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Making it count: CIVIL SOCIETY ENGAGEMENT IN EU TRADE AGREEMENTS

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A reform of civil society engagement in EU Free Trade Agreements (FTAs) is necessary and particularly timely with the recently launched review of EU's trade policy.

Civil society can contribute towards promoting sustainability dimensions of FTAs between the EU and other countries. Domestic Advisory Groups (DAGs) and joint civil society meetings were established to do just that. However, given the lack of substantial outcomes, civil society actors and other stakeholders are increasingly critical of the usefulness of these mechanisms. There is a crucial need to justify the investment made towards civil society mechanisms in EU FTAs to ensure continued participation.

The paper provides concrete recommendations to enhance the effectiveness and added value of DAGs and joint civil society meetings. DAGs should be strengthened to improve their ability to monitor sustainability aspects of FTAs and to influence trade policy measures. To do so, here are some of the recommendations presented in the paper:

- Strengthen efforts to identify and monitor concrete trade and sustainable development priorities.
- Ensure that civil society mechanisms have a sustainable stream of resources.
- Create transparent and structured channels for civil society to interact with government entities.
- Enhance synergies with development cooperation instruments – including civil society roadmaps – that can reflect commitments to support non-state actor engagement in EU trade agreements with certain low- and middle-income countries.

These and other measures highlighted in the paper, can empower civil society actors to promote sustainability dimensions of trade agreements more effectively, thereby proving the added value of investing in civil society mechanisms in EU FTAs.

Table of Contents

Acknowledgements	iii
Acronyms	iii
1. Introduction	1
2. Purpose(s).....	2
3. Composition	4
4. Scope	6
5. Organisation	8
6. Channels of input	11
7. Monitoring and enforcement more broadly	13
8. Conclusion	14
Bibliography	17
Annex 1: Interviewee list	19
Annex 2: Webinar participant list	20

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The views expressed in this study are exclusively those of the authors and should not be attributed to any other person or institution. For comments or questions related to the paper, you're welcome to contact the authors by sending an email to jvs@ecdpm.org (Jeske van Seters) and na@ecdpm.org (Nadia Ashraf).

Acronyms

AED	Alianza Empresarial para el Desarrollo
CEU	Central European University
CEUS	Centre for EU Studies
CTEO	Chief Trade Enforcement Officer
DAG	Domestic Advisory Group
ECDPM	European Centre for Development Policy Management
EESC	European Economic and Social Committee
ESF	European Services Forum
ETUC	European Trade Union Confederation
EU	European Union
FES	Friedrich-Ebert-Stiftung
FTA	Free trade agreement
FTAO	Fair Trade Advocacy Office
ITUC	International Trade Union Confederation
NGO	Non-governmental organisation
TSD	Trade and Sustainable Development

1. Introduction

In recent years, the European Union (EU) has increasingly sought to promote a normative agenda of values and principles in its trade policy. The Trade for All Strategy adopted in 2015 reflects the EU's ambition to better link trade policy instruments with the aim of addressing labour rights and environmental protection (European Commission 2015). The current European Commission has expressed its commitment to further promote sustainable and responsible trade, including in the context of the EU Green Deal (European Commission 2019).

Non-state actor engagement can contribute towards promoting and realising the sustainability dimensions of trade policies in general, and free trade agreements (FTA) in particular. The EU-CARIFORUM economic partnership agreement (EPA), concluded in 2008, was the first trade agreement that created a dedicated mechanism to incorporate civil society participation, covering all aspects of the implementation of the agreement. Since the EU-South Korea FTA in 2011, non-state actor engagement is a standard feature in EU free trade agreements as part of the Trade and Sustainable Development (TSD) chapter.¹ This 'new generation' of FTAs have TSD chapters that contain provisions to promote labour and environmental standards that both parties need to respect in the framework of the agreement. Civil society mechanisms have been formed to monitor these sustainable development commitments. These mechanisms take different forms, namely Domestic Advisory Groups (DAGs) on both the EU and the trading partner side, along with joint civil society meetings that bring together civil society representatives from both DAGs, as well broader civil society actors (European Commission 2017).²

The EU is a frontrunner in institutionalising the participation of civil society actors in trade agreements. DAGs and joint civil society meetings can act as instruments of participatory democracy allowing access to civil society actors to contribute to the monitoring and implementation of trade agreements. In practice, however, civil society mechanisms in EU trade agreements have received strong criticism on their added value and effectiveness. There is limited evidence of substantial outcomes achieved by these mechanisms, and stakeholders are increasingly disappointed with the lack of progress made in this regard (Smith et al. 2020, Harrison et al. 2018a). This begs the question of whether the investments made to create and operate these mechanisms, as well as further investments in the context of future trade agreements, are justified. It further implies that in order to keep actors interested and motivated to continue participating in these mechanisms, and for the civil society mechanisms to deliver on their promise, the EU will have to consider substantial reform of these structures.

It is now a particularly opportune time to reform civil society dialogue given the recently launched review of the EU's trade policy. The review aims to provide a direction to the EU's trade policy in response to new global challenges brought by the coronavirus pandemic. A reform of the trade policy as well as the civil society participation it entails, can help build "a smart and sustainable new normal" as put by EU Trade Commissioner Phil Hogan in his speech to launch the review process.³

¹ Civil society mechanisms have been established under nine EU FTAs: Canada, CARIFORUM, Central America, Georgia, Japan, Moldova, Peru-Colombia-Ecuador, South Korea and Ukraine.

² In the EPAs with African, Caribbean and Pacific countries, the EU provided for the inclusion of a Consultative Committee as the institutional mechanism to associate non-state actors to the implementation process of the whole agreement. Only the Caribbean Forum agreed to this setting, which is still absent from other EPAs concluded with African and Pacific countries.

³ See the [speech by Commissioner Phil Hogan at Launch of Public Consultation for EU Trade Policy Review - Hosted by EUI Florence](#) and <https://www.youtube.com/watch?v=NrVO9kurlgQ&authuser=0>. For more information on the review process, see [this press release](#).

The aim of this paper is to discuss key challenges facing non-state actor engagement in EU FTAs and provide recommendations for the way forward. The paper explores different characteristics of civil society mechanisms that influence their effectiveness, followed by specific recommendations related to each characteristic. Information has been collected through a desk review, as well as a select number of semi-structured interviews with academic experts and other relevant stakeholders (see Annex 1). This is in addition to feedback gathered from an interactive webinar, during which preliminary findings of the report were presented and discussed. The webinar was attended by policy makers, as well representatives from the private sector, non-governmental organisations (NGOs), trade unions and academia (see Annex 2).

