PREPRINT

International Labour Organization

STUDIES ON GROWTH WITH EQUITY

HANDBOOK ON

ASSESSMENT OF LABOUR PROVISIONS IN TRADE AND INVESTMENT ARRANGEMENTS

STUDIES ON GROWTH WITH EQUITY

HANDBOOK ON ASSESSMENT OF LABOUR PROVISIONS IN TRADE AND INVESTMENT ARRANGEMENTS

INTERNATIONAL LABOUR ORGANIZATION

Contents

Executive summary

Labour provisions play an active role in trade agreements…

Research has shown that trade liberalization can serve as a catalyst for economic growth and increased employment opportunities in both developing and advanced economies. At the same time these economies have been increasingly marked by inequality and informality, which have led to the heightened public scrutiny of trade liberalization. There have been calls for policymakers to do more, including in the context of trade agreements, to protect and promote labour standards and institutionalize the involvement of stakeholders.

It is in this context that labour provisions in trade agreements have come to take on an increasing role. Trade related labour provisions are defined as: first, references to any standard that addresses labour relations or working terms or conditions; second, mechanisms for monitoring or promoting compliance with labour standards, such as consultative groups; third, a framework for cooperation, such as the sharing of best practices, seminars and forums.

Labour provisions are becoming more commonplace in trade agreements and increasingly comprehensive in their scope. This characterization is not limited to trade agreements between advanced and developing economies, but applies equally to trade agreements between developing and emerging economies. One fourth of the trade agreements with labour provisions are between developing economy partners. Moreover, the large majority of current labour provisions reference internationally recognized core labour standards (such as those referred to in the 1998 Declaration on Fundamental Principles and Rights at Work), in addition to monitoring, cooperative and dialogue mechanisms.

The ILO has been involved in providing advice and technical expertise relating to the design and implementation of labour provisions, upon request of its Members. This is in accordance with its constitutional mandate, the 1944 Declaration of Philadelphia, which lays out the aims and principles of the organization. The Declaration reaffirms the responsibility of the ILO to review all national and international economic and financial policies and measures in the light of the fundamental objective of social justice.

This mandate is reiterated in the 2008 Declaration on Social Justice for a Fair Globalization, which also states that, upon request, the ILO can provide assistance to its Members that aim to enhance decent work in the framework of bilateral or multilateral agreements subject to their compatibility with ILO obligations. Together with the 1998 Declaration on Fundamental Principles and Rights at Work, the member States affirm their commitment to international labour standards within the context of trade, stressing that labour standards should not be used for protectionist trade purposes; that the comparative advantage of any country should in no way be called into question; and that the violation of fundamental principles and rights at work cannot be invoked or used as a legitimate comparative advantage.

Given that 55 per cent of trade takes place within the framework of trade agreements, it is useful to understand how these frameworks support greater coherence in respect of inclusive growth and the promotion of decent work. The present Handbook of Labour Provisions in Trade on Assessment and Investment Arrangements complements previous ILO research on the subject by providing practical information in a format geared towards non-specialist audiences, through, first, more information on trends and the labour market linkages of trade; second, further detail on different approaches relating to technical cooperation, consultation, dialogue and monitoring, and conflict resolution in trade agreements; third, practical country examples that show how labour provisions have been implemented – with regard in particular to stakeholder involvement; and, fourth, the examination of particular issues such as global supply chains, gender and labour governance.

Prior ILO research has confirmed some benefits of labour provisions, without diverting or harming trade

These trends and questions have recently been analysed in the report Assessment of Labour Provisions in Trade and Investment Arrangements (ILO, 2016). Before elaborating on the main issues in the present handbook, it would be useful to revisit the key findings of the assessment report, which complements this research and examines how and whether labour provisions set the framework conditions for decent work outcomes. The methodology in the assessment report was based on a cross-national quantitative assessment of the 260 trade agreements reported to the World Trade Organization (WTO) at the end of 2014, including 71 with labour provisions, designed to give a better understanding of the labour market outcomes of labour provisions. The analysis was supported by case studies and interviews at the country level. The key findings showed:

- **Over the past two decades, trade-related labour provisions have become more commonplace and comprehensive.**

  This is evidenced in the assessment report by, first, the growing number of trade agreements that include labour provisions – from the first trade agreement to include a binding labour provision in 1994 to the current situation, with 77 trade agreements (covering 136 economies) that include labour provisions. Almost two thirds (64 per cent) of the trade agreements with labour provisions came into existence after 2008. Second, since 2009 it has been standard practice for most labour provisions to reference the 1998 Declaration on Fundamental Principles and Rights at Work. These are the four principles and associated rights that are considered fundamental for social justice, namely: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

  In addition, the ratification and implementation of other instruments, such as the ILO Fundamental Conventions, other ILO Conventions classified by ILO as up-to-date, and internationally agreed frameworks such as the Decent Work Agenda, are being included in some more recent agreements. States also highlight specific issues in their labour provisions, such as the protection of migrant workers. Aside from the references to labour standards, there are also evolving mechanisms for implementation and cooperation, including those relating to stakeholder involvement.

- **Labour provisions ease labour market access, in particular for working age women.**

  Based on a cross- country macro-analysis, the assessment report shows that trade agreements with labour provisions result in labour force participation rates 1.6 percentage points higher than those resulting from trade agreements without labour provisions. This is because trade agreements with labour provisions bring larger proportions of working age men and women into the labour market. In addition, because this impact is stronger for women than men, the gap between men and women's labour force participation rates is reduced by 1.1 percentage points in countries that have trade agreements with labour provisions. One possible explanation for this effect is that labour provision-related policy dialogue and awareness-raising can influence people's expectations of better working conditions, which in turn increase their willingness to enter the labour force. In addition, given the focus on non-discrimination in trade agreements, women in particular may be more inclined to join the labour market in anticipation of better working conditions. These gender-related findings were also echoed in other parts of the assessment report at the country level.

- **There is country evidence of the impact of labour provisions on the narrowing of the gender wage gap.**

  Evidence for this is furnished in the assessment report by the case study of Cambodia's textile sector, which, between 1999 and 2004, was covered by a trade agreement with the United States. The Cambodia–United States Bilateral Textile Agreement included labour provisions and a specific implementation mechanism at the firm level. The results of the assessment in the report show that the gender pay gap was reduced by about one-fifth in the textile sector – from 32 per cent prior to the agreement to 6 per cent after its adoption – directly attributable to this agreement and its implementation programme. Over the same period the gender wage gap remained virtually unchanged in other manufacturing sectors. These results are partly due to the incentive structure of the agreement, which tied export quotas to compliance with labour standards, but also to a monitoring programme (Better Factories Cambodia) that was implemented with the support of the ILO and backed by the social partners.

- **Labour provisions in trade agreements do not divert or decrease trade flows.**

  The assessment report analyses exports over the past 20 years, using a bilateral trade model, and finds that trade agreements both with and without labour provisions boost trade to a similar extent. Trade agreements with labour provisions are estimated to increase the value of trade by 28 per cent on average, while trade agreements without labour provisions increase trade by 26 per cent (these results are not statistically significantly different from each other). Further, if the number of years is reduced to the past 10 instead of 20 years, the positive effects become even stronger for both types of agreement. These findings are in line with the body of evidence that concludes that there is no negative impact on respect for core labour standards on export performance.

- **The key mechanism through which labour provisions have an impact is through labour market institutions, supported by stakeholder involvement.**

  Based on case study analysis, the assessment report finds that there are common factors related to positive outcomes. These factors include legal reforms, monitoring, and capacity-building – all supported by stakeholder involvement, in such modalities as consultative forums and dialogue. Where stakeholder involvement is concerned, there have been effective synergies between different approaches. In particular, labour advocates have combined legal, political, economic, dialogue and monitoring mechanisms in an endeavour to tackle various issues. Additional cross-border coalitions of stakeholders have been effective in facilitating implementation efforts, and also in enhancing the overall credibility of dialogue forums.

These are simple, but important findings and constitute a step forward in research on this issue. The objective of the present handbook is to elaborate on some of these issues and thereby to shed more light on the approaches and their effectiveness.

Trade liberalization has an impact on gender, global supply chains, and the role of businesses to address decent work deficits

As has been said before, trade liberalization has impacts on decent work, and presents both challenges and opportunities for all economic actors. Through trade policies and trade agreements, countries are increasingly dealing with various cross-cutting issues affected by trade liberalization, such as gender, corporate social responsibility (CSR) and global supply chains. The present handbook sheds some light on these issues.

To date, about one out of four trade agreements in force and notified to the WTO, includes gender references. In general, gender references in trade agreements are found in labour provisions as part of the principle on the elimination of discrimination in respect of employment and occupation. But they are also included independently of the labour provisions, primarily as references to gender equality. Gender provisions depend on dialogue and cooperative activities as their principal means of implementation; in practice, however, there is limited evidence of the implementation of these provisions.

The research suggests that such gender-related commitments could be better tailored to the economic and political contexts of the countries involved. In addition, there is an important area of opportunity in the implementation of ex-ante analysis and ex-post gender analyses of trade agreements, as useful tools to support the design and implementation of these provisions.

Similarly, and to some extent motivated by new forms of production such as global supply chains, reference to CSR commitments in trade and investment agreements has become increasingly widespread. While global production networks have been considered as an engine for development, contributing to economic growth and job creation, they have coincided with decent work deficits. Through CSR instruments and initiatives, businesses may uphold labour rights in a manner that complements the role played by States. Even though CSR commitments in trade agreements are new, and the language is generally promotional with limited reference to specific CSR instruments, they have potential. For example, CSR provisions can be used and monitored by workers, businesses and States, through the implementation mechanisms that are provided in trade agreements. At the same time, CSR practices are only one of the different mechanisms available to tackle the challenges and seize the opportunities posed by the interface between global supply chains and trade policies.

Trade liberalization can have important impacts on domestic and foreign firms in global supply chains, and also on their workers. A trade barrier on imports can shield domestic producers from import competition, which may at least delay the market exit of firms and obviate immediate job dismissals. In the context of global supply chains, however, many firms rely on imported inputs that enter their production process. A trade barrier on imports in this context can have adverse effects on domestic firms and their workers, with the effects magnified if inputs cross borders multiple times. Trade liberalization also has an impact on how and where firms set up their global production networks. In many cases such networks create decent jobs, but it can also happen that basic labour standards are violated and the quality of jobs is poor. In this respect, an important role can be played by labour market institutions that promote core labour standards in global chains, and also by efforts to provide a cushion to displaced and disadvantaged workers.

In this regard, labour provisions in trade agreements provide an entry point for stakeholders and governments to discuss issues related to decent work in global supply chains and hold the potential to create spillover effects that may improve domestic governance in trade partners. Labour provisions may facilitate a feedback loop between governments and their citizens on broader issues that affect trade. For instance, they may help policymakers to integrate labour rights with other public policies (such as fiscal policy, anticorruption policies or criminal laws), which may eventually lead to improved governance, increased productivity and advance social cohesion.

