

Sustainable development provisions in new-generation free trade agreements among ASEAN countries

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Abstract: This paper examines the incorporation of sustainable development provisions within the new-generation free trade agreements (FTAs) among ASEAN countries. By conducting a detailed regulatory analysis, the study identifies the various approaches taken by different member states and evaluates the extent of convergence in their sustainability regulations. The findings highlight key similarities and differences in how these provisions are framed, shedding light on potential areas of conflict or cooperation. Based on this analysis, the research provides policy recommendations aimed at harmonizing sustainable development regulations across ASEAN, thereby enhancing regional integration and promoting a cohesive approach to sustainability. These recommendations are designed to address existing regulatory gaps and align ASEAN's sustainability efforts with global standards, ultimately fostering a more sustainable and resilient economic community.

Keywords: *sustainable development, new-generation free trade agreements, ASEAN countries.*

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1 Trade and sustainable development

1.1 *How Trade affects/worsen sustainable development?*

Trade, as a central pillar of global economic activity, is often lauded for its capacity to drive economic growth, foster innovation, and reduce poverty. However, the interaction between trade and sustainable development reveals a more complex narrative, marked by significant tensions and contradictions. While trade can stimulate economies and provide resources for sustainable growth, it often exacerbates environmental degradation, social inequality, and resource exploitation. This paper critically examines how trade affects, and in many cases worsens, sustainable development by analyzing its impact on environmental sustainability, social equity, and economic stability. It argues that while trade is a powerful engine for growth, its current patterns and governance mechanisms often undermine the core principles of sustainable development.

1.1.1 Environmental degradation through trade

The environmental consequences of international trade are one of its most significant challenges to sustainable development. Global trade promotes specialization and the exploitation of comparative advantages, often leading to the overexploitation of natural resources in developing countries. This phenomenon, known as the "resource curse," highlights how countries rich in natural resources experience environmental depletion without achieving long-term economic benefits. For instance, the expansion of palm oil trade in Indonesia and Malaysia has led to massive deforestation, biodiversity loss, and increased greenhouse gas emissions. Studies show that global deforestation accounts for nearly 10% of annual carbon dioxide emissions, a significant contributor to climate change.¹ Moreover, trade-related activities, including transportation and logistics, significantly contribute to carbon emissions, with the International Maritime Organization estimating that shipping accounts for approximately 3% of global CO₂ emissions.²

Trade liberalization further intensifies environmental harm by encouraging a "race to the bottom" in environmental regulations. Developing countries, seeking to attract foreign direct investment and compete in global markets, often lower environmental standards.³ This phenomenon undermines international efforts to combat climate change and protect ecosystems, contradicting the principles of sustainable development outlined in the United Nations' 2030 Agenda for Sustainable Development.⁴ While mechanisms such as the Paris Agreement aim to address these challenges, trade-related emissions and resource exploitation remain insufficiently regulated, highlighting the need for stronger environmental governance in trade agreements.

1.1.2 Social inequalities exacerbated by trade

Trade also perpetuates social inequalities, undermining the social dimension of sustainable development. The globalization of trade has created significant wealth disparities between and within nations. Developing countries often serve as low-cost producers in global supply chains,

¹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change* (Cambridge University Press 2022).

² International Maritime Organization, *Fourth IMO Greenhouse Gas Study 2020* (IMO 2020).

³ Dani Rodrik, *Straight Talk on Trade: Ideas for a Sane World Economy* (Princeton University Press 2017).

⁴ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (UN 2015).

where workers face poor labor conditions, low wages, and limited access to social protections. For instance, the garment industry in countries like Bangladesh illustrates the exploitative nature of global trade. Workers, predominantly women, are subjected to unsafe working environments, as evidenced by the 2013 Rana Plaza disaster, which claimed over 1,100 lives.⁵

Furthermore, trade liberalization disproportionately benefits multinational corporations and wealthy nations, exacerbating income inequality. The World Bank reports that while trade has contributed to poverty reduction in some regions, it has also widened income gaps in others, particularly in sub-Saharan Africa and Latin America.⁶ This disparity contradicts the principle of "leaving no one behind," a cornerstone of the 2030 Agenda for Sustainable Development. Moreover, the displacement of local industries by cheaper imported goods often leads to job losses and economic insecurity, further destabilizing communities and undermining social cohesion.⁷

1.1.3 Economic instability and unsustainable growth patterns

While trade is often associated with economic growth, its contribution to sustainable development is far from guaranteed. The volatility of global markets, driven by trade dependencies, exposes countries to economic instability. For example, the 2008 global financial crisis demonstrated how interconnected trade networks can amplify financial shocks, disproportionately affecting vulnerable economies.⁸ Additionally, trade-induced growth often prioritizes short-term gains over long-term sustainability. Export-oriented growth strategies frequently emphasize the extraction and export of natural resources, leaving economies vulnerable to price fluctuations and depleting their resource base.⁹

Moreover, the focus on GDP growth as a measure of trade success overlooks the broader dimensions of sustainable development, including environmental and social well-being. The overemphasis on economic indicators incentivizes unsustainable practices, such as overproduction, excessive consumption, and the depletion of finite resources. Without integrating sustainability metrics into trade policies, economic growth driven by trade risks perpetuating environmental degradation and social inequities.¹⁰

1.1.4 Trade governance and the need for reform

The governance of international trade plays a crucial role in shaping its impact on sustainable development. Existing trade agreements, such as those under the World Trade Organization (WTO), often prioritize market liberalization and economic growth over environmental and social considerations.¹¹ While some trade agreements, such as the European Union's trade policies,

⁵ ILO, *World Employment and Social Outlook: Trends 2023* (ILO 2023).

⁶ World Bank, *World Development Report 2020: Trading for Development in the Age of Global Value Chains* (World Bank 2020).

⁷ Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (Anthem Press 2002).

⁸ Joseph E. Stiglitz, *Globalization and Its Discontents Revisited: Anti-Globalization in the Era of Trump* (WW Norton & Company 2018).

⁹ Jeffrey D. Sachs, *The End of Poverty: Economic Possibilities for Our Time* (Penguin Press 2005).

¹⁰ Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* (Chelsea Green Publishing 2017).

¹¹ WTO, *World Trade Report 2023: Trade, Climate Change and Resilience* (WTO 2023).

include provisions for environmental and labor standards, their enforcement mechanisms remain weak, limiting their effectiveness.¹²

To align trade with sustainable development, there is an urgent need for reform in trade governance. This includes incorporating binding environmental and social standards into trade agreements, strengthening enforcement mechanisms, and promoting fair trade practices. Additionally, trade policies should be integrated with international sustainability frameworks, such as the Sustainable Development Goals (SDGs), to ensure coherence and alignment.¹³ For instance, the inclusion of carbon border adjustment mechanisms can help address trade-related emissions by incentivizing low-carbon production methods.¹⁴ Such reforms are essential to mitigate the adverse effects of trade and harness its potential as a driver of sustainable development.

1.2 How trade could be solutions to promote sustainable development

While trade poses risks to sustainable development, its strategic governance and integration with sustainability frameworks can yield significant benefits. Because trade has long been a driver of economic growth, poverty reduction, and technological advancement. However, its potential to act as a catalyst for sustainable development—a concept encompassing economic, environmental, and social dimensions—remains underexplored in legal and policy frameworks. By aligning trade policies with sustainability goals, fostering international cooperation, and leveraging legal instruments such as trade agreements and standards, trade can become a transformative tool for achieving the United Nations' Sustainable Development Goals (SDGs).

1.2.1 Facilitating environmental sustainability through trade

Trade, when governed appropriately, can be a powerful mechanism for promoting environmental sustainability. International trade enables the diffusion of environmentally friendly technologies and practices, fostering the global transition to a low-carbon economy. For instance, the liberalization of environmental goods and services (EGS) has been identified as a critical pathway to reducing greenhouse gas emissions and conserving natural resources.¹⁵ The World Trade Organization's (WTO) Environmental Goods Agreement (EGA), though still under negotiation, exemplifies how trade agreements can lower tariffs on products like solar panels, wind turbines, and energy-efficient technologies, making them more accessible and affordable globally.¹⁶ By encouraging the trade of such goods, countries can accelerate the adoption of clean energy solutions and sustainable infrastructure, contributing to climate change mitigation.

Moreover, trade can incentivize sustainable resource management through mechanisms such as certification schemes. The Forest Stewardship Council (FSC) certification for timber products and the Marine Stewardship Council (MSC) certification for seafood are examples of market-driven approaches that promote sustainable production and consumption.¹⁷ These certifications

¹² European Commission, *Trade for All: Towards a More Responsible Trade and Investment Policy* (European Commission 2015).

¹³ UNCTAD, *Trade and Development Report 2023* (UNCTAD 2023).

¹⁴ Dieter Helm, *Carbon Border Adjustments and Climate Clubs* (Oxford University Press 2021).

¹⁵ WTO, *Environmental Goods Agreement: Progress Report* (WTO 2020).

¹⁶ WTO, *World Trade Report 2023: Climate Change and Trade* (WTO 2023).

¹⁷ Forest Stewardship Council, *FSC Global Strategy Report 2021* (FSC 2021).

help consumers identify sustainably sourced products, creating demand for environmentally responsible practices. Additionally, trade policies can include provisions for environmental protection, such as the European Union's trade agreements, which incorporate legally binding commitments to implement the Paris Agreement on climate change.¹⁸ Such provisions demonstrate how trade governance can align economic activity with environmental sustainability goals.

1.2.2 Enhancing social equity through trade

Trade can also play a pivotal role in advancing social equity, a core pillar of sustainable development. By providing access to global markets, trade enables developing countries to integrate into global value chains, creating opportunities for economic empowerment and poverty reduction. The World Bank estimates that trade has lifted over one billion people out of extreme poverty since 1990, particularly in East Asia and the Pacific.¹⁹ By generating income and employment, trade can contribute to improving living standards and reducing inequality, provided that its benefits are equitably distributed.

Fair trade initiatives further illustrate how trade can promote social equity by addressing labor rights, gender equality, and community development. Fairtrade-certified products, such as coffee and cocoa, ensure that producers receive fair wages and work under safe conditions.²⁰ These initiatives also support investments in local communities, such as education and healthcare, fostering long-term social development. Moreover, trade policies can be designed to address systemic inequalities by incorporating labor standards and human rights obligations. For example, the United States-Mexico-Canada Agreement (USMCA) includes provisions to combat forced labor and promote gender equality in trade.²¹ Such frameworks demonstrate how trade can be harnessed to advance social justice and human dignity.