The next section discusses the potential purpose(s) of civil society mechanisms, followed by sections on composition, scope and organisation of DAGs/joint civil society meetings, as well the channels to engage with the signatory parties of the trade agreement. The paper then briefly discusses some of the broader monitoring and enforcement challenges related to sustainable development dimensions of EU FTAs that affect the functioning of non-state actor mechanisms, followed by a final concluding section.

2. Purpose(s)

To ascertain the effectiveness of civil society mechanisms, it is important to first define the purpose of these mechanisms. The European Commission's purpose to set up a domestic advisory group is only broadly defined, namely “to advise on the implementation of the sustainable development chapters in EU trade agreements”.⁴ In practice, non-state actors involved in these mechanisms as well as other stakeholders have varying perspectives of what role these mechanisms should and could play.

Orbie et al. (2016a) have identified **four distinct categories to describe the purpose of non-state actor engagement in EU trade agreements**, namely to i) legitimise FTAs; ii) provide a platform for dialogue; iii) monitor the TSD chapter; and iv) influence policy.

Starting from the most basic, civil society mechanisms can be used to **legitimise** the trade agreements. DAGs and joint civil society meetings can be perceived to contribute towards making EU trade agreements more socially acceptable, simply by giving civil society actors access to the FTA and its processes. This essentially means offering a ‘fig leaf’ to civil society which may be opposed to the agreement, without providing any substantial opportunities to contribute towards the implementation of the agreement. Using civil society mechanisms to legitimise a trade agreement is not in itself a sufficient achievement, and can arguably even weaken civil society processes if members are diverted towards less transformative agendas (Orbie et al. 2016b). While there appears to be no evidence that the participation in DAGs influences organisations to change their perspectives on trade policy, civil society actors are aware of the “potentially legitimising effect” of their participation (Orbie et al. 2016b).

At a slightly higher level of inclusiveness, the DAGs and joint civil society meetings can provide a **platform for dialogue** between different stakeholders, allowing them to share expertise and information, discuss policies and broaden their networks. In general, it may be useful to bring different types of organisations together, which would usually not meet otherwise, and promote a more coherent and broad-based discussion on trade and sustainable development (Interviews 2020). It could also provide recognition to civil society actors by their respective government and build the understanding of government stakeholders towards civil society actors and processes (EESC 2019). The joint civil society meetings also provide opportunities for civil society actors in partner countries to learn from their

⁴ See: [Implementation of the Trade and sustainable development \(TSD\) chapter in trade agreements - TSD committees and civil society meetings](#). European Commission, news archive, December 2019.

counterparts in Europe and vice versa. While DAGs and transnational meetings are, to an extent, considered successful in providing such platforms, there still exist limitations to how far the mechanisms can go in promoting dialogue. There may be little value in debates where some parties monopolize agendas or due to very divergent interests the discussions become too “frustrating” for people (Interviews 2020). Nevertheless, based on a survey of EU DAG members, DAGs and joint civil society meetings are considered to have moved towards more substantive debate on trade and sustainable development in recent years (Drieghe et al. 2020).

Going beyond the intrinsic value of civil society mechanisms as knowledge sharing platforms, non-state actor engagement can be used to **monitor** the sustainability dimensions of trade agreements. While the signatory parties have a key role and commitment to monitor the implementation of a trade agreement and its impact, civil society actors can also gather information and provide recommendations. While these recommendations are not enforceable, they can still contribute to making policy makers more accountable.

Finally, at the highest level potentially, in terms of impact, DAGs and joint civil society meetings could become instruments to **influence policy**. This means allowing civil society actors to actively contribute to decision making regarding the sustainable development dimensions of trade agreements.

Analysis indicates that civil society mechanisms play a limited role in monitoring the sustainability dimensions of trade agreements (Barbu et al. 2017) and even more so in influencing policy (Drieghe et al. 2020, Kube 2019). The Korea case provides a good but rare illustration of the potential influence of civil society mechanisms. The EU DAG and the joint civil society forum have played a positive role in escalating the issue of harassment and imprisonment of trade unionists by South Korea (t&sd group 2019).⁵ At the same time, it should be recognised that it still took eight years for the European Commission to initiate consultation despite repeated pressure from the civil society bodies as well as other actors, including the European Parliament. This demonstrates the difficulty of civil society mechanisms to achieve tangible outcomes.

While these roles are not mutually exclusive and civil society bodies can potentially play more than one role, it is still **important to work towards a common understanding of the main purpose of civil society engagement** among the signatory parties and the civil society actors involved. Different civil society actors view these mechanisms differently, which has an implication on the functioning of the DAGs. For instance, some papers point to a relative satisfaction of the business community with the dialogue and the monitoring function of civil society engagement. The business community does not necessarily strive to influence policies, while NGOs and other civil society actors are more keen to push towards more tangible outcomes (Drieghe et al. 2020).⁶

As mentioned above, civil society mechanisms can provide an intrinsic value in terms of the dialogue function, but these mechanisms can be further strengthened to allow non-state actors to contribute more meaningfully towards monitoring sustainability dimensions of EU trade agreements as well as potentially influencing policy. In other words, **the characteristics of these mechanisms should facilitate civil society actors to fulfil these envisaged role(s)**. This paper will look into different characteristics of civil society mechanisms and the ways in which they can be improved.

⁵ The EU DAG wrote a letter (2014) to the Trade Commissioner expressing serious concern over the widespread violations, followed by a joint statement (2015) by the EU-Korea Civil Society Forum, and another letter of the EU DAG (2016) to the Trade Commissioner asking for consultations to be initiated.

⁶ Findings from Drieghe et al (2020) primarily concern the EU DAGs and (to a lesser extent) the joint civil society meetings.

3. Composition

This section will discuss procedures and practices through which DAG members are chosen, as well as the issues related to representativeness and independence of members. There are no set rules and procedures for DAGs or joint civil society meetings, and selection and composition of members differs across DAGs.

