

BlogDUE

The Formulation of the Trade and Sustainable Development Chapter in the European Union-New Zealand Free Trade Agreement: Novel Aspects and Likely Effectiveness Issues

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SUMMARY: 1. Introduction. – 2. “The Power of Trade Partnerships: Together for Green and Just Economic Growth” Communication: scope and policy priorities. – 3. Innovative aspects in the Trade and Sustainable Development Chapter of the EU-New Zealand Free Trade Agreement. – 4. Final considerations on the effectiveness and enforcement of sustainability clauses.

1. On 1st May 2024, the [European Union \(“EU”\)-New Zealand Free Trade Agreement](#) (“FTA”) entered into force. Holding up the cooperation previously established between parties under the [Partnership Agreement on Relations and Cooperation](#), the final text was signed after the authorisation from the Council, and multiple rounds of negotiations protracted since 2018.

This FTA aligns with the EU’s broader strategy of reinforcing ties with like-minded countries on sustainable development, which constitutes a crucial issue of EU trade relations at the international level (for more details, see D. PAUCIULO, *La promozione dello sviluppo sostenibile negli accordi internazionali sugli investimenti esteri*, Napoli, 2023, p. 143 ss.). The EU-New Zealand FTA has been defined as “the most progressive and sustainable European trade agreement ever” and, according to the European Commission, it will set a benchmark for future FTAs with unprecedented climate and social provisions (see [EU Completes Ratification of State-of-the-art Trade Agreement with New Zealand](#) and [Parliament Approves EU-New Zealand Free Trade Agreement](#)).

Major innovative elements have been designed according to the Communication “The Power of Trade Partnerships: Together for Green and Just Economic Growth” policy priorities (“Green and Just Growth Communication”), which pursue obtaining a stronger alignment with the European Green Deal by introducing more effective sustainability clauses (see

for more details, [COM/2022/409, Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and The Committee of the Regions “The power of trade partnerships: together for green and just economic growth”](#)).

As the Green and Just Growth Communication represent a new benchmark for the elaboration of Trade and Sustainable Development Chapters of new EU FTAs (on the effectiveness of Trade and Sustainable Development Chapters in FTAs see *ex multis*, G. ADINOLFI, *A Cross-Cutting Legal Analysis of the European Union Preferential Trade Agreements’ Chapters on Sustainable Development: Further Steps Towards the Attainment of the Sustainable Development Goals?*, in C. BEVERELLI, J. KURTZ, D. RAESS (eds.), *International Trade, Investment, and the Sustainable Development Goals: World Trade Forum*, Cambridge, 2020, p. 15 ss.; A. MUCCIONE, *Il rapporto dei capitoli su “Commercio e sviluppo sostenibile” con la disciplina in materia commerciale*, in G. ADINOLFI (a cura di), *Gli accordi preferenziali di nuova generazione dell’Unione europea*, Torino, 2021, p. 235 ss.), this post focuses on the main environmental and - in subordination - social aspects of this specific Chapter in the EU-New Zealand FTA (so, hereinafter the expression “Sustainable Development Chapter”, and the acronym “SDC” will be used).

Building on previous contributions on this topic (see in particular, G. D’AGNONE, [Sviluppo sostenibile: una condizionalità ambientale... soft? Alcune brevi osservazioni sull’accordo commerciale negoziato tra l’Unione europea e la Nuova Zelanda](#), in *Quaderni AISDUE*, 2022, p. 195 ss.), the aim is to envisage if what one can see “on paper” is likely to bring real added value from a legal point of view. To do this, Section 2 provides the big picture, setting the background and scope of the Green and Just Growth Communication. Section 3 ascertains novelty components compared to prior EU FTAs and discusses how the Green and Just Growth Communication and policy priorities have affected the design of the EU-New Zealand final wording. Taking stock of the findings of this investigation, Section 4 analyses the components that are expected to impact on the effectiveness and enforcement of sustainability clauses.

As a side note, the assessment will also rely on a comparative analysis with prior EU FTAs (see in particular, EU-Vietnam, EU-UK Trade and Cooperation Agreement, EU-Singapore, EU-Mercosur, and EU-Korea).

