

## **The EU's 'Value-based Trade Agenda': Trade and Sustainable Development Chapters in CETA**

*Andreas Lichtenberger\**, *Kenya Price\*\** und *Marcel Spinner\*\*\**

### **Abstract**

*The adoption of CETA (currently under provisional enforcement) represents a new form of trade liberalisation that goes beyond the stalemates of WTO trade negotiations. Shaped by the 'Trade for All' agenda of the European Commission, trade policies are intended to be a key tool for meeting the UN Sustainable Development Goals. This paper aims to clarify the integration of sustainable development (SD) in CETA by analysing its Trade and Sustainable Development Chapters (TSD). Using a critical realist approach, structural and discursive selectivities are applied to shed light on the implementation of sustainability in CETA, drawing on examples from the agricultural sector. This study's findings report protective potentials as the inclusion of the precautionary principle, a right to regulate and dispute settlements including civil society and independent experts; despite being framed as a 'comprehensive set of binding provisions', regulations regarding SD remain indeterminate and lack concretisation and clear sanctions in case legislations are not met.*

**Keywords:** trade policy, sustainable development, CETA

## **Die wertbasierte Handelspolitik der EU: eine Analyse der Kapitel zu Handel und Nachhaltigkeit von CETA**

### **Zusammenfassung**

*Der Beschluss von CETA repräsentiert eine neue Entwicklung im Bereich der Freihandelsabkommen. Basierend auf der „Trade for All“ Agenda der Europäischen Kommission soll durch entsprechende Handelspolitik die Erreichung der UN-Ziele zu nachhaltiger Entwicklung befördert werden. Inwiefern die Einbindung von nachhaltiger Entwicklung in CETAs „Trade and Sustainable Development“-Kapitel erfolgt ist, soll Teil dieses Beitrags sein. Im methodologischen Forschungsrahmen des kritischen Realismus werden Ansätze struktureller und diskursiver Selektivität herangezogen, zuzüglich Beispiele aus dem Feld der Landwirtschaft, um CETA auf seinen nachhaltigkeitsfördernden oder -beschränkenden Charakter zu analysieren. Zu den Ergebnissen zählen potentiell schützende Elemente wie die Integration des Vorsorge-Prinzips, des Rechts auf Regulierung und eines Streit-schlichtungsmechanismus, welcher zudem die Zivilgesellschaft sowie unabhängige Experten einbindet. Obwohl Regulierungen im Zusammenhang der nachhaltigen Entwicklung als umfassende und verbindliche Vorschriften beschrieben werden, lassen ihre Formulierungen viel Spielraum und adressieren keine klaren Sanktionen im Falle gesetzlicher Übertretungen.*

**Schlagwörter:** Handelspolitik, nachhaltige Entwicklung, CETA

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\*Andreas Lichtenberger, Vienna University of Economics and Business. E-Mail: [andreas.lichtenberger@gmx.at](mailto:andreas.lichtenberger@gmx.at)

\*\*Kenya Price, Vienna University of Economics and Business. E-Mail: [kenyaprice90@gmail.com](mailto:kenyaprice90@gmail.com)

\*\*\*Marcel Spinner, Vienna University of Economics and Business. E-Mail: [marcel.spinner@gmail.com](mailto:marcel.spinner@gmail.com)

## 1. Introduction

CETA (Comprehensive Economic and Trade Agreement) is a bilateral trade agreement between Canada and the European Union (EU) which was signed by the EU and Canada in October 2016 (Pabriks 2018). On 21 September 2017, it entered into force provisionally; as soon as it is ratified by all EU member states, CETA will be fully implemented (Pabriks 2018). CETA represents a significant new form of agreement aimed at broadening and advancing the levels of trade liberalisation beyond existing commitments and into new areas including investment, services and public procurement (Madner 2017). It has gained much attention and criticism in the media and by civil society organisations for its limitations, but has been held up by the European Commission (EC) as the new gold standard in terms of its ability to establish EU values in the international trade context, including those concerned with sustainable development (SD). The adoption of the 'Trade for All' strategy right after the UN 2030 agenda, making sustainability a key objective of EU trade policy, committed the EC to integrating trade and sustainable development (TSD) chapters into CETA (EC 2017a). These chapters in combination with examples from the agricultural sector – a sector with major ramifications on the environment, constituting a crucial development issue regarding sustainability – will be used in this paper to highlight aspects about the integration of SD into CETA. Thus, the following research question will be addressed:

*How is sustainable development included in CETA's TSD chapters and what potentials and limitations does it have, drawing on examples from agriculture?*

Elaborating the potentials and limitations of the structural aspects that outline the sustainable development agenda, this paper uses critical realism as its research methodology. The strength of critical realism lies in its capability to gain knowledge about existing structures and generative mechanisms (Danermark et al. 2002: 10). In critical realism there is nothing approaching 'the method'; it is to be understood as a guideline for social science research, following three main arguments.<sup>1</sup> Hence, depending on the object of investiga-

tion, critical realist research uses theories to explain and understand processes and events. In order to grasp the structural specificities and the embedment of sustainable development in the TSD chapters, the strategic selectivities approach of Sum and Jessop (2013) will be applied, since their theory supports an analysis of the way in which governance structures shape room for manoeuvre. Using a critical realist method, concepts on an abstract level (structural aspects about CETA clauses) will be identified and connected to concrete cases (examples from the agricultural sector); this procedure is part of the research methodology and supportive to illustrate the implications of some of the key provisions on sustainable development. Therefore, the focus of this paper is on developing an understanding of specific elements of CETA's TSD chapter, representing parts of the EU's 'Trade for All' agenda.

Due to this focus and space limitations, this paper does not reflect in depth on the whole agreement and thus disregards some aspects that will also affect sustainable development achievements but have been elaborated in other chapters (such as the investment court system [ICS], sanitary and phytosanitary rules and subsidies). Therefore, there is significant scope in future studies to take a more holistic approach to understanding CETA. Achievements of this paper include enabling a pre-emptive evaluation of the potentials of some specific mechanisms that have been strengthened or included in CETA that aim at changing structural and discursive elements of global trade and contributing to advancing the EU's values-based trade agenda.

## 2. Research Design & Methodology

This paper aims for a better understanding of the inclusion of SD in CETA. Therefore, at its core, it is an analysis of what is included in the TSD chapters and what forms the structural corpus that allows and constrains trade operations. As a framework for explaining the 'structures making up the constituent properties of social relations' (Danermark et al. 2002: 113), critical realism appears to be a suitable research methodology to tackle the question of how SD was integrated into CETA and which kind of aspects it covers and omits.

