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2 Annexes

## **TRADE AND SUSTAINABLE DEVELOPMENT: EFTA'S EXPERIENCE AND OUTLOOK<sup>1</sup>**

### **I. Introduction**

1. In the EFTA States, openness to trade and access to international markets is the basis for economic growth and general welfare. At the same time, the EFTA States apply and actively promote high standards for sustainable development and inclusiveness not only domestically, but also in their respective foreign policies. In fact, free trade and economic growth can contribute to the achievement of their sustainability policies. This experience of the EFTA States is widely shared internationally and the importance of trade as a means to promote sustainable development has been explicitly recognized in relevant international bodies, most recently in the United Nations' 2030 Agenda for Sustainable Development<sup>2</sup> which states that “international trade is an engine for inclusive economic growth and poverty reduction and contributes to the promotion of sustainable development”.

2. The positive contribution of trade to sustainable development is, however, not automatic. It depends on, and is reinforced by, the presence of enabling factors, such as functioning and transparent markets, effective institutions and sound social and environmental policies. In order to fully harness the potential for a positive contribution of international trade to the promotion of sustainable development, there is a need for enhanced policy coherence at the national and international levels.

3. The EFTA States employ a wide variety of instruments to promote sustainable development domestically and worldwide and are undertaking constant efforts to ensure policy coherence among those instruments. With regard to international trade policy, the objective of policy coherence requires it to be closely coordinated with other dimensions of foreign policy, including development cooperation, as well as with domestic policies relevant for sustainable development. In this context, specific trade policy instruments, such as free trade agreements (FTAs), cannot be considered in isolation but must be designed with a view to maximizing their positive and minimizing their possible negative effects on sustainable development.

4. Against this backdrop, and in addition to taking inter alia environmental considerations into account where relevant in provisions throughout the FTA, the EFTA States adopted provisions on trade and sustainable development (TSD) in 2010 and have since then further developed and systematically included them in their FTAs. This report sets out the main elements of the approach EFTA has chosen in this regard and presents the experiences made and results achieved in negotiating these provisions over the last ten years. It also shows how the EFTA TSD provisions relate to other – multilateral and bilateral – instruments and

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<sup>1</sup> This report celebrates 10 years of experience of negotiating and including Chapters on Trade and Sustainable Development in EFTA's Free Trade Agreements. The report has been amended to fit the format of the website and references have been added to increase the understanding for readers less familiar with EFTA's work in this area.

<sup>2</sup> <https://sustainabledevelopment.un.org/post2015/transformingourworld>, see para 68.

initiatives to promote sustainable development in partner countries and present the efforts undertaken to monitor the implementation of the respective obligations. Finally, the report outlines the EFTA States' priorities in this regard for the future – on the one hand regarding the further development of the TSD provisions in a recently concluded review and on the other hand regarding additional efforts to monitor and promote the implementation of the provisions and sustainable development in partner countries.

## **II. Ten years of experience in negotiating Trade and Sustainable Development chapters in EFTA Free Trade Agreements**

### **A. Development of the provisions on trade and sustainable development**

5. Work on provisions on trade and sustainable development in EFTA began in 2008 when EFTA Ministers decided to establish ad hoc working groups on “trade and environment” and on “social and labour standards in EFTA Free Trade Agreements”. Both groups were mandated to review the possibility of integrating environmental/social and labour elements into EFTA FTAs.

6. With this decision, EFTA Ministers acknowledged a need for enhanced policy coherence at the national and international levels in order to harness the potential for a positive contribution of international trade to the promotion of sustainable development.

7. The two working groups engaged in a detailed and comprehensive analysis of the international practice in this field by looking at recently concluded FTAs by other countries or regional trade blocs. Based on this analytical work, the working groups concluded that – in addition to the relevant elements already contained in other chapters of EFTA FTAs – there was an argument to be made to address trade-related environmental and social/labour issues in a dedicated chapter. The working groups also concluded that many of the elements to be addressed regarding environment and labour were of a similar type, which warranted combining them into a chapter on trade and sustainable development rather than establishing two separate chapters. They recommended to EFTA Ministers to adopt draft provisions on trade and sustainable development consisting of a dedicated chapter, amendments to the Preamble as well as to the article on objectives in the chapter on general provisions in EFTA FTAs. At their meeting in June 2010, EFTA Ministers followed the recommendations of the working groups and adopted the EFTA TSD provisions.

### **B. Main features of the EFTA approach**

8. The EFTA TSD provisions adopted by Ministers in 2010 reflect a cooperative approach and put an emphasis on policy coherence. They recognise that economic development, social development and environmental protection are interdependent and mutually supportive components of sustainable development and foresee that the Parties reaffirm their commitment to promote the development of international trade in such a way as to contribute to sustainable development. The provisions of the chapter specifically address trade- or investment-related aspects of labour and environmental standards. Some of the standards and obligations referred to in the chapter also have a human rights dimension or may relate to the fulfilment of such rights. In addition, references to human rights are made in the Preamble to the free trade agreement.

9. The EFTA TSD provisions recognise each Party's right to regulate and set its own level of protection for labour or environment, while encouraging Parties to strive for high levels of protection. This is complemented by a binding obligation for the Parties not to fail to effectively enforce their labour or environmental standards in a manner affecting trade or investment and not to weaken or reduce the level of protection in this regard, or to waive or derogate from such laws in order to support trade or investment.

