

EU unilateral measures in addressing the global footprint across value chains Lecture in Cochin Nuals



Co-funded by the
Erasmus+ Programme
of the European Union



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January 2026

1. EU Global Footprint and Sustainable Development

EU's global footprint

- + 80-90% of environmental harm are caused through value chains outside the EU.
- + Efforts by the EU to achieve climate neutrality objective by 2050 will be nugatory in case that the EU's global footprint increases.

⇒ Unilateral trade measures (Process and production methods (PPMs))

EU's global footprint

- + As the largest international player in trade and foreign investment, the EU crosses different **planetary boundaries**.
- + The EU depends on imports for most of its **critical raw materials** –reliant on imports of scarce and economically important raw materials. Moreover, the supply of many critical materials is highly concentrated (98% of rare earth elements comes to the EU from China).

Sustainable Development, as a core objective of the EU

Article 3(3) TEU. The Union shall work for the **sustainable development** of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.

It shall combat social exclusion and discrimination, and shall promote **social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.**

Sustainable Development



Sustainable Development, as a core objective of the EU external policies

- + Article 21(2) TEU.
- + d) foster the **sustainable economic, social and environmental development of developing countries**, with the primary aim of eradicating poverty;
- + (f) help develop international measures to **preserve and improve the quality of the environment** and the **sustainable management of global natural resources**, in order to ensure sustainable development;
- + (g) assist populations, countries and regions confronting **natural or man-made disasters**; and

Integration

Article 11 TFEU. Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

Sustainable development in EU primary law

Article 191(1) TFEU. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

(2). Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

Provisions of constitutional importance

These primary law provisions are applicable

+ **internally** (secondary EU law)

+ and **externally** (EU international agreements)

2. EU sustainable development agenda in trade agreements

SD in new EU trade agreements

- + New generation of EU FTAs contain TSD chapters
- + Lower standards of protection in one of the parties can enhance trade and investment in its territory
- + Environmental and labour standards can become disguised trade barriers
- + Addressing global challenges?

Sustainable development in trade relations

- + Trade liberalisation has never been an end on its own
- + In its Opinion 2/15, the Court found that the sustainable development chapter (13) in the EUSFTA fell within the scope of the Common Commercial Policy (CCP).

Sustainable development in trade relations

- + A breach of TSD chapter could constitute a material breach of the FTA and therefore authorising the Parties under international customary law to terminate or suspend the liberalisation of trade provided for in the FTA (CJEU Opinion 2/15, para 161)
- + the sustainable development chapter 'plays an **essential role** in the agreement' (para. 162) TSD chapter 'plays an essential role in the agreement' (CJEU Opinion 2/15, para. 162)

'the link which the provisions of Chapter 13 ...display with trade ... is also specific in nature **because a breach of the provisions concerning social protection of workers and environmental protection, ..., authorises the other Party** — in accordance with the rule of customary international [...] — **to terminate or suspend the liberalisation,** provided for in the other provisions of the envisaged agreement, **of that trade.'**



Comparative elements

- + EU-India 1994 Cooperation Agreement
- + 2004 EU-India Strategic Partnership

India has been negotiating trade agreements with several partners – both bilateral and regional:

- + Comprehensive Partnership Agreements with Korea, Japan, Singapore and the UAE,
- + the India-Australia Economic Cooperation and Trade Agreement

Trade in goods

India and the EU are already important trading partners.

Trade increased by 70% in the decade from 2009 to 2019.

