

**INDIA'S EVOLVING APPROACH TO LINKING
TRADE AND ENVIRONMENT:
PAST, PRESENT, AND A ROAD-MAP FOR FUTURE FREE TRADE AGREEMENTS**

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EXECUTIVE SUMMARY

India has begun engaging with multiple trading partners on trade and environment issues in Free Trade Agreements (“FTAs”). The Centre for WTO Studies has undertaken an analysis of India’s approach towards trade and environmental sustainability issues. This paper provides a comprehensive and critical review of India’s approach to trade and environment-related provisions in FTAs, and presents a road map for negotiating future FTAs.

Traditionally, India has refrained from linking trade and sustainability issues multilaterally as well as in bilateral arrangements. It has maintained that environment, labour, and gender discussions are non-trade issues which have dedicated fora and instruments, and any concerns relating to these should be addressed within those frameworks alone. India’s stance, and those of other similarly situated developing countries, is influenced by their developmental priority which lies in achieving economic growth. For traditionalists, environmental sustainability becomes a secondary concern. More recently, however, India has had to take into account the strong preference of partner countries to include trade and sustainable development related issues in FTAs. India has actively engaged with its developed trading partners such as the United Kingdom (“UK”), the European Union (“EU”), and the European Free Trade Association (“EFTA”) countries on trade and sustainability issues. The recently concluded Trade and Economic Partnership Agreement (“TEPA”) with the EFTA countries² marks India’s first trade agreement with provisions on trade and sustainable development. By virtue of negotiating a dedicated chapter on Trade and Sustainable Development (“TSD”) in an FTA, India has signalled its commitment to inclusive growth, social development, and environmental protection. The Environment Chapter under the more recently concluded India–UK Comprehensive Economic and Trade Agreement (“CETA”) goes further than the TEPA and is the most ambitious outcome on trade and environmental issues that India has agreed to date.

The paper begins with a broader analysis of the intersections of sustainable development, Multilateral Environmental Agreements (“MEAs”), and the World Trade Organization

² India’s agreement with the EFTA countries (comprising Switzerland, Iceland, Norway and Liechtenstein), the *Trade and Economic Partnership Agreement (TEPA)*, was recently signed on 10th March, 2024.

(“WTO”), providing context for environmental commitments in trade frameworks. The paper then delves into FTAs, analysing the historical evolution of environmental provisions and the factors motivating their inclusion. This section also discusses the EU’s approach as it is the frontrunner in integrating environmental clauses into its FTAs and also an important FTA partner for India. It then compares major global economies, summarizing G20 countries’ positions and trends across key mega-regional agreements that underscore varying approaches and obligations on environmental issues.

India’s stance on trade and environmental sustainability issues is assessed against its multilateral stance and in the FTAs that it has concluded as well as those wherein negotiations are ongoing. The section on India’s stance provides a detailed overview of obligations undertaken by India in its FTAs, *inter alia*, the India-Japan Comprehensive Economic Partnership Agreement (“CEPA”), the India-United Arab Emirates (“UAE”) CEPA, the India-Australia Economic Cooperation and Trade Agreement (“ECTA”), the India-EFTA TEPA, the India-UK FTA, and the India-EU FTA. Here, India’s positions and challenges are outlined, including the “redlines” it maintains, difficulties in reconciling domestic policies with international commitments, and areas where India may pursue proactive (or its offensive) interests in ongoing and future negotiations.

The paper nears conclusion by outlining India’s autonomous regulatory framework to assess flexibilities that India can accommodate and identify areas where sufficient policy space needs to be carved out in the short to medium run. This includes a performance review of India’s international commitments, priority sectors for policy changes, and institutional challenges in managing FTA-related obligations.

The conclusion provides a set of recommendations aimed at aligning India’s FTA policy with its national priorities, in order to ensure that its trade negotiations foster environmental sustainability while preserving the domestic policy space and supporting India’s development objectives.

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LIST OF ABBREVIATIONS

AfCFTA	African Continental Free Trade Area
AFTA	ASEAN Free Trade Area
ASEAN	Association of Southeast Asian Nations
CBAM	Carbon Border Adjustment Mechanism
CBD	Convention on Biological Diversity
CBDR-RC	Common-But-Differentiated Responsibilities and Respective Capabilities
CCTS	Carbon Credit Trading Scheme
CEC	Commission for Environmental Cooperation
CEPA	Comprehensive Economic Partnership Agreement
CETA	Comprehensive Economic and Trade Agreement
CITES	Convention on International Trade in Endangered Species of Wild Flora and Fauna
CPCB	Central Pollution Control Board
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSD	Commission on Sustainable Development
CTE	Committee on Trade and Environment
CWS	Centre for World Trade Organization Studies
DPP	Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade
ECA	Environmental Cooperation Agreement
ECTA	Economic Cooperation and Trade Agreement
EFTA	European Free Trade Association
EGS	Environmental Goods and Services
EST	Environmentally Sound Technology
FFSR	Fossil Fuels Subsidy Reform
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade, 1994
GIM	National Mission for a Green India
ILO	International Labor Organization
IUU	Illegal, unreported and unregulated (fishing)
MEA	Multilateral Environmental Agreements
MC	Ministerial Conference
MoEFCC	Ministry of Environment, Forest and Climate Change of India

NAAEC	North American Agreement on Environmental Cooperation
NAFTA	North American Free Trade Agreement
NAPCC	National Action Plan on Climate Change
NICRA	National Innovations on Climate Resilient Agriculture
NMEEE	National Mission for Enhanced Energy Efficiency
NMSA	National Mission for Sustainable Agriculture
NMSH	National Mission on Sustainable Habitat
NMSHE	National Mission for Sustaining the Himalayan Ecosystem
NMSKCC	National Mission on Strategic Knowledge for Climate Change
NSM	National Solar Mission
NWM	National Water Mission
PTA	Preferential Trade Agreement
NDC	Nationally Determined Contributions
NGO	Non-Governmental Organisation
RCEP	Regional Comprehensive Economic Partnership
RTA	Regional Trade Agreements
SCM Agreement	Subsidies and Countervailing Measures
SDG	Sustainable Development Goals
SPCB	State Pollution Control Boards
SPS Agreement	Sanitary and Phytosanitary Measures Agreement
TBT Agreement	Technical Barriers to Trade Agreement
TEPA	Trade and Economic Partnership Agreement
TESSD	Trade and Environmental Sustainability Structured Decisions
TRIPS Agreement	The Agreement on Trade-Related Aspects of Intellectual Property Rights
TSD	Trade and Sustainable Development
T-TIP	Transatlantic Trade and Investment Partnership
UN	United Nations
UNFCCC	United Nations Framework Convention for Climate Change
UNGA	United Nations General Assembly
USMCA	United States-Mexico-Canada Agreement
UTPCC	Union Territory Pollution Control Committee
WTO	World Trade Organization

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1. BACKGROUND

(i) Sustainable Development and Multilateral Environmental Agreements

Sustainable Development, as per the Brundtland Report of 1987, refers to “development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs.”³ The concept has evolved through various MEAs including the Rio Declaration, Agenda 21, the United Nations Framework Convention for Climate Change (“UNFCCC”) and its Paris Agreement and the Convention on Biological Diversity (“CBD”) and its protocols. Sustainable development centres itself around two main loci – ‘intergenerational’ and ‘intragenerational’ equity. There are three essential pillars of sustainable development, viz., ‘economic development’, ‘environmental development’ and ‘social development’. The third pillar, i.e., social development, was recognised by States in 1997.⁴

In the 2012 UN Conference on Sustainable Development (**Rio+20**), the Member States launched a process to develop a set of Sustainable Development Goals (“SDG”) building upon the Millennium Development Goals and converging with the post 2015 development agenda. The outcome document at the Conference— titled, ‘Future We Want’—contains clear and practical measures for implementing sustainable development.⁵ Furthermore, in the background of the triple planetary crisis of climate change, pollution, and biodiversity loss, the 2022 **Stockholm +50** meeting highlighted the need to accelerate implementation of the environmental dimension of sustainable development.⁶

MEAs have been key in global environmental governance, often incorporating trade-related provisions to control environmental degradation, demonstrating the link between trade and environmental protection. There are currently over 250 MEAs in force, about fifteen (15) of which include provisions to control trade in order to prevent damage to the

³ ‘Our Common Future’, Report of the World Commission on Environment and Development, 1987. Available at <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>

⁴ European Commission, Sustainable development. Available at https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development_en#:~:text=It%20has%20three%20pillars%3A%20economic,proposed%20by%20the%20United%20Nations.

⁵ “The Future We Want”, Rio 20 Outcome Document, Available at https://www.un.org/disabilities/documents/rio20_outcome_document_complete.pdf

⁶ Laura Yaniz Estrada, The triple planetary crisis: What is it and what can we do about it? Available at <https://aida-americas.org/en/blog/triple-planetary-crisis-what-it-and-what-can-we-do-about-it#:~:text=The%20triple%20planetary%20crisis%20refers,and%20feed%20on%20each%20other.>

environment.⁷ For instance, the Convention on International Trade in Endangered Species of Wild Flora and Fauna, 1973 (“**CITES**”) places certain controls on international trade in specimens of selected species by requiring that the import, export, re-export and introduction from the sea of specimens of species covered by the Convention be authorised through a permit and certificate system.⁸ Similarly, CBD collaborates with the WTO Secretariat and the standard setting bodies recognized by the WTO, in order to address the risk of biological invasions.⁹ Further, scope of the Cartagena Protocol to CBD on Biosafety extends to the transboundary movement, transit, handling and use of all living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity.¹⁰ The UNFCCC requires that measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.¹¹ The provisions under Paris Agreement concerning voluntary cooperation among parties, involving use of internationally transferred mitigation outcomes towards implementation of Nationally Determined Contributions (“**NDC**”), and technology development and transfer don’t directly refer to trade but may have trade implications.¹²

(ii) Developments at the WTO

The Marrakesh Agreement (1994) establishing the WTO recognizes sustainable development and environmental protection as part of its core goals. WTO agreements allow regulatory space for members to adopt measures, like trade restrictions, to protect human, animal, plant life, and natural resources, provided these are not arbitrary or disguised protectionism. The Agreement on Subsidies and Countervailing Measures (“**SCM Agreement**”), the Agreement on Technical Barriers to Trade (“**TBT Agreement**”), the Agreement on Sanitary and Phytosanitary Measure (“**SPS Agreement**”), the Agreement on Trade-Related Aspects of Intellectual Property Rights (“**TRIPS Agreement**”) all provide mechanisms to accommodate environmental concerns. The Agreement on Fisheries promotes marine sustainability by banning harmful subsidies. The

⁷ WTO Matrix on Trade-Related Measures Pursuant to Selected Multilateral Environmental Agreements (MEAs), available at https://www.wto.org/english/tratop_e/envir_e/envir_matrix_e.htm

⁸ Article II, III, IV, V, VI of CITES.

⁹ Matrix on Trade-related Measures pursuant to Selected Multilateral Environmental Agreements, Note by the Secretariat, Committee on Trade and Environment, 19 March 2021, (WT/CTE/W/160/Rev.9, TN/TE/S/5/Rev.7), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/CTE/W160R9.pdf&Open=True>

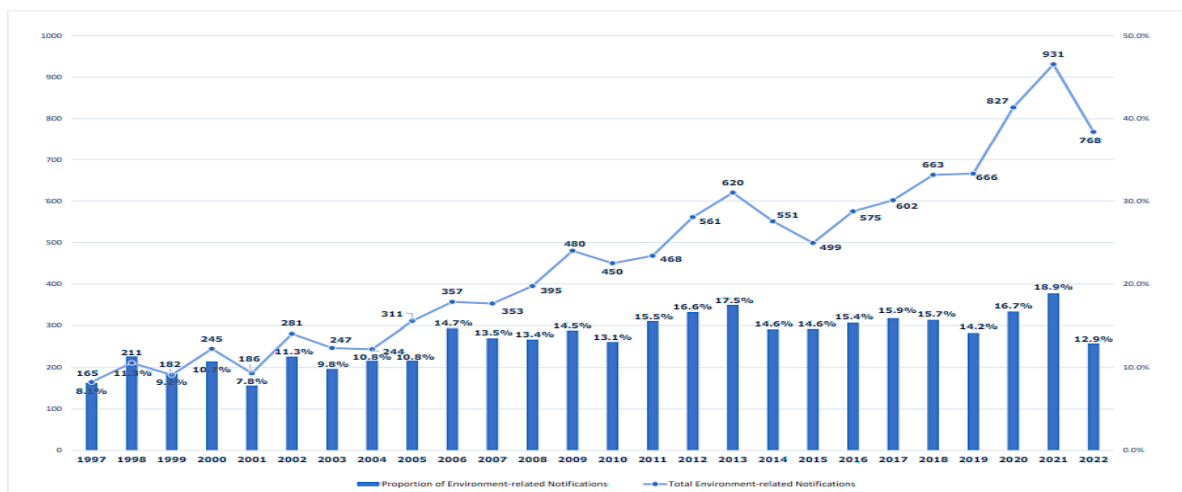
¹⁰ Article 4 of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity. .

¹¹ Ibid.

¹² Article 6, 10 of the Paris Agreement 2015. See also Matrix on Trade-related Measures pursuant to Selected Multilateral Environmental Agreements, Note by the Secretariat, Committee on Trade and Environment, 19 March 2021, (WT/CTE/W/160/Rev.9, TN/TE/S/5/Rev.7), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/CTE/W160R9.pdf&Open=True>

WTO's Committee on Trade and Environment (“CTE”), established in 1995, explores the trade-environment link, influencing key negotiations like the 2001 Doha Development Agenda. Further, WTO members are increasingly using trade measures for environmental purposes, as reflected in the growing environment-related notifications in the WTO's 2022 Environmental Database (see Figure 1 below).¹³

Figure 1. Environment-related Notifications (1997 – 2022)



Source: WTO Environmental Database for 2022

Currently, three environmental initiatives are under discussion at the WTO: the Trade and Environmental Sustainability Structured Discussions (“TESSD”), Fossil Fuel Subsidy Reform (“FFSR”), and Dialogue on Plastics Pollution (“DPP”). With participation from 77 members representing 85% of global trade, TESSD recognises that trade policies must be supportive of environmental and climate goals. It covers discussions on trade-related climate measures, environmental goods and services (“EGS”), circular economy, and environmental impacts of subsidies.¹⁴ FFSR seeks to achieve rationalisation, phasing out or elimination of harmful fossil fuel subsidies. It has three main pillars: transparency of fossil fuel subsidies and fossil fuel subsidy reform; targeted, transparent and temporary support measures in response to the global energy crisis; and identification of problematic types of fossil fuel subsidies from a trade and environment perspective.¹⁵ The DPP seeks to explore

¹³Committee on Trade and Environment - Environmental Database for 2022 - Note by the Secretariat, WT/CTE/EDB/22, 14 March 2024.