### 2.1 Critical Realism

According to critical realism, reality has an objective existence, which means contrary to the position of cognitive relativists that there is a reality that exists

<sup>1</sup> (1) Science should make generalising claims, (2) abduction and retrodution are essential modes of inference for critical realist research, (3) an overall aim of social science is to explain events and processes (Danermark et al. 2002: 73f).

independently of our knowledge (the ratification of an FTA (free trade agreement) will enforce it – whether we know about it or not) (Danermark et al. 2002: 39). Science as a practice allows us to obtain truthful knowledge about it. However, critical realism opposes the empiricist view that reality could be studied by neutral empirical observations alone – due to a gap between the things we experience and what really happens (just because we do not see an immediate outcome after the enforcement of an FTA, this does not mean that the mechanisms and structures of influence remain the same) (Danermark et al. 2002: 39). In contrast to these empiricist views, critical realism deals with a deep dimension of reality which regards structures, powers, generative mechanisms and tendencies as emergent phenomena generated by the actions of people (e.g. mechanisms of wage labour structure) which are not always carried out by all at the same time (e.g. when people opt for alternatives such as self-subsistence or taking care of children) and which do not always affect all people in the same way (e.g. different effects for people who are employed and unemployed) (Danermark et al. 2002: 55f). Social structures do not exist independently of people's actions and their effects are a complex compound which do not determine people's actions completely; underlying powers and mechanisms may be present without being perceived, hence we must also regard non-manifest and non-realised modes of operation (Danermark et al. 2002: 57).

As CETA has not been in force thus far, an understanding of its non-realised modes of operation will be gained by combining an analysis about the structural specificities of the SD embedment in CETA (abstract aspects) with cases from the agricultural sector regarding the outlined effects as well as experiences with other FTAs (concrete cases). This approach feeds into the integrative manner of critical realist research which does not oppose the concrete and abstract level, but instead uses concrete aspects to manifest the abstract and uses the abstract to enable a broader view of the concrete level (Danermark et al. 2002: 42). Therefore, a study with a critical realist methodology has the potential to investigate the actually existing structures and mechanisms in relation to SD and trade in the case of CETA.

In order to understand how SD can be promoted in terms of a trade perspective, it has to be understood how the embedment of SD in a governance structure like the free trade agreement of CETA is exerted. For this research, a theory-laden perspective as propo-

sed by critical realism will be performed. As reality is not equated with empirical observations of reality (no neutral observations of 'facts' about reality), and since gaining knowledge about reality is conceptually mediated, it is implied that facts are theory-dependent (Danermark et al. 2002: 41). As an appropriate theoretical approach to a critical realist research design, the strategic selectivities approach by Sum and Jessop (2013) will be introduced in the next subsection.

## 2.2 Strategic Selectivities Approach

The strategic selectivities are part of a research agenda about cultural political economy by Sum and Jessop (2013: 196). In it, they analyse via a transdisciplinary approach the production of hegemonies and counter-hegemonies, drawing on notions of complexity reduction and critical realism (Sum/Jessop 2013: 197, 214). Defining hegemony as a mode of domination through social practices by winning overt or tacit consent (Sum/Jessop 2013: 201), the CETA agreement can be seen as a hegemonic project which is in favour of an open market and intercontinental trade between Canada and the EU. The theoretical strength of Sum and Jessop's approach lies in their analysis of the relevant strategic contexts of projects that promote (counter-) hegemonic realisation.

The strategic selectivities approach introduces four modes of selectivities: structural, agential, technological and discursive selectivities (Sum/Jessop 2013: 214ff). In general, they offer guidance in order to understand the capacity of particular agents in certain surroundings, as well as the conditioning manners of variation, selection and retention of hegemonic projects (as the integration into market structures and aspects of access and limitation that go along with it) and their societal repercussions (Sum/Jessop 2013: 214). More specifically:

a) *Structural selectivity* facilitates or obstructs certain projects by different social forces, as they represent an asymmetrical configuration of constraints and opportunities by e.g. institutional orders, organisational forms and interaction contexts (Sum/Jessop 2013: 214, 218).

b) *Discursive selectivity* is an asymmetrical constraint and/or opportunity regarding genre, style and discourses. It describes the manner whereby some discourses rather than others are enunciated. Crucially, the question of what can be imagined and promoted is limited by the semiotic resources which are set in discourse (Sum/Jessop 2013: 215).

c) *Technological selectivity* treats asymmetries regarding the limitation of choices, bodies, thoughts and modes of conduct by apparatuses (technologies). The production of object and subject positions creates dispositives and truth regimes that can limit the development of further alternatives and positions (Sum/Jessop 2013: 216).

d) *Agential selectivity* describes the different capacities of agents to attain their goals and strategic behaviour. Actors are subjectivated by their specific identities, ideals and material interests (representing different kinds of social forces) (Sum/Jessop 2013: 217).

In this project, two selectivities will be used, firstly (i) the 'discursive selectivity' to investigate the way in which SD is framed within the agreement, and secondly (ii) the 'structural selectivity' to analyse the set-up of legal clauses containing SD in CETA. Due to our research interest, namely how SD was integrated into the TSD chapters of CETA, this paper suspends the technological selectivity in order not to place a major focus on technological aspects. An agential selectivity analysis of the influence of different social forces or the role of certain networks in the formation of the contract will not be included in either part for this specific research project (but it would be an interesting follow-up topic).

Structurally inscribed strategic selectivity (structural selectivity in short) can take both enabling and constraining forms of institutions and organisational structures. Whether a structural feature of the agreement is enabling or constraining depends on the interest of an actor – e.g. corporations with an expanding and upscaling intention will find the fact of a bigger market with fewer and/or lower tariffs an enabling factor for their business, while for others this could be a constraining factor. Yet it is not an absolute constraint that applies equally to all agents, but rather it favours certain interests, therefore denoting an asymmetrical configuration of constraints and opportunities on social forces as they pursue particular projects (Sum/Jessop 2013: 214).

The difference between structural and discursive selectivity is that the latter covers the aspects of 'what' (can be enunciated), 'who' (is authorised to enunciate) and 'how' (enunciations enter contextual fields) of semiotic constructions (Sum/Jessop 2013: 215). Therefore, the discursive selectivity will introduce the reader into the language of CETA and focus on the semantics, framing and modes of expression, whereas structural selectivity will be used later on to conduct

the main analysis in terms of the potentials of and the constraints to SD as outlined in the TSD chapters. This combination of selectivities will help to identify how SD is understood in CETA and in how far structural conditions are creating opportunities or limiting the space for SD. Cases from the field of agricultural policies will be used to visualise potential effects due to the implementation of the specified SD measures. By grounding our analysis in a particular field, we can look at the change potentials of these mechanisms.

