

27 October 2017

A Formal Complaint Procedure for a More Assertive Approach towards TSD Commitments

Version 1.1

Contents

1	Introduction	4
2	Why a formal complaint mechanism is necessary	6
3	Personal scope: who can bring a complaint?.....	9
4	Material scope: which violations can be the subject of a complaint?	10
5	Key procedural considerations and the level of discretion for the Commission	10
5.1	A 'substantiated' complaint	11
5.2	The examination phase	11
5.3	Time-limits.....	11
5.4	A Commission decision: four options.....	12
5.5	Judicial review by the EU courts.....	12
6	Concluding remarks.....	14

Executive summary

This legal briefing sets out a recommendation for a formal complaint mechanism that NGOs, trade unions, and members of the public could use to report breaches of social, environmental, and human rights obligations in current and future EU trade agreements. The proposed mechanism would function similar to the already-existing Trade Barriers Regulation (TBR), which provides a complaint procedure for EU businesses facing foreign trade barriers.

This recommendation is a response to the Commission's non-paper on 'Trade and Sustainable Development (TSD) Chapters in EU Free Trade Agreements', and therefore only focusses on the issue of monitoring and enforcement. In addition to putting in place a formal complaint mechanism, as described in this proposal, the Commission should also do more to take the substantive environmental, social and human rights provisions in EU FTAs seriously, and must move beyond the current weak language contained in FTA TSD chapters. Without strong substantive obligations, there will be little to monitor and enforce.

A formal complaints mechanism would ensure a greater commitment by the EU to monitor and enforce compliance by its trade partners with the social and environmental obligations contained in EU FTAs. In other words, it would spur the Commission to become 'more assertive' on these issues.

- First, a formal complaints mechanism would facilitate the monitoring of social and environmental obligations. Individuals, civil society, and trade unions would be given the necessary procedural assurances that their complaints would be taken seriously by the Commission, while the Commission would be empowered in investigating such complaints.
- Second, a formal complaints procedure would increase the accountability of the Commission by ensuring that its decisions are transparent and subject to judicial review.
- Third, the registration of complaints and subsequent decision-making by a formal complaints mechanism would increase transparency by providing a public record regarding the compliance of social and environmental obligations in FTAs.

A significant advantage of a formal complaint mechanism is that it would not require negotiations with third countries: the EU can adopt such an instrument unilaterally. Moreover, a single complaints procedure could be applied to all current and future agreements, without the need to include a specific mechanism in each EU FTA.

1 Introduction

On June 11 2017 the Commission services published a non-paper on Trade and Sustainable Development (TSD) chapters in EU Trade Agreements with a view to contribute to the ongoing debate on potential reform of these chapters. The Commission underlined the EU's commitment to a *'fair, international, rules-based order based on high standards'* and the consequent need to ensure that labour and environmental obligations in these chapters are respected in line with EU citizens' expectations.¹ Indeed, the European Court of Justice (ECJ) has recently stated that the EU has a legal obligation to integrate the objectives and principles of preserving and improving the quality of the environment and the sustainable management of global natural resources into the EU's common commercial policy.²

To that end, the Commission has outlined two limited options for consideration. In the first option, *'a more assertive partnership on TSD'*, the EU would *'improve actions to react to allegations of non-compliance'*, *'step up monitoring'*, be *'more results-oriented'* and crucially *'a more assertive use of the TSD dispute settlement mechanism'*. The second option, *'a model with sanctions'* mainly describes the perceived disadvantages of moving towards a model whereby violations of the TSD commitments may result in trade sanctions, without discussing the merits of sanctions.³

As a preliminary matter, ClientEarth believes that the EU's current approach to TSD chapters already allows for the use of trade sanctions, contrary to what the non-paper suggests. In paragraph 161 of its Opinion 2/15, the ECJ stated in relation to the sustainable development chapter in the EU-Singapore FTA that:

“a breach of the provisions concerning social protection of workers and environmental protection, set out in that chapter, authorises the other Party [...] — to terminate or suspend the liberalisation, provided for in the other provisions of the envisaged agreement, of that trade.”⁴

¹ European Commission, 'Non-paper of the Commission services Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs)' 11 June 2017, p. 1

² Opinion 2/15, *EU-Singapore Free Trade Agreement*, EU:C:2017:376, paras 139-147

³ See for a discussion on the merits of sanctions: European Trade Union Confederation, 'ETUC submission on the Non-paper of the Commission services on Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs)' available at: <https://www.etuc.org/documents/etuc-submission-non-paper-commission-services-trade-and-sustainable-development-tsd#.WeC6tklrwdV>

⁴ Opinion 2/15, *EU-Singapore Free Trade Agreement*, EU:C:2017:376, para 161. EU FTAs are an integral part of the EU legal order. The ECJ has the exclusive power to give a definitive interpretation of EU law to which the Commission is bound.