1.2.3 Fostering inclusive economic growth through trade

Inclusive economic growth, a cornerstone of sustainable development, can be achieved through trade by fostering innovation, investment, and entrepreneurship. Trade stimulates competition and knowledge transfer, driving productivity gains and technological advancements. This dynamic is particularly evident in the context of digital trade, which has revolutionized global commerce by enabling small and medium-sized enterprises (SMEs) to access international markets. The rise of e-commerce platforms, such as Alibaba and Amazon, illustrates how digital trade can empower entrepreneurs, particularly in developing countries, to participate in global value chains.²² By reducing barriers to market entry, digital trade promotes economic inclusivity and diversification, contributing to sustainable development.

Additionally, trade agreements can be structured to prioritize sustainable economic practices. For instance, trade facilitation measures, such as streamlining customs procedures and reducing

¹⁸ European Commission, *Trade and Sustainable Development Chapters in EU Trade Agreements* (European Commission 2022).

¹⁹ World Bank, *World Development Report 2020: Trading for Development in the Age of Global Value Chains* (World Bank 2020).

²⁰ Fairtrade International, *Fairtrade and the SDGs: 2023 Report* (Fairtrade International 2023).

²¹ United States-Mexico-Canada Agreement, Chapter 23 (Labor), 2018.

²² UNCTAD, *Digital Economy Report 2022* (UNCTAD 2022).

non-tariff barriers, can enhance the efficiency of supply chains while minimizing environmental and social costs.²³ Regional trade agreements, such as the African Continental Free Trade Area (AfCFTA), also demonstrate the potential of trade to foster regional integration and economic resilience. By creating larger, more diverse markets, these agreements enable countries to pool resources, attract investment, and achieve economies of scale, laying the foundation for sustainable economic growth.²⁴

1.2.4 Legal instruments to align trade with sustainable development

The alignment of trade with sustainable development requires robust legal and policy frameworks that integrate environmental, social, and economic considerations. Trade agreements provide a critical platform for embedding sustainability objectives into global commerce. For example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) includes chapters on environmental protection and labor rights, setting a precedent for how trade agreements can promote sustainability.²⁵ These provisions are increasingly being incorporated into bilateral and multilateral trade agreements, creating a normative framework for sustainable trade governance.

Additionally, mechanisms such as sustainability impact assessments (SIAs) can help evaluate the environmental and social implications of trade policies, ensuring that they align with sustainable development goals.²⁶ The European Union has pioneered the use of SIAs to assess the sustainability impacts of its trade agreements, demonstrating the importance of evidence-based policymaking. Furthermore, international organizations, such as the WTO and the United Nations Conference on Trade and Development (UNCTAD), play a vital role in promoting coherence between trade and sustainability frameworks.²⁷ For instance, UNCTAD's BioTrade Initiative supports the trade of biodiversity-friendly products, highlighting how trade can contribute to the conservation of ecosystems and the livelihoods of local communities.²⁸

1.2.5 Challenges to sustainable trade and the way forward

While trade holds significant potential to promote sustainable development, realizing this potential requires overcoming several challenges. The lack of enforceable sustainability provisions in many trade agreements undermines their effectiveness, as countries may prioritize economic gains over environmental and social objectives.²⁹ Additionally, the unequal distribution of trade benefits risks exacerbating inequalities, particularly for marginalized groups and least developed countries (LDCs). Addressing these challenges requires strengthening the legal and institutional frameworks governing trade, enhancing cooperation among stakeholders, and fostering transparency and accountability in trade policies.

²³ WTO, *Trade Facilitation Agreement: Implementation Guide* (WTO 2021).

²⁴ African Union, *AfCFTA: Creating One African Market* (AU 2020).

²⁵ Comprehensive and Progressive Agreement for Trans-Pacific Partnership, Chapter 20 (Environment), 2018.

²⁶ European Commission, *Sustainability Impact Assessments Handbook* (European Commission 2021).

²⁷ UNCTAD, *Trade and Development Report 2023* (UNCTAD 2023).

²⁸ UNCTAD, *BioTrade Principles and Criteria Handbook* (UNCTAD 2021).

²⁹ Dani Rodrik, *Straight Talk on Trade: Ideas for a Sane World Economy* (Princeton University Press 2017).

Policymakers must also leverage emerging opportunities, such as the circular economy and green trade, to align trade with sustainability. The circular economy, which emphasizes resource efficiency and waste reduction, can be promoted through trade by encouraging the exchange of recyclable materials and sustainable products.³⁰ Similarly, green trade initiatives, such as carbon pricing and border adjustment mechanisms, can incentivize low-carbon production and consumption. These approaches highlight the need for innovative legal and policy solutions to integrate sustainability into the fabric of global trade.

2 Trends of incorporating sustainable development provisions in FTAs: To critically compare and contrast the US and EU's approaches

Free Trade Agreements (FTAs) have evolved significantly over the past few decades, transforming from instruments primarily focused on tariff reduction and market access to comprehensive frameworks addressing a wide array of non-economic issues. Among these, the inclusion of sustainable development provisions (SDPs) has emerged as a critical trend, reflecting heightened global recognition of the interconnectedness between trade, environmental sustainability, and social equity. The European Union (EU) and the United States (US) have been at the forefront of this shift, serving as trend-setters in incorporating SDPs into their respective FTAs. However, their approaches differ significantly in terms of legal enforceability, substantive focus, and underlying rationale.

2.1 From Traditional FTAs to New-Generation FTAs: The rise of sustainable development provisions

The inclusion of SDPs in FTAs represents a fundamental shift in the purpose and scope of trade agreements, reflecting the global push for more sustainable and inclusive economic systems. Traditional FTAs, such as the General Agreement on Tariffs and Trade (GATT) 1947, were primarily concerned with reducing tariffs and non-tariff barriers to facilitate trade liberalization.³¹ However, the environmental degradation, social inequalities, and labor rights violations associated with unregulated globalization have prompted a rethinking of the relationship between trade and sustainability.³² New-generation FTAs seek to address these concerns by embedding commitments to environmental protection, labor standards, and sustainable resource management directly into trade agreements.³³

The rationale for incorporating SDPs into FTAs is threefold. First, SDPs reflect the recognition that trade liberalization can exacerbate environmental harm and social inequalities if not accompanied by adequate safeguards.³⁴ Second, SDPs aim to harmonize sustainability standards across trading partners, preventing a "race to the bottom" in regulatory standards and

³⁰ Ellen MacArthur Foundation, *Circular Economy and Trade: Opportunities for Developing Countries* (Ellen MacArthur Foundation 2021).

³¹ John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* (2nd edn, MIT Press 1997).

³² Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (WW Norton 2011).

³³ WTO, *World Trade Report 2022: Climate Change and International Trade* (WTO 2022).

³⁴ OECD, *Trade and Environment: Promoting Sustainable Development* (OECD 2022).

ensuring fair competition.³⁵ Third, SDPs align trade policy with broader international commitments, such as the Paris Agreement on Climate Change and the United Nations Sustainable Development Goals (SDGs), reinforcing the legitimacy of FTAs in an era of heightened public scrutiny.³⁶

2.1.1 The EU's Approach: Comprehensive and binding sustainable development provisions

The EU adopts a holistic and legally binding approach to incorporating SDPs into its FTAs, reflecting its commitment to promoting environmental sustainability, labor rights, and human rights in trade policy.³⁷ The EU's "Trade and Sustainable Development" (TSD) chapters, included in most of its recent FTAs, address a wide range of sustainability issues, including climate change mitigation, biodiversity conservation, and the enforcement of core labor standards as defined by the International Labour Organization (ILO).³⁸ For example, the EU-Vietnam FTA includes commitments to implement the Paris Agreement and uphold ILO conventions on freedom of association and collective bargaining.³⁹

The EU's approach is characterized by its emphasis on multilateralism and the integration of sustainability commitments into international legal frameworks. By requiring trading partners to adhere to international environmental and labor agreements, the EU seeks to create a level playing field that prevents unfair competition arising from weak regulatory standards.⁴⁰ Furthermore, the EU has pioneered innovative enforcement mechanisms for SDPs, including civil society monitoring, dialogue-based dispute resolution, and the establishment of Domestic Advisory Groups (DAGs) comprising representatives from labor unions, environmental organizations, and business groups.⁴¹ However, critics argue that the EU's reliance on dialogue and cooperation rather than sanctions has undermined the effectiveness of its TSD chapters, as evidenced by the limited enforcement of sustainability commitments in the EU-Korea FTA.⁴²

2.1.2 The US's Approach: Targeted and enforceable labour and environmental standards

In contrast to the EU, the US adopts a more targeted and enforcement-driven approach to incorporating SDPs into its FTAs, with a primary focus on labor and environmental standards. US FTAs typically include chapters on labor and the environment that are subject to the same state-to-state dispute settlement mechanisms as other provisions of the agreement.⁴³ This approach reflects the US's preference for enforceable commitments to prevent unfair trade practices and protect domestic industries from competition with producers operating under weaker regulatory standards.⁴⁴

³⁵ Joseph E. Stiglitz, *Making Globalization Work* (WW Norton 2006).

³⁶ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (UN 2015).

³⁷ European Commission, *Trade for All: Towards a More Responsible Trade and Investment Policy* (European Commission 2015).

³⁸ EU-Vietnam Free Trade Agreement, Chapter 13 (Trade and Sustainable Development), 2019.

³⁹ International Labour Organization, *ILO Conventions and Recommendations* (ILO 2021).

⁴⁰ European Commission, *Sustainability Impact Assessments Handbook* (European Commission 2021).

⁴¹ European Commission, *Domestic Advisory Groups in EU FTAs* (European Commission 2020).

⁴² WTO, *Trade and Environmental Sustainability: The Role of Trade Agreements* (WTO 2021).

⁴³ United States-Mexico-Canada Agreement, Chapter 23 (Labor) and Chapter 24 (Environment), 2018.

⁴⁴ Jeffrey Schott, *NAFTA and Sustainable Development* (Peterson Institute for International Economics 2017).

For example, the United States-Mexico-Canada Agreement (USMCA) includes robust labor and environmental provisions, such as commitments to eliminate forced labor, improve working conditions, and enforce environmental laws.⁴⁵ Notably, the USMCA introduced an innovative "Rapid Response Labor Mechanism," which allows for facility-specific investigations and sanctions in cases of labor rights violations.⁴⁶ This mechanism represents a significant departure from the EU's dialogue-based approach, reflecting the US's emphasis on enforceability and accountability.