EU FTAs call for a balanced representation of independent economic, social and environmental stakeholders, including employers' and workers' organisations, environmental groups and other relevant organisations.⁷ While civil society mechanisms are repeatedly criticized for not having **transparent and clear selection procedures**, the process is becoming increasingly transparent, especially on the EU side. The European Commission sends a public call for interest and in general organisations are selected on the basis of the diversity and added value that is brought in by different stakeholders (Potjomkina 2018). More specifically, to become a member of the EU DAG, an organisation needs to fulfil certain criteria which include “independent not-for-profit organisation, represent and promote EU interests, have specific expertise or competence on areas covered by the trade and sustainable development chapter, registered in both the Transparency Register of the European Commission/European Parliament and in the civil society dialogue database of DG Trade”.⁸ Some organisations are selected by the European Economic and Social Committee (EESC). The European Commission selects organisations that meet these criteria. At the same time, the organisations also have a say in who they would want to include in the group. For instance in EU CETA DAG organisations selected by the Commission were free to choose who they wanted among themselves to be included in the core group, while ensuring a balanced representation of economic, social and environmental interests⁹ In the CARIFORUM EU DAG, after the European Commission's screening, there was an election in which organisations voted for whom they wanted to be included within each civil society category (Interviews 2020).

On the side of EU's trading partners, the selection processes are considered to be less transparent. An important issue here is the extent to which **governments control membership**. Can civil society organisations take the initiative to join a DAG themselves or is membership entirely controlled by government entities? In general, the EU FTAs are not very detailed on the selection procedures and there are instances of considerable government control on DAG membership in partner countries. In Costa Rica, the government composed the list of members and itself called on organisations to join (Interviews 2020, Orbie et al. 2016a). Similarly, in South Korea the government in the beginning chose to not include the largest trade union in Korea, the Korean Confederation of Trade Unions, which was only included after pressure from European Commission and the EU DAG (t&sd group 2019).

Moreover, governments may choose to use existing civil society mechanisms rather than creating a new domestic advisory group, which may not always be the most appropriate option. In most trade agreements, governments are free to use existing mechanisms, except for the EU-Korea agreement which obliges the government to set up a new group on sustainable development (Martens et al 2018). Using existing structures allows civil society actors to benefit from and build on existing communication channels and trust built between actors rather than starting anew.

⁷ See: [Implementation of the Trade and sustainable development \(TSD\) chapter in trade agreements - TSD committees and civil society meetings](#). European Commission, news archive, December 2019.

⁸ Ibidem

⁹ See: [Call for interest to become a member of the EU Domestic Advisory Group for CETA](#). European Commission, February 2018.

However, **the value of using existing mechanisms depends on the suitability of the existing structure(s) to play the DAG role.** For instance, do the actors involved in these structures fit the criteria of becoming a DAG member, such as relevant expertise on areas covered by the trade and sustainable development chapter? Existing structures may not always fulfil such conditions. In the case of Peru, some of the existing bodies chosen by the government are very specialist in nature and not suitable for discussing broader issues concerning the TSD chapter, while some are led by government officials, which hinders their independence (t&sd group 2019). In addition, many organisations which were interested in participating in the monitoring of the TSD chapters did not get the opportunity to do so, and ended up creating their own network to monitor the implementation of the agreement. Another possible disadvantage of using existing structures is that there is less certainty that these bodies will actually discuss or monitor the sustainability dimensions of the trade agreement (Martens et al 2018). Members may for instance be more inclined to discuss pre-existing agendas.

A further issue, linked to transparency of selection procedures, is the representativeness of civil society actors in DAGs and joint meetings. A **balanced representation of economic, social and environmental interests** is important to ensure that debate is not dominated by one type of interest or some aspects get overshadowed by more powerful sections of the civil society. While all EU FTAs call for a balanced representation of the different interests, in practice this is not always the case (Kube 2019). For instance, it is estimated that around half of the organisations in the Caribbean Consultative Committee represent business interests (Smith et al. 2020) and the business sector is considered to dominate discussions in the group (Interviews 2020). At the same time, others consider that the private sector in EU DAGs may be overshadowed by NGOs and labour unions representatives who often have similar interests. In addition, environmental groups in EU DAGs are often underrepresented (Drieghe et al. 2020). Such imbalance between labour, capital and environmental representation can make debates one sided and exacerbate power asymmetries.¹⁰

Relatedly, there is a concern that the members participating in civil society mechanisms may not be **representative of the interests of the civil society** they claim to represent. In particular, it is perceived that the current structure excludes certain sections of the civil society, specifically the most vulnerable and disadvantaged. Membership is usually restricted to established organisations, while interests of non-organised sections of the society such as informal workers and minority groups may be neglected (Kube 2019). In their study of civil society mechanisms in the EU FTAs with Moldova, South Korea and CARIFORUM, Smith et al. (2020) noted that issues related to temporary and/or women workers were not raised in the civil society mechanisms due to a focus on core labour standards, but also because of the hierarchy of organised labour. This refers to for instance the low participation of irregular workers in trade unions, which then has an influence on the issues raised in DAG meetings.

In addition, there are instances where the member organisations may not be the most relevant. For example, the DAG in Moldova is represented by NGOs which work as think tanks or research institutes and that are not considered to be well rooted in Moldova and cannot draw on a network of interest groups to be able to claim representative legitimacy (Smith et al. 2020).

Finally, ensuring **regional representativeness** in regional EU FTAs can be a challenge. In the case of the CARIFORUM consultative committee, it was difficult to select organisations that represented the entire region's interests, while also having the expertise to discuss complex trade implementation issues. Many chosen organisations were national in orientation and lacked expertise to discuss regional

¹⁰ While balanced representation of the different pillars of sustainable development is important to ensure all voices are heard, it can also make it more difficult for actors to reach consensus. The wide-ranging interests may result in weak statements due to a low common denominator. At the same time, statements supported by different sections of civil society may have greater weight to influence policy makers than statements of a particular section only.

concerns or issues facing other countries (Smith et al 2020). Similarly, in the case of Central America DAG, the choice of national organisations instead of regional civil society structures makes it challenging to ensure regional cohesion (EESC 2019).

Way forward

Greater clarity on the selection procedure and ways to ensure independent and balanced membership can contribute to overcoming issues related to composition of DAGs. In this spirit, the European Commission, in its non-paper on improving the implementation and enforcement of TSD chapters, has stated that it will **promote best practices of establishment and functioning for DAGs and joint civil society meetings** (European Commission 2018a). It has committed specifically to “stimulate the creation of guidelines” for the functioning of civil society mechanisms, which could help harmonise selection criteria and processes across DAGs. It appears that such guidelines or best practices are still to be made. The process can be accelerated possibly with (more) involvement from DAG members. The European Commission (2018a) has specified that the proposed actions would be developed in collaboration with the EESC. The Commission could explore also directly involving in the process (members of) DAGs in FTA partner countries to better understand the challenges as well as best practices.