¹⁴<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/CTE/EDB22.pdf&Open=True>

¹⁵Trade and Environmental Sustainability Structured Discussion (TESSD), Brief on TESSD and its package for MC13, available at https://www.wto.org/english/tratop_e/tessd_e/tessd_brief_mc13_e.pdf

¹⁶Fossil Fuel Subsidy Reform (FFSR) Initiative, Background Information and MC13 Outcomes, https://www.wto.org/english/tratop_e/envir_e/ffsr_background_note_mc13_e.pdf

how enhanced cooperation in the WTO could contribute to global, regional and domestic efforts to reduce plastics pollution and promote the transition to more environmentally sustainable trade in plastics. These plurilateral initiatives reflect a growing commitment to integrating environmental concerns into the WTO's agenda.

2. FTAs AND ENVIRONMENTAL PROTECTION

(i) The Evolution of Environmental Provisions in FTAs and the Factors Driving their Inclusion

The existing corpus of WTO rules provides space for environmental concerns to be accommodated.¹⁶ However, it is interesting to note that bilateral and regional FTAs also contain environmental provisions – sometimes more comprehensive than those found in the WTO Agreements. The inclusion of environmental issues in FTAs (often referred to as “greening” of FTAs) gained traction in the 1990s.¹⁷ Bastiaens and Postnikov note that environmental standards became thoroughly integrated in EU and United States (“US”) FTAs as a result of the failure to address them through the WTO in the 1990s.¹⁸ This shift in the early 1970s can be attributed to “environmental disasters, which brought about higher public expectations (the creation of Ministries for the Environment, such as in France in 1971) and a heightened international awareness (UN Conference in Stockholm in 1972), but above all the desire to limit the distortions of competition within the European market that different environmental regulations on a national level could create”.¹⁹

From the mid-1990s to early 2000s, an increasing number of FTAs contained environmental elements in the text of the Agreement, or were accompanied by a separate environmental agreement, similar to what was seen in the North American Free Trade Agreement (“NAFTA”) signed in 1992 between the United States, Canada, and Mexico (now the USMCA).²⁰ The USA's FTA with Jordan in 2001 was the first instance of

¹⁶ WTO rules and environmental policies: introduction, available at https://www.wto.org/english/tratop_e/envir_e/envt_rules_intro_e.htm.

¹⁷ Eco Logic, Environmental Provisions in Free Trade Agreements, <https://www.ecologic.eu/18876>.

¹⁸ Ida Bastiaens and Evgeny Postnikov, Environmental Provisions in EU and US Trade Agreements and Regulatory Change in the Developing World, Political Economy of International Organization, <https://www.peio.me/wp-content/uploads/PEIO8/Bastiaens,%20Postnikov%2029.09.2014.pdf>

¹⁹ Charles-François Mathis, European environmental policy, Sorbonne University, <https://ehne.fr/en/encyclopedia/themes/political-europe/a-european-“model”-defined-public-policies/european-environmental-policy>.

²⁰ Inmaculada Martínez-Zarzoso, *The Environmental Impact of Free Trade Agreements*, in Eco-Integration in Latin America, Volume 21: No. 41 (March, 2017), <https://conexionintal.iadb.org/2017/04/27/el-impacto-ambiental-de-los-tratados-comerciales/?lang=en>

environmental provisions incorporated into the main text of an agreement, barring rigorous dispute settlement provisions.²¹

It could be argued that environmental concerns were first reflected within bilateral trade agreements with the inclusion of SPS chapters. SPS measures are specifically designed for “the protection of human, animal or plant life or health”.²² These measures fall squarely within the exceptions to Article XX(b) of the GATT.²³ These measures do not, however, take into account the concerns regarding the environment as a whole. It was gradually found that international competition may compel developing countries to adopt less stringent environmental standards and this, in turn, would become alluring for producers who would relocate from jurisdictions with stringent environmental standards to these spaces.²⁴ As a result, policymakers and other stakeholders from developed countries argued that environmental provisions were necessary in trade agreements to help raise international environmental standards and protect businesses and workers.²⁵

Classical FTAs were accustomed to limiting the market access to agriculture and were restricted to only limited categories of goods.²⁶ Gradually, FTAs have evolved to include sectors beyond industrial products, covering areas such as agriculture, non-tariff measures, trade in services, government procurement, and intellectual property.²⁷ At the outset, it is worth noting that nearly 97 per cent of all Regional Trade Agreements (“RTAs”) have included provisions concerning protecting or accounting for the environment explicitly through the allusion to existing WTO agreements in their preambulatory texts.²⁸ However, explicit provisions on the environment have largely centred around cooperation on climate change mitigation and adaptation, addressing alternative sources of energy, and transitioning to a low-emission economy.²⁹ Today, one can see yet another change in the dynamics of FTAs that go beyond these inclusions. These are the inclusion of digital trade chapters as well as discussions around trade and sustainable development.

²¹ US Library of Congress, Environmental Provisions in Free Trade Agreements (FTAs), <https://www.congress.gov/crs-product/IF10166>.

²² SPS Agreement Article 1

²³ Art XX b GATT; SPS Art 2(4).

²⁴ Environmental Provisions in Free Trade Agreements (FTAs), available at <https://crsreports.congress.gov/product/pdf/IF/IF10166>.

²⁵ *Ibid.*

²⁶ <https://icdt-cidc.org/wp-content/uploads/New-Generation-of-Free-Trade-Agreements-2-En.pdf>

²⁷ *Ibid.*, page 17.

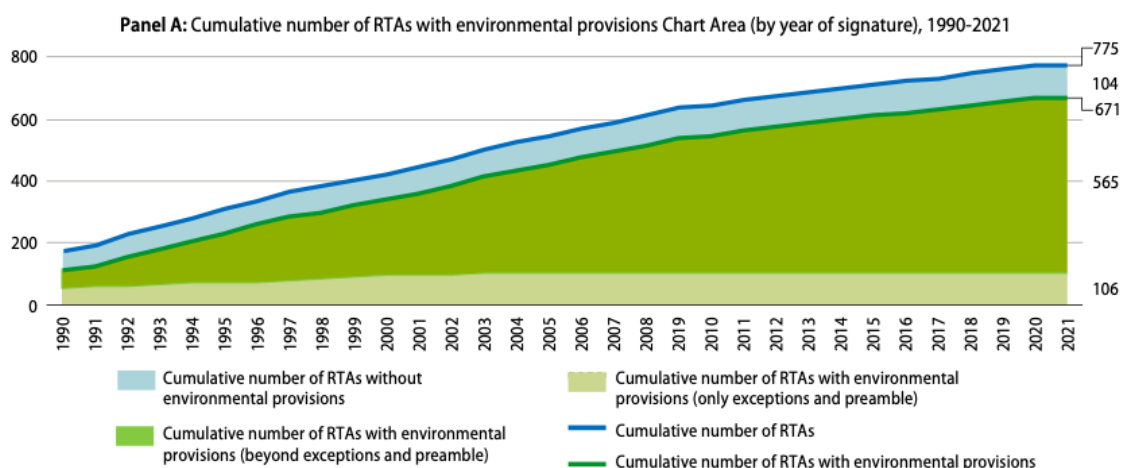
²⁸ World Trade Organization, TRADE AND CLIMATE CHANGE: Information brief no 2 – Climate change in regional trade agreements (2022), https://www.wto.org/english/news_e/news21_e/clim_03nov21-2_e.pdf.

²⁹ *Ibid.*

Several key agreements marked the evolution of environmental commitments within FTAs, reflecting a growing recognition of the need to balance economic growth with environmental sustainability. The NAFTA (implemented in 1994) was one of the first FTAs to include additional agreements on environmental issues. Since NAFTA, all of USA's FTAs have included environmental provisions. The US FTA with Jordan (2001) contained the first environmental provisions incorporated directly into the main text of the agreement.³⁰ The NAFTA served as a basis for including an entire chapter on environmental provisions in its successor, the United States-Mexico-Canada Agreement ("USMCA").

The graph below shows that a growing number of RTAs are extending their scope to cover policy objectives for environmental protection and sustainable development by incorporating environmental provisions.

Figure 2. Cumulative number of RTAs with environmental provisions (by year of signature) (1990-2021)



Source: OECD work on Regional Trade Agreements and the environment: Policy Perspectives (2023)³¹

A fine balance of political and economic factors influences how environmental policies are designed.³² Furthermore, the inclusion of environmental provisions in FTAs is also

³⁰ Environmental Provisions in Free Trade Agreements (FTAs), Congressional Research Service (CRS) Report (September 1, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF10166>

³¹ OECD work on Regional Trade Agreements and the environment: Policy Perspectives, https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/trade-and-environmental-sustainability/Policy-Perspectives-OECD-work-on-regional-trade-agreements-and-the-environment.pdf/jcr_content/renditions/original/Policy-Perspectives-OECD-work-on-regional-trade-agreements-and-the-environment.pdf.

largely influenced by industry concerns. Environmental provisions in the NAFTA, for instance, were included as a result of environmental activism surrounding the potential harms of free trade with Mexico. At the time, some US industries were concerned about “pollution havens” where there were lower compliance costs and the steady exploitation of natural resources in the area.³³ The looming fear of the race to the bottom would then compel countries like Mexico and other similarly dependant on developed countries to consider environmental protection only an optional exercise against the larger benefit of free trade. These are the very same fears echoed by indigenous communities, non-governmental organizations (“NGOs”), and other civil society organisations that attempt to foster the need to improve environmental policy within trade. Since NAFTA was one of the first few agreements to incorporate environmental provisions, it is worth investigating the conditions that led to these changes since then.

In her research, Linda Allen (2021) makes reference to the “punctuated equilibrium model”, which holds that “policymaking process is characterized by long periods of incremental change punctuated by brief periods of major change”.³⁴ This was done primarily owing to a convergence of issue-specific policy compulsions from the organisations and environmentalists, as well as macro-level commitments that also required adherence.³⁵ Namely, four factors, Allen argues, converged to allow policy change that altered the political economy:³⁶

First: A flurry of activities and scathing critique against trade liberalisation’s harmful impact on the environment – even more apparent with economies such as those in Mexico;

Second: Existing environmental degradation and depletion of natural resources;

Third: The 1991 ruling by a GATT dispute panel in the case concerning the United States’ restrictions on tuna imports from Mexico (commonly known as *Tuna-Dolphin I*),³⁷

³² Allen, Linda (2021) "The Political Economy Equilibrium of Environmental and Trade Policies in the U.S.," Hatfield Graduate Journal of Public Affairs: Vol. 5: Iss. 1, Article 8. <https://doi.org/10.15760/hgipa.2021.5.1.8>.

³³ *Ibid.*

³⁴ *Ibid*, p 4.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ In *Tuna-Dolphin I*, the panel held that the U.S. could not impose an embargo on Mexican tuna products solely because Mexico’s methods of tuna production did not conform to U.S. regulatory standards. However, the U.S. was permitted to enforce its regulations on the final product’s quality or content. This decision sparked significant debate over the scope of international trade rules, particularly their ability to accommodate non-trade concerns such as environmental protection. It raised fears that domestic environmental regulations could be weakened or rendered ineffective if they were seen as incompatible with trade obligations under the GATT framework.

Fourth: Environmental groups had begun making waves by influencing development financing through multilateral development banks, and this boosted their morale for further change.³⁸

Since NAFTA, environmentalists have been unable to attain the same desired results in policy changes through public mobilization or macro-level political support for subsequent US trade agreements. With the EU, there have been similar policy considerations and the significant level of commitment towards multilateral frameworks that are embedded within their domestic regime (owing to their monist international legal systems) that ensures a more seamless adoption of these regulations.³⁹ However, while their economy began with a focus on economic growth alone, there gradually began a shift towards including environmental concerns.

(ii) The European Union's Approach to including Environmental Clauses in FTAs

While the US paved the way for the inclusion of environmental provisions in FTAs, the EU has been a frontrunner in integrating environmental clauses into its FTAs. The EU's approach is characterized by comprehensive and binding commitments to environmental protection, sustainable development, and climate action. The EU-South Africa FTA (1999) is the EU's first trade agreement to include environmental provisions.⁴⁰ The EU's early agreements (e.g. the Cariforum Economic Partnership Agreement of 2008) focused on cooperation-based provisions for environmental protection. The Lisbon Treaty of 2009 reinforced the pursuit of sustainable economic, social, and environmental development as a specific internal and external policy goal for the EU.⁴¹ This led to the EU-South Korea FTA, which was a significant milestone incorporating a dedicated TSD chapter.⁴² Ever since the conclusion of the EU-South Korea PTA in 2009, the EU's FTAs include TSD Chapters pursuant to which a number of commitments concerning environmental standards are undertaken. Starting with the EU-South Korea FTA which entered provisionally into force in 2011, the following 'modern' trade agreements include

³⁸ Allen (n29).

³⁹ Monism is the theory that national and international law form part of one legal structure, in which international law is supreme. It is opposed to dualism, which holds that they are separate systems operating in different fields. 'Monism', Oxford Reference, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100205727>.

⁴⁰ EU-South Africa Trade, Development and Cooperation Agreement (TDCA) 1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01999A1204%2802%29-20160301&qid=1677166023164>

⁴¹ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTEXT>

⁴² The EU-Republic of Korea free trade agreement (FTA) 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2011:127:FULL>

trade and sustainable development chapters implementing environmental provisions: Canada, Central America, Colombia, Peru, and Ecuador, Georgia, Japan, Moldova, Singapore, South Korea, Ukraine, the United Kingdom and Vietnam. In addition, another six EU trade agreements that are awaiting ratification include sustainable development chapters: Chile, China, Kenya, Mercosur, Mexico and New Zealand.⁴³

The EU's "Trade for All" action plan, published back in 2014, had initially envisaged the incorporation of sustainable development chapters in the FTAs and the role of the European Parliament in realising these goals.⁴⁴ EU has been known for their agenda of "WTO plus" commitments, that contain not only the embedded WTO agreements but also additional normative elements in furtherance of a broader ambit of trade.⁴⁵ With the European Green Deal, launched by the European Commission in 2019, the EU was committed to 'greening' trade policy with a promise to bring social and environmental sustainability concerns to the forefront of their trade regime and in EU FTAs.⁴⁶ This was followed by the EU's Trade Policy Review early on in 2021 and the European Commission's 15-point action plan for the TSD Chapter implementation and enforcement in 2018.⁴⁷

The 2021 Trade Policy Review and the 2022 Communication on 'The Power of Trade Partnerships: Together for Green and Just Economic Growth'⁴⁸ emphasized the need for stronger enforcement mechanisms for TSD provisions. This culminated in the EU-New Zealand FTA of 2023, which was the first to incorporate the new TSD approach, reflecting stronger implementation and enforcement measures. The new TSD approach strengthens, among other things, the implementation and enforcement of TSD chapters by extending the standard state-to-state dispute settlement to the TSD chapter, and the possibility to use trade sanctions as a last resort, for material breaches of the Paris Climate Agreement.

3. COMPARATIVE ANALYSIS OF POSITIONS TAKEN IN FTAs INVOLVING MAJOR ECONOMIES

⁴³ Sustainable development in EU trade agreements, https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements_en

⁴⁴ European Commission, Directorate-General for Trade, (2014). Trade for all: towards a more responsible trade and investment policy, Publications Office. <https://data.europa.eu/doi/10.2781/1753>, page 15.

