



International Economic Law Clinic

ENHANCING LABOUR RIGHTS IN THE INDIAN BANKING SECTOR THROUGH FTAS

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Submitted by

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To: All India Bank Employees Association (AIBEA)

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EXECUTIVE SUMMARY

Context

In recent decades, Free Trade Agreements (FTAs) have emerged as a powerful tool for protecting workers' rights by integrating labour standards with trade liberalisation. This report examines how the ongoing India-EU and India-UK FTA negotiations can enhance workers' protection in India and how the All India Bank Employees Association (AIBEA) can strengthen its advocacy. This report addresses the key issues of informal workers, namely inadequate social security, employment insecurity, limited access to unionisation, and poor occupational health and safety standards. This report analyses the substantive obligations, and the implementation and enforcement mechanisms related to labour provisions in EU and UK FTAs, starting with the 2011 EU-Korea FTA, the first to include a dedicated chapter on sustainability. This FTA set a precedent, as all modern EU FTAs now feature comprehensive Trade and Sustainable Development (TSD) chapters.

Key labour provisions in EU/UK FTAs

In addition to FTA's preambles that reference labour, substantive obligations within FTAs can be divided into commitments related to international labour standards, domestic legislation and practice, specific thematic areas, and cooperation activities. All EU and UK FTAs include references to international standards developed by the International Labour Organisation (ILO). These include commitments to promote fundamental ILO standards, ratify and implement the ILO Conventions – both fundamental and “up-to-date” Conventions, and references to other international instruments, such as the principles of the ILO's Decent Work Agenda, the United Nations Charter, and the Universal Declaration of Human Rights, which collectively reinforce the broader agenda of promoting fair and equitable labour practices.

FTAs also include commitments related to domestic legislation and practice. These include the right to regulate, modify, and adopt labour laws; a commitment to strive to ensure a high level of domestic protection; not to lower the level of protection and not to derogate from domestic labour laws to encourage trade; and not to use domestic labour laws for protectionist purposes. Some EU FTAs and the majority of UK FTAs also address specific thematic areas, including minimum employment standards, occupational safety and health, forced labour, and corporate social responsibility, further expanding the scope of labour provisions to encompass diverse and critical aspects of worker protections. Most FTAs also include commitments to cooperation

activities. These activities are at both the intergovernmental and civil society levels, involving joint initiatives, information sharing, and the establishment of committees or working groups to address specific challenges.

The EU FTAs include various methods to enforce labour provisions in the case of non-compliance. Until 2022, the EU FTAs excluded the TSD chapter from the general dispute settlement mechanism and instead incorporated a separate enforcement mechanism, namely a “soft” and “cooperative” quasi-judicial tool. This approach emphasised dialogue and coalition between the parties rather than formal adjudication or the imposition of sanctions, involving monitoring activities and a panel’s findings. Monitoring remains in place in all FTAs, involving state-to-state dialogues, regular progress reports, stakeholder submissions, and the filing of complaints or submissions, which can potentially lead to investigations and trigger dispute resolution mechanisms for non-compliance. EU FTAs have strengthened enforcement through initiatives such as the Chief Trade Enforcement Office and the Access2Markets platform, which enables the reporting of potential labour violations through Single Entry Points (SEPs) and Domestic Advisory Groups (DAGs). These groups comprise civil society representatives who participate in annual Civil Society Forums and submit progress reports. However, except for the EU-New Zealand FTA, TSD Chapters in EU FTAs are not subject to state-to-state dispute settlement.

Recommendations

This report offers recommendations to address specific issues faced by AIBEA, focusing both on ongoing FTA negotiations and the role the AIBEA can play post ratification.

Ongoing FTA negotiations: our recommendations aim to ensure that India’s FTAs progressively align with international labour standards, encouraging long-term improvements in worker protection while maintaining the country’s sovereignty. The report suggests that India include hortatory language in the preamble, emphasising its commitment to trade aligning with high labour protection standards. A key recommendation is to ensure the inclusion of a commitment to respect all fundamental labour standards, including the right to a safe and healthy working environment. Moreover, the AIBEA should consider advocating for the inclusion of provisions that encourage continued efforts to ratify all fundamental ILO Conventions. Although India has ratified some ILO Conventions, it has yet to ratify the Freedom of Association and Protection of the Right to Organize Convention, 1948, the Right

to Organize and Collective Bargaining Convention, 1949, the Occupational Safety and Health Convention, the Promotional Framework for Occupational Safety and Health Convention, and the 2014 Protocol (P029) to the Forced Labour Convention, 1930. The report also recommends that AIBEA advocate for the inclusion of up-to-date labour Conventions in FTAs. Furthermore, it emphasises the implementation and enforcement of Indian domestic labour laws, particularly those relevant to AIBEA's concerns, using a balanced approach to ensure that India maintains sovereignty over labour law regulations and that these laws do not constitute a trade barrier or tool for protectionism. AIBEA should also push for robust provisions on specific thematic areas such as child labour, forced labour, and labour inspection.

Additionally, the report recommends that AIBEA advocate for monitoring and cooperation clauses that encourage voluntary coalition between parties on labour issues, and for the involvement of civil society organizations in such activities, ensuring transparency and accountability. The establishment of Sub-committees and bilateral consultations to address labour concerns is also important, along with technical assistance programs for labour reforms in India's banking sector. The report emphasises the importance of promoting a cooperative approach to dispute resolution, with temporary sanctions reserved as a last resort for non-compliance. Economic and trade sanctions could serve as a disincentive for violations of fundamental labour standards, but should be proportionate, temporary, and based on independent findings of non-compliance. The ultimate aim is to ensure the enforcement of labour provisions and the respect of India's sovereignty.

Post-ratification: The report provides key recommendations aimed at strengthening AIBEA's advocacy and ensuring the effective implementation of labour provisions under FTAs. First, AIBEA should enhance its advocacy efforts through evidence-based training and promote cross-border cooperation between civil society organizations in India and its trade partners. Second, AIBEA should actively explore multiple avenues for participation in the implementation process, including Single Entry Points and Domestic Advisory Groups. Third, a coalition with key international civil society actors is essential. AIBEA could partner with international labour organizations such as the International Trade Union Confederation (ITUC) and its regional organizations and the European Trade Union Confederation (ETUC) to strengthen its advocacy efforts. Finally, the report recommends establishing partnerships with civil society actors based in Brussels as strategic allies to further support AIBEA's goals in the post-ratification phase.

INTRODUCTION

Free Trade Agreements (FTAs) can serve as a key tool for global labour governance. The integration of labour standards in FTAs ensures that the benefits of trade coexist with workers' protection, fostering fairer and more sustainable growth. The North American Free Trade Agreement (NAFTA) was the first FTA to incorporate labour provisions in 1994. Since then, labour provisions have transitioned from being an exception to a standard feature in FTAs,¹ and the debate has shifted from *whether* to include labour provisions in FTAs to *how* to design and enforce them effectively.

In our world, where production and trade drive national economies, balancing trade liberalisation with workers' protection is imperative. While the International Labour Organization (ILO) remains the primary institution for promoting international labour standards, its lack of a dispute settlement mechanism limits its ability to ensure compliance. FTAs can fill this gap by embedding enforceable labour provisions safeguarding existing rights and actively creating new labour rights.

This report examines how labour provisions in FTAs can be leveraged to strengthen worker protections, with a specific focus on India, which is currently engaging in FTA negotiations with the EU and the UK. This research relies on the aspiration that these FTAs will include labour provisions to enhance protections for workers. The analysis particularly addresses the Indian banking sector, where employees face persistent challenges related to social and employment insecurity, limited unionization and collective bargaining, and occupational health and safety.

The purpose of this report is to provide strategic recommendations for the All India Bank Employees Association (AIBEA) on how to strengthen labour rights of banking employees by leveraging the ongoing India-EU/UK negotiations. To achieve this objective, the report proceeds as follows. First, it offers an in-depth overview of labour practices in India, tracing the historical evolution of outsourcing and contractual employment, and examining specific labour rights challenges faced within the Indian banking sector. Second, it categorizes and analyses existing labour provisions in the EU and UK FTAs, focusing primarily on EU FTAs

¹ ILO Research Department, Social Dimensions of Free Trade Agreement, 5 “Of about 190 countries with trade agreements, roughly 120 are partners to trade agreements that include labour provisions”.

and highlighting key distinctions in UK FTAs through box comparisons. The report examines EU FTAs starting from the 2011 EU- Korea FTA² onwards, which marked the introduction of comprehensive Trade and Sustainable Development (TSD) chapters, establishing a baseline for labour and environmental standards, mechanisms for dialogue and civil society oversight, and serving as a benchmark for evaluating the evolution of labour provisions in subsequent EU FTAs. Third, the report offers a two-pronged set of recommendations for AIBEA, the first focused on influencing negotiations, and the second on participating in monitoring efforts once the agreements are ratified. Fourth, the report concludes with a summary of the findings.

² EU- Korea FTA, 2011.

SECTION 1: BACKGROUND

1.1 Historical Background of Labour Practices in India and the Rise of Outsourcing and Contractual Employment

Labour practices in India have undergone significant changes over the past century. Under British rule, labour laws primarily served the interests of British employers rather than protecting Indian workers.³ The liberalisation reforms of the 1990s marked a major shift, aiming to boost economic growth by strengthening the private sector and reducing poverty. However, these reforms also increased government regulation and constrained traditional unions, which struggled to recruit as companies began outsourcing jobs to non-union sources. Liberalisation also transformed the financial sector, allowing private and foreign banks to operate, removing interest rate controls, and fostering competition. This led to the adoption of newer technologies and innovative services, but also popularised outsourcing and contractual employment.⁴ In sectors like banking, non-core tasks such as customer service, data entry, and back-office operations were increasingly outsourced to third-party contractors.⁵

This shift created a divide between permanent employees and contract workers. Contractual employees face short-term jobs with no renewal guarantees, leaving them financially insecure and less likely to claim their rights.⁶ Outsourcing also fragments the workforce, complicating efforts by unions like AIBEA to organise and represent these workers, who often lack adequate protections and fall outside traditional labour agreements.⁷

³ “May Day: Noida BJP MLA Organises Shram Panchayat”, *India Today*, May 2018, <https://www.indiatoday.in/education-today/gk-current-affairs/story/history-of-labour-day-and-labour-movement-in-india-1223856-2018-05-01>.

⁴ James Hanson, Cynthia Fry and Gunn Building, “Working Paper No. 104 Indian Banking: Market Liberalisation and the Pressures for Institutional and Market Framework Reform”, *Stanford Centre for International Development*, 2001, https://kingcenter.stanford.edu/sites/g/files/sbiybj16611/files/media/file/104wp_0.pdf.

⁵ Saurav Kumar, “Outsourcing in Public Sector Banks: Privatisation in Disguise”, *The Kanal*, 2020, <https://thekanal.in/en-IN/details/outsourcing-in-public-sector-banks-privatisation-in-disguise>.

⁶ Poonam Gupta, Kalpana Kochhar and Sanjaya Panth, “Bank Ownership and the Effects of Financial Liberalisation: Evidence from India”, *IMF Working Papers 11/50, International Monetary Fund*, 2011; Sudha Menon, “Migrant Worker Crisis: Why Trade Unions Are Missing in India’s Informal Sector”, *The News Minute*, 21 July 2020, <https://www.thenewsminute.com/voices/migrant-worker-crisis-why-trade-unions-are-missing-india-s-informal-sector-129131>.

⁷ Stephanie Ware Barrientos, “Labour Chains: Analysing the Role of Labour Contractors in Global Production Networks”, *Institute of Development Policy & Management and Brooks World Poverty Institute, University of Manchester, UK*, 2013.

1.2 Labour Rights Issues in the Banking Sector in India

While liberalisation has driven growth and competition in the Indian banking sector, it has also given rise to significant challenges concerning labour rights, including the lack of social security benefits, job insecurity, limited opportunities for unionisation and collective bargaining, and inadequate occupational health and safety standards. These challenges are further unpacked below.

1.2.1 Lack of social security benefits

One of the most pressing issues that outsourced and contractual workers face in the banking sector is the lack of social security benefits. In India, only about 8.75 percent of the workforce, or 35 million out of 400 million workers, have access to formal social security benefits, such as old-age income protection.⁸ India's social security system has severe inadequacies, notably for informal workers, who account for more than 90 percent of the labour force. The Code on Social Security, 2020, is a recent integration of previous legislation, notably the Unorganised Workers' Social Security Act, 2008, and attempts to provide protection to unorganised workers, gig workers, and platform workers. It provides for health, maternity, disability, and old-age benefits, as well as state-level education and housing initiatives. However, it retains major constraints from its previous version, such as non-mandatory registration processes and an advising function for Social Security Boards. Most informal workers lack significant coverage due to fragmented administrative systems, exclusion errors, and reliance on employee-employer relationships. To ensure effective compliance, the Code prioritises welfare services for gig economy workers; however, aspects of accountability and enforcement remain unclear.

1.2.2 Employment Insecurity

Another major challenge facing outsourced and contractual workers in the banking sector is job insecurity. A recent survey by ADP Research Institute highlights that 47 percent of Indian workers feel insecure in their jobs.⁹ Temporary staff might be hired based on the needs of the organisation. A lack of job stability negatively impacts individuals' income and benefits from

⁸ Ministry of Labour & Employment, Government of India, <https://labour.gov.in>.

⁹ Roshni, "The Rising Wave of Job Insecurity: Nearly Half of Indian Employees Feel Unstable in Their Jobs", *India Today*, July 10, 2023, <https://www.indiatoday.in/education-today/latest-studies/story/the-rising-wave-of-job-insecurity-nearly-half-of-indian-employees-feel-unstable-in-their-jobs-2404524-2023-07-10>.

companies, which is not a positive indicator for society. Temporary employees receive lower salaries than permanent employees.¹⁰ Hence, this job insecurity impacts their financial security and access to career development opportunities.