Since the EU already operates a trade regime based on sanctions for a breach of commitments by the other Party of the TSD chapter, this legal briefing focuses on how the EU can ensure ‘a more assertive use of the TSD dispute settlement mechanism’.⁵

To this end, ClientEarth recommends the introduction of a formal complaints mechanism that would allow citizens, civil society, unions, and Member States to submit a substantiated complaint regarding non-compliance with FTA human rights, social, and environmental provisions to the Commission.⁶ This mechanism could be implemented by means of an autonomous TSD Regulation, an amendment to the EU’s Trade Barriers Regulation (TBR), or an amendment to the GSP Regulation, among other options. The formal complaint mechanism would require that when a complaint is substantiated, the Commission would be required to conduct a full examination, respect time-limits, allow for a hearing, and take a formal decision as to whether or not the complaint requires action on the basis of the provisions of the FTA in question.

Establishing a formal complaints mechanism has several distinct advantages.

1. First, the EU already offers a similar procedural remedy to business and Member States for violations of WTO commitments by third countries through the Trade Barriers Regulation. The Commission can therefore rely on **33 years of experience** in handling such complaints.
2. Second, establishing this mechanism would **not require negotiations with third countries**, but simply the adoption of an internal piece of legislation via the ordinary legislative procedure. This makes the realisation of this mechanism significantly easier. It also ensures the full involvement of the European Parliament through the ordinary legislative procedure, rather than its mere consent to a Council decision.
3. Third, a formal complaints mechanism would allow the submission of complaints for breaches of **both future and current trade agreements** that contain social, environmental, and human rights obligations. Such a mechanism would therefore be a highly efficient and effective instrument for monitoring compliance with TSD obligations and would trigger effective action.
4. Fourth, this approach would allow the EU **to learn from and improve on the already existing complaints procedure in American and Canadian FTAs**. The EU can learn from the experience of these countries in allowing the submissions of formal complaints

⁵ The views of the ECJ, while binding on the EU institutions and the Member States, may not necessarily be shared by tribunals established under the ordinary dispute settlement mechanisms of FTAs. To avoid international legal complications, it would be advisable to expressly agree on a sanctions approach.

⁶ Such a complaint mechanism has been suggested earlier in the context of human rights clauses in FTAs by Lorand Bartels. See Lorand Bartels, 'Study: Human rights provisions in Economic Partnership agreements in light of the expiry of the Cotonou Agreement in 2020' (23 March 2017) available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578011/EXPO_STU\(2017\)578011_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578011/EXPO_STU(2017)578011_EN.pdf)

by individuals and civil society in relation to environmental and social provisions in their trade agreements.

5. Lastly, this procedure would give complainants **important procedural rights towards** the Commission and ensure that the Commission is required to handle complaints in a transparent and proper way.

This briefing will first set out the necessity and rationale of a possible future formal complaint mechanism before exploring in more detail considerations relevant to the personal and material scope of the Regulation and the procedure itself.

While a formal complaint mechanism would be a useful instrument for signalling and addressing social and environmental problems with the EU's trade partners, it would certainly **not be a panacea** for addressing the more fundamental shortcomings of the EU's current trade and sustainable development policy. In particular, the very weak commitments under the TSD chapters, which add virtually nothing of substance to already existing commitments, is a notable deficiency that the Commission should address in future trade agreements. A complaint mechanism would therefore only be meaningful if there are actual concrete obligations in trade agreements that can be monitored and enforced.

The Commission could significantly strengthen and go beyond already existing international commitments in the field of environment, social protection, and human rights, for instance by bolstering the international regimes on climate, waste, toxics, and biodiversity. Indeed, it appears that the Commission president is already considering a shift in approach by stating that *"trade is about exporting our standards, be they social or environmental standards, data protection or food safety requirements"*.⁷

While president Juncker's statement is welcome, it is not reflected in the Commission's current approach to negotiating EU trade agreements. Currently, the Commission prioritises its bargaining power to extract significant commitments in the field of intellectual property protection, investment, public procurement, market access, and general liberalisation requirements and merely approaches social, environmental, and human rights protection as an afterthought. A shift in approach from **trade liberalisation over trade regulation** to moving towards trade regulation in the interest of public interest objectives is essential to address environmental and social challenges in today's already globalised and liberalised world.

