

# A New Negotiating Agenda: How India Could Address Issues of Sustainable Development in Trade Negotiations

*India and many developing nations have maintained opposition to the development of enforceable norms on trade and sustainable development at the bilateral/regional or multilateral fora (WTO). However, new economic and political realities require India to reevaluate her stance. This paper will first discuss why India may have to address the linkage of trade and sustainable development in Free Trade Agreement negotiations and how such an engagement could prove to be a winning proposition. Consequently, this paper will broach how India could negotiate TSD clauses that serve multiple purposes. First, enable India to reach its ambitious sustainability objectives. Second, safeguard existing and future market access from protectionism. Third and finally, buffer the inevitable short-term losses that will be incurred during the period of adjustment.*

## 1. Introduction and Context

Sustainable development comprises of three intertwined pillars of economic viability, environmental protection and social equity. There is a growing trend among developed countries to incorporate provisions linking Trade and Sustainable Development (TSD) in Free Trade Agreements (FTAs).

Nearly all the recently concluded FTAs by the US and EU include provisions on TSD. Most such provisions in FTAs cover issues of environment and labour protection. This happens without appreciating the fact that Sustainable Development is a holistic

concept which inherently speaks about economics as an important dimension, without which countries cannot adopt higher standards of environment and social protection. The latter two dimensions in turn are primarily based on Multilateral Environmental Agreements (MEAs) and International Labour Organisation's (ILO) core standards respectively.

There is no doubt that trade can be a crucial facilitator for sustainable economic development. CUTS International has time and again [explored](#) this relationship and recommended policy actions suitable for

synergising the efforts of various stakeholders in this area.

However, when it comes to developing enforceable norms at the bilateral or multilateral fora, most developing countries equate this linkage of TSD (part of the more [contentious “trade and...” issues](#) at the World Trade Organisation) to the opening of a Pandora’s box of trade protectionism.

Western trade unions continue to clamour that poor labour and environmental standards make developing countries more competitive, thereby stealing their jobs. Reams of research done by several organisations, including CUTS, have shown that this is [not the case](#).

On the other hand, developing countries fear that TSD obligations could result in developed countries imposing trade restrictions based on a stringent formulation of sustainability. Such strict labour and environmental regulations are divorced from the dire socio-economic realities of developing nations and unfairly penalise them. How could India, a country with [more than 134 million](#) people surviving on less than \$2 a day, guarantee labour standards that are often [not met](#) by the world’s largest economy?

These concerns were voiced by CUTS International in its [Third World Intellectuals and NGOs’ Statement Against Linkages](#) (TWIN-SAL) in 1999, spearheaded by the noted trade economist, Jagdish Bhagwati, demanding that instead of trying to kill two birds with

one stone, the international community should get another. Thus, even though environment and labour protection are worthy goals for countries to pursue locally, there exist specialised multilateral and regional institutions where developing countries can (and are) contributing as active participants. Resultantly, these “trade and...” discussions are at best, unnecessary, and at worst, an attempt to legitimise trade protectionism.

Further, the best strategy to attain higher environment/labour standards is through export-based growth and economic development. Redirecting the gains from trade liberalisation would meet the same objectives sought by these ‘social clauses’, but in a just manner.

Regardless of the legitimacy of these arguments, new economic and political realities cannot be denied.

First, India is engaged in a multitude of FTA negotiations with important and developed trade partners that place significant importance on TSD chapters. As a country focused on export-led growth, it should brace itself for some challenging tradeoffs.

Second, India herself has very ambitious domestic and international commitments on these issues. In so far as trade is a common thread that can connect different spheres of international governance and facilitate greater synergy, India should try to formulate rules that complement her efforts to attain sustainability.

Third, without changing India's position on keeping environment and labour outside the WTO's negotiating agenda, India can attempt to utilise bilateral and regional fora to test its comfort with TSD linkages in a limited setting.

This paper will first discuss why India may have to address TSD in FTA negotiations and how such engagement could prove to be a winning (though challenging) proposition. Consequently, this paper will broach how India could negotiate TSD clauses that serve multiple purposes – enabling India to reach its ambitious sustainability objectives while safeguarding market access from protectionism and buffering the inevitable short-term losses that will be incurred during the period of adjustment.