1.2.3 Limited Unionization and Collective Bargaining

Traditionally, unionisation has been one of the strongest tools for workers to bargain for better wages and improvements in working conditions. The right to establish and join trade unions is protected under Article 19(1)(c) of the Indian Constitution, which allows citizens to form groups or unions.¹¹ However, unionisation and collective bargaining in India encounter major challenges, particularly in industries with a high percentage of contract workers and spread employment arrangements. The Trade Unions Act of 1926 establishes the legal basis for the creation and registration of trade unions, while the Industrial Disputes Act of 1947 governs collective bargaining and dispute resolution. Despite these provisions, India lacks a national-level law requiring employers to recognize trade unions, usually leaving recognition to a mutual agreement between companies and unions. While some states, including Maharashtra and Kerala, have extra legislative requirements, distinctions among regions limit the extent of national unionisation. Furthermore, political connections within trade unions have led to multi-unionism, complicating collective bargaining processes. The “Code on Industrial Relations, 2020,” issued under India's labour reform framework, intends to simplify collective bargaining by mandating recognition for trade unions that represent the majority of workers. However, successful implementation remains doubtful. The present arrangement is further hindered by weak employer compliance and barriers to organising in informal industries. This limits the workers' ability to bargain for higher wages and better working conditions.

1.2.4 Occupational Health and Safety

Outsourced and contractual workers in India's banking sector experience major occupational health and safety issues as a result of low awareness and insufficient instruction on working hazards. The lack of sufficient safety precautions, combined with exposure to unprotected machinery and hazardous materials, significantly increases the risk of workplace accidents,

¹⁰ Mr Dinkar and Lovy Sarikwal, “Social Impact of Outsourcing in India”, *International Journal of Advanced Scientific Research and Management*, 2018.

¹¹ “Constitution of India”, *Legislative Department*, <https://legislative.gov.in/constitution-of-india/>.

illnesses, and fatalities.¹² This problem is more severe in unorganised industries, where dangerous working conditions are widespread. The National Policy on Safety, Health, and the Environment at the Workplace, which is consistent with constitutional requirements (Articles 39(e) and 42), emphasises the importance of safe and humane working conditions, although its implementation is inconsistent.

¹² Subhasish Chatterjee, “Labourers of Unorganised Sectors and Their Problems”, *International journal of Emerging Trends in Science and Technology*, 2016.

SECTION 2: LABOUR PROVISIONS IN EU AND UK FTAs

Having identified the labour issues that workers face in the Indian banking sector, this section focuses on recent developments regarding labour provisions in the EU and UK FTAs. It does so to set the stage for Section 3, which explores how the ongoing FTA negotiations between India and the EU, and India and the UK, can be leveraged to address the key labour rights issues in the Indian banking sector.

After a brief introduction of the EU and UK approaches to the trade and labour linkage, this section provides an overview of labour provisions, specifically focusing on EU FTAs from the 2011 EU-Korea FTA¹³ onwards. To avoid repetition, the report illustrates the UK approach through specific boxes where it differs substantially from the EU approach. This section organises labour provisions into two broad categories: substantive obligations and implementation and enforcement mechanisms. The first category outlines the legal commitments of the parties to the FTAs, defining their rights and responsibilities. The second category focuses on monitoring and cooperation mechanisms that promote compliance with labour obligations by facilitating activities and the participation of civil society, and dispute settlement mechanisms that set out the procedures for resolving issues of non-compliance with the labour commitments within FTAs. The following section introduces the approaches of the EU and the UK to the trade and labour linkage.

2.1 Introduction of EU and UK Approaches

The EU is strongly committed to ensuring that its FTAs foster sustainability, aligning economic growth with the protection of human rights and decent work, fully adhering to the EU's values and priorities. Since 2008, when the EU incorporated sustainable development provisions into its FTA with the Caribbean Forum (CARIFORUM) states, labour rights have taken a central role in nearly all its subsequent FTAs. The 2011 EU–Korea was the first to feature a dedicated chapter on sustainable development. All modern EU FTAs now include labour provisions under chapters dealing with Trade and Sustainable Development (TSD). TSD chapters reaffirm the parties' commitment to uphold international labour standards and prevent the weakening of domestic labour laws in pursuit of trade advantages. The EU has recently shifted from its

¹³ EU- Korea FTA, 2011.

traditional cooperative approach towards a more binding approach. In fact, in 2022, the Commission proposed a new strategy that allows the use of trade sanctions as a last resort in cases of serious violations of core TSD commitments.

Turning to the UK approach, the country had to renegotiate its FTAs after leaving the EU in 2020. The UK Government, through the Department for International Trade (DIT)¹⁴, has pursued a proactive agenda to negotiate FTAs with a diverse range of countries, aiming to foster economic growth, increase market access, and secure the nation's position as a global trading hub. Additionally, the UK needed to 'rollover' the FTAs it had made as an EU member to ensure legal stability after Brexit. This led to the replication of legal text and TSD chapters from EU FTAs. As a result, there are two categories of FTAs in the UK: the 'rollover' agreements (continuity agreements) and the 'new' agreements (enhanced agreements). The rollover agreements replicate the terms of the UK's pre-Brexit deals, while the new agreements either establish fresh terms or expand the existing ones.¹⁵ The research now delves into the analysis of the labour provisions in the EU and UK FTAs starting with their substantive obligations.

2.2 Substantive Obligations

This section analyses and categorises different types of substantive obligations in EU FTAs, adding boxes for the UK approach when relevant. Substantive obligations include commitments to respect international labour standards, ensure compliance with domestic labour laws, and drive reforms to align national laws with international standards.¹⁶ This section categorises obligations into (1) preambles; (2) commitments related to international labour standards; (3) commitments related to domestic legislation and practice; (4) commitments related to specific thematic areas; and (5) cooperation activities.

2.2.1 Preambles

Although the preamble is non-binding, it sets the tone by outlining the shared values and objectives of the parties regarding labour obligations, providing context for interpreting the

¹⁴ Now known as the Department for Business and Trade (DBT).

¹⁵ David Eiser, Nicola McEwen and Graeme Roy, "The Trade Policies of Brexit Britain: the Influence of and Impacts on the Devolved Nations", *Brill Publishers*, 2021, https://web.archive.org/web/20230718184026/https://brill.com/downloadpdf/journals/eris/8/1/article-p22_22.pdf

¹⁶ Marva Corley-Coulibaly et al., "A Multi-Faceted Typology of Labour Provisions in Trade Agreements: Overview, Methodology and Trends", *International Labour Organization*, no. 9.

trade agreement as a whole.¹⁷ Preambles include aspirational statements, emphasising the parties' commitment to respecting workers' rights, to "raise living standards," "create new employment opportunities", "promote trade (...) consistent with the aims for high levels of (...) labour protection" and "improve working conditions".¹⁸ For example, the EU-Korea preamble highlights the promotion of "trade in a manner that contributes to sustainable development, and to advance the creation and enforcement of labour and environmental laws and policies". The EU-Korea case, as explained in Box 14, demonstrated that preambular language can be of great merit for panel decisions when assessing parties' intentions and analysing provisions in FTAs. Box 1 below provides examples of how preambles reference labour rights.

¹⁷ See Vienna Convention on the Law of Treaties, 1969, section 3: Interpretation of Treaties, Article 31(2), which states that preamble can be used to interpret the treaty.

¹⁸ EU-New Zealand FTA, 2024, preamble: "DESIRING to raise living standards, promote inclusive economic growth and stability, create new employment opportunities and improve the general welfare and, to this end, reaffirming their commitment to promote trade and investment liberalisation"; "DETERMINED to strengthen their economic, trade, and investment relations in accordance with the objective of sustainable development, in its economic, social and environmental dimensions, and to promote trade and investment that are consistent with the aims for high levels of environmental and labour protection and with relevant internationally recognised standards and agreements to which they are a party"; EU – Canada FTA, 2017, preamble "IMPLEMENTING this Agreement in a manner consistent with the enforcement of their respective labour and environmental laws and that enhances their levels of labour and environmental protection, and building upon their international commitments on labour and environmental matters".

RECOGNISING the Parties' respective autonomy and right to regulate within their territories in order to achieve legitimate public policy objectives. For different trade agreements there are different public policy objectives like protection and promotion of education, social services, public health, taxation, public morals, animal welfare, labour standards, safety, the environment including climate change, and in the case of New Zealand meeting its Te Tiriti o Waitangi/The Treaty of Waitangi obligations.

AFFIRMING the importance of coherent and mutually supportive trade and labour policies, including the promotion of adherence to internationally recognized labour rights, and of full and productive employment and decent work for all.

REAFFIRMING their commitment to pursue the objective of sustainable development and recognising the importance of coherent and mutually supportive trade, environmental, and labour policies in this respect.

TAKING ACCOUNT of the principles set out in the preamble and desiring that the rights and obligations between the Parties should continue as modified by this Agreement.

DESIRING that the rights and obligations between the Parties should continue; **DESIRING** to strengthen the development and enforcement of labour and environmental laws and policies, promote basic workers' rights and sustainable development and implement this Agreement in a manner consistent with these objectives.

RECOGNISING the importance of strengthening their economic, trade and investment relations, in accordance with the objective of sustainable development in the economic, social and environmental dimensions, and of promoting trade and investment between them, mindful of the needs of the business communities of each Party, in particular small and medium-sized enterprises, and of high levels of environmental and labour protection through relevant internationally recognized standards and international agreements to which both Parties are party.

CONSIDERING the need to promote economic and social progress for their people in a manner consistent with sustainable development by respecting basic labour rights in line with the commitments they have undertaken within the International Labour Organization and by protecting the environment in line with the 2002 Johannesburg Declaration.

DETERMINED to strengthen their economic, trade and investment relationship in accordance with the objective of sustainable development, in its economic, social and environmental dimensions, and to promote trade and investment under this Agreement in a manner mindful of high levels of environmental and labour protection and relevant internationally recognised standards and agreements.

Box 1: Preambular Language in EU FTAs

UK FTAs similarly adopt preambular language that reflects the parties' commitment to high levels of protection and responsible trade practices. A key element common to most UK FTAs is the recognition of the parties' autonomy and right to regulate.

Box 2: Preambular Commitments in UK FTAs

2.2.2 Obligations related to International Labour Standards

EU FTAs include obligations requiring parties to adhere to international labour standards developed by the ILO. Specifically, these obligations encompass three types of commitments: (i) promoting ILO fundamental standards; (ii) ratifying and implementing the ILO Conventions; and (iii) ratifying and implementing other labour instruments.

i. Commitments to Promote ILO Fundamental Standards

In EU FTAs¹⁹, the Parties commit to respect²⁰, promote²¹, and realise²² in their laws, regulations and practices the Fundamental Principles and Rights at Work (hereinafter, “fundamental principles/standards”).²³ The ILO fundamental principles are part of the ILO Declaration on Fundamental Principles and Rights at Work. Each of the fundamental principles is associated with a fundamental ILO Convention.

The five categories of fundamental principles are: freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour; elimination of discrimination in respect of employment and occupation; and occupational health and safety at work. The International Labour Conference decided to include a safe and healthy working environment in the ILO’s framework of fundamental principles in 2022.²⁴ Therefore, this fundamental principle does not appear in FTAs ratified prior to 2022. For example, Article 19.3.3 of the EU-New Zealand FTA

¹⁹ EU-Canada FTA, 2017, Ch. 23, Art. 23.3(1) “The Parties affirm their commitment to respect, promote and realise those principles and rights in accordance with the obligations of the members of the International Labour Organization (the ‘ILO’) and the commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998 adopted by the International Labour Conference at its 86th Session”.

²⁰ EU-South Korea case, 2021, para 131, “a commitment to respecting the principles relating to the right to freedom of association refers to the negative obligation not to injure, harm, insult, interfere with or interrupt freedom of association”; “Maastricht Guidelines on Violations of Economic, Social and Cultural Rights”, 1998, 20 Human Rights Quarterly 691. See too “refrain from interfering with the enjoyment of the rights”, the Report of the UN Special Rapporteur on Peaceful Assembly and Freedom of Association, 71st session, UN General Assembly, 14 September 2016, A/71/385 [63].

²¹ EU-South Korea case, 2021, para 132 “The ordinary meaning of ‘promote’ means to ‘further the development, progress, or establishment of (a thing), encourage, help forward, or support activity’”.

²² EU- South Korea case, 2021, para 133 “A commitment to realise is a commitment to attain or ‘make real’”.

²³ Fundamental Principles and Rights at Work, *International Labour Organization*, <https://www.ilo.org/projects-and-partnerships/projects/fundamental-principles-and-rights-work>.

²⁴ Safe and Healthy Working Environment: A Fundamental Principle and Right at Work, *International Labour Organization*, <https://www.ilo.org/topics/safety-and-health-work/safe-and-healthy-working-environment-fundamental-principle-and-right-work>.

reads as follows: “In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work adopted at Geneva on 18 June 1998 by the International Labour Conference at its 86th Session and its Follow-up, each Party shall respect, promote and realise the principles concerning the fundamental rights at work which are the subject of the fundamental conventions of the ILO, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.”

Under the Declaration, ILO Member States commit to respect and promote the fundamental standards, whether or not they have ratified the relevant Conventions.²⁵ The ILO fundamental standards are universal, apply to ILO members regardless of their level of economic development, and do not require harmonisation of domestic labour laws or outcomes. In fact, “...the aim is not for the ILO to achieve uniformity in the level of social protection’ because ‘differences in conditions and levels of protection are linked to a certain extent to differences in levels of development’. Rather, there should be ‘universal recognition of certain basic rights ... respect of certain common rules of the game...’.”²⁶ The following section addresses the ILO fundamental Conventions.

ii. Commitment to Ratify and Implement the ILO Fundamental Conventions

All EU FTAs incorporate labour provisions encouraging the ratification of the fundamental ILO Conventions, making this a standard and essential component of the EU’s TSD chapters. This consistent inclusion reflects the EU’s commitment to embedding labour rights as a cornerstone of its trade policy. The fundamental ILO Conventions cover the ILO fundamental principles and are set out in Box 3 below.

²⁵ The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998.