2. It is well recognised that sustainable development is key to the EU in both the internal and external dimensions, as can be inferred by Article 3, para. 3 TEU, expressing its connection with the internal market, and Article 21 TEU, stating its pivotal role in EU external relations. Additionally, this is remarked by Article 11 TFEU and Article 37 of the Charter of Fundamental Rights outlining the environmental integration principle. Accordingly, the EU has been striving to promote sustainable development by means of trade instruments and foreign investments (see for more details, W. TH. DOUMA, *The Promotion of Sustainable Development through EU Trade Instruments*,

in *European Business Law Review*, 2017, p. 197 ss.; S. SCHACHERER (ed.) *Sustainable Development in EU Foreign Investment Law*, Leiden, Boston, 2021, p. 19 ss.; P. A. PILLITU, *Il principio dello sviluppo sostenibile nel diritto ambientale dell'Unione europea*, in *Il principio di sviluppo sostenibile nel diritto internazionale ed Europeo dell'ambiente*, Napoli, 2007, p. 219 ss.).

As regards this aspect, in June 2021, the European Commission launched an in-depth review with the objective of strengthening the capability of FTAs to champion sustainable trade. Specifically, the Commission conducted a comparative study on SDCs in EU FTAs and carried out an open public consultation to gather input from a diverse array of citizens and stakeholders. The scope was to strengthen economic growth in its external action, hand-in-hand with the protection of the environment, human rights, and decent work. In this respect, the EU has regarded FTAs as fundamental instruments to enforce sustainable development in its foreign policy (see for more details, M. COLLI VIGNARELLI, *The European Commission Trade Policy Review: The Effectiveness of Sustainable Development Chapters in EU FTAs*, in *europeanpapers.eu*, 2021; S. VILLANI, *I capitoli in materia di sviluppo sostenibile negli accordi commerciali dell'Unione europea: prove di rilevanza sistemica*, in *Diritto del commercio internazionale*, 2022, p. 707 ss.).

In 2022, the European Commission finalised this study and drew up six policy priorities to be considered in drafting future EU FTAs. These priorities, indicated in the Green and Just Growth Communication, are: i) keeping a proactive approach in the cooperation with partners; ii) maintaining a country-specific approach; iii) mainstreaming sustainability beyond the SDC; iv) improving the monitoring phase of the implementation of Trade and Sustainable Development provisions; v) reinforcing the role of civil society; and vi) enhancing enforcement by means of trade sanctions as a measure of last resort. Additional action points have been specified for each policy priority, based on the feedback gathered during open public consultations and the EU implementation experience. The 2022 Communication covers critical aspects of the EU FTAs, which in turn touch on the competence of the EU itself to conclude Trade and Sustainable Development Chapters, in line with the main arguments of the Court of Justice in this respect (see in particular, CJEU, [Opinion 2/15](#), 16 May 2017, and, *ex multis*, C. BEAUCILLON, [Opinion 2/15: Sustainable Is the New Trade. Rethinking Coherence for the New Common Commercial Policy](#), in *europeanpapers.eu*, 2017, p. 819 ss.; M. CREMONA, [Shaping EU Trade Policy post-Lisbon: Opinion 2/15 of 16 May 2017. ECJ, 16 May 2017, Opinion 2/15 Free Trade Agreement with Singapore](#), in *European Constitutional Law Review*, 2018, p. 231 ss.; C. KADDOUS, *The EU Competence to Conclude the New Generation of Free Trade Agreements: Opinion 2/15 (EU-Singapore FTA)*, in G. BUTLER, R. A. WESSEL, *EU External Relations Law: The Cases in Context*, Oxford, New York, Dublin, 2022, p. 891 ss.).

Against this backdrop, multiple innovative components in the SDC of the EU-New Zealand FTA have been drafted in accordance with the novel policy priorities. The next paragraph examines how the new EU approach has

affected the framing of the sustainability clauses and whether these modifications have enhanced the Chapter's labour and environmental impact.

3. Carrying out a comparative text analysis with prior EU FTAs, it is possible to notice novelty clauses in the final text of the EU-New Zealand FTA: in the first place, two brand-new articles have been introduced; secondly, new wordings can be identified related to the implementation of the Green and Just Growth Communication.