Adapting a critical realist model for explanatory social science – based on a more detailed outline of Danermark et al. (2002) – the paper is structured in three stages:

(1) *Description of the subject and its bigger context of trade in the EU:*

What is the relevance of CETA? What is the bigger context in which CETA emerged and which guides further sustainability developments? In the first step, this article delivers a general description about the broader context.

(2) *Theoretical analysis of SD in CETA, based on the strategic selectivities framework of Sum/Jessop (2013):* An analysis of SD is the main part of the work, investigating the chapters on SD in CETA (22, 23 and 24) and also including other literature. This way of looking into the subject is supported by the theoretical lens of structural and discursive selectivities by Sum/Jessop (2013).

(3) *Final synthesis of opportunities and limitations of SD, and conclusion:* Do the clauses in CETA leave much room for SD development or are they mere rhetoric? Which kind of SD is it that is propagated? Does CETA include many new issues or is it only combining clauses of pre-existing free trade agreements (FTAs)? The final part of this paper sheds light on these aspects.

### 3. Trade and the Bigger Framework of CETA

#### 3.1 Context and Setting: EU and Trade

There has been a shift by the major developed countries away from the multilateral WTO (World Trade Organisation) forum for trade negotiations and toward bilateral agreements (Madner 2017). This move is motivated by a desire to move past the stalemates at WTO negotiations (Trebilcock 2013). The EU has built up a large number of preferential bilateral agreements all over the world and uses these to export norms and governance structures to other parts of the world (Nicolaidis/Meunier 2011). The EU thus holds significant hegemo-

nic power through being able to discriminate or allow access to the biggest global market and thus cannot only affect global trade policy, but also domestic regulation and policy in other countries and regions (Nicolaidis/Meunier 2011). It has become a major player globally in trade as it is the largest importer and exporter of goods and services and is the largest foreign direct investment (FDI) sender and receiver and sees itself as a normative power, using this position in trade to push its agenda and achieve goals in the rest of the world (EC 2015; Nicolaidis/Meunier 2011). Therefore, in the trade arena, the actions and standards set by the EU and fellow large developed players have a significant impact on standards, regulations and the global trade agenda (Nicolaidis/Meunier 2011). Canada is a country of similar development level and economic prosperity, however in terms of economic dependencies and environmental standards it differs in a number of ways from the EU. For instance, regulations in Canada regarding environmental, labour, health and agricultural standards are strongly influenced by those of the US (O'Brien 2016). Canada accounts for about 1.7% (as of 2014) of the EU's external trade in goods, whereas the EU accounts for 9.4% of Canada's, making it the second-largest trading partner for Canada (Hübner 2016). Thus, Canadian exporters stand to gain more economically out of CETA via greater access to the large single market than the EU (GDP of €14 trillion in 2014) will gain from access to the smaller Canadian market (€1.3 trillion in 2014) (EC 2017e), with European Commission estimates predicting larger gains in terms of GDP for Canada than the EU (Raza et al. 2016). However, EU goals appear more focused on the standard-setting and liberalisation precedent this agreement can set. Canada is a significant exporter of fossil fuels and also has many health and environmental standards more in line with those of the US than with EU models (O'Brien 2016). Therefore, although there are many similarities and shared values, differing core interests play a role in the negotiation of CETA and the included provisions.

### 3.2 The EU's Value-Based Trade Agenda

The European Commission has released a 'Trade for All' policy document outlining its value-based trade agenda. The goal of this trade strategy is to ensure that the benefits of trade are available to as many people as possible, including Europeans as well as those from other parts of the world (EC 2015). This new trade strategy maintains a focus on trade as the driver of jobs

and growth and future development in Europe and poorer regions of the world and it is thus a key tool to meeting the UN Sustainable Development Goals (EC 2015). It is also a way to address some of the growing political attention and concerns being raised over free trade agreements, globalisation and the lack of transparency felt by EU citizens and the European Parliament (Puccio/Binder 2017). The strategy states its commitment to increasing transparency in trade negotiation and decision-making and allowing for greater public scrutiny (EC 2015). Addressing further key civil society and NGO concerns, EU regulation in ensuring labour standards and environmental, consumer and health protection are to be upheld through the inclusion of SD chapters included in CETA and other FTAs. The inclusion of these chapters is stated as reflecting and then exporting the sustainable development values of the EU to the rest of the world (Madner 2017). While the Commission maintains the position of using multilateral cooperation as its main approach, the use of bilateral and small group coalitions is a way to set standards and progress the EU agenda within a setting of conflicting interests at the multilateral level (EC 2017c). In this way, EU trade agreements are not simply used as tools to enhance economic flows, but to 'shape the rule book' (EC 2017c) and enhance the EU's influence in the multilateral field across a variety of policy issues.

The SD goals in the EU are shaped by the use of the Brundtland definition: 'meeting the needs of the present without compromising the ability of future generations to meet their own needs' (EC 2015; Hush 2018). This involves the acknowledgement of three key and interdependent pillars, through the balancing of which sustainable development goals can be met. The pillars are: environmental, economic and social (Escobar 2015; Hush 2018). The economic goals in the EU context relate to allowing the market economy to function, encouraging economic liberalisation, integrating the region and enabling transfers of knowledge and technology (Escobar 2015). The social pillar specifies goals of meeting human rights standards, allowing for a free and functioning democracy, encouraging social development, providing fundamental rights and allowing the participation of civil society (Escobar 2015). Thirdly, the environmental goals relate to preventing and reducing pollution and environmental damage as well as actively encouraging sustainable production and consumption behaviours (Escobar 2015). The dispute settlement role in this regard is thus to balance the state's rights to protect these social and environmental

objectives with the rights of investors being protected by this economic pillar (Hush 2018). Given that in most countries trade policy is skewed to focus on the economic objectives, meeting sustainable development goals requires a rebalancing of this focus toward social and environmental aspects (Hush 2018). This agenda maintains the primacy of trade as the driver of productivity and economic security via encouraging specialisation, investment and efficiency, but takes into consideration that efficiency requires accounting for trade's externalities (EC, 2017c). The inclusion of the sustainable development chapters and protections is the way in which the EU aims to bring a stronger focus on environmental and social issues into trade.

