regulation came into force in late 2023 and is to be implemented by the end of 2025. CBAM complements the EU Emissions Trading System, which contributes to achieving the European emissions reduction targets by putting a price on CO<sub>2</sub> emissions. However, as only a few of the world's CO<sub>2</sub> emissions are subject to direct pricing or prices are set at a lower level than in the EU, an import tax on un- or lower-priced imports should protect the EU's competitiveness. This will also make it less attractive for European production to relocate to countries with less strict regulations on emissions: CBAM will charge products manufactured there, at least when they are imported into the EU.<sup>60</sup>

If such trading systems were implemented globally, this would probably constitute the first-best option for solving the global climate effect.<sup>61</sup> Even though possible disadvantages for the EU can be offset at the import side by the levy, still disadvantages can occur for exports: the pricing system makes exports from the EU more expensive compared to foreign competitors on the global market. The EU's trading partners are disparately affected by CBAM's import levy, depending on their respective export structure. They criticise not only the fact that there is no international consensus on a method used to determine product-related emissions, but also regard CBAM as generally protectionist, as it was passed unilaterally by the EU. Some partners, such as India and China, have reacted by announcing analogous systems.<sup>62</sup>

Another unilateral sustainability measure concerns agricultural fuels: if they are certified as sustainable, they can be counted towards European emission reduction targets under the EU Renewable Energy Directive (RED). They contribute to the target to increase the share of renewable fuel in the transport sector. For exporters of soybean oil, for example, this eligibility means that European demand for agricultural fuels is secured and offers access to various support measures from individual EU states. However, the criteria for certification were changed with the 2018 revision of the Renewable Energy Directive (RED II): Since then, imported agrofuel products must not only contribute to the direct reduction of emissions in the EU, but must also avoid changing land use in the country of origin. The aim is to prevent other agricultural products from being displaced in order to produce exports that are to be certified as sustainable, but whose displacement also results in emissions (deforestation). The risk of indirect land use change is determined for individual products by analysing data on the national expansion of production. For a product defined

<sup>57</sup> Ibid.

<sup>58</sup> Fabry, Köhler-Suzuki, Lamy and Sibona, *How China, Europe, Japan and the United States Shape the World through Economic Security* (see note 31).

<sup>59</sup> Thomas Verellen, "Unilateral Trade Measures in Times of Geopolitical Rivalry. A Call for Effective Accountability Mechanisms", *Verfassungsblog*, 25 May 2021, <https://verfassungsblog.de/unilateral-trade-measures-in-times-of-geopolitical-rivalry/> (accessed 21 August 2023).

<sup>60</sup> Galina Kolev, Roland Kube, Thilo Schaefer and Leon Stolle, *Carbon Border Adjustment Mechanism (CBAM). Motivation, Ausgestaltung und wirtschaftliche Implikationen eines CO<sub>2</sub>-Grenzausgleichs in der EU*, IW Policy Paper, no. 6/21 (Cologne: Institut der deutschen Wirtschaft [IW], March 2021), [https://www.iwkoeln.de/fileadmin/user\\_upload/Studien/policy\\_papers/PDF/2021/IW-Policy-Paper\\_2021\\_Carbon-Border-Adjustment.pdf](https://www.iwkoeln.de/fileadmin/user_upload/Studien/policy_papers/PDF/2021/IW-Policy-Paper_2021_Carbon-Border-Adjustment.pdf) (accessed 24 July 2024).

<sup>61</sup> Hannah Levinger and Milena Schwarz, *Globaler CO<sub>2</sub>-Preis: der schwierige Weg zu einer effektiven internationalen Antwort auf den Klimawandel*, KfW Research Fokus Volkswirtschaft, no. 417 (Frankfurt: Kreditanstalt für Wiederaufbau [KfW], February 2023), <https://www.kfw.de/PDF/Download-Center/Konzernthemen/Research/PDF-Dokumente-Fokus-Volkswirtschaft/Fokus-2023/Fokus-Nr.-417-Februar-2023-CO2-Preis.pdf> (accessed 24 July 2024). Possible disadvantages to the EU can be offset by the import levy, still competitive

<sup>62</sup> Julian Parodi, *Carbon Border Adjustment Mechanism: A Game Changer for Global Decarbonisation? A Country-by-Country Outlook on Europe's Main Trading Partners*, Briefing (Brussels: Friedrich-Ebert-Stiftung [FES], Competence Centre Climate and Social Justice, January 2024), [https://justclimate.fes.de/fileadmin/user\\_upload/images/publications/2024/FES\\_JustClimate\\_31012024\\_CBAM\\_Briefing.pdf](https://justclimate.fes.de/fileadmin/user_upload/images/publications/2024/FES_JustClimate_31012024_CBAM_Briefing.pdf) (accessed 24 July 2024).



as a high-risk product in this sense, import and use in the EU are not prohibited, but it cannot be counted towards the European emission reduction targets.<sup>63</sup> In 2020 palm oil was classified as high-risk product and accordingly cannot be certified by the EU as sustainable in the future. This led to large criticism from the main exporters Indonesia and Malaysia and ultimately resulted in complaints against the EU at the WTO.

A third example for public unilateral measures are the stricter maximum residue levels (MRLs) that have applied within the EU since 2022 for the ingredients clothianidin and thiamethoxam, which are harmful to bees, in individual products (see Annex 3, page 42f). The EU has extended its amended domestic regulation to imports,<sup>64</sup> with the aim of protecting bees from harm. This is the first time that environmental rather than health-related criteria have been used for such MRLs. This has been criticised by some countries, including the USA, at the WTO.<sup>65</sup>

In addition to these unilateral measures, that are defined for individual products and targets, which have already been adopted or are well advanced in the decision-making process, a general mechanism for unilateralism is repeatedly proposed: so-called mirror clauses are intended to systematically transfer (mirror) sustainability requirements for EU producers to imports. This approach is being discussed in particular for agricultural production (see Box 1, page 12).

### **The case of due diligence: corporate implementation at centre**

In recent years, G7 countries in particular have introduced a new type of unilateral sustainability approaches. This fits into the globally growing catalogue of unilateral measures, but places domestic private actors and their activities along international supply chains at the centre (see Annex 3, page 42f). These corporate due diligence approaches cover sustainability requirements including human and labour rights and, in some cases, environmental goals.<sup>66</sup>

In the case of human rights, the shift towards a private obligation based on the public, the state's duty under international law to respect, protect and fulfil human rights. This state obligation includes the influence of third parties on human rights, which can include private actors like companies.<sup>67</sup>

Due diligence obligations include binding documentation, risk management objectives and remedial systems in the event of violations.<sup>68</sup> The duties can be divided into the 'duty to endeavour' (duty of care to comply with certain legal requirements) and the 'duty to succeed' (to demonstrate actual material success with regard to a specific objective). The extent of the obligations is generally risk-based, i.e. depends on how serious potential violations in certain supply chains are considered to be. The respective assessment is based on experience with risks in supply chains and can be predefined for individual sectors or even entire countries if these are considered to be particularly risky.

Depending on the individual approach, companies must establish complaints mechanisms and various types of responses to on-compliance with due diligence exist ranging from administrative fines, exclusion from public procurement processes or civil liability.

<sup>63</sup> "Commission Delegated Regulation (EU) 2019/807 of 13 March 2019 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council as regards the determination of high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed and the certification of low indirect land-use change-risk biofuels, bioliquids and biomass fuels", *Official Journal of the European Union*, 21 May 2019, [https://eur-lex.europa.eu/eli/reg\\_del/2019/807/oj?locale=en](https://eur-lex.europa.eu/eli/reg_del/2019/807/oj?locale=en); "Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the Promotion of the Use of Energy from Renewable Sources (Recast)", *Official Journal of the European Union*, 21 December 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L2001&from=EN> (both accessed 21 August 2023).

<sup>64</sup> EC, "EU Legislation on MRLs", n.d., [https://food.ec.europa.eu/plants/pesticides/maximum-residue-levels/eu-legislation-mrls\\_en](https://food.ec.europa.eu/plants/pesticides/maximum-residue-levels/eu-legislation-mrls_en) (accessed 21 November 2023).

<sup>65</sup> WTO, Committee on Sanitary and Phytosanitary Measures, *European Union Import Tolerances for Certain Pesticides to Achieve Environmental Outcomes in Third Countries – Specific Trade Concern 534*, 28 March 2023, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/GEN2112.pdf&Open=True> (accessed 4 December 2023).

<sup>66</sup> Scientific Advisory Board on Agricultural Policy, Food and Consumer Health Protection at the Federal Ministry of Food and Agriculture (BMEL), *New Due Diligence Obligations for Companies in the Agri-Food Sector*, Expert report (Berlin, December 2023), 206ff., [https://www.bmel.de/SharedDocs/Downloads/EN/\\_Ministry/New-due-diligence-obligation-for-companies.html](https://www.bmel.de/SharedDocs/Downloads/EN/_Ministry/New-due-diligence-obligation-for-companies.html) (accessed 31 July 2024).

<sup>67</sup> United Nations Human Rights Office of the High Commissioner (OHCHR), *Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework* (New York and Geneva: United Nations, 2011), [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf) (accessed 25 July 2024).

<sup>68</sup> Details to different elements of different due diligence approaches in: Scientific Advisory Board BMEL, *New Due Diligence Obligations* (see note 66).

All these approaches address the weaknesses mentioned above on enforcing sustainability in bilateral agreements. The starting point is companies in their own regulatory area, i.e. the EU, which can be directly obliged to fulfil requirements. Nevertheless, the effect of the obligations extends internationally along the supply chain to the supplier region and therefore to the trading partner. If a supplier actor or region is deemed too risky to comply with the requirements based on a risk assessment, they can be dropped from the supply chain. International enforcement is therefore based on the fact that access to the sales market is restricted. Despite this possible restriction on sales, these approaches emphasise the need to enable committed actors to maintain international value chain relationships ('stay and behave') instead of withdrawing ('cut and run'). In addition to the far-reaching enforcement power of due diligence concepts, they also offer protection and compensation if obligations are breached, e.g. environmental remediation in the event of environmental damage.<sup>69</sup>

The recently introduced EU initiatives cover these general modules in different ways:

The *EU Directive on corporate sustainability due diligence (EUCSDDD)*, which came into force in July 2024, primarily contains human rights and labour law requirements and a few environmental references, mostly with a reference to labour protection. Compensation for harmed persons and the rectification of environmental damage are foreseen. The trilogue procedure between the Commission, EU Parliament and Council of Ministers lasted from autumn 2023 to spring 2024 and led to numerous renegotiations. Germany's abstention was joined by other member states, making it uncertain at times whether the qualified majority of votes required for adoption would be achieved. Despite initial resistance, civil liability for breaches of due diligence obligations was agreed, which applies to those companies that fall within the scope of the directive. In return, the previously defined risk sectors to which stricter obligations were to apply (such as agriculture) were removed. The size of the obligated companies was also increased so that fewer companies are affected than originally intended. The financial sector is temporarily excluded; its potential inclusion will be decided at a later date. The directive is to be implemented from 2027 in stages according to company size, and should be fully implemented by 2029. Member state regulations that have already come into force, such as the "Devoir de vigilance" in France since 2017 or the Supply Chain Due Diligence Act (LkSG) in Germany since 2021, must be adapted as national transpositions of the directive. A currently proposed Omnibus regulation foresees to integrate and simplify parallel existing provisions of the EUCSDDD, and other reporting acts like the Corporate Sustainability Reporting Directive and the EU taxonomy for sustainable activities.<sup>70</sup> The proposal of end February 2025 focusses now on the largest companies only and aims to limit the trickle-down effects for small companies within the chain. As well the hard-fought liability rule has been abolished: The current provisions on civil liability in the CSDDD will be deleted. Instead, the Commission wants to shift civil liability to the respective national law of the Member States. The entry into application will be postponed by one year.

The *EU regulation on deforestation-free products (EUDR)* aims to ensure deforestation-free supply chains and has been in force since 2023. Originally, it was to be implemented in stages depending on firm size starting in late 2024. Following a recently adopted postponement, its implementation has been delayed by one year to the end of 2025. The regulation initially applies to seven products: Wood, cocoa, coffee, rubber, oil palm, soy and cattle, as well as products made from these, such as beef or paper. Importing and processing companies in the EU will be required to demonstrate that these imported products have been grown or reared (in the case of cattle and beef) on land that has been deforestation-free since 31 December 2020 (zero deforestation). This constitutes differently from the EUCSDDD a duty to succeed. The proof of deforestation must go back to a very small area of 0.5 hectares (geolocation). In animal husbandry, individual labelling of the animals is required to record the entire cycle of husbandry on potentially differing areas. In contrast to the EUCSDDD, labour and human rights criteria play only a minor role.

The EUDR regulations apply equally within the EU and to sales outside the EU and, hence, to exports. In contrast to the EUCSDDD regulations, they apply to all companies, regardless of size. However, the requirements differ for various market participants such as importers or distributors and for smaller companies. Furthermore, a country or regional risk benchmark is provided. The respective risk class results in different levels of due diligence and

<sup>69</sup> Ibid.

<sup>70</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements*, (Brussels: 26 February 2025, [https://finance.ec.europa.eu/document/download/29624c4a-94e1-4b47-b798-db7883f79c87\\_en?file-name=proposal-postponing-requirements-csrd-transposition-deadline-application-csddd\\_en.pdf](https://finance.ec.europa.eu/document/download/29624c4a-94e1-4b47-b798-db7883f79c87_en?file-name=proposal-postponing-requirements-csrd-transposition-deadline-application-csddd_en.pdf) (accessed 4 March 2025)).

inspection frequencies. Three foreseen risk classes are to be based on historical deforestation rates in the regions, but can also take other criteria into account. These can be a company's own protection regulations or existing sustainability partnerships with the EU. However, no finally exclusive list of criteria has been drawn up. This intended benchmarking system of individual countries has sparked political conflicts and final classification is still pending.<sup>71</sup> In the course of the EU debate on postponing the application of the regulation, a further zero risk category was proposed. Countries that would have been placed in this category would not have been subject to any obligations. However, this substantive change was rejected in the final decision on the postponement.<sup>72</sup>

In the event of violations of the duty of care, sanctions such as fines can be imposed, participation in public tenders for the company in question can be stopped and the products in question can be confiscated at the border. The latter is a kind of import ban as a particularly strict enforcement instrument. Unlike the EUCSDDD, the EUDR includes no compensation for damages.