To begin with, a novel article has been introduced on gender equality, which aims to promote gender parity and non-discrimination in a vast array of trade aspects, such as investment relationships, international commerce, and green growth (Article 19.4). In previous EU FTAs, differently, gender equality was mentioned limitedly in the sphere of decent working conditions and labour standards. Moreover, in a dedicated article, parties pledge to reduce fossil fuel subsidies progressively, due to their inconsistency with the growth of sustainable trade (Article 19.7). Whereas fossil fuel subsidies play a significant role in the perpetuation of polluting energy sources, this is an unprecedented element for EU FTAs, as parties have never specifically mentioned their reduction or removal.

Aside from these new articles, numerous correlations should be noted between the Green and Just Growth policy priorities and novel clauses of this EU FTA.

On the first policy priority concerning *having a proactive approach in cooperation with the partner country*, parties endeavour to increase mutual assistance and remark in several provisions on collaborating and cooperating "bilaterally, regionally". The novel formula has been included in multiple articles, specifically, on multilateral labour and environmental agreements (Articles 19.3 (11) and 19.5 (5)), climate change policies (Article 19.6 (5)), forest management (Article 19.9 (4)), fishery policies (Article 19.10 (7)), sustainable investments, responsible business conduct (Article 19.11 (6)) and supply chain management (Article 19.12 (4)). During open public consultations conducted in 2021, stakeholders laid particular emphasis on the fact that more proactive bilateral cooperation was necessary to reduce the potential for tension with partner countries and facilitate the implementation stage of FTA (see [Open Public Consultation on the Trade and Sustainable Development \(TSD\) Review Summary Report](#), 2021, p. 12, spec. p. 15).

Further, Article 19.6 (5) (b) on trade and climate change configures an additional element compared to previous EU FTAs, wherein parties agree to engage in "policy and technical exchanges regarding the development and implementation of domestic and international carbon pricing". Under the action points of this policy priority, technical and financial bilateral assistance has emerged as a significant incentive for trade partners to contribute to further raising labour and environmental standards, in line with the SDC objectives (see [COM/2022/409](#), cit., p. 5).

Eventually, it is worth noting the more extended and elaborate provisions to foster initiatives between parties on the protection of biodiversity, fisheries,

forest management, circular economy, sustainable investments, and cooperation with international bodies (Articles 19.3 (11), 19.5 (5), 19.8, 19.9, 19.10, and 19.11). This wording provides examples and clarifications, to guide parties in a more effective application of the sustainability provisions, suggesting actions and initiatives they may undertake to implement sustainability goals. For instance, concerning the cooperation on trade-related aspects of biological policies (Article 19.8), parties affirm that such cooperation “may cover inter alia (...) the development and application of natural capital, ecosystem accounting methods, the valuation of ecosystems and their services and related economic instruments”. Despite some exemplifications being present also in earlier FTAs, in the EU-New Zealand FTA, they are more elaborated, enriched, and numerous compared to previous agreements, even compared to the recent EU-UK TCA, which contains higher sustainability standards.

Thereafter, on the second policy priority on *framing a country-specific approach*, the EU aims to conduct a more precise assessment of the SDC’s impact, drafting country-specific sustainability priorities and time-bound roadmaps to steer the FTA implementation phase.

In the EU-New Zealand FTA, the EU carried out a sustainability impact assessment (“SIA”) during different phases of the negotiations. This aimed to evaluate the FTA’s environmental, social, and economic impacts and calibrate the most appropriate wording for SDC provisions (see [Sustainability Impact Assessments](#)). The SIA final results did not reveal any explicit mandate in the human rights sphere, where the EU FTA’s impact has been considered “marginal” (see [Position Paper On The Sustainability Impact Assessment In Support Of Negotiations For A Free Trade Agreement Between The European Union And New Zealand](#), p. 5, spec. pp. 11-14). Differently, in the environmental field, the SIA provides recommendations to promote the exchange of information “in the field of water quality, also taking into account the EU’s Water Framework Directive”. As the Commission noted, the area of water policies was not covered by the negotiations, but it could further boost effective policy-making and environmental impact. Nevertheless, in the final wording of the agreement, there is no trace of water quality policies.