#### 4. Trade and SD Chapters in CETA

The 3 TSD chapters – Trade and Sustainable Development (22), Trade and Labour (23) and Trade and Environment (24) – are the key instruments through which the EU and Canada aim to achieve the sustainable development goals described above. The European Commission has highlighted key areas that it seeks to promote with the use of the TSD chapters: upholding and ensuring implementation of multilateral labour and environmental standards; ensuring a level playing field in terms of standards and regulations prohibiting or encouraging trade and investment; sustainable natural resource management and corporate social responsibility practices in the trade arena; setting up an inclusive institutional structure encouraging participation by civil society organisations and actors (EC 2017d). The role of these chapters is to ensure that the increasing liberalisation of investment and trade in goods and services does not come at the cost of reducing environmental protection and labour conditions (Puccio/Binder 2017).

Most of the included provisions are not particularly radical or new to trade agreements; these chapters were first introduced in the EU-South Korea FTA and Canada has provided side agreements along the same lines in other trade agreement negotiations (Cosbey 2014; Puccio/Binder 2017). Chapter 22 sets out the general commitments of both parties to develop trade in a way that is consistent with sustainable development achievement and global commitments (EC 2016a; Puccio/Binder 2017). There are commitments to transparency, public consultation, encouraging sustainable consumption and business practices as well as compliance with labour and environmental law (EC

2016a). Chapters 23 and 24 contain similar provisions in relation to labour standards (23) and environmental protection (24) including: commitments on regulatory dialogue and cooperation, reaffirmation of the parties' international commitments, provisions for the parties' right to regulate and commitments ensuring that standards are not lowered to attract business or investment (Puccio/Binder 2017). Chapter 23, for example, commits both parties to the ILO principles and rights and declares that both parties will ratify the ILO core conventions (Canada has not fully ratified) and decent work agenda (EC 2016a; Puccio/Binder 2017). Similarly, chapter 24 pledges both parties' commitment to implementing multilateral environmental agreements and to promoting trade and investment in environmental goods and services (EC 2016a; Puccio/Binder 2017). The TSD chapters also include dispute settlement mechanisms that involve the following actions: consultations between governments; trade, labour and environment expert panel consultation; public reporting and monitoring mechanisms (EC 2017d). The following subsection applies the structural selectivities to some of the key provisions made in CETA to analyse their impact on the agricultural sector with a particular focus on the EU.

##### 4.1 Discursive Selectivities

The sustainability narrative of the TSD chapters delineates trade as a means to promote SD (22.3.2) and thereby reflects objectives of the 'Trade for All' agenda (EC 2017a). Currently, the TSD approach – as described by the EC – contains a 'comprehensive set of binding provisions' (EC 2017a) treating labour and environmental aspects equally (EC 2017a). In the initial part of chapter 22, some recognised international conventions are listed, such as the Rio Declaration on Environment and Development of 1992 and the ILO Declaration on Social Justice for a Fair Globalisation of 2008; however, more recent climate agreements such as the Paris Agreement of 2015 are omitted (Bartels 2017). References to international norms and declarations without any genuine commitments have therefore been criticised as mere 'lip service' to sustainable development (Stolper 2016). The inclusion of SD in chapter 22 is generally short (just four pages) and uses cautious language (Stolper 2016). Statements are often general and along the lines of aiming to 'promote sustainable development', 'promote dialogue and cooperation' and 'enhance enforcement of their respective labour and

environmental law' (22.1) or mentioning tasks as being to 'exchange information', 'cooperate on initiatives', or 'discuss the subjects' (24.10).

Definitions of terms used in social and environmental regards are shortly defined and without reference to any broader understanding. In article 23.1.1, the parties recognise the international trade's support for full and productive employment and decent work for all, generating a positive framing of labour in general and aspirations of non-exclusionary benefits. Then (23.3.1) fundamental principles of rights at work and the ILO's decent work agenda are mentioned, relying on international standards. The term 'environment' is introduced in chapter 24.1 as a separate term and appears alongside aspects about human health and environmental impacts. Environmental law includes abatement and emissions, chemicals and waste, and the conservation and protection of wild flora and fauna (24.1). The discursive setting is of an anthropocentric character, not using more systematic perspectives and also not introducing any language pertaining to 'animal welfare' (except briefly in chapter 21, though not part of the SD chapters)<sup>2</sup>, reflecting a shortcoming of ethical values in the name of international trade (Thomsen 2016).

Chapters 23 and 24 state that no encouragement of trade shall occur at the expense of lowering labour or environmental law protections. However, no sanctions or consequences for not upholding these principles are outlined. Generally, the framing of actions is often abstract and appeals to encouraging parties as the central motive, e.g. regarding the 'use of voluntary schemes' such as eco-labelling, fair trade promotion, or sustainability considerations in private consumption (22.3). Therefore, a lack of concrete measures leaves room for unsustainable manoeuvres. To 'encourage public debate' (23.6, 24.7) 'may lead to the adoption of new labour law and standards' or 'environmental law'; however, little is stated aside from recommendations and possible scenarios. In the whole narrative, scientific and technical information plays a central role aside from international standards but interestingly also a notion of postmodern scientific thinking has entered

<sup>2</sup> The article 21.4 on Regulatory Cooperation Activities states: 'The Parties endeavour to fulfil the objectives set out in Article 21.3 by undertaking regulatory cooperation activities that may include: [...] (s) exchanging information, expertise and experience in the field of animal welfare in order to promote collaboration on animal welfare between the Parties.'

the paragraphs in the form of the precautionary principle (24.8 or 23.3): it is stated that under 'threats of serious or irreversible damage', a lack of full scientific certainty shall be no reason to postpone cost-effective (emphasising the economic dimension) measures to prevent environmental degradation/prevent injury or illness to a natural person.

Economic efficiency is a fundamental principle and is explicitly stated as being a relevant condition in the case of following international labour standards (23.5) and available administrative and judicial proceedings in the event of environmental infringements (25.6). While environmental or social degradation at the cost of trade are unacceptable, the relevance of sustainable growth is seen as a solid foundation to SD. The parties agreed to promote the trade of environmental goods and services and encourage exchange of climate change mitigation goods as in the field of renewable energy (24.9). Thus, the TSD chapters are even assumed to convey an 'aggressive' assertion of a right to regulate so that trade serves sustainability while lacking actionable obligations on investors (Hush 2017). Not concretising ways to push their agenda forward or elaborate on sanctioning procedures, parties agreed on rights to regulate environmental and social realms and committed to cooperating on activities in international fora (e.g. WTO, OECD, UNEP). This document does move toward reframing trade to also take into consideration environmental and social protection and the interrelation with the economic goals of trade – the role of multilateral agreements in protecting environment and society opens up new realms of discourse, though often in a vague and unclear manner, leaving much room for interpretation.