Countries follow different paths towards the same goal of promoting labour standards and improving working conditions…

As discussed in more detail in the present handbook, labour provisions take different forms in different countries. In the great majority of trade agreements that include labour provisions the parties commit themselves to not lowering their labour standards or derogating from labour law in order to attract trade or investment. Labour provisions also aim to ensure that domestic labour laws are effectively enforced and are consistent with labour standards. In all, 72 per cent of trade-related labour provisions make reference to ILO instruments, with most including legally binding commitments in respect of internationally recognized core labour standards.

Typically, policy mechanisms related to labour provisions can be understood as a combination of different policy intervention: pre-ratification measures, meaning that the parties agree to make certain legal and/or institutional changes before the agreement enters into force; post-ratification measures meaning that parties agree to make certain legal and/or institutional changes after the agreement enters into force; technical cooperation, providing resources and training; monitoring, directed towards the performance of commitments by States or by firms; dispute settlement, including the possibility of using sanctions; and economic incentives (and disincentives), for instance, in the form of quota increases in exchange for social performance.

...with the involvement of stakeholders…

A number of countries have set up advisory mechanisms to involve social partners in the implementation of labour provisions in trade agreements. These mechanisms include: permanent consultative structures, more agreement-specific mechanisms, and more inclusive mechanisms involving broader segments of civil society and the general public. While they share common traits, the mechanisms differ in some cases. For example, in the case of the European Union, the consultation of advisory bodies is mandatory for both parties and there is an establishment of institutional mechanisms explicitly aimed at promoting dialogue between the civil societies of the parties to the trade agreement.

Evidence shows that, through their involvement, social partners can contribute to an environment that is more conducive to improving labour standards in the long run, including by increasing public awareness of labour issues, enhancing dialogue between governments and civil society, and putting labour issues on the political agenda. To improve their effectiveness, however, dialogue mechanisms could become more institutionalized, and the accountability of governments towards the mechanisms could be strengthened.

Stakeholders have frequently played an important role in activating the various mechanisms provided under the labour provisions in trade agreements. Evidence indicates that labour rights are most effectively promoted in cases where different mechanisms, ranging from legal, political and economic mechanisms, to development cooperation and monitoring, have been used in combination. Collaboration among civil society organizations across borders has played a fundamental role in the activation of such mechanisms. Opportunities exist to enhance the integration of the various mechanisms provided under trade agreements.

It clearly emerges from past experience that the involvement of stakeholders in different stages of labour provisions has been very important in obtaining the desired effect. For example, at the negotiation stage, stakeholders have advocated – and, in some cases, successfully obtained – stronger government commitment towards implementation of labour standards (as in the European Union-Republic of Korea agreement). In addition, the filing of public submissions by stakeholders has proved a useful means of raising awareness and promoting labour standards in some countries (such as the CAFTA-Dominican Republic or United States-Peru agreements).

…in development cooperation and through cross-border dialogue.

From a general point of view, case studies show that different mechanisms such as development cooperation, cross-national dialogue or enforcement mechanisms are interrelated. Similar to other mechanisms, stakeholder involvement has also been relevant in determining their success. For example, in the case of the European Union-Republic of Korea agreement, cross-border

advocacy by trade unions and other civil society groups led to the inclusion of a trade and sustainable development chapter. Cross-border dialogue and development cooperation have played an important role in the cases of Mexico and Morocco in their agreements with the United States and the European Union, respectively. In Colombia the identification of areas favourable for capacity-building was achieved through cooperation with partner countries and other stakeholders. Projects resulting from these consultations have proved helpful in strengthening institutions and capacity-building in ministries of labour and the judiciary.

In the case of the European Union-Republic of Moldova Association Agreement and the Deep and Comprehensive Free Trade Agreement, dialogue mechanisms have recently been established – for the former, the Civil Society Platform and, for the latter, the Joint Civil Society Dialogue Forum. These have focused, among other things, on the overall governmental commitment to labour reform, transparency and accountability, and on the involvement of the social partners. While these mechanisms provide a space for discussion, it remains to be seen whether they can also serve as an effective means of raising issues related to the violation of labour standards and their monitoring. Another finding is that, thanks to close coordination among various stakeholders, the monitoring of compliance has also been effective. The Cambodian textile sector exemplifies how the governments, employers, trade unions, and other non-State actors can work together in a trade framework (namely, the Cambodia-United States Bilateral Textile Agreement) to improve labour market outcomes. The ILO's assistance also proved helpful in supporting credible and transparent monitoring.

All the same, even though the mechanisms included in labour provisions have proved reasonably effective in improving the protection of labour rights, there is still scope for further improvement. While there is a growing trend to involve stakeholders, problems remain in making that involvement meaningful. Another problem is posed by the reluctance of some governments to take action, and that is one of the reasons why in some countries gaps remain between labour legislation and its enforcement.

The ILO will continue to analyse labour provisions, provide technical expertise to its Members, and develop partnerships to promote decent work in relation to trade and investment in the context of the Sustainable Development Goals

At its 328th Session in November 2016, the ILO Governing Body decided to continue to collect and analyse information regarding labour provisions in trade agreements and provide technical assistance to constituents requesting support in applying such provisions. The ILO also decided to develop partnerships with relevant international organizations and others with a view to offering integrated policy advice to constituents regarding the promotion of decent work in the context of trade and investment, as part of the implementation of the 2030 Agenda for Sustainable Development. This decision affirms the aspiration of ILO Members to achieve a better understanding of the design, implementation and impacts of labour provisions in trade agreements. The decision is timely in the light of a number of initiatives that have also called for a clearer link between trade policy and supporting strategies to improve decent work outcomes, including:

- The 2030 Agenda for Sustainable Development, which, through its Goal 8, undertakes to promote inclusive and sustainable economic growth, employment and decent work for all and also endorses the promotion of a rules-based equitable multilateral trading system, and, through its Goal 17, seeks meaningful and lasting trade liberalization;

- The Nairobi Maafikiano work programme adopted by the United Nations Conference on Trade and Development (UNCTAD) at its fourteenth session, which affirmed that trade was a means to support the sustainable development goals and that "regional integration can be an important catalyst to reduce trade barriers, implement policy reforms, decrease trade costs, and increase developing country participation in regional and global value chains … These agreements [bilateral and regional trade agreements] should be consistent with, and should contribute toward a stronger multilateral trading system" (paragraph 29);[1]

- The resolutions and conclusions of the Committee on Decent Work in Global Supply Chains, adopted at the 105th Session of the International Labour Conference, in 2016, which concluded that governments should "consider to include fundamental principles and rights at work in trade agreements, taking into account 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".

[1] United Trade Conference on Trade and Development (UNCTAD). 2016. Nairobi Maafikiano – From decision to action: Moving towards an inclusive and equitable global economic environment for trade and development (TD/519/Add.2).

I. LABOUR PROVISIONS: BACKGROUND AND TRENDS

1 TRENDS IN LABOUR PROVISIONS IN TRADE ARRANGEMENTS

SUMMARY

Labour provisions in trade agreements have become increasingly common over the past two decades, accounting for 7.3 per cent of trade agreements in 1995 and 28.8 per cent in 2016.

Labour provisions tend to be included in agreements between developed and developing countries – known as North-South agreements-, while one-quarter of labour provisions are found in agreements among developing countries – South-South agreements-.

Labour provisions have also become more comprehensive, including in respect of the obligations within the framework of ILO instruments, and the mechanisms for implementation and cooperative activities.

Despite some emerging evidence, the effectiveness of labour provisions in improving working conditions is a largely under-researched area, and further research is needed.

What are labour provisions and what have been their trends?

Since the North American Free Trade Agreement (NAFTA) of 1994, labour provisions have become increasingly more common in trade agreements.

The number of trade agreements with labour provisions has increased from 3 in 1995 to 77 in 2016 (figure 1). These figures account for 7.3 per cent of the total number of trade agreements in 1995 and 28.8 per cent in 2016. In addition, labour provisions have also become more comprehensive in their scope, with most referring to core labour standards and other ILO instruments, as well as mechanisms for implementation and cooperation, including with stakeholder involvement.

The definition of labour provisions that is referred to in this chapter is broad-based and includes:

- Any **reference** to standards that addresses labour relations or minimum working terms or conditions;
- Any **mechanism** to promote compliance with the standard, such as consultative bodies to facilitate dialogue, which can be permanent or temporary;
- Framework for **cooperative activities**, such as technical assistance, exchange of best practice, training, and others.

On the one hand, labour provisions are viewed as governance tools and a means of promoting compliance with international labour standards. Indeed, in most trade agreements that include labour provisions trade partners promote compliance with labour standards through various commitments which are discussed further below.

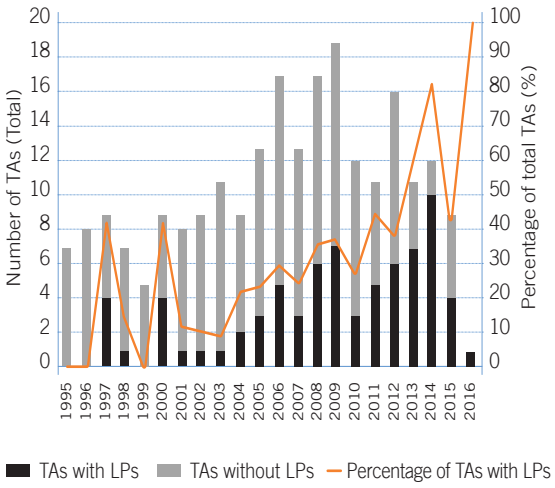
On the other hand, labour provisions are also cooperative tools for dialogue and the exchange of information on a number of labour issues. Given that, over the past decade, a growing number of jobs have been linked to trade, the inclusion of labour provisions in trade agreements can have implications for workers. Indeed, in the past two decades alone, the number of jobs related to international trade has rapidly increased both in terms of their

This chapter was written by Marva Corley-Coulibaly, Takaaki Kizu, Elizabeth Echeverria Manrique and Ngoc-Han Tran

number and their share of total employment. For example, an ILO study on 40 countries[2] estimates that the number of jobs linked to global supply chains has increased from 296 million in 1995 to 453 million in 2013, accounting for 16.4 per cent of total employment in 1995 and 20.6 per cent in 2013.[3]

The present chapter reviews the scale and scope of labour provisions, along with their effectiveness based on the findings in the literature.

Figure 1.1 Trade agreements with and without labour provisions, 1995-2016 [4]



What are regional patterns of labour provisions in trade agreements?

The majority of labour provisions tend to be included in agreements between developed and developing countries (North-South agreements). These North-South trade agreements account for as much as 70.1 per cent of the total number of trade agreement with labour provisions.

But there are also an increasing number of trade agreements with labour provisions concluded among developing and emerging countries (South-South agreements). In fact, one fourth of all trade agreements with labour provisions are between developing economy partners, involving in particular a large number of trading partners in Latin America and Sub-Saharan Africa.

