

In 2022, the **IUCN World Commission on Environmental Law (WCEL)** created the Plastic Pollution Task Force to provide insights and support to the Treaty negotiation process. The following is one of a series of ten targeted legal briefs that are part of the present IUCN Submission for the third Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment.

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*These are updated briefings of the INC-1 and INC-1 submissions, please note, and are considered version 3 – for submission to INC-3 as annexes for Forms A and B from IUCN. Further information can be found on <https://www.iucn.org/incplastics> - or by searching <https://www.iucn.org/search?key=plastics>.*

**BRIEFING 10 of 10: Free Trade Agreement Convergence and the Plastic Pollution Treaty**

**IUCN WCEL BRIEFING FOR NEGOTIATORS  
International Legally Binding Instrument INC-3 Session  
Free Trade Agreement Convergence and the Plastic Pollution Treaty**

**Key messages:**

The envisaged scope of the Plastic Pollution Treaty, as articulated by United Nations Environment Assembly (UNEA) resolution 5/14, includes all aspects of product design and use, the circular economy and elements of the plastic life-cycle as vital elements for addressing plastic pollution and production. As recognized in UNEA Resolution 5/14 and discussed more fully in the IUCN WCEL Briefing for Negotiators on Regime Convergence, the creation and implementation of the International Legally Binding Instrument (IBLI) will involve connections across multiple fields of law and policy. Following INC-1 and INC-2, it is clear that a number of suggestions for the IBLI – including the regulation of the plastics life-cycle, encouragement of alternatives and substitutes, mandatory reporting of certain chemicals and polymers in plastic products and labelling of plastics products – will connect to international trade law. While much of the discussions on these connections has focused on ensuring compliance with World Trade Organization (WTO) laws and practice, this briefing addresses the relationships between Regional Trade Agreements and Free Trade Agreements (collectively, FTAs) since such agreements are often the site of significant legal advancements in environment, labour, intellectual property and related laws and rules.

These relationships will be critical for negotiating the IBLI in a way that facilitates trade law commitments, ending plastic pollution, addressing environmental impacts of plastic pollution, incorporating just transitions, protecting human health, ensuring the viability of intellectual property law systems, and generating sustainable innovations in design, use and management

of plastic products. As the briefing emphasizes, there are areas of intersection between FTAs and many aspects of the IBLI but this can be seen as a complementary system rather than a source of competition or concern. Whether through providing areas in which the regulation of plastic pollution can be coordinated in a way that does not impede trade or reinforcing commitments to human rights, just transitions, sustainable development and environmental commitments that connect to the IBLI or ensuring that activities such as the disclosure of certain elements of plastics comply with intellectual property requirements and labelling protections, FTAs represent an important consideration in creating coherence with the IBLI and existing international legal regimes.

## 1. Relevant FTA Preamble Elements

The specific inclusion of environmental protection, conservation, and legal regimes relating to the environment are staple elements of many FTAs, as are statements regarding the interconnected nature of trade law and environmental commitments at the international and national levels.<sup>1</sup> Some FTAs also reference the need to address climate change, marine protection and fisheries as unifying elements for trade and environmental practice.<sup>2</sup>

Many FTAs, particularly more recent agreements, feature preamble statements regarding the commitment of State Parties to the fundamental rights of workers, their need for protection, and cooperation between State Parties in the field of labour issues.<sup>3</sup> Often these statements are linked to endorsement of the agreement as a means to increase employment opportunities and standards, as well as standards of living within the State Parties *per se*. Inclusion of references to the work of the International Labour Organization (ILO) and ILO conventions in preambles is another method of linking trade and labour concerns in the FTA context.<sup>4</sup>

Referencing, and reiterating the role of, human rights and trade agreements and the Universal Declaration of Human Rights is a common practice in FTA preambles.<sup>5</sup> Similarly, FTAs often include preamble language that includes international human rights law generally, and in some instances references to regional human rights law regimes are included as well.