In October 2024, the European Commission proposed postponing the start of implementation of the EUDR by at least one year due to major international and European resistance. The Council of Ministers and the new European Parliament (which had even proposed a postponement of two years) finally agreed to this postponement without any further changes to the content.

Similar to the EU trade agreements, hardly any incentives are used in the EU's due diligence approaches. In principle, under the EUDR, existing forest protection regulations on the partner side or already established forest protection partnerships with the EU can be taken into account as criteria for classifying countries in risk categories. The incentive for achieving a low-risk classification lies in simplified due diligence requirements for companies and less frequent inspections.

Other unilateral approaches recognise incentives in the form of trade facilitation measures for exports: according to the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, voluntary FLEGT partnerships can accompany the previous EU Timber Regulation (EUTR), which is being replaced by the EUDR. These partnerships Other unilateral approaches recognise incentives in the form of trade facilitation measures for exports, with presently seven countries, not only offer incentives for exporters in the country of origin, but also for importers in the EU, who no longer need to provide cumbersome proof that certain regulations have been complied with for each imported batch of a product. Instead, proof of origin from a FLEGT partner country will suffice. However, prerequisite is that partner countries commit to setting up a control system in accordance with the EU's requirements. In addition to making things easier for exporters and importers, it is also hoped that this will provide an impetus for better and more effective regulation in the countries of origin. So far, only Indonesia has been able to fulfil the EU criteria, which makes it easier to import timber into the EU.<sup>73</sup>

Flexibility for amendments is inherent in the EUDR, but as a step-by-step extension approach in the sense that additional products and ecosystems can be included in the obligations on the basis of impact analyses.

Most of the EU's unilateral sustainability measures focus on imports or sales as non-compliance with sustainability requirements restricts market access. The size and attractiveness of the EU market are therefore decisive for the impact of the measures, which, in line with the so-called Brussels effect, lead to trading partners complying with the standards out of economic interest.

Conversely, the requirements for EU exports have so far generally only concerned a few, very specific products and uses, such as products with military or medical applications. In the meantime, sustainability-related applications of export requirements are being debated or proposed, particularly in relation to animal husbandry or pesticide exports (see Annex 3, page 42f).

<sup>71</sup> Helen Bellfield, Osvaldo Pereira, Toby Gardner and Jane Siqueira Lino, *Risk Benchmarking for the EU Deforestation Regulation: Key Principles and Recommendations*, Policy Briefing (Stockholm Environment Institute [SEI] and Global Canopy, August 2023), <https://globalcanopy.org/insights/publication/risk-benchmarking-for-the-eu-deforestation-regulation-key-principles-and-recommendations/> (accessed 24 July 2024).

<sup>72</sup> Therese Meitinger, "Einigung zur EUDR: EU-Entwaldungsverordnung wird verschoben", *Logistik heute* (online), 4 December 2024, <https://logistik-heute.de/news/einigung-zur-eudr-eu-entwaldungsverordnung-wird-verschoben-187321.html> (accessed 12 December 2024).

<sup>73</sup> Publications Office of the European Union, "Licensing Scheme for Timber Imports into the EU. Summary of the document: Regulation (EC) No 2173/2005 establishing a FLEGT licensing scheme for timber imports", 11 September 2019, <https://eur-lex.europa.eu/DE/legal-content/summary/licensing-system-for-imports-of-timber-to-the-eu.html> (accessed 21 August 2023).

## Criticism from trading partners

Many of the EU's trading partners are heavily criticising these new unilateral sustainability approaches, initiating WTO complaints and threatening to break off trade negotiations:<sup>74</sup>

In 2020 and 2021, Indonesia and Malaysia complained to the WTO that the EU had categorised palm oil as a high-risk product in RED II. This meant that palm oil could no longer be sold in the EU with the favourable "sustainable" certificate. The recent ruling by the WTO panel in the Malaysia case does not represent a fundamental rejection of the EU approach, but it does call for an improvement in certification and its implementation.<sup>75</sup> The decision on Indonesia's parallelly launched complaint, similarly, found that while the EU's Indirect Land Use Change (ILUC)-risk cap and phase-out is principally in line with WTO law, it needs to be amended to guarantee indiscriminate application.<sup>76</sup>

India has threatened to file a WTO complaint against the EU's CBAM<sup>77</sup> and occasionally has announced its intention to introduce its own CO<sub>2</sub> border adjustment system.

Brazil also criticised the EUDR together with countries of the global South. The group of countries sent open letters to the EU and the WTO in 2022.<sup>78</sup> At the same time, a draft law on "environmental reciprocity" was presented in Brazil in May 2023, according to which imports from countries with lower environmental standards would be penalised – provided these countries used their own unilateral environmental restrictions under trade policy. Together with Australia, Brazil criticised the European mapping of existing forest areas, foreseen as basis for the applicable EUDR obligations.<sup>79</sup>

All Mercosur countries claimed a series of demands linked to the negotiation of a trade agreement. The EU-Mercosur agreement had been finalised in 2019, shortly before the EU decided on its unilateral approaches and as well submitted an additional declaration to the original agreement's text in spring 2023. This intended to tighten sanctions for violating sustainability provisions. Prior to the signing of the agreement, originally planned for December 2023, the Mercosur states worked towards linking the unilateral commitments more closely to the trade agreement. In particular, they called for a general waiver of sanctions in the agreement as well as EU support for the implementation of unilateral measures. They also called for an unspecified compensation mechanism for the fact that these measures reduce the benefits of the concessions agreed in the agreement. On 6 December 2024, a trade agreement was politically agreed that includes some of these demands in an annex to the previous sustainability chapter of the 2019 agreement text (see Box 3, page 33).

The USA, together with other countries, criticised the EU's recent tightening of maximum residue levels for neonicotinoids on the basis of environmental rather than purely health-related arguments at the WTO.<sup>80</sup> American players in the wood and paper industry also called for postponing the implementation of the EUDR.<sup>81</sup>

<sup>74</sup> Scientific Advisory Board BMEL, *New Due Diligence Obligations* (see note 66)

<sup>75</sup> EC, DG Trade, "WTO Rules on Renewable Energy Dispute", Brussels, 5 March 2024, [https://policy.trade.ec.europa.eu/news/wto-rules-renewable-energy-dispute-2024-03-05\\_en](https://policy.trade.ec.europa.eu/news/wto-rules-renewable-energy-dispute-2024-03-05_en) (accessed 24 July 2024).

<sup>76</sup> WTO, *European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels*, Dispute Settlement DS593, 4 October 2024, [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds593\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm) (accessed 24 July 2024).

<sup>77</sup> Euractiv and Reuters, "India Plans to Challenge EU Carbon Tax at WTO", *Euractiv*, 17 May 2023, <https://www.euractiv.com/section/emissions-trading-scheme/news/india-plans-to-challenge-eu-carbon-tax-at-wto/> (accessed 21 November 2023).

<sup>78</sup> WTO, Committee on Agriculture, *Joint Letter: European Union Proposal for a Regulation on Deforestation-Free Products*, 29 November 2022, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/AG/GEN213.pdf&Open=True> (accessed 21 November 2023).

<sup>79</sup> Andy Bounds and Alice Hancock, "EU's Use of Incorrect Deforestation Data 'Risks Blocking Imports'", *Financial Times*, 16 July 2024, <https://www.ft.com/content/ab2aabb-8978-444b-844b-3d0d70553266> (accessed 31 July 2024).

<sup>80</sup> WTO, *Specific Trade Concern 534* (see note 65).

<sup>81</sup> "EUDR: US-Regierung bittet EU-Kommission um Verschiebung der Entwaldungsverordnung", *EUWID Papier und Zellstoff*, 1 July 2024, <https://www.euwid-papier.de/news/unternehmen/eudr-us-regierung-bittet-eu-kommission-um-verschiebung-der-entwaldungsverordnung-010724/> (accessed 24 July 2024).

Criticism also grew within the EU: in the summer of 2024, German Agriculture Minister Cem Özdemir, with the support of Federal Chancellor Olaf Scholz, called for a postponement and better preparation for the implementation of the EUDR.<sup>82</sup> For its part, the EU Commission proposed finally such a postponement of one year in October 2024,<sup>83</sup> which, after a number of conflicts between the EU institutions, was finally agreed in mid-December 2024, shortly before the originally planned start of implementation.<sup>84</sup>

Concludingly, the criticism voiced by many countries is, on the one hand, expressed as an accusation that unilateral measures by the EU would violate WTO regulations and express a neocolonialist dominance, while, on the other hand, emphasising feared trade disadvantages.

## Room for manoeuvre and limits, WTO and the Brussels effect

The EU's new unilateral approaches make up for the shortcomings of trade agreements, for example in the enforcement and implementation of sustainability provisions and in protecting against or compensating for damages due to violations. However, international legislation and real market developments also determine whether these positive effects of the unilateral measures can materialise at all:

The WTO's basic rules for avoiding arbitrary restrictions on trade are the most-favoured-nation principle (Art. I GATT) and the principle of national treatment (Art. III GATT). The former states that identical imported products must be treated equally despite their different origins, for example with regard to standards or customs duties. The latter means that imports and thus exporting actors must not be burdened more heavily by taxes and regulations than domestic producers, i.e. domestic market protection should not be pursued.

The WTO rules nevertheless recognise exceptions to the principle of open trade that allow unilateral trade restrictions: For example, the general prohibition of quantitative restrictions (Article XI GATT) allows for temporary quantitative export restrictions in the event of supply shortages, especially for food products. There are further exceptions for the environmental objective of protecting endangered species or the human rights-related objective of public order (Art. XX GATT). Previous rulings in WTO disputes emphasise that respective trade restrictions are permissible if they are justified as necessary.<sup>85</sup> The WTO national security clause (Art. XXI GATT) expresses another strongly political defence-related exception for trade restrictions. It was used as an argument in the case of the US protective tariffs on steel in 2018.<sup>86</sup>

Another justification for unilateral approaches concerns agreements with economically weak countries. Under these asymmetric trade regimes, unilateral tariff concessions are possible that are granted in a development policy context without reciprocity being required through a counter-offer by the partner side, as is usually the case.<sup>87</sup>

Other recognised reasons for unilateral trade restrictions are protection of human, animal and plant health: According to the WTO Agreement on Sanitary and Phytosanitary Measures (SPS), import bans are possible if jointly agreed international standards are violated. As a rule, this refers to standards directly related to products, such as MRLs. The GATT principles of equal treatment of like products (Art. III) and most-favoured-nation treatment (Art. I) can be applied to these.

<sup>82</sup> "Özdemir fordert Verschiebung der EU-Entwaldungsverordnung", *Lebensmittel Zeitung* (online), 13 September 2024, <https://www.lebensmittelzeitung.net/politik/nachrichten/umstrittenes-gesetzesvorhaben-oezdemir-fordert-verschiebung-der-eu-entwaldungsverordnung-179839> (accessed 24 September 2024).

<sup>83</sup> EC, "Commission Strengthens Support for EU Deforestation Regulation Implementation and Proposes Extra 12 Months of Phasing-in Time, Responding to Calls by Global Partners", press release (Brussels, 2 October 2024), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_5009](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5009) (accessed 21 November 2024).

<sup>84</sup> BMEL, "Özdemir: Verschiebung der EUDR endlich geschafft", Meldung, 17 December 2024, <https://www.bmel.de/SharedDocs/Meldungen/DE/Presse/2024/241217-verschiebung-eudr.html> (accessed 20 December 2024).

<sup>85</sup> WTO, "Environmental Disputes in GATT/WTO", n.d., [https://www.wto.org/english/tratop\\_e/envir\\_e/edis00\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/edis00_e.htm) (accessed 21 November 2023); Joost Pauwelyn, "Human Rights in WTO Dispute Settlement", *Human Rights and International Trade*, ed. Thomas Cottier, Joost Pauwelyn and Elisabeth Bürgi (Oxford: Oxford University Press, 2005), 206-31, doi: 10.1093/acprof:oso/9780199285822.003.0010.

<sup>86</sup> Bettina Rudloff, *Yes, He Can: Trump Provokes a Trade War*, SWP Comment 2018/C 29 (Berlin: Stiftung Wissenschaft und Politik, 19 July 2018) <https://www.swp-berlin.org/publikation/yes-he-can-trump-provokes-a-trade-war> (accessed 18 February 2025).

<sup>87</sup> WTO, "Main Legal Provisions", n.d., [https://www.wto.org/english/tratop\\_e/devel\\_e/d2legl\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/d2legl_e.htm) (accessed 21 November 2023).

It is difficult to judge in advance whether the EU's due diligence obligations are compatible with WTO rules. Previous assessments of trade-related measures and panel rulings on this question emphasise that the underlying reasons for protection must be clearly defined and that most-favoured-nation treatment and national treatment must be observed.<sup>88</sup> The EU is endeavouring to achieve national treatment in its due diligence obligations by ensuring that the regulations for imports apply equally to intra-European production and to exports from the EU.

However, it is not only trade law principles that determine the limits of unilateral measures. Real economic developments influence the efficacy of such measures. The decisive factor is the importance of the actor implementing unilateral measures as a sales market. For the EU, the so-called 'Brussels effect' describes the attractiveness of its internal market. The EU sales market while important in absolute terms, is still diminishing in significance over time (see Annex 1 and 2, page 40f): In terms of trade in goods, Europe's global market share fell by 3 per cent between 2005 and 2023, similar to that of Japan and the US. Conversely, China India, and Mercosur's global market shares have increased, albeit in some cases at a low level. The EU has also become less attractive as a bilateral trading partner over time. The importance of the EU as a buyer for traditionally dominant bilateral supplier countries such as Switzerland, Türkiye, Mercosur and the United Kingdom has declined in trade of goods. However, the EU has become slightly more important as a sales market for US and Canadian exports over time. In trade in services it is currently maintaining its global market share, but is also losing importance as a consumer in bilateral trade.