An example of the usefulness of such guidelines can be found in the recent DAG initiative in Central America to develop joint governance guidelines for all national DAGs set up in the context of the trade pillar of the EU - Central America Association Agreement.¹¹ They cover, among other things, member selection procedures and have been inspired by the rules of procedure of their counterpart DAG in the EU. DAG members expect that such guidelines will be useful in streamlining coordination among Central American DAGs as well with the EU DAG and can be a real “turning point”, as put by one interviewee (Interviews 2020).

While promoting best practices or guidelines can be a useful starting point, it does not ensure more representative and balanced civil society mechanisms. The Commission in its non-paper points to the need for clear and transparent rules for DAGs, particularly on the partner country side, while keeping in mind the independent nature of these structures. Although the need to allow trading partners to independently implement their own rules in a flexible manner is acknowledged, the European Commission is sometimes criticised for its “hands-off” approach towards the composition of civil society mechanisms in partner countries (Orbie et al. 2016a, Interviews 2020). The commission is considered to exert little influence on trading partners to address the concerns regarding the composition of DAGs. The EESC, in its opinion paper on the role of DAGs, has asked for the **EU to “persuade, diplomatically but firmly”, it’s trade partners on the need to constitute representative and balanced civil society mechanisms** (EESC 2019).

4. Scope

Similar to the purpose of civil society mechanisms, there are also diverging views on what the scope or mandate of these mechanisms should be. Under the current FTAs the DAGs are competent to discuss sustainability issues related to the trade and sustainable development chapters of the agreements. It is often argued that the scope of the DAGs should be extended to cover **sustainability aspects of the entire trade agreement**, as the wider provisions of the agreement can have impacts on social and environmental issues. For instance, there is a link between the tariff structure and the protection and

¹¹ The Central American signatory countries of the Association Agreement with the EU are Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

promotion of jobs. Civil society actors in DAGs have also made repeated requests to be able to discuss social and environmental sustainability dimensions of FTAs that go beyond the TSD chapter (European Commission 2018).

To go further, an argument can also be made to broaden the scope of the agreement **beyond sustainable development** to cover economic issues as well. This is exemplified in the CARIFORUM agreement where the remit of the consultative committee is not limited to social and environmental sustainability only, but also covers economic considerations. One can argue that by extending the scope of the DAGs beyond TSD chapters to address sustainability issues across the trade agreement in a way already covers economic issues. As such, extending the scope of DAGs to properly address issues arising from all chapters of the trade agreement can complement the existing efforts of the civil society and allow better implementation of EU FTAs (EESC 2019). The EESC, in its opinion on the role of DAGs, has called for the expansion of the scope of the advisory groups to cover all aspects of the FTA.

However, extending the mandate of civil society mechanisms comes with its challenges. There is a risk that broadening the scope of the DAGs can **dilute the concerns** of civil society actors and make it challenging to prioritise issues. For instance, the CARIFORUM consultative committee is criticised for never discussing labour standards, in part because of the wide scope of the mechanism (Harrison et al. 2018b). The difficulty to prioritise issues is already a major concern for many DAGs, given the participation of actors from across the spectrum of civil society with often diverging agendas. Moreover, extending the scope of DAGs may also make it more difficult for civil society actors to monitor the wide range of issues and would require substantial support to build capacity both in terms of **resources and expertise**. This corresponds to the earlier mentioned point on the need to ensure that the capacity of DAGs is commensurate with the role assigned to it.

Way forward

Based on these concerns there is a rationale for the remit of civil society mechanisms to be expanded beyond the TSD chapters to cover the entire agreement, but still maintain the focus on the labour, social and environmental pillars of sustainable development. This addresses the concern that provisions throughout FTAs can have labour, social and environmental implications, while it keeps the focus on the EU's value agenda. In response to the demand to extend the scope of DAGs, the European Commission in its second non-paper on the implementation of the TSD chapters has indeed decided to broaden the scope of DAGs to cover the sustainability implications arising from the entire agreement in future FTAs (European Commission 2018a). The approach will be implemented in the forthcoming EU-Mexico and EU-Mercosur FTAs and will henceforth become a standard negotiation approach. This will nonetheless require measures that facilitate better prioritisation of issues and strengthen the capacity of the DAGs, which are crucial concerns even without expanding the scope of these mechanisms (discussed further in the next section).

Furthermore, in an attempt to facilitate a more focused and tailored EU action, **the European Commission has decided to develop TSD country priorities for implementation** (European Commission 2018a). This can help identify the key challenges and opportunities facing each partner country/region in the context of TSD implementation. Such 'action plans' can prove to be a key factor in helping DAGs streamline their discussions and focus on specific issues that are considered to be the priority concerns for partner countries. The usefulness of this tool would depend on how much effort is involved in ensuring that the priorities are well "hashed out" (Interviews 2020). It appears that the process of developing TSD priorities has not achieved substantial progress. **The European Commission in collaboration with trade partners can strengthen efforts in this regard.** DAGs can encourage the signatory parties more strongly to do so.

Another suggestion to support prioritisation of issues is to disentangle the broad scope of sustainable development, by dividing the DAGs into smaller sub-groups pertaining to different aspects of sustainability. They may allow sufficient attention to be given to each of the pillars of development, and avoid diluting discussions or some sensitive topics being overshadowed by less controversial issues. For instance, the EU-Canada explicitly creates separate domestic groups for labour and environmental issues (Martens et al. 2018). The Costa Rican DAG is another example where the DAG is divided into three different groups.

This solution should still not be considered as a silver bullet as it does not in itself empower civil society actors. This can be exemplified by the Costa Rican DAG example, which continues to face challenges including organisations not being very active or not aware of the issues under debate (Interviews 2020; Orbie et al. 2016a). The need for organisations to more effectively discuss proposals continues despite the sub-division of groups. The next section will look into the issue of capacity and resource availability for civil society mechanisms.

5. Organisation

Setting up the structure of the civil society mechanisms is complex and can be delayed, among other things, because of the difficulty in selecting representative organisations or a lack of clear purpose. This section will explore some of the other more logistical challenges faced by DAGs, including coordination and communications challenges, capacity limitations and financial constraints.