Many FTAs contain references to the promotion and inclusion of sustainable development as a general matter<sup>6</sup> and often specifically include the Sustainable Development Goals (SDGs). Additionally, some FTAs containing references to sustainable development also link directly to international or regional treaties, including MEAs, and collaboration with international

<sup>1</sup> For direct links to the RTAs and FTAs discussed in this brief, see World Trade Organization, Regional Trade Agreements, <[https://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](https://www.wto.org/english/tratop_e/region_e/region_e.htm)>, accessed 13 August 2023. Korea Canada FTA; Korea US FTA; Korea EFTA RTA; New Zealand Taiwan FTA; EU, Colombia and Peru RTA; EU UK FTA; UK Georgia FTA; UK Turkey FTA; UK Ukraine FTA; EFTA Central America RTA; EFTA Hong Kong RTA; EFTA Indonesia RTA; EFTA Philippines RTA; EFTA Ukraine RTA; Korea Peru FTA; Japan Peru FTA; EFTA Montenegro RTA; New Zealand Korea FTA; EU Moldova FTA; CETA; EU Singapore FTA; EU Vietnam FTA; PACER; USMCA; CPTPP; Canada Ukraine FTA; Canada Honduras FTA; Canada Korea FTA; Canada Jordan FTA; Canada Panama FTA; US Panama FTA; US Colombia FTA; Canada Colombia FTA; Canada Costa Rica FTA; Canada Israel FTA; Singapore New Zealand FTA; CAFTA – DR; US Morocco FTA.

<sup>2</sup> See EU UK FTA; UK Georgia FTA; UK Turkey FTA; UK, Iceland, Norway and Liechtenstein RTA; EU Central America RTA.

<sup>3</sup> See Korea Canada FTA; Korea EU FTA; Korea US FTA; USMCA; CPTPP; Canada Ukraine FTA; Canada Honduras FTA; Canada Jordan FTA; Canada Panama FTA; US Panama FTA; Canada Colombia FTA; Canada Israel FTA; CAFTA-DR.

<sup>4</sup> CARIFORUM UK RTA; Bosnia and Herzegovina EFTA FTA; EFTA GCC RTA; EFTA Georgia FTA; EFTA Hong Kong FTA; EFTA Indonesia RTA; EFTA Philippines RTA; EFTA Ukraine RTA; UK, Iceland, Norway and Liechtenstein RTA; CETA; Korea US FTA.

<sup>5</sup> Korea EFTA RTA; Bosnia and Herzegovina EFTA FTA; UK Georgia FTA; UK Ukraine FTA; EFTA Georgia RTA; EFTA Hong Kong RTA; EFTA Indonesia RTA; EFTA Philippines RTA; EFTA Ukraine RTA; UK, Iceland, Norway and Liechtenstein RTA; EU Central America RTA; Korea US FTA; Canada Korea FTA; Canada Jordan FTA; Canada Panama FTA.

<sup>6</sup> Korea Canada FTA; CARIFORUM UK FTA; Turkey Denmark FTA; EU Pacific States RTA; EU, Colombia and Peru RTA; UK Georgia FTA; UK Ghana FTA; UK Japan FTA; UK Moldova FTA; EFTA Central America RTA; EFTA GCC RTA; EFTA Georgia RTA; EFTA Montenegro RTA; EFTA Hong Kong RTA; Korea EU FTA; Iceland China FTA; UK Kenya FTA; UK Pacific States RTA; NZ Korea FTA; EU Central America RTA; EU Moldova FTA; CETA; EU Singapore FTA; PACER; Indonesia Australia FTA; Canada Ukraine FTA; Korea China FTA; Canada Honduras FTA; Canada Korea FTA; Hong Kong Chile FTA; Canada Jordan FTA; Canada Panama FTA; Canada Colombia FTA; Canada Costa Rica FTA

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organizations.<sup>7</sup> The incorporation of sustainable development into the economic development practices of the State Parties and connections between aspects of human rights protections, labour practices, environmental protection and conservation and sustainable development are areas of particular focus.

A smaller number of FTAs contain preamble text recognizing the connection between development and Indigenous and traditional knowledge preservation, protection and fair compensation.<sup>8</sup> Taken together, the preambles of FTAs offer support for many elements of the ILBI and its enforcement, providing support for the understanding that FTAs and the ILBI can be reinforcing in their convergence.