²⁶ ILO, Director General’s Report, “ILO Standard Setting and Globalization”, Report to the 85th International Labour Conference, 1997, Geneva.
<https://www.ilo.org/publications/ilo-standard-setting-and-globalization-report-director-general>

Fundamental ILO Conventions	Summary
Freedom of Association and Protection of the Right to Organize Convention, 1948 (No 87)	This Convention upholds the right of workers and employers to freely form and join organizations without interference. It ensures their autonomy in setting rules, choosing representatives, and affiliating internationally, with legal protections to prevent government restrictions.
Right to Organize and Collective Bargaining Convention, 1949 (No 98)	This Convention protects workers' rights to organize without discrimination or interference. It promotes collective bargaining to negotiate working conditions and safeguards the independence of workers' and employers' organizations.
Forced Labour Convention, 1930 (No 29) (and its 2014 Protocol)	This Convention aims to eliminate all forms of forced or compulsory labour. It requires states to prevent forced labour, protect victims, and ensure their rehabilitation, with the 2014 Protocol strengthening efforts to address modern forms of forced labour and improve protections for vulnerable populations.
Abolition of Forced Labour Convention, 1957 (No 105)	This Convention mandates the elimination of forced labour in all forms, particularly prohibiting its use for political coercion, labour discipline, punishment for strikes, or as a means of discrimination. It reinforces global efforts to uphold human rights and fair labour standards.
Minimum Age Convention, 1973 (No 138)	This Convention sets the minimum age for employment at 15 years, aiming to eliminate child labour and ensure that work does not interfere with a child's education or development. It encourages states to raise the minimum age for hazardous work to 18, promoting the protection and welfare of children in the workforce.
Worst Forms of Child Labour Convention, 1999 (No 182)	This Convention aims to eliminate the most harmful types of child labour, including slavery, trafficking, forced labour, and hazardous work that jeopardizes children's health, safety, or moral development. It urges member states to take immediate and effective measures to prohibit and eliminate these practices, prioritizing the protection of children's rights and welfare.

Equal Remuneration Convention, 1951 (No 100)	This Convention promotes equal pay for men and women for work of equal value. It requires member states to ensure that their national laws and practices uphold this principle, aiming to eliminate wage discrimination and promote gender equality in the workplace.
Discrimination (Employment and Occupation) Convention, 1958 (No 111)	This Convention aims to eliminate discrimination in employment and occupation based on race, colour, sex, religion, political opinion, national extraction, or social origin. It urges member states to promote equality of opportunity and treatment in the workplace, ensuring that employment decisions are based on merit and not discriminatory factors.
Occupational Safety and Health Convention, 1981 (No. 155)	This Convention sets standards for workplace safety and health, requiring member states to develop policies to prevent accidents and hazards. It mandates employer responsibility, worker protection, training, and national enforcement to ensure a safe working environment.
Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)	This Convention promotes continuous improvement in workplace safety and health by requiring member states to develop national policies, systems, and programs. It emphasizes a preventive safety culture, risk assessment, and coalition between employers, workers, and authorities to reduce occupational injuries, diseases, and deaths.

Box 3: ILO Fundamental Conventions.

EU FTAs adapt obligations to the capabilities of trade partners by using either stricter or more flexible approaches. Across FTAs, terms like “will”, “shall”, and “must” imply stricter obligations, while phrases like “affirm,” “reaffirm,” or “consider” indicate softer commitments. In the EU-Korea case, the panel held that the term “commit” is legally binding, rather than being a purely aspirational term.²⁷ An example of a flexible approach with moderate normative force is in the EU-Singapore FTA, which allows leeway by stating Parties “will make continued and sustained efforts” to ratify conventions “taking into account domestic circumstances”.²⁸ The EU-Japan FTA requires each Party to “make continued and sustained efforts on its own

²⁷ Panel of Experts Proceeding Constituted under Article 13.15 of the EU–Korea FTA, 2011, paras. 125 and 127.

²⁸ EU-Singapore FTA, 2019, Ch. 12, Sec. B, Art. 12.3(5).

initiative” emphasizing sovereignty and reducing enforceability.²⁹ A stricter approach, among others,³⁰ is in the EU-New Zealand FTA, which requires that “each Party shall make continued and sustained efforts to ratify the fundamental Conventions of the ILO if they have not yet done so” and “shall effectively implement” ratified Conventions.³¹ This creates an ongoing obligation but allows discretion in how efforts are made.³²

The language “continued and sustained efforts to ratify” does not stipulate specific forms or contents of efforts being required, nor does it set a specific target date or a particular milestone for the ratification process.³³ While it has been deemed elusive by some commentators,³⁴ it is appropriate as it “accords the Parties a certain level of leeway in selecting specific ways of making such required efforts”.³⁵ Despite its soft tone, such language has proven effective in encouraging states to ratify these conventions. For example, Japan ratified the Abolition of Forced Labour Convention (No 105), and the Republic of Korea ratified the Conventions on Freedom of Association and Protection of the Right to Organise (No 87), the Right to Organise and Collective Bargaining (No 98) and on Forced Labour (No 29).

FTAs can also impose pre-ratification requirements to prevent situations where an FTA is in place without the parties ratifying the fundamental Conventions. Pre-ratification conditionality can lead to significant changes in labour legislation.³⁶ This was the case of Vietnam, when the European Parliament required it to ratify some ILO Conventions before signing its FTA.³⁷

²⁹ EU-Japan FTA, 2019, Ch. 16, Art. 16.3(3).

³⁰ EU-Korea FTA, 2011, Ch. 13, Art. 13.4(3); EU-Canada FTA, 2017, Ch. 23, Art. 23.3(4); EU-Japan FTA, 2019, Ch. 16, Art. 16.3(3); EU-Singapore FTA, 2019, Ch. 12, Sec. B, Art. 12.3(4); EU-Vietnam FTA, 2020, Ch. 13, Art. 13.4(3a); EU-UK TCA, 2021, Ch. 8, Art. 8.3. Exchange of information provisions on ratification are also included in EU-Colombia, Peru, Ecuador FTA, 2013; EU-Central America FTA, 2013; EU-Georgia FTA, 2016; EU-Moldova FTA, 2016.

³¹ EU-New Zealand FTA, 2024, Ch. 19, Art. 19.3(5)(7). See also, EU-Vietnam FTA, 2020.

³² Panel of experts proceeding constituted under Ch. 13, Article 13.15 of the EU-Korea FTA, 2011, Report of the panel of experts, para 278.

³³ EU- South Korea case, para 276; See Gött, ‘Linkages of Trade’ (n 10), 45–47.

³⁴ Giovanni Gruni, “Labour Standards in the EU-South Korea Free Trade Agreement”, *The Korean Journal of International and Comparative Law*, June 2017: 96.

³⁵ EU-South Korea case, para 274.

³⁶ “Social Dimensions of Free Trade Agreements”, *International Labour Organization and International Institute for Labour Studies*, Revised edition, 2015. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@inst/documents/publication/wcms_228965.pdf, 29.

³⁷ In 2018, 32 Members of the European Parliament sent a letter to Commissioner Malmström and High Commissioner Mogherini asking for Vietnam’s ratification and implementation of ILO Conventions. See <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/628248/EPRS_BRI\(2018\)628248_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/628248/EPRS_BRI(2018)628248_EN.pdf)>

Some EU FTAs³⁸ also require the parties to ratify the so-called up-to-date ILO Conventions which address specific issues such as weekly rest, maternity protection, social benefits, and protection against unemployment, as well as hygiene and medical examinations.³⁹ This commitment often has a lighter phrasing, such as: “The Parties will also consider the ratification of remaining priority Conventions.”⁴⁰ This reflects encouragement rather than a binding requirement. Conversely, other FTAs⁴¹ use stronger wording: “The Parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions as well as the other Conventions that are classified as “up-to-date” by the ILO”.⁴²

iii. Commitment to Ratify and Implement Other Instruments

Substantive obligations include the commitment to ratify and implement other international labour instruments. All FTAs mention the ILO Decent Work Agenda⁴³, which includes promoting decent working conditions, fair wages, and promoting social dialogue between stakeholders and government officials.⁴⁴ The EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA) provides a broader approach, emphasising on improving social dialogue, inclusion, and poverty reduction while also promoting ILO standards: “The Parties

accessed 29 April 2024. See also European Parliament, non-legislative resolution of 17 December 2015 on the draft Council decision on the conclusion, on behalf of the Union, of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Vietnam, of the other part (P8_TA(2015)0468; see also ILO, Social Dimensions of Free Trade Agreements (ILO 2013) 36.

³⁸ EU-Korea FTA, 2011, Ch. 13, Art. 13.4; EU-Canada FTA, 2017, Ch. 23, Art.23.3(4); EU-Japan FTA, 2019, Ch. 16, Art.16.3; EU-Singapore FTA, 2019, Ch. 12, Art.12.3; EU-Vietnam FTA, 2020, Ch. 13, Art.13.4(3); EU-UK TCA, 2021, Ch. 8, Art.8.3.

³⁹ Up-to-date Conventions and Recommendations, *International Labour Organization*, <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12020:0::NO>: See EU-Vietnam FTA, 2020, Ch. 13, 13.4(3); EU-Canada FTA, 2017, Ch. 23, 23.3(4); EU- Ukraine FTA, 2014, Ch. 13, Article 291(3).

⁴⁰ EU-Georgia FTA 2016, Ch. 13, Art. 229(4); EU-Moldova FTA 2016, Ch. 13, Art. 365(3); EU-Armenia FTA 2021, Ch. 9, Art.274(3).

⁴¹ EU-Korea FTA 2011, Ch. 13, Art. 13.4(3); EU-Canada FTA 2017, Ch. 23, Art. 23.3(4); EU-Japan FTA 2019, Ch. 16, Art.16.3(3); EU-Singapore FTA 2019, Ch. 12, Art. 12.3(4); EU-Vietnam FTA 2020, Ch. 13, Art. 13.4(3a); EU-UK TCA 2021, Ch.8, Art. 8.3. Exchange of information provisions on ratification are also included in EU-Colombia, Peru, Ecuador FTA 2013; EU-Central America FTA 2013; EU-Georgia FTA 2016; EU-Moldova FTA 2016.

⁴² EU-Korea FTA 2011, Ch. 13, Art. 13.4(3)

⁴³ The ILO's Decent Work Agenda emphasizes productive employment, workers' rights, social protection, and social dialogue, with a focus on gender equality. It gained global urgency after the 2008 economic crisis to ensure quality jobs and poverty reduction. In 2015, decent work became central to the UN's 2030 Agenda for Sustainable Development, particularly through Goal 8, which promotes inclusive growth and full employment. The agenda's elements are also embedded in other UN goals and supported by international bodies like the G20, G7, and the African Union for sustainable development and crisis recovery.

⁴⁴ EU-Canada FTA 2017, Ch. 23, Art. 23.3(2); EU-Korea, recital [84].

shall strengthen their dialogue and cooperation on promoting the ILO Decent Work Agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality, and anti-discrimination, and thereby contribute to the promotion of more and better jobs, poverty reduction, enhanced social cohesion, sustainable development, and improved quality of life.”⁴⁵ The United Nations Charter and the Universal Declaration of Human Rights also serve as central tenets across several EU FTAs, including those with Korea, Colombia, Ecuador, Peru, Central America, Moldova, Georgia, Ukraine, Canada, Armenia, Singapore, Japan, Vietnam, the UK, and New Zealand. They are typically in the preamble or early articles, reaffirming the parties’ commitment to them. For instance, the preamble of the EU-Japan FTA states that the parties “REAFFIRM their commitment to the Charter of the United Nations and having regard to the principles articulated in the Universal Declaration of Human Rights.” Such declarations emphasize core values of fair trade and labour rights while aligning with the ILO’s Decent Work Agenda and fundamental human rights. Box 4 below illustrates the approach of the UK FTAs to international labour instruments.

When it comes to the ILO Centenary Declaration for the Future of Work, only UK FTAs with New Zealand, Iceland, Norway, and Liechtenstein explicitly recall the ILO Centenary Declaration for the Future of Work. Notably, these agreements are relatively newer compared to others, and all four nations are developed economies. EU-UK FTA mandates each party to continue to promote decent working conditions, workplace health and safety, and non-discrimination, including for migrant workers. Article 8.3 (6) of the EU-UK Free Trade Agreement states: “Each Party shall continue to promote, through its laws and practices, the ILO Decent Work Agenda as set out in the 2008 ILO Declaration on Social Justice for a Fair Globalisation [...] with regard to (a) decent working conditions for all, [...] (b) health and safety at work, [...] and (c) non-discrimination in respect of working conditions, including for migrant workers.”

Box 4: Approach of the UK FTAs to International Labour Instruments

2.2.3 Obligations Related to Domestic Legislation and Practice

FTAs also include commitments related to domestic legislation and practice. These provisions emphasise the adoption, maintenance, and amendment of domestic labour laws, including reforms aimed at strengthening legislation. Domestic and international commitments are interrelated and interdependent: labour provisions in FTAs may include language that encourages or mandates parties to modify and enforce their domestic labour laws in accordance

⁴⁵ EU-Armenia FTA 2018, Art. 15.84.

with international conventions or declarations.⁴⁶ Obligations related to domestic legislation and practice include (i) the right to regulate, modify, and adopt labour laws; (ii) commitments to strive to ensure a high level of domestic protection; (iii) commitments not to lower the level of protection and not to derogate from domestic labour laws to encourage trade; and (iv) commitments not to use domestic labour laws for protectionist purposes.

In contrast to the EU, the UK's regressive post-Brexit strategy affords higher importance to obligations related to domestic legislation and practice rather than international labour standards. In this sense, UK FTAs deviates from the EU approach, and is more aligned with the US approach, which gives more relevance to obligations related to domestic laws.

Box 5: Alignment of UK FTAs with US Labour Strategy

i. Right to Regulate, Modify and Adopt Labour Laws

Labour obligations in FTAs should not restrict the parties' ability to pursue their approach to sustainable development and social protection. All FTAs⁴⁷ affirm the right of each party to determine its level of social protection and to adopt or modify relevant laws and policies accordingly. Such provisions are important to safeguard the parties' rights to regulate and establish their own social regulations and labour standards in alignment with their social development priorities.⁴⁸ For instance, the EU-New Zealand FTA reads: "The Parties recognize the right of each Party to: (a) determine its sustainable development policies and priorities; (b) establish the levels of domestic environmental and labour protection, including social protection, that it deems appropriate; and (c) adopt or modify its relevant law and policies. Such levels, laws, and policies shall be consistent with each Party's commitment to the agreements and internationally recognized standards referred to in this Chapter."⁴⁹ This provision underscores the sovereignty of nations to set their own sustainable development objectives,

⁴⁶ Marva Corley-Coulibaly et al., "A Multi-Faceted Typology of Labour Provisions in Trade Agreements: Overview, Methodology and Trends", *International Labour Organization*.

