



Paris, 28 October 2021

POLITICAL OPINION

on the public consultation launched by the European Commission entitled "Trade and Sustainable Development (TSD) Review"

- ① The Senate European Affairs Committee,
- ② Having regard to the public consultation launched by the European Commission in July 2021 and entitled "Trade and Sustainable Development (TSD) Review",
- ③ Having regard to the non-paper of the Commission services dated 26 February 2018 on Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements and its 15-point action plan on Trade and Sustainable Development chapters.
- ④ Having regard to the Communication of the Commission dated 11 December 2019 entitled "The European Green Deal", COM(2019) 640 final,
- ⑤ Having regard to the Communication of the Commission dated 19 February 2020 entitled "Shaping Europe's digital future", COM(2020) 067 final,

- ⑥ Having regard to the Communication of the Commission dated 10 March 2020 entitled "A New Industrial Strategy for Europe", COM(2020) 102 final,
- ⑦ Having regard to the Communication of the Commission dated 10 March 2020 entitled "An SME Strategy for a sustainable and digital Europe", COM(2020) 103 final,
- ⑧ Having regard to the Communication of the Commission dated 11 March 2020 entitled "A new Circular Economy Action Plan for a cleaner and more competitive Europe", COM(2020) 98 final,
- ⑨ Having regard to Senate European Resolution no. 82 (20192020) of 10 April 2020 on the European Commission's Work Programme for 2020,
- ⑩ Having regard to the non-paper from the Netherlands and France of May 2020 on trade, social economic effects and sustainable development,
- ⑪ Having regard to the Communication of the Commission dated 20 May 2020 entitled "EU Biodiversity Strategy for 2030 Bringing nature back into our lives", COM(2020) 380 final,
- ⑫ Having regard to the Communication of the Commission dated 20 May 2020 entitled "A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system" presented by the European Commission on 20 May 2020, COM(2020) 381 final,
- ⑬ Having regard to the Communication of the Commission dated 27 May 2020 entitled "Europe's moment: Repair and Prepare for the Next Generation" COM(2020) 456 final,
- ⑭ Having regard to the Commission White Paper of 17 June 2020 on levelling the playing field as regards foreign subsidies, COM(2020) 253 final,
- ⑮ Having regard to Senate European Resolution no. 122 (2019-2020) of 20 July 2020 on the modernisation of European competition policy,
- ⑯ Having regard to the European Parliament resolution of 26 November 2020 on the EU Trade Policy Review (2020/2761(RSP)),

- ⑰ Having regard to the conclusions of the meeting of the European Council of 10 and 11 December 2020, EUCO 22/20,
- ⑱ Having regard to the political opinion of the Senate European Affairs Committee dated 13 January 2021 on the European Commission's Work programme for 2021 and the Commission's response dated 31 March 2021,
- ⑲ Having regard to the Communication of the Commission entitled "Trade Policy Review - An Open, Sustainable and Assertive Trade Policy", COM(2021) 66 final,
- ⑳ Having regard to European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)),
- ㉑ Having regard to the European Parliament resolution of 7 July 2021 on the trade related aspects and implications of COVID-19 (2020/2117(INI)),
- ㉒ Having regard to the "Fit for 55" package presented by the Commission on 14 July 2021 and, in particular, the Proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism, COM(2021) 564 final,
- ㉓ Having regard to the opinion of the "External Relations" Section of the European Economic and Social Committee dated 6 October 2021, entitled "Next Generation Trade and Sustainable Development – Reviewing the 15-point action plan" (REX/535),
- ㉔ Having regard to Senate draft resolution no. 39 *rect.* (2021-2022), submitted on 8 October 2021, intended to assert the need for an ambitious agreement at the Glasgow COP 26 to guarantee the effective application of the Paris Climate Agreement,

- ②⑤ Whereas the European Union is founded on the values of respect for human dignity, freedom, democracy, equality and the rule of law as well as respect for human rights;
- ②⑥ Whereas the European Union is a signatory of the Paris Climate Agreement and has displayed, with the European Green Deal and the "Fit for 55" legislative package, high ambitions in terms of the fight against climate change;
- ②⑦ Whereas the transition towards a greener economy must not be synonymous with degrowth;
- ②⑧ Whereas it is necessary to reconcile the fight against climate change and sustainable development with economic development and social inclusion;
- ②⑨ Whereas geopolitical tensions are growing and there is a need to reinforce the strategic autonomy, resilience and the economic competitiveness of the European Union following the Covid-19 pandemic;
- ③⑩ Whereas the European Union forms the world's largest trading bloc and has a substantial network of trade agreements, which in particular allows it, subject to it ensuring it has the necessary means, to implement its standards, its values and its sustainability frameworks, but also to use trade policy to further its geopolitical objectives;
- ③① Whereas global trade and its integrated value chains are an essential driver of the Union's growth and the internal market constitutes a fundamental asset whose integrity must also be preserved;
- ③② Whereas blockages are affecting the functioning of the World Trade Organisation (WTO), and in particular that of the Appellate Body of the dispute settlement system;