## 2. Free Trade Agreements Referencing Multilateral Environmental Agreements

An increasing trend in FTAs has been explicit reference to, and provisions governing, the nexuses between trade and State Party commitments under MEAs. While there are multiple forms to these commitments, overall the use of these references stresses that potential sources of tension between trade agreements and the ILBI can be mitigated. In some instances, the language used in these provisions includes references to compliance with the terms of specific MEAs without reference to the interactions between future MEAs and the free trade agreement regime.<sup>9</sup> In other examples, the treaty language used includes an express list of MEAs to which the States Parties have obligations yet note that this list can be amended with the agreement of all Parties.<sup>10</sup> In these instances, there is space for the inclusion of the Plastic Pollution Treaty on the list of included treaties in the future. Generally referencing specific MEAs, efforts to be inclusive have included explicit statements regarding the inclusion of annexes, amendments, protocols and other related aspects of MEA practice as with the ambit of the covered definition of the MEAs themselves.

Further, other FTAs have opted to avoid the use of references to specific MEA regimes, instead recognizing that State Parties also have international and national legal obligations under MEAs to which they are parties. As the Korea-Australia FTA makes clear, “the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements and international trade agreements to which both are party,” while also requiring that “the Parties shall consult, as appropriate, with respect to negotiations on trade related environmental issues of mutual interest.”<sup>11</sup> Relatedly, the CPTPP provides that “the Parties emphasise the need to enhance the mutual supportiveness between trade and environmental law and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly with respect to the negotiation and implementation of relevant multilateral environmental agreements and trade agreements.”<sup>12</sup>

Some FTAs have made express reference to the connection between their MEA commitments and their labour commitments under various ILO conventions. In this context, language used references commitments made by the State Parties respectively, though it is generally unclear from the text whether this is an ongoing commitment or only extends to commitments in place at the time of FTA ratification. For example, the EU Singapore FTA expressly includes references to the UNFCCC, Kyoto Protocol and the Paris Agreement as a shared commitment. Similarly, the EU Vietnam FTA contains provisions specifically relating the application and

<sup>7</sup> See UK Turkey FTA; EFTA Central America RTA; UK Southern and Eastern African States RTA; EU Central America RTA.

<sup>8</sup> Canada Korea FTA; USMCA; Canada Jordan FTA; CPTPP; Singapore New Zealand FTA.

<sup>9</sup> See Canada Korea FTA; Korea US FTA; USMCA; Canada Ukraine FTA; Canada Honduras FTA; Canada Jordan FTA; Canada Panama FTA; Canada Chile FTA; Chile Central America RTA.

<sup>10</sup> US Panama FTA; US Colombia FTA.

<sup>11</sup> Korea-Australia FTA; see also EU Singapore FTA; EU Vietnam FTA; Peru Australia FTA; CPTPP.

<sup>12</sup> CPTPP; see also Korea US FTA.

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sharing of best practices regarding the UNFCCC system, the CBD system, and CITES. More generally, this FTA also contains provisions encouraging conservation of biological diversity, the sustainable use of biodiversity, and measures to address agriculture.

### 3. FTAs with Dedicated Human Rights Provisions

As a fundamental matter, some FTAs incorporate human rights and related issues, whether as legally binding principles or as dedicated topics of provisions within the agreement. It should also be noted that many FTAs follow the terms of GATT Article XX regarding allowable exceptions to their provisions in the event of legitimate concerns for public safety, health and the environment. Additionally, these FTAs tend to contain provisions in which States commit not to use trade arguments as a rationale for lowering health, environmental and labour law protections. Thus, these provisions can be linked to many aspects of the expected terms of the ILBI as well as the human rights associated elements of them.

#### *Indigenous Communities and Traditional Knowledge*

Increasingly, FTAs across multiple jurisdictions have included provisions relating to Indigenous communities and the role of traditional knowledge in trade as part of human rights considerations. Where all State Parties to an FTA have strong Indigenous community presence and governance engagement, these agreements often stress the ability of communities to work with each other as well as through the governments of their respective States.<sup>13</sup> In this capacity, the treaty terms stress that collaboration is intended to foster information sharing and collaboration in the economic and non-economic spheres, including biodiversity preservation as well as traditional knowledge.

Indigenous and traditional knowledge has also been linked to biodiversity and the CBD, especially Article 8(j), in some FTAs. These FTAs tend to emphasise the connections between such issues and trade as well as being freestanding international legal obligations of the State Parties.<sup>14</sup> Links are also established between the application of these FTA provisions and access and benefit sharing for genetic resources, conservation efforts regarding biodiversity and the sustainable use of biodiversity. Additional connections have been made between compliance with TRIPs and the protection of Indigenous and traditional knowledge as elements of these FTAs.