10. In the same spirit of coherence and recognizing that international environmental and labour standards are set in specialised international fora such as the International Labour Organisation (ILO) and various Multilateral Environmental Agreements (MEAs), the EFTA TSD provisions refrain from creating new environmental or labour standards and make reference to those well-established international standards and instruments.

11. In order to enhance the positive contribution of trade and investment to sustainable development, the provisions foresee a commitment by the Parties to facilitate and promote investment, trade in and dissemination of goods and services that contribute to sustainable development.

12. In line with EFTA's practice throughout its FTAs, the provisions foresee a lean institutional structure. Contact points are established to facilitate communication between the Parties regarding any issues arising under the Chapter, which allows consultations either at expert level or in the Joint Committee<sup>3</sup> of the FTA<sup>4</sup>.

13. In case these consultations do not result in the matter being settled, the Parties have recourse to most of the dispute settlement mechanisms foreseen in the respective FTA chapter (consultations, good offices, conciliation and mediation), but not to arbitration. The exclusion from arbitration means that there is no possibility for sanctions under the FTA in case of a breach of an obligation under the TSD chapter – as in the approach of the EU, but as opposed to the approach of e.g. the USA or Canada, which in some cases foresee sanctions and penalties for violations in the field of environmental law.

14. When it comes to promoting the implementation of international labour and environmental standards, the EFTA States are of the view that an approach focusing on promoting the understanding and the implementation of obligations primarily through dialogue does in the long run yield better results than an approach based solely on the threat of sanctions. In addition, on a case by case basis, the EFTA States provide concrete assistance to partners facing difficulties to implement their obligations.

15. In this regard, it should be noted that areas subject to arbitration and possible trade sanctions in FTAs are normally based on WTO agreements, which do foresee such mechanisms. On the other hand, the provisions of the TSD chapter build on international instruments, which do not follow sanction-based approaches. Trade sanctions are normally included in trade agreements as a means to compensate parties for quantifiable economic damage resulting from a failure to comply with commitments under the agreement. Applying a sanction-based approach to sustainability provisions would mean that a party to the FTA

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<sup>3</sup> A Joint Committee, composed of representatives of the EFTA States and the partner country, supervises the implementation and further development of each FTA. To facilitate its work, a Joint Committee may establish Subcommittees. Joint Committees usually meet every two years.

<sup>4</sup> A new provision on the possibility of establishing a panel of experts was elaborated during the review in 2018-2019 (see part 4) but has not yet been negotiated with a partner when this report is written.

would be compensated in the case of a breach of TSD provision by another party to the FTA. This supposes that the damage caused by the breach can be quantified. Whereas it is relatively straightforward to quantify the economic damage resulting from a party's failure to implement a tariff concession foreseen under a FTA on another party, it is significantly more challenging to assess the economic consequence of, for example, a specific company in a partner country failing to respect a labour convention or an environmental standard referred to in the TSD chapter.

### C. Experiences in negotiating the chapter

16. Since the adoption of the provisions on trade and sustainable development in 2010, EFTA systematically proposes the inclusion of such provisions to all new negotiating partners. In addition, EFTA proposes to partners to add a chapter on trade and sustainable development to existing FTAs, on an ad hoc basis or as part of a review of the FTA.

17. A chapter on trade and sustainable development has been included in EFTA's FTAs with Montenegro (signed in 2011), Bosnia and Herzegovina (2013), the Central American States (2013), Georgia (2016), the Philippines (2016), Ecuador (2018), Indonesia (2018) and Mercosur (not yet signed). The EFTA-Hong Kong China FTA (2011) includes a chapter on trade and environment, while a side agreement on labour has been concluded in parallel. A TSD chapter has also been added as part of a comprehensive review of the FTA with Turkey (2018). Finally, TSD chapters have been added to the existing FTAs with Albania (2015) and Serbia (2015). An overview of the Agreements and the provisions on TSD contained therein is attached in Annex I.

18. While EFTA has in general managed to convince partners to include a TSD chapter along the lines of its provisions, it has proven sometimes difficult to reach this negotiating objective. This section will present some of the most common arguments made as well as EFTA's counterarguments.

19. Some partners have shown initial opposition to including a TSD chapter at all, arguing that an FTA should deal with trade matters only and TSD provisions are beyond the scope of an FTA. EFTA emphasises the interdependence and mutual reinforcement of economic development, social development and environmental protection and the importance of expressing the common understanding among the Parties that international trade should be developed so as to contribute to sustainable development. EFTA furthermore underlines that its provisions focus on the trade-related aspects of labour and environmental standards.

20. Regarding the structure of the TSD chapter, some counterparts have expressed a preference for including two distinct chapters on trade and environment and trade and labour, rather than a single one covering all three dimensions of sustainable development. Such preferences were either linked to prior experiences negotiating with countries following such an approach (e.g. the USA or Canada) or meant to facilitate internal consultations with the competent line ministries. EFTA consistently argues that some disciplines included in the TSD chapter<sup>5</sup> apply to a large extent to both labour and environmental protections and standards and can efficiently be combined into the same chapter, instead of repeating them in two different chapters and creating unnecessary duplications. The only instance where EFTA accepted a

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<sup>5</sup> For example, provisions on "right to regulate", "upholding levels of protection", "promotion of trade favouring sustainable development" and all institutional provisions are cross cutting provisions

distinct chapter on trade and environment and a side agreement on labour was with Hong Kong China due to Hong Kong China's particular status.