⁴⁷ EU-North Macedonia FTA 2004; EU Croatia FTA 2005; EU-CARIFORUM FTA 2008; EU-Albania FTA 2009; EU-Montenegro FTA 2010; EU- Republic of Korea 2011; EU-Central America FTA 2013; EU-Colombia, Peru, Ecuador FTA 2013; EU-Serbia FTA 2013; EU-Bosnia and Herzegovnia FTA 2015; EU-Georgia FTA 2016; EU-Moldova FTA 2016; EU-SADC FTA 2016; EU-Canada FTA 2017; EU-Ukraine FTA 2017; EU-Japan FTA 2019; EU-Kazakhstan FTA 2020; EU-Vietnam FTA 2020; EU-Algeria FTA 2005.

⁴⁸ Marva Corley-Coulibaly et al., "A Multi-Faceted Typology of Labour Provisions in Trade Agreements: Overview, Methodology and Trends", *International Labour Organization*, 11.

⁴⁹ EU-New Zealand FTA 2024, Ch. 19, Art. 19.2(1); EU-Canada FTA 2017, Ch.23, Art. 23.2.

establish protection levels in environmental and labour areas, and amend domestic laws accordingly.

The UK- Australia's FTA goes a step further in protecting national sovereignty by explicitly stating: "Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of the other Party."

Box 6: Protecting Sovereignty in Labour Chapters: UK-Australia FTA

ii. Commitments to Strive to Ensure a High Level of Domestic Protection

EU FTAs require parties to ensure that their social and labour laws promote high levels of labour protection. These FTAs also contain best endeavours clauses, which encourage ongoing attempts to strengthen social protections. "Each Party shall strive to ensure that its labour laws and policies provide for and encourage high levels of labour protection and shall strive to continue to improve such laws and policies with the goal of providing high levels of labour protection".⁵⁰

Some EU FTAs contain vaguer obligations, such as the requirement to "encourage public debate with and among non-state actors as regards the development and definition of policies that may lead to the adoption of labour law and standards by its public authorities"⁵¹, as well as "promote public awareness of the country's labour obligations and standards".⁵² Some FTAs contain mere declarations of intent, wherein the parties "reconfirm that trade should promote sustainable development in all its dimensions"⁵³ and "recognize the beneficial role that core labour standards and decent work can have on economic efficiency".⁵⁴

iii. No Lowering of Level of Protection and No Derogation from Domestic Law to Encourage Trade

All EU FTAs include obligations not to lower or derogate from domestic labour law to encourage trade. For instance, the EU-New Zealand FTA states: "A Party shall not weaken or reduce the levels of protection afforded in its environmental or labour law in order to encourage

⁵⁰ EU-UK TCA 2021, Ch. 21, Art. 21.2.

⁵¹ EU-Canada 2017, Ch. 23, Art. 23.6.1.

⁵² EU-Canada 2017, Ch. 23, Art. 23.6.2.

⁵³ EU-Korea FTA 2011, Ch. 13, Art. 13.6.1.

⁵⁴ Ibid.

trade or investment. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental or labour law in order to encourage trade or investment. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental or labour law in a manner affecting trade or investment”.⁵⁵

The “trade-related” clause safeguards sovereignty by linking labour commitments to trade matters. However, its interpretation varies. In the US-Guatemala dispute⁵⁶, the panel required evidence that Guatemala’s failure to enforce labour standards conferred a competitive advantage in trade, which proved challenging.⁵⁷ To make it easier for the complainant to bring labour violations claims under an FTA, the US shifted the burden of proof in the US-Mexico-Canada Agreement, creating a rebuttable presumption of trade impact.⁵⁸

In contrast, the EU-Korea FTA panel rejected Korea’s argument that labour issues were unrelated to trade. The panel interpreted the FTA as requiring adherence to ILO standards across all sectors, not just those directly related to trade.⁵⁹ The panel emphasized that national measures upholding fundamental rights are inherently linked to trade, in line with the objectives of the FTA.⁶⁰

⁵⁵ EU-New Zealand FTA 2024, Ch. 19, Art. 19.2.4-5-6.

⁵⁶ Guatemala-Issues relating to the Obligations Under Art. 16.2.1(a) of the CAFTA-DR (2017).

⁵⁷ Rebecca Walker, “The “trade-related” conundrum of the EU–Korea FTA Expert Panel: Are FTAs a novel forum to enforce sustainable development goals?”, 7.

⁵⁸ USMCA Art. 23.3 footnote 5 “for purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”

⁵⁹ Panel of Experts Proceeding Constituted under Article 13.15 of the EU–Korea Free Trade Agreement, para 65-66.

⁶⁰ Rebecca Walker, “The “trade-related” conundrum of the EU–Korea FTA Expert Panel: Are FTAs a novel forum to enforce sustainable development goals?”; Panel of Experts Proceeding Constituted under Article 13.15 of the EU–Korea Free Trade Agreement, para 95.

UK FTAs with developed countries, such as the UK-New Zealand FTA (Article 23.6), include precise and detailed language. The contract reads: “The Parties shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, their respective labour laws in order to encourage trade or investment if the waiver or derogation weakens or reduces adherence to the internationally recognised labour rights.” Another example is, the CARIFORUM States agreement, “the Parties agree not to encourage trade or foreign direct investment to enhance or maintain a competitive advantage by (a) lowering the level of protection provided by domestic social and labour legislation; (b) derogating from or failing to apply such legislation and standards.” This emphasis on clear commitments serves to ensure that labour protections are prioritized and that standards are not compromised in the pursuit of trade advantages. These sections clearly prohibit any action or omission that could undermine rights, emphasizing constant respect to international standards. They also include provisions for appropriate enforcement autonomy, which increases flexibility without compromising obligations.

On the other hand, Article 9 (1) of the Moldova FTA reads: “The Parties recognize the right of each Party to establish its own levels of domestic environmental and labour protection, and to adopt or modify accordingly its relevant laws and policies, consistently with internationally recognised standards and agreements to which they are a party”. Although this article recognizes sovereignty in regulating labour laws, the lack of binding or prescriptive wording hinders its enforceability. Despite allowing flexibility for regulatory autonomy, the Moldova FTA's weaker language reduces enforceability and implies a lack of commitment in maintaining labour and environmental standards. This exemplifies the different approaches in FTAs, in which developing countries are frequently given greater flexibility in implementing and changing their own regulations.

Box 7: Difference in Language of UK FTAs

iv. No Use of Domestic Labour Laws for Protectionist Trade Purposes

EU FTAs stress that states should not use domestic labour laws as protectionist tools or disguised trade barriers. Parties must ensure that they do not undermine workers’ rights to gain a competitive trade advantage. The EU-New Zealand FTA reads: “A Party shall not establish or use its labour law or other labour measures in a manner that would constitute a disguised restriction on trade or investment”.⁶¹

⁶¹ EU-New Zealand FTA 2024, Ch. 19, Art. 19.2(9).

This obligation is absent in UK FTAs with North Macedonia, Kenya, Chile, Albania, Israel, Morocco, and ESAS. Developed countries often include specific provisions against manipulating labour standards to create trade barriers recognizing that it is inappropriate to use labour laws for protectionist trade purposes and acknowledging that the parties shall not waive or otherwise derogate from their respective labour laws in order to encourage trade or investment. For example, in the UK-New Zealand agreement states that “The Parties recall the ILO Declaration on Social Justice for a Fair Globalization and note that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes”.

Box 8: Omissions in Labour Obligations Across UK FTAs

2.2.4 Specific Thematic Areas

EU FTAs include obligations on thematic areas such as safety and health at work,⁶² minimum employment standards,⁶³ non-discrimination,⁶⁴ and the necessity to effectively enforce labour laws by maintaining a system of inspection⁶⁵ and providing access to justice and remedies. For example, the EU-New Zealand requires parties to implement occupational health and safety measures and policies, including compensation for workplace injuries or illnesses, as well as maintaining sufficient labour inspection systems.⁶⁶ Similarly, the EU-Canada requires parties to guarantee that their labour laws and practices protect workers’ health and safety.⁶⁷ This includes developing policies to reduce workplace accidents and injuries and developing an

⁶² EU-New Zealand 2024, Ch. 19, Art. 19.3(9); EU-UK TCA 2021, Chapter 8, Art. 8.3; Commission's proposals for the EU-Indonesia FTA and the EU-Chile FTA.

⁶³ EU-Canada FTA 2017, Ch. 23, Art. 23.3; EU-UK TCA 2021, Ch. 8, Art. 8.3.

⁶⁴ EU-New Zealand FTA 2024, Ch. 19, Art. 19.4; EU-Algeria FTA 2005, Title VIII, Art. 88; EU-Morocco FTA 2000, Title VI, Ch. 1, Art.65; EU-Tunisia FTA 1998 requires that parties not discriminate against workers based on nationality with regard to working conditions, remuneration and dismissal, and social security; EU-Japan FTA 2019, Ch. 16, Art. 16.5.

⁶⁵ See Labour Administration and Inspection, *International Labour Organization*, <https://www.ilo.org/topics-and-sectors/labour-administration-and-inspection>.

⁶⁶ EU-New Zealand FTA, Ch. 19, Art. 19.3.9. “Each Party shall: (a) adopt and implement measures and policies regarding occupational health and safety, including compensation in the event of occupational injury or illness; and (b) maintain an effective labour inspection system”.

⁶⁷ EU-Canada FTA 2017, Ch. 23, Art. 23.3(3) “Pursuant to subparagraph 2(a), each Party shall ensure that its labour law and practices embody and provide protection for working conditions that respect the health and safety of workers, including by formulating policies that promote basic principles aimed at preventing accidents and injuries that arise out of or in the course of work, and that are aimed at developing a preventative safety and health culture where the principle of prevention is accorded the highest priority. When preparing and implementing measures aimed at health protection and safety at work, each Party shall take into account existing relevant scientific and technical information and related international standards, guidelines or recommendations, if the measures may affect trade or investment between the Parties. The Parties acknowledge that in case of existing or potential hazards or conditions that could reasonably be expected to cause injury or illness to a natural person: a Party shall not use the lack of full scientific certainty as a reason to postpone cost-effective protective measures”.

environment that prioritizes prevention. The FTA also requires parties to comply with minimum employment standards for wage earners, even those not covered by collective agreements.⁶⁸ The EU-Japan⁶⁹ stresses: “The Parties recognise the importance of the principles concerning fundamental rights at work, decent work for all, and fundamental values of freedom, human dignity, social justice, security and non-discrimination for sustainable economic and social development [...]”⁷⁰

Compared to the EU, the UK has lower labour standards, following the model of the CPTPP. However, a distinguishing feature of UK FTAs are its provisions that target specific thematic areas, which are way more detailed than those included in the EU FTAs. In fact, mostly all UK FTAs include obligations on protecting, combating, and promoting thematic areas such as child labour, gender, migrants, forced labour, occupational safety and health, corporate social responsibility, ethnic, racial groups, indigenous people and youth. While these principles are often voluntary and lack strict enforcement mechanisms, their inclusion highlights the UK’s commitment to addressing them. The primary principles and rules referenced in the UK FTAs include:

- Call to Action to End Forced Labour, Modern Slavery and Human Trafficking.
- The principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains.
- The United Nations Guiding Principles on Business and Human Rights.
- The OECD’s Guidelines for Multinational Enterprises on Responsible Business Conduct.
- The United Nations Global Compact.

Box 9: Specific Thematic Areas in UK FTAs

2.2.5 Cooperation Activities

EU FTAs from the 2010s onward commit parties to cooperative activities, following North American FTAs’ example of embedding detailed provisions for coalition.⁷¹ Most of the EU FTAs encourage cooperation between the parties through joint initiatives, information sharing, and the establishment of committees or working groups to address specific challenges. At the intergovernmental level, for instance, technical support aims to build institutional capacity for labour ministries, enhance cross-border dialogue, improve labour inspection and statistical

⁶⁸ EU-Canada FTA 2017, Ch. 23, Art. 23.3 (2).

⁶⁹ EU-Japan FTA 2019, Ch. 16, Art. 16.5.

⁷⁰ EU-Japan FTA 2019, Ch. 16, Art. 16.5(a).

⁷¹ Gabrielle Marceau et al., “The Evolution of Labour Provisions in Regional Trade Agreements”, *Journal of World Trade*, Vol. 53, Issue 3, 2023, pp. 361-410, <https://doi.org/10.54648/trad2023015>.

systems, and train labour inspectors and judges. At the civil society level, initiatives focus on enhancing platforms for dialogue and educating citizens on labour rights.⁷²

Under the EU-Korea FTA, “The Parties recognize the value of international cooperation... They commit to consulting and cooperating as appropriate on trade-related labour and employment issues of mutual interest.”⁷³ The importance of cooperation is also often reflected in the preambles of FTAs. For instance, the preamble of the EU-Colombia, Ecuador, and Peru FTA highlights: “Contributing to the harmonious development and expansion of world and regional trade and offering a catalyst for international cooperation.”⁷⁴ However, the EU-Japan FTA stands out as the only preamble explicitly referencing cooperation related to labour.⁷⁵

Older FTAs with Central America, Moldova, and Armenia explicitly address the informal economy. For example, the EU-Central America FTA states: “The Parties agree to cooperate in order to promote employment and social protection through actions and programmes, which aim in particular to: ... (g) address issues relating to the informal economy.”⁷⁶ Similarly, the EU-Armenia FTA specifies: “Cooperation, based on exchange of information and best practices, may cover a selected number of issues to be identified among the following areas: ... (b) employment policy, aiming at more and better jobs with decent working conditions, including with a view to reducing the informal economy and informal employment.”⁷⁷ These provisions signal an acknowledgement of its significance in these regions, which are largely part of the Global South or developing economies. From 2018 to 2024, there has been a

⁷² EU-Korea FTA 2011, Ch. 13, Art. 13.12; EU-New Zealand FTA 2024, Ch. 19, Art. 19.16: Contact points Upon the entry into force of this Agreement, each Party shall designate a contact point to facilitate communication and coordination between the Parties on matters covered by this Chapter and shall notify the other Party of the contact details for the contact point. Each Party shall promptly notify the other Party of any change of those contact details.