- ③③ Whereas difficulties have arisen following the recent trade negotiations conducted by the European Commission, with the Comprehensive Economic and Trade Agreement with Canada still being only partially and provisionally applied, due to the failure to conclude the ratification process, while the draft agreement with Mercosur, as it has been negotiated, is encountering opposition from certain Member States;
- ③④ **On the overall framework of trade policy and its contribution to the promotion of a greener, fairer and more sustainable economy**
- ③⑤ Approves the Commission's general policy of promoting an open, sustainable and assertive trade policy and of truly making it a tool to reinforce the European Union's strategic autonomy;
- ③⑥ Considers that the Union must assert itself as a trading power to defend its interests, including when faced with extra-European actors benefiting from State aid, using in particular the defensive trade tools it has at its disposal, by promoting its standards, ensuring that it guarantees a level playing field and fair competition, and by working towards reciprocity in access to public procurement contracts and concerning direct investments; requests that the Commission take all measures to neutralise extraterritorial sanctions taken by Third States against European countries;
- ③⑦ Emphasises the need, in order to achieve this objective, to ensure proper coordination between trade policy and the Union's other policies, in particular competition policy, industrial policy and environmental and social policies;
- ③⑧ Welcomes the appointment of a European Chief Trade Enforcement Officer and the introduction of a centralised Single Entry Point for reporting complaints relating to market access barriers and violations of the trade and sustainable development commitments included in the trade agreements signed by the European Union and in the Generalised System of Preferences;
- ③⑨ Urges, in connection with the "Fit for 55" legislative package, the rapid and effective implementation of a European Union carbon border adjustment mechanism, within a framework compatible with the rules of the World Trade Organisation and taking account of the other instruments implemented by the European Union such

as the European Union Emissions Trading System (EU ETS), in order to prevent the risk of carbon leakage, ensure fairness in international trade relations and reconcile the fight against climate change and sustainable development with economic development and social inclusion;

④① On the evaluation of the application of the 15-point action plan concerning the implementation of the Trade and Sustainable Development chapters

④① Applauds the fact that, since 2006, the European Union has striven to foster sustainable development and inclusive growth by enhancing its trade agreements with a chapter on Trade and Sustainable Development (TSD), in particular committing the signatories to implement the multilateral environmental agreements to which they are parties as well as to ratify and implement the fundamental conventions of the International Labour Organisation (ILO);

④② Nevertheless notes that the implementation of this type of chapter is in practice a complex matter, which must lead the Union to adopt appropriate means to ensure the effective implementation of the commitments made by the signatories;

④③ Considers that the 15-point action plan drawn up in February 2018 by the Commission services corresponds to a state of thinking that is now outdated, in light of the debates that have arisen in recent years, and that this should lead the Union to raise its level of ambition concerning the content of these chapters, in particular with regard to the fight against climate change, the preservation of biodiversity, the fight against deforestation and responsible business conduct;

④④ Emphasises that transparency, dialogue and good communications with citizens and all stakeholders are essential to achieve acceptance and appropriation of trade agreements;

④⑤ Notes that a first effort at transparency has been accomplished in the last few years, in particular thanks to the publication of impact assessments at the start of each new set of trade negotiations, then again just before the conclusion of the negotiations, when the negotiating directives are issued, at the time of the work of the Domestic Advisory Group (DAGs) as part of the

monitoring of the implementation of the agreements and, finally on the setting up and promotion of the Access2Markets portal;

④⑥ Nevertheless considers that these efforts to be more transparent are insufficient and must be reinforced, in particular by taking greater account of the national parliaments;

④⑦ Emphasises that the impact assessments conducted by the Commission must be based on coherent, clear, measurable and objective criteria and that they must assess not only the strictly economic impacts, but also those relating to sustainable development, not only in terms of social inclusion but also the fight against climate change, the preservation of biodiversity or the fight against deforestation;

④⑧ Considers that, in order to foster enlightened debate in the different Member States, the *ex ante* and *ex post* impact assessments can no longer concern only data aggregated at European Union level, but must also include data for each economic sector concerned and each geographical zone and at least for each Member State; further requests that better account be taken, under the same conditions, of the cumulated impact of the different trade agreements negotiated by the European Union;

④⑨ Notes that, although the Common Commercial Policy is an exclusive competence of the Union, this competence is exercised within the limits set by the Court of Justice of the European Union in its "Singapore" ruling,¹ which has set a precedent resulting in numerous new-generation trade agreements being mixed trade and investment agreements; reiterates in any case the mission of evaluation and control of government action incumbent upon the national parliaments, of which the Commission should take greater account in its relations with the Member States, including when agreements fall exclusively within the competence of the Union;