## 2. The Inevitable Tide: rise and rise of TSD clauses in FTAs

The incremental and consistent acceptance of TSD clauses in trade agreements, especially mega-regionals like the [Comprehensive and Progressive Agreement for Trans-Pacific Partnership](#) (CPTPP) and the resolve in the [Indo-Pacific Strategy of the US](#) to “develop new approaches to trade that meet high labour and environmental standards” implies that sooner or later, most developing countries in the Asia-Pacific will undertake or be impacted by commitments on labour rights and environmental protection.

Accordingly, if India desires to integrate itself into global value chains and the new trading order that is being driven by a



critical mass of countries, a discussion on TSD clauses in FTAs will become non-negotiable. Case in point, the ratification of the EU-MERCOSUR trade deal has been put on hold (after twenty years of negotiations) due to [pressure](#) from businesses, civil society, and some EU member states over the agreement's failure to include guarantees on sustainability.

Second, growing public consciousness and [changes in consumer preference](#) are increasingly creating an incentive to enter a 'race to the top' and distinguish products from competitors based on adherence to social values rather than cost differential alone. Thus, domestic exporters will inevitably need to upgrade their products and processes per increasingly higher environmental/labour product standards and labelling measures in developed countries.

Acceding to incremental TSD obligations for greater market access could help incentivise exporters to comply with its provisions to avail the FTA's benefits. This would differentiate Indian exporters from competitors, as has been tried by prominent players in the sectors of [textile](#)

and [leather](#). Nationally, India too has adopted various public and private labels like the Eco-mark (for consumer products meeting fixed environmental criteria) and RUGMARK (addressing child labour in the rug making industry) and there should be a push for greater uptake of the same.

Beyond immediately tangible commercial prospects, the ongoing geopolitical, geo-economic and geo-technological churn will see global challenges that necessitate the existence of reliable and sustainable supply chains. India must build itself to be [“an engine for regional growth and development.”](#)

Third, with or without TSD obligations in FTAs, there is a rise in the number of trade measures being taken to address SD goals. Various international legislations focus on sustainability and impact supply chains. For instance, [Section 307 of the US Tariff Act](#) prohibits import of products manufactured wholly or in part by forced labour, including forced child labour. The [Australian Modern Slavery Act of 2018](#) requires companies to report steps taken to keep their supply chains free of modern slavery.

Fears of protectionism through new non-tariff measures in developed countries can be addressed through WTO-plus rules negotiated bilaterally/within lighter blocs if India assents to engage in meaningful talks on these issues.

Further, considering the growing momentum of negotiations at the WTO (multilateral rules on [fisheries](#) as well as a

plurilateral push for [Trade and Environmental Sustainability Structured Discussions](#), rules on [plastics trade](#) and phasing out of [fossil fuel subsidies](#)), FTAs can allow India to dip her toes in the waters of TSD. Utilising this experience at the regional and bilateral levels, in particular with some of rich demandeur countries, will allow India to address these issues at the WTO with greater ease.

Finally, and perhaps most importantly, India needs a new negotiating agenda that targets simultaneous transformation on two fronts. First, in pursuit of economic growth, India needs to necessarily attain competitiveness in manufacturing and pursue the elimination of trade barriers in key export markets. Second, while bucking all trends, India must strive hard for a low-carbon pathway to such economic growth. The right mix of policies with an adequate focus on green goods, services and technologies can accelerate India's movement along its economic and environment [Kuznets curves](#) to attain reduction in inequality and environmental degradation.

Shifting the Indian workforce from low in productivity, highly polluting and informal ventures to resource-efficient manufacturing that is sustainable and formal in nature will necessarily require the negotiation of conducive trade deals in synergy with its domestic reforms.

### 3. Dip Toes, Don't Tiptoe: key items to check in the new negotiating agenda

With sights on an ambitious developmental model that bucks previous trends of 'growing up and cleaning up', the new agenda should be built on three prongs.

First, the FTA must take on a suitable level of legal obligations that India can deliver. Negotiators must ensure that India does not repeat its past mistake of overpromising and underdelivering as it did with its International Investment Agreements. The fallout resulted in back-to-back losses in Investor State Dispute Settlement (ISDS) cases.

This brings us to the second prong. In exchange for acquiescing to stronger rules and standards, India should negotiate enforceable and meaningful obligations for assistance and capacity building. This would also reinforce commitments made by developed countries at other fora such as the United Nations Framework Convention on Climate Change (UNFCCC) to facilitate the transfer of technologies and finance. Further, India too could insist upon its FTA partners playing a larger role in the galvanisation of India led international initiatives like the [Green Grid-Initiative - One Sun, One World, One Grid \(GGI-OSOWOG\)](#) under the International Solar Alliance, for globally inter-connected solar grids.