However, the US approach has been criticized for its narrow focus and lack of multilateral alignment. Unlike the EU, the US does not explicitly link its trade agreements to international environmental and labor conventions, relying instead on domestic legal standards.⁴⁷ This approach limits the scope of US SDPs and raises concerns about their compatibility with broader global sustainability goals. Furthermore, the US's emphasis on enforcement has been perceived as a tool for advancing protectionist interests rather than genuine sustainability objectives, particularly in North-South FTAs.⁴⁸

2.1.3 Comparing the EU and US Approaches: Convergence and Divergence

While both the EU and the US incorporate SDPs into their FTAs, their approaches reflect divergent priorities and strategies. The EU's approach is broader in scope, addressing a wide range of sustainability issues and emphasizing multilateral alignment. In contrast, the US approach is more focused on labor and environmental standards, with stronger enforcement mechanisms. These differences reflect the underlying rationales for incorporating SDPs: the EU seeks to promote global sustainability and regulatory harmonization, whereas the US prioritizes protecting domestic industries and addressing unfair trade practices.⁴⁹

Despite these differences, there is some convergence between the EU and US approaches. Both recognize the importance of SDPs in preventing a "race to the bottom" and ensuring a level playing field between domestic and foreign producers.⁵⁰ Furthermore, both have introduced innovative mechanisms, such as the EU's DAGs and the US's Rapid Response Labor Mechanism, to monitor and enforce sustainability commitments. However, the effectiveness of these mechanisms remains contested, highlighting the need for more robust enforcement and greater alignment with international sustainability frameworks.⁵¹

2.1.4 Level playing fields: North-North, North-South, and South-South FTAs

The incorporation of SDPs into FTAs has significant implications for the level playing field between producers in different economic contexts. In North-North FTAs, such as the EU-Canada Comprehensive Economic and Trade Agreement (CETA), SDPs serve to harmonize high

⁴⁵ USMCA, Annex 23-A (Worker Representation in Collective Bargaining in Mexico), 2018.

⁴⁶ Ibid.

⁴⁷ Robert Howse, *The World Trade Organization and the Environment* (Oxford University Press 2001).

⁴⁸ Jagdish Bhagwati, *In Defense of Globalization* (Oxford University Press 2004).

⁴⁹ WTO, *World Trade Report 2023: Trade and Sustainability* (WTO 2023).

⁵⁰ Ibid.

⁵¹ Simon Lester and Bryan Mercurio, *World Trade Law: Text, Materials and Commentary* (3rd edn, Hart Publishing 2018).

sustainability standards, preventing regulatory divergence and fostering fair competition.⁵² These agreements demonstrate how advanced economies can cooperate to address global sustainability challenges while maintaining competitive parity.

In North-South FTAs, such as the EU-Vietnam FTA and the US-Peru Trade Promotion Agreement, SDPs aim to address asymmetries in regulatory standards and promote sustainable development in developing countries.⁵³ However, these agreements often face challenges in implementation, as developing countries may lack the institutional capacity to enforce sustainability commitments. Furthermore, North-South FTAs have been criticized for imposing sustainability standards that disproportionately benefit advanced economies, raising concerns about neocolonialism and trade protectionism.⁵⁴

In South-South FTAs, such as the Vietnam-Chile and Vietnam-Peru agreements, SDPs are less comprehensive and often focus on promoting mutual economic benefits rather than addressing global sustainability challenges.⁵⁵ However, these agreements represent an important step toward integrating sustainability into trade policy in the Global South, highlighting the potential for developing countries to cooperate on shared sustainability goals.

2.2 The US approach to incorporating sustainable development provisions in FTAs: Legal Text, Enforceability, and Monitoring Mechanisms

The United States has been a prominent actor in shaping the inclusion of sustainable development provisions (SDPs) in free trade agreements (FTAs). Its approach is characterized by a pragmatic and enforcement-driven strategy, emphasizing binding legal commitments, targeted provisions on labor and environmental standards, and robust mechanisms for monitoring compliance. This approach reflects a preference for hard law obligations, enforceability through state-to-state dispute settlement (SSDS), and unilateral enforcement tools. However, the scope and ambition of SDPs in US FTAs vary depending on the economic and political context of each agreement. By analyzing key US FTAs, including the United States-Mexico-Canada Agreement (USMCA), the US-Korea Free Trade Agreement (KORUS), and agreements with other partners such as Australia and Chile, this paper evaluates the legal architecture, enforceability, and mechanisms that define the US approach to sustainable development in trade policy.

2.2.1 Legal text: clear and binding obligations

US FTAs are distinguished by their clear and legally binding commitments to labor and environmental standards, which are codified in discrete chapters on labor and the environment. These chapters typically require parties to adhere to their domestic laws and international obligations, such as the core labor standards of the International Labour Organization (ILO) and multilateral environmental agreements (MEAs).⁵⁶ For instance, the labor chapter of the USMCA commits parties to uphold the ILO's Declaration on Fundamental Principles and Rights at Work,

⁵² Comprehensive Economic and Trade Agreement, Chapter 24 (Trade and Environment), 2016.

⁵³ EU-Vietnam Free Trade Agreement, op cit.

⁵⁴ Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (Anthem Press 2002).

⁵⁵ Vietnam-Chile Free Trade Agreement, 2011; Vietnam-Peru Trade Agreement, 2018.

⁵⁶ United States-Mexico-Canada Agreement (USMCA) 2018, Chapter 23 (Labor) and Chapter 24 (Environment).

including prohibitions against child labor, forced labor, and discrimination in employment.⁵⁷ Similarly, the environmental chapter of the USMCA includes provisions requiring parties to enforce their environmental laws and commitments under MEAs, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).⁵⁸

The legal drafting of these provisions reflects the US's preference for precision and enforceability. Unlike the European Union (EU), which often relies on broad and aspirational language in its Trade and Sustainable Development (TSD) chapters, the US adopts a more prescriptive approach. For example, Article 23.5 of the USMCA explicitly prohibits the importation of goods produced using forced labor, creating a direct linkage between trade and human rights.⁵⁹ This level of specificity ensures that sustainability commitments are not merely aspirational but legally actionable, providing a stronger foundation for enforcement.

2.2.2 Enforceability: hard law commitments and dispute settlement

A defining feature of the US approach to SDPs is the integration of labor and environmental obligations into the broader dispute settlement mechanisms of its FTAs. This contrasts with the EU, which relies on dialogue-based mechanisms rather than binding dispute resolution for its TSD chapters.⁶⁰ In US FTAs, labor and environmental commitments are subject to state-to-state dispute settlement (SSDS), allowing parties to initiate formal proceedings in cases of non-compliance.⁶¹

The USMCA exemplifies this approach, as its labor and environmental chapters are fully enforceable through the agreement's general dispute settlement mechanism.⁶² Notably, the USMCA introduced the Rapid Response Labor Mechanism (RRLM), a novel enforcement tool that allows for facility-specific investigations into alleged labor rights violations.⁶³ This mechanism applies uniquely to Mexico, reflecting concerns about labor conditions in that country and the US's strategic interest in ensuring a level playing field for its domestic producers. The RRLM enables expedited investigations and sanctions, including the suspension of preferential tariff treatment for goods produced in non-compliant facilities.⁶⁴ This represents a significant advancement in the enforceability of sustainability provisions, setting a precedent for future US FTAs.

The US's reliance on hard law mechanisms underscores its commitment to ensuring that sustainability obligations are not merely symbolic. By subjecting SDPs to the same dispute settlement procedures as other trade obligations, the US approach reinforces their legal equivalence and prioritizes accountability. However, critics argue that this enforcement-driven model risks being overly punitive and could be perceived as a tool for advancing protectionist interests rather than genuine sustainability objectives.⁶⁵

⁵⁷ Ibid, Article 23.3.

⁵⁸ Ibid, Article 24.8.

⁵⁹ Ibid, Article 23.5.

⁶⁰ European Commission, *Trade and Sustainable Development Chapters in EU Free Trade Agreements* (European Commission 2021).

⁶¹ Jeffrey J. Schott, *NAFTA and the Environment: Seven Years Later* (Institute for International Economics 2000).

⁶² USMCA, Dispute Settlement Mechanism, Chapter 31.

⁶³ Ibid, Annex 31-A (Rapid Response Labor Mechanism).

⁶⁴ Ibid.

⁶⁵ Jagdish Bhagwati, *In Defense of Globalization* (Oxford University Press 2004).

2.2.3 Monitoring and review mechanisms: ensuring compliance and transparency

In addition to enforceability, the US approach incorporates robust mechanisms for monitoring and reviewing compliance with sustainability commitments. These mechanisms include annual reports, stakeholder consultations, and independent monitoring bodies. For example, under the USMCA, each party is required to publish annual reports on the implementation of its labor and environmental commitments.⁶⁶ The agreement also establishes cooperation mechanisms, such as the Environmental Cooperation Agreement (ECA), to facilitate capacity-building and technical assistance.⁶⁷

Moreover, the US engages civil society organizations and business groups in monitoring sustainability commitments. Under the Labor Advisory Committee for Trade Negotiations and Trade Policy, representatives of labor unions and other stakeholders are consulted on the implementation and enforcement of labor provisions in US FTAs.⁶⁸ This participatory approach enhances transparency and ensures that sustainability objectives are aligned with the interests of affected communities.

However, the effectiveness of these monitoring mechanisms varies across different agreements. For instance, while the USMCA's RRLM provides a direct avenue for addressing labor violations, earlier agreements, such as the US-Chile FTA, rely primarily on cooperative mechanisms and lack the same level of enforceability.⁶⁹ Similarly, the US-Korea FTA (KORUS) includes commitments to uphold environmental and labor standards but has faced criticism for weak enforcement, as labor violations in South Korea have persisted despite the agreement's provisions.⁷⁰ This highlights the uneven implementation of monitoring mechanisms across US FTAs and underscores the need for stronger institutional frameworks.

2.2.4 Legality: Hard law vs. Soft law in US FTAs

The US approach to SDPs reflects a clear preference for hard law commitments, characterized by binding obligations and enforceable dispute settlement mechanisms. This stands in contrast to the EU's reliance on soft law instruments, such as dialogue-based mechanisms and non-binding recommendations.⁷¹ The US's emphasis on hard law is rooted in its strategic interest in ensuring compliance and maintaining a level playing field for its domestic producers, particularly in sectors where sustainability standards are critical to competitiveness.

For example, the US-Australia FTA includes binding commitments to enforce labor and environmental laws, with provisions for dispute settlement in cases of non-compliance.⁷² Similarly, the US-Peru Trade Promotion Agreement includes an Annex on Forest Sector Governance, which

⁶⁶ USMCA, Article 23.14.

⁶⁷ USMCA, Environmental Cooperation Agreement (ECA), 2018.

⁶⁸ United States Trade Representative, *Labor Advisory Committee for Trade Negotiations and Trade Policy: Annual Report 2022*.