21. In some negotiations, partners raised concerns that labour or environmental standards could serve protectionist purposes and that obligations in this chapter could be used to circumvent concessions undertaken elsewhere in the FTA. In this regard, EFTA explains that its provisions refer to well-established standards and obligations adopted in the competent international fora and that several studies have shown that sustainability provisions in FTAs have never been misused for protectionist purposes. Following language agreed upon in the ILO Declaration on Social Justice for a Fair Globalisation<sup>6</sup>, EFTA's provisions include a statement that labour standards should not be used for protectionist purposes, counterbalanced, however, by a statement that the violation of fundamental principles and rights at work cannot be invoked as a legitimate comparative advantage.

22. Several negotiating partners, in particular developing countries, have proposed to include references to the difference in levels of development between the Parties in the TSD chapter. EFTA has shown openness to include general references in some FTAs with the clear understanding that such references could not be used to circumvent or put into question the obligations under the chapter or under other parts of the FTA. In EFTA's view, the concerns expressed by partners are already taken care of by the article Right to Regulate, which recognises that each Party has the right to establish its own level of labour and environmental protection. Furthermore, the chapter does not set new or additional standards but refers to international commitments and obligations already undertaken by the Parties.

23. Regarding the topics covered in the TSD chapter, EFTA has – depending on the specific partner and on Member States' priorities in this regard – included additional elements, which earlier did not form part of EFTA's provisions in certain negotiations. This includes articles on sustainable forest management and associated trade<sup>7</sup> and on trade and sustainable management of fisheries and aquaculture. In certain processes, additional provisions not foreseen in the EFTA provisions have been integrated. Those are articles on social development and sustainable management of the vegetable oil sector in the FTA with Indonesia and articles on trade and biological diversity and trade and climate change with Ecuador. Provisions on trade and biological diversity and trade and climate change as well as a provision on trade and sustainable agriculture and food systems were furthermore included in the TSD chapter with Mercosur.

### **III. The monitoring and implementation of TSD chapters in EFTA FTAs**

#### **A. The role of the Joint Committee in monitoring the implementation of TSD chapters**

24. The TSD chapters in EFTA FTAs attribute the main role regarding the monitoring of their implementation to the Joint Committee established under the respective FTA. The Joint Committee not only serves as the forum for consultations regarding any matter arising under the chapter. It is also in charge of regularly reviewing the chapter, discussing the progress achieved in pursuing the objectives set out therein, and considering relevant international developments in order to identify areas where further action could promote these objectives.

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<sup>6</sup> [https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS\\_099766/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang--en/index.htm)

<sup>7</sup> In earlier FTAs the article was called "Trade in Forest Based Products", see for example Article 10.6 in the FTA with Georgia <https://www.efta.int/free-trade/free-trade-agreements/georgia>

25. EFTA systematically discusses the state of the implementation of the TSD chapter and any problems arising in this context at Joint Committee meetings with partners under FTAs containing a TSD chapter. In Joint Committee meetings with partners with which the FTA predates the adoption of the EFTA provisions and does not thus contain a TSD chapter, EFTA discusses the inclusion of a chapter.

26. As many of the EFTA FTAs containing TSD chapters are quite recent, there has only been a limited number of Joint Committee meetings during which a substantial discussion on TSD could be held.

27. Topics addressed during these meetings included the status of ratification of the ILO Fundamental conventions<sup>8</sup> by the partners and a possible dialogue to be established in this regard, corporate social responsibility and the UN Guiding Principles on Business and Human Rights<sup>9</sup>, the rights of temporary workers and media freedom or efforts to promote social partnership/tripartite consultations, non-discrimination in respect of employment and priorities in implementing the Parties' respective commitments under the Paris Agreement<sup>10</sup>.

28. As TSD chapters are systematically included in new EFTA FTAs and are progressively added to existing FTAs, the opportunities to discuss their implementation will steadily increase over time. The EFTA States will continue to anchor these discussions as one of the points on the agenda of Joint Committee meetings.

#### B. Monitoring and implementation mechanisms in other international fora

29. When collecting information about the implementation of TSD chapters in specific partner countries and assessing the effectiveness of the monitoring mechanisms foreseen in EFTA FTAs, it is important to bear in mind that EFTA's TSD chapter does not create new labour and environmental standards. To a large extent, it builds on existing obligations and commitments undertaken by the Parties in the competent multilateral fora, which have their own mechanism in place to monitor the implementation of their specific instruments. The following paragraphs will show how the implementation of the instruments referred to in the EFTA TSD chapters is dealt with in the competent fora and how the information generated by these monitoring mechanisms can be fed into EFTA process. An overview of the status of ratification of the most important ILO Conventions and MEAs by the EFTA States and their FTA partner countries can be found in the table in Annex II to this report.

#### *Mechanisms in the ILO*

30. The Article International Labour Standards and Agreements of the EFTA TSD chapter refers to the fundamental principles and rights at work and reaffirms the obligation to effectively implement the ILO Conventions which the Parties have ratified.