⁴⁵ <https://icdt-cidc.org/wp-content/uploads/New-Generation-of-Free-Trade-Agreements-2-En.pdf>

⁴⁶ Eline Blot & Ors, *Enhancing sustainability in EU Free Trade Agreements: The case for a holistic approach* (11 April 2022), Institute for European Environmental Policy, <https://ieep.eu/publications/enhancing-sustainability-in-eu-free-trade-agreements-the-case-for-a-holistic-approach/>.

⁴⁷ *Ibid.*

⁴⁸ Communication on "The power of trade partnerships: together for green and just economic growth", <https://circabc.europa.eu/ui/group/8a31feb6-d901-421f-a607-ebbdd7d59ca0/library/8c5821b3-2b18-43a1-b791-2df56b673900/details>

The Deep Trade Agreements Database of the World Bank has classified Chapters on Environment within trade agreements into a total of 48 provisions under 7 categories as follows:

- i. Environmental Goals/Objectives
- ii. Balance between Environmental and Trade/Investment Goals
- iii. Enforcement Mechanism
- iv. External Assistance
- v. General Environmental Protection Areas
- vi. MEA Compliance
- vii. Participation in Promoting Environmental Objectives

The following section provides an overview of the number of environmental provisions in FTAs involving the Group of Twenty (“G20”)⁴⁹ countries (*Graph 1*), trends in mega-regional agreements including the USMCA and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (*Graph 2*), and the nature of commitments in key mega-regional agreements.

(i) Overview of Positions Taken in FTAs Involving G20 Countries and the EU

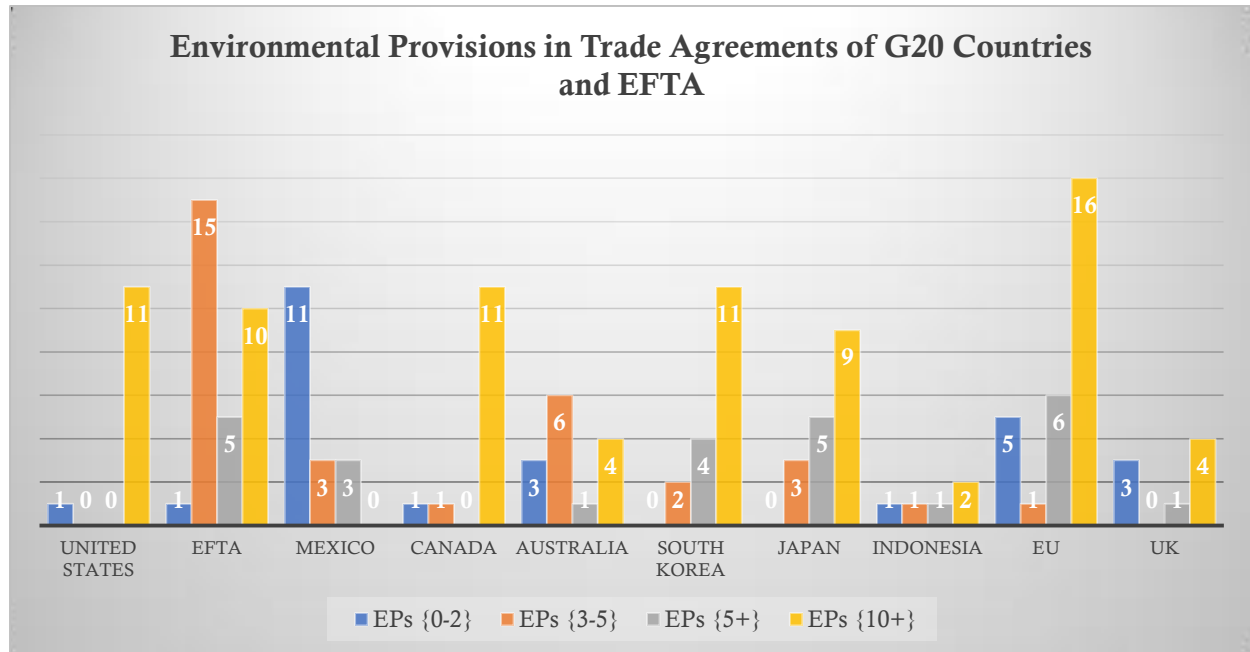
The following sub-section provides an overview of the positions taken by G20 countries, including the EU, in their FTAs with respect to environmental provisions. The data from the Deep Trade Agreements Database reveals that many G20 countries, particularly the US, EFTA, Canada, Australia, Japan, the UK, and the EU, demonstrate a robust commitment to incorporating environmental provisions in their FTAs. Conversely, countries like Mexico, South Korea and Indonesia have fewer environmental provisions (“EPs”).

- **Extensive Provisions (10+ EPs):** The US, EFTA, Canada, Japan, the UK, and the EU include a significant number of environmental provisions in their FTAs, indicating a strong commitment to integrating environmental goals within their trade agreements.
- **Moderate Provisions (3-5 EPs):** Australia and EFTA have the highest number of agreement with environmental provisions between the range of 3-5, reflecting a balanced approach between trade and environmental considerations.

⁴⁹ The Group of Twenty (G20) comprises 19 countries (Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Türkiye, United Kingdom and United States) and the European Union.

- **Minimal Provisions (0-2 EPs):** Indonesia and Mexico have very few environmental provisions in its FTAs, suggesting that environmental considerations may not be a primary focus in its trade agreements.

The ensuing graph illustrates the number of trade agreements of the respective countries which contain extensive, moderate or minimal EPs:



Graph 1: Authors' Compilation from the Deep Trade Agreements Database (World Bank)

As the G20 is a mix of developed and developing countries, an analysis of the trends in North-South FTAs involving G20 countries is relevant. **North-South Agreements** seem to focus on development more than trade itself.⁵⁰ With the growing influence of sustainable development, the more recent FTAs between North-South players shows immense promise. There is a growing trend of incorporating sustainability issues into FTAs between developed and developing countries within the G20. Of the 20 FTAs signed by the United States, only one involves a G20 developing country: the USMCA. The USMCA contains the strongest and most enforceable environmental obligations among these agreements. The details of the Agreement are discussed in the next sub-section on mega regional agreements.

The EU is negotiating FTAs with India and Indonesia, and both the agreements include chapters on trade and sustainable development. The EU-Mercosur⁵¹ Agreement 2024 and the EU-Mexico Trade Agreement (agreed in principle in 2018) contain strong and

⁵⁰ Jean-Frédéric Morin and Rosalie Gauthier Nadeau C. Hurst and; Company (2017). "The Trade and Environment Interplay" (2017), <https://www.jstor.org/stable/pdf/resrep15531.7.pdf>

⁵¹ Mercosur bloc comprises Argentina, Brazil, Paraguay, and Uruguay.

enforceable commitments on trade and sustainability. In contrast, the EU-South Africa Economic Partnership Agreement (provisionally applied since 2016) includes softer commitments regarding environmental protection.

The EU-Mercosur Agreement 2024 features a dedicated chapter on trade and sustainability, making it one of the most ambitious free trade agreements in this area. Despite Mercosur being a bloc of developing countries, the agreement includes detailed and progressive provisions on environmental and labour standards, reflecting the EU's latest approach to trade and sustainable development.

The TSD chapter covers both general commitments – such as adherence to Multilateral Environmental Agreements (MEAs) and international labour standards – and thematic articles addressing specific environmental issues. These include climate change, biodiversity, sustainable management of forests and fisheries, and responsible supply chains. The parties have agreed not to weaken or fail to enforce environmental or labour laws to attract trade or investment, and to uphold existing climate and labour standards. Notably, it makes the Paris Agreement an essential element of the FTA, allowing for potential suspension of trade obligations in the event of serious non-compliance – an unprecedented development in EU FTAs. At the same time, the agreement aims to prevent sustainability measures from being used as disguised trade barriers that could affect market access. Notably, commitments under the TSD chapter are enforceable through a dedicated dispute settlement mechanism. This process involves consultations and, if necessary, a review by an independent panel of experts.

Another North-South FTA within the G20 bloc is the **EFTA-Indonesia CEPA**. The EFTA-Indonesia has a dedicated TSD Chapter with hard commitments pertaining to sustainable development areas.⁵² The Parties have committed to uphold levels of protection in the application and enforcement of domestic laws and regulations, and to strive to further improve the level of protection provided for in the domestic regime. This reflects not only an external commitment towards the environment, but also an internal vision to align domestic laws and regulations with furthering environmental protection. The chapter also included thematic areas such as Sustainable Forest Management and Associated Trade, Sustainable Management of Fisheries and Aquaculture and Associated Trade, and Sustainable Management of the Vegetable Oils Sector and Associated Trade.

As far as Australia FTAs are concerned, while the 2019 **Australia-Indonesia CEPA** does not have specific commitments on sustainable development, the **Australia-India**

⁵² Comprehensive Economic Partnership Agreement Between the Republic of Indonesia and the EFTA States (Indonesia-EFTA CEPA); <https://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/indonesia/fta-indonesia-main-agreement.pdf>.

ECTA (currently under negotiations) contains a separate chapter regarding environmental protection. Similarly, the UK also has a mixed approach. While the **UK-SACUM**⁵³ **Economic Partnership Agreement** has a separate chapter on trade and environment, the 2021 **UK-Turkey FTA** has no substantial provision on environment.

The dynamics of North-South trade agreements are characterized by asymmetries in power and influence,⁵⁴ often leading to developed countries acting as “rule makers” and developing countries as “rule takers.” The literature to date suggests that environmental commitments are desired by developed countries and agreed to by developing countries in exchange for market access.⁵⁵ Developing countries often accept commitments in areas like labour and environment as part of the broader negotiation strategy to gain preferential market access in developed countries.⁵⁶ This trade-off reflects an asymmetry in bargaining power. Developed countries, as the primary export destinations, use their leverage to promote environmental standards that align with their own regulatory frameworks and policy objectives. For developing countries, agreeing to such provisions becomes a trade-off to secure access to larger, more lucrative markets, even if the capacity to implement or enforce these standards is limited.

However, the approach to North-South agreements varies between small and large developing countries. Smaller nations often have limited bargaining power or ‘economic strength’, leading to agreements that may not fully serve their developmental interests. In contrast, larger developing countries possess greater leverage to negotiate terms that align more closely with their national priorities. The India-EFTA TEPA exemplifies how a large developing country can secure a relatively more balanced outcome on trade and sustainability issues. Notably, India managed to include non-binding commitments in the TSD chapter, avoiding hard obligations. Avoiding hard obligations on environmental issues is not due to any lack of commitment to sustainable development on part of India. However, there would always be a difference in approaches and priorities on environmental issues and outcomes between large developing countries and

⁵³ The countries covered by the UK-SACUM EPA are Botswana, Eswatini, Lesotho, Namibia, South Africa, and Mozambique.

⁵⁴ Davit Sahakyan, “Reassessing North-South relations: the case of North-South preferential trade agreements”, *Journal of International Trade Law and Policy*, <https://doi.org/10.1108/JITLP-11-2015-0040>.

⁵⁵ Lisa Lechner & Gabriele Spilker (2021). Taking it seriously: commitments to the environment in South-South preferential trade agreements. *Environmental Politics*, <https://doi.org/10.1080/09644016.2021.1975399>; See also Ida Bastiaens & Evgeny Postnikov (2017) Greening up: the effects of environmental standards in EU and us trade agreements, *Environmental Politics*, <https://aei.pitt.edu/78868/1/Bastiaens.Postnikov.pdf>; Aseem Prakash and Matthew Potoski (2006). *The voluntary environmentalists: Green Clubs, ISO 14001, and voluntary environmental regulations*. Cambridge University Press, <https://doi.org/10.1017/CBO9780511617683>.

⁵⁶ Parthapratim Pal, Regional Trade Agreements and Improved Market Access in Developed Countries: A Reality Check and Possible Policy Alternatives, Paper no. 03/2008. Available at https://www.networkideas.org/working/apr2008/03_2008.pdf.

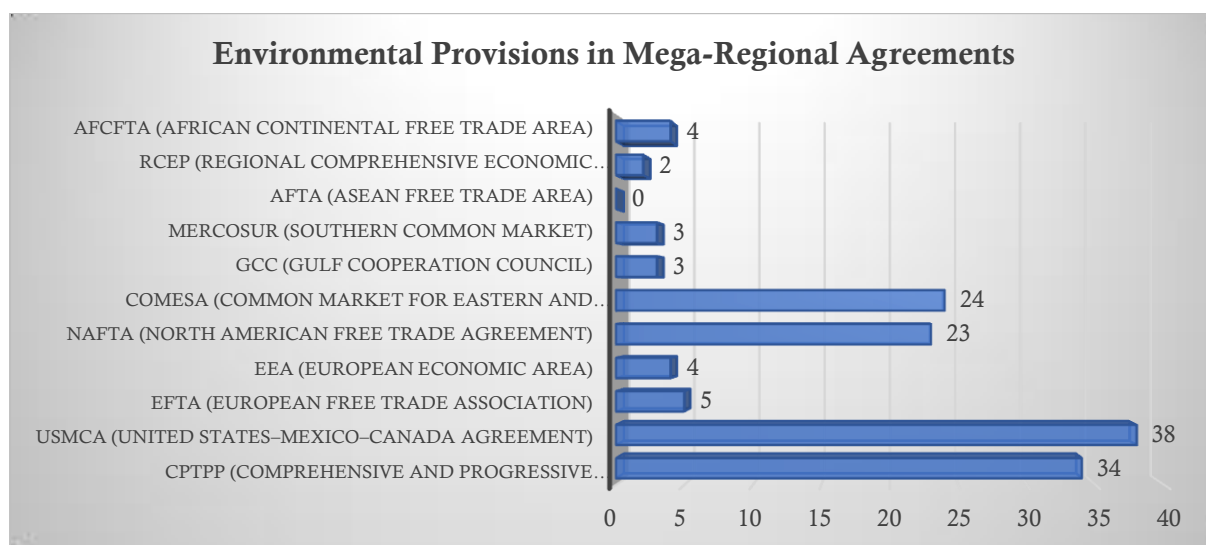
developed countries. Hard obligations that privilege one approach over another in an agreement between two very different economies with significant divergence in terms of environmental assets, levels of development, environmental management and harm mitigation strategies, systems of enforcement and accountability, etc. can become a constraint on finding the right balance of policies that is needed for optimal solutions.

(ii) Trends in Mega-Regional Agreements

The following sub-section provides an overview of the number of environmental provisions in some of the major mega-regional trade agreements, including the USMCA and the CPTPP. The data from the Deep Trade Agreements Database, World Bank, reveals that mega-regional trade agreements demonstrate varying degrees of commitment to environmental provisions. Agreements like the USMCA and the CPTPP lead in incorporating a significant number of environmental provisions, highlighting their robust approach to sustainable development. Conversely, agreements like ASEAN Free Trade Area (“AFTA”) and Regional Comprehensive Economic Partnership (“RCEP”) show minimal inclusion of environmental provisions.