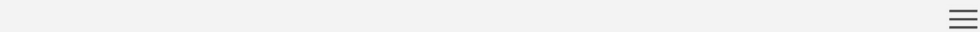
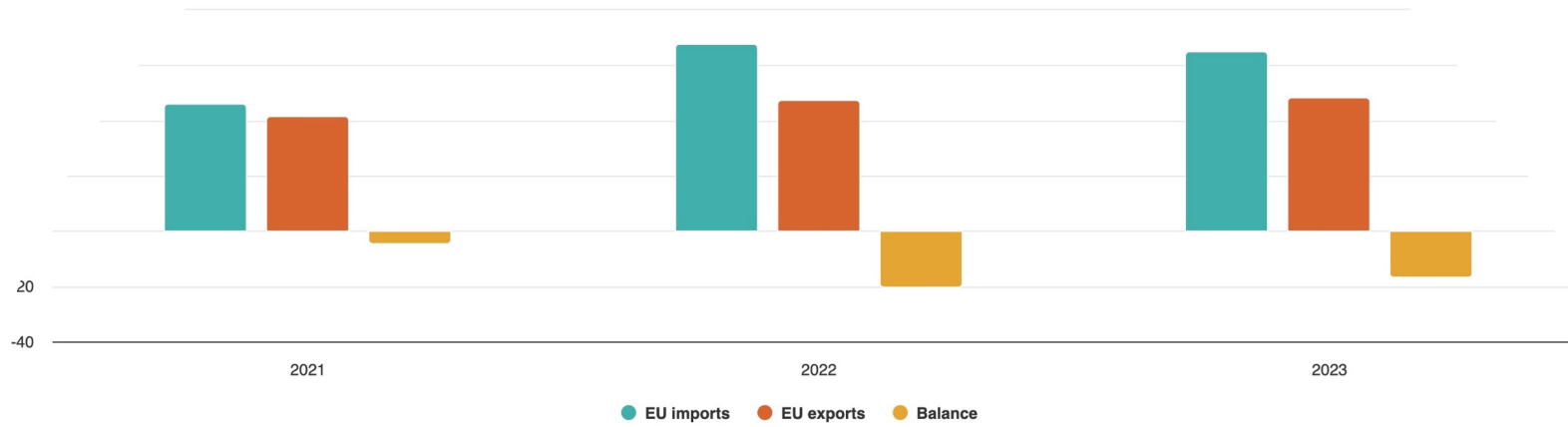
The EU is India's largest trading partner (12.2% of total Indian trade), accounting for €124 billion worth of trade in goods in 2023.

India is the EU's 9th largest trading partner, accounting for 2.2% of the EU's total trade in goods in 2023.

Trade in services between the EU and India reached €59.7 billion in 2023.



