

ROLE OF NON-STATE ACTORS, NON-GOVERNMENTAL ORGANISATIONS AND CIVIL SOCIETIES IN “NEW-AGE” FREE TRADE AGREEMENTS

Free Trade Agreements (FTAs) are being negotiated and entered into at a rapid pace, given the complexities that arise in negotiating terms at a multilateral level. Further, FTAs are no longer limited to traditional trade-related issues, as they seek to regulate various subject-matters including gender considerations, intellectual property, environmental concerns, sustainable development, labour, e-commerce and etc. This has given rise to scope for new stakeholders to give inputs, in terms of negotiation, and implementation of FTAs. The two stakeholders who actively play a role in this regard are non-governmental organizations (NGOs) and civil societies. NGOs and civil societies seek to protect the interests of the society at large, and this can range from environmental concerns being raised by NGOs to intellectual property-related issues being flagged out by civil societies. Countries such as EU, USA, Canada and New Zealand are actively introducing mechanisms to increase the participation of NGOs and civil societies in the process of negotiating FTAs and during the implementation stage.

In this background, the Report focuses on analysing the role of NGOs and civil societies in “New-Age” FTAs. The Report starts by delving into the role that NGOs and civil societies play in general at the World Trade Organization (WTO). The role of NGOs and civil societies has slowly been increasing and this has been formally recognised by the WTO at several instances. NGOs are not yet recognised as legal entities under international law. However, there has been more formal recognition of their importance and instrumentality because of the niche specialisation that NGOs and civil societies have.

The Report then proceeds to look into the various aspects of an FTA. Since several new non-trade chapters (ranging from environmental standards to enforcement of fundamental labour conventions in domestic laws and non-discrimination of women by addressing issues on gender-pay parity) are being now discussed under FTAs, the role of NGOs and civil societies is indispensable. NGOs’ expertise in niche matters, such as sustainable development and labour issues etc., is being put to use by the participating countries more often. In some instances, a proper mechanism has been set up for the involvement of NGOs and civil societies in the form of public consultations while negotiations are ongoing. This happens at the pre-negotiation stage and also when negotiations are ongoing, to get a glimpse of the public sentiment with regard to a particular provision. Despite countries taking proactive measures, there is still no discernible formal mechanism for their involvement at the negotiation stage. This has been highlighted as a drawback in the Report.

The Report then looks into the mechanisms used in new-age FTAs and Mega-regionals for the promotion of NGO and Civil Society engagement. In spite of resentment over external party participation, a few governments have taken several active initiatives to involve them. While analysing the advantages and disadvantages of promoting the participation of NGOs and civil societies in the implementation of FTAs, it is clear that despite there being concerns regarding compromise of sovereignty and longer timelines due to additional compliances, NGOs and other such organisations play a key role in improving the quality of decision making by the Governments.

Looking into real-life instances where countries have engaged NGOs and civil societies for the implementation of an FTA reaffirms the view that there has been a positive impact overall.

However, whether these mechanisms have truly helped to promote inclusivity in policy-making and whether they help the participating countries to achieve their social, political and economic welfare goals is moot. The objective of the inclusion of mechanisms to involve civil society in the process of implementation of FTAs is so that they comply with certain social, environmental, labour, gender and other societal standards. There are instances of this happening through the contribution of NGOs and civil societies but those seem to be the exception rather than the norm. The Report concludes on an optimistic note that there has to be more robust and time-bound mechanisms to include NGOs and civil societies at each stage to ensure that social, political and economic welfare goals of these new-age chapters are accomplished.