⁷³ EU-Korea FTA 2011, Ch. 13, Art. 13.4 (1).

⁷⁴ Similarly, the EU-Moldova FTA 2014 emphasizes its commitment to the Republic of Moldova's political and socio-economic development through “Wide-ranging cooperation in a broad spectrum of areas of common interest”.

⁷⁵ EU-Japan FTA 2019, Preamble: “RECOGNISING the importance of strengthening their economic, trade and investment relations, in accordance with the objective of sustainable development in the economic, social and environmental dimensions, and of promoting trade and investment between them, mindful of the needs of the business communities of each Party, in particular small and medium-sized enterprises, and of high levels of environmental and labour protection through relevant internationally recognised standards and international agreements to which both Parties are party”

⁷⁶ EU-Central America FTA 2013, Title III, Art. 42 (1).

⁷⁷ EU-Armenia FTA 2018, Title V, Ch. 15, Art. 85.

noticeable shift, with no explicit mention of the informal economy in newer FTAs with developed or high-income countries.

Cooperation provisions are typically framed as voluntary guidelines rather than binding obligations,⁷⁸ and refer to activities outlined in specified annexes or provisions.⁷⁹ The EU-Canada FTA states: “For greater certainty, a Party is not required to enter into any particular regulatory cooperation activity and may refuse to cooperate or may withdraw from cooperation. However, if a Party refuses to initiate regulatory cooperation or withdraws from cooperation, it should be prepared to explain the reasons for its decision to the other Party.”⁸⁰ This language underscores the non-binding nature of such provisions. Questions about effectiveness remain, as some FTAs have yet to fully implement the cooperative activities outlined in their TSD chapters.⁸¹

In the UK’s FTAs, references to cooperation in the preambles are relatively sparse, and none explicitly address cooperation related to labour. Among these agreements, only the UK-Central America FTA and the UK-Republic of Moldova FTA include specific mentions of cooperation aimed at addressing issues related to the informal economy and reducing informal employment. This highlights a limited emphasis on labour-related cooperation in the overarching frameworks of the UK’s FTAs, with targeted mentions being the exception rather than the norm.

Box 10: Mention of Cooperation and Informal Employment in UK FTAs

2.3 Implementation and Enforcement Mechanisms

Until 2022, the EU excluded the TSD chapter from the general dispute settlement mechanism in its FTAs for violations of labour standards. Instead, EU FTAs included a dedicated enforcement mechanism, characterized as a “soft” and “cooperative” quasi-judicial instrument.

⁷⁸ Marva Corley-Coulibaly et al., “A Multi-Faceted Typology of Labour Provisions in Trade Agreements: Overview, Methodology and Trends”, *International Labour Organization*, 14; EU-Georgia FTA 2016; EU-SADC FTA 2016; EU-Vietnam FTA 2020; EU-Armenia FTA 2021; EU-SADC RTA 2016, Art. 11 provides that ‘the Parties may cooperate, inter alia, in the following areas: (a) the trade aspects of labour or environmental policies in international fora, such as the ILO Decent Work Agenda and [Multilateral Environmental Agreements] MEAs’.

⁷⁹ See Annex 13 of EU-Korea FTA 2011; EU-Colombia, Peru, Ecuador FTA 2013; EU-Central America FTA 2013; EU-Moldova FTA 2016; EU-Georgia FTA 2016; EU-SADC FTA 2016; EU-Canada FTA 2017; EU-Japan FTA 2019; EU-Singapore FTA 2019; EU-Vietnam FTA 2020.

⁸⁰ EU-Canada FTA 2017, Ch. 21, Art. 21.2 (6).

⁸¹ James Harrison, “The Labour Rights Agenda in Free Trade Agreements”, 20(5) *Journal of World Investment & Trade*, 2019, pp. 705– 725, <https://doi.org/10.1163/22119000-12340153>, ‘cooperative activities, which are envisaged as central to the ethos of the TSD chapters, have not been systematically implemented’.

This approach focused on dialogue and coalition between parties rather than formal adjudication or sanctions.⁸² In 2022, the Commission proposed a more binding approach, envisaging trade sanctions for non-compliance. This section is categorized into two areas: (1) soft and cooperative approach and (2) dispute settlement mechanisms.

2.3.1 Soft and Cooperative Approach

Initially, the parties are encouraged to resolve alleged violations of labour provisions through direct consultations, with the goal of reaching a mutually satisfactory solution. The soft and cooperative approach is characterized by monitoring activities and the establishment of a panel.

i. Monitoring Provisions and Enforcement through DAGs / Advisory Opinions

A key part of the “soft” approach to labour provisions in EU FTAs includes monitoring through DAGs, and the issuance of advisory opinions. Monitoring focuses on the implementation of labour provisions in the FTAs. It seeks to facilitate dialogue, cooperation, and compliance tracking through activities such as data exchange, technical support, capacity building, and stakeholder involvement. They promote transparency and accountability by enabling state-to-state dialogues, progress reports, and stakeholder submissions, which can trigger investigations or dispute resolution if non-compliance is alleged. Monitoring also plays a critical role in disputes, with parties adopting action plans and providing technical assistance as needed.

To institutionalize civil society engagement, EU FTAs require each party to establish a DAG. Composed of civil society representatives, DAGs advise on the TSD chapter’s implementation on the basis of information they obtain from their members or partner organizations in countries concerned. DAGs participate in annual Civil Society Forums to review and submit progress reports. For instance, under the EU-New Zealand FTA, “Each Party shall give due consideration to communications and opinions from the public on matters related to this Chapter. A Party may inform, where appropriate, the domestic advisory groups established

⁸² See EU-Korea, EU-Singapore, EU-Vietnam FTA; From 2020, EFTA (which previously followed a political/diplomatic model) states included the possibility to establish a panel of experts who will be tasked to submit a report to the parties with recommendations on how to remedy a breach of an obligation under the TSD chapter similar to the former EU approach.

under Article 24.6 (Domestic advisory groups) as well as the contact point of the other Party, designated pursuant to Article 19.16 (Contact points), of such communications and opinions.”⁸³

Besides the criticism of the DAGs⁸⁴, the role of civil society in enforcement and monitoring has received some positive feedback. For instance, a study on the EU-Singapore FTA found that stakeholders viewed civil society’s involvement as highly effective, faster, and more cost-efficient than court proceedings.⁸⁵ In countries where trade unions face restrictions, these forums provide a critical space for workers to voice their concerns and engage in meaningful dialogue. The EU recently established the Chief Trade Enforcement Office⁸⁶ and the Access2Markets⁸⁷, a digital platform that enables stakeholders to report potential violations of labour commitments. Access2Markets allows stakeholders, including trade unions, to report “trade barriers or non-compliance with sustainability commitments in third countries” through SEPs⁸⁸. The platform supports factual and legal complaints, with timelines and procedures for collaboration with the EU Commission. Outcomes of investigations are publicly available on a dedicated website. When used effectively, this platform can highlight labour issues, facilitate consultations, and, when necessary, trigger formal litigation, serving as a critical tool for improving labour rights enforcement under EU FTAs. Box 11 below illustrates an example of the successful use of the SEPs for labour provisions. This is, however, not a substitute for a legislative instrument providing a procedure to which the EU Commission is legally bound.

⁸³ EU-New Zealand FTA 2024, Ch. 19, Art. 19.15 (4).

⁸⁴ EU-New Zealand FTA 2024: Towards a new approach in the enforcement of trade and sustainable development obligations”, 25 September 2022, <https://www.ejiltalk.org/eu-new-zealand-fta-towards-a-new-approach-in-the-enforcement-of-trade-and-sustainable-development-obligations/>

⁸⁵ Directorate General for external policies, policy department - Free Trade Agreements between the EU and the Republic of Singapore- Analysis [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603864/EXPO_STU\(2018\)603864_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603864/EXPO_STU(2018)603864_EN.pdf).

⁸⁶ Chief Trade Enforcement Officer, *European Commission*, Available at https://policy.trade.ec.europa.eu/enforcement-and-protection/chief-trade-enforcement-officer_en.

⁸⁷ Access to Markets, *European Commission*, <https://trade.ec.europa.eu/access-to-markets/en/home>.

⁸⁸ Access2Markets, Single Entry Points, *European Commission*, Available at <https://trade.ec.europa.eu/access-to-markets/en/content/single-entry-point-0>.

The EU-Colombia-Peru-Ecuador FTA has paved the way for addressing labour rights concerns, particularly following a 2022 complaint from CNV International, a Dutch NGO, regarding labour conditions in Peru's mining sector. This complaint led to significant cooperation under the SEP mechanism, showcasing the EU's innovative approach to leveraging FTAs for social change. In response to the complaint, the European Commission has developed a comprehensive agenda for collaboration with the Peruvian government. This initiative, which will receive substantial technical and financial support over the next two years, focuses on six key priorities: social dialogue, freedom of association, child and forced labour, labour informality, and labour inspection. Civil society organizations in Europe and Peru are also contributing to this effort, further strengthening the partnership. The outcomes of this collaboration highlight the transformative potential of FTAs. By using the TSD chapter of the EU-Colombia-Peru-Ecuador FTA, the initiative not only strengthens labour rights in Peru but also serves as a model for ongoing discussions with Colombia to tackle similar challenges. Through this, the agenda emphasizes the importance of civil society's role in ensuring that FTAs can lead to meaningful improvements in labour standards.

Box 11: Example of Effective use of Single-Entry point: Peru Case

The UK's FTAs do not include civil society forums but instead establish distinct labour committees to address labour-related issues. The general trend indicates that newer and more comprehensive FTAs, primarily with developed and some middle-income countries, feature multiple layers of committees and advisory structures. In contrast, agreements with developing countries often lack such institutional mechanisms, with some entirely omitting enforcement or dispute settlement provisions. The 2023 UK-New Zealand FTA, includes one of the most robust labour inspection provisions, ensuring thorough procedural safeguards. It mandates that "Each Party shall adopt and implement laws and policies for facilitating the resolution of individual and collective labour disputes, and maintain an effective labour enforcement system, including labour inspections in accordance with its international obligations."

Box 12: Labour Committees in UK FTAs

ii. Panel Establishment

If the cooperation fails to produce an agreement, the mechanism shifts to a more formalized process, where any party can request the establishment of a panel of independent experts to assess the alleged violation. The panel assesses the complaint in accordance with the relevant provisions of the FTA. Both parties present their arguments, with the panel adhering to set rules of procedure and conducting hearings to ensure fairness and clarity. The panel, after seeking input from various sources, issues a report with its findings and recommendations. The party

concerned must inform the other party of the measures it intends to undertake to address the panel's findings.

Similarly, in all UK FTAs, the first step in the dispute settlement process involves holding consultations; however, this is not the case for North Macedonia, Kenya, Chile, Albania, and the Eastern and Southern African States, which are primarily developing or least developed countries, lacking any formal dispute settlement mechanisms in place, reflecting a softer approach to enforcement. If labour consultations do not lead to a satisfactory resolution, parties can escalate the matter to the formation of committees comprised of representatives from both parties, seeking to address the unresolved issues by gathering information from experts and providing recommendations. If consultations at all levels fail, a party can request the establishment of a dispute resolution panel.

Box 13: Labour Consultations in UK FTAs

Old EU FTAs do not provide for sanctions or remedies in the event that a party fails to take the required actions. This soft and cooperative approach was successful in the context of the South Korea case, where the process had a visible impact on domestic political opinion, potentially influencing the government's progress on ratifying ILO Conventions. Positive effects of the soft approach are more likely in countries with democratic governance systems. The Box 14 below addresses the EU- Korea case.

The dispute between the European Union and South Korea started in July 2019, when the EU requested the establishment of a panel of experts under the TSD chapter to assess Korea's alleged violations of labour-related obligations. In 2021 the panel of experts rejected the EU's claims that South Korea had violated the FTA by failing in its treaty obligations to "Make continued and sustained efforts towards ratifying the fundamental ILO Conventions." Nevertheless, the panel agreed with the EU that Korea had not acted consistently with certain labour obligations under the agreement. More specifically, the panel determined that many aspects of Korea's domestic labour legislation were inconsistent with the country's commitments under the EU-Korea FTA to respect, promote, and realize the rights of freedom of association. The panel concluded that Korea needed to adjust its labour laws and practices and continue the process of ratifying four ILO Conventions in order to comply with the agreement. Although the decision was issued in the form of non-binding recommendations, it put political pressure on South-Korea and resulted in tangible action: South Korea followed up by ratifying the three fundamental ILO Conventions that it had not yet ratified.

Box 14: South Korea Dispute⁸⁹

⁸⁹ EC, Korea Labour Commitments. Available at https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/bilateral-disputes/korea-labour-commitments_en

2.3.2 Binding Dispute Settlement

The EU Parliament and civil society have been vocal in demanding that labour standards within FTAs are properly enforced.⁹⁰ In 2022, the EU Commission issued Communication 409 titled: ‘The power of trade partnerships: together for green and just economic growth’.⁹¹ The Communication signals a major change in the EU Commission’s approach, now supporting the use of all available enforcement tools in trade law to address serious violations of ILO fundamental principles and labour rights.⁹² The Communication establishes that the standard state-to-state enforcement of EU FTAs can apply to violations of labour standards, and it accepts the possibility of using trade sanctions as a matter of last resort in case of non-compliance with core TSD commitments, such as serious violations of fundamental ILO principles, regardless of their impact on trade. Trade sanctions would be temporary and proportionate and may take the form of suspension of trade concessions. They would be possible only if a panel finds a party in breach of its TSD commitments and the latter does not bring itself into compliance within the arranged time period. In that context, the parties may also reach a mutually agreed-upon solution to the dispute at any time. The Communication also suggests reform of the SEPs to improve access for private parties, such as trade unions, to the available enforcement mechanisms at the EU level.