Trade in goods, EUR billion



Trade in services, EUR billion

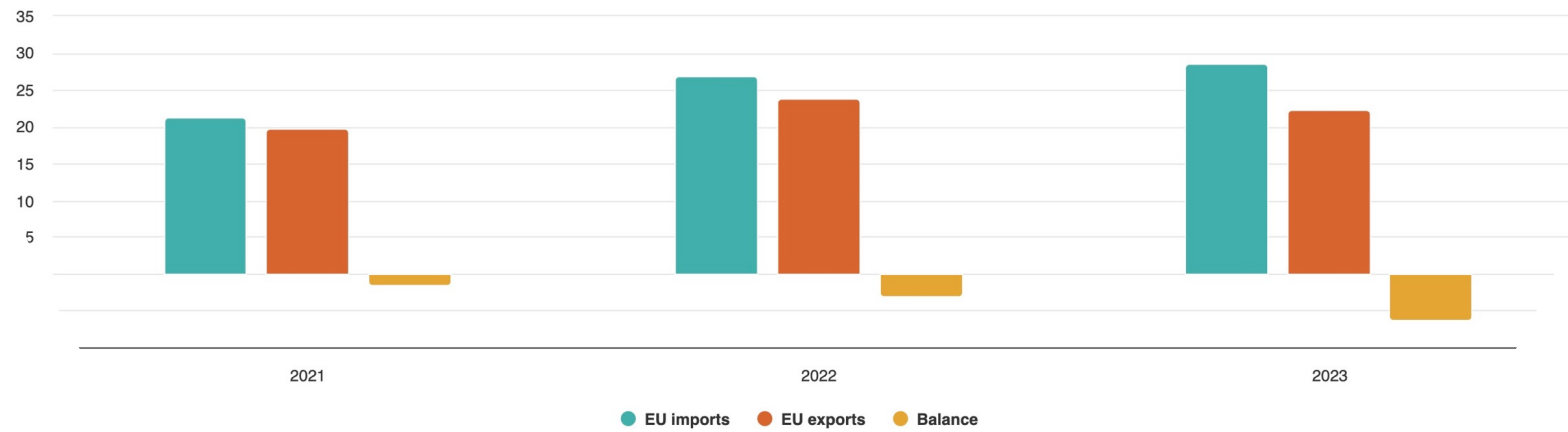
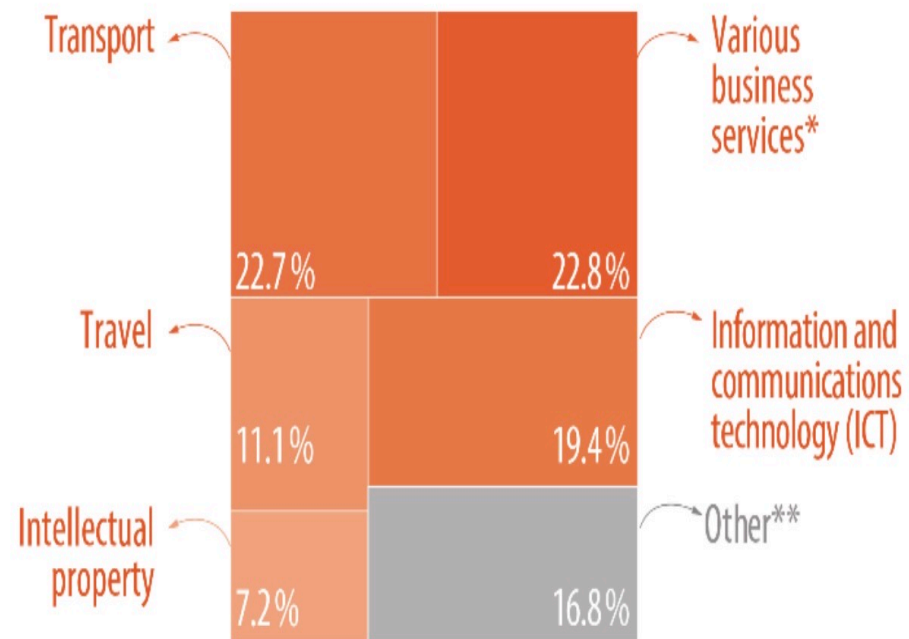
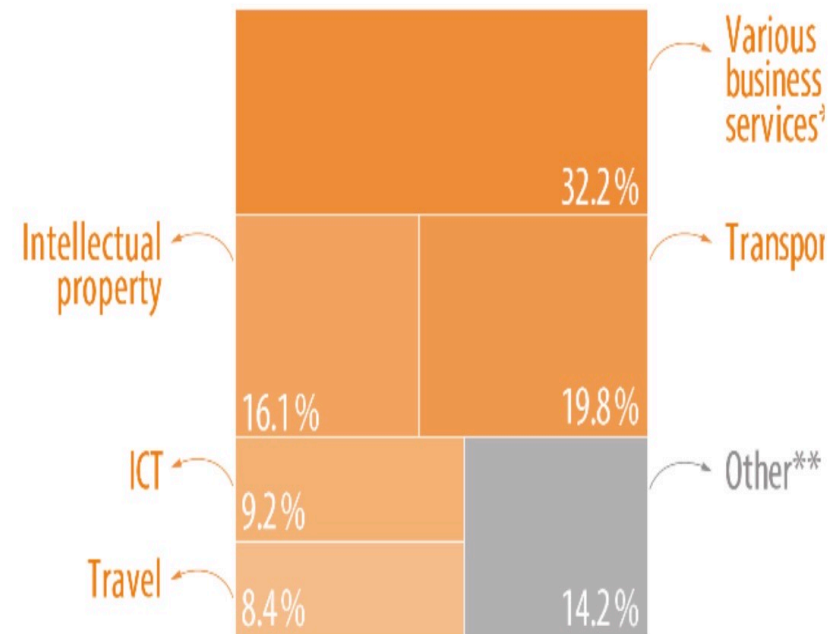


Figure 2 – Trade in services with India

EU exports of services to India (2022)



EU imports of services from India (2022)



‘Currently, India’s trade regime and regulatory environment remains relatively restrictive.

Technical barriers to trade (TBT), sanitary and phyto-sanitary (SPS) measures, deviation from internationally-agreed standards, as well as discrimination based on legislative or administrative measures by India, affect a wide range of sectors, including goods, services, public procurement and investment’.

European Commission, EU trade relations with India. Facts, figures and latest developments.