## 4.2 Structural Selectivities

### 4.2.1 Provisions Describing the Goal of Sustainable Development

Sustainable Development in CETA was based on the Rio Declaration on Environment and Development from 1992. This provision can be found in chapter 22.1 of the treaty and it describes the interdependence of the three social, environmental and economic pillars (EC 2016a; Puccio/Binder 2017). The goal lies in achieving sustainable development by mutually enforcing these pillars. This means that economic measures must be implemented in balance with and taking account of environmental and social effects (Angot et al. 2016; EC

2016a). It also establishes that the parties will promote sustainable international trade in line with the Brundtland definition. This shapes the future path of trade and trade disputes by allowing for the environmental and social pillars to hold ground in relation to the economic interests. However, the room provided for sustainable policies and goals aligned with an increase in jobs, sustainable growth, upswings in environmental goods and services and trade expansion creates a certain understanding of SD that is shaped by ideas of 'green growth'. Such scenarios can be linked to a version of sustainability that is in line with capital substitutability, and therefore can be seen as *weak sustainability* (Pelenc/Ballet 2015).

In terms of equal opportunities, a socially sustainable condition for economic exchange is seen by advocates of FTAs as being to enable small and medium enterprises (SMEs) to participate in global markets by lowering tariffs and barriers to entrance. However, difficulties for smaller businesses will potentially increase as competition among European and Canadian firms will be higher (Thomsen 2016). CETA will open the respective market to companies across the Atlantic and therefore increase the supply of marketable goods. Such an increase in supply will intensify competition and push down prices. As a consequence, small and medium-sized farms will face harder conditions in which to compete with bigger enterprises and will lose ground (Council of Canadians 2016). This trend could already be observed in the aftermath of the North American Free Trade Agreement (NAFTA). In the period from 1988 to 2007, Canadian exports in agricultural products tripled from US\$11 billion to US\$33 billion. However, during the same period, the net income of Canadian farms dropped by more than half and farm debt doubled – with dire consequences: while there were 366,128 family farms in Canada in 1970, this figure drastically dropped to 205,730 in 2011. Today, most cattle, pigs and poultry are held in large factory farms – often in their thousands in small areas (National Farmers Union 2014).

As farmers are already facing price pressure in the agricultural sector, a further decrease in prices can only be met either by lowering standards in the production process to save expenditure or by upscaling production (Marowitz 2017). Thus, a market enlargement by CETA could have unsustainable social and ecological implications. It is especially the highly profitable and low-cost producers that benefit from access to new markets – not small and medium-sized farms. Increased compe-

tion therefore encourages less sustainable, large-scale, mono-cultural farming practices (Thomsen 2016). Small-scale farms, together with locally robust forms of food cultivation, will continue to vanish under CETA (National Farmers Union 2014). This trend seems to contradict the goals of social and environmental sustainability that CETA claims to promote.

#### 4.2.2 Rights to Regulate

CETA is built on the idea that international environmental governance and agreements are crucial for achieving sustainable development goals. The provisions include the right to regulate, which ensures that each party maintains its right to put in place protections and establish its own levels of environment and labour protection. Some of the content is customarily included in FTAs; however, CETA includes articles 23.2 and 24.3 relating in particular to investment claims and clauses that specify that the parties will not lower standards to attract investment or trade flows (EC 2016a). Furthermore, the parties will maintain the right to adopt and modify these laws and policies according to multilateral environmental agreements (EC 2016a). The purpose of this is to lower the risk of investment protection rules being used to prevent governments from enforcing important protections. These are noted in articles 24.3 and 24.5 but also in 8.9 as 'upholding levels of protection'. This shows a somewhat rebalancing of power compared to previous agreements, which only strengthen the rights of investors in this regard (Hush 2018). Furthermore, each party shall encourage public debate and awareness of its environmental laws, as well as their enforcement and compliance procedures (EC 2016a). However, there is no specific mention of how this will be achieved, and it maintains a vague and indeterminate wording around the transparency provisions.

This provision has the potential to be used to limit any recourse or pressure for regulatory chill when looking at the states' environmentally and socially beneficial protections. It provides a legal framework for defending against claims brought by investors in regard to expropriation, but leaves much up to the decision makers in each case (Hush 2018; Mikadze 2016). It has also been noted that this right to regulate provision seems to be made subordinate when looking at the agreement as a whole, with other conditions in other chapters providing room to contest this provision (IISD 2016). Looking at the example of NAFTA, the



deregulating potential of altering standards and legislative powers can be highlighted. The high degree of integration between the agricultural markets of Canada and the US has led to a gradual deregulation of food safety standards in Canada. Critics fear that CETA may lead to a harmonisation of standards on the level of the lowest common denominator. Another concern is that such a process of rapprochement lacks transparency and grants preferred access to corporate stakeholders (Greenpeace 2017; Thomsen 2016).

Furthermore, mechanisms such as the Investor-State Dispute Settlement (ISDS; which is part of CETA but not of the TSD chapters) pose a severe threat towards a state's power to regulate. The notion behind such dispute settlement procedures is that corporations can bring cases in front of international arbitration tribunals in the event of breaches of CETA's inherent investment protection schemes (part of section D of article 8 and especially section F of article 8 with the resolution of investment disputes between investors and states). Critics feared that CETA would favour business interests over national sovereignty and civil will (Nadarajah 2015). In response to this criticism, Canada and the EU reformed the ISDS by setting up a new Investment Court System (ICS) which is part of CETA chapter 8 and also includes the right to regulate and an independent investment court system. The ICS provides protection for foreign investors to seek damages if they believe they have incurred financial losses due to a state's regulatory measures, such as those protecting health and environmental standards (Van Harten 2015). However, as a result of the European Commission's approach, a contrast between the rights to regulate and the foreign investor protection remains: property rights are uplifted in relation to the right to regulate and other human rights (Van Harten 2015). Regarding the TSD chapters, the right to regulate is affirmed; yet this is not the case for other chapters (e.g. chapter on investment) which weakens the enforcement of the right to regulate (Van Harten 2015). Hence the implementation of ICS discriminates in favour of foreign investors' interests against those of other actors (whose rights may be affected by state decisions) by omitting comprehensive regulation in aid of investment competences.

Regardless of the reforms made to the investor-state disputes settlements, companies that feel threatened by national regulations will try to recoup potential losses through the inherent dispute settlement schemes at the cost of taxpayers in both Europe and Canada (Stolper 2016). In an article, Van Harten and Malysheuski (2016)

assess the main beneficiaries of ISDS schemes, using all publicly available litigated ISDS cases as of spring 2015. They conclude that ISDS has produced monetary benefits for companies with an annual revenue above \$1 billion and individuals with a net wealth of over \$100 million at the expense of respondent states. In 48 cases, extra-large companies (with an annual revenue of more than \$10 billion) have received compensation payments amounting to \$6.718 billion (Van Harten/Malysheuski 2016).