The **coordination and communication** of civil society actors within a DAG as well as in joint civil society meetings continues to be a hindering factor for members to participate effectively. An important element in this regard is the frequency of meetings and the feasibility of member organisations to participate in them. The TSD chapters do not dictate the number of times DAGs need to meet, given that DAGs are free to set rules and procedures including frequency of meetings, as mentioned earlier (Kube 2019). In practice, **DAG meetings** usually take place once or twice a year with more frequent meetings on the side of EU DAGs (Drieghe et al. 2020; Martens et al. 2016). The participating organisations may also vary from one year to another making in-depth discussions and continuity of debates challenging.

More fundamentally, there is sometimes a lack of coordination between civil society actors to properly prepare for these meetings, which can be especially challenging for regional DAGs. For instance, in Central America, coordination among national DAGs is considered to be limited because of lack of communication and follow up of meetings (Martens et al. 2016). One reason for this is the absence of an EESC-like regional coordinating body (Orbie et al. 2016b).

Apart from DAGs on both the EU and the partner country side, **DAG-to-DAG meetings and open civil society meetings** are also considered a crucial element of non-state actor engagement in the implementation of EU trade agreements. These mechanisms allow for knowledge sharing between civil society actors and provide a platform through which stakeholders can jointly try to influence policy makers. These transnational meetings usually take place once a year, which is not considered enough especially given that there is little to no follow up in between meetings (Martens et al. 2016). On the partner country side, there are also instances where civil society members face logistical and financial barriers to attend the meetings. For instance, in a statement of the CARIFORUM-EU joint consultative committee, it is mentioned that CARIFORUM participants were not able to get visas to attend the

meeting in a CARIFORUM member state.¹² On other occasions participants were not provided funding to travel to Brussels for the joint meeting (Interviews 2020).

There is also room to improve coordination **between different DAGs** to facilitate best practices and knowledge sharing. Given the increasing number of EU trade agreements and the corresponding civil society mechanisms, it would be important to create links among members of different DAGs which is considered to be lacking at present (European Commission 2018a). Several stakeholders across DAGs may be dealing with similar issues and would benefit from sharing experiences with each other. It is also relevant to note that many organisations are already in several DAGs and could usefully contribute to broader discussions on sustainability in EU trade agreements. Relatedly, coordination with **other stakeholders** may also be important. For instance, DAGs could benefit from more communication with international organisations, such as the International Labour Organisation.

A related challenge, as mentioned earlier, is the need to bolster civil society's **capacity** to monitor and advise on sustainability issues arising from the implementation of the trade agreement. The availability of funding is closely associated with capacity. In the context of DAGs, **capacity entails several concerns** including: i) expertise and funding to conduct **research**, ii) financial support to **organise meetings** and for members to attend them, and iii) resources to **disseminate information** (t&sd group 2019, Martens et al. 2016, Montoute 2011). Understanding the trade agreements and its sustainable development provisions is a complex matter and there is a need to build civil society's expertise in this field. Extending the scope of the DAGs to cover the entire trade agreement would require even greater expertise and resources.

On the EU side, the proliferation of trade agreements and civil society mechanisms can prove to be a further strain on the capacity of civil society actors. Given that many European organisations participate in more than one DAG, the rapidly increasing number of FTAs likely means that organisations will prioritise engagement in some FTAs over others (Smith et al. 2020). This may adversely impact the representativeness of EU DAGs if for example important trade unions are not present in some DAGs. Greater financial support and capacity building may encourage organisations to keep participating in different DAGs effectively. In a similar vein, the capacity of EU institutions, both in terms of finance and human resources, will also need to be enhanced to engage with the growing number of DAGs. The EESC estimates the costs of its engagement in DAGs to double in the next three years (since 2019), and asks for an additional budget to allow it to fulfil its role effectively (EESC 2019).

Way forward

In the last few years, some of these organisational issues have been resolved, and may not be the top priority to further address. Nevertheless, many DAGs, more so on the partner country side, still face logistical challenges which hinders effective participation of member organisations.

The EU has in recent years made more funding available to support non-state actor engagement in EU trade agreements. In 2018 the European Commission launched a **EUR 3 million project to help DAGs (both EU and partner countries) overcome logistical and organisational challenges as well as encourage the exchange of best practices** (European Commission 2018a). While this funding is considered useful to support the functioning of DAGs, it appears to target more the organisational and information sharing/exchange aspects of DAGs, with less focus on building the **monitoring capacity** of civil society bodies (Drieghe et al. 2020). For instance, more support can be made available to DAGs to access grants to undertake in-depth research, which would enhance their monitoring ability.

¹² See: [Joint Statement from the Fourth Meeting of the CARIFORUM-EU Consultative Committee](#), December 2018.

More fundamentally, the project funding announced in the non-paper may not be sufficient to build the capacity of DAGs in the long run and a **more sustainable stream of resources** may have to be created. In this regard, it may be important for the text of trade agreements to explicitly provide provisions for financing civil society bodies, both by the EU and counterpart governments (EESC 2019). As such, dedicated funds need to be established for each specific trade agreement to fulfil the objectives of the TSD chapters (Harrison et al. 2018b). A common fund pooling resources with the partner country may be an option (Martens et al. 2016).

Additionally, there is scope to **enhance synergies with development cooperation instruments**, specifically the civil society roadmaps developed by DG DEVCO for different partner countries.¹³ These roadmaps could reflect priorities of the commission with respect to supporting non-state actor engagement in EU trade agreements. For instance, the roadmap for engagement with civil society in Ukraine already has a priority on active participation of civil society in EU programming consultations and other international processes. One of the indicators within this priority relates to the “quality (nature and scope) of CSO's involvement in dialogue processes related to the EU national strategic partnership, Free Trade Agreements, programming of EU assistance, etc.”¹⁴ This can be potentially further developed to include specific priority actions, possibly based on the earlier mentioned TSD priorities.

With respect to communication and coordination, a common recommendation is to encourage more frequent meetings and follow ups by also using **virtual mediums**. The EESC recommends that DAGs meet at least twice a year at the EU level, and joint civil society meetings should also take place twice a year (one face to face meeting and one possibly using video conferencing) (EESC 2019). It also calls for a conference call among all EU DAGs once a year to facilitate stakeholders to share experiences from their participation in respective DAGs. Online knowledge sharing platforms and capacity building tools could also be used to enhance communication between DAG members and joint civil society meetings.¹⁵ For instance, in a DAG meeting under the FTA with Colombia and Peru, a web live stream and email connection have been used to directly forward inquiries from the broader public (Kube 2019).