Offsetting the risk of losing importance in trade is at the centre of numerous EU political initiatives and recommendations, particularly on European competitiveness, such as the recent Draghi Report and the Competitiveness Compass.<sup>89</sup> In terms of sustainability, such a potential loss of importance can reduce the leverage effect for enforcing sustainability through sales requirements. The EU must therefore identify alternatives to purely trade-related solutions to achieve sustainability goals with its trading partners.

## Synopsis: Pros and Cons of unilateral approaches on sustainability

In principle, trade theory pursues open trade – i.e. the abolition of any restrictions of either a bilateral or unilateral nature – to maximise welfare for all parties involved.<sup>90</sup>

Nevertheless, trade theory also recognises exceptions to this, such as optimal tariffs or temporary tariffs to protect newly raising industries ("infant industry") from external competition. This can increase welfare for the individual country.<sup>91</sup> Furthermore, sustainability-related trade restrictions have a welfare-enhancing effect if they compensate for market failure. This is the case, for example, when imported products trigger externalities such as health or environmental impacts during consumption.<sup>92</sup> However, trade restrictions themselves can also lead to external effects if they cause production or exports to be shifted to other markets. This can increase environmental pollution in other places or concentrate it elsewhere (leakages, pollution oases).<sup>93</sup>

<sup>88</sup> Clémentine Baldon and Nikos Braoudakis, "Imported Products, Pesticides, and the Environment: The Compatibility of 'Mirror Measures' with WTO Rules", *Global Trade and Customs Journal* 16, no. 9 (2021): 459-66, <https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/16.9/GTCJ2021051> (accessed 21 November 2023).

<sup>89</sup> EC, *The Future of European Competitiveness. Part A. A Competitiveness Strategy for Europe*, Report of Mario Draghi, September 2024, [https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961\\_en](https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en) (accessed 24 September 2024); *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. A Competitiveness Compass for the EU* (Brussels: European Commission, 29 January 2025) [https://commission.europa.eu/document/download/10017eb1-4722-4333-add2-e0ed18105a34\\_en](https://commission.europa.eu/document/download/10017eb1-4722-4333-add2-e0ed18105a34_en) (both accessed 18 February 2025).

<sup>90</sup> Devashish Mitra, "Political Economy of Trade Policy," in idem, *The Political Economy of Trade Policy. Theory, Evidence and Applications* (World Scientific Publishing Company, 2016), 239-54, doi: 10.1142/9789814569156\_0013; Meredith Kolsky Lewis, "The Prisoners' Dilemma Posed by Free Trade Agreements: Can Open Access Provisions Provide an Escape?" *Chicago Journal of International Law* 11, no. 2 (2011), <https://chicagounbound.uchicago.edu/cjil/vol11/iss2/24/> (accessed 21 August 2023).

<sup>91</sup> Friedrich List, *Das nationale System der politischen Ökonomie* (Stuttgart and Tübingen, 1841).

<sup>92</sup> Charles S. Pearson, ed, *Multinational Corporations, Environment and the Third World: Business Matters* (Durham, NC: Duke University Press in Co-operation with the World Resources Institute, 1987), 295ff.; William J. Baumol and Wallace E. Oates, *The Theory of Environmental Policy* (Cambridge: Cambridge University Press, 1988); Scott Barrett, "Strategic Environmental Policy and International Trade," *Journal of Public Economics* 54, no. 3 (1994): 325-38.

<sup>93</sup> Pearson, ed., *Multinational Corporations, Environment and the Third World* (see note 93).

In theory, unilateralism is mainly analysed in comparison to multilateralism and understood as a first-best solution. However, there are hardly any analyses in comparison to bilateral trade agreements. The following summary of the advantages and disadvantages of unilateral sustainability measures compared to bilateral trade agreements (TSD chapter) is therefore based on plausibility considerations. It takes into account the dimensions of effectiveness, coordination costs, welfare and external dynamics (see Table 1, page 24):

There are *several advantages* for the country applying unilateral measures. A The initial advantage is the overall greater leverage, as bilateral agreements only cover around 20 per cent of EU trade.<sup>94</sup> A comparatively strong enforcement of sustainability is possible. Corresponding due diligence laws, for example, are explicitly aimed at actors in their own regulatory area (e.g. in the EU), over which, in contrast to international actors, there is legal recourse. As well there is no need for complex negotiations with the trading partner with possibly other interests. This allows greater consideration to be given to national or European resistance. If many unilateral approaches from different countries exist side by side, competition for the best approach may promote effectiveness. The international harmonisation of divergent standards would presumably be advantageous for many trade players, as the implementation costs would fall for both the exporting and the controlling players. If, through imitation, certain regulations of one actor become established, this actor can gain first-mover advantages and political leadership as a standard setter. If the measure internalizes externalities, additionally welfare increases. In principle, unilateral sustainability measures are consistent with the Tinbergen rule, according to which approaches that focus on a single objective are superior to those that attempt to achieve multiple objectives simultaneously.<sup>95</sup> Accordingly, sustainability-specific unilateral approaches may be better suited to achieving sustainability than addressing it in agreements that focus primarily on bilateral trade.

*Disadvantages of unilateral measures* do not only exist on the part of the partner who is affected by the measure but was not involved in its creation. The actor implementing the measure can also fail to achieve the intended increase in sustainability. This may be the case if the principle of subsidiarity and, consequently, local circumstances on the partner side are not taken into account. Unilateral measures can as well lead to leakage effects through trade diversion, which in regard to global environmental issues such as the climate effect, can even increase global environmental damages. A large number of different unilateral approaches side by side increases implementation costs for producers and traders. This may not only reduce acceptance on the partner side for these (and other) cooperation approaches or trade agreements, but also burden importers in the country using the measure. Compensation claims by the trading partner can also provoke resistance to further cooperation or trade agreements in the country that introduced the measure. If trade diversion occurs because other sales markets are sought, this can not only lead to general sustainability risks, but also to welfare losses due to declining imports. Finally, reactive measures by partners are conceivable, conflicts may arise at WTO level and they lose interest in concluding a bilateral agreement.

The advantages and disadvantages of unilateral sustainability measures cover very different dimensions that can hardly be aggregated and which are weighted differently across countries. Moreover, current EU trade policy is not characterised by the clear dichotomy of using either only unilateral or only bilateral approaches on sustainability. The EU rather makes use of both approaches simultaneously. Its unilateral approaches principally apply to all countries. It has concluded trade agreements with sustainability provisions with some countries, while trade agreements are still being negotiated with others. With still others there is no agreement. This results in a very individualised picture of possible advantages and disadvantages for each partner, which must be taken into account.

<sup>94</sup> Gonciarz / Verbeet, *Significance of Most-Favoured-Nation Terms* (see note 20)

<sup>95</sup> Detlef Lorenz, "Zur Krise des Liberalisierungshandels: Aussenwirtschaft", *Wirtschaftsdienst* 58, no. 6 (1978): 282–86.

**Table 1****Pros and cons of unilateral approaches on sustainability compared to bilateral TSD chapters**

Dimension	Pros of unilateralism	Cons of unilateralism
Effectiveness for sustainability goal	<ul style="list-style-type: none"> <li>■ Strong implementation of the sustainability target possible</li> <li>■ Competition of diverging systems</li> </ul>	<ul style="list-style-type: none"> <li>■ Sustainability jeopardised by not considering subsidiarity in different local circumstances</li> <li>■ Sustainability jeopardised by leakage effects</li> </ul>
Coordination costs	<ul style="list-style-type: none"> <li>■ Faster decision-making</li> <li>■ Focus on internal consideration and compensation of interests possible</li> </ul>	<ul style="list-style-type: none"> <li>■ Less external acceptance on the partner side due to loss of sovereignty</li> <li>■ Less internal acceptance by the actor levying the measure if the partner demands compensation</li> </ul>
Welfare	<ul style="list-style-type: none"> <li>■ Welfare maximisation through Tinbergen rule</li> <li>■ In case of import-dependent externality, the linked loss is offset</li> <li>■ In case of harmonization reduced coordination costs and by imitation first-mover advantage possible</li> </ul>	<ul style="list-style-type: none"> <li>■ Losses in case of trade diversion by partner side</li> <li>■ Increase in transaction costs due to different unilateral measures</li> <li>■ Less acceptance of new trade agreements (which potentially increases welfare)</li> </ul>
External dynamics	<ul style="list-style-type: none"> <li>■ Political leadership as a standard setter</li> </ul>	<ul style="list-style-type: none"> <li>■ Trade conflict from reactive unilateralism</li> <li>■ Loss of attractiveness as a partner for new trade agreements</li> </ul>

Source: Own compilation.



# Good partnership: criteria and existing options

The EU is striving for stronger international enforcement of its sustainability goals. Bilaterally, it is trying to achieve this in agreements through greater sanctionability and greater protection against rule violations. Unilaterally, it is using due diligence to enforce sustainability as well internationally along supply chains with the help of companies. However, this new level of enforcement could not only impair the success of trade agreements that the EU is increasingly targeting for geopolitical reasons – the measures used are also limited in their impact on sustainability and could even jeopardise it. In addition, their trade-based logic makes their impact dependent on the volume of trade. Trade volumes, however, can change over time for a variety of reasons. In addition, sustainability measures potentially trigger trade diversion from partners.

As described above (page 14ff), sanctions and safeguard measures in bilateral trade agreements only have a limited impact on sustainability. This is due to the fact that both instruments are based on the idea that damage from rule violations can be expressed in terms of the trade volume affected. As next step compensation measures are intended to offset the competitive damage suffered by the compliant actor. The agreement between the USA and Canada and Mexico, for example, provides for tariff compensation, which is staggered according to the severity and frequency of violation. In a similar way, the rebalancing mechanism works as envisaged in the agreement between the EU and the UK.<sup>96</sup> However, the damage to sustainability itself cannot be measured in this way. On the contrary: sanctions can even have a negative impact on sustainability, e.g. if the sanctioning of a labour law violation leads to job losses because a tariff increase (i.e. the sanction) weakens a labour-relevant sector.<sup>97</sup>

Similarly, the effectiveness of unilateral approaches to achieving sustainability is also limited, for example if the volume of bilateral trade between the trading parties involved declines. From the EU's perspective, its trade relevance for others determines the Brussels effect and thus the lever for ensuring that partners fulfil their requirements. If trade relations shift towards other sales markets, this effect is reduced.

In addition, all measures based on trade flows, both bilateral and unilateral, can themselves harbour risks for sustainability through leakage effects. In this context, trade diversion, which focusses on other sales markets, may lead to greater sustainability risks than linked to previous trade with the EU. In addition, entirely different sustainability goals may be jeopardised than those originally addressed by the approaches. In the case of unilateral due diligence obligations, for example, there is a development-related sustainability risk that small suppliers from the Global South, which may not be able to document deforestation-free requirements, fall out of the supply chain and lose their income base as a result.<sup>98</sup>

<sup>96</sup> David A. Gantz, *The U.S.-Mexico-Canada Agreement: Labor Rights and Environmental Protection*, Baker Institute Report, no. 06.13.19 (Houston, TX: Rice University's Baker Institute for Public Policy, June 2019), <https://www.bakerinstitute.org/research/protecting-labor-rights-and-environment-under-usmca> (accessed 21 November 2023).

<sup>97</sup> Paolo Mazzotti, *Stepping Up the Enforcement of Trade and Sustainable Development Chapters in the European Union's Free Trade Agreements: Reconsidering the Debate on Sanctions* (Vienna: European Law Institute [ELI], 2021), [https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/YLA\\_Award/Submission\\_ELI\\_Young\\_Lawyers\\_Award\\_Paolo\\_Mazzotti\\_2021.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/YLA_Award/Submission_ELI_Young_Lawyers_Award_Paolo_Mazzotti_2021.pdf) (accessed 25 July 2024).

<sup>98</sup> Alla Jacques Kirioua and Michael Brüntrup, *EU Regulation on Deforestation. Unintended Risks for Smallholders in the Global South? Example of the Cocoa Sector in Côte d'Ivoire*, The Current Column (Bonn: German Institute of Development and Sustainability [IDOS], August 2023), <https://www.idos-research.de/en/the-current-column/article/unintended-risks-for-smallholder-in-the-global-south-example-of-the-cocoa-sector-in-cote-divoire/> (accessed 8 December 2023).

Due to these inherent limits to the effectiveness of existing unilateral and bilateral approaches, other paths to sustainability should be sought. Such new approaches are not only relevant for the current geopolitical goal of concluding further trade agreements and overcoming existing blockades caused by the unilateral measures that hinder negotiations with partners.

The sustainability goals themselves also require alternatives in order to be achieved in a stable manner: Supposedly enforceable approaches that depend on trade flows are subject to fluctuations, which also makes potential sustainability volatile.

## Criteria for a good partnership

Theories of international relations, economic and game theory concepts see partnership as a type of relationship that is characterised by commonality and cooperation in contrast rivalry.<sup>99</sup> According to these theories, the key to a good partnership is that all partners involved are able to realise gains through cooperation.<sup>100</sup> Partnership is also understood as the result of an explicit and planned process and not as a spontaneously occurring event. A frequently stated prerequisite is that both sides utilise joint resources for the process leading up to the partnership.<sup>101</sup>

The EU utilises many approaches that it at least explicitly describes as partnerships: It has a long tradition of partnerships in development policy that rely on support concepts. This support can take the form of direct transfers or tariff reductions, as in the preferential agreements of the GSP.<sup>102</sup> Technical assistance in trade policy is common as an “aid for trade” concept, for example to support developing countries in implementing trade regulations in general or in complying with sustainability regulations.<sup>103</sup> Raw materials partnerships, on the other hand, are intended to secure the EU’s own supply of raw materials in order to support the objectives of the Green Deal and the associated green transformation.