#### *Gender and Women's Rights*

While it is not uncommon for FTAs to contain provisions against discrimination *per se*, some have extended this to include dedicated articles and chapters relating to gender rights. Through such provisions, these FTAs seek to end multiple forms of legal, regulatory and societal inequalities in women's ability to enter into commercial and trade-related activities, limited their employment and professional opportunities, and restricted their business participation opportunities.<sup>15</sup>

#### *Rights of the Child*

Efforts to protect children in FTAs can be seen to exist broadly in the sense of State Parties agreeing to incorporate international labour laws and standards because these include prohibitions on certain types of child labour and protections for working children. Additionally, there is some precedent for the inclusion of international laws on the rights of the child,

<sup>13</sup> See New Zealand Taiwan FTA Ch 19, arts 1 & 2.

<sup>14</sup> EU, Colombia and Peru RTA Ch 2, art 201; UK Ukraine FTA art 219; Korea Peru FTA art 17.5; EU Ukraine FTA 229.

<sup>15</sup> COMESA Ch 24; Canada Israel FTA Ch 13.

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including for social and economic contexts as well as trade and labour related practices.

#### 4. FTAs with Labelling and Packaging Restrictions

Following INC-1 and INC-2, it has become clear that one of the areas of nexus between potential ILBI provisions and international trade law is that of imposing labelling and packaging requirements for plastics and plastics containing products. With this in mind, it should be highlighted that many FTAs have expanded to include marketing and labelling provisions that seek to ensure compliance with the WTO TBT Agreement and ensure that labelling and packaging does not constitute a practical barrier to trade.<sup>16</sup>

#### 5. FTAs with Investment and Environment Provisions

In recent years, FTAs have consistently expanded in scope to include provisions, and often dedicated chapters, on investment as well as strictly trade measures. At the same time, these investment provisions tend to include elements on investment and environment which uniformly enshrine the principle that State Parties should not derogate from their laws relating to environment, health and safety.<sup>17</sup> Given the need for public and private investment as part of the ILBI, these intersections across the FTA and ILBI provisions are vital.

#### 6. FTAs with Relevant Intellectual Property Provisions

FTA provisions relating to intellectual property protection tend to be framed within the setting of regime convergence in relation to WIPO and associated treaty regimes that relate to many aspects of products, trade and services. In keeping with commitments at the WTO level and within the confines of the WIPO related treaties, FTAs tend to contain provisions requiring the extension of national treatment in all aspects of intellectual property. Based on the discussions at INC-1 and INC-2 regarding the need for plastics and plastic-related product composition disclosure for at least some elements under the ILBI, these intersections will be important to ensuring the continued viability of the FTAs and the ILBI system.

##### *Patents*

Of note in the context of efforts to potentially require disclosure of certain aspects of chemical, polymer and other plastics and plastic-containing product contents as part of the IBLI are the connections between the FTA provisions on intellectual property that incorporate the Patent Cooperation Treaty and the Patent Law Treaty. While one of the key points for the FTAs containing provisions on intellectual property is the idea of patent eligibility regardless of nationality, these allowances are not absolute. In the context of the IBLI discussions, it is notable that exceptions typically exist for patent applications where there is a threat to human, animal or plant health or to the environment generally as a result of the proposed patent.<sup>18</sup>

At the same time, provisions in these FTAs tend to contain expanded protections for those seeking to market certain classes of products in the pharmaceutical and agricultural chemicals

<sup>16</sup> EU, Colombia and Peru RTA; EU Armenia FTA art 131; UK Georgia FTA art 48; UK Ukraine FTA art 56; EEU Vietnam RTA art 6.6; EU Central America FTA art 138; EU Ukraine FTA art 58; EU Moldova FTA art 175; EU Georgia FTA art 49; EU Vietnam FTA art 5.9.

<sup>17</sup> Korea Canada FTA art 8.10; New Zealand Taiwan FTA Ch 12, Sect A, art 16; EFTA Philippines RTA Ch 7, art 7.1; New Zealand Korea FTA art 10.13; Korea Chile FTA Pt III, Ch 10, art 10.18; PACER Art 19; Indonesia Australia FTA art 14.16; USMCA art 14.16; Peru Australia FTA arts 8.16, 8.18; CPTPP art 9.16; Canada Korea FTA art 8.10; Canada Panama FTA art 9.16; US Panama FTA art 10.11; US Colombia FTA art 10.11; Korea US FTA Art 11.10; Canada Colombia FTA art 9.16; Australia US FTA art 11.11; Colombia Costa Rica FTA art 12.8; CAFTA-DR art 10.11; US Morocco FTA art 10.10.