Finally, India must draw up safeguards or 'relief clauses' in the TSD context. This

means that first, India should be able to negotiate for flexibilities that accommodate its socio-economic realities and individual interests. For example, despite the Indian government's efforts to eliminate child labour, especially in hazardous occupations, pervasive poverty drives households to prioritise additional income. Accordingly, enforcement obligations should take into account good faith and best efforts made towards addressing labour concerns.

Second, to ensure that TSD obligations do not become a shield used by developed nations for protectionism, India should ensure incorporation of positive obligations towards dismantling non-tariff barriers.

#### **A. An ambitious yet practical TSD chapter**

Much has changed since India first opposed TSD chapters in FTAs. India is one of the few major economies that is [on track](#) to meet its Paris Climate Agreement targets. It is at the forefront of the negotiation and implementation of ambitious MEAs that often find mention in TSD obligations. One example is the Montreal Protocol and its amendment in Kigali that was ratified by India last year to phase out extremely climate-polluting hydrofluorocarbons. Such efforts should be recognised and accounted for in trade negotiations.

When it comes to labour, India has ratified six out of the eight core ILO conventions including those abolishing forced labour and the worst forms of child labour. The

recent [overhaul of labour laws](#) to provide greater clarity and enforceability as well as the rising trend of formalisation in the Indian economy bode well for labour rights.

Accordingly, the TSD chapters in the US FTA with [CAFTA](#) or the EU FTA with [Vietnam](#) can serve as a starting point. These FTAs base their demands on agreements concluded under the auspices of the MEA/ILO in promotional language, rather than binding or conditional terms. This is equivalent to “best endeavour” (and hence unenforceable) clauses in the WTO agreements relating to various provisions on Special and Differential Treatment (S&DT) of developing and least developed countries. The ensuing commitments would not require a legislative overhaul but only the enforcement of existing laws and incentivisation of exporters to adopt better environment and labour related practices in their operations. Other options include a TSD side agreement in FTAs, as entered by Canada with [Panama](#) and [Honduras](#), or MOUs for cooperation on labour and the environment between [Canada and China](#).

In any case, India should ensure that the TSD provisions do not require observance of specific environmental or labour standards without accommodating for its national circumstances. For instance, when it comes to the enforceability of environmental/labour standards, India should assent to clauses that pay adequate deference to ‘domestic circumstances’ when enforcing core labour

or environmental standards (Art 13.4(3)(b), [EU-Vietnam](#) FTA).

Another example is the [EU’s FTA with Colombia, Ecuador and Peru](#) which commits to the “promotion of domestic policies and *suitable* international initiatives based on the *equity* principle and in accordance with their *common but differentiated responsibilities* and *respective capabilities* and their social and economic conditions.” This is a reiteration of the preambular recital of the UNFCCC that acknowledges the principle of Common But Differentiated Responsibilities (CBDR).

Second, India could opt for clauses where the *appropriateness* of domestic laws to achieve a higher level of standards is left to discretion. (Article 285, [EU Central America Association Agreement](#)). For instance, India’s agreement to “phasing down” rather than “phasing out” the use of coal balances her resolve to be carbon-neutral by 2070 while reserving the right to provide cheap energy for its industrialisation and urbanisation needs. In other words, even if one party believes that India’s domestic framework offers only a low level of protection, as long the same is implemented effectively, there should not be a breach of the TSD obligations.

Further, when it comes to enforcement, India must retain enough policy space to determine the distribution of resources in relation to domestic regulation, implementation, monitoring, and prosecution/compliance. For instance, despite having dedicated courts in place

for addressing issues of environment and labour as well as schemes for modernisation of courts overall, the [time taken](#) for resolution is long and the process cumbersome. It should be explicitly provided that if a course of action or inaction is the result of decisions made in good faith/inadequate capacity despite best efforts, then the same shall not constitute a breach of the obligation of effective enforcement ([Article 20.3.5, CPTPP](#)).