In a different vein, on labour conditions, the SIA suggests defining “clear steps towards ratification by New Zealand of the ILO Conventions C87 and C138”. This recommendation has been integrated into Article 19.3 (11) (a), where parties agree to cooperate for the “implementation of fundamental, priority and other up-to-date ILO conventions”.

Additionally, roadmaps outlining timelines have not been prepared and disclosed. In sum, it is possible to notice that not all key SIA suggestions have been elaborated on and considered in the FTA final text.

Concerning the third policy priority, *mainstreaming sustainability beyond the Sustainable Development Chapter*, the EU aims to prioritise the liberalisation of green goods and services, which are considered as those favouring the reduction of greenhouse gas emissions and contributing to resource efficiency. Under Article 19.5 (5), on multilateral environmental

agreements, parties agree to address tariff and non-tariff barriers to encourage trade and investments in environmental goods and services.

Despite these clauses being present also in earlier FTAs, for the first time, the EU-New Zealand FTA includes a definition of green goods and services, and illustrative lists to facilitate their recognition are annexed to the EU FTA (Annex 19 List A and List B). Environmental goods are defined as goods that contribute to achieving “environmental and climate goals by preventing, limiting, minimising or remediating environmental damage to water, air and soil and by contributing to the dissemination of technologies that serve to mitigate climate change”. Moreover, according to paragraph 3 of Article 19.11, parties affirmed to facilitate trade and investment for environmental services and manufacturing activities, which are considered those contributing to “achieving environmental and climate goals by preventing, limiting, minimising or remediating environmental damage to water, air and soil and by assisting the transition to a circular economy”. According to the formulation of these clauses, parties have decided to implement, for the first time, a zero-tariff regime for the non-exhaustive lists, as annexed to the FTA.

Considering policy priority four on *improving the monitoring of the SDC*, the EU focuses mostly on its internal monitoring strategy, which lies upon operating guidelines and the involvement of EU services. In particular, the EU intends to continue to pull together the expertise and all available instruments at its disposal in order to develop a comprehensive approach across services focusing on the involvement of the European Parliament and EU Delegations (see [COM/2022/409](#), cit., p. 8). As these procedures are primarily intended to be applied unilaterally, this policy priority does not necessitate a reflection in the text of the EU FTA. Nevertheless, compared to previous EU FTAs, mention has to be made of a new clarification clause addressing logistic and operational issues: as per Article 19.16 parties are required to “notify the other Party of the contact details for the contact point. Each Party shall promptly notify the other Party of any change of those contact details”. Indeed, a commonly occurring theme regarding the Single Entry Point (“SEP”) was that the process is not sufficiently defined and there is no clear procedure to deal with complaints (see [Review Summary Report](#), 2021, p. 9).

Moreover, in relation to policy priority five regarding *reinforcing the role of civil society*, the EU strives to ensure an inclusive consultation process with civil society throughout all stages of the lifecycle of trade agreements. The Commission remarked that the monitoring and implementation of the SDC are expected to be underpinned by the collective efforts of civil society and social partners (see [COM/2022/409](#), pp. 8-10). Additionally, civil society participation also contributes to obtaining a stronger alignment with the principles and mechanisms set forth by the well-known 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, to which the EU and the Member States are parties (for recent considerations, see M. LEE, [NGOs Shaping Public Participation Through Law: The Aarhus Convention and Legal Mobilisation](#), in *Journal of Environmental Law*, 2023, p. 1 ss.).

In this EU FTA, it is possible to notice clauses which further increase civil society participation. Despite also previous EU FTAs promoting forms of public participation, these clauses clarify and thus guarantee the possibility for civil society to take part in certain stages of the implementation and monitoring phases. In particular, as per Article 19.14 on transparency, parties are required to “provide interested persons and stakeholders with a reasonable opportunity to comment” on newly introduced environmental, labour, and trade measures. Notwithstanding similar wording also included in the EU-UK TCA (Article 398.1 (a)), this clause is innovative for EU FTAs. Further, in Article 19.15 (4), each party agree to give “due consideration to communications and opinions from the public” in monitoring climate and labour provisions, and inform, where relevant, contact points or the Domestic Advisory Groups (“DAGs”). Moreover, for the first time in EU FTAs, the DAGs are mentioned in the Article on monitoring compliance, which states that DAGs “may submit observations to the Trade and Sustainable Development Committee” (Article 26.13 (3) (c)), in alignment with the wording enshrined in the EU-UK TCA (Article 409 (4)).