<sup>18</sup> Korea US FTA art 18.8; EU Korea FTA art 20.36; Hong Kong Georgia FTA art 8.  
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context. These provisions ensure that domestic producers or others with access to the required marketing disclosures not use them in a way that would cause damage to the rights holder.<sup>19</sup> Considering the discussions surrounding content disclosure requirements for chemicals, polymers and other aspects of plastics and plastic containing products, this model could be useful as a model to balance the interests of producers and the application of the IBLI.

### *Technology Transfer*

Technology transfer is a common provision in many elements of recent FTAs. Some have included parameters for facilitating technology transfer and for the evolution of these needs and practices within the scope of their intellectual property provisions. For example, the EU Korea FTA contains an agreement for the Parties to continue their dialogues on technology transfer, noting that “particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including, inter alia, issues such as development of human capital and legal framework.”<sup>20</sup>

## **7. FTAs with Sustainable Development Provisions**

Many FTAs adopted following the 2015 contain references to the SDGs as an element of their commitments to incorporate sustainable development in trade and related practices. Additionally, FTAs with provisions relating to sustainable development tend to include references to a number of MEAs as well as ILO Conventions and Declarations as supporting laws and tenets. These provisions also mirror many of the issues discussed for inclusion in the ILBI, again emphasizing points of beneficial convergence.

### *Human Rights*

FTAs with chapters or provisions relating to sustainable development are inherently connected with legal and societal protections for human rights and public participation as part of the development process. For example, in the CARIFORUM UK FTA, the State Parties stated that the objective of sustainable development would form a part of the agreement and that “the application of this Agreement shall fully take into account the human, cultural, economic, social, health and environmental best interests of their respective population and of future generations.”<sup>21</sup>

### *Cooperation in international fora*

FTAs using sustainable development provisions tend to include basic yet vital terms requiring that the State Parties “shall endeavour to cooperate in all international fora where issues relevant to this partnership are discussed.”<sup>22</sup> Other iterations of this provision include bilateral and regional fora within the ambit of covered activities.<sup>23</sup>

### *Governance*

In a number of FTAs, issues relating to sustainable development and connected provisions are placed under the jurisdiction of a dedicated committee structure for guidance and support to the State Parties. Where issues such as MEAs, which would fall under the jurisdiction of other

<sup>19</sup> Korea US FTA art 18.9; EU Korea FTA 20.45 (applicable to agricultural chemical products only), 20.48, 20.50 (applicable to pharmaceutical products only).

<sup>20</sup> EU Korea FTA art 10.3.

<sup>21</sup> CARIFORUM UK RTA Pt I, art 3(2)(a).

<sup>22</sup> Id. at Pt I, art 6; EU Pacific States RTA art 5.

<sup>23</sup> See EFTA Bosnia and Herzegovina RTA art 40; UK Ghana FTA art 9; EFTA Central America RTA art 9.10; EFTA Georgia RTA art 10.9; EFTA Indonesia RTA art 8.11; EFTA Philippines RTA art 11.9; EFTA Montenegro RTA art 38.

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FTA-created committees, are identified as having connections to the work of committees responsible for sustainable development, there tend to be provisions facilitating the coordination and cooperation of all implicated aspects of the committee structure. In many instances, the designated committees are required to hold meetings with and facilitate involvement of members of civil society.

When questions of mutual interest exist between State Parties regarding sustainable development provisions or related topics, many FTA regimes have established a system for intergovernmental consultations, with the option of including designated experts as part of the evaluation process.<sup>24</sup>

### *Trade and Investment Favouring Sustainable Development*

In the FTA context, provisions have encouraged and supported the adoption of environmentally focused production, research and development, technological advances and alternative forms of energy. Importantly for the IBLI context are the aspects of these provisions seeking to encourage the use of eco-labelling for goods and services in the State Parties.<sup>25</sup>

### *Biodiversity Connections*

Many FTAs with sustainable development provisions include explicit references to and encouragement of trade policy that also includes the protection and conservation of biodiversity, with pollution reduction measures often falling under this rubric. These provisions contain references to the CBD – and sometimes the CITES as well – in the trade context as well as within the parameters of domestic law and regulation in the State Parties.<sup>26</sup>

### *Forests and Forestry*

Forests and forestry are the subject of efforts to ensure sustainable management and transparent harvesting of timber within the context of FTAs with focuses on sustainable development.<sup>27</sup> In some instances, connections with the CITES regime are made in these provisions, and often there are soft law connections to voluntary certification and reporting schemes existing to ensure the traceability and legality of forestry and timber harvesting.