- **Extensive Provisions (30+ EPs):** USMCA (38 EPs) and CPTPP (34 EPs) show a high level of commitment to environmental provisions, reflecting their strong emphasis on integrating environmental goals with trade agreements.
- **Moderate Provisions (20-29 EPs):** NAFTA (23 EPs) and Common Market for Eastern and Southern Africa (“COMESA”) (24 EPs) have a substantial number of environmental provisions, indicating a moderate emphasis on environmental sustainability.
- **Low Provisions (1-5 EPs):** EFTA (5 EPs), European Economic Area (“EEA”) (4 EPs), Gulf Cooperation Council (“GCC”) (3 EPs), MERCOSUR (3 EPs), RCEP (2 EPs), and African Continental Free Trade Area (“AfCFTA”) (4 EPs) include fewer environmental provisions, suggesting varying levels of commitment to environmental goals within their trade agreements.
- **Minimal or No Provisions (0 EPs):** AFTA (0 EPs) does not include any environmental provisions, indicating a lack of focus on environmental sustainability in this agreement.

The following graph illustrates the adherence of respective trade agreements to the total number of environmental provisions outlined:



Graph 2: Authors' Compilation from the Deep Trade Agreements Database (World Bank)

An analysis of the above graph reveals a noteworthy observation: the 1993 Agreement establishing the Common Market for Eastern and Southern Africa (COMESA), which includes 21 developing countries, contains a greater number of environment-related provisions compared to the Convention establishing the European Free Trade Association (EFTA). Notably, the COMESA Agreement is the first regional trade agreement to include a dedicated provision on climate change.⁵⁷

In contrast, references to environmental concerns in the EFTA Convention are limited. The Preamble acknowledges the need for mutually supportive trade and environmental policies in order to achieve sustainable development. Additionally, the Convention includes exceptions to certain obligations for the protection of human, animal, and plant life, as well as the environment.

The COMESA Agreement, however, adopts a more comprehensive approach by dedicating an entire chapter to “Cooperation in the Development of Natural Resources, Environment, and Wildlife.” This chapter underscores collaboration among member states in managing natural resources and the environment, preventing illegal international trade in toxic and hazardous waste, and developing and managing wildlife. Its overarching goals are to preserve, protect, and enhance environmental quality, safeguard human health, and ensure the prudent and rational use of natural resources.

This comparison challenges the common perception that trade agreements among developed countries are necessarily more ambitious in terms of environmental commitments. Instead, it highlights how developing countries, particularly when

⁵⁷ Climate Change in Regional Trade Agreements, Trade and Climate Change- Information Brief, WTO, available at https://www.wto.org/english/news_e/news21_e/clim_03nov21-2_e.pdf

negotiating among themselves, can integrate robust environmental provisions, including on climate change, into their trade frameworks.⁵⁸

From a broader perspective, this dynamic reflects a key feature of North-South asymmetries in trade negotiations. While developed countries often push for stringent environmental standards in North-South agreements – sometimes perceived as disguised protectionism or as conditions for market access – they may not always mirror the same level of ambition in their trade agreements. In contrast, South-South agreements like COMESA may reflect a more development-oriented and cooperative approach to environmental integration, potentially driven by shared vulnerabilities and regional priorities.

(iii) Nature of Obligations in Key Mega-Regional Agreements

The following section discusses the nature of environmental provisions in key mega-regional agreements such as the CPTPP, the USMCA, and the Transatlantic Trade and Investment Partnership (TTIP).

a. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

Signed in 2018, the CPTPP is another important agreement with detailed environmental provisions and featuring a comprehensive chapter on the environment. The CPTPP is often seen as an agreement with one of the most ambitious Environment Chapters, which covers nearly all the possible environment-related provisions such as the protection of the ozone layer, the transition to a low-emissions economy, invasive alien species, the protection of the marine environment from ship pollution, and sustainable fisheries management. Notably, the CPTPP requires countries to enforce and not derogate from their environmental laws to attract trade and investment, implement specified multilateral environmental agreements they have joined, prohibit certain fishing subsidies, and combat illegal wildlife trade. It establishes formal mechanisms for engaging civil society in environmental matters, and also includes a dispute settlement mechanism to enforce commitments, though some exemptions apply.

⁵⁸ Lisa Lechner & Gabriele Spilker (2021). Taking it seriously: commitments to the environment in South-South preferential trade agreements. *Environmental Politics*, <https://doi.org/10.1080/09644016.2021.1975399>;

b. The United States–Mexico–Canada Agreement (USMCA)

The USMCA, which replaced NAFTA, entered into force in 2020 alongside a companion Environmental Cooperation Agreement (“ECA”). The USMCA builds on NAFTA and more recent FTA practice, subjecting the Agreement’s labour and environment obligations to the state-to-state dispute settlement mechanism that governs most of the other provisions.⁵⁹ The USMCA is deemed as the strongest set of environmental provisions ever included in an FTA.⁶⁰ The agreement includes a robust environment chapter that addresses a wide range of issues, such as air quality, marine litter, and sustainable forest management. USMCA also provides for two cooperation-based mechanisms, designed to enforce only the environmental obligations. Though the USMCA includes a number of provisions that support climate action, it has been criticized for failing to explicitly include climate change commitments.⁶¹

c. The Transatlantic Trade and Investment Partnership (TTIP)

The TTIP is a proposed trade and investment agreement between the US and the EU, encompassing discussions on environmental and labour issues. Although the negotiations stalled in 2016 without reaching an agreement, the proposals made during the talks are significant for understanding how the two most developed economies approach trade and sustainability issues. Unlike the US, the EU’s textual proposals for the TSD Chapter are publicly available.⁶² The US approach is inferred from Trade Promotion Authority (“TPA”)⁶³ negotiating objectives.⁶⁴

The TSD Chapter under TTIP aims to ensure mutual supportiveness of trade and environmental policies and to seek environmental protection and preservation. Both the

⁵⁹ USMCA: Legal Enforcement of the Labor and Environment Provisions, Congressional Research Service Report (May 14, 2021), <https://sgp.fas.org/crs/row/R46793.pdf>

⁶⁰ Benefits for the Environment in the United States-Mexico-Canada Agreement, Office of the USTR, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/benefits-environment-united-states-mexico-canada-agreement>

⁶¹ James Bacchus, Using the USMCA for climate action, Brookings Institution Policy (February 2022), <https://www.brookings.edu/articles/usmca-forward-building-a-more-competitive-inclusive-and-sustainable-north-american-economy-climate/>

⁶² The EU’s Textual Proposal ‘Trade and Sustainable Development’ available at <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/86cbf6f1-23d1-4c2d-928e-e261256f4152/details?download=true>

⁶³ The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA-2015) (H.R. 1890; S. 995) was introduced on April 16, 2015. The legislation re-authorizes the Trade Promotion Authority (TPA) which is used to can be used for legislation to implement trade agreements entered into by the US, <https://sgp.fas.org/crs/misc/R43491.pdf>

⁶⁴ US Congress, Bipartisan Congressional Trade Priorities and Accountability Act of 2015, available at <https://www.congress.gov/bill/114th-congress/house-bill/2146>

EU and the US propose commitments to not derogate or waive from their environmental laws and regulations, as well as to effectively enforce these laws. The parties acknowledge that environmental policies should not constitute arbitrary and unjustifiable discrimination or serve as a disguised restriction on trade. In addition, the EU proposes to recognise the sovereign right of parties to determine and regulate their own levels of protection.

The EU proposes to reaffirm commitments to effectively implement MEAs, while the US seeks to ensure that parties adopt and maintain measures to implement the MEAs to which they are party. The US seeks market access for environmental goods and services, however, the EU proposal merely recognises the importance of cooperation for facilitating trade in environmental goods and services. Additionally, the EU's proposal includes commitments on specific environmental issues such as fisheries management, biodiversity conservation, flora and fauna protection and sustainable forest management. The US proposal sought to reduce or eliminate practices by its trading partners that unduly threaten sustainable development and to strengthen their capacity through promotion of sustainable development. Furthermore, the US intends to subject environmental protection commitments to dispute settlement. The EU's proposal does not include provisions on dispute settlement and institutional aspects, which were to be negotiated at a later stage.

While the TTIP negotiations did not culminate in a final agreement, the negotiating positions adopted by the US and the EU offer valuable insights into the dynamics of North-North trade agreements involving two big blocs. TTIP involved two economic giants – both established “rule-makers” – and was therefore expected to result in an ambitious agreement. The symmetry in rule-making power of the two economic giants should have enabled more balanced bargaining and the formulation of robust rules on environmental standards.

Despite both parties maintaining high domestic environmental standards, the proposals reflect a somewhat paradoxical outcome. Rather than reinforcing high benchmarks, some of the commitments—particularly in the EU's proposal—take on an aspirational tone. A particularly striking aspect is the absence of dispute settlement provisions in the EU's draft. While the US approach explicitly aimed to subject environmental obligations to binding dispute settlement, highlighting a more enforceable approach, the EU's proposal did not include enforcement mechanisms. This is in sharp contrast to EU's position vis-à-vis developing countries. This might indicate that while the EU is comfortable with pushing for TSD-related rule-making while negotiating with developing countries (who have relatively less developed regulations and institutions

related to TSD in comparison), they are unwilling to take commitments vis-à-vis an FTA partner with strong or even more advanced institutions and regimes.

Another point of divergence lies in the treatment of environmental goods and services. The US sought tangible market access commitments in this area, whereas the EU proposal merely acknowledged the value of cooperation in facilitating such trade, without offering concrete obligations.

This contrast suggests that, even in an agreement between two developed economies, where the political and institutional capacity for high standards exists, ambition in environmental sustainability provisions may be tempered by other considerations. If the intent of developed countries were truly to enforce robust environmental and labour standards, TTIP – more than any other agreement – should have exemplified the highest level of commitment, supported by binding and enforceable provisions rather than aspirational language.

d. Comparative Analysis of Trends in Mega-Regional Agreements

Mega-regional trade agreements increasingly integrate environmental protection provisions, reflecting a shift toward mutually supportive trade and environmental policies. The environment chapters in these agreements emphasize high environmental protection standards while ensuring that sustainability goals do not serve as disguised trade or investment barriers. These agreements recognize the right of parties to regulate environmental matters, yet include binding non-regression clauses that prevent countries from weakening or waiving environmental laws to gain trade or investment advantages. However, their scope is often limited to central governments, excluding commitments at regional or subnational levels.

Furthermore, mega-regional agreements reaffirm commitments to MEAs, reinforcing global sustainability obligations. Beyond setting broad commitments, these agreements integrate specific thematic provisions such as addressing biodiversity conservation, climate change mitigation, and sustainable forest management. Importantly, the environmental chapters are enforceable through dispute settlement mechanisms under the agreements, ensuring accountability among parties.

The table below compares the environment-related provisions present in the CPTPP and the USMCA, and the negotiated (but not implemented) provisions of the TTIP, followed by a brief explanation of the observations.

Table 1. ‘Environment Protection’ provisions under CPTPP, USMCA and TTIP

S.N.	Key Provisions	CPTPP	USMCA	T-TIP	
				EU approach	US approach ⁶⁵
1.	Definition of environment/ environment law	✓	✓		
2.	Scope of application	✓	✓		
3.	Objectives	✓	✓	✓	✓
4.	General Commitments ⁶⁶	✓	✓	✓	✓
5.	MEAs	✓	✓	✓	✓
6.	Protection of Ozone layer	✓	✓		
7.	Protection of Marine Environment from Ship Pollution	✓	✓		
8.	Trade and Fisheries	✓	✓	✓	
9.	Trade and Biodiversity	✓	✓	✓	
10.	Trade and Forests		✓	✓	
11.	Conservation and Trade	✓	✓	✓	
12.	Transition to a low Emission and Resilient Economy	✓			
13.	Environmental goods and	✓	✓		✓

⁶⁵ The US approach for TTIP is inferred from the TPA negotiating objectives (US Congress, Bipartisan Congressional Trade Priorities and Accountability Act of 2015, available at <https://www.congress.gov/bill/114th-congress/house-bill/2146>

⁶⁶ General Commitments include provisions on the right to regulate, non-derogation and effective enforcement of environment laws and regulations.

	Services				
14.	Corporate Social Responsibility	✓	✓	✓	
15.	Public Participation	✓	✓	✓	
16.	Transparency (Procedural Matters)	✓	✓	✓	
17.	Voluntary mechanism to enhance environmental performance	✓	✓	✓	
18.	Cooperation	✓	✓	✓	
19.	Institutional Framework	✓	✓		
20.	Consultations	✓	✓		
21.	Dispute Settlement	✓	✓		✓

The CPTPP and the USMCA illustrate the advanced integration of trade and environmental governance in mega-regional trade agreements. Both agreements exhibit a high degree of specificity and breadth in their environmental provisions. They address a wide range of thematic commitments, including the sustainable management of forests and fisheries, conservation of biodiversity, and the protection of the marine environment from ship pollution. Notably, both agreements include binding commitments to uphold MEAs, prohibit the weakening of environmental laws for trade or investment gains, and provide for enforceable dispute settlement mechanisms, including panel reviews. These agreements reflect emerging practices within mega-regional trade agreements, wherein environmental standards are incorporated as integral elements of trade governance rather than treated as ancillary concerns. This trend indicates a broader shift towards embedding sustainability objectives within the core architecture of international trade law, supported by enforceable compliance frameworks.

It is important to note that while the EU's approach, particularly in the context of the TTIP, was ambitious in its early proposals, the agreement was never finalized. As a result, concrete conclusions about the EU model based on T-TIP remain limited.

4. INDIA'S POSITION ON TRADE AND ENVIRONMENTAL SUSTAINABILITY ISSUES

(i) India's Multilateral Stance

While India supports the harmonious existence of the two regimes of international law, i.e. international environmental law and international trade law, it considers that mixing non-trade topics with the WTO rules may lead to greater fragmentation of rules, encourage trade distortive subsidies and non-trade barriers, and has the potential to adversely affect the economic interests of developing countries.⁶⁷ India considers that inclusion-related issues are better addressed through contextual and targeted national measures which fall outside the domain of international trade relations.⁶⁸

Developed nations are increasingly enforcing unilateral environment-related trade measures, such as carbon border taxes, deforestation-linked import bans, and strict sustainability standards, to curb global environmental degradation. The EU's Carbon Border Adjustment Mechanism (CBAM) imposes tariffs on carbon-intensive imports, while its Deforestation Regulation bans commodities like palm oil, soy, and beef unless proven deforestation-free. The U.S. has implemented similar policies, such as the Clean Competition Act, which proposes carbon tariffs on high-emission imports, and the FOREST Act, which aims to block imports linked to illegal deforestation. Additionally, the U.S. enforces bans on unsustainable fishing practices, restricts single-use plastics, and mandates eco-labelling for various products. While these measures aim to accelerate sustainability, they effectively function as trade barriers, disproportionately affecting developing nations that lack the financial and technological capacity to comply with evolving standards

At the WTO, India has highlighted that **border adjustment measures** effectively nullify the tightly negotiated balance of rights and obligations under the MEAs.⁶⁹ India maintains that **regulations banning imported products on the basis of determination of land-use patterns or deforestation and country of origin** impose unrealistic compliance burdens on importers as well as exporters and have the potential to severely impact global agricultural trade.⁷⁰ India has also highlighted that **arrangements on tariff quotas or equivalent measures based on carbon content of the products** being traded seem to effectively use

⁶⁷Report of the Meeting Held on 17 and 21 October 2022, Note by Secretariat, Committee on Trade and Environment (CTE) (WT/CTE/M/76).