Finally, a novel clause is present on trade and investment, where parties agree to facilitate the investment in green goods and services through “awareness-rising actions and information and public education campaigns” (Article 19.11 (5) (a)).

The last policy priority consists of *enhancing enforcement by means of trade sanctions as a measure of last resort, including the extension of the general state-to-state Dispute Settlement Mechanism (“DSM”) to the SDC*. The EU has introduced a gradual “hardening” of its position to remedies in FTAs, which is apparent from the reference to the SDCs in the 2021 amendment to the 2014 Trade Enforcement Regulation (see for more details, Regulation (EU) 2021/167 of the European Parliament and of the Council amending Regulation (EU) No 654/2014 OJ L49/1, Recital (10)).

In the EU-New Zealand FTA, it is possible to see noteworthy modifications in the structure of the DSM (Articles 19.11(5)(a), 19.14, 19.15(4), and 26.13(3)(c)). In previous EU FTAs, the SDC has always been subjected to a *specialis* DSM, being considered the “Achilles’ heel” of sustainability provisions. The reason is that in case of non-compliance, the DSM requires the convocation of a Panel of Experts to evaluate the dispute, which drafts a report including only non-binding recommendations. The EU – CARIFORUM FTA represents the only exception, where the DSM is not separated from the *generalis* state-to-state mechanism, yet sanctions such as the suspension of trade concessions are expressly excluded (Articles 189, 195, 204 (6), 213 (2); see for more details, M. GALLIE, *Le droit international du travail dans la coopération Européenne au développement. Le cas de l’Accord Cariforum-CE*, in *Revue Belge de Droit International*, 2009, p. 195 ss.).

The EU-New Zealand FTA unifies the DSM of the SDC under the *generalis* DSM mechanism and introduces sanctions as measures of *extrema ratio* (Article 26.16(2)). In line with this policy priority, Article 26.16 (2) enables the use of temporary remedies for any act or omission which violates

the ILO's fundamental principles or "materially defeats the object and purpose of the Paris Agreement". It should be noted that the Paris Agreement sets out a procedural apparatus for countries to adopt specific Nationally Determined Contributions ("NDCs"), however, it does not include any binding obligations as regards the stringency or compliance with the commitments under the NDC.

Further, it is worth noticing that sanctions are limited to the Paris Agreement without recalling other international environmental agreements. Differently, with reference to the labour field, multiple ILO fundamental principles are recalled and the FTA does not mention only one single convention or agreement.

4. Taking stock of the findings of the previous paragraphs it seems possible to conclude that the new Green and Just Growth Communication has considerably affected the SDC of the EU-New Zealand FTA. Novel clauses cover the implementation of aspirational sustainability goals, the structure of the DSM, the circulation of green goods, and civil society participation in the monitoring and compliance stages.

Yet, sustainability provisions can be considered unsatisfactory when it comes to defining substantive obligations backed up by effective remedies: novel elements remain largely aspirational in nature and characterised by a broad framing, in line with prior FTAs. Therefore, it is possible to affirm that the significant improvements mentioned by the Commission in respect of the EU-New Zealand FTA can largely be regarded as formal improvements, which only marginally affect the implementation of SDC. The only exception consists of the circulation of environmental goods and services, which is supposed to valuably contribute to fostering energy efficiency and renewable energy, thereby constituting a potential reference point for the wording of future FTAs.

More precisely, considering the Green and Just Growth Communication and the first objective of *enhancing the cooperation with the partner country*, the formula "bilaterally, regionally" has been included in the FTA together with additional exemplifications to guide parties in the implementation of sustainability provisions (see Articles 19.3 (11), 19.5 (5), 19.8, 19.9, 19.10, and 19.11). However, without the presence of coercive components which can guarantee compliance with the cooperation commitments, the application of novel clauses can change quickly with the momentary willingness of the signatory parties. Further, SDC provisions should include more punctual commitments to foster compliance with international sustainability standards, with specific obligations on mutual technical and financial assistance, in line with what is required by the Green and Just Growth Communication.