In the wake of the increasing number of trade agreements, a restructuring of the DAGs to optimise financial and human resources may become necessary. Given that various organisations on the EU side are part of several DAGs, one suggestion could be to merge different DAGs. This could take the shape of regional DAGs for instance. However, this may not be an easy task and can arguably exacerbate existing challenges. For instance, **DAGs clustered together** for one region would require civil society actors who understand the region as well as the trade related issues. This would require considerable expertise. Additionally, unless there is a regional agenda, regionally clustered DAGs may lead to the dilution of interests as stakeholders would have very different priorities (Interviews 2020). The way in which DAGs are potentially clustered will have to mirror the trade agreement. It may also not make political sense to merge different countries which are not part of the same trade agreement.

Another way could be to cluster different stakeholders across DAGs, on the EU side at least, in thematic groups, for instance on labour or environmental issues (Martens et al. 2016). This could be done in addition to the meetings organised for each trade agreement. While this would not relieve the pressure on resources, it may foster the necessary coordination and communication among different DAGs. Additionally or alternatively, DAG and joint meetings can be organised one after another during a short period to allow for economies of scale, making it more feasible for organisations to participate.

¹³ For more information see: [Capacity4dev, Civil society roadmaps](#).

¹⁴ See: [EU Roadmap for engagement with civil society in Ukraine 2018 - 2020](#).

¹⁵ See: [Joint Statement from the Fourth Meeting of the CARIFORUM-EU Consultative Committee](#), December 2018.

6. Channels of input

This section will specifically focus on the channels through which DAGs can engage with the signatory parties of the trade agreement.

Transparent and structured mechanisms for civil society to interact with government entities is important for more effective monitoring. Trade agreements vary in terms of specifying **the interaction between civil society actors and the parties** (Martens et al. 2018). In practice civil society groups have used several avenues including letters to the EU Trade Commissioner, published reports, engaging with officials in DAG and joint civil society meetings as well as reaching out to parliamentarians (Drieghe et al. 2020). However, **no guidelines exist on exactly how and to whom civil society structures can channel their inputs** and monitor trade agreements.

In addition, there is a lack of two-way communication between civil society actors and the government. In most FTAs there is no institutionalised mechanism through which civil society groups can demand **response from government entities** (Interviews 2020, Kube 2019). There are instances of delayed response from both partner country governments and the EU. For instance, it took the EU Trade Commissioner 17 months to respond to a letter from the DAG in Peru, raising the issue of hazardous working conditions in the mining sector (Thu and Schweisshelm 2020). A relatively recent and so far rare example of a response commitment, is the EU-Canada agreement that binds parties to annually report on how they have followed up on the recommendations emerging from civil society meetings.

The **relationship of the DAG with other governance structures in the FTA**, in particular the Trade and Sustainable Development (TSD) committee, is crucial. The TSD committee is an intergovernmental body responsible for monitoring the implementation of the TSD chapter as well as assessing the impact of the agreement on sustainable development issues. In its 2018 non-paper, the European Commission mentions the participation of DAG chairs in TSD committee meetings as a best practice, but at present, links between the DAG and the TSD committee are limited and ad hoc. For instance, the co-chairs of the joint consultative committee of the CARIFORUM have been allowed to participate as observers in parts of TSD Committee meetings, but have not been given permanent observer status regardless of repeated requests.¹⁶

Moreover, an important mechanism for civil society actors to influence decision making is the **dispute resolution mechanism** of the TSD chapters. This involves government consultations as a first step, which is passed on to the panel of experts in case of non-agreement. Civil society actors cannot trigger the dispute settlement process themselves, which is a constraint for DAG members to effectively escalate alleged violations of TSD commitments (Drieghe and Potjomkina 2019).

Nevertheless civil society mechanisms can still be involved in the process, with varying degrees across the different trade agreements. The link between DAG and the dispute resolution mechanism can range from no formal connection, as in the case of Central America for instance, to a voluntary approach of there being an option for the TSD committee to consult other stakeholders, including DAGs, as in the EU-Vietnam FTA (Kube 2019). The EU FTAs with Korea and with Canada go further by stating that the DAGs 'shall' be consulted either during the government consultation or by the panel of experts. It is also important to consider civil society actors engagement in the follow-up on the recommendations of the panel of experts. In most trade agreements, the panel of experts is obliged to inform the DAG on the outcome of its proceedings and civil society actors can submit observations on the implementation (Kube 2019). It is important to note that while relevant articles in the trade agreement set the basis for

¹⁶ See the joint statements from the [fourth](#) and [fifth](#) meeting of the CARIFORUM-EU Consultative Committee, in December 2018 and November 2019 respectively.

civil society engagement, the actual involvement and contribution of civil society actors may vary in practice.

More broadly, the extent to which civil society actors can effectively engage with the signatory parties also depends on the overall **political attitude towards civil society engagement** and whether both trading partners share the same views. The Peruvian Government, at the beginning of the formation of the DAG especially, was not in favour of, and even hostile to, civil society participation in monitoring trade (Orbie and Van den Putte 2016). In the case of the CARIFORUM-EU agreement, the Cariforum Secretariat has reportedly posed roadblocks to prevent the consultative committee from contributing meaningfully (Interviews 2020). This (perceived) unwillingness of partner country governments and regional organisations to engage with civil society actors, and considering these mechanisms a mere requirement from the EU is a key barrier to the effectiveness of DAGs. In this context, improving direct channels of communication between the DAG in a partner country and the EU, can provide civil society actors with more avenues to influence and engage with policy makers.

Way forward

To allow civil society actors to effectively channel their inputs, it is imperative to create structured **reporting and feedback mechanisms** within the framework of the trade agreement. The EESC asks for the **DAG chairs to have the right to present their views in Trade and TSD committees**, and also have the **right to request a response on the recommendations provided by the DAG within a specified time frame** (EESC 2019). Relatedly, it could be ensured more consistently that DAG/joint civil society meetings take place just prior to meetings of intergovernmental bodies, so that non-state actor deliberations and statements can immediately feed into intergovernmental meetings.