2 Why a formal complaint mechanism is necessary

Under the EU's Trade Barriers Regulation, business and Member States can lodge a complaint with the Commission over an infringement of WTO rules by an EU trade partner. The TBR is an

⁷ Euractiv, 'Calls grow for green clause in EU trade deals' 24 October 2017, available at <http://www.euractiv.com/section/energy-environment/news/calls-grow-for-green-clause-in-eu-trade-deals/>

important tool in the EU's common commercial policy.⁸ It has allowed the EU to respond rapidly and effectively to alleged violations of trade obligations by third countries under both the GATT and the WTO Agreements for over 30 years.

The Regulation lays down clear rules and procedures aimed to ensure effective oversight of WTO compliance by third countries. It allows the Commission to investigate substantiated complaints, and gives businesses and Member States procedural guarantees including the right to be heard by the Commission and established time-frames in which the Commission is to take decisions. The trade barriers regulation states therefore that it ensures 'rapid and effective action' within the WTO.⁹

The TBR has been used dozens of times with considerable results for those lodging complaints. One of the main advantages for the complainants is that the TBR offers procedural rights that will ensure that the Commission will take complaints seriously. Not only does the TBR offer a formal means of lodging a complaint, it also offers strict time-limits that need to be respected by the Commission, the right to be heard, and a formal decision by the Commission that is subject to judicial review by the EU courts. For the Commission, the TBR offers an efficient and targeted way of handling complaints alleging non-compliance with WTO rules, and empowers the Commission services to examine and investigate substantiated complaints.

An extension of these procedural rights to violations of sustainable development and human rights provisions in FTAs demonstrates that the EU is equally concerned with the need to ensure that labour and environmental obligations in FTAs are respected by its trade partners and that the Union takes possible violations seriously. It would also give the Commission an effective means of handling and guiding complaints with a view of ensuring compliance of its trade partners with the sustainability provisions in FTAs.

Moreover, these procedural guarantees give the necessary assurances to civil society, affected individuals, and trade unions that the Commission will properly investigate alleged breaches of social, environmental, and human rights obligations in FTAs. Civil society and trade unions do not have the same extensive network with officials of DG Trade or their goodwill that enables them to rely on informal complaints regarding non-compliance.¹⁰ A formal complaint mechanism through a Regulation will give complainants the procedural guarantees that a substantiated complaint will be properly examined in a timely fashion.

Indeed, civil society and trade unions have been weary of writing the Commission for such violations not only because of the lack of meaningful commitments but also because the

⁸ European Commission, 'Non-paper of the Commission services Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs)' 11 June 2017,

⁹ Regulation 2015/1843 of the European Parliament and the Council of 6 October 2015 laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization [2015] OJ 2 272/1, recital 12

¹⁰ Marco Bronckers and Natalie McNelis, 'The EU Trade Barriers Regulation Comes of Age' (2001) 35 *Journal of World Trade*, p. 427–482

Commission has not shown any commitment to take such complaints sufficiently seriously.¹¹ Even if informal complaints are lodged with the Commission, they have not resulted in the Commission taking such complaints forward to formal consultations.

For instance, the European Trade Union Confederation (ETUC) sent several letters to Commissioner Malmström and her predecessor de Gucht regarding severe and persistent labour and human rights violations in Korea. The EU Domestic Advisory Group to the EU-Korea FTA also sent two letters on the same issue to both Commissioners. These letters have only resulted in a formal response by the Commissioner and despite years of on-going violations, the Commission is yet to initiate formal consultations with the Korean government.

Another example is that of Peru. In June 2015, the RedGe civil society network sent a letter to the EU ambassador in Peru to complain about several severe infringements of environmental and social obligations by Peru. While RedGe hoped to be able to push these issues to the agenda of the intergovernmental meeting discussing the implementation of the TSD chapter, there have been no indications that this has been the case.