The EU–New Zealand is the first FTA with a stronger enforcement mechanism following this new approach, with serious violations of fundamental labour standards being subject to trade sanctions, regardless of their impact on trade.⁹³ Remarkably, the FTA does not provide a separate softer enforcement mechanism for the TSD chapter. Instead, the general state-to-state

⁹⁰ In a July 2021 resolution on the trade-related aspects and implications of Covid-19, it stresses that ratification of the ILO core conventions and respect for human rights are requirements for concluding free trade agreements; it furthermore calls for the EU to engage with future and existing trading partners to ratify and effectively implement outstanding ILO conventions when reviewing and negotiating agreements. In an October 2020 resolution on the Commission's 2018 FTAs implementation report, the Parliament called on the Commission to develop a 'precise and specific methodology for monitoring and evaluating the implementation' of TSD chapters, as well as to make proposals for strengthening their enforcement: Harrison, J., “The Labour Rights Agenda in Free Trade Agreements”, *The Journal of World Investment & Trade* 20, 5, 705-725, 2019, <https://doi.org/10.1163/22119000-12340153>.

⁹¹ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, “The Power of Trade Partnerships: Together for Green and Just Economic Growth”, COM (2022) 409 Final, June 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0409>.

⁹² Ibid para 3.6.

⁹³ EU–New Zealand FTA 2024, Ch. 26, Art. 26.16.

dispute settlement can apply, with a different choice of panellists for labour disputes.⁹⁴ This is a notable development that comes after decades of reticence in the EU towards the use of the standard state-to-state enforcement regarding sustainability standards. However, most EU FTAs do not contain the new approach to the enforcement of labour standards but follow the old promotional approach.⁹⁵ This means that most of the American continent, several major partners in Asia, and most of the developing countries in the African, Caribbean, and Pacific Region have FTAs with the EU that do not enforce labour standards in the way described by Communication 409. Consequently, the new approach to the enforcement of labour standards will have an effect on international law only if and when those FTAs are updated.

Recent UK FTAs include binding dispute settlement mechanisms with trade remedies for non-compliance, such as compensation, suspension of benefits, and compliance/action plans. However, the UK Parliament's International Trade Committee has criticized the inconsistency in the UK's approach to labour standards. Despite legal provisions for sanctions-based dispute settlement, the texts contain numerous loopholes, exceptions, and trade-related conditions that make enforcement difficult. For example, the UK-Australia FTA requires proving that a party failed to adopt laws encouraging trade or investment, which is challenging. Article 21.6 further complicates matters by allowing parties to exercise "reasonable enforcement discretion" in allocating resources for labour rights enforcement, as long as it doesn't conflict with obligations. Although UK FTAs could impact social standards, the UK has not conducted human rights and environmental impact assessments for any of its new agreements. Older FTAs, such as with Iceland, Liechtenstein, and Norway, take a softer approach, focusing on discussions and mutually agreed action plans for non-compliance rather than strict penalties. Similar approaches are seen in agreements with Singapore, Korea, Japan, Canada, and others. Some FTAs with developing countries, like those with Japan, North Macedonia, Kenya, and African partners, lack remedies for non-compliance and rely on consultations and monitoring instead of countermeasures.

Box 15: Enforcement Mechanisms in UK FTAs

⁹⁴ EU-New Zealand FTA 2024, Ch. 26, Art. 26.5; See also EU–Kenya FTA 2024, Title II, Art.113.

⁹⁵ Japan, Canada, Chile, Singapore, Vietnam, and Mexico, Caribbean, Pacific, and Sub-Saharan regions FTAs. The EU Parliament has been vocal in demanding that labour and environmental standards included in the FTA are properly enforced. The European Union proposed a Joint Instrument to the Mercosur Party. The Joint Instrument clarifies some of the substantive content of the obligations without, however, modifying the approach to the enforcement of labour and environmental obligations. Notwithstanding the soft approach utilized in this case, the proposed instrument has been labelled 'unacceptable' by the Presidents of both Brazil and Argentina, who were particularly vocal in saying they do not want to deal with environmental problems under 'threat'. The EU–Mercosur FTA 2024 is another FTA following the softer promotional approach to the enforcement of labour standards, instead of the one advocated in Communication 409.

2.4 Conclusion

To conclude, this section provided a comprehensive overview of the labour provisions in EU and UK FTAs, highlighting key trends and developments. It found that while the core focus of substantial labour provisions in EU FTAs remains on commitments to respect international labour standards, there is an emphasis on strengthening and implementing domestic labour laws, as well as addressing specific thematic areas such as child labour, forced labour, and workers' rights. The section also underscored the importance of cooperative activities. Regarding implementation and enforcement, while the EU has traditionally adopted a soft, cooperative approach to enforcement, recent shifts indicate a more robust strategy, including the introduction of potential sanctions for non-compliance. Monitoring remains a critical aspect of ensuring adherence, with tools such as DAGs and SEPs playing a crucial role in maintaining transparency and accountability. Section 3 offers recommendations on how AIBEA can leverage FTA negotiations to protect workers' rights and how it can strengthen its advocacy during and after the negotiations.

SECTION 3: RECOMMENDATIONS

This section provides recommendations for AIBEA to strengthen and create workers' rights in the Indian banking sector by leveraging ongoing India-EU and India-UK trade negotiations. Given India's reluctance to commit to provisions in FTAs,⁹⁶ it is crucial to advocate for balanced terms that protect workers' rights without undermining sovereignty. Our recommendations focus on addressing the specific challenges faced by Indian banking sector workers. This section outlines AIBEA's role in two phases: (1) during ongoing FTA negotiations and (2) after the FTAs are ratified.

3.1 Leveraging the Ongoing FTA Negotiations

This section indicates relevant labour provisions that AIBEA should advocate for inclusion in the India-EU and India-UK FTAs. It offers model provisions regarding (1) substantive obligations and (2) implementation and enforcement mechanisms. The recommendations focus on Indian banking sector workers, assessing which labour provisions best address their specific issues. To recall, AIBEA's primary concerns include the lack of social security benefits, employment insecurity, challenges of unionization and collective bargaining, and occupational health and safety at work.

3.1.1 Substantive Obligations

We divide recommendations on substantive obligations into (i) preamble; (ii) obligations related to international labour standards; (iii) obligations related to domestic labour standards; (iv) obligations related to specific thematic areas; (v) cooperation activities.

i. Preamble

We recommend that AIBEA advocate for the inclusion of hortatory preambular language that emphasizes the parties' commitment to trade in alignment with protection standards and international instruments. This helps in interpreting the entire FTA, aiding in the demonstration

⁹⁶ Amitendu Palit, "India Commits to Labour Standards in FTAs," *Institute of South Asian Studies*, March 22, 2024, <https://www.isas.nus.edu.sg/papers/india-commits-to-labour-standards-in-ftas/>.

of non-compliance with specific labour provisions.⁹⁷ A model preamble language, inspired by various FTAs⁹⁸, could be as follows:

“The Parties... AFFIRMING the importance of coherent and mutually supportive trade and labour policies, including the promotion of adherence to internationally recognized labour rights, and of full and productive employment and decent work for all; RECOGNISING the Parties’ respective autonomy and right to regulate within their territories in order to achieve legitimate public policy objectives; DESIRING to strengthen the development and enforcement of labour laws and policies, promote basic workers’ rights and sustainable development and implement this Agreement in a manner consistent with these objectives; PROMOTING trade and investment while ensuring high levels of labour protection through relevant internationally recognized standards and international agreements to which both Parties are party; DETERMINED to strengthen their economic, trade and investment relationship in accordance with the objective of sustainable development, in its economic, social and environmental dimensions, and to promote trade and investment under this Agreement in a manner mindful of high levels of environmental and labour protection and relevant internationally recognised standards and agreements, HAVE AGREED as follows:...”

ii. Obligations Related to International Labour Standards

This study underscored how both the EU and UK FTAs highly value commitments related to ILO standards.⁹⁹ We recommend that AIBEa advocate for the introduction of labour obligations related to ILO standards in India’s FTAs, because such obligations offer multiple advantages. Firstly, ILO standards are universal and apply equally to all member states, irrespective of their levels of development.¹⁰⁰ Secondly, incorporating the legal framework of ILO instruments into FTAs enhances alignment between the ILO’s system and the labour provisions embedded within these agreements. Thirdly, monitoring a country’s compliance with ILO standards is more straightforward than tracking how it implements its domestic laws.¹⁰¹ Fourthly, the implementation of labour obligations related to ILO standards has demonstrated the potential to align domestic legislation with international labour norms. For instance, the EU’s coalition with Vietnam has driven ongoing reforms of its Labour Code, paving the way for the establishment of independent trade unions. Similarly, the EU’s

⁹⁷ See Korea Case explained previously.

⁹⁸ UK-New Zealand FTA 2023; EU-Vietnam FTA 2019; EU-New Zealand FTA 2024; EU-Japan FTA 2019; UK-Australia FTA 2023; UK-Republic of Korea FTA 2021; UK-Vietnam FTA 2021.

⁹⁹ Giovanni Gruni, "Labor Standards in the EU-South Korea Free Trade Agreement," *The Korean Journal of International and Comparative Law* 5 (June 7, 2017): 94, <https://doi.org/10.1163/22134484-12340081>.

¹⁰⁰ Declaration on Fundamental Principles and Rights at Work and its follow-up, *International Labour Organization*, 1998, amended 2022.

¹⁰¹ *Ibid.*

partnership with Japan has influenced the development of labour rights due diligence guidelines, encouraging Japanese companies to adopt responsible sourcing practices in line with international standards. This report offers recommendations about: (1) references to ILO fundamental standards; (2) references to ILO fundamental conventions; (3) references to fundamental and “up-to-date” ILO conventions.

(1) References to ILO Fundamental Labour Standards

All EU and UK FTAs include a commitment to respect, promote, and implement the fundamental ILO standards, though the approaches vary across agreements. We recommend that AIBEA advocate for a provision that mentions the ILO Declaration on Fundamental Principles and Rights at Work and lists the fundamental standards. This approach supports the advancement of ILO standards in areas where India has not yet ratified the Conventions. The recommended provision reads as follows:

“In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998 and as amended at its 110th Session in 2022, each Party shall respect, promote and realise the principles concerning the fundamental rights at work, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation; and (e) a safe and healthy working environment.”

To strengthen the protection of labour rights, AIBEA could advocate for making the respect for fundamental standards an “essential element” of the FTA. “Essential element” clauses allow one party to unilaterally suspend the FTA¹⁰², either wholly or partially, if it determines that the other party has failed to comply with them.¹⁰³ Some FTAs already include essential element clauses to advance environmental commitments. For instance, the EU-UK Trade and

¹⁰² Under Art. 60(3) Vienna Convention on the Law of Treaties states can depart from the general rule of *pacta sunt servanda* when “essential elements” of the agreement are violated. Article 60 (1) VCLT establishes that “a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part”. Article 60 (3) specifies that a material breach arises, *inter alia*, in the case of “the violation of a provision essential to the accomplishment of the object or purpose of the treaty”.

¹⁰³ Colette van der Ven, Pascal Lamy, Geneviève Pons, and Pierre Leturcq, “GT12 – Make-or-Break: Including Multilateral Environmental Agreements as “Essential Elements” in EU Free Trade Agreements”, *Europe Jacques Delors*, 5 December 2022, 2.

Cooperation Agreement (TCA)¹⁰⁴, the EU-New Zealand FTA¹⁰⁵, and the EU-Mercosur FTA¹⁰⁶ turn the Paris Agreement into an essential element. Similarly, embedding the respect for fundamental standards as an essential element in the FTA could create a powerful tool for reinforcing labour rights protections. However, this is a strong commitment¹⁰⁷ that India may be hesitant to accept.

(2) References to ILO Fundamental Conventions

Including references to the ILO fundamental conventions is non-negotiable for the EU and UK in their FTAs. The commitment to ratify and implement fundamental ILO Conventions is the ‘deepest’,¹⁰⁸ or more far-reaching, and one of the most sensitive since India has not ratified all ILO Conventions.¹⁰⁹ Out of the fundamental ILO conventions, India has yet to ratify the Freedom of Association and Protection of the Right to Organize Convention (No. 87), the Right to Organize and Collective Bargaining Convention (No. 98), the Occupational Safety and Healthy Convention (No. 115), and the Promotional Framework for Occupational Safety and Health Convention (No. 187). The following box explains India’s approach towards ratification of ILO Conventions.

¹⁰⁴ EU-UK TCA 2021, Art. 401.

¹⁰⁵ EU-New Zealand FTA 2024, Article 27.4, read together with EU-New Zealand Partnership Agreement Article 54 authorizes the suspension in full or termination of the EU-New Zealand FTA in the case of “an act or omission that materially defeats the object and purpose of the Paris Agreement”.

¹⁰⁶ EU-Mercosur FTA 2024 see blob: <https://circabc.europa.eu/c0950cb4-ab14-4009-89fd-d3c90ea81bd2>

¹⁰⁷ Colette van der Ven, Pascal Lamy, Geneviève Pons, and Pierre Leturcq, “GT12 – Make-or-Break: Including Multilateral Environmental Agreements as “Essential Elements” in EU Free Trade Agreements”, *Europe Jacques Delors*, 5 December 2022, 3. Ibid, conclusion: “For essential element clauses to be a game changer, however, it will be important to develop a better understanding of how a party to an FTA can establish a breach of the essential element clause”.

¹⁰⁸ Heng Wang, “How to Assess Regional Trade Agreements? Deep FTAs v. China’s Trade Agreements”, 54(2) *Int’l Law*. 247–279, 264, 2021.

¹⁰⁹ For the status of ratification, see “Up-to-date Conventions and Recommendations”, *International Labour Organization*, <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12020:0::NO:>

India has adopted a cautious approach to ratifying ILO Conventions, as ratification imposes legally binding obligations. India typically ratifies a Convention only after ensuring that its laws and practices align with the relevant standards. India's official stance is that it is better to implement the standards progressively and leave formal ratification for a later stage when it becomes practical. Even for Conventions not yet ratified, India generally votes in their favor while reserving its position on future ratification. The government maintains that the Indian Constitution already provides extensive labour protections through domestic legislation. However, India has not ratified Conventions on freedom of association and collective bargaining, citing conflicts with statutory rules, such as those restricting the right to strike. Indian authorities argue that ratifying these Conventions would require significant policy changes, which are currently not feasible.