Moreover, it would be valuable to create a **complaint procedure that is open to civil society actors** (t&sd group 2019). More generally, greater clarity on how and to whom the civil society actors need to direct their input is required (European Parliament 2018), which should be accompanied by institutionalised response mechanisms that oblige governments or intergovernmental bodies within the FTA framework to respond to the issues raised by civil society mechanisms.

The **DAGs can also play a more important role in providing input to the dispute settlement processes**. The EU-Canada FTA is already more advanced with provisions to consult civil society mechanisms during government consultations or by the panel of experts, as well as involving them in the follow-up of the recommendations of the panel. It may serve as a good blueprint for future trade agreements.

In addition, **communication between DAGs and EU institutions can be further enhanced**. Relevant Directorate Generals of the European Commission to engage with include Trade; International Cooperation and Development; Employment and Social Affairs; and Environment. It may also be useful for the DAG to **engage with the European Parliament** and the Council of the EU in a more regular and structured manner. For example, Members of the European Parliament or their staff could participate in certain (parts of) DAG meetings as observers. More engagement of DAG members with **national parliaments in EU member states** can also be valuable, given the strong influence they can have on governments' positioning in EU decision making processes. In addition, the **EU delegations** can engage with civil society actors more actively in countries with which the EU has concluded a trade agreement. A good example is the meeting with CSOs organised by the EU delegation in Colombia to discuss the trade agreement between the EU and Colombia and Peru, its civil society mechanisms and ways in which the functioning of the agreement may be enhanced (Martens et al. 2016).

7. Monitoring and enforcement more broadly

It is important to recognize that the ability of civil society mechanisms to fulfil their roles is constrained due to broader monitoring and enforcement challenges of sustainability dimensions of FTAs. These challenges are not directly related to civil society mechanisms, but affect them. Addressing such issues can enhance the effectiveness of civil society mechanisms of TSD chapters and of sustainability in trade agreements more generally.

There is a need to **better operationalise the monitoring of the TSD chapters**, and more broadly the sustainability impacts of the entire agreement (t&sd group 2019). As mentioned earlier the signatory parties have a key role and commitment to monitor the implementation of a trade agreement and its impact, which is supported by civil society actors. In other words, a lack of clear monitoring framework and measurable targets limits the ability of civil society actors to support the process. As noted earlier, the European Commission together with trade partners can **strengthen efforts to define TSD priorities and track progress**.

Relatedly, more use of **ex-post impact assessment** is key, and there can be ways to allow civil society actors to observe or participate in these assessments. The European Commission reports annually on the implementation of the most significant FTAs, which include brief information on the implementation of TSD chapters. The Trade for All strategy states that the European Commission will also conduct more in-depth analysis ex-post of the effectiveness of EU trade agreements. An example is the evaluation of the implementation of the EU - Korea FTA published in 2018 that contains a social, human and labour rights, as well as an environmental analysis (European Commission, 2018b). **Approaches to ex-post evaluations of the implementation of FTAs merit to be further strengthened and used** (Kettunen et al. 2020).

More specific sustainability-related provisions in FTAs can also facilitate monitoring of the implementation of the agreement by civil society actors and the signatory parties alike, and contribute positively to the sustainability impact of FTAs. The wording of sustainability-related provisions in EU FTAs evolves over time, and while it is influenced by negotiation processes, it tends to become more all-encompassing in more recent FTAs, particularly on environmental matters (Ashraf et al 2020). Civil society organisations and experts have pointed out that the sustainability provisions can be further strengthened, by including stronger commitments and making them more precise, rather than aspirational. For example, there have been calls for more substantive commitments related to topics such as living wages, working hours and rights for migrant workers (e.g. Friedrich Ebert Stiftung 2017). In the environmental sphere, examples are calls for more precise commitments and targets to address forest protection (e.g. Fern 2018). Importantly, sustainability-related provisions in FTAs should be tailored to the social and environmental issues of relevance to the two negotiating trading partners, as the European Commission (2018a) has indicated it will do.

Furthermore, the **EU can be more assertive in enforcing** the sustainability provisions of the trade agreements. The EU member states, the European Parliament and civil society actors have made strong calls on the European Commission to do so. In response, it has committed to more assertive enforcement of TSD commitments (European Commission 2018a). A sign of a move in this direction is the first-ever launch of a TSD dispute settlement procedure in the context of the FTA with Korea, partly triggered by DAG calls, as explained earlier. With the process ongoing, it remains to be seen what the outcome will be. The absence of a labour expert in the panel of experts - while labour issues are part and parcel of the dispute - has been criticised (Interviews 2020; Smith et al. 2020).

More generally, dispute settlement mechanisms of TSD chapters have been criticised for lacking teeth. TSD chapters are exempt from the general dispute settlement mechanisms of EU FTAs. While a human rights or environmental violation can trigger government consultations, and a panel of experts can be created at a last resort, the recommendations of the panel are not binding. A TSD-related dispute does not explicitly provide the right to any of the parties to suspend the trade preferences against the other. In case recommendations of the panel are not implemented, no further steps are foreseen in the mechanisms (Drieghe and Potjomkina 2019, Kube 2019). **While staying committed to the dialogue and cooperation spirit of the TSD chapters, the EU could seek to make the best use of existing TSD dispute settlement mechanisms**, by for example following closely the implementation of the recommendations. **In the case of future FTAs, it could be considered to give more teeth to the dispute settlement mechanisms applicable to sustainability provisions.**

The recently created post of the **Chief Trade Enforcement Officer (CTEO)** can be considered a further step forward towards better monitoring and enforcement of the implementation of EU trade agreements. The post of the CTEO was created in December 2019 and is to be filled in 2020.¹⁷ Main responsibilities of the CTEO related to environmental and labour obligations will likely be to monitor the trade partners commitment in TSD chapters. This includes preparing monitoring reports, conducting consultations in case of alleged violations, and if required initiating dispute settlement procedures (Luyten and Kim 2020). **A complaint procedure, as recommended earlier in this paper, could facilitate the work of the CTEO. More generally, the CTEO and his team can benefit from engagement with DAGs and civil society actors.** The added value of this new position for the sustainable trade agenda will partly depend on the staff capacities available to provide support. **Capacities in the European Commission to deliver on environmental and social sustainability ambitions in the area of trade are currently limited and will need to be strengthened.**

8. Conclusion

The paper has highlighted key challenges hindering the effectiveness of non-state actor engagement in EU trade agreements. The growing number of FTAs and the associated civil society mechanisms is only adding to the fatigue of actors who are already critical of the usefulness of these mechanisms. It is thus imperative for DAGs to show results that justify the investment being made towards them, and prove to civil society actors and others that these mechanisms play a useful role in promoting sustainable dimensions of EU FTAs.