Objectives of the EU-India FTA

- + Remove barriers;
- + Open up services and public procurement markets;
- + Ensure protection of geographical indications;
- + Pursue ambitious commitments on trade and **sustainable development.**



Free trade agreement between the European Union and its Member States, of the one part, and India, of the other part

Trade and Sustainability Impact Assessment

- + Assessment of the potential impact that the FTA and IPA could have on the economy, social life, environment and the enjoyment of human rights in India or the EU (including the EU's outermost regions).
- + The assessment relies on economic modelling, literature review, statistical data analysis and continuous and wide-ranging stakeholder consultations.

3. Trade and Sustainable Development Chapters

Trade and Sustainable Development (TSD) chapters in the FTAs

- + Level-playing field
- + Promotion of sustainable development –
implementation of the existing
international obligations
- + Promotion of higher standards

Minimal level of labour protection

- + freedom of association and the effective recognition of the right to collective bargaining;
- + the elimination of all forms of forced or compulsory labour;
- + the effective abolition of child labour, and
- + the elimination of discrimination in respect to employment and occupation

Labour obligations in a TSD chapter

3 types of obligations:

- + **non-regression clauses** concerning domestic laws;

- + provisions based on the **minimum protection** under the existing international commitments;

=> Commitment of the parties to implement into their domestic legislation labour rights stemming from the eight core ILO conventions

- + **aspirational clauses**

Non-regression clauses

- + Aim to ensure the level playing field
- + Conditioned upon the intended or actual effects on trade and investment
- + Usually formulated as a commitment *not to derogate from domestic laws*, or not to *fail to effectively enforce* domestic laws “in a manner affecting trade and investment between the parties”

Minimal level of labour protection

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Aspirational clauses

- + usually expressed in terms of Parties' commitment to "endeavour" or to "seek" to ensure that existing laws and policies "provide for and encourage high levels of protection"

4. EU Unilateral trade measures Value chains

EU Unilateral trade measures

Value chains

- + Regulation on **deforestation-free products** => certain **commodities** and **products**
- + **Renewable Energy Directive** => **Biofuels**
- + **Batteries Regulation** => **Lithium, Cobalt, natural graphite, lithium**
- + **Conflict Minerals Regulation** => **Tin, Tungsten, Tantalum, Gold**
- + Directive on **Corporate Sustainability Due Diligence** that requires implementing comprehensive mitigation processes for adverse human rights and environmental impacts in major company value chains
- + Regulation on a carbon border adjustment mechanism (**CBAM**) => **steel, fertilizers, nickel, electricity**

EU Unilateral trade measures

- + Requirements to be met before placing products (commodities and derived products) on the EU market for the first time.**
- + The EU deals with complex supply-chains**

Dispute settlement

- + Government consultations
- + Special TSD dispute settlement mechanism –
Panel of experts and recommendations

Objectives

- **EU's footprint:** Minimize consumption of products coming from supply chains associated with CC impact (CBAM) and environmental impairment (deforestation or forest degradation)
- **Global Governance/Demand side:** Increase EU demand for and trade in legal and 'non environmental impacting' commodities and products.
- Ensure a **level playing field** for companies operating in the EU market in terms of requirements to be met before placing products (commodities and derived products) on the EU market for the first time.
- **Global Governance/Supply side:** Increase the EU's leverage on the way third countries implement their climate and environmental policies and thus the environmental rule of law.

2005 Timber Regulation (EUTR)

- + EUTR focuses on reducing the risk of illegal products entering the **supply chain** rather than licensing legal ones. Operators must ensure the legality of their supply chain.
- + Not a border control measure applied to each shipment; compliance is not policed at the EU border, but rather established as a result of enforcement actions by MSt.

Scope

2005 Timber Regulation

+ Broad range of timber products

roundwood; primary-processed products (sawn hardwood), and secondary-processed products (wooden furniture and paper products); fuelwood; panel products (plywood, particle-board, and fiberboard); packaging; carpentry, and prefabricated wooden buildings

2023 Deforestation and forest degradation Regulation

Relevant **commodities** (cattle, cocoa, coffee, oil palm, soya and wood) and relevant **products**, (Annex I), that contain, have been fed with or have been made using relevant commodities.