Box 16: India's Approach to Ratification of ILO Conventions

Considering that the ultimate goal is that India ratifies all fundamental conventions, it is important that AIBEA advocates for a solution that is non-threatening and non-forcing. As reaffirmed in the EU-Korea case,¹¹⁰ the decision to ratify an ILO convention remains the prerogative of the sovereign state. To respect this sovereignty, the language in FTAs concerning the ratification of ILO Conventions should be moderate. We recommend that AIBEA advocate for a provision that reads as follow:

“The Parties reaffirm their commitment to make continued and sustained efforts to ratify the fundamental Conventions of the ILO on their own initiative and taking into account domestic circumstances. Each Party shall effectively implement the ILO Conventions that they have respectively ratified, and which have entered into force.”

Moreover, while India has ratified Conventions nos. 29 and 105¹¹¹ against forced labour, it has not yet ratified its Protocol. Ratifying P029¹¹² is crucial for boosting international cooperation against forced labour, requiring preventative measures and victim support, while aligning national policies with global standards. This is relevant to AIBEA, as many workers in India earn below the statutory minimum wage, and paying workers below this threshold is equivalent

¹¹⁰ Report, Panel of Experts Proceeding Constituted under 13.15 of the EU-Korea Free Trade Agreement, adopted 20 January 2021.

<https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/d4276b0f-4ba5-4aac-b86a-d8f65157c38e/details>

¹¹¹ International Labour Organization, Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105).

¹¹² International Labour Organization, Protocol of 2014 to the Forced Labour Convention, 1930 (P029).

to forced labour.¹¹³ AIBEA might advocate for the introduction of a provision that reads as follows:

“The Parties underline the importance of ratification of the 2014 Protocol to the Forced Labour Convention if they have not yet done so.”

We caution against the pre-ratification approach, as such conditions may cause delays. Additionally, once a country ratifies a convention, there may be little incentive to improve domestic labour standards further. A more effective strategy could focus on the gradual improvement and enforcement of labour standards within the FTA framework.

(3) ILO Up-to-Date Conventions

As explained in section 2, EU and UK FTAs refer to ILO up-to-date convention.¹¹⁴ We recommend that AIBEA advocate for the following language, which ensures that the parties retain the flexibility to implement commitments according to their unique domestic contexts.

“Each Party reaffirms the importance of the ratification and implementation of the ILO Conventions and Protocols classified as “up-to-date” by the ILO in accordance with its national conditions, circumstances, and priorities.”

EU FTAs require the implementation of “fundamental, priority, and other up-to-date ILO Conventions” in general terms, rather than naming specific conventions. However, we believe explicitly citing certain up-to-date conventions is essential to address AIBEA’s concerns, particularly on issues like wage rights, employment security, and freedom of association. The following conventions are relevant to these concerns:

- Convention C081 – Labour Inspection Convention, 1947
- Convention C095 - Protection of Wages Convention, 1949
- Convention C102 - Social Security (Minimum Standards) Convention, 1952
- Convention C131 – Minimum Wage Fixing Convention, 1970
- Convention C135 – Workers Representatives Convention, 1971
- Convention C161 – Occupational Health Services Convention, 1985
- Convention C168 – Employment Promotion and Protection against unemployment Convention, 1988

¹¹³ People’s Union for Democratic Rights v Union of India (1982) AIR 1473, Para 5:8.

¹¹⁴ “Up-to-date Conventions and Recommendations”, *International Labour Organization*, <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12020:0::NO:>

India has yet to ratify Conventions nos. 161, 168, 95, and 131. We recommend that AIBEA advocate for provisions explicitly referencing these conventions. An example might be:

“Each Party reaffirms the importance of the ratification and implementation of the ILO Conventions and Protocols classified as “up-to-date” by the ILO in accordance with its national conditions, circumstances, and priorities. The Parties underline the importance of the ratification of Convention C102-Social Security (Minimum Standards) Convention, 1952 and Convention C168-Employment Promotion and Protection against unemployment Convention, 1988”

iii. Obligations Related to Domestic Labour Legislation and Practice

As illustrated in section 2, a common feature of EU and UK FTAs are substantive obligations related to domestic legislation and practice. We recommend that AIBEA advocate for commitments to ensure the implementation and enforcement of Indian labour laws, particularly on issues critical to AIBEA. First, we outline the relevant domestic labour laws in India. Second, we provide model language for different types of obligations related to domestic legislation and practice.

(1) Indian Domestic Labour Laws

The domestic labour laws in India provide several protections for workers, yet significant shortcomings in enforcement persist.¹¹⁵ Article 23 of the Indian Constitution prohibits forced labour, and the *People’s Union for Democratic Rights v Union of India*¹¹⁶ case established that paying workers below the statutory minimum wage is considered a form of forced labour. The Indian Constitution protects social security through Article 41 on the right to work, education, and public assistance. Moreover, Article 47 imposes a duty on the state to raise the level of nutrition and the standard of living to improve public health.¹¹⁷ The Indian Constitution also protects the right to form associations or unions or co-operative societies under Article 19(1)(c). Lastly, Article 43A advocates for worker participation in management, emphasizing their role in decision-making, but its weak implementation has led to limited worker involvement in management discussions.¹¹⁸

¹¹⁵ Naveen Kumar A ‘A study on labourers and their problems in the unorganized sector in India’ (2023), 333.

¹¹⁶ *People’s Union for Democratic Rights v Union of India* (1982) AIR 1473, Para 5:8.

¹¹⁷ *The Life Insurance Corporation of India v. Consumer Education and Research Centre* (1995).

¹¹⁸ Naveen Kumar A ‘A study on labourers and their problems in the unorganized sector in India’ (2023).

Despite constitutional protections, labour law enforcement in India remains inconsistent, leaving workers vulnerable.¹¹⁹ Therefore, labour provisions in FTAs must focus on ensuring the effective implementation and enforcement of India's domestic labour laws. The provisions should uphold India's sovereignty while preventing labour laws from being misused as technical trade barriers or tools for protectionism. We recommend that AIBEA advocate for a balanced approach that respects each party's sovereign authority to regulate and establish labour laws while ensuring high standards of labour protection. At the same time, parties must not exploit regulatory freedom to restrict trade or advance protectionist agendas. This dual approach strikes a balance, safeguarding national sovereignty while honouring international commitments to fair and effective labour practices. Accordingly, we propose the following model provisions:

(2) Right to Regulate, Modify and Adopt Labour Laws

"The Parties recognise the right of each Party to determine its labour policies and priorities, to establish the levels of domestic labour protection it deems appropriate and to adopt or modify its relevant law and policies. Such levels, law and policies shall be consistent with each Party's commitment to the internationally recognised standards and agreements referred to in this section. Nothing in this Chapter shall be constructed to empower a Party's authorities to undertake labour law enforcement activities in the territory of the other Party"

(3) Commitments to Strive to Ensure a High Level of Domestic Protection

"Each Party shall ensure that its relevant law and policies provide for, and encourage, high levels of labour protection, and shall strive to improve such levels, law and policies with the goal of providing high levels of labour protection."

(4) No Lowering of Level of Protection, and No Derogation from Domestic Law to Encourage Trade

"The Parties shall not weaken or reduce the levels of protection afforded in their labour law in order to encourage trade. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law in order to encourage trade. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its labour law in a manner affecting trade or investment."

¹¹⁹ Cases like *Bandhua Mukti Morcha vs Union of India & Others* on 16 December, 1983, 1984 AIR 802 (Deciding that the State has a constitutional duty to protect everyone's fundamental rights, especially if they are members of the community's weaker segments) have aimed to address these gaps, but they have achieved limited success in improving workplace conditions.

The “trade effects” requirement protects parties’ sovereignty by linking labour commitments to trade. The EU-Korea FTA panel suggested that trade and fundamental labour rights are inherently connected, without needing to prove competitive advantage or trade impact. India is likely to resist this broad approach. The USMCA’s shift in the burden of proof makes it easier for claimants to assert labour violations while still maintaining a connection between trade and labour. However, India may reject this, fearing successful litigation over its labour practices. India would likely accept to follow the example of the US-CAFTA-DR and require the demonstration of a direct link between domestic policies and trade flows to establish a violation of a labour commitment under the FTA.

(5) No Use of Domestic Labour Laws for Protectionist Trade Purposes

“A Party shall not establish or use its labour law or other labour measures in a manner that would constitute a disguised restriction on trade or investment.”

iv. Obligations related to Specific Thematic Areas

We recommend that AIBEA advocate for the inclusion of provisions governing specific thematic areas that cover AIBEA’s issues, such as child labour, labour inspection, forced labour, health and safety. For example, some model provisions covering forced labour could be the following:

“The Parties reaffirm the importance of the ILO’s Forced Labour Convention 1930 (No. 29) done at Geneva on 28 June 1930, the ILO’s Abolition of Forced Labour Convention 1957 (No.105) done at Geneva on 25 June 1957, and the 2014 Protocol to the ILO Forced Labour Convention, as key international instruments in helping combat Modern Slavery. The Parties also recall their endorsement of the Call to Action to End Forced Labour, Modern Slavery and Human Trafficking, their commitment to implement the principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains, and the United Nations’ Guiding Principles on Business and Human Rights done at Geneva on 16 June 2011 (“Guiding Principles”).”

“Each Party shall adopt or maintain laws and regulations, and practices thereunder governing decent working conditions, with respect to minimum wages, hours of work, and healthy and safe working conditions.”

v. Cooperation Activities

Cooperation should be voluntary, stemming from the core nature of the FTAs, not mandatory, as forced cooperation could reduce its appeal. AIBEA should advocate for provisions that

encourage voluntary collaboration. Preambles should specifically mention cooperation relating to labour provisions to set out the intentions and commitments of the parties. The preambular language may read as follows:

“The Parties... RECOGNIZING the value of international cooperation and agreements on employment and labour affairs. COMMITTING to consulting and cooperating on trade-related labour and employment issues of mutual interest... HAVE AGREED as follows...”

A model provision to encourage cooperation could be as follows:

“The Parties recognise the importance of cooperation activities that contribute to the implementation and better use of this chapter and, in particular, to the improvement of policies and practices related to labour protection as set out in its provisions. Such cooperation activities should cover activities in areas of mutual interest, such as:

- (a) activities related to the evaluation of impacts of this Agreement on labour, including activities aimed at improving the methodologies and indicators for such evaluation;
- (b) activities related to the investigation, monitoring and effective implementation of fundamental ILO Conventions and multilateral environmental agreements, including trade-related aspects;
- (c) studies related to levels and standards of labour protection and mechanisms to monitor such levels;
- (d) activities related to trade-related aspects of the ILO Decent Work Agenda, including on the interlinkages between trade and productive employment, fundamental labour standards, social protection and social dialogue.”

The FTA should also explicitly specify informal economy to highlight the Parties’ commitment of cooperation regarding the informal working sector. An example could be:

“The Parties agree to cooperate based on exchange of information and best practices, in order to promote employment and social protection through actions and programmes, which aim in particular to address issues relating to the informal economy and informal employment.”

AIBEA could also aim to include provisions of Labour inspection into the FTAs. For example:

“Each Party shall adopt and implement laws and policies for facilitating the resolution of individual and collective labour disputes, and maintain an effective labour enforcement system, including labour inspections in accordance with its international obligations.”

3.1.2 Implementation and Enforcement Mechanisms

Comprehensive and clear substantive obligations are essential for the protection of the workers' rights. However, they can only be effective if they are implemented and enforced. This section provides recommendations on adequate implementation and enforcement mechanisms. It tackles (i) monitoring and (ii) enforcement.

i. Monitoring

Monitoring activities enhance transparency and accountability by facilitating state dialogues and stakeholder submissions, which can lead to investigations or dispute resolution in cases of non-compliance. This section provides recommendations on how AIBEA can contribute to monitoring the implementation of labour provisions under the FTAs. It includes (1) involvement of civil society organizations; (2) establishment of Sub-committees; (3) bilateral consultations.

(1) Involvement of Civil Society Organizations

FTAs provide a key platform for addressing labour rights, but their effectiveness depends on political context and a strong framework. To maximize this potential, India and its trade partners should involve civil society organizations, which enhance transparency, accountability, and monitoring through independent insights, real-time feedback, and reporting violations. The positive outcome of the Peru case, where a Dutch trade union filed a complaint under the SEP, highlighted the crucial role of civil society and NGOs in monitoring labour provisions in third countries. AIBEA should advocate for the inclusion of labour provisions establishing a contact point for civil society and social partners to raise issues on labour provision implementation. A model provision is as follows:

“Each Party shall designate an office within its administration that shall serve as contact point to the other Parties for the purposes of implementing trade-related aspects of sustainable development and channelling all matters and communications that may arise in relation to this Chapter”.

(2) Establishment of Sub-Committees

AIBEA should advocate for a provision establishing Sub-committees on labour that involve high-level representatives from the administrations of each Party responsible for labour matters.

Here is the model language:

“The Parties shall establish a Sub-committee on Labour. The Sub-committee shall comprise high level representatives from the administrations of each Party, responsible for labour and trade matters. Decisions of this Sub-committee, as well as any report on matters related to the implementation of this Title that it may prepare, shall be made public, unless the Sub-committee decides otherwise. Furthermore, the Subcommittee shall be open to receive and consider inputs, comments or views from the public on matters related to this Chapter. The functions of the Sub-committee should include:

- (a) To identify actions for the protection of labour rights;
- (b) To submit to the Trade Committee, when it deems it appropriate, recommendations for the proper implementation of the chapter;
- (c) To identify areas of cooperation and assess the effective implementation of cooperation.”