In the context of the GSP Regulation, a coalition of NGOs submitted a human rights impact assessment of the EU's Everything But Arms Initiative in Cambodia in 2013.¹² The report found severe human rights violations in relation to economic land concessions for the sugar industry issued by the Cambodian government. While the Commission has informally met with CSO representatives and discussed the issue with the Cambodian government, the Commission has not initiated the procedure for withdrawal of GSP preferences for some or all of the products imported from Cambodia.

In addition, a formal procedure will provide a record of complaints and a formal decision setting out the reasons why the Commission will or will not take action based on the complaint. Such transparency will offer much needed accountability for taking violations of social, environmental and human rights obligations in FTAs seriously. It will also serve as a useful indicator for monitoring the implementation of the TSD and human rights obligations in FTAs. Currently, there is no factual record of informal complaints submitted to the Commission and only a few organisations have made such informal complaints public.

Lastly, by introducing such a remedy, the Commission would be meeting its obligations under the EU-Canada Comprehensive Economic and Trade Agreement (CETA). CETA's trade and

¹¹ See for instance the letter of the Trades Union Congress on the inadequacies of the current EU-Mexico FTA of 9 November 2015, available here http://ec.europa.eu/carol/index.cfm?fuseaction=download&documentId=090166e5a38507f0&title=malmstr_om091115let..pdf

¹² Equitable Cambodia and Inclusive Development International, 'Bittersweet Harvest: A Human Rights Impact Assessment of the European Union's Everything But Arms Initiative in Cambodia' (2013) available at https://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf

environment chapter requires the EU to be 'open to receive submissions from the public' on matters related to that chapter and 'shall give due consideration' to such submissions.¹³

The introduction of such a complaint mechanism in CETA is not surprising given Canada's experience with allowing for such submissions for monitoring and implementation purposes of sustainability chapters in its FTAs.¹⁴ While these complaint procedures have been widely used by civil society to highlight often severe violations of environmental and social provisions, such complaints have only once resulted in the establishment of a Panel.¹⁵ The main reasons for such inaction is that the entities receiving such complaints are not under strict legal obligations to pursue dispute settlement, even if there are clear violations of the relevant environmental and social provisions.¹⁶ Moreover, the lack of proper time-lines has resulted in significant inaction for prolonged periods of time, despite the seriousness of the violations in question.¹⁷

The North American experience with complaints mechanisms therefore demonstrates the need for rigorous procedural requirements. In both the United States and Canada only modest results in improving compliance with environmental and social provisions in FTAs have been achieved, mostly in terms of highlighting violations and putting additional formal pressure on the relevant governments. In order to ensure that a complaints mechanism would be an effective means to address violations of social and environmental provisions in FTAs, it would be imperative to significantly improve these procedural aspects of the North American experience.

3 Personal scope: who can bring a complaint?

The complaint procedure should be open to anyone who submits a substantiated complaint and should not have restrictive standing requirements that would hamper effective monitoring of the implementation of the TSD chapters in EU FTAs. The approach taken under the NAFTA environmental side agreement, for instance, is entirely based on the merits of the submission and no preconditions are attached to the capacity of the submitter.¹⁸ The agreement allows for submissions by "any non-governmental organization or person".

¹³ Article 24.7 (3) CETA

¹⁴ See Axel Marx, Franz Ebert, Nicolas Hachez, and Jan Wouters, 'Dispute Settlement in the Trade and Sustainable Development Chapters in EU Trade Agreements' ISBN: 9789082643114 available at <https://ghum.kuleuven.be/ggs/publications/books/final-report-9-february-def.pdf> , p. 30-41

¹⁵ Panel report, In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA - DR Final report of the Panel, June 14, 2017, available at [https://www.trade.gov/industry/tas/Guatemala – Obligations Under Article 16-2-1\(a\) of the CAFTA-DR June 14 2017.pdf](https://www.trade.gov/industry/tas/Guatemala – Obligations Under Article 16-2-1(a) of the CAFTA-DR June 14 2017.pdf)

¹⁶ See above n 14

¹⁷ Ibid

¹⁸ Article 14 North American Agreement on Environmental Cooperation, available at <http://www.cec.org/about-us/NAAEC#sem>

A similar broad personal scope would allow for effective monitoring of the TSD chapter and not exclude submissions on formal grounds that would demonstrate and substantiate significant shortcomings in the compliance with the obligations in the TSD chapter.

Moreover, similar to the Trade Barriers Regulation Member States should also be in the position to submit complaints for review by the Commission. This would give Member States a role and responsibility in the implementation of the TSD chapters and enhance the overall governmental capacity to monitor third country social and environmental obligations.

