



THE LONDON SCHOOL
OF ECONOMICS AND
POLITICAL SCIENCE ■

FACT SHEET

Assessing Other Countries' Experience in TSD Implementation and Enforcement

Comparative Analysis of Trade and
Sustainable Development (TSD)
Provisions for Identification of Best
Practices to Support the TSD Review

A widening scope for TSD provisions in comprehensive FTAs

- ◆ The range of specific environmental issues covered by third-country FTAs has significantly increased over time, with more recent agreements including references to climate action, genetic resources, and renewable energy.
- ◆ Provisions on transparency and public participation are more and more common in FTAs.
- ◆ The scope of TSD provisions has gone beyond traditional labour and environmental provisions to include, among others, gender and indigenous rights, as witnessed in Canada, Chile and New Zealand.

Implementing TSD provisions

- ◆ Even for sanction-based enforcement models like in Canada and the US, cooperation remains the watchword for the implementation of TSD provisions, as illustrated by the prevalence of cooperation provisions in the selected FTAs' labour and environmental provisions.
- ◆ A decompartmentalized or "whole-of-government" approach to TSD, whereby third countries leverage institutional resources across government agencies, has allowed them to devote greater resources to the implementation and enforcement of TSD provisions than they would only with trade agencies.



The role of international organizations in implementation

- ◆ International organisations can play **an important role in improving compliance with international standards** in both developing and developed countries. Evidence shows that the ILO can play a valuable role in capacity building and monitoring, in collaboration with two or several FTA Parties, multinational firms, government officials, NGOs, and local workers.
- ◆ While engagement with Multilateral Environmental Agreement (MEA) Secretariats has been much rarer than ILO technical assistance, the experience of the US-Peru FTA shows that TSD implementation can **provide space for capacity building activities** cosponsored by MEA Secretariats like the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The role for civil society

- ◆ Having an informed, enlightened and engaged civil society can provide considerable leverage in monitoring, encourage public submissions for non-compliance and add pressure on implementing the provisions.
- ◆ A multi-stage approach to **civil society participation can maximize stakeholders' input** at various stages of the trade policy process:



Pre-negotiating & negotiating stage

Social and environmental impact assessments paired with civil society consultations have helped countries identify specific problems and anticipate key questions related to TSD implementation.



Implementation stage

Technical assistance and capacity building programmes with meaningful civil society engagement are more likely to bring tangible results than projects merely targeting government agencies, as revealed by the analysis of multiple trade-and-labour capacity building programmes across different regions.



Enforcement

Public submissions for non-compliance can play an important role to improve labour, environmental standards as well as human rights.

- ◆ **Sustained collaboration with stakeholders requires commensurate and long-term funding**, as illustrated by several of our case studies.

Tools used by third countries to enforce TSD provisions in FTAs

Most of TSD enforcement provisions include one or more of these categories:

- ◇ Obligations to implement international standards based on ILO Conventions or Multilateral Environmental Agreements
- ◇ Requirements to effectively enforce one's labour and environmental laws
- ◇ A non-derogation clause
- ◇ A public complaint or submission mechanism
- ◇ A consultation process between the Parties
- ◇ A dispute settlement
- ◇ Remedies

The combination of cooperation and incentives can be very effective...

...as it allows partners to engage by increasing pressure and establishing clear timelines to achieve specific outcomes (e.g. US-Cambodia Bilateral Textile Trade Agreement).

Company-level monitoring or verification processes...

...can deflect tensions between states and transfer liability for enforcement onto private actors for environmental and/or labour matters.

Lessons from pre-ratification and ex-ante implementation processes

- ◆ The pre-ratification period can be used to press for domestic (legal) reforms, whether this relates to labour or environmental standards.
- ◆ The US certification of compliance that occurs *after* ratification but *before* entry into force is a form of "ex-ante implementation" coordinated by the executive and legislative branches that has been particularly impactful in both labour and environmental realms.

Key takeaways on public submission processes

Public submissions for non-compliance can help improve labour, environmental standards and human rights on the ground. Trade agreements can offer opportunities to make civil society voices heard when domestic channels are blocked.

Procedural certainty is an essential part of the public submissions approach which enables close cooperation between partner countries and stakeholders. Detailed guidelines with established timelines, submission criteria and transparency requirements all contribute to procedural certainty and make public submissions more accessible, transparent, and effective.

Among the selected third countries, Canada and the US have established the most specific public submission processes for non-compliance.

The USMCA's labour chapter innovates by lowering the burden of proof for civil society complaints, allowing on-site verification of labour rights violations and setting specific timelines under which complaints must be addressed. Its early success in protecting workers' rights will have to be weighed against some of its potential downsides, including implementation costs, bureaucratic burdens and concerns over due process.



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