⁶⁸India opposes fragmentation of multilateral trading systems and inclusion of non-trade topics at WTO MC13, February 26, 2024, PIB, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=2009228>

⁶⁹Report of the Meeting Held on 17 and 21 October 2022, Note by Secretariat, Committee on Trade and Environment (CTE) (WT/CTE/M/76).

⁷⁰Report of the Meeting Held on 17 and 21 October 2022, Note by Secretariat, Committee on Trade and Environment (CTE) (WT/CTE/M/76).

environmental measures to bypass foundation principles and design of the global trading system and have the potential to severely fragment global trade flows.⁷¹

A notable observation is that India does not participate in any of the three plurilateral environmental initiatives at the WTO, viz. TESSD, FFSR and DPP.⁷² India has also made its submissions to the Working Group on Trade and Technology Transfer providing a roadmap towards future work on Trade and Technology Transfer for developing countries.⁷³

(ii) India's Bilateral Approach to Linking Trade and Environment in FTAs

The data from the Deep Trade Agreements Database reveals that India's trade agreements vary significantly in their inclusion of environmental provisions:

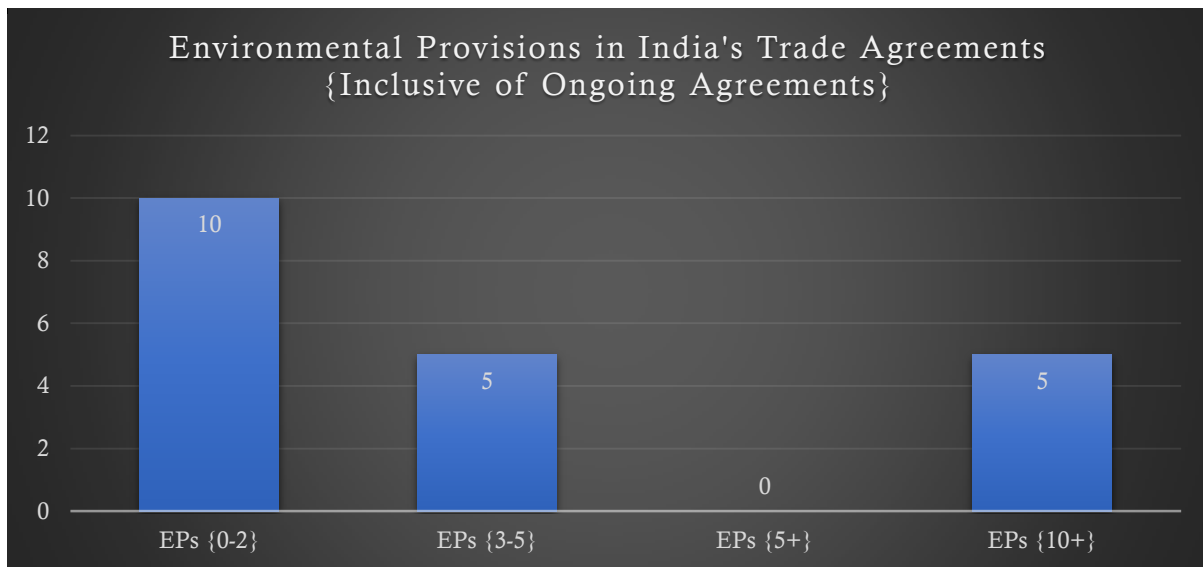
- **Minimal Provisions (0-2 EPs):** Trade agreements with Thailand, Mauritius, UAE, Bhutan, Afghanistan, Nepal, Chile, Peru (Ongoing), Oman (Ongoing), and Sri Lanka (Ongoing) have very few environmental provisions, ranging from 0 to 2.
- **Moderate Provisions (3-5 EPs):** Agreements with South Korea, Malaysia, ASEAN, MERCOSUR, and Singapore contain a moderate number of environmental provisions, ranging from 3 to 5.
- **Extensive Provisions (10+ EPs):** Agreements with Japan, EFTA, UK, EU (Ongoing), and Australia (Ongoing) include more than 10 environmental provisions, indicating a higher level of commitment to environmental goals.

The ensuing graph illustrates the adherence of respective trade agreements (India and the World) to the total number of environmental provisions outlined:

⁷¹Report of the Meeting Held on 17 and 21 October 2022, Note by Secretariat, Committee on Trade and Environment (CTE) (WT/CTE/M/76).

⁷² Ibid.

⁷³Working Group on Trade and Transfer of Technology - Council for Trade-Related Aspects of Intellectual Property Rights - Committee on Trade and Environment - Reinvigorating discussions on the relationship between trade and the transfer of environmentally sound technolog[...].ange - Communication from India, (JOB/IP/70) (Restricted).



Graph 3: Authors' Compilation from Deep Trade Agreements Database (World Bank)

India has traditionally avoided including disciplines on non-trade issues, including trade and environment, in its trade agreements. India's FTAs with Korea, Association of Southeast Asian Nations (ASEAN), and Malaysia do not address environment-related issues, and the CEPA with Japan only touches on environmental protection in a limited manner. The RCEP, from which India withdrew before its finalization, also lacks such provisions.⁷⁴ Among India's more recent FTAs signed with Australia and the UAE, the interim India-Australia ECTA does not cover trade and environment, whereas the India-UAE CEPA includes some provisions on environmental cooperation. Negotiations were resumed for an ambitious India-Australia Comprehensive Economic Cooperation Agreement ("CECA") to build upon the ETCA outcomes. The negotiations are ongoing and it remains to be seen how substantively India engages with Australia on the inclusion of trade and environment issues.

Among India's early FTAs, the India-Japan CEPA was a notable exception in including some environmental provisions. Conversely, the India-Korea CEPA (signed in 2009) focused on trade liberalization, lacking substantive commitments to environmental standards. This absence could be attributed to the economic context of the time. As a developing nation during the CEPA negotiations, Korea's leveraging power and economic priorities likely differed from its current standing. Consequently, for South Korea in 2009, securing market access may have been a more pressing concern than incorporating environmental safeguards, explaining the contrasting approaches observed in the India-Japan and India-Korea agreements.

⁷⁴ Dr. V.S. Seshadri, *India's Approach towards Inclusion of New Areas in Future FTAs*, Delhi Policy Group Policy Brief (September 10, 2022), <https://www.delhipolicygroup.org/publication/policy-briefs/indias-approach-towards-inclusion-of-new-areas-in-future-ftas.html>

Much has changed since India's initial cautious approach towards trade and environment linkages in FTAs. India is now actively pursuing multiple FTA negotiations with important and developed trade partners that place significant importance on TSD chapters, which may nudge India to engage more substantively on environmental provisions in FTAs.

The following section provides a detailed overview of trade and environment-related provisions in India's FTAs since the India-Japan CEPA.

a. India-Japan CEPA

India-Japan CEPA is India's first trade agreement dealing with environmental protection, however, the agreement dwells upon the matter in a limited manner. The preamble of the India-Japan CEPA recognises the interplay and interdependence of economic development, social development, and environmental protection. Moreover, it also highlights that economic partnership between both the nations can promote sustainable development. Article 8 and Article 99 of India-Japan CEPA does refer to environmental protection but somewhat generally in terms of adequacy of protection by the parties while encouraging trade and investment.

Article 8 provides the right to "each Party to establish its own domestic environmental policies". Further, it is incumbent upon each Party to make sure that its laws and regulations provide for adequate environmental protection, and it shall strive further in that direction. Clause 3 of the Article 8 provides that each Party is required to take those measures which are necessary to create awareness among the public for the environmental policies, and that it recognises the role of education for the promotion of environmental policies. It also encourages the Parties to trade in and disseminate goods and services which are not detrimental for the environment, rather are beneficial for it. Lastly, clause 4 of Article 8 reaffirms the rights and obligations of parties under the international agreements concerning the environment, to which both are Parties. The Parties have also undertaken non-derogation obligation for encouraging investments. Article 99 provides that, environmental regulations shall not be relaxed for the purpose of encouraging investment activities, thereby acknowledging that economic development shall not take place at the cost of the environment.

b. India-UAE CEPA

India's agreement with the UAE, the Comprehensive Economic Partnership Agreement (CEPA), was concluded in February 2022. In line with India's traditional approach to

trade policy, the India-UAE CEPA does not contain significant environmental provisions. While the preamble of the India-UAE CEPA recognises the need to protect the environment, provisions relating to environment are contained in Chapter 14 which deals with economic cooperation.

Article 14.2, while delineating the scope of economic cooperation between both the Parties, includes in its scope trade in environmental goods and services. Further, Article 14.5 talks about environmental cooperation between both the Parties. It requires the Parties to take into account those policies which are in furtherance of the goal of the sustainable development. Further, it recognises the importance of mutually supportive trade and environmental policies, the sovereign right of each Party to establish its own levels of domestic environmental protection and priorities and the importance of multilateral environment agreements for the protection of the environment.⁷⁵ The CEPA further states that “each party affirms its commitment to implement the multilateral environmental agreements to which it is a party”. This provision, like every other in the CEPA, is subject to the dispute settlement mechanism provided in the FTA. However, the CEPA does not further substantiate environmental standards and primarily emphasises the sovereign rights of the parties in setting their environmental policies.

Moreover, Chapter 16 dealing with the exceptions, incorporates Article XX of GATT. Article XX(g), of GATT, provides for the measures which are aimed at protection of the exhaustible natural resources. Thus, by incorporating environmental obligation exception under the agreement, the parties have provided themselves with a leeway to undertake such measures which are solely for the purpose of the environment. Such a provision can potentially be a pathway to unilateral trade measures in pursuance of environmental objectives, particularly relevant in case of developed countries like the EU.

c. India-Australia ECTA

India's interim trade agreement with Australia, the India-Australia ECTA, was concluded in April 2022. The ECTA did not contain any substantive provision relating to sustainable development. The ECTA mentions the principle in its Preamble but does not expand upon it further. Later, negotiations were resumed for an ambitious comprehensive agreement i.e., the CECA, which would build upon ECTA. India and

⁷⁵ Article 14.5, India UAE CEPA

Australia engage in discussions on trade and environment issues, as part of the CECA, which remains to be concluded.⁷⁶

d. India-EFTA TEPA

India's agreement with the EFTA countries (comprising Switzerland, Iceland, Norway and Liechtenstein), the TEPA, was signed recently on 10th March, 2024. The India-EFTA TEPA is India's first trade agreement that includes provisions on trade and sustainable development in a substantial way. By virtue of a chapter on TSD, India signals its commitment to sustainable development, inclusive growth, social development and environmental protection.

The TEPA TSD chapter prioritises environmental protection while also ensuring the inclusivity of economic growth. Under the TEPA, the parties agree to promote international trade in a manner that contributes to sustainable development and to integrate this objective in their trade relations. Additionally, the parties have **committed to not derogate from or fail to effectively enforce their respective environmental laws**. The parties have **reaffirmed their commitment to implement the multilateral environmental agreements to which they are a party**. The specific emphasis on the UNFCCC and the Paris Agreement are addressed in a specific article on 'trade and climate change'. Furthermore, a sub-committee on sustainability has been established to monitor and review the implementation of the commitments in the TSD chapter along with the right to seek consultations to address any matter related to the chapter.

The TSD chapter in TEPA demonstrates India's successful leveraging of its market power during negotiations. India secured a TSD chapter carefully crafted to its domestic sensitivities, resulting in the absence of enhanced enforcement and dispute settlement mechanisms. Further, to address India's concerns, the chapter includes a categorical **prohibition on the use of environmental and labour measures as a disguised restriction on trade**. India and EFTA note the **"value" of international agreements for addressing environmental and social challenges**. This reflects the approach also adopted by India at the WTO's Thirteenth Ministerial Conference (MC13), which argues that sustainable development issues (such as climate change) should be kept outside the realm of trade regulation.⁷⁷

⁷⁶ 10 major areas set for agreement in India-Australia trade negotiations, <https://www.firstpost.com/world/10-major-areas-set-for-agreement-in-india-australia-trade-negotiations-13805927.html>

⁷⁷ Ministry of Commerce and Industry, Press release dated 26 February 2024, available at URL: <https://pib.gov.in/PressReleasePage.aspx?PRID=2009228>

The TSD chapter refers to a range of multilateral environmental agreements and labour conventions, whose implementation is based on a balance of rights and obligations. Thus, while the chapter does recognize the relevance of trade as a tool to achieve sustainable development goals, it also recognizes the importance of such goals being achieved under the context of international agreements that specifically deal with such sustainable development issues.

The agreement also emphasizes the importance of good corporate governance and corporate social responsibility and reaffirms the rights of governments to regulate and set their sustainable development policies and priorities.

Although the India-EFTA TEPA contains environmental provisions which were often ignored in India's earlier trade agreements, it does not impose burdensome requirements on India, and thus, can serve as a **prototype for future trade agreements** entered into by India. While the commitments linked to environmental standards in the TSD chapter are a first for India, the design of the TSD chapter allows India the flexibility to prioritise its developmental priority over environmental issues. The substance of the TEPA TSD chapter can serve as a useful threshold in negotiations on environmental commitments. The TSD chapter in TEPA marks a forward-looking evolution in India's trade policy and sets a positive precedent.

e. India-UK FTA

The India–United Kingdom Comprehensive Economic and Trade Agreement (CETA), signed in July 2025, marks a significant milestone as the first Indian trade agreement to include a dedicated chapter on the 'environment'. For India, the application of this chapter is limited to actions taken at the central government level.

Adopting a cooperative framework, the chapter seeks to promote sustainable development, ensure coherence between trade and environmental policies, uphold high standards of environmental protection, and strengthen the capacity of both parties to address environmental challenges. It also acknowledges the differing levels of development between the two countries. While affirming each party's sovereign right to regulate and determine its own environmental protection standards, the agreement includes a binding non-regression clause. This provision prohibits either party from weakening its environmental laws in order to encourage trade or investment between the parties. Furthermore, the chapter requires both parties to effectively enforce their environmental laws, while also recognizing that such enforcement should not result in arbitrary or unjustifiable discrimination, nor serve as a disguised restriction on trade.

The parties also commit to cooperate on environmental issues, subject to the availability of financial, human, and other resources, and in accordance with their respective laws and regulations. Allusions to several Multilateral Environmental Agreements (MEAs) serve as reference points for the Parties “to affirm their commitment to implement such agreements and cooperate, as appropriate and subject to national circumstances, with respect to environmental issues of mutual interest related to MEAs to which they are a party”.⁷⁸

The Chapter highlights the most pressing concerns regarding the environment, including climate change, combating air pollution, protecting the marine environment, sustainable forest management, and prevention of biodiversity loss.