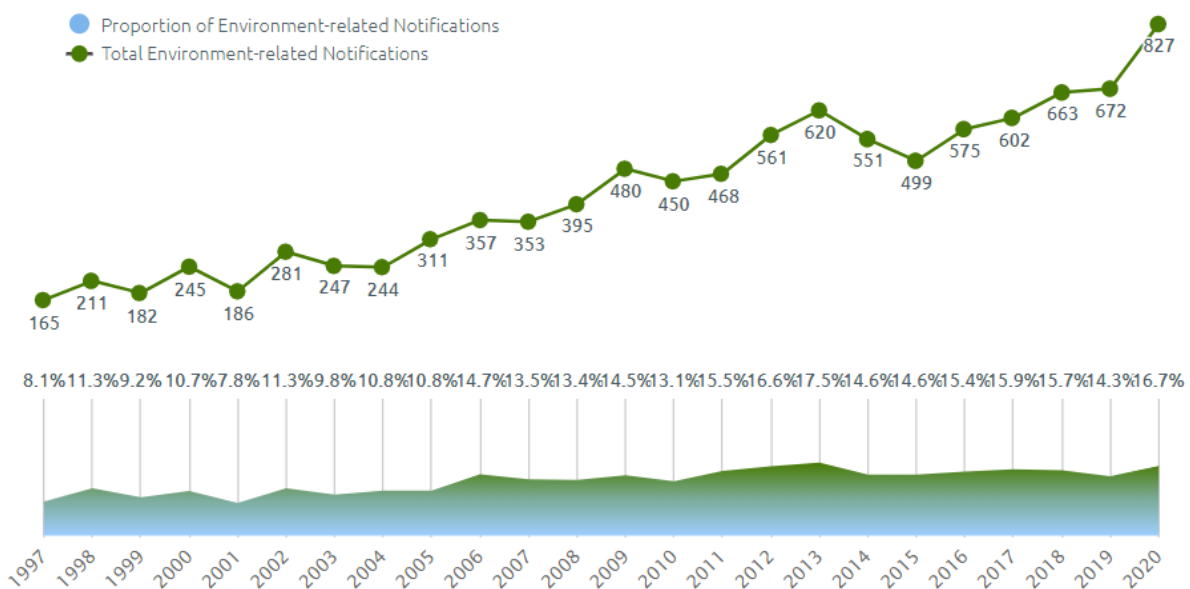
Third, India should insist upon making the TSD chapter incentive rather than sanction focused (more carrots, less sticks). For instance, in the [US-Cambodia Textile Agreement](#) the regulatory alignment was done through positive incentives. Compliance with labour standards unlocked increased export quotas thereby linking increased labour standards with better export prospects and job creation. Similarly, an [FTA between Indonesia and](#)

[the European Free Trade Association](#) offers Indonesian palm-oil exporters lower tariffs if they meet certain environmental standards.

**B. Build forward better**

Even without an FTA, a slew of upcoming measures to fight climate change like the [EU’s Carbon Border Adjustment Mechanism](#), and other carbon-related border/pricing measures cropping up in the US, UK, and Canada will make it imperative for Indian exporters to adapt to changes.

Further, an exponential increase in sustainability standards will become unavoidable for India and exporters, especially Small & Medium Enterprises (SMEs) desiring integration with Global Value Chains to access larger markets. Notably, many voluntary private standards are turning into *de facto* or mandatory requirements and will continue to proliferate. These usually mandate higher



Source: WTO’s Environmental Database (EDB)

levels of performance and upgrade rapidly to match industry needs – increasing the costs and difficulty of compliance, especially for micro firms and SMEs.

Adjustment to such change requires financial and technical support, for instance through skilling workers to integrate into value chains driven by clean technologies. Without an unencumbered availability of clean technologies and financial resources to bridge the resource gap between domestic and international frameworks, higher environmental/labour standards in the developed countries will lead to green protectionism.

Thus far, India's climate policies have been [largely financed](#) from domestic resources. A substantial scaling up of the climate action calls for greater resources and incentivisation of effective policies like the [Sweden Textile Water Initiative](#) which targeted improved water use efficiency in the textiles industry at factory level in developing countries including India.

In fact, such assistance will prove to be more effective as well as cost efficient as compared to unilateral measures like carbon tariffs. For instance, a carbon tariff on primary goods like steel will hike the prices of downstream products. However, technical assistance/cooperation with developing country producers can increase compliance with higher standards while also benefitting consumers in both domestic and international markets. The FTA could aim for incentivisation and institutionalisation of initiatives like [Siderwin](#) (an initiative by ArcelorMittal and

11 European companies to develop technologies for decarbonisation of steel).

Similarly, instead of simply mandating high labour standards which could counterproductively result in unemployment, informalisation and a rise in inequality, the FTA partner should commit to cooperation and assistance that would directly help in mitigating labour concerns.