There is some regional variation underlying the overall trends in labour provisions. Among the 136 countries that have included labour provisions in their trade agreements, Canada, Chile, the EU and the United States are particularly active.

The trade agreements concluded by Canada and the United States almost exclusively include labour provisions. The United States has included labour provisions in 13 out of its 14 agreements in force. Similarly, Canada has labour provisions in 9 out of its 11 trade agreements. The EU has concluded 15 trade agreements with labour provisions, accounting for 39.5 per cent of the total of 38 trade agreements in force.[5] Lastly, Chile has included labour provisions in 12 out of its 26 agreements in force.

Some countries have not included any labour provisions in their trade agreements. As of August 2016, there were 55 such countries from all regions across the world, except Eastern Europe. At the regional level, countries without labour provisions in their trade agreement are more highly concentrated in Southern Asia and the Arab States. No countries in Southern Asia and only four of the 12 Arab States have such provisions.

What about normative contents and scope?

As mentioned above, the content of labour provisions include a range of obligations (and also non-committal provisions) and references, most notably to ILO instruments. There are also mechanisms for implementation and enforcement ranging from governmental and civil society committees for monitoring and dialogue, amicable or formal consultations, recourse to a general or dedicated panel in the event of disputes, and the application of fines or sanctions.

The **nature of the normative contents** (obligations or political commitments) is determined by the question: what do countries undertake to do in respect of labour rights and working conditions? Research shows that the most frequent commitments found in the agreements are the following:

- To ensure the effective enforcement or implementation of laws, regulations and labour standards;
- To adopt, uphold and/or improve laws, regulations and labour standards;
- Not to waive or derogate from laws, regulations and labour standards;
- The reaffirmation of obligations of parties to the agreements as members of the ILO;
- To promote public awareness of labour and laws, tran-

[2] The sample 40 countries are seven emerging economies (Brazil, China, India, Indonesia, Mexico, the Russian Federation, Turkey), and 33 advanced economies (Australia, Canada, the EU 27 countries, Japan, the Republic of Korea, Taiwan (China) and the United States).

[3] ILO (2015).

[4] Data shown in the figure is as of August 2016.

[5] The European Union has different types of agreements that regularly include a trade pillar or component: Association Agreements, Stabilisation Agreements, Deep and Comprehensive Free Trade Agreements or Areas and Economic Partnership Agreements.

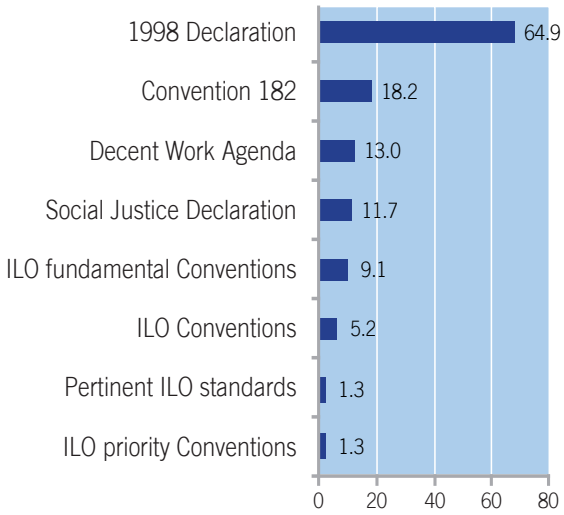
sparency and communication to the public;

- To ensure access to tribunals in order to uphold labour laws and standards;

- To provide procedural guarantees to ensure the effective application of labour laws, regulations and standards.

Where their scope is concerned, in some instances, parties commit themselves to these obligations under international frameworks relating to international labour standards or labour rights and principles. For example, it is quite common for most trade agreements with labour provisions to include reference to the **1998 Declaration on Fundamental Principles and Rights at Work**[6] (figure 1.2).

Figure 1.2 Reference to the ILO instruments in trade agreements, 2016 [7]



But, there are also examples where other ILO instruments or frameworks have been included, beyond these standard references. These include the following:

- **ILO fundamental Conventions**, whose effective implementation is called for in 9.1 per cent of trade agreements with labour provisions, in particular EU trade agreements;
-
- ILO Decent Work Agenda, referred to in 13 per cent of EU and some Canadian trade agreements;

- **ILO Social Justice Declaration for a Fair Globalization**, referred to in 11.7 per cent of agreements concluded by the EU, the European Free Trade Association (EFTA) countries and Canada.

Besides ILO instruments, certain specific issues of importance to the countries are also included in provisions, such as **gender** for the EU (for instance, in agreements with the Republic of Korea and Georgia) and Canada (in agreements with Peru and Colombia), and the protection of **migrant worker rights** for Canada and some EU agreements (for example, with Colombia and Peru) (see box 1.1).

Apart from the reference to labour relations and working conditions, reference is also made to a wide variety of cooperative mechanisms, on such matters as institutional capacity-building, as between Costa Rica and Singapore; on labour-related policy dialogue, as between Chile and Peru; on promotional activities, including technical cooperation projects, as in the East African Community; and on consultation and dialogue, as between Hong Kong, China, and Chile.

How effective have labour provisions been in improving working conditions?

The effectiveness of labour provisions is a hugely under-researched area. This is because the link between these provisions and working conditions is complex and difficult to examine. In order for labour provisions to materialize in working conditions at the firm level, they first need to have some impacts at the institutional level, for example, by triggering changes in laws and regulations. Such intermediate outcomes would then have more direct impact on working conditions at the firm level. A direct link of this nature is difficult to quantify, however (see chapter 4). Hence, there is a significant lack of empirical research on this topic.

These difficulties notwithstanding, a few empirical studies have been carried out, pointing to some emerging evidence. One study finds that labour provisions in trade agreement ease labour market access, in particular for working age women. Trade agreements with labour provisions boost labour force participation rates by 1.6 percentage points more than agreements without labour provisions. Since this impact is stronger for women, the gender gap in the labour force participation rate is reduced by some 1.1 percentage points. One possible explanation for the positive impact of labour provisions on labour force participation rate is that labour provision-related policy dialogue and awareness-raising can influence people's expectation of better working conditions.

[6] The Southern African Development Community (SADC) does not include a reference to the 1998 ILO declaration. It does, however, refer to individual ILO core Conventions, such as Conventions Nos. 29 and 105 (on forced labour); Nos. 87 and 98 (on freedom of association and the right to collective bargaining); Nos. 100 and 111 (on discrimination); and No. 138 (on the minimum age of entry into employment).

[7] Some agreements make reference to general principles and labour rights without making direct references to ILO instruments (Declarations, Conventions, Recommendations or Protocols).

Box 1.1 Labour rights of migrant workers

Unlike trade, the migration of low-skilled workers tends to move in one direction only: from developing to developed countries. This pattern of migration has led to a clash of interests,[8] which might partly explain the limited inclusion of provisions on migrant workers' rights and the growing inclusion of security and mobility-related clauses in trade agreements.[9] Given the importance of labour protection for migrant workers in trade agreements, the United Nations Human Rights Council suggested that States include explicit references to international human rights and labour instruments in all trade agreements.[10] Since 2009 provisions for migrant workers have been increasingly incorporated in EU and Canadian trade agreements:

- **Provisions for migrant workers in EU trade agreements:** Provisions on migrant workers tend to be part of the EU political agreements, more than of EU Free Trade Agreements or trade pillars/DCFTAs under Association Agreements.[11] The EU-Colombia and Peru trade agreement and the political pillar of the EU-Ukraine agreements make direct reference to migrant workers' rights. Provisions for migrant workers are incorporated in the main texts of these two agreements.

- **Provisions for migrant workers in Canada trade agreements:** Provisions for migrant workers are incorporated in side agreements on labour (agreements on labour cooperation) in all Canada's trade agreements (signed and in force) since 2009. These provisions for migrant workers include non-discrimination clauses relating to conditions of work for migrant workers and scope for cooperative activities regarding promoting labour standards. In the case of the Canada-Jordan trade agreement, the provision also includes cooperation in the management of temporary foreign worker programmes.

- **EU- Canada Comprehensive Economic and Trade Agreement (CETA)**[12]: In 2011, the EU undertook an ex-ante assessment of the impact of trade agreements on the EU and Canada in terms of their economic and social aspects. The assessment suggested that, given the economic situation of Canada and most EU Member States, there would be less demand for labour movement between Canada and the EU, even for high-skilled workers (p. 375). This notwithstanding, the assessment called on both parties to promote and ensure the non-discrimination of migrant workers (p. 137). A specific reference to migrant workers is included in the Trade and Labour chapter (Art. 23.3(2)(c)).

In addition, given the focus on non-discrimination in labour provisions, women may be more encouraged by the labour provisions to join the labour market than men.

The positive impacts of labour provisions on gender equality are also found at the country level. For instance, a study of the Cambodian textile sector finds that the labour provisions in the Cambodia-United States bilateral textile agreement and its implementation programme played a significant role in reducing gender wage gaps in the textile sector by some one fifth – from 30 per cent prior to the agreement to 6 per cent after its adoption and implementation. Since the gender wage gap in other manufacturing sectors remained unchanged, the narrowing of the gender wage gap can be attributed to the labour provision and its implementation programme.
Despite some available evidence, the effect of labour provisions might remain to be manifested, given that the extensive inclusion of labour provisions is a relatively recent development. Thus, further empirical research on this topic is strongly encouraged.

Conclusions

The growing trend to include labour provisions in trade agreements is evidenced by the rise in the number – and also the share – of these provisions since 2008. In addition, the scope of labour provisions has also broadened to include reference not only to core labour standards, but also to other ILO instruments and to cooperative and dialogue mechanisms.

Given the regional variation in trends, more research is needed on the effectiveness of mechanisms. This includes analysis at the institutional level, to gain a better understanding of the following factors: first, how labour provisions can promote international labour standards through capacity-building not only of domestic institutions, but also of civil society and firms; and, second, how such promotion could be more strongly linked to better decent work outcomes at the firm level.

[8] Lavenex and Jurje (2014, p. 5).

[9] United Nations (2016, p. 6); Lavenex and Jurje (2014, p. 19).
There are three types of migration clauses in trade agreements: (i) Security related clauses: refer to parties' commitment to fight irregular migration, cooperation on readmission of illegal migrants and cooperation on circulation of migration for development. (ii) Labour rights clauses: non-discrimination of migrant workers. For example, Art. 276 in EU- Colombia and Peru trade agreement and Art. 17 in EU- Ukraine trade agreement (iii) Movement related provisions: mobility of service suppliers (addressed under Mode 4 of the GATS) and labour mobility (regarded as a basic freedom (EU, MERCOSUR) or a mean to further trade liberalization and economic integration (NAFTA, ASEAN).

[10] United Nations (2016, p. 6).

[11] They are EU- Colombia and Peru, EU- Central America, EU- Moldova, EU- Georgia and EU- Ukraine.

[12] CETA was signed on 30 October 2016.