Importantly, this Chapter shall not be subject to dispute settlement procedures under the CETA. Instead, there is a water-tight consultations mechanism within the Chapter. Parties are empowered to undertake consultations on the application of the Chapter (Article 21.18). Thereafter, failure to resolve any issues thereunder can be addressed through a Joint Committee consultation (Article 21.19). If this, too, is unsuccessful, parties can escalate the matter to Ministerial Consultations (Article 21.20).

f. India-EU FTA

India and the EU have been engaged in negotiations on the TSD chapter based on the EU’s proposed text (“Proposed Text”).⁷⁹

The Proposed Text represents the most ambitious provisions on trade and sustainable development India has negotiated to date. *The following section outlines the challenges concerning the key provisions in the Chapter:*

Key Issues

a. Applicability to all levels of government

The Proposed Text in its current formulation, upon coming into force, applies to all levels of government. The Constitution of India provides for a division of powers between the Centre and the States. The Seventh Schedule to the Constitution of India

⁷⁸ Synopsis of Key Chapters of India-UK Comprehensive Economic and Trade Agreement (CETA), <https://www.commerce.gov.in/wp-content/uploads/2025/08/India-UK-CETA-Synopsis-of-Key-Chapters.pdf>

⁷⁹ EU’s Proposed Text for ‘Trade and Sustainable Development’ chapter under the India-EU FTA, available at URL: <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/2db52ef6-a1fc-4245-85d8-f622c21bdedf/details?download=true>

provides for three lists i.e. the Union, State and Concurrent List. The term “environment” per se does not appear in the Seventh Schedule. However, elements of environmental matters are present across all three lists. Most of the subject matters on environment are present within the Concurrent list. There are overlapping areas of governance between the Union and the States, and variations from state to state with respect to environmental laws. In addition to this, many regulations are still in the process of being formed. Given the level of complexities involved in administration at different levels of the government, India may need to carve out measures below the Central level of government out of the obligations of this Chapter. Such approach would also be in line with the practices in FTAs of certain other countries that have a federal structure of government, such as Australia, Canada, and the US.⁸⁰

b. Commitments on non-derogation and effective implementation of international commitments

The EU seeks binding commitments on non-derogation and effective implementation of international commitments undertaken multilaterally. India’s laws/rules/regulations may require further amendments to reduce compliance burden and unnecessary bureaucratic hurdles, promote ease of doing business, attract investment and catalyse creation of employment opportunities. There is a possibility that these rationalization measures may be misinterpreted as weakening of the protection afforded in our existing laws for encouragement of trade and investment. Therefore, a hard commitment on non-derogation may be difficult for India. Similarly, India faces challenges in enforcing its environment laws throughout its territory, which might not be the case with the EU. To this extent, monitoring of effective implementation of environmental laws is difficult in India. Thus, undertaking binding commitments across the TSD chapter and agreeing to effectively implement international commitments may pose challenges for India.

c. Dispute settlement

Owing to the reasons elucidated in points (a) and (b) above, it can be stated that any type of dispute settlement mechanism would not be desirable for India. "Aligned with the EU’s 2022 Communication *The Power of Trade Partnerships: Together for Green and Just Economic Growth*⁸¹, which highlights the need for stronger enforcement of TSD

⁸⁰ See Australia-UK FTA, <https://www.dfat.gov.au/trade/agreements/in-force/aukfta/official-text/australia-uk-fta-chapter-22-environment>; Canada – United States – Mexico Agreement (CUSMA), <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/24.aspx?lang=eng>.

⁸¹ Communication on “The power of trade partnerships: together for green and just economic growth”, <https://circabc.europa.eu/ui/group/8a31feb6-d901-421f-a607-ebbdd7d59ca0/library/8c5821b3-2b18-43a1-b791-2df56b673900/details>

provisions, the FTA's dispute settlement mechanism could include **trade sanctions or compensation** for material breaches of the Agreement's provisions.

Although such suspensions are intended as a last-resort measure, there is considerable apprehension regarding their ultimate utility. India advocates a cooperative approach to addressing environmental and labour issues, including within the framework of an FTA, therefore, the applicability of dispute settlement to the TSD chapter would be antithetical to its policy and may constitute a strong red line for India.

d. Right to regulate and levels of protection

The EU in its Proposed Text seeks commitment to not weaken or reduce the level of protection, to not waive or derogate from and to effectively enforce domestic laws on environment, labour and gender. The Proposed Text also seeks for Parties to improve their level of protection. India is in the process of rationalization of environmental laws, which includes taking a departure from the current norms in certain cases. Considering the nascent stage of sustainability-oriented policies, India may require further amendments to reduce compliance burden, encourage sustainable practices, attract investment and create employment opportunities. These actions would be at the risk of being regarded as non-compliance with the Proposed Text. Therefore, India should negotiate carefully to safeguard its policy space as provided under multilateral agreements.

e. Civil society involvement

Existing laws and practices in India give sufficient space for public/ civil society involvement. However, unlike the EU, India does not have a structured form of civil society mechanism. The extent of civil society involvement envisaged by the EU and as reflected in the TSD Review⁸² mechanism would place a significant and unprecedented administrative and resource burden on India so as to develop internal systems specifically to support civil society interaction for FTAs. Given the size of India, varied stakeholders, and the lack of a structured civil society mechanism in place, it would be onerous for India to consider the views of all members of civil society, and act on them. It needs to be kept in view that the inclusion of civil society references within an FTA is unprecedented for India and in view of the complexity in administrative matters, and past experiences, it would be appropriate for India to consider an endeavour-based provision promoting public participation in environmental or labour cooperative activities.

⁸² Communication on revised TSD approach dated 22 June 2022. - See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0409>

f. Supportive measures

India may seek to negotiate the inclusion of provisions that ensure supportive measures from the EU, such as financial assistance, transfer of technology, and capacity building. Under the MEAs like the UNFCCC and the Paris Agreement, developed countries, including the EU, are obligated to provide such measures to the developing countries.⁸³ Incorporating these provisions into the proposed chapter would create a more balanced and comprehensive framework for environment commitments.

As it stands, the Proposed Text offers an incomplete picture of the obligations under these MEAs, as it lacks substantive provisions on supportive measures. To address this gap, India may advocate for strong commitments for financial assistance, technological transfer and capacity building. Furthermore, India may consider developing a mechanism to ensure that its environmental protection commitments relating under FTAs with developed countries are contingent upon the fulfilment of obligations by the latter to provide supportive measures. Notably, the UNFCCC also stipulates that effective implementation of developing countries' commitments will depend on how well the developed countries fulfil their own commitments under the Convention.⁸⁴

g. Thematic areas

In addition to the above horizontal issues which impact all thematic areas, the EU's proposal includes detailed provisions with respect to specific thematic areas of "environment" such as climate change, biological diversity, forests and marine biological resources. The Proposed Text includes provisions that may be challenging for India to accept in their current form. For example, India may resist linking trade and climate change issues, as it views multilateral environmental platforms as the appropriate forums for addressing climate change and related environmental concerns. Like other developing countries, India views the principles of equity and Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) as fundamental to any discussion on climate change. Other contentious areas for India may include the inclusion of supply chain issues, implementing measures concerning third countries, promoting trade in environmental goods, referencing trade-specific measures, or recognizing instruments that India has not ratified.

⁸³ Article 4 of the UNFCCC; Article 9, 10, 11 of the Paris Agreement.

⁸⁴ Article 4.7 of the UNFCCC.

5. TRACING INDIA'S AUTONOMOUS REGIME

The intention to preserve and protect the environment is enshrined as a Directive Principle of State Policy under Article 48A of the Constitution of India⁸⁵ as well as a Fundamental Duty of every citizen of India under Article 51A.⁸⁶ India's regulatory landscape hosts several environmental legislations. The different environmental laws in India purport to address distinct challenges affecting the environment.⁸⁷ The overarching law concerning environmental protection in India following the United Nations Conference on the Human Environment in Stockholm is the Environmental (Protection) Act, 1986 ("EPA").⁸⁸ The EPA is to be read along with the Environment Protection Rules, 1986.⁸⁹ Prior to this, several specific legislations had been drafted to account for different environmental concerns. These are: the Water (Prevention and Control of Pollution) Act, 1974 ("Water Act"),⁹⁰ the Air (Prevention and Control of Pollution) Act, 1981 ("Air Act"),⁹¹ and the Wildlife (Protection) Act, 1972.⁹² Thereafter, the Energy Conservation Act, 2001,⁹³ the Biological Diversity Act, 2002,⁹⁴ the National Green Tribunal Act, 2010,⁹⁵ and the Compensatory Afforestation Fund Act, 2016 were also framed.⁹⁶

The MoEFCC oversees enforcing the regulatory framework related to the environment, biodiversity, forests, wildlife and climate change in India. It lays down the general policy framework on environmental issues. Additionally, the Central Pollution Control Board ("CPCB") is the authority in charge of framing standards and implementing regulations relating to "industrial pollution, waste management, emissions or effluent standards, etc." with the assistance of the each State's respective State Pollution Control Boards ("SPCBs") and the Union Territory Pollution Control Committee ("UTPCCs").⁹⁷

⁸⁵ Article 48A, Constitution of India, 1950. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country, Constitution of India, 1950.

⁸⁶ Article 51A (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures, Constitution of India, 1950.

⁸⁷ <https://www.linkedin.com/pulse/environmental-laws-india-apurva-agarwal/>

⁸⁸ The Environment (Protection) Act, No. 29 of 1986 [May 23, 1986], <https://cpcb.nic.in/displaypdf.php?id=aG9tZS9lcGEvZXByb3RlY3RfYWw0XzE5ODYucGRm> (hereinafter, "EPA 1986").

⁸⁹ The Environment (Protection) Rules, 1986, http://moef.gov.in/wp-content/uploads/2018/03/THE_ENVIRONMENT.pdf.

⁹⁰ Water (Prevention and Control of Pollution) Act, 1974

⁹¹ Air (Prevention and Control of Pollution) Act, 1981

⁹² Wildlife (Protection) Act, 1972

⁹³ Energy Conservation Act, 2001

⁹⁴ Biological Diversity Act, 2002

⁹⁵ National Green Tribunal Act, 2010

⁹⁶ Compensatory Afforestation Fund Act, 2016

⁹⁷ At a glance: enforcement of environmental law in India, available at <https://www.lexology.com/library/detail.aspx?g=ee60c873-1bd3-494e-826c-0619b0438d90>.

Where the CPCB has the power to levy penalties in case of violations, the SPCBs and UTPCCs grant environmental consent to the industries within their jurisdiction and monitor the operations of the industries closely and regularly.⁹⁸

In addition to these resources, the Ministry of Statistics and Programme Implementation published EnviStats reports for 2024, containing Environmental Conditions and Quality,⁹⁹ Environmental Resources and their Use,¹⁰⁰ Residuals,¹⁰¹ Extreme Events and Disasters,¹⁰² Human Settlements and Environmental Health,¹⁰³ and Environmental Protection, Management and Engagement.¹⁰⁴

(i) India's Commitments in FTAs vis-à-vis its Domestic Legal Regime

India's environmental commitments in FTAs can be perceived as reserved or guarded. As stated previously, this arises because of the basic distinction that India dwells on between trade and environmental provisions, enforcement mechanisms, and resource allocation. India actively advocates for the recognition of CBDR-RC principle in the different chapters owing to its position as a developing country. It also seeks supportive measures and softer obligations in the TSD chapter.

In addition to undertaking numerous initiatives towards financing climate adaptation, India is moving towards a rate-based Emissions Trading Scheme (ETS) with the adoption of the Carbon Credit Trading Scheme (CCTS) which will cover nine energy intensive industrial sectors.¹⁰⁵ The CCTS enables the “determination of a price for one tonne of carbon dioxide equivalent emissions, encouraging an obligated entity to factor

⁹⁸ *Ibid.*

⁹⁹ Component 1,

https://www.mospi.gov.in/sites/default/files/reports_and_publication/statistical_publication/EnviStats/ES1_2024_Comp1.pdf.

¹⁰⁰ Component 2,

https://www.mospi.gov.in/sites/default/files/reports_and_publication/statistical_publication/EnviStats/ES1_2024_Comp2.pdf.

¹⁰¹ Component 3,

https://www.mospi.gov.in/sites/default/files/reports_and_publication/statistical_publication/EnviStats/ES1_2024_Comp3.pdf.

¹⁰² Component 4,

https://www.mospi.gov.in/sites/default/files/reports_and_publication/statistical_publication/EnviStats/ES1_2024_Comp4.pdf.

¹⁰³ Component 5,

https://www.mospi.gov.in/sites/default/files/reports_and_publication/statistical_publication/EnviStats/ES1_2024_Comp5.pdf.

¹⁰⁴ Component 6,

https://www.mospi.gov.in/sites/default/files/reports_and_publication/statistical_publication/EnviStats/ES1_2024_Comp6.pdf.

¹⁰⁵ Carbon Pricing in India: Market Mechanisms for Climate Leadership, Press Information Bureau, June 23, 2025, <https://www.pib.gov.in/PressNoteDetails.aspx?id=154721&NoteId=154721&ModuleId=3>

in the cost of a resource that was not priced earlier, thereby incentivising investment in alternative low-emission technologies”.¹⁰⁶ India is developing a voluntary crediting mechanism alongside its ETS targeting at non-ETS sectors like agricultures, afforestation, clean cooking, etc.¹⁰⁷

India has also begun instilling pro-planet choices in individual and community mindsets.¹⁰⁸ A few of these, as noted in the Economic Survey 2023-24 are:

- Using air-conditioners and thermostats at sustainable temperatures;
- Charging individuals for using disposable, single-use plastic bags for errands, and gradually adopting alternative materials;
- Improving attitudes towards reusing water, such as rainwater harvesting;
- Practising sustainable agriculture;
- Offering fiscal incentives for large households.¹⁰⁹

All the commitments that India has undertaken are in line with its domestic environmental regime. The EPA, the Water Act, and Air Act grant the Central Government (and, through State Boards, the State Governments) adequate authority to proactively ensure that environmental standards and measures are adhered to. In fact, the Government has, time and again, issued numerous notifications in pursuance of environmental goals.¹¹⁰

(ii) India’s International Commitments & Performance Review

On 30th June 2008, India drew up its National Action Plan on Climate Change (“NAPCC”).¹¹¹ With 8 submissions, the NAPCC sought to “adapt and magnify ecological sustainability in India’s development path”.¹¹² These submissions are National Solar Mission (NSM), National Mission for Enhanced Energy Efficiency (NMEEE), National Mission on Sustainable Habitat (NMSH), National Water Mission (NWM),

¹⁰⁶ Government of India, *Economic Survey of India 2023-24: Chapter 6 – Climate Change and Energy Transition: Dealing with Trade-Offs*, <https://www.indiabudget.gov.in/economicsurvey/doc/eschapter/echap06.pdf> (hereinafter, “**Chapter 6**”), p. 200.

¹⁰⁷ Carbon Pricing in India: Market Mechanisms for Climate Leadership, Press Information Bureau, June 23, 2025, <https://www.pib.gov.in/PressNoteDetails.aspx?id=154721&NoteId=154721&ModuleId=3>

¹⁰⁸ Government of India, *Economic Survey of India 2023-24: Chapter 13 – Climate Change and India: Why We Must Look at the Problem Through Our Lens*, <https://www.indiabudget.gov.in/economicsurvey/doc/eschapter/echap13.pdf> (hereinafter, “**Chapter 13**”).

¹⁰⁹ *Ibid*, p. 470-71.