In 2022, the EU Commission presented a reform project on how the topic of sustainability in trade agreements and TSD chapters can be improved. Accordingly, an evaluation of the TSD chapters is to be published in spring 2025. As stated by the review, partnerships play a crucial role in this context and will be strengthened. To this end, coordination between bilateral trade agreements and unilateral sustainability approaches will be improved. Furthermore, the review emphasises the importance of positive measures through incentives and support. The review defines sanctions – at least rhetorically – being regarded as a last resort.<sup>104</sup>

For the concrete organisation of the partnerships, it can be important to agree on individual roadmaps for each country that regulate how the sustainability goals listed in the TSD chapters can be implemented. In doing so, it is important to take into account the partner’s priorities when it comes to sustainability. A similar approach can be seen in the European Strategy for Economic Security of 2023: Here, the EU mentions partnerships with as many partners as possible as a goal and identifies (potential) partners being either like-minded or showing a willingness to cooperate – which deserves support – as a prerequisite for this goal.

Bilateral trade agreements and due diligence obligations as a unilateral measure offer various options for partnership. So far, however, they have mostly been used separately and are usually not interlinked.

<sup>99</sup> Lucyna Czechowska, “The Concept of Strategic Partnership as an Input in the Modern Alliance Theory,” *The Copernicus Journal of Political Studies* 4, no. 2 (2013): 36-51, [https://repozytorium.umk.pl/bitstream/handle/item/1889/The\\_concept\\_of\\_strategic\\_partnership\\_as\\_an\\_input\\_in\\_the\\_modern\\_alliance\\_theory.pdf](https://repozytorium.umk.pl/bitstream/handle/item/1889/The_concept_of_strategic_partnership_as_an_input_in_the_modern_alliance_theory.pdf) (accessed 21 August 2023); Ronald W. McQuaid, “The Theory of Partnership. Why Have Partnerships?”, *Public-Private Partnerships. Theory and Practice in International Perspective*, ed. Stephen P. Osborne (London and New York: Routledge, 2000), 9-35.

<sup>100</sup> Maureen Mackintosh, “Partnership: Issues of Policy and Negotiation,” *The Journal of the Local Economy Policy Unit* 7, no. 3 (1992): 210-24, doi: 10.1080/02690949208726149.

<sup>101</sup> McQuaid, “The Theory of Partnership” (see note 99).

<sup>102</sup> Sebastian Steingass, Maurizio Carbone and Pascaline Winand, “The European Union and the Evolving Requirements of International Development: Aid, Policies, Partnerships”, *Global Affairs* 7, no. 4 (2021): 425-36, doi: 10.1080/23340460.2021.1999174.

<sup>103</sup> EC, DG International Partnerships, *EU Aid for Trade. Progress Report 2022* (Luxembourg: Publications Office of the European Union, 2023), <https://data.europa.eu/doi/10.2841/005862> (accessed 22 November 2023).

<sup>104</sup> EC, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The Power of Trade Partnerships: Together for Green and Just Economic Growth*, COM(2022) 409 final (Brussels, 22 June 2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0409> (accessed 2 December 2024).

## Partnership options in bilateral trade agreements

The negotiation process means that trade agreements are designed per se for exchange with the partner side – at least at government level. The outcome of negotiations reflects the balance of interests and needs achieved on both sides. Specific options for partnerships arise – and differ – depending on the phase in of negotiations (see Table 2, page 31):

Prior to starting and during a negotiation process partnership takes place primarily through dialogue between government representatives. However, government delegations and -trips can bring together as well representatives of societal interests from both sides. Irrespective of formally starting negotiations, a joint exchange body can create trust and raise awareness of mutual interests and concerns. Examples include the EU-US Trade and Technology Council (TTC), which has provided the key platform for transatlantic dialogue on trade issues since 2021 following the failure of the TTIP negotiations, and a similar council between the EU and India, which was established in parallel with the negotiations for a new trade agreement that began in 2022.<sup>105</sup>

Since 1999, Sustainable Impact Assessments (SIAs) have been required before negotiations begin, so-called ex-ante SIAs, which are carried out by European services or by scientific institutions following tenders.<sup>106</sup> They are intended to evaluate the likely effects of an envisaged trade agreement, but also to identify specific starting points to increase positive and reduce negative effects. In principle, such potential improvements can still be incorporated into the negotiations. Regarding agricultural trade in particular, assessments of simultaneous cumulative trade and welfare effects of all EU agreements currently in force have recently been carried out.<sup>107</sup>

SIAs are often criticised regarding their differences, resulting from diverging foci of the analyses, meaning that the estimated impact of different agreements can only be compared with difficulty. Furthermore, SIAs often employ quantitative economic modelling, which capture the effects on sustainability only to a limited extent. Moreover, this economic modelling is usually done for the large-scale national level, while many sustainability impacts tend to occur locally. Various effects for sustainability are better determined using qualitative analysis methods such as surveys to, e.g. measure potential social effects of an agreement. Moreover, the ex-ante assessment sometimes takes place too late to actually initiate improvements in ongoing negotiations. For instance, the SIA on the Mercosur agreement was criticised for being published six months after the political agreement was announced in 2019.<sup>108</sup>

After an agreement is concluded still changes by joint amendments are possible: declarations or protocols can supplement finally negotiated agreements. This happened, for example, in case of the trade agreement with Canada in order to incorporate the precautionary principle – an important element for the EU. Concerning the EU-Mercosur agreement, following the political agreement in 2019, negotiations were held on such an additional declaration proposed by the EU. This was only proposed in 2023, i.e. long time after the end of negotiations. The proposed declaration called for the strengthening of forest and climate protection. Some of these EU demands, as well as counter-demands from the Mercosur side, were later included in the new political agreement of December 2024. Such additional declarations are often criticised by the European Parliament, which is not involved in the process leading up to their decision. Furthermore, the status such protocols under international law is unclear. Politically, however, they symbolise the willingness of both sides to work in partnership to change the content of the agreement, particularly on conflict issues.<sup>109</sup> In addition to these jointly decided declarations or protocols, legal scrubbing, usually a formality,

<sup>105</sup> European Commission, “EU-US Trade and Technology Council addresses common challenges and responds to global crises”, press release (Washington, DC, 5 December 2022), [https://ec.europa.eu/commission/presscorner/detail/de/ip\\_22\\_7433](https://ec.europa.eu/commission/presscorner/detail/de/ip_22_7433) (accessed 21 August 2023).

<sup>106</sup> Eline Blot, *Reflections on the New Approach to the TSD Chapters for Greener Trade* (Brussels: Institute for European Environmental Policy [IEEP], February 2023), <https://ieep.eu/publications/reflections-on-the-new-approach-to-the-tds-chapters-for-greener-trade/> (accessed 21 August 2023).

<sup>107</sup> Emanuele Ferrari et al, *Cumulative Economic Impact of Upcoming Trade Agreements on EU Agriculture. 2024 Update*, Report (Luxembourg: Publications Office of the European Union, 2024), <https://publications.jrc.ec.europa.eu/repository/handle/JRC135540> (accessed 2 December 2024).

<sup>108</sup> Thomas Dauphin and Mathilde Dupré, *The European Commission’s Trade Sustainability Impact Assessments: A Critical Review*, Report (Paris: Veblen Institute for Economic Reforms and Hamburg: Greenpeace, May 2022), [https://www.veblen-institute.org/IMG/pdf/ec\\_trade-sia\\_may\\_2022.pdf](https://www.veblen-institute.org/IMG/pdf/ec_trade-sia_may_2022.pdf) (accessed 25 July 2024).

<sup>109</sup> Christina Eckes and Roda Verheyen, *Kann das EU-Mercosur-Abkommen durch eine Zusatzklärung gerettet werden?*, Rechtsgutachten; Summary by Ludwig Essig (Munich: Umweltinstitut München, April 2023), [https://umweltinstitut.org/wp-content/uploads/2023/05/Zusammenfassung\\_Rechtsgutachten\\_Mercosur\\_Umweltinstitut.pdf](https://umweltinstitut.org/wp-content/uploads/2023/05/Zusammenfassung_Rechtsgutachten_Mercosur_Umweltinstitut.pdf) (accessed 21 November 2023).

can be used to make changes to the content. This was for example done in the agreement with Canada to adapt investment protection provisions, which were strongly disputed on the EU side.<sup>110</sup> Last but not least, jointly agreed amendments to the original agreement may become necessary when new partners join. This was the case when Ecuador joined the EU's trade agreement with Colombia and Peru in 2017, which had already been in place since 2013.

The following procedures and formats have been established for subsequent amendments to trade agreements:

- An overarching trade committee set up under the agreement initially serves as the institution for amending agreements or for exchanging information. It can amend annexes and protocols, which are then implemented in accordance with national procedures.<sup>111</sup> There are also chapter-specific committees dealing with individual chapters. They monitor their implementation, check whether changes are necessary, investigate conflicts, regulate cooperation with civil society and generally facilitate dialogue. So-called domestic advisory groups (DAGs) provide their opinion specifically on the TSD chapters. Even if they are not jointly composed, there are joint meetings of the DAGs on each partner side. A joint civil society forum is held once a year for each agreement.<sup>112</sup> Other exchange formats are often organised on a topic-specific basis, such as the technical working group on animal welfare or sustainable food systems.
- There are also various review mechanisms that can form the basis for changes to be initiated: Review clauses determine when an agreement is to be reviewed, which can lead to changes or modernization, as was the case with the trade agreement between the EU and Chile in 2023. However, according to an analysis by the European Parliament's Research Service, only 12 per cent of all EU international agreements including FTAs have such clauses. More recent EU FTAs increasingly contain special thematic review clauses, such as on gender equality (with Chile) or sustainability (with Japan). However, none of these review options include an automatic amendment mechanism that would respond to identified implementation deficits. Consultation clauses commit to regular dialogues or trigger them at the request of a partner. They are often intended for the dispute settlement procedure in agreements.<sup>113</sup>
- Ex-post impact assessments analyse impacts after an agreement has entered into force and can provide impetus for changes and thus supplement review clauses. In particular, they are meant to further capture unintended effects, such as sustainability risks for smallholder farmers, which were not foreseeable at the time of the negotiations.
- There are also other common ways of supporting TSD chapters, such as jointly developed guidelines for implementing them. As a pilot project, a "Handbook of Implementation" was developed jointly with Ecuador on the initiative of Sweden for the agreement between the EU and the Andean region.<sup>114</sup> It provides for different local social actors to be more closely involved in the implementation of sustainability issues.

<sup>110</sup> Axel Berger and Henning Klodt, *CETA und die Reform des Investitionsschutzes: Frischer Wind oder laues Lüftchen?* Die aktuelle Kolumne (Bonn: Deutsches Institut für Entwicklungspolitik [DIE], 7 March 2016), <https://www.idos-research.de/die-aktuelle-kolumne/article/ceta-und-die-reform-des-investitionsschutzes-frischer-wind-oder-laues-lueftchen/> (accessed 21 November 2023).

<sup>111</sup> It is often not clearly regulated which own institutions (including the European Parliament) are to be involved. See Peter-Tobias Stoll, Till Patrik Holterhus and Henner Gött, *Die geplante Regulierungszusammenarbeit zwischen der Europäischen Union und Kanada sowie den USA nach den Entwürfen von CETA und TTIP*, Rechtsgutachten (Arbeiterkammer Vienna, June 2015), [https://www.arbeiterkammer.at/in-fopool/wien/Regulierungszusammenarbeit\\_ttip\\_ceta.pdf](https://www.arbeiterkammer.at/in-fopool/wien/Regulierungszusammenarbeit_ttip_ceta.pdf) (accessed 21 November 2023).

<sup>112</sup> Deborah Martens, Diana Potjomkina and Jan Orbie, *Domestic Advisory Groups in EU Trade Agreements. Stuck at the Bottom or Moving Up the Ladder?* Study (Berlin: FES, November 2020), <https://library.fes.de/pdf-files/iez/17135.pdf> (accessed 26 July 2024).

<sup>113</sup> Milan Remáč, *International Agreements – Review and Monitoring Clauses. A Rolling Check-List*, Study (EPRS, October 2019), [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/631768/EPRS\\_STU\(2019\)631768\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/631768/EPRS_STU(2019)631768_EN.pdf) (accessed 21 August 2023).

<sup>114</sup> National Board of Trade Sweden, *TSD Handbook. Implementation of the Chapter on Trade and Sustainable Development in the Trade Agreement between EU and Ecuador* (Stockholm, August 2019), <https://www.kommerskollegium.se/globalassets/publikationer/guider/2019/handbook-tsd-en.pdf> (accessed 26 July 2024).

## Box 2: Explicit partnership in EU due diligence approaches

### EU regulation for deforestation-free products (EUDR)<sup>115</sup>

#### Article 30

- Commission's strategic framework planned for international cooperation with third countries, various Union instruments to be mobilised for co-operation
- Cooperation with other consumer countries with the aim of jointly reducing deforestation and protecting a level playing field

#### Article 29

- For the risk classification of countries and regions (benchmark), other criteria can be taken into account in addition to deforestation, such as national commitment to forest protection and existing forest protection partnerships with the EU
- Special dialogue sought by the Commission with countries classified as high-risk
- Categorisation as a high-risk country must be notified with an invitation to provide information for improvement

### EU directive on corporate sustainability due diligence (EUCSDDD)<sup>116</sup>

#### Paragraph 72

- Possible use of neighbourhood instruments, including trade agreements, to support third countries and upstream economic operators
- Working with partner country governments, the local private sector and stakeholders to address root causes of adverse human rights and environmental impacts

#### Article 20

- Accompanying measures by Member States, in particular to support small and medium-sized enterprises (SMEs), including in third countries; support from the Commission is possible for this purpose

#### Articles 21 and 28

- Intra-European Central helpdesk for the exchange of information between participating authorities
- Mutual (official) assistance

## Partnership options in unilateral due diligence initiatives

Unlike trade agreements, unilateral measures offer hardly any exchange in the phase of their creation and conclusion; partnership in this context focuses instead on the phase after the measures enter into force. The major aim here is to enable the partner to implement the measures that were previously defined unilaterally by the EU. The interests, concerns or own implementation ideas of the partners are only taken into account to a limited extent.