⁶⁹ US-Chile Free Trade Agreement, Chapter 18 (Environment), 2003.

⁷⁰ US-Korea Free Trade Agreement (KORUS), Chapter 20 (Environment), 2012.

⁷¹ European Commission, *Sustainability Impact Assessments Handbook* (European Commission 2021).

⁷² US-Australia Free Trade Agreement, Chapter 19 (Environment), 2004.

requires Peru to combat illegal logging and enhance transparency in the timber trade.⁷³ This annex is enforceable through the agreement's dispute settlement mechanism, reflecting the US's commitment to integrating hard law provisions into its FTAs.

However, the reliance on hard law has limitations, particularly in North-South FTAs. Developing countries often lack the institutional capacity to fully implement and enforce sustainability commitments, creating challenges for compliance.⁷⁴ Additionally, the punitive nature of hard law mechanisms can strain trade relations and undermine cooperation on shared sustainability goals. This has led to calls for a more balanced approach that combines enforceability with capacity-building and technical assistance.⁷⁵

2.2.5 Trends and implications: comparing us ftas with different partners

The incorporation of SDPs in US FTAs reflects broader trends in international trade policy, with variations in scope and ambition depending on the economic and political context of each agreement. In North-North FTAs, such as the US-Australia FTA, SDPs focus on maintaining high standards and ensuring regulatory convergence.⁷⁶ In North-South FTAs, such as the US-Peru Trade Promotion Agreement, the emphasis is on addressing asymmetries in sustainability standards and promoting capacity-building.⁷⁷ However, South-South FTAs involving the US, such as agreements with Central American countries, often face challenges in implementation due to resource constraints and conflicting priorities.⁷⁸

The US's approach has significant implications for the level playing field between domestic and foreign producers. By enforcing high sustainability standards, the US seeks to prevent unfair competition and protect its domestic industries. However, this approach also raises questions about equity and inclusivity, particularly in North-South FTAs, where developing countries may perceive sustainability commitments as a form of trade conditionality.⁷⁹ Balancing enforceability with flexibility and cooperation will be essential to ensuring that SDPs contribute effectively to sustainable development without exacerbating inequalities.

2.3 *The EU's approach to incorporating sustainable development provisions in FTAs: From Dialogue-Based Mechanisms to Gradual Hardening*

The European Union (EU) has established itself as a global leader in embedding sustainable development provisions (SDPs) into free trade agreements (FTAs). Unlike the United States, which emphasizes enforceable and binding obligations, the EU traditionally adopts a softer, dialogue-based approach to SDPs, characterized by hortatory language, reliance on civil society participation, and mechanisms such as Domestic Advisory Groups (DAGs) and panels of experts.⁸⁰

⁷³ US-Peru Trade Promotion Agreement, Annex on Forest Sector Governance, 2007.

⁷⁴ Dani Rodrik, *The Globalization Paradox* (WW Norton 2011).

⁷⁵ OECD, *Trade and Environment: Promoting Sustainable Development* (OECD 2022).

⁷⁶ US-Australia Free Trade Agreement, op cit.

⁷⁷ US-Peru Trade Promotion Agreement, op cit.

⁷⁸ Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), Chapter 17 (Environment), 2004.

⁷⁹ Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (Anthem Press 2002).

⁸⁰ European Commission, *Trade and Sustainable Development: Recent Developments and Future Approaches* (European Commission 2023).

This approach reflects the EU's commitment to multilateralism, inclusivity, and fostering cooperation with its trading partners rather than imposing punitive measures. However, in response to criticism regarding the limited enforceability of its sustainable development chapters, the EU has begun to gradually harden its approach, as evidenced by recent agreements such as the EU-New Zealand FTA.⁸¹ This evolving strategy highlights the EU's efforts to balance its normative commitment to sustainability with the need for stronger accountability mechanisms. This section critically examines the EU's approach to SDPs, focusing on its legal architecture, mechanisms for implementation, and the gradual shift towards enforceable commitments.

2.3.1 Soft Law and Dialogue-Based Mechanisms: The Traditional EU Approach

The EU's traditional approach to SDPs in FTAs is rooted in soft law principles, relying on cooperative mechanisms rather than binding enforcement. The EU's Trade and Sustainable Development (TSD) chapters, included in virtually all modern FTAs, reflect a broad and holistic understanding of sustainability, encompassing labor rights, environmental protection, and commitments to international agreements such as the Paris Agreement on Climate Change.⁸² However, these provisions are typically phrased in aspirational terms, emphasizing shared commitments rather than legally binding obligations. For example, the EU-Vietnam FTA (EVFTA) requires parties to "strive" to improve labor and environmental standards but does not impose explicit sanctions for non-compliance.⁸³

Central to the EU's approach is the involvement of civil society through Domestic Advisory Groups (DAGs). DAGs are composed of representatives from labor unions, business associations, environmental organizations, and other stakeholders, who monitor the implementation of TSD provisions and provide recommendations to the parties.⁸⁴ This participatory mechanism reflects the EU's commitment to transparency and inclusivity, ensuring that civil society plays an active role in promoting sustainable development.⁸⁵ The EVFTA, for example, established DAGs in both the EU and Vietnam to oversee the implementation of commitments related to labor rights and environmental sustainability.⁸⁶

In addition to DAGs, the EU relies on dialogue-based mechanisms such as government consultations and the use of panels of experts to resolve disputes related to TSD chapters.⁸⁷ These panels, composed of independent experts in labor and environmental law, provide non-binding recommendations to the parties, encouraging compliance through persuasion rather than coercion.⁸⁸ This approach reinforces the EU's preference for cooperation and capacity-building over punitive measures, particularly in agreements with developing countries.

⁸¹ EU-New Zealand Free Trade Agreement (2023), Chapter 25 (Trade and Sustainable Development).

⁸² European Commission, *EU-Vietnam Free Trade Agreement: Sustainability Impact Assessment* (European Commission 2020).

⁸³ EU-Vietnam Free Trade Agreement (2019), Chapter 15 (Trade and Sustainable Development), Article 15.3.

⁸⁴ European Commission, *Domestic Advisory Groups in EU Trade Agreements* (European Commission 2021).

⁸⁵ *Ibid.*

⁸⁶ EU-Vietnam Free Trade Agreement, *ibid.*, Article 15.4.

⁸⁷ European Commission, *Panels of Experts in EU Trade Agreements* (European Commission 2020).

⁸⁸ *Ibid.*

2.3.2 Criticisms of the EU's Dialogue-Based Approach

While the EU's dialogue-based approach reflects its normative commitment to fostering cooperation, it has faced significant criticism for its limited enforceability and effectiveness. The reliance on soft law mechanisms has led to concerns that TSD chapters lack the necessary legal force to ensure compliance, particularly in cases where trading partners fail to meet their sustainability commitments.⁸⁹ For instance, the EU-Korea FTA, one of the first agreements to include a TSD chapter, has been criticized for its inability to compel South Korea to fully implement ILO core labor standards, despite repeated consultations and engagement with DAGs.⁹⁰

Moreover, the EU's reliance on dialogue and recommendations has raised questions about the accountability of its trading partners. Critics argue that the absence of binding dispute settlement mechanisms in TSD chapters creates a loophole, allowing countries to evade their sustainability obligations without facing tangible consequences.⁹¹ This has led to calls for a more robust and enforceable framework, particularly in light of the EU's ambitious sustainability agenda under the European Green Deal.⁹²

2.3.3 Gradual Hardening: The EU-New Zealand FTA as a Turning Point

In response to these criticisms, the EU has begun to harden its approach to SDPs, as evidenced by recent agreements such as the EU-New Zealand FTA. Signed in 2023, this agreement marks a significant departure from the traditional EU model by introducing binding commitments and stronger enforcement mechanisms for TSD provisions.⁹³ For the first time, the EU has included TSD commitments that are subject to the same dispute settlement procedures as other provisions of the agreement, including the possibility of sanctions for non-compliance.⁹⁴ This represents a shift towards a hybrid model that combines the EU's traditional emphasis on dialogue with the enforceability of hard law mechanisms.

The EU-New Zealand FTA also strengthens the role of civil society and expert panels, ensuring that monitoring and dispute resolution processes are more transparent and accountable.⁹⁵ For example, the agreement includes provisions for enhanced cooperation on climate change, such as commitments to phase out fossil fuel subsidies and promote renewable energy, which are binding and enforceable through dispute settlement.⁹⁶ This evolution reflects the EU's recognition of the need to ensure that its sustainability commitments are credible and capable of delivering tangible results.

The gradual hardening of the EU's approach is also evident in its proposed revision of the TSD chapter model, which seeks to make sustainability commitments more enforceable across all

⁸⁹ WTO, *Trade and Sustainable Development: The Role of FTAs* (WTO 2023).

⁹⁰ James Harrison, *Labour Rights in EU Free Trade Agreements: The EU-Korea Experience* (2021) 57 CMLR 103.

⁹¹ *Ibid.*

⁹² European Green Deal, COM(2019) 640 final.

⁹³ EU-New Zealand FTA, *op cit.*

⁹⁴ *Ibid.*, Chapter 25, Article 25.9.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*, Article 25.12.

future FTAs.⁹⁷ This includes the introduction of financial penalties for non-compliance and the integration of TSD commitments into the general dispute settlement mechanism of FTAs.⁹⁸ These changes highlight the EU's efforts to address the shortcomings of its traditional approach while maintaining its emphasis on cooperation and inclusivity.

2.3.4 Comparing the EU and US Approaches: Convergence and Divergence

The evolution of the EU's approach to SDPs highlights both convergence and divergence with the US model. While the EU and the US share a common goal of promoting sustainability through trade, their strategies reflect fundamentally different legal and policy priorities. The US adopts a hard law approach, characterized by binding obligations and strong enforcement mechanisms, as exemplified by the United States-Mexico-Canada Agreement (USMCA).⁹⁹ In contrast, the EU has traditionally relied on soft law principles, emphasizing dialogue and capacity-building, although recent agreements such as the EU-New Zealand FTA signal a shift towards greater enforceability.

Despite these differences, there is growing convergence between the two approaches, as both the EU and the US recognize the need for credible enforcement mechanisms to ensure compliance with sustainability commitments. The EU's gradual hardening of its TSD chapters mirrors the US's emphasis on enforceability, while the US's recent efforts to incorporate cooperative mechanisms, such as the Environmental Cooperation Agreement (ECA) under the USMCA, reflect an acknowledgment of the value of dialogue and capacity-building.¹⁰⁰

However, key divergences remain, particularly in the scope and focus of SDPs. The EU's TSD chapters adopt a broader and more holistic approach, addressing a wide range of sustainability issues, including biodiversity, climate change, and corporate social responsibility.¹⁰¹ By contrast, US FTAs focus primarily on labor and environmental standards, with less emphasis on broader sustainability goals.¹⁰² These differences reflect the underlying normative frameworks of the two actors, with the EU prioritizing multilateralism and global governance, while the US emphasizes domestic interests and reciprocity.