Moreover, in the EU-New Zealand FTA, it still remains challenging to identify a structured *country-specific approach*, as per the second policy priority. No improvements can be observed in comparison with previous EU FTAs, as not all key SIA recommendations have been considered in the final text. Further, from a comparative perspective, it is clear that numerous clauses

are standardised with prior EU FTAs with few elements drafted according to the environmental and labour characteristics of the commercial partner. Implementing a country-specific approach is fundamental to framing clauses tailored to the capabilities and necessities of the signatory parties and this also ensures a more coherent integration of the principle of “Common But Differentiated Responsibility”, well-known in International Environmental Law, as expressed by Principle 7 of the 1992 Rio Declaration (see for more details on this principle, P. CULLET, *Differential Treatment in Environmental Law: Addressing Critiques and Conceptualizing the Next Steps*, in *Transnational Environmental Law*, 2016, p. 305 ss.; W. SCHOLTZ, *Equity as the basis for a future international climate change agreement: Between pragmatic panacea and idealistic impediment. The optimisation of the CBDR principle via realism*, in *Comparative and International Law Journal of Southern Africa*, 2009, p.166 ss.). Additionally, as remarked by the Green and Just Growth Communication, country-specific priorities should go hand in hand with detailed and time-bound road maps including milestones to ensure proper implementation.

As for the priority concerning *Civil society participation*, newly introduced normative elements give civil society the opportunity to be more involved in the monitoring and compliance phases. However, without more detailed participation schemes, these clauses may create margins for ineffective participation in practice. Indeed, a mention that civil society can intervene is not sufficient to guarantee that relevant opinions will actually be examined and considered by the competent bodies. On the contrary, participatory schemes should be more precisely described and implemented by the DAGs and Trade and Sustainable Development Committee to ensure an inclusive consultation process for qualified stakeholders, throughout all stages of the lifecycle of trade agreements: from gap analysis to implementation, including priority identification.

Finally, the *general DSM has been extended to the SDC provisions*, and remedies are available as measures of *extrema ratio*. Nonetheless, despite the significant structural change in the SDC, due to the vague and generic obligations outlined in the two enforceable provisions, the innovative DSM can be considered to frame a “soft” enforcement mechanism (see G. D’AGNONE, *Sviluppo sostenibile: una condizionalità ambientale... soft? Alcune brevi osservazioni sull’accordo commerciale negoziato tra l’Unione europea e la Nuova Zelanda*, in *Quaderni AISDUE*, 2022, p. 195 ss.). So, even though multiple authors stressed the importance of bolstering the effectiveness of remedies (see for example, M. BRONCKERS, G. GRUNI, *Retooling the Sustainability Standards in EU Free Trade Agreements*”, in *Journal of International Economic Law*, 2021, p. 51; K. HRADILOVÁ, O. SVOBODA, *Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness*, in *Journal of World Trade*, 2018, pp. 1041-1042) in the EU-New Zealand FTA, the enforceability of the SDC remains challenging.

In addition, and more specifically, when it comes to the Paris Agreement it seems to be difficult to determine what actions could qualify as material breaches of the “*object and the purpose*” of this instrument (see in particular, V. REMONDINO, [*New Generation Free Trade Agreements at a Crossroads. Assessing Environmental Enforcement of the E.U.’s Trade and Sustainable Development Chapters from Global Europe to the Power of Trade Partnerships Communication*](#), in *University of Bologna Law Review*, 2023, p. 149 ss.). The wording of this clause could presumably encompass a situation where a country fails to disclose the NDC or neglects to update the NDC in line with the nation’s highest possible ambition (see for more details, R. BODLE, L. DONAT, *The Paris Agreement: Analysis, Assessment and Outlook*, in *Carbon & Climate Law Review*, 2016, p. 5 ss.; D. BODANSKY, *The Legal Character of the Paris Agreement*, in *Review of European, Comparative, and International Environmental Law*, 2016, p. 142 ss.). Yet, Article 26.16 (2) cannot be used to enforce compliance with environmental commitments established under the Paris Agreement.