⑤⑩ Observes that the negotiating methodology used by the European Commission has led to blockages preventing the full and final implementation of the Comprehensive Economic and Trade Agreement with Canada and in the conclusion of the agreement

¹ Opinion 2/15 of the Court of Justice of the European Union (plenary session) of 16 May 2017.

with Mercosur; notes, on the other hand, the success of the methodology applied in the negotiations on the withdrawal of the United Kingdom from the European Union, which relied on close and regular sharing of information with the national parliaments, but regrets that the national parliaments were not in the end called upon to ratify the Trade and Cooperation Agreement between the European Union and the United Kingdom; therefore invites the Commission to revise its methodology accordingly so as to take better account of and involve the national parliaments;

⑤① Welcomes the conclusions of the meeting of the European Council of 10 and 11 December 2020, stating that the Union will ensure that its trade policy and trade agreements are consistent with its climate ambition, as well as the new orientations developed by the Commission in its communication entitled "Trade Policy Review - An Open, Sustainable and Assertive Trade Policy", according to which the European Union will make compliance with the Paris Agreement an essential component of future trade and investment agreements, in the same way as respect for human rights and the fight against the proliferation of weapons of mass destruction already are; invites the Commission to ensure there is effective monitoring of compliance with this clause and to insert it in agreements already in force when they are next renegotiated or adapted;

⑤② Emphasises, in this respect, the need to ensure respect for human rights as well as the prior ratification and effective implementation of the ILO fundamental conventions; acknowledges that the methodology used with Vietnam and the action taken against South Korea in 2018 constitute useful precedents; invites the Commission to further reinforce the implementation of these fundamental conventions, in particular by means of increased collaboration with the ILO;

⑤③ Observes that respect for human rights, which is one of the founding values of the European Union, and the next legislative proposal announced by the Commission on mandatory corporate due diligence must be fully taken into account in the conduct of the Union's trade policy;

⑤④ Advocates greater European cooperation on responsible business conduct in the form of an action plan including both mandatory and voluntary measures with a view to fostering

conditions of fair competition within and outside the Union as well as responsible production and management of supply chains; requests, more widely, a reinforcement of supply chain traceability;

⑤⑤ On other measures that could be adopted to strengthen the Trade and Sustainable Development (TSD) chapters

⑤⑥ Hopes that the review of the 15-point action plan will lead to a reinforcement of the monitoring of the application of the TSD chapters, based on the actions of the European Chief Trade Enforcement Officer, and on the implementation of further enforcement measures, going as far as sanctions, in order to combat any failure on the part of the Union's trade partners to meet their obligations;

⑤⑦ Invites the Commission, in accordance with the orientations set out in its communication entitled "Trade Policy Review - An Open, Sustainable and Assertive Trade Policy", to develop the tools and, where applicable, to present the adaptations to the legislative framework necessary to enable the Union to address the new challenges and protect European companies and citizens against unfair trading practices, both inside and outside the Union;

⑤⑧ Considers that the Union must envisage a gradual and reversible approach to the implementation of the TSD chapters, in particular in the form of gradual reductions in tariffs, which will enable it to encourage, based on clear, objective and shared criteria, compliance with social and environmental commitments and, conversely, to draw the conclusions of any decline in compliance with these commitments;

⑤⑨ Considers that, as a last resort, the Commission should refer matters to the dispute resolution bodies, as it did with South Korea, to ensure complete compliance with the TSD chapters;

⑥① Invites the Commission to assess the relevance, in the context of the internal market and in connection with the trade policy objectives, of a more systematic use of mirror measures, subject to these being based on credible and shared scientific data or on legitimate public policy objectives and to their being defined in line with the WTO rules in order to ensure fair competition and a level playing field;

- ⑥1 **On the need for the World Trade Organisation to take better account of sustainable development issues**
- ⑥2 Supports the Commission's desire to modernise the functioning of the World Trade Organisation (WTO), undertaken within a wider international framework; considers that this reform must lead in particular to the modernisation of the rules on subsidies by strengthening the obligations of transparency and notification and clarifying the rules applicable to horizontal industrial subsidies; calls for a solution to be found as soon as possible to restore the functioning of the Appellate Body of the WTO's dispute settlement system;
- ⑥3 Considers that the WTO must integrate in its works the issues related to sustainable development, adapt its rules to take account of the imperative fight against climate change, and that it also has an important role to play in contributing to the attainment of the United Nations Sustainable Development Goals on Decent Work and Gender Equality;
- ⑥4 Approves the orientations presented by the Commission with a view to a European initiative on trade and the climate and expresses the hope that the Twelfth WTO Ministerial Conference will lead to the adoption of an ambitious Ministerial Statement.