Drawing on an example from an FTA in North America (NAFTA), such cases have been brought against Canada. In accordance with chapter 11 of NAFTA, cases of investor-state dispute were brought against the country for its ban on the sale and use of pesticides or a ban on hydraulic fracking in the St Lawrence River Basin. In fact, as a result of NAFTA, Canada became one of the most sued countries in the world. Chemical giant Dow AgroSciences utilised the provisions contained in NAFTA to force the province of Quebec to publicly announce and acknowledge that the pesticide 2,4-D does not present an 'unacceptable risk' to human health – a position previously held by the Canadian government and backed by several studies that found that it causes cancer and cell damage (Barlow 2015).

These examples illustrate the significant threat to national legislation making. It remains questionable whether the 'right to regulate' included in the reformed ICS is enough to protect the environment and human health and safety. The Council of Canadians labels the changes made in the ISDS as a 'smoke and mirror' policy, as companies on both sides will nevertheless be able to sue Canadian and European governments. The changes implemented through the novel ICS schemes do not challenge the fundamental flaw inherent in such a dispute settlement process (Barlow 2016).

#### *4.2.3 Provisions Encouraging Sustainable Trade*

In CETA specific provisions have been included that are aimed at the parties actively encouraging sustainable trade, particularly in environmental goods and services and products that have been produced in sustainable ways (for example 24.9 and 24.10) (EC 2016a; Puccio/Binder 2017). CETA is based on the notion that international cooperation is a valuable step towards achieving the goal of sustainable development. The parties thus aim at the following actions: encouraging business to adopt practices that achieve economic, social and envi-

ronmental objectives; fostering the sustainable production of goods and services; recognising the benefits of eco-labelling and fair trade schemes; encouraging sustainability considerations in both private and public consumption patterns; facilitating and promoting trade and investment in environmental goods and services with special attention to goods and services that are relevant for climate change mitigation or renewable energy (Article 22.3) (EC 2016a). The inclusion of these provisions on trade and sustainability recognises the role of trade in fostering more sustainable development (EC 2016a). However, the formulation of the provisions has been described as vague and leaves room for a range of interpretations (Meyer-Ohlendorf et al. 2016). Furthermore, the agreement is in many cases based on voluntary measures (eco-labelling, sustainable production of goods and services, CSR) (EC 2016a).

Looking at an example, we could examine the City of Toronto's Local Food Procurement Policy, established in 2008. The intention of this policy was to increase the percentage of food production in city-owned facilities or purchased for city operations from local sources. The policy aimed at fostering successful and resilient local food systems and to raise awareness about the diversity of local food in Ontario. In this specific case, local was defined as 'food that is grown in the Greater Toronto Area, the Greenbelt of Ontario and other regions of Ontario' (Butts/Matthews 2008). This policy expressly states that its goals are to 'reduce climate change and greenhouse emissions associated with food transportation and production as well as the harmful effects of agricultural chemicals, in particular, pesticides and fertilizers' (Butts/Matthews 2008). Although there are significant economic, environmental and social benefits involved in such local procurement policies, there is growing concern that such procurements will violate international trade law rules (Nadarajah 2015).

Transport is very energy-intensive and is thus an important factor in determining the environmental sustainability of food supply chains (Sim et al. 2007). It already makes up a quarter of European greenhouse gas emissions and is the main cause of pollution in cities (EC 2014). Although they aim at reducing shipments significantly, CETA will put procurements – such as that developed by the City of Toronto – at risk. By only indicating voluntary aspects and not stipulating any clear rules, the implementation of CETA could make subnational government bodies, such as municipalities, provinces and states, less able to promote local procurement commitments and put them in a worse position

to promote sustainable consumption and investments. The agreement requires that procurements will now be open to applicants from Europe on an equal footing alongside Canadian companies (National Farmers Union 2014). Therefore, the agreement could deter even subnational government bodies from favouring local companies and systematically expose local economic development to higher competition challenges (Nadarajah 2015).

Not only could such an agreement substantially restrict national and subnational governments in their use of public spending, but increased trade in agricultural goods between Europe and Canada will increase the need for transportation and shipping. This would go against the whole concept of local food supply and is thus not conducive to sustainable consumption considerations (Nadarajah 2015). It also works counter to the European strategy for low-emission mobility (EC 2014) and generally against the idea of trade in a sustainable sense.

#### *4.2.4 Regulatory Cooperation and the Precautionary Principle*

While the Regulatory Cooperation provision is not contained within the three designated Trade and Sustainable Development chapters, the articles in this chapter have significant effects on the sustainable development aspects and goals in CETA. Chapter 21.1 is recognised as applying to 'the development, review and methodological aspects of regulatory measures' in regard to a number of chapters including 22, 23 and 24 (EC 2016a). This chapter commits each party to ensuring high levels of protection for human, animal, and plant life or health (in accordance with other agreements), recognising the value of regulatory cooperation and developing it further to reduce unnecessary barriers to trade and investment and enhancing competitiveness and innovation (21.2) (EC 2016a). However, there is the caveat that this regulatory cooperation is voluntary and states have the right to withdraw from the cooperation if necessary (21.2).

Additionally, levels of regulation have been addressed differently on both sides: in the EU, the regulation of activities and products can be based on the precautionary principle, which is reflected and established in European treaties and laws. Basically, the precautionary principle postulates that a ban is justified if 'there are reasonable grounds for concern that the[re are] potentially dangerous effects on the environment,

human, animal or plant health' (EC 2000). This means that in the event of insufficient scientific evidence of a risk, legal decision makers are nevertheless permitted to apply regulatory restrictions on products or producers (Stoll et al. 2016). Canada, on the other hand, does not provide such a mechanism. Canada and the US have been following a more 'science-based' approval approach, in which only definitive, scientifically proven risk is taken into account. Consequently, in Canada products can only be banned if the risk has been proven unequivocally (Thomsen 2016). For the first time, CETA adopts a provision similar to this ruling, allowing for measures to be put in place to prevent potential harm in the face of scientific uncertainty. In chapter 24.8: 'The Parties acknowledge that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation' (EC 2016a). This principle is not named as such, but the provision's wording is similar to that currently used in the EU (Angot et al. 2017; EC 2016b).

It means that in general investors are more limited in their ability to challenge the preventative measure used to protect environmental and social safety purely on the grounds that they are preventative (Hush 2018). As in previous examples, this could have profound implications in terms of making this a normal provision in future trade agreements, which would encourage protectionist measures relating to health and safety. This is placing an EU practice that upholds its higher standards in the international arena, with the goal of raising other countries' standards of protection. However, given that it is still interpretable by arbitrators, there is the chance that it may not be enforced as strongly in an international setting. CETA also provides provisions in chapters 21 and 12 that allow opportunities to challenge measures brought under this principle in relation to not allowing this to impede or delay economic activity (EC 2016a). If the interpretation and use of this is vague, there is a risk that the benefits of its inclusion may not be realised.