¹¹⁰ https://wwfin.awsassets.panda.org/downloads/legal_regulatory_framework.pdf

¹¹¹ National Action Plan on Climate Change (NAPCC), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/dec/doc202112101.pdf>.

¹¹² *Ibid*.

National Mission for Sustaining the Himalayan Ecosystem (NMSHE), National Mission on Strategic Knowledge for Climate Change (NMSKCC), National Mission for a Green India (GIM), and National Mission for Sustainable Agriculture (NMSA). It has been reported that these missions have seen several issues in terms of state-wise implementation of policies concerning water supply and building strategic knowledge, given the income and educational disparity within India.¹¹³ India has been criticised for its inaction towards undertaking climate friendly policies and following through with its commitments at the multilateral level.¹¹⁴ The Global Climate Risk Index 2021 ranked India the 7th most affected nation due to climate change.¹¹⁵ These statistics need to be strongly considered by India following which an objective assessment of India's inability to satisfy these criteria needs to be undertaken. Thereafter, mitigating action can be deployed wherever necessary and expediently.

The Climate Action Tracker is a joint effort of Climate Analytics and New Climate Institute, which measures government climate actions against the globally agreed Paris Agreement aim of “holding warming well below 2°C, and pursuing efforts to limit warming to 1.5°C.”¹¹⁶ As per their country-specific overview of India, India is rated as “Highly Insufficient” in their global efforts to combat climate change.

India holds such a ranking owing to its continued dependence on fossil fuels. India is yet to strategise for the long run in response to changing weather patterns. The data indicated a slightly lower estimate of 2030 emissions owing to the increased renewable energy adoption and reduced power sector emissions. However, India's overall emissions are still expected to rise beyond 2030.¹¹⁷

From 2021 to 2030, India's NDCs under the Paris Agreement have been submitted as follows:¹¹⁸

1. To put forward and further propagate a healthy and sustainable way of living based on traditions and values of conservation and moderation, including through

¹¹³ *Ibid.*

¹¹⁴ The Climate Action Tracker, India, 4 Dec 2023, <https://climateactiontracker.org/countries/india/>.

¹¹⁵ Sonali Sharma, India's Climate Change Policy: Challenges and Recommendations, Indian School of Public Policy (Jan 16, 2023), <https://www.ispp.org.in/indias-climate-change-policy-challenges-and-recommendations/#:~:text=India%20has%20developed%20its%20policy,sustainability%20in%20India's%20development%20path.>

¹¹⁶ The Climate Action Tracker, <https://climateactiontracker.org/about/>; The Climate Action Tracker, India, 4 Dec 2023, <https://climateactiontracker.org/countries/india/>.

¹¹⁷ *Ibid.*

¹¹⁸ India's Updated First Nationally Determined Contribution Under Paris Agreement (2021-2030) - August 2022 Submission to UNFCCC, available at <https://unfccc.int/sites/default/files/NDC/2022-08/India%20Updated%20First%20Nationally%20Determined%20Contrib.pdf>.

a mass movement for 'LIFE'– 'Lifestyle for Environment' as a key to combating climate change.

2. To adopt a climate friendly and a cleaner path than the one followed hitherto by others at corresponding level of economic development.
3. To reduce Emissions Intensity of its Gross Domestic Product ("GDP") by 45 percent by 2030, from 2005 level.
4. To achieve about 50 percent cumulative electric power installed capacity from non-fossil fuel-based energy resources by 2030, with the help of transfer of technology and low-cost international finance including from Green Climate Fund (GCF).
5. To create an additional carbon sink of 2.5 to 3 billion tonnes of CO₂ equivalent through additional forest and tree cover by 2030.
6. To better adapt to climate change by enhancing investments in development programmes in sectors vulnerable to climate change, particularly agriculture, water resources, Himalayan region, coastal regions, health and disaster management.
7. To mobilize domestic and new & additional funds from developed countries to implement the above mitigation and adaptation actions in view of the resource required and the resource gap.
8. To build capacities, create domestic framework and international architecture for quick diffusion of cutting edge climate technology in India and for joint collaborative R&D for such future technologies.

In June 2025, India has reached a major milestone in its energy transition by achieving the NDC goal of 50% of its installed electric power capacity from non-fossil fuel sources; five years ahead of the committed timeline of 2030.¹¹⁹

These targets have been analysed in accordance with India's current GDP growth rate, and it has been contended that India, with the increasing capacity, could have set more ambitious targets in its agenda.¹²⁰

(iii) Priority Sectors for Change

The continued use of fossil fuel has hurt India's climate targets consistently. India has begun making considerable efforts to building better renewable energy resources to meet these demands. It is crucial for this to be taken seriously for India to meet its NDCs, as flagged by several organisations.

¹¹⁹ Ministry of Environment, Forest and Climate Change, Parliament Question: - Nationally Determined Contributions, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2146355>

¹²⁰ The Climate Action Tracker, India, 4 Dec 2023, <https://climateactiontracker.org/countries/india/>.

In its Economic Survey for 2023-24, India dedicated two chapters towards addressing the threat of climate change. In Chapter 6 titled ‘Climate Change and Energy Transition: Dealing with Trade- Offs’,¹²¹ India marks its “mission-mode” towards addressing climate change impact with while keeping growth steady.¹²² India has already increased its solar power capacity and taken numerous steps towards enhancing energy efficiency. In Chapter 13 titled ‘Climate Change and India: Why we must look at the problem through our lens’, the Survey notes that “the global movement on climate change must be accommodative of sovereign choices and economic needs”.¹²³

With India marked as a potentially climate-vulnerable country,¹²⁴ India must consider climate adaptive techniques to conserve its vegetation, biodiversity, and water resources, to name a few.¹²⁵ In that respect, India has introduced the National Innovations on Climate Resilient Agriculture (“**NICRA**”) “to enhance the resilience of Indian agriculture to climate change and climate vulnerability through strategic research and technology demonstration, flood forecasting and early warning system, etc. are some significant initiatives in this direction”,¹²⁶ in addition to a few older schemes also mentioned in the chapter. India has also indicated its willingness to meet green hydrogen targets on the demand and supply ends.¹²⁷ It has also introduced several voluntary rating schemes and programs to keep individuals and industries accountable for their energy use.¹²⁸

India has begun finding ways to finance sustainable development. In that regard, the Government issued sovereign green bonds of approximately ₹16,000 Crore in January-February 2023 “to raise proceeds for public sector projects that would contribute to the efforts to reduce the intensity of the economy's emissions”, followed by ₹20,000 Crore through sovereign green bonds in October-December 2023.¹²⁹

It is hoped that the 2024 Budget released in July 2024, with a specific Climate Change commitment, fosters this realisation towards sustainable development more

¹²¹ Chapter 6, p. 181.

¹²² *Ibid*, p. 183.

¹²³ Chapter 13, p. 476.

¹²⁴ See footnote 23 of Chapter 6: The 10 most affected countries in 2019, Table 1, Page 8, Global Climate Risk Index 2021, <https://www.germanwatch.org/en/19777>.

¹²⁵ Chapter 6, p. 185.

¹²⁶ *Ibid*.

¹²⁷ *Ibid*.

¹²⁸ *Ibid*, p. 191.

¹²⁹ *Ibid*, p. 199.

unambiguously and fervently.¹³⁰ In the budget, India has continued to stand by its sustainable agricultural and farming practices.

(iv) Institutional and Governance Challenges of Undertaking Obligations in FTAs

Institutional challenges in undertaking commitments under an FTA involves India's complex institutional framework for environmental governance. The framework involves multiple ministries and regulators. While the MoEFCC is the line ministry for environment issues, the Ministry of Commerce and Industry is the line ministry for trade issues. The TSD Chapter includes a wide range of thematic provisions which involves multiple other ministries and regulators. Coordination across the various departments is often complex, adding to the challenges in harmonizing trade and environmental goals. Meaningful engagement on trade and environmental sustainability issues in FTAs would require Ministries and regulators to be more in conversation with one another to realise existing commitments under India's domestic laws and increase preparedness for undertaking ambitious obligations in FTAs.

Governance challenges lie in inadequate administrative and technical capacity to implement and monitor FTA obligations. Enhancing capacity to meet the new FTA objectives would be crucial for India to engage with developed country FTA partners. This would involve building expertise and capacity in specific areas such as robust environmental impact assessments and monitoring of sustainable practices. There are also concerns that while industry and other groups are well represented in stakeholder engagements pertaining to the environment, civil society groups need to find greater prominence to articulate their positions on these issues. Such proactive efforts to involve a wider cross section of opinion will only help the government to establish a dialogue on these different matters. However, without developing internal systems to support civil society interaction for FTAs, meaningful engagement of the civil society could involve administrative and resource burden on India.

6. CONCLUSION AND RECOMMENDATIONS

With the increasing recognition within WTO Members of the potential of 'green trade' to contribute to the broader sustainable development agenda, trade and environmental sustainability is at the forefront of discussions at the WTO as well as other international forum. Some WTO Members are engaging on plurilateral initiatives, others are enacting unilateral trade-related environmental measures. The linkage between trade and environment is not only being explored at the multilateral level, but also at bilateral and regional levels. While for the developed countries the incorporation of environmental

¹³⁰ Chapter 13.

issues in FTAs is not a new phenomenon, developing countries have traditionally been less willing to address the linkage in trade agreement negotiations due to the fear of ‘green protectionism’ i.e., use of trade barriers to protect domestic industry from competition under the guise of environmental regulation. Noticeably, developing countries, including India, are evolving in their approach, and progressing towards the inclusion of trade and environment commitments in their PTAs with developed countries.

India, and developing countries in general, have been apprehensive in discussing non-trade areas (such as environment, labour, and gender) within the ambit of the WTO as well as bilateral trade agreements. India’s stance is influenced by its status as a developing country, whose priority lies in achieving economically sustainable trade policies. Environmental sustainability is a corollary of the overall agenda of sustainable development, which includes issues of livelihoods and economic security. The concern of developing countries about ‘green protectionism’ is well-founded as unilateral environment-related trade measures and environmental commitments within trade agreements often reflect the environmental priorities and capabilities of developed countries, which are not always aligned with the developmental needs of developing economies. Additionally, the fear of green protectionism extends to the potential for environmental measures to serve as disguised forms of protectionism, where the real intent is to shield domestic industries from foreign competition rather than to genuinely address environmental concerns.

Much has changed since India first opposed trade and environment linkages in FTAs. Despite the apprehensions regarding the potential of environmental commitments within trade agreements to restrict the policy space, new economic and political realities required India to re-evaluate its stance. India is now actively pursuing multiple FTA negotiations with important and developed trade partners that place significant importance on TSD chapters as part of their trade policy, which has led India to engage more substantively on environmental provisions in FTAs with partners such as the EU and the UK. While India’s older FTAs do not contain environmental commitments, the newer FTAs mark a shift in India’s position. India’s FTAs with Japan and UAE were the initial FTAs wherein India has undertaken environmental commitments. The “Trade and Environment” Chapter of the recently concluded India-UK CETA and the proposed “Trade and Sustainable Development” under the ongoing India-EU FTA negotiations contain detailed environmental commitments.

Furthermore, India’s domestic regime is showing a newfound commitment towards expanding climate-change related actions as well as undertaking requisite changes in sensitive areas through dedicated schemes, financing, and other initiatives. India’s

Economic Survey of 2023-24 promises not only to honour necessary commitments towards a multilateral effort, but also to instil within its domestic framework a drive to undertaking more sustainable efforts while maintaining a growth mindset.

The inclusion of environmental provisions in FTAs is a new development in India's stance on linking trade and environmental sustainability issues, and therefore, it is crucial that the negotiations on these issues allows India to have enough policy space to adopt practices that contribute to environmental sustainability without undermining its ability to develop competitive domestic industry. India needs to carefully negotiate environmental provisions in FTAs so that India's ability to participate in global trade on equal terms does not get hampered. While negotiating with developed countries, India will need to be offensive regarding the necessary support from these countries, such as financial assistance, technology transfer, and capacity building, as this approach would enable India to comply with the environmental commitments undertaken in the FTAs and mitigate the risks of green protectionism.

Following are some recommendations to help India strengthen its position in FTA negotiations, and ward off the possibility of FTA commitments being used as a disguised form of protectionism.

1. ***Finding a rational balance between progressing TSD reform while retaining adequate policy space:*** India's recently concluded FTA with the UK and the ongoing FTA with the EU contain provisions on a number of thematic areas relating to environment such as clean energy, circular economy, air quality, protection of the marine environment, biodiversity, fisheries, and sustainable forest management, among others. Going forward, India should aim to keep the list of thematic areas as concise as possible in order to preserve its policy space in these areas. India's approach should be to prioritise the thematic areas to recognition-based and cooperation-based provisions, without imposing any binding commitments. In areas where India has domestic sensitivities, endeavour-based commitments should be the maximum extent of obligations India should undertake. India should ensure that its commitments, while bringing greater ambition and transparency to TSD-related goals for both India and its FTA partner, does not create trade barriers that impede developmental priorities.
2. ***Mirroring the principles of the MEAs in the FTA text:*** The principles of equity and CBDR-RC, in the light of different national circumstances, are the foundational principles of the international environmental regime. The principle of 'CBDR-RC' recognises the differential share of developed and

developing countries to global greenhouse gas emissions. The principle of 'respective capabilities' recognises the different socio-economic status of parties. CBDR-RC should be fundamental to any discussion on climate change, especially in the context of trade agreements; the reason being that environment or climate change is not seen as a core trade issue but rather as a 'trade and' issue.

Further, the UNFCCC also requires that measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Similarly, the Rio Declaration also prohibits use of environment related trade policy measures as a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Additionally, the NDCs under the Paris Agreement promote regulatory heterogeneity and provide ample regulatory space to the parties to choose climate change policies. If developing countries are being expected to undertake environment-related commitments within the context of trade agreements, it is only fair that the foundational principles of the MEAs are reflected in the FTA text so as to acknowledge the special situation of developing countries. This is crucial to enable developing countries meet their developmental needs without being unfairly penalised for the associated emissions.

3. ***Incorporating provision on targeted support to developing countries for climate action:*** Support from high-income countries, in the form of finance, technology transfer, and capacity building, is a crucial pillar of the MEAs. These elements are essential for enabling the developing countries to fulfill the obligations under the MEAs. The UNFCCC provides that the extent to which developing countries will effectively implement their commitments under the Convention will depend on the effective implementation by developed countries of their commitments under the Convention related to financial resources and transfer of technology.¹³¹ Similarly, the Paris Agreement and the Kyoto Protocol to the UNFCCC also impose obligation on developed countries to provide targeted support.