The role of technology and innovation here will be unsurmountable. First, a dedicated chapter/provisions on innovation should address concerns of equitable access to green goods and technologies through their transfer/licensing at fair and reasonable terms. This is a valid compromise where use of such technologies is made inevitable by environmental standards or regulations that impact exports of developing countries.

Second, innovation and open trade could be deployed to incentivise [labour-friendly technologies](#). Such technologies could increase labour productivity by increasing human capital (for instance through personalised education/skilling by AI) or through direct support to workers through the use of technologies like [augmented reality](#) or machine learning to improve worker performance and [workplace safety](#) even while saving costs.



Article 47 of the [EU-Morocco FTA](#) can be a good template to kickstart negotiations in this direction:

*The aim of cooperation shall be to: (a) encourage the establishment of permanent links between the Parties' scientific communities, notably by means of: - providing Morocco with access to Community research and technological development programmes in accordance with Community rules governing non-Community countries' involvement in such programmes, - Moroccan participation in networks of decentralised cooperation, - promoting synergy in training and research; (b) improve Morocco's research capabilities; (c) stimulate technological innovation and the transfer of new technology and know-how; (d) encourage all activities aimed at establishing synergy at regional level.*

### **C. Flexibilities, safeguards and deeper regulatory coherence**

Finally, India should also insist upon various flexibilities and 'relief clauses' that can mitigate the negative effects of obligations more onerous than those specified in Section A. This would ensure the maintenance and continued expansion of market access despite obligations under the TSD chapter. Additionally, adequate focus must be directed at achieving deeper regulatory coherence between FTA partners for the elimination of NTBs.

#### a) Transitional Time Periods

Transitional time periods provide a longer duration to less developed countries in implementing their commitments. This allows for an opportunity to bring structural changes required to fulfil obligations.

Such a period could also be linked to an objective criterion. For instance, Article 27 of the [WTO Agreement on Subsidies and Countervailing Measures](#) allows a developing country Member that has attained export competitiveness in a given product to phase out its export subsidies for such product(s) over a period of two years. The operationalisation of more onerous obligations of the TSD chapter could be linked to prior and meaningful improvement in India's performance on international indices on environment and labour.

#### b) Carveouts

The TSD chapter could be made inapplicable to certain sectors (like agriculture) or certain policy measures that India deems crucial to enable a '[just transition](#)' without sabotaging its prospects of employment, industrialisation and urbanisation (e.g., government procurement and reasonable subsidies on fossil fuel).

#### c) Sectoral approach

A sector by sector, or even a product wise approach could be used to determine the applicability of the TSD obligations. India could prioritise sectors/products where implementation of TSD chapters would

have the most impact. Domestically, this entails ensuring timely and adequate reforms. Bilaterally/regionally, this involves the simultaneous dismantling of non-tariff barriers in the export market that could hamper market access.

In this regard, the ASEAN approach to eliminating NTBs is noteworthy. ASEAN first identified eleven priority sectors and thereupon classified various NTBs plaguing each sector into three boxes of Red, Amber and Green. Similar assessment of FTA partners' regulatory measures corresponding to TSD objectives must be done. The FTA should provide a timeline for their removal.

d) Equivalence, Harmonisation and Good Regulatory Practices

• *Equivalence*

Deeper integration in FTAs through recognition of each other's measures as equivalent or adhering to one common standard (harmonisation) and reducing unnecessary regulatory diversity (via Good Regulatory Practices) can remove trade barriers, lower administrative costs and in turn enhance market competitiveness.

The mutual recognition of conformity assessment procedures or results (based on testing/inspection/certification etc.) to gauge compliance with environment related technical regulations or standards is the lowest hanging fruit that can be given greater thrust under the FTA.

The FTA could also incorporate provisions for gradually progressing to the mutual recognition of regulations. This would require time and investments in upgrading

technical infrastructure to establish equivalence between regulations of both countries. Accordingly, the FTA could progress sector by sector, emulating India's approach in the India-Singapore CECA that has sectoral annexes for electrical, electronic and telecommunications equipment.