2.3.5 Implications for future FTAs

The gradual hardening of the EU's approach to SDPs has significant implications for the future of trade and sustainable development. By enhancing the enforceability of TSD chapters, the EU seeks to ensure that its sustainability commitments are credible and capable of delivering tangible results. However, this shift also raises questions about the balance between enforcement and cooperation, particularly in agreements with developing countries, where capacity constraints may hinder compliance.¹⁰³

⁹⁷ European Commission, *Proposal for a Revised Trade and Sustainable Development Chapter Model* (European Commission 2022).

⁹⁸ Ibid.

⁹⁹ United States-Mexico-Canada Agreement (2018), Chapter 23 (Labor) and Chapter 24 (Environment).

¹⁰⁰ USMCA, Environmental Cooperation Agreement (2018).

¹⁰¹ EU-New Zealand FTA, op cit, Article 25.2.

¹⁰² USMCA, ibid.

¹⁰³ Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (Anthem Press 2002).

Moreover, the EU's evolving approach highlights the need for greater coherence between trade policy and broader sustainability objectives, such as the European Green Deal and the United Nations Sustainable Development Goals (SDGs).¹⁰⁴ By integrating binding commitments on climate change, labor rights, and environmental protection into its FTAs, the EU aims to position itself as a global leader in sustainable trade. However, achieving this goal will require addressing the challenges of implementation and ensuring that sustainability commitments are not perceived as trade barriers or conditionalities.¹⁰⁵

3 Sustainable development provisions in FTAs among ASEAN countries: Convergence or divergence?

The incorporation of sustainable development provisions (SDPs) in free trade agreements (FTAs) has become a defining trend in contemporary trade policy, driven by the growing recognition of the interconnectedness between global trade, environmental sustainability, and social equity. However, significant divergence exists in the legal design, enforceability, and mechanisms for the implementation of SDPs across FTAs, particularly between the European Union (EU) and the United States (US). These two approaches exemplify different levels of bindingness, with the US favoring hard law mechanisms and enforceable commitments, while the EU historically adopts a softer approach rooted in dialogue and cooperation. Despite this divergence, there is convergence in the substantive content of SDPs, as both approaches address key areas such as environmental protection and labor rights, often supported by monitoring and review mechanisms. This dichotomy of divergence and convergence has important implications for ASEAN countries, which navigate these trends when negotiating their own FTAs. By examining the divergence and convergence in SDP frameworks and analyzing which ASEAN countries align with particular models, this section critically explores the incorporation of SDPs in FTAs within the ASEAN region, identifying areas of both policy coherence and fragmentation.

3.1 Divergence in Approaches: Bindingness and Enforceability

The divergence between the EU and US approaches to SDPs is most evident in the level of bindingness and the mechanisms for enforcement. The US model is characterized by its reliance on hard law commitments, where SDPs are subject to legally binding obligations and enforceable through state-to-state dispute settlement (SSDS).¹⁰⁶ For example, in the United States-Mexico-Canada Agreement (USMCA), labor and environmental provisions are fully enforceable, with violations subject to the same dispute settlement procedures as other trade obligations.¹⁰⁷ The USMCA also introduced the Rapid Response Labor Mechanism (RRLM), which allows for facility-specific investigations and sanctions in cases of labor rights violations.¹⁰⁸ This reflects the US's prioritization of enforceability to prevent unfair competition and protect domestic industries from underregulated foreign markets.

¹⁰⁴ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (UN 2015).

¹⁰⁵ Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (WW Norton 2011).

¹⁰⁶ United States-Mexico-Canada Agreement (USMCA) 2018, Chapter 23 (Labor) and Chapter 24 (Environment).

¹⁰⁷ *Ibid*, Article 23.5.

¹⁰⁸ *Ibid*, Annex 31-A (Rapid Response Labor Mechanism).

In contrast, the EU traditionally adopts a soft law approach, relying on dialogue, cooperation, and non-binding recommendations to promote sustainability in its FTAs.¹⁰⁹ The EU's Trade and Sustainable Development (TSD) chapters often use aspirational language, committing parties to "strive" for compliance with international labor and environmental standards.¹¹⁰ Dispute settlement in EU FTAs typically excludes TSD chapters from binding arbitration, relying instead on consultations and panels of experts to provide non-binding recommendations.¹¹¹ For example, in the EU-Vietnam FTA (EVFTA), labor and environmental commitments are subject to government consultations and monitoring by Domestic Advisory Groups (DAGs), but violations do not result in trade sanctions.¹¹² This approach reflects the EU's preference for fostering multilateral cooperation and capacity-building, particularly in agreements with developing countries.

The divergence in bindingness has significant implications for the effectiveness of SDPs. The US model's emphasis on enforceability ensures that sustainability commitments are treated as legal obligations rather than political aspirations. However, it has been criticized for its punitive nature, which may strain diplomatic relations and discourage cooperation.¹¹³ Conversely, the EU's softer approach promotes inclusivity and dialogue but has faced criticism for its limited capacity to compel compliance, raising questions about its credibility.¹¹⁴

3.2 Convergence in Content: Environmental and Labor Standards

Despite their differences in bindingness and enforcement, the EU and US approaches converge in the substantive content of SDPs, particularly in their focus on environmental protection and labor rights. Both models reflect international commitments, such as the Paris Agreement on Climate Change and the International Labour Organization (ILO) Core Conventions, integrating these into FTA provisions to promote global sustainability goals.¹¹⁵

Environmental provisions in both EU and US FTAs address issues such as climate change mitigation, biodiversity conservation, and the enforcement of domestic environmental laws. For example, the USMCA includes detailed commitments to combat illegal logging and wildlife trafficking, while the EVFTA requires parties to implement the Paris Agreement and conserve biodiversity.¹¹⁶ Similarly, labor provisions in both models emphasize the protection of workers' rights, including freedom of association, collective bargaining, and the elimination of forced and child labor.¹¹⁷ These shared priorities reflect the global consensus on the importance of aligning trade policy with sustainability objectives.

Furthermore, both the EU and US have introduced mechanisms to monitor and review the implementation of SDPs, albeit with different levels of legal force. In US FTAs, monitoring is often

¹⁰⁹ European Commission, *Trade and Sustainable Development Chapters in EU Free Trade Agreements* (European Commission 2021).

¹¹⁰ EU-Vietnam Free Trade Agreement (EVFTA) 2019, Chapter 13 (Trade and Sustainable Development).

¹¹¹ European Commission, *Panels of Experts in EU Trade Agreements* (European Commission 2020).

¹¹² Ibid.

¹¹³ Jagdish Bhagwati, *In Defense of Globalization* (Oxford University Press 2004).

¹¹⁴ James Harrison, *Labour Rights in EU Free Trade Agreements: The EU-Korea Experience* (2021) 57 CMLR 103.

¹¹⁵ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (UN 2015).

¹¹⁶ USMCA, Chapter 24, Article 24.8; EVFTA, Article 13.6.

¹¹⁷ International Labour Organization, *ILO Core Conventions and Recommendations* (ILO 2021).

supported by annual reports and facility-specific inspections, as seen in the RRLM under the USMCA.¹¹⁸ In contrast, the EU relies on participatory mechanisms, such as DAGs and government consultations, to oversee compliance and provide recommendations.¹¹⁹ While these mechanisms differ in design, they serve a common purpose: ensuring transparency and accountability in the implementation of sustainability commitments.

3.3 *ASEAN and SDP Frameworks: Convergence or Divergence?*

The incorporation of SDPs in FTAs among ASEAN countries reflects a mixed picture of convergence and divergence, shaped by the region's diverse economic, political, and institutional contexts. ASEAN countries have engaged with both the EU and US models, adopting elements of each approach depending on the nature of their trade partnerships and domestic priorities.

3.3.1 Singapore and the EU Model

Singapore, as a highly developed ASEAN member, aligns closely with the EU's approach to SDPs, emphasizing dialogue and cooperation over enforceability. The EU-Singapore FTA (EUSFTA) includes a comprehensive TSD chapter that commits both parties to high standards of labor and environmental protection while relying on mechanisms such as DAGs and consultations for monitoring compliance.¹²⁰ This reflects Singapore's preference for soft law mechanisms and its commitment to multilateralism, consistent with the EU's normative approach.

3.3.2 Vietnam and Hybrid Models

Vietnam offers an illustrative case of a hybrid approach, incorporating elements of both the EU and US models. The EVFTA reflects the EU's softer approach, emphasizing capacity-building and dialogue through DAGs and panels of experts. However, Vietnam has also engaged with the US model, as seen in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which includes enforceable labor and environmental provisions modeled after US FTAs.¹²¹ This dual engagement highlights Vietnam's strategic interest in balancing flexibility with binding commitments to enhance its integration into global value chains.

3.3.3 South-South FTAs and Limited SDPs

In contrast, FTAs among ASEAN members and with other developing countries often lack comprehensive SDPs, reflecting a divergence from the EU and US models. For example, the ASEAN Trade in Goods Agreement (ATIGA) and the ASEAN-Australia-New Zealand FTA (AANZFTA) focus primarily on trade liberalization, with limited provisions on sustainability.¹²² Similarly, the Regional Comprehensive Economic Partnership (RCEP), which includes ASEAN and its major trading partners, incorporates general references to sustainable development but lacks enforceable commitments on labor and environmental standards.¹²³ This highlights the challenges

¹¹⁸ USMCA, Annex 31-A, op cit.

¹¹⁹ EVFTA, Article 13.15, op cit.

¹²⁰ EU-Singapore Free Trade Agreement (EUSFTA) 2018, Chapter 12 (Trade and Sustainable Development).

¹²¹ Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) 2018, Chapter 19 (Labour) and Chapter 20 (Environment).

¹²² ASEAN Trade in Goods Agreement (ATIGA) 2009, Chapter 2 (General Provisions).

¹²³ Regional Comprehensive Economic Partnership (RCEP) 2020, Preamble and Chapter 17 (Economic and Technical Cooperation).

of integrating SDPs into South-South FTAs, where economic development priorities often take precedence over sustainability goals.