In reality, developed countries are far from meeting their obligations under the MEAs. The first global stocktake under the Paris Agreement published in 2023

¹³¹ Article 4(7) of the UNFCCC.

revealed that the goal of developed country Parties to mobilise jointly USD 100 billion per year by 2020¹³² was not met in 2021, and therefore developed countries have been urged to fully deliver, with urgency, on the USD 100 billion per year goal through to 2025, noting the significant role of public funds.¹³³ It was also emphasized that scaling up new and additional grant-based, highly concessional finance, and non-debt instruments remains critical for supporting developing countries, particularly in facilitating a just and equitable transition. The critical issue of finance was also discussed at the recent 26th United Nations Climate Change Conference (commonly referred to as “**COP**”) and is one of the tangible outcomes achieved by COP26. Governments at COP26 agreed on the need for much greater support to developing countries.¹³⁴

While developing countries are expected to undertake binding commitments to effectively implement the MEAs, there is a clear deficiency on the part of developed countries to effectively implement their support-related obligations under the MEAs. India should, through a detailed provision on supportive measures from developed country partners, seek to address this disparity. The varied position and capacity of developing countries should be acknowledged through a policy of targeted support. This would potentially entail an obligation upon the developed country partner to facilitate technology transfer and deployment, provide technical assistance, capacity building and extend financial assistance to India, in order to enable it to comply with the ambitious environmental commitments included in the FTAs.

4. ***Creation of sovereign funds for technology transfer:*** Climate change mitigation requires technology-intensive solutions, and access to clean/green technologies such as technologies employing alternative energy sources, recycling and waste technologies, etc. is a key factor in effectively addressing the global challenge of climate change.¹³⁵ The UNFCCC and its Kyoto Protocol introduced market-

¹³² At COP15, developed countries committed to mobilise USD 100 billion per year by 2020 to support climate action in developing countries, which was extended from 2020 through to 2025 at COP21 and the developed countries were also asked to balance climate finance for mitigation and adaptation. This included finance from both public and private, bilateral and multilateral and alternative sources.

¹³³ Outcome of the first global stocktake, Draft decision -/CMA.5, (13 December, 2023), Available at https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf

¹³⁴ 4 Key Achievements of COP26, UNFCCC Platform, Available at <https://unfccc.int/news/4-key-achievements-of-cop26>

¹³⁵ Hall, Bronwyn H., and Christian Helmers. *The role of patent protection in (clean/green) technology transfer*. No. w16323. National Bureau of Economic Research, 2010. Available at <https://www.nber.org/papers/w16323>

based interventions designed to promote technology transfer between developing and developed countries (Annex 1 countries).¹³⁶ Despite this, there is an observed technological divide between developed country firms who are owners of the most advanced technologies and developing country actors seeking access to those technologies.¹³⁷ The Global South does not have access to the same technological resources of the Global North. Thus, transfer of technology is an important policy goal for developing countries for whom acquisition and diffusion of green technologies can allow them to catch up with the developed economies.

Developing countries and least-developed countries (“LDCs”) face obstacles not only in terms of acquiring adequate access to green technologies required to tackle climate change, but also in safely deploying them in a manner that makes sense for their region. While green technologies are concentrated in developed countries, there remain unrealistic expectations from developing countries regarding the environmental sustainability targets that they have to meet. India, departing from its traditional stance to include non-trade issues like environmental provisions in trade agreements, is now including environmental provisions in its FTAs with developed economies to secure market access in these economies.¹³⁸ In these FTAs, India is being expected to undertake binding commitments on effective enforcement of MEAs. However, such expectations are not accompanied by the necessary support for developing countries in the form of climate finance, technology transfer, and capacity building – obligations on developed countries that stem from the MEAs.

A study looking at patenting by foreign companies as a measure of technology transfer in green technologies suggests that most technology exchange is occurring between Organisation for Economic Co-operation and Development (“OECD”) countries.¹³⁹ Climate-mitigation technology flows to non-OECD

¹³⁶ Annex 1 countries are developed countries and countries in transition, including the members of the European Union, Iceland, Norway, Switzerland, Canada, Australia, New Zealand, Japan, the U.S., Turkey, Belarus, Ukraine, and the Russian Federation.

¹³⁷ Kowalski, P., D. Rabaioli and S. Vallejo (2017-11-20), “International Technology Transfer measures in an interconnected world: Lessons and policy implications”, *OECD Trade Policy Papers*, No. 206, OECD Publishing, Paris. Available at <http://dx.doi.org/10.1787/ada51ec0-en>

¹³⁸ Gupta, Anshuman. “Trade and Environment: Tracking Environmental Provisions in Regional Trading Agreements (RTAs) to Make Appropriate Indian Stance.” Available at <https://www.ris.org.in/sites/default/files/Publication/DP-292-Anshuman.pdf>

¹³⁹ Dechezleprêtre, A., 2011. Invention and transfer of climate change mitigation technologies: a global analysis. *Review of Environmental Economics and Policy*, 5(1), pp.109–130. Available at <https://www.journals.uchicago.edu/doi/full/10.1093/reep/req023>

countries mostly concern fast-growing economies, in particular, China.¹⁴⁰ Although much of the technology is developed, held and managed by private actors, governments can play a role in influencing transfer of technology. Technology transfer can be encouraged through the creation of North-South “sovereign funds for technology transfer”. Such a *sovereign fund* would be owned by the government, with the government as the main facilitator of technology and knowledge diffusion.¹⁴¹ A sovereign fund, focused on transfer of knowledge and technology, can play a crucial role in bridging the technology gap between developed and developing countries by facilitating the acquisition, development, and dissemination of innovative technologies.¹⁴² Such a fund can prioritize investments in climate technologies, and enable developing countries to implement green solutions.

India’s climate actions have so far been largely financed from domestic resources.¹⁴³ It should also target generation of additional global financial resources as well as transfer of technology as committed under UNFCCC and the Paris Agreement. As India is negotiating FTAs with developed country partners, one of India’s offensive asks should be the creation of sovereign fund for transfer of knowledge and technology in order to enable India to undertake the ambitious obligations being proposed in the TSD Chapter in FTAs.

5. **Leveraging FTA to target unilateral trade measures:** Recent trends show countries adopting numerous trade measures to advance environmental objectives. These include measures for de-carbonisation, circularity, waste management, and deforestation, among others. Environment-related trade measures might be trade restrictive or discriminatory, depending on their design and the manner of implementation. Among India’s FTA partners, the EU’s approach is particularly notable as it has come up with a wide range of environmental sustainability-oriented trade measures, such as the CBAM, the Renewable Energy Directive (RED), and the Regulation on Deforestation-Free Products (EUDR). The UK is also following suit and coming with regulations similar to

¹⁴⁰ Ibid.

¹⁴¹ Cornell University, INSEAD, and WIPO (2020). *The Global Innovation Index 2020: Who Will Finance Innovation?* Ithaca, Fontainebleau, and Geneva. Available at https://www.researchgate.net/profile/Sacha-Wunsch-Vincent/publication/359222025_The_Global_Index_2020_-_Who_Will_Finance_Innovation/links/622f90a17d417d7842ea4d94/The-Global-Index-2020-Who-Will-Finance-Innovation.pdf#page=138

¹⁴² Wealth, S. N. S. S. (2017). From Financialization to Vulture Developmentalism. *The Oxford Handbook of Sovereign Wealth Funds*, 87. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2836450

¹⁴³ Framework for Sovereign Green Bonds Government of India. Available at <https://dea.gov.in/sites/default/files/Framework%20for%20Sovereign%20Green%20Bonds.pdf>

the EU CBAM and deforestation regulation. These measures have extraterritorial implications, and would potentially hamper the exports of developing countries, including India, which are major exporters of products under the ambit of these regulations. Such measures have the potential to disrupt the balance and mutual benefits achieved under the FTAs. As per reports, CBAM will lead to nullification of benefits to India under the India-UK FTA.¹⁴⁴ Under the FTA, while UK products will get duty-free access to Indian markets, Indian products will be subjected to additional outgo, equivalent to tariffs, owing to CBAM.¹⁴⁵ Going forward, it will be crucial for India to incorporate language in the FTA text targeting the trend of using protectionist environmental measures. This could include securing carve-outs or exemption clauses, or negotiating rebalancing or retaliation mechanisms in cases where such measures adversely impact India's exports.

6. ***Response to CBAM-like policies in FTAs:*** The FTA could include provisions that mandate the creation of a dedicated bilateral funding mechanism, financed through the additional taxes collected from the implementation of carbon pricing mechanisms by the FTA partner country. This fund could be used to support technology transfer from the partner country to India i.e., the monies from the taxes collected can be accessed by Indian firms (in the form of zero duty loans or grants) to license green technology. This approach also aligns with the UNFCCC and the Paris Agreement which encourage developed countries to support developing countries in building technological capacity.

Furthermore, the differentiated carbon pricing levels between developed and developing countries should be explicitly acknowledged. To address the trade-restrictive effects of CBAM-like policies, the FTA should incorporate language that takes into account the typically lower per unit price of carbon in developing countries and acknowledges the absolute value of carbon mitigation. For example, India's performance in renewable energy expansion and energy intensity reduction¹⁴⁶ can be recognised as legitimate mitigation contributions, even in the absence of explicit high-price carbon taxes.

¹⁴⁴ Labour party takes charge-Fate of India-UK FTA, GTRI Report 48 (July 5, 2024) <https://gtri.co.in/gtriFlagshipReportsd.asp?ID=48>

¹⁴⁵ Mobility issues, carbon tax exemption, and visas key issues in trade talks between India and the UK, LiveMint (April 19, 2024) <https://www.livemint.com/economy/mobility-issues-carbon-tax-exemption-and-visas-key-issues-in-trade-talks-between-india-and-the-uk-11713524639996.html>

¹⁴⁶ PIB Delhi, India's renewable energy capacity achieves historic growth in FY 2024-25. (April 10, 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2120729> (accessed 15 Jul. 2025); Research Unit PIB, India's Green Leap: A Shift from Fossil Fuels to Clean Energy. (November 4, 2024)

7. ***Enhancing systematic engagement on unilateral environmental measures that may function as non-tariff barriers:*** A majority of the unilateral environmental measures are Non-Product-Related Process and Production Methods (NPR-PPMs), which can function as Non-Tariff Barriers (NTBs) disrupting trade flows without valid justification under the WTO TBT Agreement. In the case of the EU, most of the measures under the EU Green Deal have not been notified to the WTO TBT Committee, thereby depriving Members of the opportunity to engage through existing multilateral mechanisms. India could consider, through the TBT Chapter of its FTAs, encouraging routine and timely notification of new environmental measures by Members to the WTO TBT Committee, particularly those likely to substantially impact India's exports. Bilateral consultations mechanism, prior to any unilateral regulation affecting exports, could also be built into the FTA. In parallel, India could pursue bilateral "implementation arrangements" with key trading partners to address technical and procedural aspects of these measures at a granular level. Such arrangements can facilitate dialogue among regulators, industry stakeholders, and policymakers to ensure smoother implementation and to safeguard India's market access from being adversely affected by unilateral environmental measures.

8. ***Excluding environmental commitments from the applicability of dispute settlement mechanism of the FTA:*** It would be beneficial for India to exclude the TSD Chapter from the FTA dispute settlement mechanism. With developed country partners like the EU and the UK, there are heightened apprehensions that they might resort to the FTA dispute settlement mechanism, which would place an undue burden on India. The EU's roadmap to strengthen the EU and partner countries' commitments towards TSD in their trade agreements warrants special attention.¹⁴⁷ The Commission aims to strengthen the enforcement of sustainability commitments, with plans to extend the standard state-to-state dispute settlement compliance phase to the TSD chapter, including the possibility to resort to, as a last resort, the use of trade sanctions against partners for material breaches of the Paris Agreement on Climate Change. Although the option to impose trade sanctions is to be sought as a last resort, there is considerable concern about their ultimate utility. Furthermore, the TSD Chapter in the recently concluded India-EFTA TEPA represents India's

<https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/nov/doc2024114428801.pdf> (accessed 15 Jul. 2025).

¹⁴⁷ European Commission's Communication to Strengthen Trade and Sustainable Development in Trade Agreements (EC Communication dated 22.06.2022), <https://circabc.europa.eu/ui/group/8a31feb6-d901-421f-a607-ebbdd7d59ca0/library/8c5821b3-2b18-43a1-b791-2df56b673900/details>

most ambitious stance on trade and environment to date, and it is explicitly kept out of the FTA dispute settlement process.

9. *Multi-tiered consultations mechanism within environment chapters in FTAs:* The India–EFTA TEPA and the India-UK CETA establish forward-looking and structured consultation mechanisms designed to address sustainability-related concerns through cooperation rather than conflict. Such a mechanism comprises a multi-tiered process, starting with government-to-government consultations that are prompt, non-adversarial, and aimed at resolving differences in good faith. It offers a balanced, development-sensitive model for resolving sustainability issues in FTAs, especially where binding enforcement or sanctions may be counterproductive. It reflects a modern approach rooted in procedural safeguards, inclusive participation, and institutional flexibility, making it particularly suitable for issues like climate action and labour rights. Going forward, India can seek to replicate this model in the sustainability chapters of other FTAs. It will allow parties to address complex, cross-sectoral sustainability challenges through cooperative compliance, capacity-building, and knowledge exchange, while maintaining alignment with international environmental agreements. It strengthens institutional trust and supports the broader objective of embedding sustainability into trade governance in a way that is fair, forward-looking, and implementable.

10. *Investment guarantee:* Building on the India–EFTA TEPA investment framework, India, in its ongoing and future FTAs, could consider proposing a more structured model that anchors TSD objectives to binding, performance-linked investment guarantees in green technologies. While TEPA includes a USD 100 billion investment facilitation pledge, future FTAs can strengthen this by directing guaranteed investments toward sectors like green hydrogen, solar PV, battery storage, grid modernisation, and circular economy infrastructure. This model ensures predictable capital flows and addresses critical capacity gaps, including limited access to climate finance, nascent green technology ecosystems, and underdeveloped green supply chains. Paired with technology transfer, skill development, and R&D collaboration, it supports domestic capability building. Importantly, it offers a balanced approach, aligning industrial growth with climate goals. Unlike compliance-heavy TSD chapters, it links sustainability to mutual economic gain, enabling developing countries to pursue structural transformation while meeting global climate commitments.

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ABOUT CRIT

India's Foreign Trade Policy (FTP) Statement 2015-20 suggested a need to create an institution at the global level that can provide a counter-narrative on key trade and investment issues from the perspective of developing countries like India. To fill this vacuum, a new institute, namely the Centre for Research on International Trade (CRIT), was set up in 2016. The vision and the objective of the CRIT were to significantly deepen existing research capabilities and widen them to encompass new and specialised areas amidst the growing complexity of the process of globalization and its spill-over effects in domestic policymaking. Secondly, enhancing the capacity of government officers and other stakeholders in India and other developing countries to deepen their understanding of trade and investment agreements.

ABOUT CWS

The Centre for WTO Studies (CWS) which is a constituent Centre of CRIT, pre-dates the CRIT since it was created in 1999 to be a permanent repository of WTO negotiations-related knowledge and documentation. Over the years, the Centre has conducted a robust research program with a series of papers in all spheres of interest at the WTO. It has been regularly called upon by the Government of India to undertake research and provide independent analytical inputs to help it develop positions in its various trade negotiations, both at the WTO and other forums such as Free and Preferential Trade Agreements and Comprehensive Economic Cooperation Agreements. Additionally, the Centre has been actively interfacing with industry and Government units as well as other stakeholders through its Outreach and capacity-building programs by organizing seminars, workshops, subject-specific meetings, etc. The Centre thus also acts as a platform for consensus-building between stakeholders and policymakers. Furthermore, the inputs of the Centre have been sought after by various international institutions to conduct training and studies.

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