### *Fish and Fisheries*

Many FTAs discussed in this section contain specific terms relating to fish and fisheries management. Included in these elements are the conservation of fish-related resources as well as sustainable management of these resources and their ecosystems and relationships with applicable Regional Fisheries Management Organizations. Other aspects of fisheries included are illegal, unreported and unregulated fishing practices, intersections with the work of the FAO in relation to these issues, and data and information sharing.

## **8. FTAs with Labour Provisions**

<sup>24</sup> See EU, Colombia and Peru RTA arts 283 – 286; UK Georgia FTA art 234; UK Japan FTA art 16.17 – 16.18; UK Moldova FTA art 345 – 346; UK Ukraine FTA art 287; Korea EU FTA art 13.14 – 13.15; EU Ukraine FTA art 301; EU Moldova FTA art 378 – 379; EU Georgia FTA art 242 – 243.

<sup>25</sup> EFTA Bosnia and Herzegovina RTA art 39; EU Armenia FTA art 276; UK Georgia FTA art 223; UK Japan FTA art 16.6, 16.12; UK Moldova FTA art 334; UK Ukraine FTA art 279; EFTA Georgia RTA art 10.8; EFTA Philippines RTA art 11.7; Korea EU FTA art 13.6; EFTA Montenegro RTA art 37; EU Ukraine FTA art 293; EU Moldova FTA art 367; EU Georgia FTA art 231.

<sup>26</sup> See EU, Colombia and Peru RTA art 272; EU Armenia FTA art 277; EU UK FTA art 402; UK Georgia FTA art 224; UK Japan FTA art 16.6; UK Moldova FTA art 335; EU Moldova FTA art 368; EU Georgia FTA art 232.

<sup>27</sup> EU, Colombia and Peru RTA art 273; EU Armenia FTA art 278; EU UK FTA art 403; UK Georgia FTA art 225; UK Japan FTA art 16.7; UK Moldova FTA art 336; EFTA Central America RTA art 9.8; EFTA Georgia RTA art 10.6; EFTA Indonesia RTA art 8.8; EFTA Philippines RTA art 11.8; EU Moldova FTA art 369; EU Georgia FTA art 233.

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## *General principles*

In recognition of the links between international labour law and free trade practices, the FTAs with labour specific chapters and provisions tend to include explicit reference to and connections with ILO Conventions and related tenets of human rights law. For the majority of these FTAs, the core elements of the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up are included as both rights and guiding principles. In the context of the ILBI, critical elements of the ILO Declaration that feature in these FTAs are abolishing child labour and “the elimination of discrimination in respect of employment and occupation.”

Outside of these core principles, some FTAs have expanded the objectives of labour-related chapters and provisions in relation to trade practices and the enforcement of State Parties’ laws and rules.<sup>28</sup> For example, the New Zealand Taiwan FTA articulates the objectives of its labour chapter as including the “promot[ion of] the common aspiration that free trade and investment should lead to job creation, decent work and meaningful jobs for workers, with terms and conditions of employment that adhere to internationally recognized fundamental labour principles and rights; . . . promot[ion of] the improvement of working conditions and living standards within the Parties, and protection and observance of fundamental labour principles and rights.”<sup>29</sup> In the UK Georgia FTA, there is agreement that “the Parties shall strengthen their dialogue and cooperation on promoting the Decent Work Agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and anti-discrimination, and corporate social responsibility and thereby contribute to the promotion of more and better jobs, poverty reduction, enhanced social cohesion, sustainable development and improved quality of life.”<sup>30</sup> Expansively, the EU Central America FTA includes cooperation between the State Parties to “(a) ensure decent work for all; (b) create more inclusive and well-functioning labour markets; (c) extend social protection coverage; (d) exchange best practices in the field of workers mobility and transfer of pension rights; (e) promote social dialogue; (f) ensure the respect for the fundamental principles and rights at work identified by the International Labour Organization's Conventions, the so-called Core Labour Standards, in particular as regards the freedom of association, the right to collective bargaining and non-discrimination, the abolition of forced and child labour, and equal treatment between men and women; (g) address issues relating to the informal economy; (h) give special attention to disadvantaged groups and to the fight against discrimination; (i) develop the quality of human resources through the improvement of education and training, including effective vocational training; (j) improve the health and security conditions at work, notably by strengthening labour inspectorates.”<sup>31</sup>