Ultimately, India must press for mutual recognition of environmental conformity assessments as well as regulations for reducing costs to industries. This requires extensive preliminary and on ground research to pinpoint the exact gaps that maybe plugged by equivalence. For instance, CUTS International has researched on policy measures for enabling developing countries to [seize eco-label opportunities](#) in developed nations. Mutual recognition is an important step in this regard and ensures that Indian firms do not have to apply for a separate ecolabel of the export market, leading to double costs.

Further, the FTA could provide a systematic manner of addressing divergence in trade policies adopted for similar climate-related objectives. For instance, even though India has not set a carbon price, several governmental initiatives indirectly tax/price carbon.

These include government schemes like [Perform, Achieve and Trade](#) (rewarding/penalising industrial sectors for achieving/failing to reduce energy consumption per government-mandated targets); [Renewable Purchase Obligations](#) (minimum specified quantity of electricity purchased by distributor companies

should be derived from renewable energy sources) and the GST compensation cess on coal.

The PAT scheme is comparable to the EU [Emissions Trading System](#) (cap-and-trade). There is a potential for [linking](#) the two and creating a larger market for emissions trading through harmonisation of [monitoring, reporting and verification](#) (MRV) requirements.

- *Harmonisation of standards*

Adherence to international standards by trading partners can bring immense gains through regulatory convergence. However, under the Agreement on Technical Barriers to Trade (TBT), the conceptualisation of such standards and the recognition of international standardising bodies is left to Member states and not subject to consensus as understood at the WTO.

For instance, a standard adopted despite opposition could still qualify as an international standard for the purpose of the TBT, such as the international standard on life cycle analysis (ISO14067) and social responsibility (ISO 26000).

India can insist that the FTA adopt the [TBT Committee Decision on international standards](#) (as done in the [United States–Mexico–Canada Agreement](#) (USMCA)). The TBT decision gives utmost importance to consensus as well as constraints faced by developing countries. More specifically, the precursor to the USMCA, the North American Free Trade Agreement (NAFTA) in Annex 913.5.a-3 on Automotive Standards Council, specifically recognises and accounts for existing disparity in standards-related measures of the Parties.

Additionally, in situations where an international standard is adopted despite a negative vote from an FTA partner, the FTA could provide for dialogue to adequately consider alternatives meeting similar objective in a more inclusive fashion.

Another way to increase dialogue in standard setting is to consider the views of foreign producers during the development of standards. Article-7 of the [EU-China Comprehensive Agreement in Investment](#) (Agreement-In-Principle) deals with standard setting and provides for participation of select enterprises in the development of standards by its partner.

- *Private standards*

Developed nations have thus far opposed the formulation of a voluntary "[Best Practice Guidelines regarding Private Standards](#)" which would apply to private standard setters to avoid the creation of unnecessary barriers to trade. The FTA should commit to positive movement on this issue.

- *Good Regulatory Practices*

Obligations to provide Good Regulatory Practices (for instance in the USMCA) include obligations on regulatory coordination and planning, transparent development of regulations, regulatory impact assessment, and retrospective reviews, among others. Giving stakeholders –both foreign and domestic – adequate opportunity to comment on proposed regulations helps prevent trade barriers. This is more efficient than working to remove them.

The FTA could provide for a work programme to assess the capacity building required in India to operationalise obligations on GRP.

e) Monitoring, enforcement and dispute settlement

- *Monitoring and enforcement*

Monitoring compliance is an expensive activity. As far as possible, the FTA could provide deference to existing international fora and their dispute settlement mechanisms. For instance, the UNFCCC has a reporting/monitoring system. The ILO has its own implementation, notification examination, and dispute settlement process. For instance, under the US-Cambodia Textile Agreement, the task and costs of monitoring compliance were reserved for institutional mechanisms under the ILO.

- *Dispute settlement*

Short of making the TSD chapter non-justiciable, India could opt for relatively light institutional mechanisms to address conflict. These include creating channels for dialogue with non-state entities, including labour unions. Such provisions are dominant in the TSD chapters of EU FTAs.

For example, Article 281 of the [EU-Andean Community](#) trade agreement invites stakeholders to “consult domestic labour and environment or sustainable development committees or groups, or create such committees or groups when they do not exist.” This softer approach would generate far less antagonism. Consequently, it will be [more effective](#) in comparison to state-state dispute

settlement or sanctions upon non-enforcement of TSD obligations.

Second, in case the TSD chapter remains subject to dispute resolution, its invocation could be restricted by several safeguards, for instance, Vietnam has negotiated [side agreements](#) with CPTPP Parties to ensure that dispute settlement in relation to labour obligations first, remains inapplicable for a certain time (transition period) and that such resolution does not result in Parties suspending benefits under the FTA.