4 Current landscape on sustainable development in ASEAN Economic Community

4.1 Sustainable Development Provisions in ASEAN: Cultural and Social Dimensions Beyond the ASEAN Economic Community

Sustainable development provisions (SDPs), particularly those addressing environmental protection, labor rights, and social equity, are increasingly recognized as fundamental to ensuring inclusive economic growth and long-term regional stability. However, within the institutional framework of the ASEAN Economic Community (AEC), SDPs remain notably peripheral. Despite the AEC's primary focus on economic integration, trade liberalization, and the removal of barriers to investment, sustainable development issues are largely relegated to other ASEAN pillars, such as the ASEAN Socio-Cultural Community (ASCC).¹²⁴ This division reflects a structural limitation within ASEAN's institutional architecture, where sustainable development is treated as a cultural and social matter rather than an integral aspect of economic policymaking. This section examines the current status of SDPs in ASEAN, analyzing their content, associated challenges, and their effectiveness, as well as their social and economic impacts. The analysis underscores the need for a more integrated approach to sustainable development within ASEAN's institutional framework.

4.1.1 Content and Scope of SDPs in ASEAN: Fragmentation and Gaps

The inclusion of SDPs in ASEAN is fragmented across its three pillars: the AEC, the ASCC, and the ASEAN Political-Security Community (APSC).¹²⁵ While the AEC focuses primarily on trade, investment, and economic integration, sustainable development issues—such as environmental protection, labor rights, and social equity—fall under the purview of the ASCC.¹²⁶ For instance, the ASCC Blueprint 2025 emphasizes the promotion of sustainable environmental practices, disaster resilience, and the protection of vulnerable groups.¹²⁷ However, these commitments are framed in aspirational terms, lacking legally binding obligations or enforceable mechanisms.¹²⁸ This division has created a siloed approach, where sustainable development is viewed as a cultural and social issue rather than a core component of economic policy.

Environmental provisions in ASEAN are largely addressed through the ASEAN Agreement on Transboundary Haze Pollution (AATHP) and other sectoral agreements, which aim to tackle regional environmental challenges such as deforestation, air pollution, and marine degradation.¹²⁹ However, these agreements are non-binding and have faced significant implementation challenges due to weak enforcement mechanisms and a reliance on voluntary cooperation.¹³⁰ Similarly, labor provisions within ASEAN are addressed through the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration), which emphasizes the protection

¹²⁴ ASEAN Economic Community Blueprint 2025 (ASEAN Secretariat, 2015).

¹²⁵ ASEAN Charter, Art. 1.

¹²⁶ ASEAN Socio-Cultural Community Blueprint 2025 (ASEAN Secretariat, 2015).

¹²⁷ Ibid, para 4.7.

¹²⁸ Ibid.

¹²⁹ ASEAN Agreement on Transboundary Haze Pollution (2003).

¹³⁰ Helena Varkkey, *The Haze Problem in Southeast Asia: Palm Oil and Patronage* (Routledge, 2016).

of migrant workers but lacks enforceable commitments.¹³¹ These limitations highlight the fragmented and voluntary nature of SDPs within ASEAN, reflecting the broader challenge of balancing national sovereignty with regional commitments.

4.1.2 Issues and Challenges: Institutional and Legal Constraints

The peripheral treatment of SDPs within the AEC reflects deeper institutional and legal constraints in ASEAN's approach to sustainable development. One key issue is the principle of non-interference, which underpins ASEAN's decision-making process and limits the organization's ability to enforce compliance with regional agreements.¹³² This principle has resulted in a reliance on consensus-based decision-making and voluntary cooperation, undermining the effectiveness of SDPs. For example, the AATHP has been criticized for its inability to address recurring transboundary haze pollution, as enforcement depends on the political will of individual member states.¹³³

Another challenge is the lack of integration between the AEC and the ASCC, which creates policy silos and hinders the mainstreaming of SDPs into economic decision-making.¹³⁴ While the AEC Blueprint 2025 includes references to sustainable development, these commitments are limited to the promotion of green technologies and corporate social responsibility (CSR), with little emphasis on binding obligations or enforcement mechanisms.¹³⁵ This contrasts with other regional frameworks, such as the European Union, where sustainable development is integrated into trade and economic policies through legally binding provisions in free trade agreements (FTAs).¹³⁶

Moreover, ASEAN's diverse socio-economic landscape presents significant challenges to the implementation of SDPs. Member states vary widely in terms of economic development, institutional capacity, and political priorities, leading to divergent approaches to sustainable development. For instance, while Singapore has adopted ambitious sustainability targets and integrated SDPs into its trade agreements, less developed member states such as Cambodia and Myanmar face significant capacity constraints, limiting their ability to implement SDPs effectively.¹³⁷ This divergence undermines regional coherence and creates an uneven playing field for sustainable development within ASEAN.

4.1.3 Effectiveness of SDPs in ASEAN: Limited impact and missed opportunities

The effectiveness of SDPs in ASEAN is undermined by their non-binding nature and the absence of robust enforcement mechanisms. For example, the AATHP, despite being in force since 2003, has failed to prevent recurring transboundary haze pollution, which continues to have severe environmental, economic, and health impacts across the region.¹³⁸ The lack of accountability

¹³¹ ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration, 2007).

¹³² Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (Routledge, 2014).

¹³³ Varkkey, op cit.

¹³⁴ ASEAN Economic Community Blueprint, op cit.

¹³⁵ Ibid, para 3.4.

¹³⁶ European Commission, *Trade and Sustainable Development Chapters in EU Free Trade Agreements* (European Commission, 2021).

¹³⁷ UNDP, *Human Development Report 2020: The Next Frontier* (UNDP, 2020).

¹³⁸ Varkkey, op cit.

mechanisms and the reliance on voluntary cooperation have limited the agreement's effectiveness, highlighting the need for stronger regional governance.

Similarly, labor provisions within ASEAN have had limited impact, particularly in addressing the rights and welfare of migrant workers. The Cebu Declaration, while a significant step towards regional cooperation on labor issues, lacks enforcement mechanisms and has been criticized for its failure to protect migrant workers from exploitation and abuse.¹³⁹ This is particularly concerning given the high levels of labor migration within ASEAN, where millions of workers contribute to the region's economic growth but remain vulnerable to poor working conditions and limited legal protections.¹⁴⁰

The limited effectiveness of SDPs in ASEAN also reflects missed opportunities to leverage regional economic integration for sustainable development. The AEC, as a platform for trade and investment liberalization, has significant potential to promote sustainability through the integration of binding SDPs into trade agreements and economic policies. However, this potential remains largely untapped, as the AEC's focus on economic growth often takes precedence over environmental and social considerations.¹⁴¹

4.1.4 Impacts of SDPs: Economic, Social, and Environmental Dimensions

The limited incorporation of SDPs within ASEAN has significant implications for the region's economic, social, and environmental landscape. Economically, the absence of binding SDPs in trade agreements and investment policies creates risks for regional competitiveness, particularly as global markets increasingly prioritize sustainability. For instance, the European Union's Carbon Border Adjustment Mechanism (CBAM) and other green trade policies are likely to impact ASEAN exporters, who may face trade barriers if regional economies fail to meet international sustainability standards.¹⁴²

Socially, the lack of robust labor provisions in ASEAN exacerbates inequalities and undermines social cohesion. Migrant workers, who form a significant part of the region's labor force, continue to face exploitation and discrimination, limiting their ability to contribute fully to economic growth.¹⁴³ Addressing these issues requires stronger regional cooperation and the integration of binding labor provisions into the AEC framework.

Environmentally, the failure to address transboundary challenges such as haze pollution and deforestation undermines regional sustainability and contributes to global environmental degradation. ASEAN's reliance on voluntary mechanisms and the absence of robust enforcement have limited progress in addressing these challenges, highlighting the need for stronger regional governance.¹⁴⁴

¹³⁹ International Labour Organization, *Review of Labour Migration Policies in ASEAN* (ILO, 2021).

¹⁴⁰ Ibid.

¹⁴¹ ASEAN Economic Community Blueprint, op cit.

¹⁴² European Commission, *Proposal for a Carbon Border Adjustment Mechanism* (COM/2021/564 final).

¹⁴³ ILO, op cit.

¹⁴⁴ ASEAN Secretariat, *ASEAN State of the Environment Report 2020* (ASEAN, 2020).

4.1.5 Toward an integrated approach to sustainable development in ASEAN

To address the limitations of the current approach, ASEAN must adopt a more integrated framework for sustainable development that bridges the gap between the AEC and the ASCC. This requires mainstreaming SDPs into economic policies and trade agreements, ensuring that sustainability becomes a core component of regional economic integration. ASEAN could draw lessons from other regional frameworks, such as the European Union, where sustainable development is integrated into FTAs through legally binding provisions and robust monitoring mechanisms.¹⁴⁵

Strengthening institutional capacity and enhancing regional cooperation are also critical to improving the effectiveness of SDPs. This includes establishing mechanisms for accountability and enforcement, as well as providing technical and financial support to less developed member states to enhance their capacity to implement SDPs.¹⁴⁶

Finally, ASEAN must prioritize the inclusion of civil society and other stakeholders in the formulation and implementation of sustainable development policies. This participatory approach can enhance transparency, accountability, and the alignment of SDPs with the needs and priorities of local communities.¹⁴⁷

4.2 The Challenges of New-Generation FTAs in ASEAN: Reconciling divergent approaches and implementation issues

The emergence of new-generation Free Trade Agreements (FTAs), which incorporate comprehensive sustainable development provisions (SDPs), poses critical questions for ASEAN as it navigates an increasingly fragmented global trade landscape. These agreements, whether signed with developed (North) or developing (South) partners, demand a reassessment of ASEAN's traditional approach to sustainability within trade policy. Key issues arise regarding which approach—soft law mechanisms, legally binding obligations, or hybrid models—should be adopted to align with ASEAN's normative framework, institutional capacity, and diverse economic realities. Furthermore, the implementation of SDPs in ASEAN faces significant challenges, particularly in the context of weak regional enforcement mechanisms, divergent national priorities, and limited institutional capacity. This section critically analyzes the implications of ASEAN's engagement in new-generation FTAs, focusing on the applicability of different approaches and the operational challenges of SDP implementation.

4.2.1 Divergent approaches in new-generation FTAs: The applicability question

ASEAN's engagement with trading partners from both the Global North and Global South exposes the region to divergent approaches to SDPs, creating uncertainty about which framework is best suited for its economic and socio-political context. Developed partners, such as the European Union (EU), typically advocate for legally binding SDPs with robust enforcement mechanisms,

¹⁴⁵ European Commission, op cit.

¹⁴⁶ Acharya, op cit.