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<sup>8</sup> <https://www.ilo.org/dyn/normlex/en/f?p=1000:12000::NO::>

<sup>9</sup> <https://www.unglobalcompact.org/library/2>

<sup>10</sup> <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

31. The ILO has a very elaborate supervisory system in place<sup>11</sup>. The first element is the regular system of supervision, which is based on the examination of reports on the application of a specific convention by two ILO bodies submitted in regular intervals<sup>12</sup> by ILO Member States and on observations in this regard submitted by workers' and employers' organisations. The first such body is the Committee of Experts on the Application of Conventions and Recommendations appointed by the ILO Governing Body, which is mandated to provide an impartial and technical evaluation of the application of international labour standards. Its annual report contains comments on compliance by ILO Member States with their constitutional obligations as well as observations on the application of international labour standards. This report is in turn examined by the second body of the regular system, the Committee on the Application of Standards of the International Labour Conference (Conference Committee). The Conference Committee is composed of government, employer and worker delegates, who examine the report in a tripartite setting and select from it a number of observations<sup>13</sup> for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question. The discussions and conclusions of the Conference Committee are published in a report which highlights situations of special concern.

32. In addition to the regular system, the ILO Constitution<sup>14</sup> also establishes procedures regarding specific cases based on the submission of a representation or a complaint: a procedure for representations by an industrial association of employers or workers against any Member State on the application of any convention it has ratified; a procedure for complaints by a Member State against another Member State for not complying with a ratified convention; and a special procedure for complaints regarding freedom of association by employers' or workers' organisations against a Member State to a dedicated Committee on Freedom of Association<sup>15</sup> even if the Member State in question has not ratified the relevant conventions.

33. The reports of the various bodies of the ILO supervisory system contain a wealth of information on the state of implementation of all conventions ratified by any ILO Member, which the EFTA States might find useful in identifying issues to be discussed with a specific partner country at a Joint Committee meeting.

#### *Mechanisms under MEAs*

34. On the environmental side, the Article Multilateral Environmental Agreements (MEAs) and International Environmental Governance reaffirms the Parties' commitment to effectively implement the multilateral environmental agreements (MEAs) to which they are a party and their adherence to the most important environmental principles. The picture here is less clear-cut than regarding the labour instruments as the different MEAs exist independently from each other and are not assembled under a common institutional roof such as the ILO. It is, however,

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<sup>11</sup> <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang--en/index.htm>

<sup>12</sup> The reporting intervals are three years for fundamental and priority conventions and six years for all other up-to-date conventions.

<sup>13</sup> For more information on what "observations" means in the ILO, please visit <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm>

<sup>14</sup> [https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO)

<sup>15</sup> See the explanation on the IO's website "Freedom of Association". They also list relevant Conventions, with the most important ones being Convention Nos.87 and 98. <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang--en/index.htm>

possible to identify and categorize the compliance mechanisms most commonly found in MEAs<sup>16</sup>.

35. As a first step in assessing compliance, many MEAs foresee requirements for information reviewing national performance of the respective obligations. Typically, Parties are required to report – annually or in other regular intervals – on measures they have taken to implement a specific MEA or on a previously developed national implementation plan. Under some MEAs<sup>17</sup>, the MEA Secretariat or another third party is mandated with reviewing or verifying the information received from the Parties.

36. A next step are multilateral non-compliance procedures, i.e. institutionalized multilateral procedures to consider apparent instances of non-compliance with the purpose of identifying compliance issues and to facilitate better compliance in a non-adversarial manner. This often takes the form of an elected committee (Implementation Committee or Compliance Committee). Such a committee can make recommendations on cases of alleged non-compliance referred to it for consideration. It is then usually up to the Conference of Parties (COP) of the MEA in question to take a final decision based on those recommendations.

37. In cases where substantial non-compliance is identified under a procedure referred to in the preceding paragraph, MEAs often foresee the possibility of non-compliance response measures. Depending on the particular circumstances of the case and the supposed reasons for non-compliance, such measures can take the form of incentives – such as technical and financial assistance to support improved implementation – or disincentives or penalties – such as stricter requirements for performance review information, warnings or suspensions of privileges under the MEA.

38. Finally, most MEAs establish mechanisms to settle disputes, which can be divided in three types of procedures: negotiations, conciliation and arbitration. In the first category, Parties must submit to negotiation in the event of a dispute. Should negotiations not lead to a satisfactory result, some MEAs foresee the possibility for Parties to submit to conciliation. This stage is normally not triggered automatically, but at the request of a Party. Under most other MEA, Parties may voluntarily submit to e.g. the Permanent Court for Arbitration, but there is no obligation to do so.

39. The information and reports generated during these different stages of compliance assessment under the various MEAs provide useful information in identifying issues to be taken up with partner countries under specific EFTA FTAs.

#### *Mechanisms under human rights instruments*

40. Since some of the standards and obligations referred to in the EFTA TSD provisions have a human right character or may relate to the respect, protection or fulfilment of human rights, it might also be useful to consider the monitoring and compliance mechanisms set up under the relevant human rights instruments. The most relevant human rights instruments (such as the International Covenant on Economic Social and Cultural Rights (ICESCR<sup>18</sup>) or the

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<sup>16</sup> The following information is taken from the UNEP publication “Compliance Mechanisms under Selected Multilateral Environmental Agreements”, <https://bit.ly/2Iz0D3w>

<sup>17</sup> See for example the CITES, The Ramsar Convention and UNFCCC

<sup>18</sup> <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>



Convention on the Elimination of All Forms of Discrimination against Women (CEDAW<sup>19</sup>) foresee a binding obligation for parties to submit reports at regular intervals on legislative, judicial, administrative or other measures, which they have adopted to give effect to the provisions of the respective convention. Under ICESCR the Economic and Social Council may transmit national reports to the Commission on Human Rights for study and general recommendation, as appropriate. Under CEDAW reports are examined by a committee of independent experts. This committee is competent to make suggestions and issue recommendations to the reporting party.