India could also restrict the scope of dispute resolution to non-enforcement of obligations that “*affect trade between Parties*” (Art. 16.2.1(a) US-CAFTA-DR).

Another example is that of Art 19.2 of the [US-Chile FTA](#) which provides that a party would fail in having effectively enforced its environmental laws *only after a sustained or recurring course of action or inaction*, that too in a manner that *affects trade* between the Parties. Thus, a single violation or even a series of violations will not be sufficient to constitute a violation, unless such violations “*affect trade*” between the Parties.

These would be in addition to the condition that States have the right to defend their actions on the ground of limited resources directing their priorities on enforcement efforts.

Third, in case TSD obligations are made subject to dispute settlement with sanctions, repercussions should be in the form of capped monetary assessments as seen in the [US-CAFTA-Dominican](#)

[Republic](#). Under that FTA, the most severe penalty for TSD violations is an “annual monetary assessment” determined by an arbitral panel.

These assessments are deposited into a fund established by a Commission instituted under the FTA for appropriate labour or environmental initiatives in the territory of the Party complained against. Similar language would ensure that even if India is sanctioned, the quantum of penalty would effectively remain within the country.

However, negotiators must also keep in mind that dispute settlement under the TSD chapter can play a critical role in the elimination of NTBs and in the general harmonisation of regulations.

Thus, India may attempt to negotiate a temporarily asymmetric dispute resolution mechanism where stringent environmental obligations on developing nations are subject to transition time or made non-justiciable/subject to safeguards, while the NTBs arising from implementation of those obligations (primarily by developed nations) would still be subject to quick resolution based on principles of transparency, necessity, non-arbitrariness, and proportionality.

f) Nature of measures allowed to pursue TSD obligations

As far as possible, the parties must undertake that unilateral measures with extraterritorial effects will be subject to consultation and cooperation to discuss reasonable alternative measures to accomplish the policy objective.

Consideration of costs and hardships need be given to not only domestic producers but also foreign producers.

For instance, in the [US- Shrimp-Turtle](#) Case, the WTO Appellate Body held that US’ unilateral measures for the conservation of turtles failed on two accounts. First, US did not negotiate with interested countries and second, in the uniform application of its measures, it ignored prevalent conditions in other countries and less trade restrictive alternatives. This amounted to unjustifiable discrimination and a disguised restriction on international trade.

Further, core principles of the WTO as iterated in legal texts, clarified in Appellate Body rulings and reaffirmed in Ministerial Declarations (for instance, the Singapore Ministerial Declaration of 1996 which explicitly rejected the use of labour standards for protectionist purposes) must be specified in the FTA.

Article 3.5 of the UNFCCC also provides that unilateral measures to address climate change, even though allowed, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Countries through FTAs could agree upon criteria that would invoke Article 3.5, which provides the basis for unilateralism in climate action.

Generally, the sustainable development chapters could include clauses preventing abuse. For example, Article 286(4) of the [EU-Central America agreement](#) states that “labour standards should never be

invoked or otherwise used for protectionist trade purposes and ... the comparative advantage of any Party should not be questioned.”

Specifically, TSD measures with an impact on trade ought to be designed and implemented in a way that maintain compatibility with/adequately consider:

- WTO rules
- Scientific evidence
- the principle of Common But Differentiated Responsibility
- obligations of transparency and good regulatory practices – specifically through accommodation of views of all relevant parties, including consumer and public-interest groups and importers of the product.

Such balancing of divergent interests would minimise the risk of protectionism.

#### g) Other Adjustment Mechanisms

The [EU-Singapore RTA](#) (Art 12.11(3)) specifically refers to the parties’ shared goal of progressively reducing subsidies for fossil fuels and acknowledges that reductions may be accompanied by measures to alleviate the social consequences associated with the transition to low carbon fuels. India should try to incorporate similar clauses to utilise FTAs as instruments for ‘just transition.’

## 4. Conclusion

Creativity and pragmatism must guide India’s endeavour in negotiating a full array of tools to shape sustainable trade outcomes. The Indian government should also be encouraging better labour and environmental protections in local manufacturing to ensure improved developmental outcomes for citizens. An appropriately tailored TSD chapter in India’s FTAs could be a force for good and should not be opposed without due consideration.