With all this in mind, in order to improve the impact of the SDC it is vital to provide provisions backed up by effective remedies outlining more punctual obligations. The enforcement of SDC provisions in FTAs should be based on the importance of the nature of the commitments at issue, the seriousness of their violation and the impact on the environment. The EU Commission has always had a mild approach to the SDC sanctioning system, considering the fact that remedies and enforced standards need to be agreed upon by both parties. Therefore, it is fair to acknowledge that the effectiveness of the sanctioning systems also depends on the commercial partner and its willingness to accept sustainability conditions, thus creating different regimes and fragmentations depending on the EU FTA.

To conclude, the novel clauses of the EU-New Zealand SDC, compared to prior FTAs, can be regarded as additional components which in reality did not bring a parallel strengthened implementation of sustainability articles, with the exceptions of the lists to facilitate the circulation of environmental goods and services (Annex 19 List A and B). Therefore, it is fair to acknowledge that, despite this SDC has been regarded as “the most progressive” by the EU institutions, novel normative components, in practice, are neither very ambitious nor necessarily effective.

As multiple authors affirmed, the real challenge for EU FTAs lies in striking a fair balance between the breadth and the enforceability of environmental and labour duties (see in particular G. C. LEONELLI, [*From extra-territorial leverage and transnational environmental protection to distortions of competition: the level playing field in the EU-UK Trade and Cooperation Agreement*](#), in *Journal of Environmental Law*, 2021, p. 611 ss.). Nevertheless, to align with the objectives of the new policy priorities and champion sustainable development, the EU should certainly insist on negotiating more stringent provisions. This is a challenge policy makers should promptly embrace to align the EU’s external action with the scope of the Green and Just Growth Communication and the European sustainability objectives.

ABSTRACT (ITA)

L'accordo di libero scambio ("FTA") tra Unione Europea ("UE") e Nuova Zelanda è stato definito dal Parlamento europeo "l'accordo commerciale più progressivo e sostenibile mai concluso dall'Unione Europea" e si ritiene che il Capitolo su Commercio e Sviluppo Sostenibile ("SDC") costituirà un punto di riferimento per i successivi FTAs, introducendo disposizioni senza precedenti. Gli elementi più innovativi sono stati redatti sulla base della Comunicazione della Commissione "The Power of Trade Partnerships: Together for Green and Just Economic Growth", che è volta a migliorare l'impatto dei FTAs sullo sviluppo sostenibile, introducendo clausole più efficaci. Alla luce di queste innovazioni, il presente lavoro si propone di indagare in che modo dette priorità siano state integrate nel Capitolo SDC UE-Nuova Zelanda, ed in che misura ciò è suscettibile di avere riscontri pratici, rafforzando l'efficacia e l'implementazione delle previsioni ambientali e sociali. A tale proposito, si ritiene che sebbene la formulazione delle clausole oggetto di studio presenti profili di novità rispetto ai precedenti FTAs, da ciò non discenderebbero cambiamenti di rilievo dal punto di vista della percezione ed applicazione degli obblighi sostanziali, al punto che gli articoli in ambito SDC manterrebbero per lo più impegni generici e quasi volontaristici.

ABSTRACT (ENG)

The European Union ("EU") – New Zealand Free Trade Agreement ("FTA") has been defined by the European Parliament as "the most progressive and sustainable trade agreement by the European Union ever" and the Trade and Sustainable Development Chapter ("SDC") could set a benchmark for future FTAs with unprecedented climate and social provisions. Major innovative elements have been designed according to "The Power of Trade Partnerships: Together for Green and Just Economic Growth" Communication, which aims to increase the impact of European FTAs on sustainable trade by introducing more effective sustainability clauses. In this context, this post inquires how the new European Communication has affected the design of the EU-New Zealand SDC and to what extent it has strengthened the effectiveness and implementation of environmental and social provisions. While sustainability clauses present novelty aspects compared to previous EU FTAs, these elements did not improve the effectiveness and application of substantive obligations, persisting in framing provisions largely aspirational in nature and quasi-voluntary commitments.