41. These treaty-specific mechanisms are complemented by the Universal Periodic Review<sup>20</sup> established under the UN Human Rights Council, which foresees that each UN Member State submits to a review of its human rights records in regular intervals. The review is based on a report submitted by the country under review, on information contained in reports of independent human rights experts and groups and of human rights treaty bodies as well as on information provided by other stakeholders such as national human rights institutions and NGOs. The actual review takes place through an interactive discussion between the States under review and other UN Member States.

42. To the extent that the information generated through these mechanisms (reports and recommendations by treaty bodies and UN Member States) is relevant to the scope of the EFTA TSD provisions, it can prove useful in the collection of information on potential issues of implementation.

#### *Assessment of implementation of other provisions*

43. In addition to confirming existing international obligations and commitments of the Parties in the relevant international fora, the EFTA TSD provisions also contain binding obligations that are independent from those pre-existing standards, such as the obligations in the article Upholding Levels of Protection in the Application and Enforcement of Laws, Regulations or Standards or other articles.

44. While some information on specific obligations – such as the obligation not to fail to effectively enforce its environmental and labour laws in a manner affecting trade or investment between the Parties – might be available under the multilateral mechanisms referred to above, it is nevertheless important to identify alternative sources of information. In this regard, the EFTA States' embassies in partner countries as well as line ministries competent for labour or environmental topics referred to in the TSD provisions are relevant partners. In addition, input from social partners, parliamentarians<sup>21</sup> and other civil society representatives can prove valuable in identifying issues to be taken up with partner countries.

#### C. Cooperation

45. An important means to promote the implementation of the EFTA TSD provisions is cooperation in relevant fora, be they multi-, pluri- or bilateral, with partner countries.

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<sup>19</sup> <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

<sup>20</sup> <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx>

<sup>21</sup> EFTA has two Advisory Bodies the “EFTA Parliamentary Committee” and “EFTA Consultative Committee” (consisting of trade unions and employers’ organisations), for further information see <https://www.efta.int/Advisory-Bodies-521>

46. The EFTA Secretariat implements cooperation projects on behalf of Member States directly related to the implementation of FTAs in partner countries. While the cooperation activities conducted so far have been linked to more traditional questions of implementation regarding trade in goods or services, such projects will in the future also be organised for activities related to the implementation of the TSD chapters.

47. In addition – and on a much larger scale – individual EFTA Member States are active in some of the FTA partner countries in the context of their international development cooperation policies and programmes. Many of these policies and programmes have a strong link to the objectives outlined in the TSD chapter and contribute to achieving them.

48. Sustainable development, including human rights and gender equality, is a cross cutting guiding principle for all aspects of Iceland's domestic and foreign policy. Iceland promotes sustainable development through its development cooperation and work in international fora in various ways. Icelandic authorities promote increased resilience of societies and enhanced economic growth on the basis of equality and sustainable use of natural resources, in addition to taking measures against climate change. In particular, the focus is on the use of geothermal and renewable energy, sustainable use of marine resources and waters, soil conservation, and measures to strengthen the actions of societies to mitigate and adapt to climate change. At the same time, Iceland puts a horizontal emphasis on human rights and gender equality. Further, to share its knowledge and experience, Iceland operates training programmes for practicing professionals from developing countries on fisheries management, gender equality, geothermal energy and land restoration. It is part of its official development cooperation. Many of the scholars that have participated in these training programmes originate from Iceland's free trade partner countries. Iceland places a particular focus on promoting gender equality in trade at the WTO and in other multilateral bodies through, inter alia, the Trade Impact Working Group and by supporting the International Trade Centre's (ITC) She Trades Programme<sup>22</sup>.

49. Liechtenstein's International Humanitarian Cooperation and Development<sup>23</sup> is firmly rooted in the 2030 Agenda for Sustainable Development and has its main focus on education, vocational training, human rights, food security and the rule of law in 11 low-income countries in Africa, Latin America and Europe. The long-standing cooperation with the Republic of Moldova, where Liechtenstein has been providing substantial support to develop curricula for vocational training and to improve the pedagogic and educational methodologies and infrastructure of 22 vocational schools is an example of Liechtenstein's cooperation with one of EFTA's partner countries. Another, more recent activity is aimed at developing international standards for financial services suppliers and investment flows to fight modern slavery and human trafficking. With the Liechtenstein Initiative for "Finance Against Slavery and Trafficking (FAST)<sup>24</sup>", a flexible framework for collective action to help end modern slavery and human trafficking through interrupting financial flows related to such harmful practices was developed. FAST offers a comprehensive toolkit for financial institutions in the areas of compliance, responsible investment and financial innovation.