References

Burgoon, B. 2004. "The rise and stall of labor linkage in globalization politics", in *International Politics*, Vol. 41, pp. 196-220.

International Institute of Labour Studies (IILS). 2009. *World of Work Report 2009*, (Geneva).

International Labour Organization (ILO). 2015. *World Employment and Social Outlook 2015: The Changing Nature of Jobs*, (Geneva).

Jurje, F.; Lavenex, S. 2014. "Trade Agreements as Venues for 'Market Power Europe'? The case of Immigration Policy", in *Journal for Common Market Studies*, Vol. 52, No. 2, pp. 320-336.

United Nations (UN). 2016. *Report of the Special Rapporteur on the human rights of migrants on the impact of bilateral and multilateral trade agreements on the human rights of migrants*, Human Rights Council, General Assembly, 32nd Session, A/HRC/32/40. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/19/PDF/G1609119.pdf?OpenElement [24 Nov. 2016].

Van den Putte, L.; Orbie, J. 2015. "EU bilateral trade agreements and the surprising rise of labour provisions", in *The International Journal of Comparative Labour Law and Industrial Relations*, Vol. 31, No. 3, pp 263-284.

Further reading

International Labour Organization (ILO). 2013. *Social dimensions of free trade agreements*, (Geneva).

International Organization for Migration (IOM).; World Bank.; World Trade Organization (WTO). 2004. background paper for Trade and Migration Seminar, Geneva, 4-5 Oct. Available at: http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/workshops/Trade_2004_04051004/seminar%20docs/background.pdf [24 Nov. 2016].

Lucas, Robert. E.B. 2008. *International Labor Migration in a Globalizing Economy*, Trade, Equity, and Development Program, No. 92, (Washington, DC, Carnegie Endowment for International Peace).

Taran, P. and Geronimi, E. 2002. *Globalization, labour and migration: Protection is paramount*, paper presented at Conferencia Hemisférica sobre Migracion International: Derechos Humanos y Trata de Personas en las Américas, Santiago de Chile, 20-22 Nov. 2002. Available at: http://www.cepal.org/celade/noticias/paginas/2/11302/ptaran.pdf [24 Nov. 2016].

2 TRADE AND CORE LABOUR STANDARDS

SUMMARY

The connection between trade and labour is an essential element in the establishment of the ILO and the WTO.

Since the 1996 Singapore Ministerial Declaration that renewed the commitment of the WTO membership to internationally recognized core labour standards, the ILO has affirmed two major declarations that explicitly consider the trade and labour linkage. This includes the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up and the 2008 Declaration on Social Justice for a Fair Globalization.

With the growth in labour provisions in bilateral and plurilateral trade agreements that refer to ILO instruments ILO's support has been increasingly sought by Member States to meet their commitments with respect to international labour standards in the context of trade agreements.

What is the historical context of the link between trade and labour standards?

Eighteenth century writings address the link between trade and labour standards, and reflect the awareness of the role that labour standards could play in securing competitive advantage.[13] In particular, the writer Jacques Necker, a French finance minister cautioned that a competitive advantage, based on weak labour rights, could only be obtained if countries acted in isolation.[14]

In the early 19th century, this economic reasoning was supported by a moral obligation on the part of some social activists, during the industrial revolution, to improve the welfare of workers, i.e., "a charitable urge to impose constraints on laissez-faire conditions of labour".[15] These activists included the Welshman Robert Owen, who campaigned in 1817 for an eight-hour workday, as well as Europeans such as Charles Hindley, Edouard Ducpétiaux, J.A. Blanqui, Louis René Villermé and Daniel Le Grand. The latter, from 1844 onwards, drafted different projects addressed to governments to protect workers particularly from the impacts of international competition based on different working conditions between countries.[16]

By the early 20th century some advanced economies in Europe had made some efforts to achieve a level playing field based on the institutionalization of minimum conditions of work and labour rights across trading partners.[17] This included a series of international conferences between 1890-1897 that were attended by a large group of representatives from European economies, including administrators, diplomats, academics and business representatives. The conferences discussed working conditions, proposed the creation of international labour legislations as well as the establishment of an international association for the protection of workers.

These considerations became an essential link in the establi-

This chapter was written by Marva Corley-Coulibaly and Tilottama Puri

[13] See Servais (2009) and Charnovitz (1987).

[14] Servais (2009).

[15] Ibid, (p. 21).

[16] Von Potobsky and De La Cruz (1990).

[17] For example, Austria, Belgium, France, Germany, Great Britain, and Switzerland.

shment and founding principles of the International Labour Organization (ILO) as laid out in the ILO Philadelphia Declaration in 1944.[18] The Philadelphia Declaration affirms that in order to achieve lasting peace and social justice that it is the responsibility of the Organization to examine and consider **all international economic and financial policies** and measures in the light of this fundamental objective.

Prominent discussions to link trade and labour standards also took place at the early stages of the **international trade frameworks and organizations**. This includes the Havana Charter of the proposed International Trade Organization in 1948 and the establishment of the World Trade Organization (WTO) in 1994. Indeed, Article XX in General Agreement on Tariffs and Trade (GATT), includes the exception for unacceptable labour standards.[19]

These and latter discussions on trade and labour have been rather contentious. But there have also been consensus reached that have moved the debate forward. In addition, these platforms have opened the door to integrating trade and labour standards into broader growth and development agendas—in both specific and comprehensive ways. This will be the focus of the remainder of the chapter.

What are the relevant organizational mandates?

Singapore Ministerial Declaration

A consensus on trade and labour was reached in the **Singapore Declaration of 1996**. The Declaration reaffirmed the commitment of the WTO membership to internationally recognized core labour standards in the multilateral trade framework.

The road towards this consensus is an interesting point for the current analysis.

The **WTO Ministerial Conference** held in Singapore in 1996 was the first such ministerial meeting of the newly formed organization, but it was not the first discussion on the trade and labour linkage in the WTO.

- At the prior meeting to establish the organization, held in Marrakech two years earlier, a concerted push had been made by the United States and France for a **social clause in trade relations**.[20]

- The social clause referred to introducing restrictions on trade as the result of failure to remove the most extreme forms of labour exploitation in exporting countries.[21]

- The social clause was not supported by other members of the organization and no decision was taken.[22]

A more strategic approach to the discussion of the social clause took place at the Singapore meeting in 1996, where a bloc of developed economies, including France, Norway and the United States, supported it. Equal opposition to the clause was mounted by a group of developing countries (including notably, the countries of the Association of Southeast Asian Nations (ASEAN), Argentina, Brazil, India and Pakistan), but also the United Kingdom and Australia, whose principal concern was that labour standards would be used as a pretext for protectionism.[23]

A compromise solution was reached. **The Singapore Ministerial Declaration**, adopted in 1996 affirmed:

- The renewed WTO commitment to the observance of internationally recognized core labour standards.[24]

- The ILO is the competent body to set and deal with international labour standards.

- The use of labour standards for protectionist purposes must be rejected.

- The comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question.

- The continuation of existing collaboration between the ILO and WTO Secretariats.[25]

This statement clearly expressed the Members states commitment to support labour standards as WTO members and laid out the ground work for joint collaboration with the ILO. Nevertheless, later proposals by the EU[26] to establish a joint ILO/WTO and the US and Canada to establish a WTO working group on trade, developmental, social and

[18] Valticos (1997).

[19] This would be under the exceptions provided for public morals (Article XX (a)); human life and health (Article XX(b)) and for taking measures against prison labour (Article XX (e). The main conditions for application are: necessity, proportionality and that the measure does not create unjustified discrimination. Kaufmann (2007).

[20] Sutherland (1998, p. 92).

[21] This could take the form of exclusion from preferential arrangements; restrictive quotas or trade barriers; the raising of tariff levels; and temporary suspension (Lim, 2005).

[22] In fact, the only follow-up that is mentioned is a brief reference in the Chair's list of issues that it could eventually be considered in the WTO work programme (Leary, 1997).

[23] Van Grasstek (2013); SUNS (1996).

[24] GATT Article XX already refers to labour standards.

[25] It should be noted that at the time there was no significant cooperation between the WTO and the ILO (Van Grasstek, 2013).

[26] EU mandate for the WTO Seattle Ministerial, See also the annex to the European Commission Communication on core labour standards (2001).

environmental dimensions of policy choices were met with strong resistance at the third WTO Ministerial Meeting in Seattle in 1999.[27]

The Declaration on Fundamental Principles and Rights and Work

Shortly after the adoption of the Singapore Ministerial Declaration, the ILO adopted in 1998 the **Declaration on Fundamental Principles and Rights at Work and its Follow-up**. This new instrument was created to strengthen the application of principles and associated rights that are considered fundamental for social justice. It commits ILO members to respect and enforce the core labour standards as human rights regardless of whether or not they have ratified the relevant ILO Conventions.[28]

This was the second major statement of principles and policies by the ILO (since the Philadelphia Declaration). The core labour standards, enshrined in the Declaration include:

- 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.

In apparent consideration of the trade and labour linkage, the Declaration stresses that that these standards: (i) should not be used for protectionist trade purposes; and (ii) the comparative advantage of any country should in no way be called into question.

Additionally, in the Follow-up to the Declaration a review mechanism was set up at the ILO to monitor compliance and report progress towards ratification of the core labour standards.

Thus, by virtue of their **ILO membership**, most countries **committed** themselves to respecting and promoting the core labour standards, and to reporting on a regular basis on progress with regard to these obligations. Indeed, the 1998 Declaration is the common baseline reference for labour standards in most trade agreements.

The Social Justice Declaration for a Fair Globalization

In the 21st century, the ILO reaffirmed its mandate with respect to the link between trade and labour and adopted the **Declaration on Social Justice for a Fair Globalization**. It is the third major statement of principles and policies from the ILO and its Members to achieving social justice. The Social Justice Declaration reaffirmed the mandate of the ILO in an era of globalization and comprehensively linked labour, economic and trade policies. In particular, the Social Justice Declaration:

- Reaffirms the commitment in the 1998 Declaration on Fundamental Principles and Rights at Work that (i) labour standards should not be used for protectionist trade purposes and ii) adds that the violation of fundamental principles and rights at work cannot be invoked or used as a legitimate comparative advantage.
- Requires that upon request the ILO can provide assistance to its Members, who aim to enhance decent work in the framework of bilateral or multilateral agreements subject to their compatibility with ILO obligations.

It is worth noting that the 2008 Declaration is not limited to core labour standards, but covers all strategic objectives of the Decent Work Agenda—including social protection, social dialogue and employment.

Alongside the emerging consensus on the trade, labour linkage there exists apprehension on the part of some countries to include labour provisions in trade agreements. Although labour provisions in trade agreements differ from the social clause in **scope and implementation**, much of the discussion on trade and labour has centred on similar arguments to the social clause. But, as noted above, labour provisions tend to reference core international labour standards. There is also strong emphasis in labour provisions on cooperative mechanisms, such as capacity-building and social dialogue. In addition, enforcement mechanisms are based on a broad array of tools, including social dialogue.