To improve the effectiveness of civil society mechanisms, it is important to first develop a common understanding of the main purpose of civil society engagement in EU FTAs, which should be reflected in and supported by the characteristics of these mechanisms. While DAGs and joint civil society meetings are usefully providing platforms for knowledge exchange between different stakeholders, these mechanisms can be further strengthened to contribute better towards the monitoring of sustainability aspects of FTAs, as well as influencing trade policy measures.

In light of this, the paper has provided concrete recommendations to enhance the effectiveness and added value of civil society mechanisms. While there is progress in establishing rules and procedures for setting up DAGs, there is still a need to improve the independence, balance and representativeness of civil society mechanisms, especially on the partner country side. Moreover, as the European Commission has decided to broaden the scope of civil society engagement, there is an even greater need to better prioritise discussions in civil society meetings and further capacitate DAG members.

¹⁷ See: [Commission reinforces tools to ensure Europe's interests in international trade](#). European Commission, news archive, 12 December 2019.

Relatedly, more frequent and efficient communication between civil society actors is important. Finally and importantly, structured reporting and feedback mechanisms are necessary to allow civil society actors to effectively engage with the signatory parties of the agreement.

The table below recaps the main recommendations highlighted in the preceding sections.

Table 1: Recommendations to enhance effectiveness of civil society mechanisms

Area	Recommendations	Main actor(s) concerned
Composition	Enhance the promotion of best practices for the establishment and functioning of DAGs and joint civil society meetings, including by developing guidelines	European Commission
	More firmly persuade trade partners to ensure the constitution of independent, representative and balanced civil society mechanisms	European Commission
Scope	Strengthen efforts to identify and monitor concrete TSD priorities, which can help DAGs to focus and gather information	European Commission, trade partners
	Consider creating DAG sub-groups pertaining to different sustainability dimensions, which can be feasible and valuable in some but not necessarily all cases	European Commission
Organisation	Ensure that civil society mechanisms have a sustainable stream of resources, possibly confirmed in an explicit commitment in the text of trade agreements	European Commission, trade partners
	Enhance synergies with development cooperation instruments, including civil society roadmaps that can reflect commitments to support non-state actor engagement in EU trade agreements	European Commission
	Conduct more frequent meetings using virtual tools	DAG members
	Create thematic groups to communicate across DAGs and/or organise (in-person) DAG and joint meetings one after another in a short period of time	European Commission, DAG members
Channels of input	Establish reporting mechanisms including the right to present DAG views in meetings of the TSD committee and other intergovernmental bodies of FTAs, and right to a response from parties	European Commission
	Strengthen engagement between civil society mechanisms and relevant actors beyond the intergovernmental bodies of the agreement, such as DG Environment and DG Social Affairs of the European Commission, EU delegations, the European Parliament and national parliaments of EU member states.	DAG members, European Commission, EEAS, European Parliament and national parliaments
	Establish a complaint mechanism that is open to civil society	European Commission
	The person fulfilling the new Chief Trade Enforcement Officer position in the European Commission and his/her staff to engage actively with DAGs and civil society actors more broadly	European Commission (CTEO and his/her staff in particular)

While these recommendations are focused on specific measures related to civil society mechanisms, the effectiveness of non-state actor engagement is negatively affected by broader monitoring and enforcement challenges of sustainability dimensions of FTAs. Moving forward, these broader challenges can be addressed by for example strengthening monitoring frameworks, more specific sustainability-related provisions and more assertiveness in enforcing sustainability commitments.

Trade policy can play an important role in the mix of policy areas through which social and environmental values are promoted. The measures proposed in this paper can help empower civil society actors to meaningfully contribute to the monitoring of the sustainability dimensions of trade agreements. As such, it can contribute towards the EU's commitment to promote more responsible and sustainable trade. This is not a nice-to-have, but a must for actors to consider non-state actor engagement in FTAs worth the investment.

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Annex 1: Interviewee list

No	Name, title	Organisation
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2	Pascal Kerneis, Managing Director	European Services Forum (ESF)
3	Maria Fernanda Pérez, Directora Dimensión Económica	Alianza Empresarial para el Desarrollo (AED)
4	Brenda King, Director	African & Caribbean Diversity
5	Daniela Iller, Policy Officer	Friedrich-Ebert-Stiftung (FES)
6	Jan Orbie, Associate Professor Department of Political Science, Director Centre for EU Studies (CEUS)	Ghent University
7	Deborah Martens, Postdoctoral researcher	Ghent University
8	Diana Potjomkina, PhD Fellow	VUB, Ghent University, UNU-CRIS
9	James Harrison, Professor, School of Law, Co-Director Centre for Human Rights in Practice	University of Warwick
10	Kathleen van Hove, Senior Policy Officer	European Centre for Development Policy Management (ECDPM)
11	Marc Maes, Trade Policy Officer	11.11.11 – Coalition of the Flemish North-South Movement
12	Dav-Ernán Kowlessar, Business Development Consultant/ Executive Chairman	DYKON Developments Inc.

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1	James Harrison, Professor, School of Law, Co-Director Centre for Human Rights in Practice	University of Warwick
2	Franklin Maduko, Postdoctoral researcher	Central European University
3	Timea Pal, Research fellow	University Institute of Lisbon (ISCTE-IUL); Central European University (CEU)
4	Diana Potjomkina, PhD Fellow	VUB, Ghent University, UNU-CRIS
5	Jan Orbie, Associate Professor Department of Political Science, Director Centre for EU Studies (CEUS)	Ghent University
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10	Marc Maes, Trade Policy Officer	11.11.11 – Coalition of the Flemish North-South Movement
11	Daniele Basso, Trade Advisor	European Trade Union Confederation (ETUC)
13	Montserrat Gago, Trade Affairs Officer	European Commission - DG TRADE, Unit D2 Economic Partnership Agreements, Africa, Caribbean and Pacific Countries, Overseas Countries and Territories
14	Nuno Sousa, Trade Policy Officer	European Commission - DG TRADE, Unit D1 Trade and Sustainable Development, Generalised System of Preferences
15	Stuart Newman, Senior Legal Advisor - Trade and Customs	amfori
16	Eleonora Catella, Senior Trade Advisor	Business Europe

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