50. The promotion of sustainable development is at the heart of Norway's foreign and development cooperation policies and political dialogue with other countries. Norway pursues initiatives aimed at, inter alia, the reduction of greenhouse gas emissions, sustainable management of the fisheries and aquaculture sector, access to clean and affordable energy and

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<sup>22</sup> <https://www.intracen.org/itc/women-and-trade/SheTrades/>

<sup>23</sup> <https://www.llv.li/files/aaa/ihze-broschure-en.pdf>

<sup>24</sup> <https://www.fastinitiative.org/>

improving working conditions. Through the “Norway International Climate and Forest Initiative” (NICFI<sup>25</sup>), the country has been a driving force in the international efforts to reduce emissions of greenhouse gases from deforestation and forest degradation in developing countries. Along with measures to reduce the pressure on tropical forests from international markets, trade and consumption, NICFI promotes sustainable land use, sustainable development and poverty reduction. Key bilateral partner countries for the effort include Brazil, Colombia, Indonesia and Peru. The Initiative also works through a number of civil society initiatives and through cooperation with other donor countries. A number of other initiatives have been established, such as The Clean Energy for Development Initiative, which aims at increasing access to renewable energy in developing countries. Norway furthermore assists countries in designing the regulatory framework and working methods for fisheries management and aquaculture through, inter alia, Fish for Development<sup>26</sup>, which aims at reducing poverty through socio-economic development and where Colombia has been selected as a special collaboration country. Norway is a long-standing partner of the ILO in the promotion of the Decent Work Agenda<sup>27</sup> Norwegian support to ILO includes flexible funding to its core activities and a broad-based partnership covering skills development, promotion of decent work opportunities for women and youth, strengthening of labour governance and productivity and working conditions in small and medium-sized enterprises. Norway is also a partner to Alliance 8.7, hosted by the ILO, which works to eradicate forced labour and end modern slavery and human trafficking.

51. Within the framework of its international economic development cooperation programmes, Switzerland seeks to promote the adoption and implementation of international environmental and labour standards. The aim is to strengthen the international competitiveness of partner countries and to underpin the effective implementation of ILO’s fundamental principles and rights at work and the various MEAs. The areas of cooperation encompass the promotion of ILO’s Decent Work Agenda, the sustainable management of forest and related ecosystems, the conservation and sustainable use of biological diversity, the transition to a low-carbon economy and to climate-resilient development, the investment towards a resource efficient and circular economy and the promotion of responsible business conduct. The latter includes measures encouraging relevant practices and sustainability standards that ensure a responsible management of value chains. In addition, Switzerland has established bilateral dialogues on labour and employment with selected FTA partners with a view to supporting the implementation of the TSD chapter. In the future, Switzerland will consider broadening the scope of bilateral dialogues to other trade-related areas of sustainable development. Moreover, Switzerland is committed to promoting the TSD chapter within the multilateral development banks.

#### **IV. Review of the EFTA TSD provisions 2017-2020**

52. Following the inclusion in recent EFTA FTAs of several issues, which were not part of the EFTA provisions in, at the end of 2017, the EFTA States decided to engage in a review of the provisions. In parallel, they mandated experts to examine the feasibility of adding references to gender equality considerations (and possibly other non-discrimination references) to their trade and sustainable development provisions.

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<sup>25</sup> <https://www.norad.no/en/front/thematic-areas/climate-change-and-environment/norways-international-climate-and-forest-initiative-nicfi/>

<sup>26</sup> <https://www.norad.no/en/front/thematic-areas/climate-change-and-environment/fish-for-development/>

<sup>27</sup> <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

53. Based on discussions and experiences in negotiations on the TSD chapter and taking account of recent international developments in the area of trade and sustainable development, experts agreed to update and reinforce EFTA's current provisions, regarding the content and the institutional mechanisms.

54. New articles were agreed, and elements were added to the existing articles International Labour Standards and Agreements and Promotion of Trade and Investment Favouring Sustainable Development among others.

55. Experts reassessed the revised provisions and decided on further changes after having received comments and proposals for amendments from EFTA's two advisory bodies: the Consultative Committee and the EFTA Parliamentary Committee. While commenting on a range of provisions, the advisory bodies highlighted in particular their wish for a more systematic involvement of social partners and other relevant stakeholders in the implementation and the monitoring of the TSD chapter. Experts decided on amendments to that effect notably in the following three articles: Cooperation; Implementation and Consultations; and Review.

56. The new elements included in EFTA's provisions and amendments made to existing provisions can be summarised as follows:

**International Labour Standards and Agreements:** the revised article strengthens the commitment concerning ILO's fundamental principles and rights at work and includes new commitments pertaining to ILO's Decent Work Agenda. The commitments concern inter alia social protection and decent working conditions, social dialogue, tripartism and a well-functioning labour inspection system. The article also obliges Parties to ensure that administrative and juridical proceedings are accessible and available in order to allow effective action against infringements of labour rights referred to in the chapter.

**Sustainable Forest Management and Associated Trade:** the article recognises the importance of ensuring conservation and sustainable management of forests and related ecosystems with the objective to reduce greenhouse gas emissions and loss of biodiversity resulting from deforestation and forest degradation. It furthermore foresees commitments to enforce relevant domestic legislation and international agreements and to implement measures to combat illegal logging and to promote the development and use of legality assurance instruments to ensure that only legally sourced timber is traded.

**Trade and Climate Change:** the article underlines the importance of pursuing the objectives of the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement in order to address the urgent threat of climate change and notably contains a commitment to effectively implement these instruments. It furthermore foresees commitments to promote the contribution of trade to the transition to a low-carbon-economy and to climate-resilient development.

**Trade and Biological Diversity:** the article recognises the importance of the conservation and sustainable use of biological diversity and contains commitments relating to the Convention on International Trade in Endangered Species of Wild Fauna

and Flora (CITES), wildlife crimes, invasive alien species as well as trade and biological diversity.

**Trade and Sustainable Management of Fisheries and Aquaculture:** the article recognises the importance of ensuring the conservation and sustainable management of marine resources and ecosystems. It includes commitments to implement measures and policies to combat illegal, unreported and unregulated (IUU) fishing, to promote relevant international guidelines and agreements and to fulfil the objectives set out in the United Nations 2030 Agenda for Sustainable Development concerning fisheries subsidies.