Are the main arguments for and against labour provisions still valid?

The main tenets of the debate linking trade and labour standards relate to **economic, human rights and political considerations**—the most widely debated of which seems to centre on the economic aspects.

From an **economic perspective**, the chief issue is whether labour standards are needed to level the playing field. On the one hand, opponents of labour provisions argue that they are not needed because competition in itself will lead to an improvement in labour standards. In the short term, there may be distortion, but this is temporary. Eventually labour standards will improve as economic growth leads to more jobs and improved decent work outcomes. From this perspective, labour provisions are viewed as **market distorting** and cannot be justified from the standpoint of efficiency.[29]

[27] See for example, OECD (2000) and WTO (2001).

[28] These principles correspond to those agreed at the World Summit on Social Development in Copenhagen (1995) and reflected in the *Copenhagen Declaration on Social Development and Action Programme of the World Council on Social Development*.

[29] See, for example, Lim (2005), Langille (1994).

On the other hand, proponents argue that markets must operate in a framework of rules and regulations. Such intervention is warranted because growth does not automatically lead to better decent work outcomes. There are structural barriers that prevent workers from easily changing employers or sectors. From this perspective, labour provisions are needed to address market failures with regard to **decent work outcomes**.[30]

The three key issues in this argument have been related to the following areas:

- **Comparative advantage:** Opponents argue that labour standards, by increasing the cost of labour, undermine the low wage comparative advantage of developing countries on which they rely on for encouraging exports and attracting foreign direct investment. Proponents argue that respect for core labour rights promotes framework conditions for development and sustainable growth. Additionally, violation of core labour standards cannot be used as a justification for legitimate comparative advantage.

- **Distortion of trade and employment:** According to neoclassical trade theory, by distorting markets, labour provisions ultimately lead to reduced trade and employment. Proponents argue that neoclassical trade theory fails to consider the possibility of trade-induced unemployment and surplus labour in low wage countries, which have kept wages for unskilled workers relatively low.

- **Protectionism:** Some consider labour provisions a form of disguised protectionism from high wage countries, mainly in response to competitive pressures from low wage countries. Opponents argue that labour provisions cannot be a form of protectionism if they apply in a manner that is not discriminatory and are not aimed at creating a disguised restriction on trade.[31]

As for undermining comparative advantage and harming trade, the limited empirical evidence tends to support the counterargument. The majority of studies on the issue show that respect for core standards does not adversely impact exports or investment. Additionally, studies find that there are spillover benefits of respect for core labour standards that could improve growth and development outcomes.[32]

- A **seminal 1996 study** by the Organisation for Economic Co-operation and Development (OECD), updated in 2000,[33] concludes that countries that raise labour standards do not sacrifice export performance. Core labour standards actually increase economic development; and countries that respect core labour standards will transition more easily to trade liberalization.

- **ILO research** shows that trade agreements with labour provisions boost trade to the same extent as trade agreements without labour provisions.[34] The study finds that a trade agreement with labour provisions increases the value of trade by 28 per cent on average, while a trade agreement without labour provisions increases trade by 26 per cent.[35]

- Empirical evidence suggests that countries with very low labour standards receive little foreign direct investment and that, although labour standards are supposed to increase the cost of labour, the impact is usually offset by **positive non-labour cost effects** that managers of multinational enterprises value, such as productivity and good governance.[36]

- Empirical evidence on 104 countries shows that core labour standards have a positive impact on per capita GDP.[37]

Some other earlier studies refuted the claim that labour standards do not have a negative impact on trade. Most were based, however, on analysis of labour standards in general, not core labour standards, which tend to be the focus of labour provisions in trade agreements.[38] One recent paper, however, finds that under certain circumstances, labour clauses in trade agreements may reduce the trade-promoting effect of a trade agreements—but specifically for middle-income countries, especially when the trade agreements partner is a high-income country.[39]

What are other considerations?

Regardless of the economic reasons, some argue that there is a moral obligation to respect labour rights. In this regard, labour rights are more than a labour issue, and can be seen as both a **human rights** issue and **an issue of governance and inclusive and sustainable development**.

Indeed, there is almost universal consensus with regard to the recognition of the core labour standards as human rights, which are often reflected in **human rights instruments**. This is the case of the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention to Eliminate all Forms of Discrimination against Women; and the Convention on the Rights of the Child.

[30] See, for example, Lim (2005).
[31] See GATT, Article XX.
[32] See also DiCaprio (2005).
[33] OECD (1996) and (2000).
[34] ILO (2016).
[35] These figures are not statistically significantly different from each other.
[36] Elliott and Freeman (2003).
[37] Bazillier (2008).
[38] OECD (2000).
[39] Kamata (2014).

Some commentators argue that the human rights approach may weaken labour rights, by limiting the framework to a specific list of rights, and ignoring other important labour rights.[40] Others, however, recognize the importance of the core labour standards as enabling rights that enhance the possibility of workers to claim other rights.[41] Taking this argument a step further is the suggestion that the freedom of association in particular is the key to achieving human rights.[42]

On the issue of governance, inclusiveness and sustainable development, the **2004 report of the World Commission on the Social Dimension of Globalization** recommends a broader approach to the trade and labour interplay by bringing in the wider socio-economic development and governance dimension. This is also supported in the **2030 Agenda for Sustainable Development**, which endorses a rules-based equitable multilateral trading within the framework of inclusive and sustainable economic growth, employment and decent work for all.

More recently, the trade and labour interplay was addressed as part of an appropriate governance system to achieve coherence between economic outcomes and decent work in global supply chains. In the resolutions and conclusions of the 105th Session, 2016 of the **International Labour Conference Committee on Decent Work in Global Supply Chains**, it is recommended that governments should "consider to include fundamental principles and rights at work in trade agreements taking into account 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…"[43]

Conclusions

In the past 20 years labour provisions in trade agreements have grown in importance, from one binding commitment in 1994 to 77 in 2016. More recently, about 80 per cent of agreements coming into force since 2013 include labour provisions.[44] A great majority of these agreements that include labour provisions reference ILO instruments, such as the 1998 Declaration (66 per cent), but also the Decent Work Agenda (13 per cent) and the ILO Declaration on Social Justice for a Fair Globalization (11.8 per cent). [45]

Increasingly, Members States have requested the ILO's assistance to meet their commitments with respect to international labour standards prompted by labour provisions in trade agreements. These requests include technical assistance on labour standards, labour practices and implementing commitments--including monitoring, dialogue and dispute settlement.[46] But, also assessments of labour market impacts of trade and effective policy responses. If the trend towards bilateral and plurilateral agreements continues, ILO assistance on these issues is expected to increase.

Indeed, linking trade with labour standards is only one tool for promoting labour standards. Policy coherence is equally important, including with other international organizations.

In the context of its mandate, the ILO has also been involved in joint research projects with the WTO on trade and labour markets, such as promoting more socially sustainable globalization through stronger linkages between trade, labour and social policies.[47] The implementation of the 2030 Agenda also provides an opportunity to work with other international organisations to provide integrated policy advice in the context of inclusive and sustainable development.

References

Alston, P. 2005. "Facing up to the complexities of the ILO's core labour standards agenda", in *The European Journal of International Law*, Vol 15, no. 13.

Bazillier, R. 2008. "Core labor standards and development: Impact on long-term income", in *World Development*, Vol. 36, No. 1, pp. 17-38. Available at: [https://www.researchgate.net/publication/4918637_Core_Labor_Standards_and_Development_Impact_on_Long-Term_Income [23 Oct. 2016].

DiCaprio, A. 2005. "Are labor provisions protectionist?: Evidence from nine labor-augmented U.S. trade arrangements", in *Comparative Labor Law and Policy Journal*, Vol. 26, No. 1, pp. 1-34.

Charnovitz, S. 1987. "The influence of international labour standards on the world trading regime: A historical overview", in *International Labour Review*, Vol. 126, No. 5, pp. 565-584. Available at: http://www.ilo.org/public/libdoc/ilo/P/09602/09602(1987-126-5)565-584.pdf [23 Oct. 2016].

—. 2000. "The International Labour Organization in its second century", in J.A. Frowein and R. Wolfrum (eds): *Max Planck Yearbook of United Nations Law*, pp. 147–184. Available at: http://www.mpil.de/files/pdf2/mpunyb_charnovitz_4.pdf [23 Oct. 2016].

Doumbia-Henry, C.; Gravel, E. 2006. "Free trade agreements and labour rights: Recent developments", in *International*

[40] See, for example, Alston (2005), and Langille (2005).

[41] Maupain (2005).

[42] United Nations (2016), ILO (2012), and ILO (2013).

[43] ILO (2016. para 16(h)).

[44] ILO (2016a).

[45] ILO (2016c).

[46] ILO (2016c).

[47] See, for example, ILO and WTO (2007, 2009, and 2011).

Labour Review, Vol. 145, No. 3, pp. 185-206.

Elliott, K.A.; Freeman, R.B. 2003. *Can labor standards improve under globalization?* (Washington, DC, Peterson Institute for International Economics).

International Labour Office (ILO). 2012. Report of the Committee for the Recurrent Discussion on the Strategic Objective of Fundamental Principles and Rights at Work, International Labour Conference, 101st Session. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_182951.pdf

—. 2013. *Social Dialogue*. Report VI Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalization, International Labour Conference, 102nd Session. Available at: http://www.ilo.ch/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_205955.pdf

—. 2016a. *Assessment of labour provisions in trade and investment arrangements* (Geneva).

—. 2016b. *Decent work in global supply chains*, Report IV, International Labour Conference, 105th Session, Geneva, 2016 (Geneva). Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_468097.pdf [23 Oct. 2016].

—. 2016c. *Labour-related provisions in trade agreements: Recent trends and relevance to the ILO*, Report to the Governing Body, GB. 328/POL/3, (Geneva).

International Labour Office (ILO) and World Trade Organization (WTO). 2007. *Trade and employment: Challenges and policy research* (Geneva).

—. 2009. *Globalization and informal jobs in developing countries* (Geneva).

—. 2011. *Making globalization socially sustainable* (Geneva).

Kamata. I. 2014. *Regional Trade Agreements with Labor Clauses: Effects on labor standards and trade*, RIETI Discussion Paper Series 14-E-012.

Kaufmann, C. (2007). *Globalisation and labour rights, The Conflict between core labour rights and international economic law*. Hart (Oxford and Portland, Oregon).

Kolben, K. 2006. "The new politics of linkage: India's opposition to the workers' rights clause", in *Indiana Journal of Global Legal Studies*, Vol. 13, No. 1, pp. 225-259.

—. 2007. "Integrative linkage: Combining public and private regulatory approaches in the design of trade and labor regimes", in *Harvard International Law Journal*, Vol. 48, No. 1.

Langille, Brian. 1994. "Labour Standards in the Globalized Economy and the Free Trade/Fair Trade Debate", in Werner Sengenberger W. and D.Campbell (ed.): *International Labour Standards and Economic Interdependence*, 329-56. (Geneva, ILO).