Risk-based due diligence

Due diligence is an on-going, proactive and reactive process through which companies can ensure that they respect human rights and the environment and do not contribute to conflict.

Risk-based due diligence refers to the steps companies should take to identify, prevent, mitigate and otherwise address adverse impacts associated with their activities or sourcing decisions. Cf. UN, ILO and OECD standards and principles

Requirements

2005 Timber Regulation

Legality



2023 Deforestation and forest degradation Regulation

Legality +
'Deforestation free'



Mandatory due diligence

2005 Timber Regulation

First legal instrument at the EU level that makes the exercise of due diligence mandatory, entailing three components: risk information, risk assessment and risk mitigation.

2023 Deforestation and forest degradation Regulation

Prohibition of placing on the internal market, or exporting from the EU market, the commodities and products that are not compliant with the Regulation.

+ Customs declaration =>
Due diligence statement

2023 Deforestation and forest degradation Regulation - Risk assessment

- Non-negligible risk of non-compliant commodities or products entering the EU market => risk **mitigation** measures that are adequate to lower the risk to a negligible level.
- Risk cannot be mitigated to a negligible level => prohibition to place commodities or products on the EU market

Renewable Energy Directive



Renewable Energy Directive

Addresses the objective of protecting biodiversity. It sets requirements for commodities used as biofuels or to produce biofuels and products linked to deforestation and forest degradation to be placed on the EU market.

- wood pellets or derivatives of soy and palm oil.

Indonesia is challenging before the WTO EU measures restricting the import of palm oil and oil palm crop-based biofuels.

- + European Union — Certain measures concerning palm oil and oil palm crop-based biofuels, DS593).

Conflict Minerals Regulation

- + Tin, Tungsten, Tantalum, Gold
- + Due diligence policies to control whether these minerals are from **conflict-free sources**

Batteries and waste batteries Regulation

- + **Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries**
- + **Cobalt, natural graphite, lithium, nickel**
- + **Supply chain due diligence policies**

Internationally recognised due diligence standards and principles

- + the United Nations Guiding Principles on Business and Human Rights,
- + the Ten Principles of the United Nations Global Compact,
- + the United Nations Environment programme (UNEP) Guidelines for Social Life Cycle Assessment of Products,
- + the International Labour Organisation (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,
- + the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises
- + and the OECD Due Diligence Guidance for Responsible Business Conduct.

Corporate Sustainability Due Diligence (CSDD)

EU Cies

150 M worldwide turnover + 500 employees

High-Impact Sectors: 40M worldwide turnover + 250 employees

Third countries Cies (avoiding unfair competition)

150 M EU-generated turnover (no employee treshold)

High-Impact Sectors: 40M EU-generated turnover

Scope: 13000 cies + 4000 third countries Cies

Corporate Sustainability Due Diligence (CSDD)

Due diligence: Prevent, mitigate, minimize potential adverse HR impacts and adverse environmental impacts (list of international agreements)

>> **Value chain** (subsidiaries; established business relationship)

Climate change Strategy (emissions reduction)

+ Complaint mechanisms; Civil liability

Carbon Border Adjustment Mechanism (CBAM)

Objective. Prevent the risk of carbon leakage in the EU's Emissions Trading System ('EU ETS')

Avoid that the EU emissions reduction efforts are **offset** by increasing emissions outside the EU

- relocation of production
- increased imports of less carbon-intensive products

"Complements" the ETS

> Applying an "equivalent" set of rules to imports to the EU

Carbon border adjustment mechanism (CBAM)

Scope. Apply to goods imported into the customs territory of the Union from third countries (exception : countries linked, to the EU ETS)

Carbon content of imported products indicates the GHG emissions released during their production abroad.

Non-discrimination. Ensure that imported products are treated no less favourably than domestic products produced in EU ETS installations.

CBAM certificates need to reflect closely the EU ETS price (determined through daily auction).

The **carbon price** is determined by the balance of GHG of the diminishing supply of emission allowances (the 'cap') the against the demand of the market ('trade') . Price incentive results from scarcity.

+ Encourage third country producers to use cleaner technologies and to implement (same/similar) green policies



conclusions



WASSILY KANDINSKY SQUARES WITH CONCENTRIC RINGS