**Trade and Sustainable Agriculture and Food Systems:** the article recognises the importance of sustainable agriculture and food systems and the role of trade in achieving this objective. Reiterating the Parties' commitment to achieve the 2030 Agenda for Sustainable Development and its Sustainable Development Goals, the article includes commitments to promote sustainable agriculture and food systems and to cooperate in this regard, including through conducting a dialogue, exchanging experiences and reporting on progress achieved.

**Promotion of Trade and Investment Favouring Sustainable Development:** the article has been supplemented with specific undertakings by the Parties with regard to the promotion of sustainability certification schemes, the contribution of trade and investment towards a resource efficient and circular economy and sustainable procurement practices.

**Responsible Business Conduct:** the article foresees a commitment to promote responsible business conduct, including by encouraging relevant practices such as responsible management of supply chains by businesses, acknowledging the importance of internationally recognised principles and guidelines, notably of the OECD, the ILO and the UN. The corresponding reference in the preamble was changed from "corporate social responsibility" to "responsible business conduct".

**Cooperation:** the article has been supplemented with a paragraph opening the possibility of inviting the social partners and other relevant stakeholders to identify possible areas of cooperation.

**Implementation and Consultations:** the article now includes an obligation for the Parties to give their stakeholders the opportunity to share comments and make recommendations regarding the implementation of the chapter.

**Panel of Experts:** In the provisions established in 2010, the Parties to an FTA could have recourse to the chapter on dispute settlement except for the provisions on arbitration, in case of a divergence or a dispute relating to a matter covered by the chapter. Thus, besides ordinary consultations in the Joint Committee, the instruments available for resolving a matter were limited to voluntary good offices, conciliation, mediation and consultations under the dispute settlement chapter. In addition to the existing mechanisms, this new provision provides for the possibility to establish a panel of experts competent to issue a report with recommendations towards the resolution of any matter or dispute to which a mutually satisfactory resolution could not be found through consultations or other means of the dispute settlement chapter. The panel's

report shall be publicly available and follow-up actions monitored by the Joint Committee.

**Review:** the article has been supplemented by a reference to the Parties' respective participatory processes and institutions, which shall be taken into account when conducting a review of the chapter in the Joint Committee.

57. Regarding the references to gender equality considerations, experts agreed on the following:

An article **Inclusive Economic Development and Equal Opportunities for All** was added to the provisions. The Parties acknowledge the importance of incorporating a gender perspective in the promotion of inclusive economic development. They reaffirm their commitment to implement international agreements pertaining to gender equality or non-discrimination in their laws and practices. References have also been added to the existing article **Context and Objectives** where the Parties commit to promote the development of international trade and investment, as well as their preferential economic relationship, in a manner that is beneficial to all and that contributes to sustainable development.

The text of the **preamble** of the FTA has been extended in order to reflect the issue of gender and non-discrimination. A new paragraph has been added to the preamble, reaffirming the commitment of the Parties to an FTA to promote inclusive economic growth by ensuring equal opportunities for all.

58. With the addition of the various substantial articles described above, EFTA aims at providing an up-to-date reflection of the many ways in which trade and investment interrelate with the other dimensions of sustainable development by including new commitments increase the positive contribution of trade and investment in these regards.

59. While EFTA confirms its commitment to a cooperative approach with these revised provisions, it also responds to concerns expressed by stakeholders on its implementation and the enforcement of its obligations. There will now be the possibility to ask for the establishment of a panel of (independent) experts with the mandate to submit a report with recommendations on how to remedy a breach of the obligations under the chapter. The fact that this report will be published adds an important layer of political pressure on the violating party to improve the situation subject to a recommendation. By attributing the monitoring of the measures taken to implement the recommendations to the Joint Committee, the new provision also reinforces the role of the Joint Committee as the main forum for the monitoring of the implementation of the TSD chapter.

60. It is EFTA's priority to negotiate with new partners in line with its revised provisions and to incorporate it into existing agreements. EFTA will also continue to follow the international experiences and developments in the field of sustainable development and regularly review its provisions to reflect these influences.

**V. The EFTA States' priorities for the future regarding TSD****A. Priorities regarding cooperation on trade-related sustainability issues**

61. As argued above in section 3.3, cooperation on trade-related sustainability issues with individual partner countries can be an important instrument towards promoting the objectives of the TSD chapters in the respective FTAs.

62. EFTA will put more focus on identifying how such cooperation activities can be carried out by the EFTA Secretariat to support the negotiations of FTAs and their implementation. Such cooperation activities could be discussed together with the implementation of the TSD chapter at the meetings of the Joint Committee.

63. Options in this regard could include capacity building efforts with the participation of experts from Member States or relevant international institutions related to specific provisions and obligations in the TSD chapter, such as trade-related aspects of certain ILO conventions, sustainable forest management, sustainable agriculture and food systems, climate change, biological diversity, sustainable management of fisheries and aquaculture. Furthermore, they could include similar efforts to exchange information and promote sustainable procurement practices and the use of goods and services subject to ecological, fair or ethical trade schemes or of sustainability certification schemes.

64. In addition to these initiatives at the EFTA level, the individual EFTA States will continue their efforts in the framework of their development cooperation activities to promote sustainable development and the contribution of trade thereto in selected partner countries.