(3) Bilateral Consultations

Following EU FTAs with Korea, Peru, and Colombia, AIBEA should advocate for provisions that contain mechanisms for bilateral consultations. These consultations may take the form of ad hoc meetings of bilateral committees or councils responsible for administering the agreements, at which concerns regarding labour standards can be raised. The issues can then, for example, be resolved informally or through a joint declaration. A dispute between governments relating to the labour provisions can be submitted to an expert body, which examines the case and issues findings and recommendations. These are then subject to follow-up under the agreement’s institutional framework.

ii. Enforcement

Given India’s historical reluctance to include labour provisions in its FTAs, AIBEA’s proposals must be nuanced. AIBEA could advocate for a process that begins with dialogue and cooperation, such as mediation or consultations, followed by a panel of experts issuing a report, and, if necessary, implementing compliance measures. AIBEA should align its advocacy with the 2021 TSD review framework, which subjects TSD chapters to regular dispute settlement procedures. In cases of non-compliance with fundamental ILO standards, temporary remedies like compensation, suspension of obligations, or compliance/action plans should apply to

ensure accountability. These sanctions should be temporary, proportionate, and focused on encouraging compliance, triggered only if a panel finds a breach and the party fails to remedy it within the agreed timeframe. At any stage, parties should have the option to reach a mutually agreed solution, prioritizing dialogue before punitive actions.

It is important to note that softer approaches can be effective, as demonstrated by the EU-Korea case. In contrast, rigid systems often face challenges, as seen in the US-Guatemala case and in the UK's enforcement provisions, which are fraught with legalistic loopholes. This highlights the value of prioritizing collaboration and dialogue over strict enforcement mechanisms. However, combining trade sanctions with a cooperation-based approach will enable more balanced enforcement of labour provisions in FTAs between India and its partners. This would strengthen the role of FTAs in promoting labour rights, ensuring that trade supports both economic objectives and fundamental worker protections.

3.2 AIBEA's Role Post-Ratification of the FTAs

This section offers recommendations on how AIBEA can participate in the monitoring and cooperation activities established in the FTAs. It also identifies civil society actors based in Brussels that could serve as strategic partners. Structured and ongoing dialogue is crucial for the process to succeed. The mechanisms recommended in the previous section create space for meaningful interaction, ensuring that the voices of workers, employers, and advocacy groups are incorporated into discussions around labour standards. Once the FTAs are ratified, AIBEA will have a voice in monitoring and assessing the implementation of labour provisions.

3.2.1 State's Financial and Technical Support

To enhance cooperation, Parties to the FTAs should implement a technical and financial program. AIBEA should promote communication between the government and stakeholders to foster bottom-up collaboration. We recommend that AIBEA encourage India's financial and political commitment to worker training, ensuring workers understand their rights and can engage with trade unions. Focal points are key for sharing labour standards information, and AIBEA should advocate for consultative bodies, including trade unions and employers, to monitor the implementation of labour provision, as seen in the EU model. AIBEA should also advocate for technical assistance programs within FTAs to support labour reforms and capacity building in India's banking sector.

3.2.2 Strengthen Domestic Union Capacities through Training and Outreach

AIBEA's internal structures can serve as a key platform to educate workers, particularly outsourced and contractual employees, about their labour rights under Indian laws. Many banking sector workers are unaware of their entitlements, such as minimum wage protections, working hours, and the right to collective bargaining. This knowledge gap hinders their ability to organize and assert their rights. AIBEA can bridge this gap by offering targeted training and awareness campaigns, empowering workers to advocate for themselves and strengthening the workforce. This increased awareness can also improve communication between stakeholders, enhancing their ability to advocate for the enforcement of labour commitments under FTAs.

3.2.3 Evidence-Based Contributions

To strengthen monitoring efforts and facilitate the submission of complaints, when necessary, it is recommended that AIBEA actively contribute to evidence-based advocacy. AIBEA could develop detailed research, reports, and studies that provide a comprehensive understanding of workers' conditions in the Indian banking sector. Such contributions will enhance the credibility and impact of AIBEA's efforts to address labour issues effectively.

3.2.4 Participate in the Implementation of Labour Provisions

To ensure effective participation in the implementation of labour provisions under FTAs, AIBEA should explore multiple avenues. These avenues include SEPs and DAGs, explained in Section 2. The SEP framework enables individuals or entities within the EU to submit complaints about alleged violations of TSD provisions, including breaches of domestic legislation or inadequate implementation of TSD commitments.¹²⁰ The complainants must provide a factual description of the violation, such as how domestic laws fail to meet TSD commitments or how implementation measures are insufficient.

Eligible complainants include:

1. A natural person who is a citizen or permanent resident of an EU Member State.
2. Entities formed under EU law with their registered office, central administration, or principal place of business in the EU.

¹²⁰ Platform where stakeholders can submit complaints https://trade.ec.europa.eu/access-to-markets/en/contact-form?type=COMPL_TSD_GSP.

3. EU Member States.

Since AIBEA does not qualify as any of the above, it cannot submit a complaint directly. However, the SEP mechanism allows complaints to be lodged by multiple complainants, including coalitions. AIBEA can utilize this provision by partnering with EU-based civil society organizations or trade unions, who can submit complaints on their behalf.¹²¹ For instance, Brussels-based CSOs can serve as a conduit for AIBEA's concerns. This coalition would ensure AIBEA's issues are addressed while adhering to SEP procedural requirements.

Another avenue that AIBEA should consider is its potential participation in the DAGs. Since 2011, with the EU-Korea FTA, DAGs have been present in both the EU and partner countries. For the India-EU FTA, both India and the EU are likely to establish DAGs. As a trade union, AIBEA could join the DAG in India. Membership in a DAG would enable AIBEA to advise the parties on labour-related issues under the FTA, monitor implementation of labour provisions in the TSD chapter, present concerns or feedback based on its experiences and those of its partner organizations. If direct participation in a DAG is not possible, AIBEA can collaborate with trade unions and civil society actors who are members. DAGs rely on input from their members and partners, enabling AIBEA to contribute indirectly through these partnerships.

3.2.5 Collaborate with other Civil Society Actors

Stakeholders have a legitimate role in the negotiation and implementation processes of FTAs.¹²² It is thus imperative to work with transnational labour organizations to better labour standards within FTAs and improve domestic union capacities to push working conditions across the sector. The following recommendations outline civil society actors that might serve as strategic partners for AIBEA.

i. Collaborate with International Labour Associations

To amplify its influence domestically and internationally, AIBEA could partner with international labour organizations such as the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC). AIBEA could develop an effective

¹²¹ Access to Markets: Operational Guidelines, *European Commission*, https://trade.ec.europa.eu/access-to-markets/en/form-assets/operational_guidelines.pdf, 2.

¹²² European Commission, 2015b

network with these leading transnational labour organizations to strengthen its advocacy approach and expand its influence in the field.

A partnership with the International Trade Union Confederation (ITUC)¹²³ is crucial for AIBEA's access to international labour standards and resources.¹²⁴ The ITUC advocates for workers' rights globally through union cooperation, campaigns, and engagement with major institutions.¹²⁵ Its focus includes trade unions, human rights, equality, and international solidarity.¹²⁶ The ITUC works closely with regional bodies like ITUC-Asia Pacific (ITUC-AP), ITUC-Africa, as well as the European Trade Union Confederation (ETUC). The ITUC's backing could help AIBEA pressure policymakers in India to strengthen labour laws, particularly for outsourced workers, and support its campaigns with region-specific strategies through ITUC-AP.¹²⁷

Collaboration with the ETUC is equally vital due to its strong influence on EU labour policy. ETUC's support will help AIBEA advocate for better labour provisions, including decent wages, safe working conditions, and protection of collective bargaining rights. It can be instrumental in integrating labour standards into EU FTAs and monitoring their implementation through SEPs.¹²⁸

¹²³ International Trade Union Confederation (www.ituc-csi.org), <https://www.ituc-csi.org/who-we-are>.

¹²⁴ Ibid.

¹²⁵ International Trade Union Confederation (www.ituc-csi.org), <https://www.ituc-csi.org/who-we-are>; Reynald Bourque and Marc - Antonin Hennebert, "The Transformation of International Trade Unionism in the Era of Globalization", *Just Labour*, 2011, 17 & 18.

¹²⁶ International Trade Union Confederation (www.ituc-csi.org), <https://www.ituc-csi.org/who-we-are>.

¹²⁷ International Trade Union Confederation-Asia Pacific, 'About Us' (ITUC-AP) <https://www.ituc-ap.org>

¹²⁸ European Trade Union Confederation, 'About Us' (ETUC) <https://www.etuc.org/en/about-us>

Organiz ation	Headqua rters	Representa tion	Key Focus Areas	Role in Labour Advocacy	Joining/ Requirements	Contact Informatio n
Internatio nal Trade Union Confeder ation (ITUC)	Brussels, Belgium	Represents 200 million workers from 163 countries and territories	Global labour standards, freedom of association, collective bargaining, elimination of forced labour	Advocates for core labour standards globally, collaborating with ILO to protect workers' rights and ensure that FTAs reflect international labour standards.	AIBEA can become a member by aligning with ITUC's mission for global labour standards and freedom of association.	ITUC Brussels Office, Tel: +32 2 224 02 11, Email: info@ituc- csi.org Website: https://ww w.ituc- csi.org/
European Trade Union Confeder ation (ETUC)	Brussels, Belgium	Represents 45 million workers from 92 trade unions across 39 European countries	Fair wages, safe working conditions, social dialogue, collective bargaining	Works with EU institutions to influence policies, labour provisions in FTAs promote labour standards in the EU to safeguard workers' rights and foster economic cooperation.	AIBEA can apply for membership through ETUC's affiliation process, focusing on shared goals of worker rights and collective bargaining.	ETUC Brussels Office, Tel: +32 (0) 475 60 1501 Email: etuc@etuc. org Website: https://etuc. org/en
ITUC- Asia Pacific (ITUC- AP)	Singapore	Represents unions across Asia- Pacific region	Decent work, social justice, fair wages, ILO labour standards	Addresses unique regional challenges in Asia-Pacific, advocating for ILO-aligned standards and supporting economic development while safeguarding workers' rights	As part of ITUC, AIBEA can join ITUC-AP by supporting its campaigns for decent work and fair wages in the Asia-Pacific region.	ITUC-AP Singapore Office, Tel: +65 6327 3590 Email: gs@ituc- ap.org Website: https://ww w.ituc- ap.org/
Public Services Internatio nal (PSI)	Ferney- Voltaire, France	Represents 30 million public service workers across 154 countries, including India	Quality public services, resistance to privatization, fair treatment for public sector workers	Campaigns for labour rights, equality, and social justice in public sectors; partners with UN and ILO to advocate for labour provisions in FTAs, emphasizing public services.	AIBEA can partner with PSI by joining its initiatives aimed at protecting public service workers, particularly against privatization.	PSI Ferney- Voltaire Office, Tel: +33(0)4504 06464 Email: psi@world- psi.org https://publi cservices.in ternational/

Box 17: International Labour Organizations

ii. Collaborate with Brussels-Based Groups for Advocacy Strategy

Box 18 below provides an overview of some key Brussels-based organizations that could act as strategic partners for AIBEA in further strengthening advocacy on labour rights within the FTA context. Each organization, according to its speciality, has a unique potential to play different roles in coalition on labour standards, corporate accountability, and legal representation. The ECCJ focuses on binding labour standards and corporate accountability. Solidar offers access to a network of NGOs campaigning for labour rights and fair wages. Finally, the BHRRC would be useful in monitoring infringements on labour rights. These partnerships could enable AIBEA to speak more effectively on issues affecting outsourced and contractual workers.

Organization	Focus Area	Potential Role in AIBEA Collaboration	Joining/Requirements	Contact Information
European Trade Union Confederation (ETUC)	Workers' rights, fair labour standards, social justice, labour provisions in EU FTAs	Provide technical support and advocacy for labour provisions in India-EU FTAs, help protect outsourced workers' rights	AIBEA can apply for membership through its affiliation process, demonstrating a commitment to workers' rights aligned with ETUC's policies.	ETUC Brussels Office, Tel: +32 (0) 475 60 1501 Email: etuc@etuc.org Website: https://etuc.org/en
European Coalition for Corporate Justice (ECCJ)	Corporate accountability, labour rights in FTAs, binding labour standards	Advocate for binding labour standards in FTAs, promote accountability mechanisms for companies	AIBEA could collaborate as a partner by joining campaigns for corporate accountability, highlighting shared goals in labour rights advocacy.	ECCJ Brussels Office Tel: +32 (0)2 329-01-40 Email: eccj@corporatejustice.org Website: https://corporatejustice.org/
Solidar	Social justice, labour rights, campaigns for decent work and fair wages	Access to a network of NGOs focused on labour rights and rule of law advocacy, support FTA negotiations	AIBEA can become an affiliate member by proving its commitment to social justice and decent work, especially in the banking sector.	Solidar Brussels Office Tel: +32 (0)2 479 33 72 Email: solidar@solidar.org Website: https://www.solidar.org/
Business & Human Rights Resource Centre (BHRRC)	Corporate transparency and accountability, labour rights in global supply chains	Monitor labour rights violations, pressure Indian banks and third-party contractors to comply with labour standards in FTAs	AIBEA can partner with BHRRC by joining campaigns and submitting labour violation cases from India's banking sector for global attention.	BHRRC London Office Tel: +44 (0)20 7636 7774 Email: contact@business-humanrights.org Website: https://www.business-humanrights.org/

Box 18: Brussels-based Civil Society Actors

3.3 Conclusion

This section provided a strategic roadmap for AIBEA to effectively advocate for strong labour protections in India-EU and India-UK FTAs. Our recommendations emphasize the importance of both the pre- and post-ratification stages, where AIBEA can engage in practical actions to establish a framework that guarantees fair treatment of workers while respecting India's sovereignty. This section underlined the importance of, and provided model language for, provisions relating to international labour standards, domestic labour laws, and cooperation activities. We recommended a balanced approach to enforcement, combining cooperation with trade sanctions for serious violations of ILO fundamental standards. Recommendations also focused on how AIBEA can participate in monitoring activities. AIBEA's key priorities should be seeking technical and financial assistance from the government, while also collaborating with civil society actors, such as ITUC, ETUC, and EU stakeholders, particularly through engagement with EU DAGs and Civil Society Forums. By coordinating with these groups and sharing information, AIBEA can amplify pressure on the Indian government, leveraging mechanisms like the sub-committee and SEP in partnership with Brussels-based organizations. Our recommendations help AIBEA bridge existing gaps in labour protections and advocate for a fairer, more equitable labour framework within India's banking sector and beyond.