Leary, V.A. 1997. "The WTO and the social clause: Post Singapore", in *European Journal of International Law*, Vol 8, No. 1, pp. 118–122. Available at: http://ejil.oxfordjournals.org/content/8/1/118.full.pdf+html [23 Oct. 2016].

Lim, H. 2005. *The Social Clause: Issues and challenges*. Available at: http://training.itcilo.it/actrav_cdrom1/english/global/guide/hoelim.htm#INTRODUCTION [23 Oct. 2016].
Mah, J.S. 1997. "Core labour standards and export performance in developing countries", in *The World Economy*, Vol. 20, No. 6, pp. 773–785.

Maupain, F. 2005. "Revitalization not retreat : The real potential of the 1998 ILO Declaration for the Universal Protection of Workers' Rights", in *European Journal of International Law*, Vol. 16, No. 3, pp. 439–465. Available at: http://www.ejil.org/article.php?article=303&issue=16 [23 Oct. 2016].

Organisation for Economic Co-operation and Development (OECD). 1996. *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade* (Paris). Available at : http://www.keepeek.com/Digital-Asset-Management/oecd/trade/trade-employment-and-labour-standards_9789264104884-en#.WAX8CK0cS70#page1 [23 Oct. 2016].

Organisation for Economic Co-operation and Development (OECD). 2000. *International Trade and Core Labour Standards*, Policy Brief, Oct. Available at: http://www.oecd.org/tad/1917944.pdf [23 Oct. 2016].

—. 2000 *International trade and core labour standards* (Paris). Available at: http://www.keepeek.com/Digital-Asset-Management/oecd/trade/international-trade-and-core-labour-standards_9789264188006-en#.WAX8ua0cS70#page2 [23 Oct. 2016].

Puri, T. *Linkage between international trade agreements and labour clauses: case study of India*, unpublished manuscript.

Servais, J.-M. 2009. I*nternational labour law* (Kluwer Law International, the Netherlands).

South-North Development Monitor (SUNS). 1996. *South countries oppose social clause at WTO*. Available at: http://www.sunsonline.org/trade/process/followup/1996/06210096.htm [23 Oct. 2016].

Sutherland, Johanna.1998. "International Trade and the GATT/WTO Social Clause: Broadening the Debate", in *Queensland University of Technology Law Journal 83*.

United Nations (UN). 2016. *Rights to freedom of peaceful assembly and of association*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, General Assembly, 71st Session, A/71/385.

Available at: http://freeassembly.net/wp-content/uploads/2016/10/A.71.385_E.pdf [23 Oct. 2016].
Valticos, N. 1977. *Derecho Internacional del Trabajo*. Editorial Tecnos (Spain).

VanGrasstek, C. 2013. *The history and future of the World Trade Organization* (Geneva, World Trade Organization). Available at: https://www.wto.org/english/res_e/booksp_e/historywto_e.pdf [23 Oct. 2016].

Von Potobsky, G.; De La Cruz, H. B. 1990. *La Organización Internacional del Trabajo*. Editorial Astrea (Argentina).
World Trade Organization, 2001. *Trade and Labour Standards: A difficult issue for many WTO member governments*. Available at: https://www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/brief16_e.htm

Further reading

Barry, C.; Reddy, S.G. 2006. "International trade and labor standards: A proposal for linkage", in *Cornell International Law Journal*, Vol. 39, No. 3, pp. 545-639.

Mantouvalou, V. "Are labour rights human rights?", *in European Labour Law Journal,* Vol. 3, No. 2, pp. 151–172. Available at: http://www.academia.edu/1402570/Mantouvalou-AreLabourRightsHumanRights [23 Oct. 2016].

Hafner-Burton, E.M. 2009. *Forced to be good: Why trade agreements boost human rights* (Ithaca, Cornell University Press).

Kucera, D. (ed.). 2007. "Qualitative indicators of labour standards: Comparative methods and applications", in *Social Indicators Research Series,* Vol. 30 (Springer).

Witte, J.M. 2008. *Realizing core labor standards: The potential and limits of voluntary codes and social clauses* (Easchborn, Germany, Deutsche Gesellschaft fur Technische Zusammenarbeit GTZ).

3

LINKS BETWEEN TRADE AND LABOUR: AN OVERVIEW OF THE THEORY AND EVIDENCE

SUMMARY

Overall, the literature indicates that the impact of trade on labour market outcomes cannot be generalized, and depends strongly on institutional factors.

The impact of increased trade on employment creation seems to be slightly positive at the aggregate level; there is considerable variation, however, at country, sector and firm levels.

With regard to the impact of trade on informal employment and wage inequality, the theoretical point of view is mixed – empirical studies mostly point to an increase in both cases.

What is the link between trade and labour market outcomes?

A number of questions have been raised about the effects of globalization, and the increasing number of trade agreements, on the labour market:[48]

- Does increased trade improve employment creation?
- Is the quality of jobs, in terms of informality and wages, among others, affected by trade?

There appears to be no consensus on either question, and discordant voices have been raised by academics and the wider public. It is important to get a sense of this interaction since more focused policies, which can help improve the benefits of trade for all, can only be developed on the basis of such information.

For this purpose, this short brief examines the link between trade and different aspects of the labour market, based on the theoretical and empirical literature.[49]

It is difficult, however, to draw a general conclusion from the various studies for a number of reasons as set out below:

- First, their findings are largely affected by **different assumptions** made by the researcher, such as whether there is full employment, perfect competition and constant returns to scale.
- Second, the **indicators used** (for example, to account for trade, tariffs or volumes of exports and imports) can vary and affect the outcomes.
- Third, the choice of computable general equilibrium (CGE) or different **econometric techniques**, whether these be time series analysis, difference in differences, will lead to different findings.

More important, what emerges from the studies is that **country-specific conditions** (such as the labour market and social institutions) play an important role in determining how trade affects the labour market.[50]

Strong arguments, based on existing research, may be put forward for both the positive and the negative effects of trade

This chapter was written by Pelin Sekerler Richiardi

[48] This brief focuses on the impact of trade from an economic perspective. For the impact on labour standards, see the brief on "Trade and labour standards linkage" of the present handbook.

[49] See also Jansen, Peters, and Salazar-Xirinachs (2011) for an overview.

[50] See, for example, Milberg and Winkler (2011).

on different aspects of the labour market. The objective of the present brief is to give an overview of both sides of the argument.

Trade and employment creation from a theoretical perspective

The theoretical stance in respect of the impact of trade on employment has substantially evolved over the last three decades.

- **Traditional trade theory**[51] and, until recently, modern theory on this issue have commonly assumed **perfectly flexible labour markets and full employment**, and could only explain **inter-industry trade** (trade in different goods). The focus was hence on employment shifts across industries as the result of trade, which implied that, in the long run, the unemployment rate would not be affected by trade. Such a framework did not allow for consideration of changes in the overall number of employed workers at the aggregate level.

- **Newer theories**, however, have explored different mechanisms, and opened up space for exploring the impact of trade on job creation from diverse angles. For example, studies on **intra-industry trade**[52] **and firm heterogeneity**[53] have provided scope for the consideration of exchanges of similar goods within the same industries, taking into account firms with different levels of productivity.

In addition, studies assuming **imperfect labour markets** (such as search and efficiency wage models)[54] have allowed unemployment to be incorporated directly in the theoretical model and have moved away from the full employment hypothesis. Overall, however, theoretical studies show a complex and ambiguous relationship between trade and unemployment.[55]

Trade and employment creation from an empirical perspective

Based increasingly on newer theories, empirical studies have explored changes in employment levels. A clearer picture seems to emerge from these studies: a positive relationship between trade and employment creation – or, conversely, a negative relationship between trade and the unemployment rate – at the aggregate level.[56] Echoing the theoretical studies, however, empirical studies also show considerable heterogeneity at **country** and **sector levels**.

A number of studies find that globalization leads to an increased probability of unemployment and employment destruction – in particular in manufacturing and agriculture – but the effect differs from country to country.[57] Other studies like the CGE simulations of Plummer et al. (2014) estimate net employment gains that surpass job destruction. They find that total employment for six countries of the Association of Southeast Asian Nations (ASEAN), which were examined in the study, will increase in absolute terms mainly due to agriculture. There might be losses in some other sectors such as food processing, however, especially in Indonesia and the Lao People's Democratic Republic.

Beyond sector and country differences, there is also evidence of both job creation and destruction **within the same sectors**. This dynamic is explained by the change in the labour demand for different s**kill categories** on the one hand (high and low skill),[58] and **different types of firms** on the other (high-productivity and low-productivity firms).[59] For example, one study finds a considerable job loss for low-skilled workers in the United States in the 1980s due to offshoring.[60] Another finds that, following trade liberalization in Brazil, productivity rose, but high productivity firms and exporters hired fewer workers and fired workers more frequently than average, resulting in higher unemployment.[61]

Finally, looking at the impact at **different time periods** can lead to different conclusions. For example, while long-term employment effects of trade can be positive, in the short-term important job losses can result in high adjustment costs.[62] In addition to changes in the number of jobs, studies have shown impacts with respect to changes in job quality, such as informal employment.

Trade and informal employment from a theoretical perspective

One of the questions concerns the impact of increased trade on informal employment. This is a very important issue – in many developing countries, a considerable number of workers are in the informal economy. From a theoretical point of view, trade can affect informality **both negatively and positively**, depending on the mechanisms at play.

For example, on the one hand, **increased foreign competition** can lead to a higher probability of formal workers being dismissed.[63] On the other hand, as exporting firms have a

[51] According to the Heckscher–Ohlin model, countries specialize in the production of the goods which use the most abundant factor.

[52] Helpman and Krugman (1985).

[53] Melitz (2003).

[54] Davis and Harrigan (2011); Egger and Kreickemeier, (2009); Mortensen and Pissarides (1994).

[55] Belenkiy and Riker (2015); Görg (2011).

[56] See, for example, Dutt, Mitra and Ranjan (2009); Felbermayr, Larch and Lechthaler (2013); Ibsen, Warzynski and Westergård-Nielsen (2009).

[57] See, for example, Weisbrot, Stephan and Sammut (2014) for agriculture in Mexico; Peluffo (2013), for manufacturing in Uruguay; Trefler (2004), also for manufacturing in the United States.

[58] See Crinò (2010), for service in Italy.

[59] See Melitz and Redding (2014), for references.

[60] Ebenstein, Harrison, McMillan and Phillip (2009).

[61] Menezes-Filho and Muendler (2007).

[62] See Görg (2011), for references.

[63] Goldberg and Pavcnik (2003).

higher probability of being **subject to scrutiny** (exports have to cross customs), they might be discouraged from hiring informal workers.[64]

Trade and informal employment from an empirical perspective

Similar to theoretical studies, empirical studies have produced mixed results, although they point to an increase in informality.[65] These studies find that the negative impact of **increased import competition** is dominant. Others argue that increased trade might lead to a decrease in informality by pushing **less productive informal firms out of the industry**, and allowing firms to upgrade to better technology and improved working conditions.[66] Overall, however, the existence of **labour market institutions** are found to be the determining factor in shaping the relation between trade and informal employment.[67]

Trade and wage inequality from a theoretical perspective

Another issue is the possible impact of trade on wage distribution.