## *Governance systems*

In most FTAs with specific labour chapters and provisions, a system of institutional collaboration tools between designated governmental ministries exists to facilitate dialogue and, where requested, consultations on matters of shared concern. Included in these practices is often the creation of cooperative action in labour generally, particularly including safety, working conditions, and the availability of multiple forms of training.

## *Collaboration in international fora*

<sup>28</sup> See CETA art 23.3; USMCA art 23.12; Peru Australia FTA art 18.7; CPTPP art 19.10; Canada Jordan FTA art 11-2, 11-3; Canada Panama FTA art 18.02; Canada Colombia FTA art 1603; Canada Israel FTA art 12.1.

<sup>29</sup> New Zealand Taiwan FTA ch 16, art 1.

<sup>30</sup> UK Georgia FTA art 322; see also UK Moldova FTA art 32; EU Georgia FTA art 348.

<sup>31</sup> EU Central America RTA art 42; see also EU Georgia FTA art 349.

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To reinforce the terms of FTAs in relation to labour laws and practices, many agreements contain provisions for cooperation in both employment and social policy issues at international and regional fora, including organizations.

## 9. FTAs with Dedicated Environmental Provisions

Overall, the FTAs which address the trade and environment relationship can be seen as encompassing a series of ongoing requirements that are typically expansively written and can be argued to provide space for the inclusion of new international treaty regimes such as the IBLI. These elements include reference to MEAs as well as the use of environmental law principles such as the use of impact assessments, the principle of prevention, the principle of precaution, and the polluter pays principle.

### *Sustainable Use of Natural Resources*

The idea of sustainability is key to many FTAs with environmentally focused chapters and provisions. In connection with this, there are often express links between State Party commitments to sustainable use of natural resources and environmentally sound management. Additionally, some FTAs with environmental provisions contain elements to foster trade that favours the environment, including renewable energy sources, the development of environmental technologies, and the use of energy efficient goods and services.

### *Related Areas of Intersection between Environment and Trade Provisions*

FTA provisions relating to trade and environmental intersections address a number of areas critical to negotiations and implementation of the IBLI. These areas include: mandatory and voluntary environmentally focused labelling,<sup>32</sup> technology transfer and capacity building,<sup>33</sup> natural resources, especially forests, fish and fisheries, and agriculture,<sup>34</sup> renewable energy and energy efficiency,<sup>35</sup> market mechanisms and voluntary market mechanisms,<sup>36</sup> sustainable production,<sup>37</sup> green economy provisions,<sup>38</sup> waste management,<sup>39</sup> air quality,<sup>40</sup> water quality,<sup>41</sup> industrial pollution,<sup>42</sup> chemicals and chemicals management,<sup>43</sup> climate change regulation,<sup>44</sup>

<sup>32</sup> CARIFORUM-UK RTA art 190; EU Central America RTA art 288; EU Singapore FTA art 12.10.

<sup>33</sup> CARIFORUM-UK RTA art 190; EU UK FTA art 390.

<sup>34</sup> See CARIFORUM-UK RTA art 190; EU Armenia FTA art 45; UK Georgia FTA art 283; UK Iceland/Liechtenstein/Norway RTA art 13.26, 13.27, 13.28; EU Central America RTA art 289; EU Ukraine FTA art 361; CETA art 24.10; EU Singapore FTA art 12.7; USMCA art 24.17 – 24.21; CPTPP art 20.17.

<sup>35</sup> El Salvador-Ecuador FTA art 6; CPTPP art 20.15.

<sup>36</sup> New Zealand Taiwan FTA ch 17 art 4; EU Armenia FTA ch 4.

<sup>37</sup> EU Armenia FTA art 45; UK Ukraine FTA art 338.

<sup>38</sup> EU Armenia FTA art 45; EU Ukraine FTA art 360; EU Georgia FTA art 301; CPTPP art 20.15.