Therefore, a future complaint mechanism should allow for complaints by:

- Non-governmental organisations;
- Trade unions and workers' organisations;
- Members of the public;
- Member States.

4 Material scope: which violations can be the subject of a complaint?

The significant advantage of introducing a unilateral stand-alone instrument is that it can be applied to multiple international agreements and is not part of only one agreement. The Regulation can be applied to environmental, social, and human rights obligations found in **existing and future free trade agreements**. ClientEarth would suggest that complaints can be submitted in relation to the compliance by third countries and international organisations with the following provisions in past and future international agreements of the EU:

- All human rights, social, and environmental obligations in trade agreements that qualify as 'essential elements' to that agreement;
- All provisions in chapters dedicated to sustainable development, labour, the environment and human rights.

In addition, the formal complaint mechanism could also be applied to the withdrawal mechanisms of the GSP Regulation.¹⁹ Article 15, for instance, requires the Commission to initiate a procedure for the temporary withdrawal of GSP+ benefits when the Commission has reasonable doubt that beneficiary countries do not respect their social and environmental undertakings as defined in that Article. The complaint mechanism would then ensure that the 'evidence available' to the Commission provided by civil society, trade unions, members of the public and Member States can also be properly handled and investigated.

5 Key procedural considerations and the level of discretion for the Commission

An effective and transparent mechanism designed to monitor and ensure compliance of social and environmental obligations in FTAs requires transparent and rigorous rules on procedure.

¹⁹ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences [2012] OJ 2 303/1, articles 15 and 19

Such rules not only enable the Commission to properly monitor and investigate compliance, but also give important procedural guarantees to complainants that will ensure that allegations of non-compliance will be properly investigated and taken forward by the Commission.

5.1 A 'substantiated' complaint

A complaint must enable the Commission to effectively investigate potential non-compliance of the other Party. To that end, it must provide the Commission with all the necessary information that will allow it to carry out a full examination. This will prevent the Commission from being burdened with investigating untargeted and unsubstantiated complaints. On the other hand, a complaint is only the first phase in a procedure targeted at ensuring compliance with social and environmental obligations in FTAs. It should not therefore be required of the applicants to submit a complete file demonstrating non-compliance, but merely give the Commission sufficient reasons for a decision warranting further investigation.

To that end, a submission will have to be substantiated, which would mean that a submission must:

- Sufficiently document the facts that support the finding of a breach of a provision, for instance by relying on reports or eye-witness accounts;
Indicate which provisions have been breached and provide a preliminary argumentation why those provisions have been breached.

5.2 The examination phase

Where it is apparent that there is sufficient evidence to justify initiating further investigations, the Commission is required to announce the initiation of an examination procedure in the Official Journal of the European Union. It shall indicate the country that is the subject of the complaint, the provisions that are the subject of investigation, and a summary of the complaint received. This announcement shall serve as the official start of the time-limits and will allow interested parties to submit further evidence.

The purpose of the examination phase is to enable the Commission to further investigate a complaint with a view of taking a decision on compliance as described below. It would be important to specify both the tools available (for instance hearings, including hearings open to public testimonies, consultations with secretariats of international organisations or conventions, and fact-finding missions) to the Commission as well as the constraints applicable to the Commission when it is conducting the investigation in order to ensure an effective investigation. In any event, the Commission should give the complainants the right to be heard for the purpose of giving the complainants the opportunity to respond to any evidence or argumentation that could be used for a finding other than that of non-compliance.

5.3 Time-limits

For effective and efficient use of complaint mechanisms it is essential that the Commission is subject to reasonable time-limits in taking a decision. These time-limits are essential in order to

prevent inaction. In the North American experience, for instance, inaction and severe delays are one of the most cited problems associated with the complaints mechanisms.²⁰ On the other hand, short timeframes will not allow the Commission to properly investigate the complaint. Therefore, reasonable but precise and non-indicative time-limits such as those used in the EU's trade defence instruments should be employed.²¹

5.4 A Commission decision: four options

At the end of the procedure, the Commission is required to take a decision. The Commission would need to establish whether or not it considers that the other Party has complied with its social or environmental obligations under the FTA on the basis of the complaint and the subsequent investigation. Such a finding must result in the Commission taking one of four types of decisions;

- A finding of compliance or insufficient evidence for a finding of non-compliance, in which case the Commission takes a decision not to take further action on the basis of the submission;
- A finding of non-compliance necessitating recourse to state-to-state consultations if applicable;
- A finding of non-compliance necessitating a proposal for a Council decision to (partially) suspend or terminate the agreement in accordance with the procedures under Article 218 (9) TFEU and the Vienna Convention on the Law Of Treaties, notably Articles 60 (1) and 65.