**B. Stepping up efforts to monitor the implementation of TSD chapters**

65. The negotiation of ambitious and robust provisions on trade and sustainable development in EFTA FTAs will remain a priority for the EFTA States. As more and more FTAs with TSD chapters enter into force, the implementation of these chapters will naturally have to receive increased attention.

66. As Chapter 2 of this report has identified, there is a wealth of information on the implementation of international obligations of FTA partner countries available in the competent international fora. Continuing to make use of this information will help with the identification of issues to be raised with partner countries in Joint Committee meetings and ensure that EFTA's efforts and messages to partner countries are complementary to the efforts undertaken in the competent international fora.

67. The EFTA States will also continue to coordinate closely with their respective line ministries, competent for the sustainability issues addressed in the TSD chapters. This is important to both identify topics for discussion and assess the challenges regarding implementation of specific provisions. In a related effort, EFTA will more proactively engage with the EFTA States' Embassies in the partner countries, which often have more direct access to information and can assess the situation regarding specific challenges with the implementation of TSD chapters.

68. Furthermore, the EFTA Secretariat will on a more regular basis publish reports on EFTA's efforts in negotiating and implementing TSD chapters in EFTA FTAs. These reports will provide regular updates on EFTA's efforts, improve accountability and provide the basis for further discussions on this issue with the EFTA Advisory Bodies and relevant stakeholders in the individual EFTA States.

69. In order to facilitate stakeholder involvement, the EFTA Secretariat will publish an e-mail address on its website<sup>28</sup> to which stakeholders are invited to send any observations and suggestions on the implementation of the TSD chapter in a specific partner country.

### C. Cooperation with the EFTA Advisory Bodies and other stakeholders

70. EFTA recognises the valuable contribution that the EFTA Advisory Bodies and other stakeholders can provide to discussions on the implementation of TSD chapters in EFTA FTAs. Increased stakeholder involvement could provide useful inputs and support with the aim to promote understanding of the interrelationship between trade, labour and environment, implementation and improvement of environment and labour standards also in partner countries.

71. While the Joint Committee under the various FTAs as such will remain a state-to-state forum, EFTA will increase its efforts to involve the social partners and other civil society representatives in identifying potential challenges with the implementation of TSD chapters and issues to be taken up with partner countries. In pursuing this priority, EFTA will inform the Advisory Bodies of upcoming Joint Committee meetings in order for them to have the opportunity to give their input with regard to trade and sustainable development. The EFTA States will also continue to actively use existing fora at the national level to involve other stakeholders as well.

72. Outside the Joint Committee meetings, EFTA will also seek regular exchanges with the EFTA Advisory Bodies and other stakeholders at the national level on any issues they might want to raise regarding the implementation of TSD chapters in EFTA FTAs.

73. Finally, the EFTA States are open to discussing in a more regular manner with the EFTA Advisory Bodies – or directly with social partners and other civil society representatives at the national level – possible priorities for cooperation activities with regard to trade and sustainable development.

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<sup>28</sup> See EFTA's website for the e-mail.



## Annex I – Overview of provisions on Trade and Sustainable Development in EFTA FTAs

Revised Model Chapter	HK	ME	Ce Am	BA	RS*	AL*	GE	PH	TR*	EC	ID	Mer
Context and Objectives	X	X	X	X	X	X	X	X	X	X	X	X
[Scope]	X	X	X	X	X	X	X	X	X	X		X
Right to Regulate and Levels of Protection	X	X	X	X	X	X	X	X	X	X	X	X
Upholding Levels of Protection in the Application and Enforcement of Laws, Regulations or Standards	X	X	X	X	X	X	X	X	X	X	X	X
International Labour Standards and Agreements		X	X	X	X	X	X	X	X	X	X	X
Inclusive Economic Development and Equal Opportunities for All												
Multilateral Environmental Agreements and Environmental Principles	X	X	X	X	X	X	X	X	X	X	X	X
Sustainable Forest Management and Associated Trade			X				X	X		X	X	X
Trade and Climate Change										X		X
Trade and Biological Diversity										X		X
Trade and Sustainable Management of Fisheries and Aquaculture										X	X	X
Trade and Sustainable Agriculture and Food Systems												X
Promotion of Trade and Investment Favouring Sustainable Development	X	X	X	X	X	X	X	X	X	X		X
Responsible Business Conduct												
Cooperation in International Fora	X	X	X	X	X	X	X	X	X	X	X	X
Implementation and Consultations	X	X	X	X	X	X	X	X	X	X	X	X
Panel of Experts												X
Review	X	X	X	X	X	X	X	X	X	X	X	X
Agreement on Labour	X											
Sustainable Management of the Vegetable Oils Sector and Associated Trade											X	
Sustainable Economic Development											X	
Social Development											X	

Highlighted in blue: new provisions in the revised chapter on Trade and Sustainable Development; in yellow: “other provisions”, only with some partners; in green: integrated in other provisions during review

Countries (in chronological order): HK: Hong Kong, China; ME: Montenegro; Ce Am: Central American States; BA: Bosnia and Herzegovina; RS: Serbia; AL: Albania; GE: Georgia; PH: The Philippines; TR: Turkey; EC: Ecuador; ID: Indonesia, Mer: Mercosur (\*=chapter added at later stage)

**Annex II – Overview of ratification of relevant international instruments by EFTA States and partner countries (as of November 2019)**



19-4577-Rev1.2-Overview ratification of re

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