

European Commission Introduces New Complaints System to Fight Trade Barriers and Violations of Sustainable Trade and Human Rights Commitments by Third Countries

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The European Commission (*Commission*) has launched a centralized complaints system through which EU-registered companies, industry associations, trade unions and NGOs can report market access barriers or breaches by third countries of their 'trade and sustainable development' (*TSD*) commitments or commitments undertaken under the EU's Generalised Scheme of Preferences (*GSP*).^[1]

The centralized complaints system^[2] forms part of the Commission's increased efforts in strengthening the enforcement and implementation of trade agreements that the EU has concluded with third countries and follows the appointment in July 2020 of the first Chief Trade Enforcement Officer (*CTEO*).^[3]

The stated objective of the centralized complaints system is to establish a more accessible, responsive, and structured process for handling complaints by the Commission's Directorate General for Trade (*DG Trade*).

The centralized complaints system does not create an obligation for the Commission to pursue each and every complaint and provides for no deadlines for the Commission to act. Complainants will be informed as to whether the complaint leads to an enforcement action. If the Commission decides to take action, it will communicate an action plan and indicative timeline to the complainant. The Commission will prioritize the treatment of complaints on the basis of objective criteria such as the likelihood of resolving the issue, the legal basis, and the economic/systemic impact of market access barriers and the seriousness of the violation of the TSD and GSP commitments.

The entry into force of this new complaints mechanism is accompanied by the Commission's Operating Guidelines^[4] as well as the Commission's Working Approaches^[5] which set out the ways in which the different elements of the EU's recent enforcement efforts are meant to operate together.

A. Market access barriers complaints

- This type of complaint relates to the reporting of market access barriers which may include the imposition of standards and other technical requirements, the restriction to foreign participation in a services sector, quantitative restrictions related to imports, lack of transparency of national trade regulation, unfair application of customs formalities and procedures, unreasonable labelling, marking

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and packaging requirements *etc.*

- Market access barriers complaints may be lodged by EU Member States, entities registered within the EU, industry associations of EU companies, associations of EU employers, and trade unions or trade union associations formed in accordance to the laws of any EU Member State.
- Complainants will have to demonstrate that the market access barrier directly concerns them.

B. Complaints regarding TSD/GSP commitments

- This type of complaint relates to the reporting of breaches of commitments made by third countries in trade agreements with the EU or by third countries benefitting from the EU's General Scheme of Preferences.
- Recent EU trade agreements contain rules on trade and sustainable development, in the form of trade and sustainable development commitments. TSD commitments are for instance included in the 2017 EU-Canada Comprehensive Economic and Trade Agreement (*CETA*)^[6] as well as in the EU-Georgia Association Agreement of 2014.^[7] among many.^[8]
- The EU's General Scheme of Preferences removes import duties from products coming into the EU market from vulnerable developing countries. The GSP offers:
 - (i) a partial or full removal of customs duties on two third of tariff lines for low and lower-middle income countries, such as India, Indonesia, Kenya, Nigeria *etc.*;
 - (ii) 0% tariffs for vulnerable low and lower-middle income countries that implement 27 international conventions related to human rights, labour rights, protection of the environment and good governance, such as Pakistan, Philippines, Sri Lanka *etc.*;
 - (iii) a duty-free, quota-free access for all products except arms and ammunition for least developed countries such as Afghanistan, Ethiopia, Mali *etc.*
- TSD/GSP complaints may be lodged by citizens of any EU Member State, EU Member States, entities having their registered office, central administration or principal place of business within the EU, industry associations of EU companies, associations of EU employers, trade unions or trade union associations formed in accordance with the laws of any EU Member State and NGOs formed in accordance with the laws of any EU Member State. Importantly, complainants will need to disclose if they are acting exclusively on their own behalf or if they are representing other interests as well.
- Complainants will have to provide details of the impact and seriousness of the alleged breach in addition to the description of the factual and legal elements.

Beyond the Complaint Mechanism

The centralized complaints system is part of the Commission's broader enforcement toolkit. The Commission will continue with the overall monitoring of trade barriers and how third countries implement their TSD/GSP commitments. In this, the Commission relies on its network of delegations and on information provided by Member States.

It remains to be seen how many formal complaints will be lodged by the various stakeholders and how many complaints DG Trade will be willing to formally pursue. If sufficient resources are dedicated at DG Trade to reviewing and effectively pursuing stakeholders' complaints, the centralized complaints system could play an important role in the Commission's wider push for reaffirming the EU's economic interest with major trading partners; together with bolder trade defence enforcement^[9] and the proposed new mechanism to control foreign State subsidies in the EU.^[10]

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[1] Official Press Release available at:

<https://trade.ec.europa.eu/doclib/press/index.cfm?id=2213>.

[2] The complaint forms are accessible at: <https://trade.ec.europa.eu/access-to-markets/en/contact-form>.

[3] For more information on the CTEO's competences please refer to:

<https://ec.europa.eu/trade/trade-policy-and-you/contacts/chief-trade-enforcement-officer/>.

[4] For the full text of the Commission's Operating Guidelines of 16 November 2020, please refer to: https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc_159074.pdf.

[5] For the full text of the Commission's Working Approaches of 16 November 2020, please refer to: https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc_159075.pdf.

[6] Chapter 22 of the CETA contains provisions on sustainable development. With this Chapter, both sides agree to ensure economic growth supports their social and environmental goals. The chapter also creates a Joint Committee on Trade and Sustainable Development, and commits both sides to promoting forums with interest groups.

[7] Chapter 13 of the EU-Georgia Association Agreement contains commitments on sustainable development relating to sustainable management of forests and trade in forest and fish products, the conservation and the sustainable use of biological diversity *etc.*

[8] For a full list of EU trade agreements which include rules on trade and sustainable development, please refer to: <https://ec.europa.eu/trade/policy/policy-making/sustainable-development/>.

[9] Gibson Dunn Client Alert of 24 June 2020, regarding the European Commission's imposition of countervailing duties on imports from Egypt for subsidies provided by China, available at: <https://www.gibsondunn.com/european-commission-imposes-countervailing-duties-on-imports-from-egypt-for-subsidies-provided-by-china/>.

[10] Gibson Dunn Client Alert of 18 June 2020, regarding the European Commission's White Paper on Foreign Subsidies, available at: <https://www.gibsondunn.com/european-commission-publishes-white-paper-on-foreign-subsidies-political-power-meets-legal-ambiguity/>.

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