For GSP complaints: a finding justifying the initiation of the withdrawal procedures, for instance because of a finding of 'reasonable doubt' that a particular GSP+ beneficiary country does not respect its undertakings as defined in Article 15 of the Regulation.

The second option is available if the agreement in question provides for dispute settlement procedures that are applicable to the breached provision. For instance, if the Commission establishes a finding of non-compliance of the labour provisions in the EU-Korea FTA, the Commission would take a decision to initiate government consultations based on article 13.14 of the EU-Korea FTA.

The third option is available if (1) the agreement in question does not provide for dispute settlement procedures applicable to the breached provision or (2) recourse to dispute settlement has not resulted in a satisfactory solution or in cases of urgency and severe breaches. The approach taken under the third option is fully in line with paragraph 161 of the ECJ's judgment in Opinion 2/15.

5.5 Judicial review by the EU courts

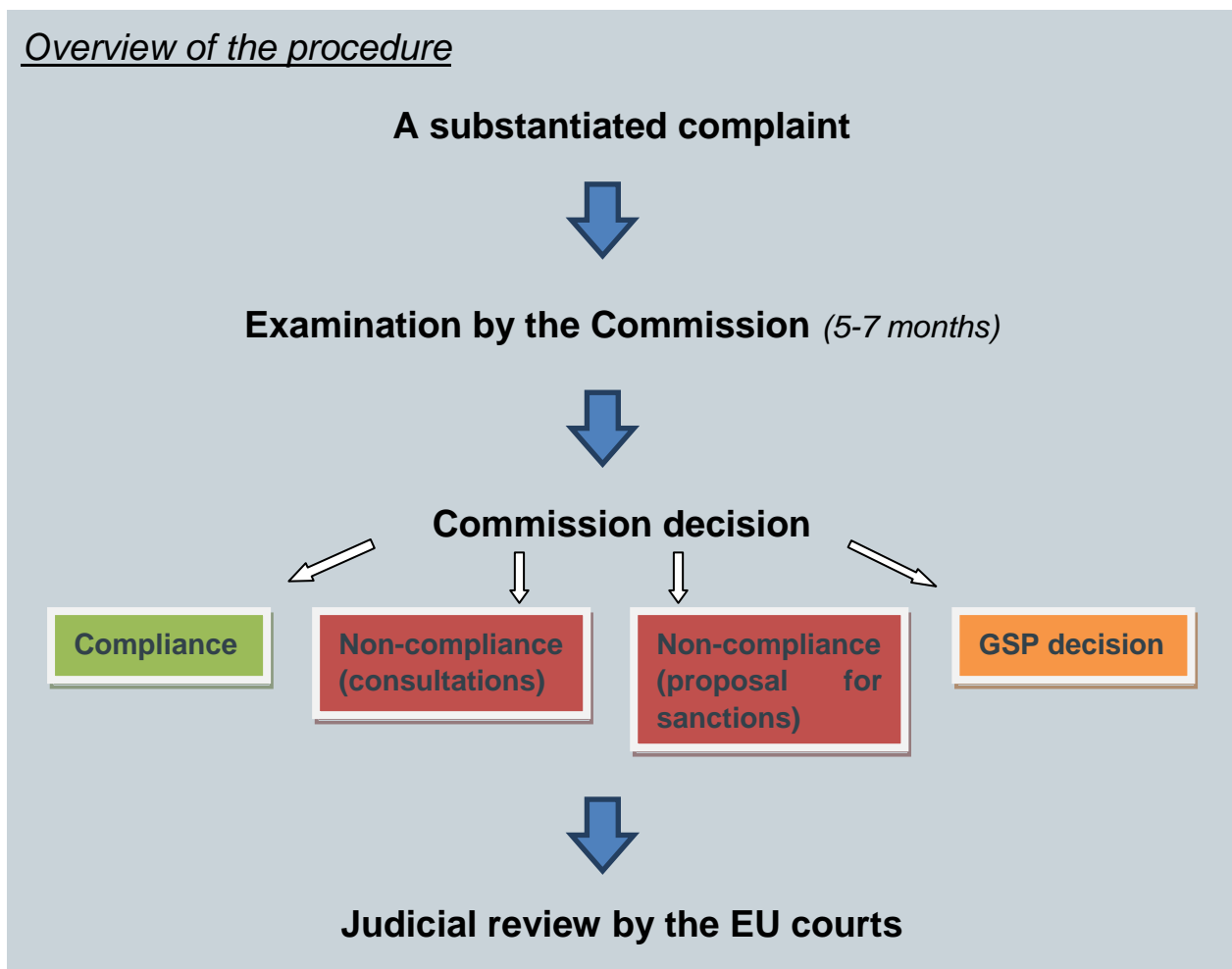
Decisions listed above must state the reasons on which they are based, published in the Official Journal of the European Union, and must be addressed to the person submitting the complaint.