¹⁴⁷ UNESCAP, *Sustainable Development Goals Progress Report: Asia-Pacific 2022*.

reflecting their commitment to multilateral environmental and labor standards.¹⁴⁸ For instance, the EU's new trade agreements, such as the EU-Singapore FTA (EUSFTA) and the EU-Vietnam FTA (EVFTA), include comprehensive Trade and Sustainable Development (TSD) chapters that obligate parties to implement international agreements like the Paris Agreement and core International Labour Organization (ILO) Conventions.¹⁴⁹ These agreements also include mechanisms for civil society participation, such as Domestic Advisory Groups (DAGs), and panels of experts to ensure compliance.¹⁵⁰

Conversely, trading partners from the Global South often prefer soft law approaches, emphasizing cooperation, capacity-building, and flexibility rather than binding obligations.¹⁵¹ This is evident in ASEAN's Regional Comprehensive Economic Partnership (RCEP), where sustainable development is addressed through general principles and voluntary commitments rather than enforceable rules.¹⁵² Similarly, South-South FTAs, such as the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), adopt hybrid models that balance soft law mechanisms with selective enforceable provisions, particularly in areas like labor rights and environmental protection.¹⁵³

The applicability of these divergent approaches to ASEAN depends on several factors, including the economic development levels of member states, their institutional capacity, and the nature of their trade relationships. For instance, less developed ASEAN members, such as Cambodia, Laos, and Myanmar, may resist binding commitments due to concerns about compliance costs and potential trade sanctions.¹⁵⁴ In contrast, more developed members like Singapore, which has the institutional capacity to enforce rigorous sustainability standards, may align more closely with the EU's approach.¹⁵⁵ This divergence within ASEAN complicates the negotiation of new-generation FTAs, as member states must reconcile their differing priorities and capacities with the demands of external partners.

4.2.2 Challenges of implementation: institutional and operational constraints

The implementation of SDPs in ASEAN's new-generation FTAs faces significant challenges, particularly in the context of weak regional governance and varying national capacities. One of the primary issues is the lack of a centralized enforcement mechanism within ASEAN, which undermines the effectiveness of SDPs.¹⁵⁶ Unlike the EU, which has a well-established legal and institutional framework for monitoring and enforcing sustainability commitments, ASEAN

¹⁴⁸ European Commission, *Trade and Sustainable Development Chapters in EU Free Trade Agreements* (European Commission, 2021).

¹⁴⁹ EU-Vietnam Free Trade Agreement (EVFTA), Chapter 13 (Trade and Sustainable Development).

¹⁵⁰ European Commission, *Domestic Advisory Groups in EU Trade Agreements* (European Commission, 2020).

¹⁵¹ Jagdish Bhagwati, *In Defense of Globalization* (Oxford University Press, 2004).

¹⁵² Regional Comprehensive Economic Partnership (RCEP), Chapter 17 (Economic and Technical Cooperation).

¹⁵³ Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Chapters 19 (Labor) and 20 (Environment).

¹⁵⁴ UNDP, *Human Development Report 2020: The Next Frontier* (UNDP, 2020).

¹⁵⁵ ASEAN Economic Community Blueprint 2025 (ASEAN Secretariat, 2015).

¹⁵⁶ Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (Routledge, 2014).

relies on a decentralized approach, where individual member states are responsible for implementation.¹⁵⁷ This creates significant disparities in the enforcement of SDPs, as less developed members often lack the resources and institutional capacity to meet their obligations.¹⁵⁸

For example, under the EVFTA, Vietnam committed to implementing ILO Core Conventions on labor rights, including the right to collective bargaining and the elimination of forced labor.¹⁵⁹ However, Vietnam's progress has been hindered by domestic legal constraints and limited institutional capacity, raising concerns about its ability to fully comply with the agreement's TSD provisions.¹⁶⁰ Similar challenges are evident in the implementation of environmental provisions under the RCEP, where member states face difficulties in addressing issues such as deforestation, illegal fishing, and pollution due to weak regulatory frameworks and enforcement mechanisms.¹⁶¹

Another key challenge is the principle of non-interference, which remains a cornerstone of ASEAN's decision-making process.¹⁶² This principle limits the organization's ability to enforce compliance with regional agreements, as member states are reluctant to cede sovereignty over domestic policy matters.¹⁶³ For instance, the ASEAN Agreement on Transboundary Haze Pollution (AATHP), despite being in force since 2003, has been largely ineffective in addressing the recurring haze crisis due to the lack of binding enforcement mechanisms and the unwillingness of member states to hold each other accountable.¹⁶⁴ This highlights the broader challenge of balancing national sovereignty with regional commitments, particularly in the context of SDPs.

4.2.3 Economic and political trade-offs in new-generation FTAs

The implementation of SDPs in ASEAN's new-generation FTAs also involves significant economic and political trade-offs. On the one hand, adopting binding SDPs can enhance ASEAN's credibility and competitiveness in global markets, particularly in light of growing consumer and investor demand for sustainable trade practices.¹⁶⁵ For example, the EU's Carbon Border Adjustment Mechanism (CBAM) and other green trade policies are likely to impact ASEAN exporters, who may face trade barriers if they fail to meet international sustainability standards.¹⁶⁶ Similarly, the integration of labor provisions into FTAs can improve working conditions and social equity, contributing to long-term economic stability and social cohesion.¹⁶⁷

On the other hand, binding SDPs may impose significant compliance costs on ASEAN member states, particularly those with limited institutional capacity and financial resources.¹⁶⁸ For instance, the implementation of environmental provisions, such as commitments to reduce carbon emissions and transition to renewable energy, requires substantial investments in infrastructure and

¹⁵⁷ Ibid.

¹⁵⁸ Helena Varkkey, *The Haze Problem in Southeast Asia: Palm Oil and Patronage* (Routledge, 2016).

¹⁵⁹ EVFTA, op cit, Article 13.3.

¹⁶⁰ International Labour Organization, *Review of Labour Migration Policies in ASEAN* (ILO, 2021).

¹⁶¹ ASEAN Secretariat, *ASEAN State of the Environment Report 2020* (ASEAN, 2020).

¹⁶² Acharya, op cit.

¹⁶³ ASEAN Charter, Art. 2.

¹⁶⁴ Varkkey, op cit.

¹⁶⁵ European Commission, *Proposal for a Carbon Border Adjustment Mechanism* (COM/2021/564 final).

¹⁶⁶ Ibid.

¹⁶⁷ ILO, op cit.

¹⁶⁸ UNESCAP, *Sustainable Development Goals Progress Report: Asia-Pacific 2022*.

technology, which may be beyond the reach of less developed members.¹⁶⁹ This raises concerns about the potential for SDPs to exacerbate existing inequalities within ASEAN, as more developed members may benefit from enhanced access to global markets while less developed members struggle to meet their obligations.¹⁷⁰

Moreover, the political implications of binding SDPs cannot be overlooked. The imposition of external sustainability standards by developed partners, such as the EU, may be perceived as a form of neo-colonialism, undermining the sovereignty and autonomy of ASEAN member states.¹⁷¹ This is particularly sensitive in the context of South-South FTAs, where member states prioritize mutual respect and cooperation over the imposition of external norms.¹⁷² Balancing these economic and political trade-offs is critical to ensuring that SDPs in new-generation FTAs contribute to sustainable development without undermining regional solidarity and cohesion.

4.2.4 Toward a Coherent ASEAN Approach to SDPs in FTAs

To address these challenges, ASEAN must develop a more coherent and integrated approach to SDPs in FTAs, balancing the demands of external partners with the region's internal diversity and institutional constraints. First, ASEAN should strengthen its institutional capacity for monitoring and enforcing SDPs, including the establishment of regional mechanisms to support compliance and accountability.¹⁷³ This could involve the creation of an ASEAN Sustainability Council, tasked with overseeing the implementation of SDPs and providing technical and financial assistance to member states.¹⁷⁴

Second, ASEAN should adopt a flexible approach to SDPs in FTAs, allowing for differentiated commitments based on the development levels and capacities of member states.¹⁷⁵ This could be modeled on the principle of “common but differentiated responsibilities” (CBDR) under international environmental law, ensuring that less developed members receive the support they need to meet their obligations while avoiding a one-size-fits-all approach.¹⁷⁶

Finally, ASEAN should prioritize the integration of SDPs into its broader economic and trade policies, ensuring that sustainability becomes a core component of regional economic integration.¹⁷⁷ This requires greater coordination between the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC), as well as the mainstreaming of SDPs into the AEC Blueprint and other regional frameworks.¹⁷⁸ By adopting a more integrated and flexible approach, ASEAN can position itself as a leader in sustainable trade, ensuring that its engagement in new-generation FTAs contributes to both regional and global sustainability goals.

¹⁶⁹ ASEAN Economic Community Blueprint, op cit.

¹⁷⁰ UNDP, op cit.

¹⁷¹ Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (WW Norton, 2011).

¹⁷² South Centre, *Developing Countries in the WTO and Regional Trade Agreements* (South Centre, 2021).

¹⁷³ Acharya, op cit.

¹⁷⁴ ASEAN Secretariat, *ASEAN Sustainable Development Goals Indicators Baseline Report* (ASEAN, 2021).

¹⁷⁵ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (UN, 2015).

¹⁷⁶ UNFCCC, *The Paris Agreement* (2015), Art. 2.

¹⁷⁷ ASEAN Economic Community Blueprint, op cit.

¹⁷⁸ ASEAN Socio-Cultural Community Blueprint, op cit.

5 Implications for sustainable development negotiations in ASEAN

The negotiation of sustainable development provisions (SDPs) in ASEAN's Free Trade Agreements (FTAs) has far-reaching implications for the region's sustainable development trajectory. The diversity of ASEAN member states, combined with the varying approaches of its trade partners, necessitates a tailored strategy for negotiating SDPs that aligns with the region's socio-economic realities and institutional capacity. This section critically examines the implications of South-South and South-North FTA negotiations for ASEAN, outlining different scenarios and proposing recommendations for navigating each context. By analyzing the applicability of the EU and US approaches, this discussion provides a roadmap for ASEAN to strengthen its position in sustainable development negotiations.

5.1 South-South Negotiations: adopting a gradual EU-style approach

In South-South negotiations, ASEAN often engages with trade partners that share similar development challenges, such as capacity constraints, limited financial resources, and a focus on economic growth. Given these shared priorities, the EU's softer approach to SDPs—characterized by non-binding commitments, capacity-building, and cooperative mechanisms—offers a pragmatic model for ASEAN to adopt.¹⁷⁹ This approach allows for the gradual integration of sustainability principles into trade agreements without imposing overly burdensome obligations on developing countries.