The existing EU due diligence approaches contain various options for partnerships especially with partner countries as countries of origin for supply. Various stakeholders such as manufacturers or authorities involved in monitoring compliance with the requirements can be taken into account. In some cases, partnership options only apply to actors within the EU (see Box 2, page 29).

In addition to these formats explicitly designed for the new due diligence approaches, the EU also uses general formats for the dialogue with civil society. Stakeholders from third countries can also get involved here (see Table 2, page 31).

- Consultations are planned for each new legislative procedure. In the case of EUDR and EUCSDDD, there were comparatively many responses, with 1 million and 500,000<sup>117</sup> respectively – although only a third of them came from abroad.

<sup>115</sup> "Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 concerning the making available on the Union market of certain raw materials and products associated with deforestation and forest degradation and their export from the Union", in Official Journal of the European Union, 9.6.2023.

<sup>116</sup> Source: "Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on due diligence obligations of companies with regard to sustainability", in: Official Journal of the European Union, 5 July 2024.

<sup>117</sup> European Commission, "Deforestation and forest degradation – reducing the impact of products placed on the EU market", Consultation (Brussels, 3 September 2020–10 December 2020), [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12137-Minimising-the-risk-of-deforestation-and-forest-degradation-associated-with-products-placed-on-the-EU-market/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12137-Minimising-the-risk-of-deforestation-and-forest-degradation-associated-with-products-placed-on-the-EU-market/public-consultation_en); idem.,

- Other exchange and dialogue formats are used in individual sectors, for example as part of the EU’s Cocoa Alliance. Since 2020, timetables for a sustainable cocoa sector have been developed in multi-stakeholder discussions with Côte d’Ivoire, Cameroon and Ghana to prepare the three countries to fulfil the upcoming requirements of the EUDR and the EUCSDDD.<sup>118</sup> A Joint task force between the EU, Indonesia and Malaysia was created in response to criticism of the EU’s classification of palm oil as a high-risk product. It also provides a framework for dialogue on the implementation of the EUDR.<sup>119</sup>
- Various forms of financial and technical assistance, such as in the Cocoa Initiative, support implementing the EU’s unilateral measures. One often addressed objective is to support traceability. This is a key component for due diligence initiatives, for example to prove the absence of deforestation. The EU therefore offers support in this area through various initiatives, including the Sustainable Agriculture for Forest Ecosystems (SAFE) project. Participating countries include Brazil, Indonesia, Democratic Republic of Congo, Vietnam.<sup>120</sup>
- Recognising existing solutions and experiences on the partner side is not only an expression of respect for the experience of other countries. It can also promote effectiveness. Sustainability problems often arise locally and can therefore be tackled more effectively locally than through an externally imposed solution. With this in mind, the CBAM aims to consider trading partners’ own systems or pricing mechanisms for cooperation agreements with the EU, but without specifying the exact objective and form of such cooperation.<sup>121</sup> According to the EUDR, a trading partner’s own forest protection measures can be “taken into account” when categorising a country or region in a risk class. This can be existing forest protection partnerships with the EU. However, the criteria to be taken into account for the classification have not yet been finalised (see Box 2, page 29).

“Sustainable corporate governance”, Consultation (Brussels, 26 October 2020–8 February 2021), [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation_en) (accessed 26 July 2024).

<sup>118</sup> EC, “The Sustainable Cocoa Initiative”, n.d., [https://international-partnerships.ec.europa.eu/policies/programming/programmes/sustainable-cocoa-initiative\\_en](https://international-partnerships.ec.europa.eu/policies/programming/programmes/sustainable-cocoa-initiative_en) (accessed 23 July 2024).

<sup>119</sup> DG Environment, “The European Commission, Indonesia, and Malaysia Agree to a Joint Task Force to Implement the EU Deforestation Regulation”, 29 June 2023, [https://environment.ec.europa.eu/news/european-commission-indonesia-and-malaysia-agree-joint-task-force-implement-eu-deforestation-2023-06-29\\_en](https://environment.ec.europa.eu/news/european-commission-indonesia-and-malaysia-agree-joint-task-force-implement-eu-deforestation-2023-06-29_en) (accessed 21 August 2023).

<sup>120</sup> “Sustainable Agriculture for Forest Ecosystems (SAFE)”, n.d., <https://zerodeforestationhub.eu/projects/safe/> (accessed 26 July 2024).

<sup>121</sup> “Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 Establishing a Carbon Border Adjustment Mechanism”, *Official Journal of the European Union*, 16 May 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0956> (accessed 21 August 2023).

**Table 2****Partnership options in trade agreements and in unilateral due diligence approaches of the EU towards supply partners**

Bilateral trade agreements		Unilateral due diligence approaches	
Ex ante: Partnership decisions before finalising the regime			
Procedure	Content	Procedure	Content
<ul style="list-style-type: none"> <li>■ Possible immanent balancing of interests negotiated</li> <li>■ Preliminary dialogue formats and travel</li> <li>■ Joint exchange bodies such as trade and technology councils</li> <li>■ Adapting content following ex ante impact assessment</li> </ul>	<ul style="list-style-type: none"> <li>■ Coverage and enforcement of sustainability (sanctions)</li> <li>■ Market access and -protection</li> <li>■ Mechanism to compensate for competitive damage</li> <li>■ Support for implementing sustainability</li> </ul>	<ul style="list-style-type: none"> <li>■ Few options prior start of and during the process</li> <li>■ General consultation formats</li> </ul>	<ul style="list-style-type: none"> <li>■ Consultation procedure</li> <li>■ Considering sustainability partnerships with the EU and own sustainability approaches to determine duties and control frequency (EUDR risk classification)</li> </ul>
Ex post: Partnership decisions after finalisation of the regulations			
Procedure	Content	Procedure	Content
<ul style="list-style-type: none"> <li>■ Amending declarations and protocols</li> <li>■ Adjustment during the legal scrubbing</li> <li>■ Joint committees</li> <li>■ Review and consultation clauses</li> <li>■ Joint meetings and exchange of civil society organisations (DAGs)</li> <li>■ Common guidelines for implementation (“handbooks”)</li> <li>■ Possible adjustment after ex-post impact assessment</li> </ul>	<ul style="list-style-type: none"> <li>■ Amendment of agreed content (see above)</li> </ul>	<ul style="list-style-type: none"> <li>■ Changeable risk classification (EUDR)</li> </ul>	<ul style="list-style-type: none"> <li>■ Adjustment after impact analyses</li> <li>■ Support for implementation, including through trade agreements</li> <li>■ Incentive system: better risk classification (EUDR risk classification)</li> </ul>

Source: Own compilation.

The partnership options presented in unilateral due diligence obligations and bilateral trade agreements described in the previous chapter relate to partners that are representing supplying regions (see Table 2, page 31). However, some of the existing options for unilateral action also concern alternative partnership types for another type of partner: These are other importing countries that compete with the EU as a sales region. These countries can jeopardise the EU's sustainability efforts by triggering trade diversion given their less stringent sustainability requirements. Accordingly, exporting countries may sell to them instead of to the EU. Beyond a competitive disadvantage for the EU, this could result in a leakage effect. To this extent, deforestation would continue, albeit in connection with exports to markets other than the EU.

Cooperation with these importing countries to align previously divergent sustainability requirements can help to avoid these risks. This can also have benefits for supplying countries, as a diffusion of standards reduces the compliance costs caused by different unilateral regulations. This in turn increases welfare and can reduce opposition to such measures. The G7 launched such a cooperation initiative in 2022 by initiating an inventory of existing due diligence obligations of its members relevant to the agricultural sector, carried out by the OECD.<sup>122</sup> This may serve as a first step for further aligning the approaches. The EUDR also explicitly mentions the goal of cooperation with other consumer countries (see Box 2, page 29).

## Interlinking bilateral and unilateral approaches

Despite the different and isolated decision-making processes of trade agreements and unilateral approaches, both have a simultaneous impact on the export opportunities of partner countries. However, there is no systematic partnership model for this impact that adequately takes this simultaneity into account. This contrasts the review of the TSD chapters in 2022, which emphasises the aim of better linking the approaches. The EUCSDDD hints at that linkage by mentioning trade agreements as one approach to supporting their implementation (see Box 2, page 29).

In October 2024, the EU Commission published the long-awaited strategic framework for cooperation with third countries in the context of the EUDR. It emphasises the importance of partnerships and supports continuous dialogue and greater coherence with other EU policy areas. It highlights trade agreements, but only as an exchange platform for unilateral approaches, without outlining concrete possibilities for closer integration.<sup>123</sup> However, the EU-Mercosur political agreement reached in December 2024 shows the first explicit link to unilateral measures, which could serve as a model for further agreements (see Box 3, page 33, Part 3).

<sup>122</sup> *Pathways Towards Sustainable Food Systems in Times of Crises. G7 Agriculture Ministers' Communiqué* (Berlin, 14 May 2022), <https://www.g7germany.de/resource/blob/997532/2040144/8bd6097641a2c66114d95a2615c4d01d/2022-05-16-g7-agrarminister-eng-data.pdf?download=1> (accessed 21 August 2023).

<sup>123</sup> EC, "Communication from the Commission on the Strategic Framework for International Cooperation Engagement in the Context of Regulation (EU) 2023/1115", C(2024) 7028 final, Annex (Brussels, 2 October 2024), [https://green-business.ec.europa.eu/document/download/98053bb7-bb73-4157-bf35-a9ffa35e2ee2\\_en?filename=Annex%20to%20Communication%20Strategic%20Framework%20for%20International%20Cooperation%20EUDR.pdf](https://green-business.ec.europa.eu/document/download/98053bb7-bb73-4157-bf35-a9ffa35e2ee2_en?filename=Annex%20to%20Communication%20Strategic%20Framework%20for%20International%20Cooperation%20EUDR.pdf) (accessed 11 October 2024).



### **Box 3: Sustainability provisions in the political agreement on the EU-Mercosur trade agreement of December 2024<sup>124</sup>**

#### **(1) Stricter climate commitment: climate article**

- Article XX (2) and (3): United Nations Framework Convention on Climate Change (UNFCCC) and Paris Climate Agreement as essential elements
- Article XY: in case of violation, appropriate measures up to and including suspension of the agreement possible

#### **(2) Rebalancing: “Rebalancing Mechanism” in the dispute resolution chapter**

- Article XX (1): Balance of concessions of the Agreement shall be maintained
- Article XX (4): Balance relates to allegation by a party that a measure nullifies benefits

#### **(3) Linkage with unilateral approaches, incentives and mutual recognition: Annex to the TSD chapter**

- Point 16: Avoiding deforestation and strengthening reforestation from 2030 onward
- Paragraph 40: Regularly review the list of Mercosur products that contribute to forest conservation and the protection of sensitive ecosystems. Create additional market access to the EU for these products or other incentives to promote their trade. The list is to be jointly defined one year after entry into force

- Paragraph 41: Measures to be reviewed regularly (e.g. more market access) to facilitate trade in goods and services that contribute to the low-resource and low-carbon economy
- Point 56a: Favourable consideration of this agreement for risk classification (i.e. in accordance with Art. 29 EUDR)
- Paragraph 56b and c: Existing official systems on the Mercosur side for monitoring, documentation and traceability should be taken into account in order to demonstrate compliance with EU requirements. In the event of deviations, the EU should take into account additional explanatory information from the Mercosur side
- Paragraph 57: At the request of the competent authorities of Mercosur countries, the EU will support independent assessments of traceability or certification systems and other officially recognised systems for their compliance with the requirements

## **References to trade in unilateral approaches**

In order to promote and successfully ensure compliance with unilateral sustainability requirements, it is conceivable to incentivise trade negotiations that have been initiated or concluded. For instance, in its current version, the EUDR lists existing bilateral forest agreements with the EU as a soft criterion for improved risk classification. It would be a possibility to extend this criterion explicitly to the trade agreement’s conclusion or to its specific sustainability provisions. For example, this could apply in the form of particularly stringent rules such as sanctions. Such an extension could justify a better risk classification, as was recently made possible for the first time in the political agreement on a text for the EU-Mercosur agreement. This could then spark the geostrategic momentum necessary for revitalised trade negotiations. In addition, existing unilateral support approaches should be coordinated with those in trade agreements. The same applies to impact analyses. The analyses provided for in the EUDR, for example, require trade diversion to be recorded. These analyses could be expanded to address how trade effects may vary depending on different individual agreements.

<sup>124</sup> European Commission, “EU-Mercosur: Text of the Agreement” (online, accessed 19 December 2024).

## References to unilateral requirements in trade agreements

Conversely, bilateral trade agreements can also integrate unilateral sustainability requirements. Support for implementing the latter can be combined with support that is already agreed upon in individual chapters of a trade agreement, such as the chapter on sustainable food systems. In addition, all other modules in agreements that consider partner interests (see Table 2, page 31) can, in principle, be linked to unilateral requirements:

- Unilateral sustainability provisions could be understood as a sanctions option accompanying an agreement as they can achieve comparatively strong enforcement of many provisions similar to a TSD chapter. This would allow agreements to forgo sanctions, but they would still be possible if both partners chose to adopt them. If sanctions have already been agreed upon in existing agreements, such as those with New Zealand or Kenya, they could result in a favourable risk classification under the EUDR.
- Furthermore, facilitated access to the EU market could be offered on a performance-related basis, i.e. if the due diligence obligations are met. Such market access can also act as a form of reactive compensation if new, stricter unilateral measures limit the partner's export options. To a certain extent, this would serve as a reverse rebalancing. This is provided for in the EU-UK agreement as a form of market protection in case one side suffers a competitive disadvantage because the other side has lowered sustainability standards.
- Conversely, instead of offering more access to one's own market, it would also be conceivable to agree upon stronger protection for their markets with their partners.