Including the convergence or alignment of regulations and standards could result in possible regulatory erosion and a lower standard adaptation. Regulations and standards have differed significantly between Canada and Europe in terms of agriculture and requirements for labelling and packaging as well as transport used and levels of monitoring (O'Brien 2016). As an example, the use of pesticides and chemicals in agricul-

tural processes is significantly less regulated in Canada than in the EU (Hush 2018; Angot et al. 2017). Canada is one of the world's largest producers of GMOs (genetically modified organisms). While GMOs are strongly regulated in the EU, they are far more common in Canada; for example, 90% of all the rapeseed (Canola) cultivation in Canada is genetically modified. Hence, there are strong interests in the biotech industry aiming at new GMO regulations which are lower than the current EU regulations (Thomsen 2016). Naturally, Canadian exporters view the strong European regulation in biotech products as a barrier to trade, as products containing GMOs cannot be exported into the EU. Canada already attempted to challenge the strict laws in this area in front of the WTO in 2009. The case was concluded by a settlement between the two parties, which included a forum for the approval of new biotech products (Thomsen 2016). Moreover, in the WTO forum, where Canada and the US brought a dispute against the EU over hormones in beef and the use of GMOs, the EU based their argumentation for regulatory standards on the precautionary principle and lost the case (Thomsen 2016; WTO 2014). Furthermore, there is also a deep involvement of many large and powerful US companies in Canada, which may allow these companies, such as Monsanto, to influence levels of regulation and cooperation on the Canadian side. Consequently, a strong industrial interest has been influencing the development of CETA itself (O'Brien 2016).

CETA will not create a binding obligation for the EU to change its current stand on topics such as GMOs. However, the parties agree to open further dialogue and cooperation on GMOs and other related topics. Article 25.2 shows that the bilateral dialogue and its objectives are clearly designed to serve industry interest (Thomsen 2016). Given the powerful interests on the side of lowering standards, it seems feasible that this cooperation may result in a lowering of EU regulations and a convergence toward Canadian and US standards as global standards in terms of health and sanitation measures (Hush 2018).

#### 4.2.5 Civil Society Forum

In sub-chapter 22.5 of CETA, the establishment of a specific civil society forum is described. CETA provides opportunities for representatives from various corresponding fields to take part in regulatory cooperative activities. CETA obliges the facilitation of such joint Civil Society Forums to be held once a year. They are

comprised of representatives of civil society organisations in a balanced representation of relevant interests (employers, unions, labour and business organisations, environmental groups and civil society) (EC 2016a). The role of this forum is to promote public awareness and include dialogue around sustainable development from the civil society groups, encouraging more transparency in decisions relating to CETA (EC 2016a). This forum is to be convened once a year unless both parties agree against it and should be made up of representatives from civil society organisations in each territory and represent various and balanced interests (Puccio/Binder 2017). There are the domestic advisory groups (DAGs) established under provisions 23.8 and 24.13 who are called upon for opinions and advice on the parties' actions within the context of the three chapters (EC 2016a; Orbie et al. 2016). The DAGs are made up of domestic civil society representatives from business, labour and environment for each state. Members of this are then selected to the transnational civil society forum (mentioned above), who then meet annually to review the implementation of the SD provisions (Orbie et al. 2016).

This mechanism thus opens up the trade agreement to civil society involvement and offers the opportunity for varying interests to be involved in its implementation. This can help to strengthen the democratic legitimacy of the agreement and EU trade policy; however, the selection of the members of the DAG and forum has been criticised for having little transparency (Orbie et al. 2016).

Critics fear that these forums show an imbalanced composition in favour of respective lobbies and corporate interest. Thus the selection will play a critical role in how this mechanism works and in the SD's strength. Many voices apprehend that there is no clear dividing line between business stakeholders and interest groups for the public good. These terms are more or less used synonymously. Furthermore, the requirements regarding who can take part in these dialogues remains undefined. These forums obtain information on the status of policy implementation and comment on those policies. Yet direct communication with the committee is not envisaged. Moreover, these forums are limited to questions of sustainability. They are not involved in other – even closely related – topics, such as health policy or biotechnology (Stoll et al. 2015).

The focus of these forums is furthermore centred on establishing dialogue, providing information and having meetings, but does not clearly mention a speci-

fic procedure or how the regulatory authorities will put the conclusions and advice from civil society forums into action. The parties may consult with these forums, but CETA does not include any obligation to engage with these stakeholders. Therefore, the efficiency of such forums to enhance participation and sustainability remains questionable (Stoll et al. 2015).

Similar forums have already been included in other EU trade agreements, such as the EU-Colombia Agreement (Article 282) and the EU-South Korea Agreement. While stakeholder dialogues in trade agreements facilitate policy learning across countries and can have effects on domestic policymaking, the general influence of civil society remains rather limited. It will remain to be seen to what extent these forums will have an influence on regulatory cooperation (Meyer-Ohlendorf et al. 2016).

#### 4.2.6 Committee on TSD and Dispute Settlement

The commitments are reiterated and clarified in the Joint Interpretative Instrument (JII) also released alongside the CETA text. This document aims at more clearly defining certain articles and meanings of terms included in the articles to be used in decision-making alongside the full agreement (Angot et al. 2017; Puccio/Binder 2017). This also states that there will be binding assessments and review mechanisms related to sustainable development commitments and passed down by the Civil Society Forum and the Committee on Trade and Sustainable Development (CTSD) (Puccio/Binder 2017).