<sup>39</sup> EU Armenia FTA art 46 – 48; EU UK FTA art 390; UK Georgia FTA art 283; UK Ukraine FTA art 338; UK Iceland/Liechtenstein/Norway RTA art 13.29; Israel Ukraine FTA art 7.2; Peru Australia FTA art 19.1; CPTPP art 20.1; Canada Ukraine FTA art 12.1.

<sup>40</sup> EU Armenia FTA art 46 – 48; EU UK FTA art 390; UK Georgia FTA art 283; UK Moldova FTA art 79; UK Ukraine FTA art 338; EU Ukraine FTA art 361; EU Georgia FTA art 302; USMCA art 24.9; CPTPP art 20.5; Chile Thailand FTA art 11.5.

<sup>41</sup> EU Armenia FTA art 46 – 48; EU UK FTA art 390; UK Georgia FTA art 283; UK Moldova FTA art 79; UK Ukraine FTA art 338; UK Iceland/Liechtenstein/Norway RTA art 13.23, 13.24; EU Ukraine FTA art 361; EU Georgia FTA art 302; Chile Thailand FTA art 11.5.

<sup>42</sup> EU Armenia FTA art 46 – 48; EU UK FTA art 390; UK Georgia FTA art 283; UK Moldova FTA art 79; UK Ukraine FTA art 338; EU Ukraine FTA art 361; EU Georgia FTA art 302; Israel Ukraine FTA art 7.2; USMCA art 24.1; Peru Australia FTA art 19.1; CPTPP art 20.1; Canada Ukraine FTA art 12.1.

<sup>43</sup> EU Armenia FTA art 46 – 48; EU UK FTA art 390; UK Georgia FTA art 283; UK Moldova FTA art 79; UK Ukraine FTA art 338; UK Iceland/Liechtenstein/Norway RTA art 13.22; EU Ukraine FTA art 361; EU Georgia FTA art 302, ch 4; USMCA art 24.1; Chile Thailand FTA art 11.5.

<sup>44</sup> EU Armenia FTA ch 4; UK Georgia FTA ch 4; UK Moldova FTA ch 4; UK Ukraine FTA art 338; Korea Peru FTA art 9.8; Chile Thailand FTA art 11.5.

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biodiversity protection and conservation,<sup>45</sup> marine and aquatic environment protection,<sup>46</sup> and agriculture and food security.<sup>47</sup>

### *Governance*

There is a split in governance practice between FTAs granting capacity for State Parties to create committees or similar governance systems to facilitate the implementation of environmental commitments and those that create dedicated bodies from the outset. In some instances, these provisions contain advanced systems for the use of consultations and convening of expert panels to address issues raised between the State Parties.

### *Monitoring and Compliance*

As in other areas of trade cooperation, FTAs with environmental provisions often include processes for monitoring of the agreement's terms and consultation between the State Parties. Additionally, a core of FTAs with environmental provisions either contain terms that commit State Parties to enforce their environmental laws and rules and then create the capacity for investigations of claims of non-compliance or that utilize separate side agreements to enshrine stand-alone compliance mechanisms.

### *Interrelationship with MEAs*

In some of the applicable FTAs, there is an agreement that State Parties will also assist each other with the implementation of their shared MEA obligations as well as in the negotiations of environmental issues in which all State Parties are interested. At the same time, there are commitments on the part of many FTAs to facilitate the implementation of shared MEA provisions as a matter of their domestic law, including trade practice.

<sup>45</sup> EU Armenia FTA art 46 – 48; COMESA art 125; Korea Peru FTA art 9.6; UK Iceland/Liechtenstein/Norway RTA art 13.25; USMCA art 24.1; Peru Australia FTA art 19.1; CPTPP art 20.1; Canada Ukraine FTA art 12.1; Chile Thailand FTA art 11.5.

<sup>46</sup> EU UK FTA art 390; UK Iceland/Liechtenstein/Norway RTA art 13.26; CETA art 24.11; EU Singapore FTA art 12.8; USMCA art 24.10, 24.12 (including references to controlling marine litter, plastic litter and microplastics in the marine environment); CPTPP art 20.6; Chile Thailand FTA art 11.5.

<sup>47</sup> EU UK FTA art 390; UK Iceland/Liechtenstein/Norway RTA art 13.30.

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