- **Traditional theory** suggests that trade will increase the real return to the most abundant factor in a given country.[68] Thus, in the context of free trade, **the income of high-skilled workers should increase in advanced economies**, widening the wage gap, while the opposite phenomenon should be observed in developing countries. Since the 1980s, however, an increase in wage inequality has taken place in most developing and advanced countries, putting traditional theory at odds with reality. Moreover, increasing wage gaps between similar workers (not just between high-skilled and low-skilled workers) have been observed.

- **New theories** have pointed to disparities at the firm level, and labour market frictions, to explain such trends.[69] What emerges is that there is probably no single directional impact of trade on inequality, and other factors such as firm-level differences and institutional responses are crucial in determining the impact of trade.[70]

Trade and wage inequality from an empirical perspective

From an empirical perspective, a large number of studies seem to agree that **increased trade leads to higher inequality**.[71] In the case of trade agreements, findings also point to a positive effect of trade on wage dispersion, or at least they indicate no significant inequality-reducing impact.

Some argue, however, that the magnitude of this impact is low compared to the role played by **skill-biased technological change**.[72] While this seems to be the current dominant theory, some studies also highlight that it is difficult to separate the effects of trade and technology as there are important interactions between them. Others argue that, because trade can modify production methods by firms and accelerate technological change, the impact of skill-biased technological change on inequality can be traced back to trade.[73]

There is also evidence to show that the increase in **global supply chains** (offshoring and outsourcing activities) have put stronger pressure on inequality.[74]

Trade and gender[75]

From a gender perspective, a number of studies find that trade liberalization creates **employment opportunities for women** and might lead to a **decrease in the gender wage gap in certain circumstances, especially in advanced economies**.[76] Such an outcome might stem from an increase in female productivity due to trade or from a rise in demand for unskilled labour, in particular in developing countries. It may also be a spillover effect of the improvement of women's economic rights.[77]

Wage differentials and barriers still exist, however, for women entering the labour market. In this regard, many studies highlight that other factors such as skills, firm-level and sectoral differences and country-specific conditions are crucial in determining how women benefit from trade.[78]

Common findings and policy considerations

What emerges from the above studies is that the impact of trade by itself on labour market outcomes can hardly be generalized. Indeed, several studies argue that such outcomes depend strongly on institutional factors.[79]

There are, however, some common findings: globalization can

[64] Paz (2014).

[65] See Munro (2011), for a list of studies and Acosta and Montes-Rojas (2013).

[66] See Aleman-Castilla (2006), for the impact of NAFTA in Mexico.

[67] P. Goldberg and Pavcnik (2003).

[68] Stolper-Samuelson theorem.

[69] Helpman, Itskhoki and Redding (2010); Egger and Kreickemeier (2009); Goldberg and Pavcnik (2007).

[70] Helpman, Itskhoki and Redding (2011); Pavcnik (2011).

[71] Feenstra and Hanson (2001); Krugman (2008); OECD (2013); Rosnick (2013).

[72] See, for example, Jaumotte, Lall and Papageorgiou, (2013); Katz and Autor (1999).

[73] Krugman, Obstfeld and Melitz (2012, p. 96).

[74] Pavcnik (2011).

[75] See also chapter on "Gender considerations in trade agreements" of the present handbook.

[76] Klein, Moser and Urban (2010); Oostendorp (2009).

[77] Neumayer and Soysa (2011).

[78] Aguayo-Tellez (2011); Juhn, Ujhelyi and Villegas-Sanchez (2014); Korinek (2005); Tejani and Milberg, (2010).

[79] Amiti and Davis (2012); Milberg and Winkler (2011); OECD (2011).

lead to **considerable job turnover** and result in workers losing their jobs and **changing sectors**, especially in the **short term**. Those who lose their jobs require support to recover. There also seems to be the consensus that globalization affects certain groups – such as low-skilled workers – more than others.

These findings suggest that adequate policies could help to improve and equitably distribute the benefits of international trade. This includes **national policies** such as comprehensive social protection and labour market polices, in order to address the needs of the groups that are particularly affected by globalization. A specific challenge in the context of globalization, however, is the involvement of a variety of firms and national frameworks, which makes **coordination at the international level** essential. In this regard, one of the questions has been how the increasingly extensive inclusion of labour provisions in trade agreements would help to spread the benefits of trade to all workers.

References

Acosta, P.; Montes-Rojas, G. 2013. *Informal jobs and trade liberalisation in Argentina*, Department of Economics Discussion Paper No. 13/10 (London, City University London). Available at: https://ideas.repec.org/p/cty/dpaper/13-10.html [24 Oct. 2016].

Aguayo-Tellez, E. 2011. *The impact of trade liberalization policies and FDI on gender inequalities: A literature review*, Background Paper for World Development Report 2012: Gender equality and development (World Bank). Available at: https://openknowledge.worldbank.org/bitstream/handle/10986/9220/WDR2012-0009.pdf?sequence=1&isAllowed=y [24 Oct. 2016].

Aleman-Castilla, B. 2006. *The Effect of Trade Liberalization on Informality and Wages: Evidence from Mexico*, CEP Discussion Paper No. dp0763, (Centre for Economic Performance, LSE). Available at: https://ideas.repec.org/p/cep/cepdps/dp0763.html [24 Oct. 2016].

Amiti, M.; Davis, D. R. 2012. "Trade, firms, and wages: theory and evidence", in *Review of Economic Studies*, 79(1), pp. 1–36.

Belenkiy, M.; Riker, D. 2015. "Theory and empirical evidence linking international trade to unemployment rates", in *Journal of International Commerce and Economics*, (May 2015). Available at: https://www.usitc.gov/publications/332/journals/vol_vii_article1_theory_and_empirical_evidence.pdf [24 Oct. 2016].

Crinò, R. 2010. "Employment effects of service offshoring: Evidence from matched firms", in *Economics Letters*, 107(2), pp. 253–256. Available at: https://doi.org/10.1016/j.econlet.2010.01.039 [24 Oct. 2016].

Davis, D. R.; Harrigan, J. 2011. "Good jobs, bad jobs, and trade liberalization", in *Journal of International Economics*, 84(1), pp. 26–36. Available at: https://doi.org/10.1016/j.jinteco.2011.03.005 [24 Oct. 2016].

Dutt, P.; Mitra, D.; Ranjan, P. 2009. "International trade and unemployment: Theory and cross-national evidence", in *Journal of International Economics*, 78(1), pp. 32–44. Available at: https://doi.org/10.1016/j.jinteco.2009.02.005 [24 Oct. 2016].

Ebenstein, A.; Harrison, A.; McMillan, M.; Phillips, S. 2009. *Estimating the Impact of Trade and Offshoring on American Workers Using the Current Population Surveys*, NBER Working Paper No. 15107, (National Bureau of Economic Research, Inc.). Available at: https://ideas.repec.org/p/nbr/nberwo/15107.html [24 Oct. 2016].

Egger, H.; Kreickemeier, U. 2009. "Firm Heterogeneity and the Labor Market Effects of Trade Liberalization", in *International Economic Review*, 50(1), pp. 187–216. Available at: https://doi.org/10.1111/j.1468-2354.2008.00527.x [24 Oct. 2016].

Feenstra, R.; Hanson, G. 2001. *Global Production Sharing and Rising Inequality: A Survey of Trade and Wages*, Working Paper No. 8372, (National

Bureau of Economic Research). Available at: http://www.nber.org/papers/w8372 [24 Oct. 2016].

Felbermayr, G. J.; Larch, M.; Lechthaler, W. 2013. "Unemployment in an Interdependent World", in *American Economic Journal*: Economic Policy, 5(1), pp. 262–301.

Goldberg, P. ; Pavcnik, N. 2007. "The effects of the Colombian trade liberalization on urban poverty", in *NBER Chapters*, pp. 241–290, (National Bureau of Economic Research, Inc.). Available at: https://ideas.repec.org/h/nbr/nberch/0106.html [24 Oct. 2016].

Goldberg, P.; Pavcnik, N. 2003. "The response of the informal sector to trade liberalization", in *Journal of Development Economics*, 72(2), pp. 463–496. Available at: https://doi.org/10.1016/S0304-3878(03)00116-0 [24 Oct. 2016].

Görg, H. 2011. "Globalization, offshoring and jobs", in Bachetta, M.; Jansen, M. (eds.): *Making Globalization Sustainable*, pp. 21–47, (Geneva, ILO/WTO).

Helpman, E.; Itskhoki, O.; Redding, S. 2010. "Inequality and unemployment in a global economy", in *Econometrica*, 78(4), pp. 1239–1283.

Helpman, E.; Itskhoki, O.; Redding, S. 2011. *Trade and Labor Market Outcomes*, Working Paper No. 16662, (National Bureau of Economic Research). Available at: http://www.nber.org/papers/w16662 [24 Oct. 2016].

Helpman, E.; Krugman, P. 1985. *Market Structure and Foreign Trade: Increasing Returns, Imperfect Competition, and the International Economy* (Cambridge, MA: MIT Press).

Available at: https://mitpress.mit.edu/books/market-structure-and-foreign-trade [24 Oct. 2016].

Ibsen, R..; Warzynski, F.; Westergård-Nielsen, N. 2009. *Employment Growth and International Trade: A Small Open Economy Perspective*, Working Paper No. 09–9, (University of Aarhus, Aarhus School of Business, Department of Economics). Available at: https://ideas.repec.org/p/hhs/aareco/2009_009.html [31 Oct. 2016].

Jaumotte, F.; Lall, S.; Papageorgiou, C. 2013. "Rising income inequality: technology, or trade and financial globalization?" in *IMF Economic Review*, 61(2), pp. 271–309. Available at: https://doi.org/10.1057/imfer.2013.7 [31 Oct. 2016].

Jansen, M.; Peters, R.; Salazar-Xirinachs, JM. (eds.). 2011. *Trade and Employment, from Myths to Fact.* (Geneva, ILO). Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_162297.pdf [31 Oct. 2016].

Juhn, C.; Ujhelyi, G.; Villegas-Sanchez, C. 2014. "Men, women, and machines: How trade impacts gender inequality", in *Journal of Development Economics*, 106, pp. 179–193. Available at: https://doi.org/10.1016/j.jdeveco.2013.09.009 [24 Oct. 2016].

Katz, L. F.; Autor, D. H. 1999. "Changes in the wage structure and earnings inequality", in *Handbook of Labor Economics*, pp. 1463–1555, (Elsevier). Available at: https://ideas.repec.org/h/eee/labchp/3-26.html [24 Oct. 2016].