The TSD chapters in CETA establish a Committee for Trade and Sustainable Development (CTSD) and a dispute settlement process involving government consultation procedure and a Panel of Experts review process (EC 2016b; Puccio/Binder 2017). The Committee is comprised of high-level representatives of the EU and Canada, and will be co-chaired by the Minister for International Trade of Canada and the Member of the European Commission responsible for trade. This is established in Articles 26.1 and 26.2 (Specialised Committees) (EC 2016a). The representatives are involved in monitoring, assessing and presenting updates on the parties' actions towards the commitments and then providing information to the civil society forum mentioned above (Angot et al. 2017). Through annual reports and a constant presentation of updates, the Committee shall promote transparency and public participation

(EC 2016a). The CTSD may recommend modifications of chapters on sustainable development to the CETA Joint Committee in accordance with the amendment procedures in Article 30.2 (EC 2016a). CETA involves a government consultation procedure for the SD provision disputes, through using the committee and an independent Panel of Experts. Each party has a contact point for information exchange and consultation with each other. If no solution is reached via consultation, then the panel of experts is introduced for the specific situation at stake (Puccio/Binder 2017). These two bodies aim to seek information from international bodies such as ILO and other bodies responsible for environmental agreements to provide reports and recommendations to the respective parties (Puccio/Binder 2017). These reports are made public, but no sanctions or enforcement mechanisms are provided for in the framework. In the event of a dispute, 'the Parties shall make every attempt to arrive at a mutually satisfactory resolution of the dispute' (EC 2016a). The obligations are mutually accepted and disputes are settled through the procedures for dispute resolution provided in Articles 23.10. and 24.15. Furthermore, the parties shall discuss any disputes in meetings with the committee of trade and sustainable development to arrive at a common interest. The provisions in these TSD chapters are designed in a very flexible and cautious way, in that specific commitments to changing domestic laws are not present and there is much flexibility and discretion in action left to each government without significant penalties for non-compliance (Orbie et al. 2016).

When looking at the way in which these mechanisms may influence the path of sustainable development in trade, the committee provides guidance and monitoring that is publicly published, which could strengthen the commitments of the parties. The JII is also there to clarify vagueness in the provisions and set forth a clearer standard for the limitations on investors' rights to challenge regulations in these areas (Hush 2018). However, it remains unclear how recommendations that proceed from this dispute process will actually be enforced (Puccio/Binder 2017). This means relying on the CTSD's consultations and the panel of experts' independent review mechanisms (as stated in the two-stage ad hoc framework for dispute settlement) while not providing any sanctions (Puccio/Binder 2017). This can be compared to the ICS which contains much stronger enforcement mechanisms and monetary damages than the TSD dispute mechanism and highlights a prioritisation in the agreement of

investment and economic protection. Some examples of how business can and has utilised the dispute settlement schemes in agricultural issues through free trade agreements can be found in 4.2.2. The lacking strength given to the TSD dispute mechanism provisions thus can be noted as a potential weakness of these chapters and commitments, and limits the possibilities for sustainable practices.

## 5. Discussion & Conclusion

This paper has examined the context and inclusion of sustainable development in CETA by looking at the included mechanisms and *potentials* that these hold. After the first integration of SD clauses in the EU-South Korea FTA in 2011, TSD chapters in CETA show an interrelation with environmental protection and social standards that shall not be eroded at the expense of trade increases – whereby trade is seen as a form of solution with which to achieve SD. The right to regulate further enables the parties to set regulatory priorities and adapt legislations, offering a potential counter-element to pure deregulation tendencies. In terms of the precautionary principle this represents a discourse of post-normal science,<sup>3</sup> moving to address the current state of uncertainty by strengthening the ecological and social aspects that are at stake. There is also the addition of a dispute settlement process which includes civil society and an independent panel of experts aimed at addressing transparency concerns.

On the other hand, certain limitations have been identified: while there is an awareness about intergenerational justice (needs of future generations) and certain difficulties of global character (e.g. climate change), only few concrete measures are included in the TSD chapters to address these issues. Environmental, economic and social aspects are seen as interacting pillars; however, SD is represented in the form of weak sustainability (implying also negative environmental and social effects and not addressing all pillars equally). While TSD chapters are framed as a 'comprehensive set of binding solutions' insufficient sustainability instru-

3 Post-normal science builds on the idea of integrating notions of systemic uncertainties and high decision stakes. Instead of the puzzle-solving practice of 'normal science', post-normal science includes issues of ethics and safety while reflecting on contexts of power and profit which exert an external influence on scientific research (Ravetz 2004). Therefore, the integration of the 'precautionary' principle is a crucial element in dealing with contemporary challenges.

ments have been provided to prevent an increase in trade at environmental or social expense. Thus, several aspects that influence the path of TSD include the inherent assumption that economic growth is only beneficial, leaving no doubt about the growth paradigm. Further, many provisions remain vague and indeterminate: the way the civil society forum is included in the implementation of TSD chapters, the structure of a panel of experts (who is behind the selection), possibilities for the parties' right to regulate (how can it be upheld against converging deregulation) as well as the integration of the precautionary principle. The institutional setting of the agenda regarding the communication of experiences, information sharing and configuration of contact points remains similarly unclear. Generally speaking, there is a need for improvements in TSD enforcement (e.g. introducing trade sanctions) or the functional involvement of civil society structures (e.g. participation of civil society in activities related to TSD implementation) (EC 2017a).

The EC is aware of certain shortcomings and suggests improvements, such as to (i) establish a more assertive partnership on TSD (more efficient responses to TSD infringements, better use of TSD dispute settlement mechanisms) or (ii) introduce a model with sanctions (impacting trade by non-compliance like withdrawal of trade concessions as in the US or fines as in Canada) (EC 2017a). Acknowledging these critical reflections, the two presented scenarios still fail to address more concrete measures like integrating environmental protection in state-to-state dispute settlement, including a Key Performance Indicator Scorecard and incorporating environmental criteria in the imposition of anti-dumping duties (Transport & Environment 2017).

While this study contributes to the literature by examining the TSD chapters in CETA through strategic selectivities and identifies awareness about environmental, social and democratic concerns, it also finds specific shortcomings in the mechanisms, mostly due to a lack of defined consequences and general vagueness. Even though three chapters are dedicated to the issue of sustainable development (with partly encouraging language), it remains questionable whether this will stimulate businesses to adapt to sustainable practices. As the language is open and does not deliver clear sustainability criteria, it is possible that a huge breadth of different definitions of this term will fill the realm of understanding (including rather unsustainable interpretations of SD like in the form of CSR

phrases from oil companies). Also in terms of consequences and sanctions, CETA has not delivered clear mechanisms regarding breaches of the TSD chapters. Now a reference point for further trade agreements for a new generation of FTAs, the weak integration of SD in CETA could be replicated, spread to other economies and open doors for greenwashing businesses and economic policies to lower environmental standards. European and Canadian citizens will potentially be better informed (inclusion of civil society forums) but remain without clear leverage with which to enforce their own interests. On a political level, it is therefore very improbable that protection of the poor and powerless will be improved without clear-cut measures. Lacking a legal set of binding provisions on SD, there will be little that changes the influence of the currently dominating actors. On the contrary, more chances for acting transnationally might augment their own sphere of competence and control. In future studies, it could therefore be interesting to elaborate actors-based selectivities, also referring to more examples from the agricultural sector, work on another sectoral policy field or broaden the scope of sustainable development to examine the agreement as a whole.

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