²⁰ See above n 14

²¹ See for instance article 9 (8) of the TBR, prescribing a time-limit of 5 to 7 months

As such, decisions would be subject to judicial review by the EU courts and would allow for judicial scrutiny of the Commission's decision-making process.

The Regulation in question should also expressly allow applicants to obtain a ruling on whether the conduct of the EU's trade partner criticized in a complaint lodged under the Regulation constitutes a practice that is incompatible with its obligations under international law, as defined above under the material scope of the Regulation, in order to compel the Commission to investigate and ultimately decide whether or not to take action on the basis of the trade agreement.²² Such a provision would be necessary because trade agreements generally do not allow for direct effect of those agreements while at the same time preserving the inter-governmental character of dispute settlement under the agreement.²³ The Regulation must therefore expressly refer to current and future EU trade agreements containing social, environmental, and human rights obligations.



²² In order to ensure judicial review similar to the judicial review carried out by the ECJ in Case 70/87 *Fediol v Commission* EU:C:1989:254, para 19

²³ See article 30.6 (1) CETA and its North American equivalent 30.6 (2) CETA

6 Concluding remarks

A complaints mechanism as described above is no panacea to solving the fundamental problems underlying the EU's current approach towards trade and sustainable development. The EU remains committed to create a vast bilateral network of liberalisation obligations for third countries and extensive actionable rights for foreign investors and multinational corporations without meaningful social, environmental, or human rights obligations for either transnational corporations or governments. For instance, as was recently underlined by the academic report requested by the French president Macron, the CETA contains no provisions that contribute to mitigating climate change, while CETA at the same time is likely to increase worldwide CO2 emissions and provides extensive opportunities for the Canadian mining and oil industry.²⁴ This approach remains disappointing and worrying.

Nevertheless, a formal complaints mechanism can ensure a greater commitment by the EU to monitor and ensure compliance by its trade partners with the social and environmental obligations that are part of those agreements, and would be especially useful if the Commission bolsters social and environmental commitments in future trade agreements. First, a complaints mechanism would greatly facilitate the monitoring of these obligations. Individuals, civil society, and trade unions would be given the necessary assurances that their complaints will be taken seriously by the Commission, while the Commission would be empowered in investigating such complaints. Second, such a procedure would contribute to the accountability of the Commission by ensuring that its decisions in this area are transparent and subject to judicial review. Moreover, the registration of complaints and the subsequent decision-making will also provide for a helpful public record regarding the compliance of social and environmental obligations in FTAs.

Dr. Laurens Ankersmit

Lawyer / Juriste

020 808 4321

lankersmit@clientearth.org

www.clientearth.org

²⁴ Independent Committee, 'Rapport au Premier ministre - L'impact de l'Accord Économique et Commercial Global entre l'Union européenne et le Canada (AECG/CETA) sur l'environnement, le climat et la santé' of 7 September 2017 available at <https://static.mediapart.fr/files/2017/09/08/rapport-ceta.pdf>

ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

ClientEarth is funded by the generous support of philanthropic foundations, institutional donors and engaged individuals.

Brussels

Rue du Trône 60
5ème étage
1050 Bruxelles
Belgique

London

274 Richmond Road
London
E8 3QW
UK

Warsaw

ul. Żurawia 45
00-680 Warszawa
Polska

ClientEarth is a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, with a registered branch in Belgium, N° d'entreprise 0894.251.512, and with a registered foundation in Poland, Fundacja ClientEarth Prawnicy dla Ziemi, KRS 0000364218.