However, all of these options influence trade flows and therefore have an impact on countries that are not party to the respective bilateral agreement. In response, said countries could demand or enact measures to protect their markets. In addition, complaints by such states to the WTO are conceivable because, without an existing agreement, they do not benefit from any incentive mechanism for the implementation of unilateral approaches.

Finally, impact assessments of bilateral approaches should be in line with impact assessments of unilateral approaches. They are envisaged for both trade agreements and unilateral measures (e.g. the EUDR), but are carried out separately as part of the respective approach. However, it is recommended that interactions between bilateral and unilateral approaches are explicitly recorded. In addition, these analyses should be carried out jointly by both partners. The same applies to involving civil society. Here too, existing forms of cooperation could be utilised jointly.

# Strategic partnerships for trade and sustainability in concrete terms

In principle, the EU can and should utilise all existing partnership options that can be found in unilateral and bilateral approaches (see Table 2, page 31). However, these various options should be utilised in such a way that they suit the respective partner. To this end, it is sensible to analyse the individual trade policy relationship between the EU and its partner, the potential of the relationship, and the relationship's vulnerabilities. Trade-related factors and the interests of both sides should be incorporated into a corresponding profile. In particular, the impact of the EU's unilateral approaches on bilateral trade flows is relevant, as this currently represents a decisive conflict parameter in trade relations with the EU. At the same time, these effects can also be an incentive to improve partnerships.

Partnership options in unilateral measures are applicable to any partner. The scope for partnership in trade agreements depends on the status of negotiations, including the absence of negotiations to date.

If the EU intends to reorient its trade partnerships, it should also incorporate improvements to the present partnership concepts. This should entail positive incentives and an improved integration of unilateral and bilateral approaches, including the partnership options contained therein.

## Mapping individual partnership profiles

The EU and its trading partners are characterised by different initial conditions in trade in general and in their mutual trade relations. These influence their respective interests and sensitivities, especially in view of the new unilateral approaches to sustainability, the current point of contention. In order to sound out the options for partnership (see page 27ff. and 29ff.) in specific constellations, a systematic characterisation of the respective partner relationship is helpful.

There are various approaches to such characterization, which use different parameters depending on the objective. The International Trade Centre (ITC), for example, has developed an interactive map that records each product covered by the EUDR, individually focussing on economic and trade aspects. The ITC considers the extent to which the partner side is affected by the EUDR regulation across each of the seven EUDR-relevant product groups individually and their overall importance for the partner. It also lists the relevance of a partner for the import of these products into the EU. In addition to this trade relevance, Zinngrebe et al. (2024) cover the importance of bilateral trade flows for the EUDR's envisaged goal of zero deforestation.<sup>125</sup>

<sup>125</sup> International Trade Centre (ITC), "The EU Regulation on Deforestation-free Products. Which Trade Flows Could Be Affected?" Spotlight, November 2023, <https://tradebriefs.intracen.org/2023/11/spotlight> (accessed 23 December 2024); Yves Zinngrebe et al, "Prioritizing Partners and Products for the Sustainability of the EU's Agri-food Trade", *One Earth* 7, no. 4 (2024): 674-86.

This study focuses on the connection between trade and partnership. Annex 4 (page 44f.) provides an example how to systematise possible parameters to create a map for individual partnerships. ITC parameters were adapted for this purpose and additional dimensions were added:<sup>126</sup>

- Using the EUDR as an example, the “*effect of unilateral measures*” records the size of the export flows of all covered products affected by the EU measure and their economic importance from the perspective of the trading partners (columns 1 and 2). The EU side is also taken into account, namely the relevance of the affected trade flows for its own market (column 3).<sup>127</sup>
- The “*incentives for partnership*” collect other relevant parameters from both, the perspective of the partner and of the EU beyond those trade flows directly affected by unilateral measures.
- Finally, the “*stability of the bilateral relationship*” reflects existing conflicts and cooperation in the individual partnerships.

These dimensions are presented below as examples for seven partners (and regions) differing in numerous aspects including economic growth, income status, and trade agreement status. To this extent, some are covered by existing trade agreements or regimes with the EU or are actively negotiating them, while others are not.

The impact of the EU’s unilateral actions on the trading partner is illustrated by the share of affected export flows. In the case of the EUDR, the affected export flows are (so far) limited to seven products (and some defined products made from them) covered by the regulation. In the case of the EUCSDDD, which horizontally affects supply chains across all sectors and is not limited to specific products, export flows are touched sector wide.

The case of Ethiopia serves as an example for large effects at the partner side. Presently, 32 percent of the country’s coffee exports go to the EU, which therefore represents a dominant sales market for Ethiopian coffee. Additionally, coffee is a key export product for Ethiopia, as around 41 per cent of the country’s total export revenue derives from coffee exports (see Annex 4, page 44). This impact dimension illustrates that Ethiopia will be strongly affected by the EUDR because the EU is a large sales market for Ethiopian coffee. Moreover, coffee proves crucial for Ethiopian exports. However, from an EU perspective, such imports represent barely 2 per cent of total coffee imports and therefore play only a minor role for the EU.

But even in such cases, a partnership is in the EU’s own trade and sustainability interest, as significant impacts may lead the partner to look for other markets and allies. For Mercosur countries, for example, China, their own regional market or Egypt are alternative options for exporting products falling under the EUDR (Annex 4, page 44, “Negative factors” column). On the other hand, alternative trade shifts can often threaten sustainability goals due to leakage effects. Moreover, the EU’s own welfare could decline if its imports collapse as a result of trade diversion. Regarding Mercosur, one quarter of soy imports to EU member states currently come from the Mercosur region and thus, a slump in imports is likely to be noticeable. Simultaneously, this expresses the potentially large leverage effect of EU’s consumption on the supply region and thereby on achieving EU sustainability targets along the value chain.

It is not only the EU’s unilateral sustainability measures that create incentives for a partnership on both sides. Partnerships are also attractive beyond those trade flows that are directly affected by these measures. For instance, the EU is seeking access to raw materials that it has identified as critical either for its supply, or as strategically important for climate and economic transformation as described in the Green Deal.<sup>128</sup> For example, such raw materials include nickel from Indonesia. Another strategic consideration may be to recruit labour from the partner country to work in the EU, as the migration agreement with Kenya aims to do (Annex 4, page 44).

Partners have trade interests that are not directly linked to the supply chains affected by the EU’s unilateral approaches, too. For instance, Brazil repeatedly emphasises the importance of technology transfer through trade for its own economic development.

These trade and political factors determine the motivation for (new) partnerships. Their concrete design is influenced by experience with existing relationships between the EU and trading partners as well as the individual

<sup>126</sup> Paul Bochtler and Bettina Rudloff, *Replication Data: Trade Relations with Regard to the Regulation on Deforestation-free Products*, Datenfile Version 1.0.0 (Berlin: Stiftung Wissenschaft und Politik, 2024), doi: 10.7802/2793.

<sup>127</sup> The parameter expresses the share of the respective partner country or partner region in the total imports of EUDR-relevant products into the EU, whereby intra-European trade is also recorded. This recording is defined by the ITC.

<sup>128</sup> Definition at: Council of the EU: “An EU critical raw materials act for the future of EU supply chains”, 12 September 2024, <https://www.consilium.europa.eu/en/infographics/critical-raw-materials/> (accessed 24 September 2024).

interests of both sides. However, such factors can influence the vulnerability of a partnership. These vulnerabilities become increasingly apparent when an EU partner considers export destinations away from the EU. In addition to welfare and leakage risks, this decision harbours risk for the political cooperation stability within the EU. Trade agreements may serve as a formalized and potentially stabilizing framework. In the past, for example, Uruguay has started negotiation contacts with both China and Türkiye. Brazil has criticised these contacts as incompatible with the concept of Mercosur as a regional integration area, which would require joint negotiations with the EU.<sup>129</sup>

If the partner and the EU are already cooperating on several issue areas, then both positive and negative experiences within this cooperation will impact future partnerships. For instance, there have been various disputes between the EU and Indonesia initiated at the WTO. One example is Indonesia's complaint against the EU for classifying palm oil as a high-risk product under RED II. Conversely, the EU has taken Indonesia to court over its export restrictions on nickel.<sup>130</sup> However, such conflict experiences can also be an incentive for further cooperation. The dispute with Malaysia over the classification of palm oil, which has now been decided by the WTO, has led to an ad hoc joint task force between the EU, Malaysia, and Indonesia. This task force is identifying supportive formats for EUDR implementation.

Another example of positive cooperation is the OECD's stocktaking of unilateral sustainability approaches of G7 countries. Moreover, there are other formats of cooperation beyond due diligence approaches. These are evident between the EU and one of the G7 members, the US, which should be followed given the recent period of heightened tensions. This includes the TTC or bilateral agricultural equivalence agreements, for example on veterinary controls during slaughter.<sup>131</sup> The inclusion of already established approaches on the partner side is a constructive building block for future partnerships. They can not only support risk classification (EUDR), but can also be taken into account for due diligence documentation obligations.<sup>132</sup> Brazil, for example, has developed its own data systems for identifying forest areas and deforestation. Brazil also has a participatory certification system for organic agriculture at the local level.<sup>133</sup> The new political consensus on the EU-Mercosur agreement offers opportunities to take account of such existing approaches (see Box 3, page 33).

## Partnership options depending on the agreement status

For the exemplary profiles of the EU's trade policy relations with Mercosur, Indonesia, Canada, Kenya, Ethiopia, the USA, and China shown in Annex 4 (page 44f.), the following partnership options can be derived as examples. They are determined by the status of the agreement:

*Ongoing or not formally finished negotiations*, such as those with Indonesia and Mercosur, show the greatest interaction between bilateral and unilateral approaches. In this constellation, EU partners fearing losses due to the EU due diligence obligations can still negotiate to include provisions in the agreement to offset their effects. For instance, the Mercosur countries reacted to the additional declaration for more enforceable environmental protection in the agreement, proposed by the EU in 2023. Mercosur demanded that sanctions be waived and called for a – at that time not further defined – compensation mechanism. This should ensure that the expected benefits of the negotiated agreement were not nullified by unilateral measures.

<sup>129</sup> "Brazilian Foreign Minister: Uruguay's Agreement with China Would 'Destroy' Mercosur", *Buenos Aires Times*, 23 January 2023, <https://www.batimes.com.ar/news/economy/uruguays-agreement-with-china-would-destroy-mercursos-says-brazilian-foreign-minister.phtml> (accessed 24 September 2024).

<sup>130</sup> EC, "WTO Panel Rules against Indonesia's Export Limitations on Raw Materials", press release (Brussels, 30 November 2022), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7314](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7314) (accessed 24 September 2024).

<sup>131</sup> U.S. Department of Agriculture, "International Trade Policies: European Union", n.d., <https://www.ams.usda.gov/services/organic-certification/international-trade/european-union> (accessed 25 September 2024).

<sup>132</sup> Marcelo Matsumoto, Will Anderson, Katie Reytar and Leonardo Barbosa, "Brazil's Forests are Being Restored – Now We Can See Where" (Washington, DC: World Resources Institute, 10 March 2021), <https://www.wri.org/insights/brazils-forests-are-being-restored-now-we-can-see-where> (accessed 25 September 2024).

<sup>133</sup> Sukanya Das et al, *Enabling Local Governance to Mitigate the Climate and Biodiversity Crises*, T20 Policy Brief (July 2023), <https://t20ind.org/research/enabling-local-governance-to-mitigate-the-climate-and-biodiversity-crises/> (accessed 26 July 2024).

The EU could offer its partner more market access to accommodate such concerns. From Mercosur's point of view, greater access for beef exports would be particularly interesting. But this in turn could lead to resistance within the EU, e.g. by France. In this case, internal compensation within the EU would be conceivable, for example through subsidies of the Common Agricultural Policy (CAP). The most recent political agreement on the trade agreement with the Mercosur countries (see box 3, page 33) provides a list of products from Mercosur. This includes those protecting ecosystems and forests, that are still to be jointly defined and to be given better market access to the EU. The list will presumably also include agricultural products. This type of equalisation mechanism is formulated so openly and as a 'living agreement' that it should facilitate a subsequent joint decision (also within the EU). In addition, very limited additional and new market access for Paraguay has been agreed for pork and biodiesel.<sup>134</sup>

Conversely, it is conceivable to agree on more market protection on the partner side instead of improved market access to the EU. For example, the politically agreed text of the Mercosur agreement now includes an option for market protection on the Mercosur side in the event of rising automotive vehicle imports. This new safeguard seems easier to be implemented than is the case in traditional safeguard clauses.<sup>135</sup>

For Indonesia, EU market access for palm oil is crucial. Following the WTO ruling on the categorisation as a high-risk product in the Malaysian case, the EU will at least have to change the certification requirements justifying a risk classification according to RED.<sup>136</sup> This could facilitate market access for Indonesia in the future. During the negotiation of an EU-Indonesia agreement, it may also play a role if the EU offers support for the EUDR requirements or the possibly adapted RED certification. Easier market access for products other than certified palm oil can also be offered within the negotiations. The EU, in turn, is interested in access to nickel, which could increase its willingness to make its own offers.

If a *trade agreement or unilateral preference scheme is already in force* (Canada, Kenya, Ethiopia), the procedures for amending an adopted agreement come into question. Such amendments could be based on jointly conducted impact assessments. In the case of Canada, it would make sense to expand the process initiated by the G7 to take stock of the different due diligence regulations of all G7 countries. It would also be useful to systematically monitor and record their interactions with existing G7 members' trade agreements. The agreement with Kenya contains sanctionable provisions in the TSD chapter. This enforcement mechanism, which is comparatively strong for an EU free trade agreement, could be taken into account in unilateral approaches and justify a favourable risk classification under the EUDR. A particular difficulty arises for the GSP regime, as this affects a large number of countries that have previously been subject to standardised sustainability requirements. Adjustments for individual countries such as Ethiopia, which may be extremely affected by the EUDR, would put the other GSP-beneficiary countries at a disadvantage. The scope for better trade policy incentives is limited here in any case, as these regimes already offer major tariff concessions, up until complete duty-free treatment. In this case, the options in unilateral approaches are more decisive and can support these countries in implementing unilateral measures. For example, support measures for traceability at small-scale farm level (geolocalisation) are very important.