The EU's Trade and Sustainable Development (TSD) chapters provide a useful framework for South-South negotiations, as they emphasize dialogue, cooperation, and capacity-building over punitive enforcement.¹⁸⁰ For instance, the EU-Vietnam FTA (EVFTA) includes provisions for environmental protection and labor rights, but enforcement relies on consultative mechanisms and panels of experts rather than trade sanctions.¹⁸¹ This structure enables developing countries to prioritize capacity-building and knowledge transfer, creating the institutional foundations necessary for long-term compliance.¹⁸² Similarly, the EU's emphasis on stakeholder participation, through mechanisms such as Domestic Advisory Groups (DAGs), ensures that civil society voices are included in the implementation of SDPs.¹⁸³

In the context of South-South FTAs, ASEAN could adopt a phased approach to integrating SDPs, starting with non-binding commitments and gradually transitioning to more enforceable provisions. This strategy would allow less developed ASEAN member states, such as Cambodia, Laos, and Myanmar, to build their institutional capacity and address domestic sustainability challenges before committing to binding obligations.¹⁸⁴ For example, the Regional Comprehensive Economic Partnership (RCEP), which includes ASEAN and other developing countries, could serve as a platform for piloting this gradual approach by enhancing the scope of its existing

¹⁷⁹ European Commission, *Trade and Sustainable Development Chapters in EU Free Trade Agreements* (European Commission 2021).

¹⁸⁰ EU-Vietnam Free Trade Agreement (EVFTA), Chapter 13 (Trade and Sustainable Development).

¹⁸¹ Ibid.

¹⁸² European Commission, *Domestic Advisory Groups in EU Trade Agreements* (European Commission 2020).

¹⁸³ Ibid.

¹⁸⁴ UNDP, *Human Development Report 2020: The Next Frontier* (UNDP 2020).

sustainability provisions.¹⁸⁵ This incremental strategy would ensure that SDPs are aligned with the development realities of ASEAN member states while fostering regional cooperation on shared sustainability goals.

5.2 South-North Negotiations: navigating divergent approaches

In South-North negotiations, ASEAN faces the challenge of reconciling the divergent approaches of developed partners, particularly the United States (US) and the European Union (EU). These partners represent two distinct models for incorporating SDPs into FTAs: the US favors a hard law approach with enforceable commitments, while the EU adopts a softer, dialogue-based model.¹⁸⁶ Each approach presents unique opportunities and challenges for ASEAN, necessitating tailored recommendations to maximize the benefits of these partnerships.

5.2.1 The US Model: enforceable commitments and recommendations for ASEAN

The US approach to SDPs emphasizes binding commitments and enforceable mechanisms, treating sustainability provisions as integral to trade agreements.¹⁸⁷ For instance, the United States-Mexico-Canada Agreement (USMCA) includes detailed labor and environmental provisions that are subject to the same dispute settlement mechanisms as other trade obligations.¹⁸⁸ The USMCA's Rapid Response Labor Mechanism (RRLM), which allows for facility-specific investigations and sanctions in cases of labor violations, exemplifies the US's focus on enforceability.¹⁸⁹

While the US model ensures accountability and equal treatment of trade and sustainability commitments, it poses significant challenges for ASEAN, particularly for its less developed members. Binding obligations may impose compliance costs that exceed the institutional and financial capacity of these countries, potentially leading to non-compliance and trade disputes.¹⁹⁰ Moreover, the punitive nature of the US model may strain diplomatic relations and undermine trust, particularly in the context of South-North partnerships.¹⁹¹

To navigate these challenges, ASEAN should advocate for a balanced approach that combines enforceable commitments with capacity-building and flexibility. This could involve negotiating differentiated obligations based on the development levels of member states, allowing less developed countries to implement SDPs at a pace that aligns with their domestic priorities.¹⁹² For instance, ASEAN could propose the inclusion of transitional periods for compliance, during which technical and financial assistance from the US would be provided to support capacity-building.¹⁹³ Additionally, ASEAN should prioritize the inclusion of dispute prevention

¹⁸⁵ Regional Comprehensive Economic Partnership (RCEP), Preamble and Chapter 17 (Economic and Technical Cooperation).

¹⁸⁶ United States-Mexico-Canada Agreement (USMCA), Chapter 23 (Labor) and Chapter 24 (Environment).

¹⁸⁷ Ibid.

¹⁸⁸ USMCA, Annex 31-A (Rapid Response Labor Mechanism).

¹⁸⁹ Ibid.

¹⁹⁰ Jagdish Bhagwati, *In Defense of Globalization* (Oxford University Press 2004).

¹⁹¹ Dani Rodrik, *The Globalization Paradox* (WW Norton 2011).

¹⁹² ASEAN Economic Community Blueprint 2025 (ASEAN Secretariat 2015).

¹⁹³ Ibid.

mechanisms, such as consultations and mediation, to address potential trade disputes before they escalate to formal arbitration.¹⁹⁴

5.2.2 The EU Model: dialogue-based cooperation and recommendations for ASEAN

The EU's approach to SDPs, which relies on dialogue, cooperation, and non-binding commitments, aligns more closely with ASEAN's principles of non-interference and consensus-based decision-making.¹⁹⁵ For example, the EU-Singapore FTA (EUSFTA) and the EVFTA emphasize the implementation of international agreements, such as the Paris Agreement and ILO Core Conventions, but enforcement relies on consultative mechanisms and panels of experts rather than trade sanctions.¹⁹⁶ This approach fosters inclusivity and trust, enabling developing countries to engage in sustainability commitments without the fear of punitive measures.

For ASEAN, the EU model offers significant advantages, particularly in terms of capacity-building and knowledge transfer. By prioritizing cooperation over enforcement, ASEAN member states can leverage EU expertise and resources to strengthen their domestic institutions and align their policies with international sustainability standards.¹⁹⁷ For instance, the EU's support for stakeholder participation, through mechanisms such as DAGs, could help ASEAN enhance the transparency and accountability of its sustainability initiatives.¹⁹⁸

However, the EU model also has limitations, particularly in terms of enforceability. The reliance on soft law mechanisms may undermine the credibility of SDPs, as non-compliance does not result in trade sanctions or other tangible consequences.¹⁹⁹ To address this issue, ASEAN should advocate for a hybrid approach that combines the EU's emphasis on dialogue and cooperation with selective enforceable commitments in key areas, such as labor rights and environmental protection.²⁰⁰ This would ensure that SDPs are both credible and flexible, fostering greater alignment between ASEAN and the EU while addressing the region's development realities.

5.2.3 Strategic recommendations for ASEAN in South-North FTAs

To maximize the benefits of South-North FTAs, ASEAN should adopt a strategic approach that balances the demands of developed partners with the region's internal diversity and institutional constraints. Key recommendations include:

i. Differentiated commitments: ASEAN should negotiate differentiated commitments based on the development levels of its member states, ensuring that less developed countries are not disproportionately burdened by binding obligations. This could involve transitional periods, capacity-building support, and technical assistance to facilitate compliance.²⁰¹

¹⁹⁴ European Commission, *Panels of Experts in EU Free Trade Agreements* (European Commission 2020).

¹⁹⁵ ASEAN Charter, Art. 2.

¹⁹⁶ European Commission, *Trade for All: Towards a More Responsible Trade and Investment Policy* (European Commission 2015).

¹⁹⁷ ASEAN Secretariat, *ASEAN Sustainable Development Goals Indicators Baseline Report* (ASEAN 2021).

¹⁹⁸ Ibid.

¹⁹⁹ James Harrison, *Labour Rights in EU Free Trade Agreements: The EU-Korea Experience* (2021) 57 CMLR 103.

²⁰⁰ UNESCAP, *Sustainable Development Goals Progress Report: Asia-Pacific 2022*.

²⁰¹ ASEAN Economic Community Blueprint, op cit.

ii. Hybrid enforcement mechanisms: ASEAN should advocate for hybrid enforcement mechanisms that combine the EU's emphasis on dialogue and cooperation with the US's focus on accountability. This could involve consultative mechanisms for dispute prevention, supplemented by selective enforceable commitments in critical areas such as deforestation and forced labor.²⁰²

iii. Stakeholder participation: ASEAN should prioritize the inclusion of stakeholder participation mechanisms, such as DAGs, to enhance transparency, accountability, and inclusivity in the implementation of SDPs. This would ensure that civil society voices are represented in sustainability initiatives, fostering greater trust and legitimacy.²⁰³

iv. Capacity-building and technical assistance: ASEAN should leverage its partnerships with developed countries to secure financial and technical assistance for capacity-building. This support is particularly critical for less developed member states, which face significant institutional constraints in implementing SDPs.²⁰⁴

v. Alignment with global standards: ASEAN should align its sustainability commitments with international standards, such as the Paris Agreement and ILO Core Conventions, to enhance its credibility and competitiveness in global markets.²⁰⁵ This alignment would also facilitate greater coherence between ASEAN's FTAs and the sustainability priorities of its developed partners.²⁰⁶

6 Conclusion

In conclusion, the incorporation of sustainable development provisions in new-generation free trade agreements (FTAs) among ASEAN countries represents a pivotal step toward balancing economic growth with environmental sustainability and social equity in the region. While ASEAN member states have demonstrated a growing commitment to integrating sustainability into trade policies, the regulatory approaches remain fragmented, reflecting divergent national priorities, economic capacities, and institutional frameworks. This regulatory diversity underscores both the challenges and opportunities for harmonizing sustainability standards within ASEAN. The study reveals that the lack of uniformity in the design and enforcement of these provisions often leads to regulatory gaps, creating risks of environmental degradation, labor exploitation, and social inequality, which undermine the overarching goals of sustainable development. Nonetheless, ASEAN's strategic position as a dynamic hub of global trade provides a unique opportunity to develop regionally coordinated legal frameworks that integrate binding commitments to sustainable development. Drawing lessons from the legal architectures of the European Union and the United States, ASEAN can adopt a hybrid approach that combines soft law mechanisms, such as capacity-building and dialogue, with enforceable obligations supported by robust monitoring and dispute resolution mechanisms. Additionally, embedding these provisions into broader regional trade agreements, such as the Regional Comprehensive Economic Partnership (RCEP), can enhance regulatory coherence and align ASEAN's sustainability efforts with global standards,

²⁰² UNFCCC, *The Paris Agreement* (2015), Art. 2.

²⁰³ Ibid.

²⁰⁴ ILO, *Review of Labour Migration Policies in ASEAN* (ILO 2021).

²⁰⁵ UNDP, *op cit.*

²⁰⁶ European Commission, *op cit.*

including the United Nations Sustainable Development Goals (SDGs). The study concludes by emphasizing the importance of leveraging legal and institutional reforms to advance a more unified, equitable, and enforceable framework for sustainable trade governance in ASEAN, thereby fostering an integrated and resilient economic community that positions itself as a global leader in sustainable development.

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