If there are *no trade agreements* (yet), such as with the USA and China, the options of the unilateral sustainability approaches are also dominant for shaping a partnership. However, improvements should be developed. With the USA in particular, the EU can draw on experience with the mutual recognition of different standards. For example, they could look to the veterinary sector or for organic products. This approach is generally little used and has not yet been mentioned in unilateral requirements such as the EUDR. The difficulty of mutual recognition lies in agreeing on a common sustainability goal as a first step, for which different implementations are then recognised. Nevertheless, it should be explored whether this path between the EU and the USA would be possible for certifying the implementation of EUDR or EUCSDDD requirements. The "Transatlantic Initiative on Sustainable Trade" of the TTC could be utilised for this purpose.

It currently seems unlikely that there will be a new attempt at a comprehensive transatlantic trade agreement. Nevertheless, a transatlantic project to examine the trade effects of unilateral approaches in light of existing trade

<sup>134</sup> EC, "The Upgraded EU-Mercosur Agreement – What Is New Compared to the 2019 Agreement", 10 December 2024, <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/86fb1930-16ed-4ac6-af25-5e0ad0d0c816/details?download=true> (accessed 23 December 2024).

<sup>135</sup> Ibid.

<sup>136</sup> DG Trade, "Renewable Energy Dispute" (see note 75).

agreements of both partners and a potential future joint one would be desirable. The result could be a better understanding of parallel effects in general and be useful for future trade cooperation between these two actors. Such a project could be taken up by the G7 format and also include trade relations and agreements between other member states such as the EU and the UK or Canada.

Cooperation with China is important due to both its role as a trading partner for the EU, and position as an alternative export destination for EU partners. This role gives China influence over how attractive trade agreements with the EU are for partners and how successful a European trade-related sustainability approach can be. Co-operation between the EU and China should aim to reduce the risk of trade diversion and subsequent relocation that (could) result from comparatively easier access conditions to the Chinese market. Low-threshold approaches would be joint impact analyses or research projects on trade effects of sustainability requirements.

These individualisation approaches can have a standardisation effect. Individualised approaches, such as the recent one with Mercosur, may encourage harmonisation, as other trading partners may demand a similar approach. In any case, individualised partnership approaches should be based on general and broader principles of good partnership.

This strategy includes developing a common understanding of sustainability that helps to ensure that sustainability is pursued systematically and independently of changes in trade flows. A common understanding of sustainability is also the basis for accepting different national paths to the same goal, which overall favours effectiveness. Following the EU's traditional political guiding principle of subsidiarity, its international application could help to better achieve sustainability. By applying the principle of subsidiarity, implementation practices are decided on the ground, and are therefore better adapted to local conditions than if they were prescribed externally e.g. by the EU.<sup>137</sup>

One step in this direction would be to review whether and how existing certification systems can be integrated on the partner side. These could be taken into account for the risk classification of the EUDR, and be accepted as proof of compliance with the due diligence obligations of the EUCSDDD. In addition, it could be helpful to draw on Brazil's experience with participative certification. This form of certification could support smallholders and indigenous actors by jointly documenting new unilateral requirements. This reduces both their burden and their risk of being excluded from the supply chain. The political agreement reached in December 2024 on the EU-Mercosur Agreement offers options for recognising existing approaches to protect forest such as those described (see Box 3, page 33).

However, in the latest text version of the EU-Mercosur agreement, which has been politically agreed, the target is still set unilaterally by the EU. This stands in contrast to the usual process of mutual recognition with a common definition of a target. In the spirit of partnership, it should therefore at least be jointly and continuously monitored whether this set goal is being achieved. And this process should be open-ended: If impact assessments show that the EUDR regulations are failing in achieving the target of zero- deforestation for a certain product, this could be removed from the scope of the regulation. The impact analyses foreseen in the EUDR should be in any case conducted jointly.

The EU's operating in a changing geo-economic landscape that requires the union to make new coalitions of partners. The EU's flexibility and willingness to compromise in that process is of the utmost importance. This entails the EU reacting flexibly to changing trade constellations, regardless of whether they change for trade policy, general political or conflict-related reasons.

The EU's willingness to compromise in particular is necessary for future trade agreements, as the difficult EU-Mercosur negotiations have shown. In this context providing incentives instead of sanctions will become important, especially in areas that are often condemned by the partners as highly restrictive and protectionist. This includes access to the European agricultural market and often also the labour market. Here the EU is in the difficult position of having to compensate internally for the resistance of some member states to opening up. However, a lever for successful trade negotiations can also be the counterpart of market access to the EU, i.e. agreed market protection for the partner. But for both dimensions – market access to the EU and market protection on the partner side – the EU will have to make more compromises in order to continue concluding new trade agreements. A first step in this direction was the political agreement reached on the trade agreement between the EU and Mercosur at the end of 2024. This compromise contains both clear offers from the EU and concessions from the Mercosur side.

<sup>137</sup> Martin Scheele, "Raumwirksamkeit der Umweltpolitik als Kriterium subsidiärer Kompetenzverteilung", *Wirtschaftsdienst* 73, no. 8 (1993): 424–30.

# Annex

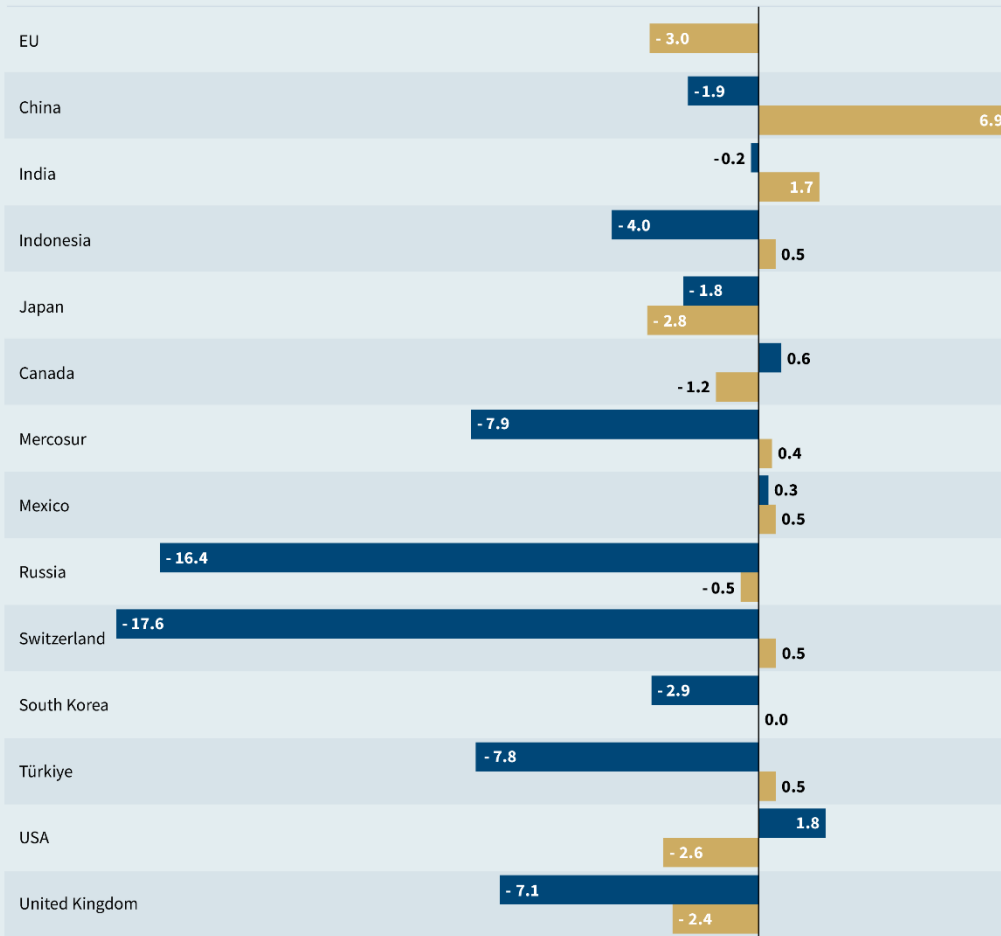
## Annex 1

### Change in the importance of the EU and other players in trade in goods

Change in the value of trade shares 2005 to 2023, in per cent; excluding intra-EU trade

■ Importance of the EU as sales market in the individual bilateral trade

■ Importance of the EU and other players in global trade in goods



Source: International Monetary fund, Direction of Trade Statistics, retrieved: 10.07.2024.

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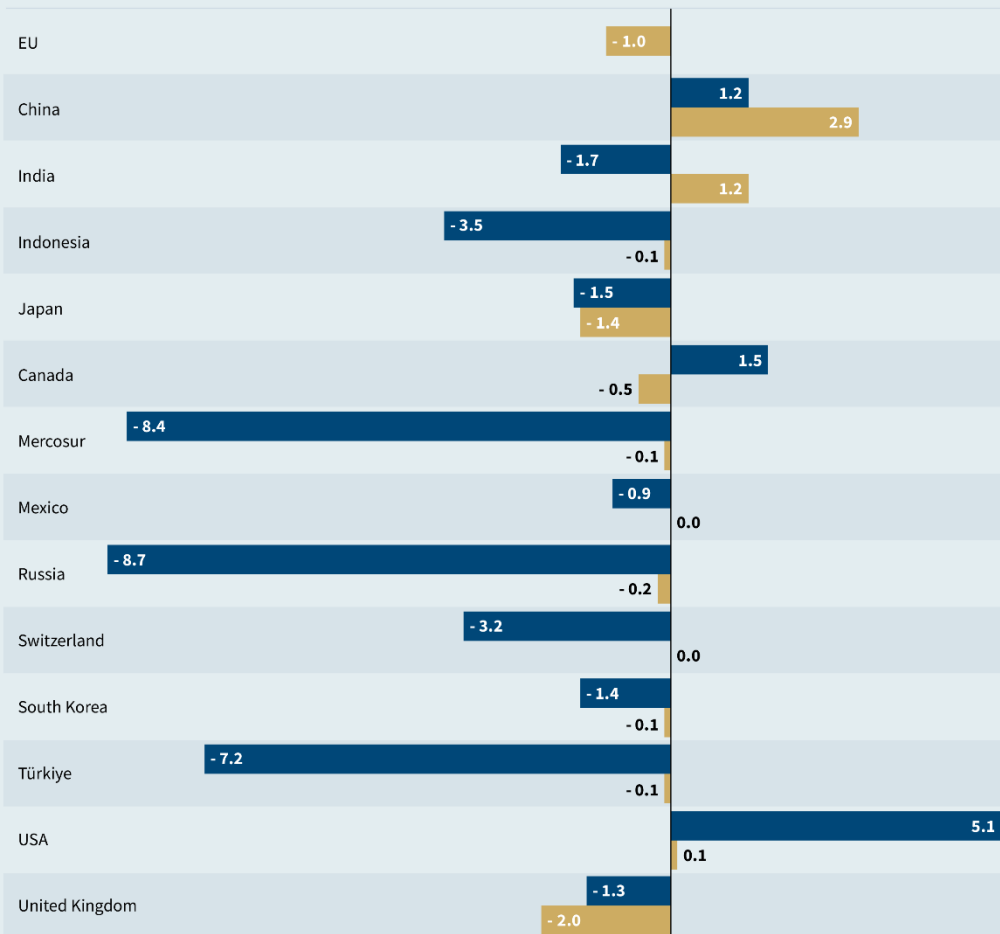
## Annex 2

### Change in the importance of the EU and other players in trade in services

Change in the value of trade shares 2005 to 2021, in per cent; excluding intra-EU trade

■ Importance of the EU as sales market  
in the individual bilateral trade

■ Importance of the EU and other players  
in global trade in services



Source: OECD/WTO, Balanced Trade in Services (BaTIS), retrieved: 11.07.2024.

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### Annex 3

#### Unilateral EU sustainability measures with an impact along international supply chains (selection)

Legal act or proposal	Approach and enforcement mechanism	Year (of entry into force)	Product/Coverage
<b>Import/Sales Approach</b>			
<b>State enforcement</b>			
Generalised scheme of preferences (GSP) of the EU towards developing countries	Conditional tariff preference dependent on ILO, environmental and governance regulations	Since 1970 with adjustments	Depending on the country group <ul style="list-style-type: none"> <li>■ for least developed countries all products except arms</li> <li>■ otherwise up to 75 per cent of the products / tariff lines covered</li> </ul>
EU Renewable Energy Directive (RED)	<ul style="list-style-type: none"> <li>■ Creditability for EU agricultural fuel target in transport as part of greenhouse gas reduction</li> <li>■ Definition of indirect land use change (ILUC) and phase-out for palm oil (D: 2023, EU: 2030)</li> <li>■ Certification including indirect land use</li> </ul>	2009 (currently RED III, 2023)	Agrofuels
EU regulation on illegal, unreported and unregulated (IUU) fishing	<ul style="list-style-type: none"> <li>■ Ban on imports of fish linked to IUU fishing</li> <li>■ Increasingly strict step-by-step measures</li> </ul>		Fish products
EU Timber Regulation (EUTR)	Due diligence to prove legal deforestation	2010/2013 (will be repealed by the EUDR)	Timber
EU seal regulation	Import ban on seal products except for indigenous and personal use	2015	Seal products
EU anti-dumping regulation	Compensatory tariff in the event of dumping (incl. lacking human rights and environmental regulations)	2019	All
EU regulation on the creation of a carbon border adjustment mechanism (CBAM)	Product-related equalisation burden	2023	Sectors in the emissions trading system
EU amending regulation on pesticides MRLs in/on food and feed of plant and animal origin and Commission implementing rules	Import ban if MRLs for neonicotinoid pesticide active substances is exceeded	2023	Certain agricultural products
EU regulation banning products made by forced labour	Import and export ban on products manufactured using forced labour	2024	All
















Annex 3, cont.

Unilateral EU sustainability measures with an impact along international supply chains (selection)

Legal act or proposal	Approach and enforcement mechanism	Year (of entry into force)	Product/Coverage
<b>Import/Sales Approach</b>			
Corporate enforcement: due diligence obligations			
France: Devoir de vigilance	Due diligence obligations, liability	2017	All
Germany: The Act on Corporate Due Diligence Obligations in Supply Chains (Lieferkettensorgfaltspflichtengesetz, LkSG)	Due diligence obligations, public order law	2023	All
EU regulation on Deforestation-free products (EUDR)	Due diligence obligations and country classification	2023	<ul style="list-style-type: none"> <li>■ (So far) 7 products and defined associated (processing) products: soy, cattle, oil palms, cocoa, coffee, wood, rubber</li> <li>■ Progressive approach for possible expansion</li> </ul>
Directive on corporate sustainability due diligence (EUCSDDD)	Due diligence obligations, public order law and liability	2024	All
<b>Export approach</b>			
European Convention for the Protection of Animals during International Transport	Due diligence obligations of the transporter of live animals to third countries	2007	Live animals
Germany: Moratorium on the issuance of veterinary certificates for third-country transport	Withdrawal of veterinary certificates for breeding animals	2023	Live animals
EU regulation on Deforestation-free products (EUDR) (see above)	Application also to EU exports	2024	See above
Adopted EU regulation banning products manufactured using forced labour (see above)	Import and export ban	2024	
Germany: Proposed regulation on an export ban for certain plant protection products	export ban of plant protection products that are banned in the EU to third countries	Not in force; announced 2022, draft available since summer 2023 implementation unclear	Certain active ingredients in selected plant protection products

Source: Own compilation, based on Bettina Rudloff, *Sustainable International Value Chains: The EU's New Due Diligence Approach as Part of a Policy Mix*, Research Division EU/Europe, Working Paper 2 (Berlin: Stiftung Wissenschaft und Politik, June 2022), [https://www.swp-berlin.org/publications/products/arbeitspapiere/Rudloff\\_The\\_EUs\\_new\\_due\\_diligence\\_approach\\_as\\_part\\_of\\_a\\_policy\\_mix\\_WP.pdf](https://www.swp-berlin.org/publications/products/arbeitspapiere/Rudloff_The_EUs_new_due_diligence_approach_as_part_of_a_policy_mix_WP.pdf) (accessed 5 August 2024).

Mapping individual partnerships: Systematization of parameters

Dimensions for partner-profile	1 Effect of unilateral measures The case of the EU Regulation on Deforestation-free Products (EUDR)*		2 Incentives for partnership		3 Stability of the bilateral relation		
	Partner perspective		EU perspective	Partner perspective	EU perspective	Negative factors	Positive factors
	<b>Importance of EU as market</b> Share of EUDR-relevant exports, <i>in per cent</i> <ul style="list-style-type: none"> <li>Exports to EU</li> <li>Exports to other countries</li> </ul>	<b>Importance for export revenues</b> Share of EUDR-relevant product revenue in total global revenue, <i>in per cent</i> <ul style="list-style-type: none"> <li>EUDR-relevant products</li> <li>Other products</li> </ul>	<b>Importance of the partner as supplier</b> Share of EUDR-relevant imports, <i>in per cent</i> <ul style="list-style-type: none"> <li>Imports from partner country</li> <li>Imports from other countries incl. EU-member states</li> </ul>	Other products and trade interests	Access to strategic or critical raw materials, other trade interests	Known conflicts, trade diversion	Existing cooperation
<b>FTA not yet in force / being negotiated</b>							
<b>Mercosur</b>	 15.9 Soy, 14 Cattle, 8.9 Total	 30.9 Soy, 18.7 Cattle, 5.2 Total	 4.3 Soy, 25 Cattle, 8.3 Total	<ul style="list-style-type: none"> <li>Protecting the domestic public procurement market</li> <li>Technology transfer</li> <li>Access to EU agricultural market</li> </ul>	<ul style="list-style-type: none"> <li>Brazil: Niobium, Aluminium</li> </ul>	<ul style="list-style-type: none"> <li>Trade diversion to China, Egypt</li> <li>Negotiation initiatives with China, Türkiye, UAE</li> <li>Brazil: Complaints about EUDR at EU and WTO-level</li> </ul>	<ul style="list-style-type: none"> <li>SAFE-programme as general exchange platform</li> <li>Brazil: SAFE-programme for traceability of beef</li> <li>Anazonia+ programme</li> <li>Own monitoring</li> <li>Participative certification</li> </ul>
<b>Indonesia</b>	 12.4 Soy, 13.8 Cattle, 21.1 Total	 23.8 Soy, 14.1 Cattle, 0.4 Total	 1.6 Soy, 23.5 Cattle, 1.1 Total	<ul style="list-style-type: none"> <li>WTO-disputes: DS 592 Nickel, DS 593 Palm oil</li> </ul>	<ul style="list-style-type: none"> <li>Nickel</li> </ul>	<ul style="list-style-type: none"> <li>Ad hoc joint task-force with Malaysia and EU as dialogue framework for implementing the EUDR</li> <li>FLEGT-partnership</li> </ul>	
<b>Trade regime in force</b>							
<b>Canada</b>	 2.5 Soy, 20.7 Cattle, 1.5 Total	 11.9 Soy, 0.5 Cattle, 9.4 Total	 0.3 Soy, 1.4 Cattle, 0.2 Total		<ul style="list-style-type: none"> <li>Nickel, Coking coal, fertiliser</li> </ul>	<ul style="list-style-type: none"> <li>G7, for instance stocktaking of unilateral measures of individual G7 countries</li> </ul>	
<b>Kenya</b>	 22.1 Soy, 41.5 Cattle, 28.3 Total	 8.7 Soy, 4 Cattle, 0.2 Total	 <0.1 Soy, 0.6 Cattle, <0.1 Total	<ul style="list-style-type: none"> <li>Access to EU labour market</li> <li>Domestic employment</li> </ul>	<ul style="list-style-type: none"> <li>Titanium, Zirconium</li> </ul>	<ul style="list-style-type: none"> <li>Trade diversion to Pakistan, USA, UK, China, Egypt</li> </ul>	<ul style="list-style-type: none"> <li>Climate- and development partnership</li> <li>Migration agreement</li> </ul>
<b>Ethiopia (GSP)</b>	 29.7 Soy, 32 Cattle, 32 Total	 44 Soy, 41.1 Cattle, 41.1 Total	 0.1 Soy, 1.9 Cattle, 1.9 Total		<ul style="list-style-type: none"> <li>Tantalum, Niobium</li> </ul>	<ul style="list-style-type: none"> <li>Trade diversion to Saudi Arabia, USA, Japan</li> </ul>	<ul style="list-style-type: none"> <li>Participation in Compact with Africa</li> </ul>

\* Regulation (EU) 2023/1115, Annex 1. EUDR-relevant are the following seven products: Wood, cocoa, coffee, rubber, oil palm, soya, cattle as well as products derived from them. The percentage figures reflect the weighted average for 2015-2022.  
 FTA: Free Trade Agreements, GSP: Generalised Scheme of Preferences, WTO: World Trade Organisation, SAFE: Sustainable Agriculture for Forest Ecosystems, FLEGT: Forest Law Enforcement, Governance and Trade  
 Source: Own calculations based on ITC, UN Comtrade, COMEXT, 2018-2024  
 For details on the calculation see: <https://doi.org/10.7802/2763>  
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Mapping individual partnerships: Systematization of parameters

Dimensions for partner-profile	1 Effect of unilateral measures The case of the EU Regulation on Deforestation-free Products (EUDR)*		2 Incentives for partnership		3 Stability of the bilateral relation		
	Partner perspective	EU perspective	Partner perspective	EU perspective	Negative factors	Positive factors	
	<b>Importance of EU as market</b> Share of EUDR-relevant exports, <i>in per cent</i> <ul style="list-style-type: none"> <li>Exports to EU</li> <li>Exports to other countries</li> </ul>	<b>Importance for export revenues</b> Share of EUDR-relevant product revenue in total global revenue, <i>in per cent</i> <ul style="list-style-type: none"> <li>EUDR-relevant products</li> <li>Other products</li> </ul>	<b>Importance of the partner as supplier</b> Share of EUDR-relevant imports, <i>in per cent</i> <ul style="list-style-type: none"> <li>Imports from partner country</li> <li>Imports from other countries incl. EU-member states</li> </ul>	Other products and trade interests	Access to strategic or critical raw materials, other trade interests	Existing cooperation	
<b>No FTA in force</b>							
<b>USA</b>	<ul style="list-style-type: none"> <li>8.4 Total</li> <li>8.1 Soy</li> <li>9.5 Wood</li> </ul> <ul style="list-style-type: none"> <li>25.4 Palm oil</li> </ul>	<ul style="list-style-type: none"> <li>5.9 Total</li> <li>2 Soy</li> <li>2.5 Wood</li> </ul> <ul style="list-style-type: none"> <li>0.1 Palm oil</li> </ul>	<ul style="list-style-type: none"> <li>1.9 Total</li> <li>6.7 Soy</li> <li>1.7 Wood</li> </ul> <ul style="list-style-type: none"> <li>1.1 Palm oil</li> </ul>	<ul style="list-style-type: none"> <li>Beryllium, Coking coal, Helium</li> </ul>	<ul style="list-style-type: none"> <li>Criticism of EU's stricter maximum residue levels at the WTO</li> <li>Current de-risking-approaches</li> <li>Conflict regarding WTO reform</li> <li>Increasing tariff barriers under Trump II administration</li> </ul>	<ul style="list-style-type: none"> <li>G7, for instance stockpiling of unilateral measures of all G7 countries</li> <li>Mutual recognition of different standards</li> <li>Trade- and Technology Council between EU and USA (TTC)</li> </ul>	
<b>China</b>	<ul style="list-style-type: none"> <li>15.8 Total</li> <li>47.5 Coffee</li> <li>21.7 Palm oil</li> </ul> <ul style="list-style-type: none"> <li>15.9 Wood</li> <li>15.6 Rubber</li> </ul>	<ul style="list-style-type: none"> <li>4.5 Total</li> <li>&lt;0.1 Coffee</li> <li>&lt;0.1 Palm oil</li> </ul> <ul style="list-style-type: none"> <li>3.7 Wood</li> <li>0.8 Rubber</li> </ul>	<ul style="list-style-type: none"> <li>5.2 Total</li> <li>0.4 Coffee</li> <li>0.5 Palm oil</li> </ul> <ul style="list-style-type: none"> <li>7.3 Wood</li> <li>7.7 Rubber</li> </ul>	<ul style="list-style-type: none"> <li>Graphite, Phosphate Tungsten, Bismuth</li> <li>Agricultural export</li> </ul>	<ul style="list-style-type: none"> <li>Alternative market for many EU-partners</li> <li>Effects of trade-conflict with USA</li> <li>Numerous WTO-conflicts and compensatory measures</li> </ul>		

\*Regulation (EU) 2023/1115, Annex 1. EUDR-relevant are the following seven products: Wood, cocoa, coffee, rubber, oil palm, soya, cattle as well as products derived from them. The percentage figures reflect the weighted average for 2018-2022. FTA: Free Trade Agreements, WTO: World Trade Organisation  
 Source: Own calculations based on ITC, UN Comtrade, COMEXT, 2018-2024. For details on the calculation see: <https://doi.org/10.1892/2193-CC-BY/4.0>

# Abbreviations

ACI	Anti-Coercion Instrument
APS	Generalised system of tariff preferences
BMEL	Federal Ministry of Food and Agriculture
BRICS	Brazil, Russia, India, China and South Africa
Cariforum	Caribbean Forum
CBAM	Carbon Border Adjustment Mechanism
CETA	Comprehensive Economic and Trade Agreement
CO <sub>2</sub>	Carbon dioxide
DAG	Domestic Advisory Group
DG	Directorate-General
EC	European Commission
EPRS	European Parliamentary Research Service
EU	European Union
EUCSDDD	European Directive on corporate sustainability due diligence (2024/1760)
EUDR	European Regulation on Deforestation-free Products (2023/1115)
EUTR	European Timber Regulation
EUWID	European Economic Service
FES	Friedrich Ebert Foundation
FLEGT	Forest Law Enforcement, Governance and Trade
FTA	Free Trade Agreement (see FTA)
G7	Group of Seven (the seven leading Western industrialised countries)
CAP	Common agricultural policy
GATT	General Agreement on Tariffs and Trade
GSP	Generalised Scheme of preferences
ILO	International Labour Organization
ILUC	Indirect Land Use Change
INTA-EP	Committee on International Trade of the European Parliament
ITC	International Trade Centre
IUU	Illegal, unreported and unregulated fishing
SMEs	Small and medium-sized enterprises
LkSG	The Act on Corporate Due Diligence Obligations in Supply Chains (Lieferkettensorgfaltspflichtengesetz, LkSG)
MEA	Multilateral Environmental Agreement
Mercosur	Mercado Común del Sur
MPIA	Multi-Party Interim Appeal Arbitration Arrangement
OECD	Organisation for Economic Co-operation and Development
RED	European Renewable Energy Directive
MRL	Maximum Residue Level
RTA	Regional Trade Agreement
SAFE	Sustainable Agriculture for Forest Ecosystems
SIA	Sustainable Impact Assessment

SPS	Sanitary and phytosanitary measures
T20	Think20 (Engagement Group of the G20)
TSD	Trade and Sustainable Development
TTC	Trade and Technology Council
TTIP	Transatlantic Trade and Investment Partnership
UNFCCC	United Nations Framework Convention on Climate Change
UK	United Kingdom
USA	United States of America
EPA	European Partnership Agreement
WTO	World Trade Organisation

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