Klein, M. W. ; Moser, C. ; Urban, D. M. 2010. *The Contribution of Trade to Wage Inequality: The Role of Skill, Gender, and Nationality*, NBER Working Paper No. 15985, (National Bureau of Economic Research, Inc.). Available at: https://ideas.repec.org/p/nbr/nberwo/15985.html [24 Oct. 2016].

Korinek, J. 2005. *Trade and Gender*, OECD Trade Policy Papers, (Paris, OECD). Available at: http://www.oecd-ilibrary.org/content/workingpaper/826133710302 [24 Oct. 2016].

Krugman, P.; Obstfeld, M.; Melitz, M. 2012. *International Economics* (Boston, Pearson Education).

Krugman, P. R. 2008. "Trade and wages, reconsidered", in *Brookings Papers on Economic Activity*, 39(1 (Spring)), pp. 103–154.

Melitz, M. J. 2003. "The impact of trade on intra-industry reallocations and aggregate industry productivity", in *Econometrica*, 71(6), pp. 1695–1725.

Melitz, M. J.; Redding, S. J. 2014. "Chapter 1 – Heterogeneous firms and trade", in Helpman, E.; Rogoff, K.; Gopinath, G. (eds.): *Handbook of International Economics*, Vol. 4, pp. 1–54, (Elsevier). Available at: http://www.sciencedirect.com/science/article/pii/B978044454314100001X [24 Oct. 2016].

Menezes-Filho, N. A.; Muendler, M.-A. 2007. *Labor Reallocation in Response to Trade Reform*, CESifo Working Paper Series No. 1936, (CESifo Group Munich). Available at: https://ideas.repec.org/p/ces/ceswps/_1936.html.

Milberg, W.; Winkler, D. 2011. "Actual and perceived effects of offshoring on economic insecurity: the role of labour market regimes", in Bachetta, M.; Jansen, M. (eds.). *Making Globalization Sustainable*, pp. 147–198), (Geneva, ILO/WTO).

Mortensen, D. T.; Pissarides, C. A. 1994. "Job creation and job destruction in the theory of unemployment", in *Review of Economic Studies*, 61(3), pp. 397 – 415.

Munro, L. 2011. *A Literature Review on Trade and Informal Labour Markets in Developing Countries*, OECD Trade Policy Working Papers No. 132.

Neumayer, E.; Soysa, I. D. 2011. *Globalization and the empowerment of women: an analysis of spatial dependence via trade and foreign direct investment*, LSE Research Online Documents on Economics No. 30792, (London School of Economics and Political Science, LSE Library). Available at: https://ideas.repec.org/p/ehl/lserod/30792.html [24 Oct. 2016].

Organization for Economic Cooperation and Development (OECD).

2011. *Divided We Stand: Why Inequality Keeps Rising,* (OECD Publishing). Available at: http://dx.doi.org/10.1787/9789264119536-en [24 Oct. 2016].

—. 2013. *Interconnected Economies: Benefiting from Global Value Chains*, (OECD Publishing). Available at: http://www.oecd.org/sti/ind/interconnected-economies-GVCs-synthesis.pdf [24 Oct. 2016].

Oostendorp, R. H. 2009. "Globalization and the gender wage gap", in *The World Bank Economic Review,* 23(1), pp. 141–161. Available at: https://doi.org/10.1093/wber/lhn022 [31 Oct. 2016].

Pavcnik, N. 2011. "Globalization and within-country income inequality", in Bacchetta, M.; Jansen, M. (eds.): *Making Globalization Socially Sustainable*, pp. 233–259, (Geneva, WTO/ILO).

Paz, L. S. 2014. "The impacts of trade liberalization on informal labor markets: A theoretical and empirical evaluation of the Brazilian case", in *Journal of International Economics*, 92(2), pp. 330–348.

Peluffo, A. 2013. *Assessing Labor Market Impacts of Trade Opening in Uruguay*, (SpringerPlus), 2(219). Available at: https://doi.org/10.1186/2193-1801-2-219 [24 Oct. 2016].

Plummer, M. G.; Petri, P. A.; Zhai, F. 2014. *Assessing the Impact of ASEAN Economic Integration on Labour Markets*, ILO Working Paper No. 486351, (ILO). Available at: https://ideas.repec.org/p/ilo/ilowps/486351.html [24 Oct. 2016].

Rosnick, D. 2013. *Gains from Trade? The Net Effect of the Trans-Pacific Partnership Agreement on U.S. Wages.* (Washin-

gton DC, Center for Economic and Policy Research). Available at: http://www.cepr.net/documents/publications/TPP-2013-09.pdf [24 Oct. 2016].

Tejani, S.; Milberg, W. 2010. *Global Defeminization? Industrial Upgrading, Occupational Segmentation and Manufacturing Employment in Middle-Income Countries*, SCEPA Working Paper No. 2010–1, (New York, Schwartz Center for Economic Policy Analysis). Available at: http://siteresources.worldbank.org/EXTGENDER/Resources/Global-Defeminization.pdf [24 Oct. 2016].

Trefler, D. 2004. "The Long and Short of the Canada–U.S. Free Trade Agreement", in *American Economic Review*, 94(4), pp. 870–895.

Weisbrot, M.; Stephan, L.; Sammut, J. 2014. Did NAFTA *Help Mexico? An Assessment After 20 Years*, (Washington DC, Center for Economic and Policy Research). Available at: http://www.cepr.net/documents/nafta-20-years-2014-02.pdf [24 Oct. 2016].

Further reading

Bachetta, M.; Jansen, M. (eds.). 2011. *Making Globalization Sustainable*. (Geneva, ILO/WTO). Available at: https://www.wto.org/english/res_e/booksp_e/glob_soc_sus_e.pdf [24 Oct. 2016].

Harrison, A.; McLaren, J.; McMillan, M. 2011. "Recent perspectives on trade and inequality", in *Annual Review of Economics*, 3(1), pp. 261–289. Available at: http://doi.org/10.1146/annurev.economics.102308.124451 [24 Oct. 2016].

Helpman, E.; Itskhoki, O.; Redding, S. 2011. *Trade and Labor Market Outcomes*, Working Paper No. 16662, National Bureau of Economic Research. Available at: http://www.nber.org/papers/w16662 [24 Oct. 2016].

ILO, *Skills for Trade and Economic Diversification Description (STED)*. Available at: http://www.ilo.org/employment/areas/trade-and-employment/WCMS_171814/lang--en/index.htm [10 Nov. 2016].

Lee, E.; Vivarelli, M. (eds.). 2005. *Understanding Globalization, Employment and Poverty Reduction*, (Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan).

Lippoldt, D. (ed.). 2012. *Policy Priorities for International Trade and Jobs*, (OECD). Available at: http://www.oecd.org/site/tadicite/50258009.pdf [24 Oct. 2016].

Paz, L. S. 2014. "The impacts of trade liberalization on informal labor markets: A theoretical and empirical evaluation of the Brazilian case", in *Journal of International Economics*, 92(2), pp. 330–348.

II. LABOUR PROVISIONS IN TRADE AGREEMENTS: IMPLEMENTATION AND STAKEHOLDER INVOLVEMENT

4 ASSESSING THE EFFECTS OF LABOUR PROVISIONS IN TRADE AGREEMENTS

SUMMARY

Labour provisions can be understood as a combination of different policy interventions that are aimed at promoting labour standards within trade partners. The most important policy interventions, related to labour provisions, are: pre-ratification measures, technical cooperation, monitoring, dispute settlement, and economic (dis)incentives.

To assess the effects of labour provisions in trade agreements, a distinction is made between intermediate and ultimate effects: the ultimate effects are to improve labour rights and working conditions for workers; while the intermediate steps consist of legal or institutional changes.

The intermediate impacts of labour provisions can be measured through improved capacity at the level of public authorities, stakeholders and firms to promote, respect and enforce labour standards.

Labour provisions: is there a gap in our understanding of effectiveness?

Over the last two decades, the number of trade agreements with labour provisions has risen considerably. Typically, such provisions establish minimum standards of working conditions and labour rights, and may also include a framework for cooperation, monitoring and conflict resolution in differing forms. While there are clear similarities between the labour provisions used in different trade agreements, their content can vary considerably as a result of different approaches and country contexts. The increasing use, in combination with the spread of different approaches, makes it important to explore the effectiveness of such labour provisions.

Research has examined diverse aspects of effectiveness, such as the role of dispute settlement,[80] the impacts on specific labour standards,[81] institutional and organizational changes concerning labour enforcement;[82] and the role of civil society actors,[83] among others.

These studies have also made use of different methods. While some are based on statistical analysis,[84] others instead use qualitative approaches.[85] There are also different understandings with regard to what effectiveness in this context means, mostly effectiveness with respect to what?

Many of these partial studies, however, can be viewed from a common angle.[86] Hence, the aim of this brief chapter is to provide an overall and multi-disciplinary framework on the analysis and measurement of effectiveness, with reference to labour provisions in trade agreements.

How to assess the effects of labour provisions in promoting labour rights and improving working conditions?

The discussion on how to promote labour rights and working conditions through the use of labour provisions in

This chapter was written by Jonas Aissi, Rafael Peels and Daniel Samaan

[80] Nolan García (2009); ILO (2013); Vogt (2014); Bazillier and Rana (forthcoming).

[81] Samaan and Lopez (2015); Raess and Sari (forthcoming).

[82] Delpech (2013); Dewan and Ronconi (2014).

[83] Van den Putte (2015).

[84] Häberli et al. (2012), Kim (2012); Postnivkov and Bastiaens (2013); Samaan and Lopez (2015); Bazillier and Rana (forthcoming).

[85] Delpech (2013); Vogt (2014); Van de Putte (2015); Campling et al. (forthcoming).

[86] See also Polaski (2003); Campling et al. (forthcoming).

trade agreements is developed around two arguments. First, it distinguishes four pillars that are key to understanding labour provisions and assessing their effectiveness. Second, the framework puts the idea of capacity front and centre, and shows how various policy interventions can increase the capacity of public authorities, trade unions and employers' organisations and other parts of civil society, and firms to promote, respect and enforce labour rights and working conditions.

To assess the effectiveness of policy interventions that are related to labour provisions, four pillars can be taken into consideration:[87]

1. *Breaking labour provisions down into their (five) main policy mechanisms:* (i) pre-ratification measures, meaning that the parties agree to make certain legal and/or institutional changes before the agreement enters into force; (ii) technical cooperation, providing resources and training; (iii) monitoring, which can be directed towards commitments of public authorities or firms;[88] (iv) dispute settlement; and (v) economic (dis)incentives, for instance in the form of quota increases in exchange for social performance (figure 4.1).[89]

2. *Distinguishing between intermediate and ultimate effects:* A distinction is made between the ultimate and intermediate, more instrumental, effects of labour provisions. While the ultimate effects are to improve labour rights and working conditions for workers, for instance through increased wages; the intermediate steps can consist of legal and institutional changes. Examples of these are the modification of domestic legislation, to adhere to international labour standards, or to increase the budget of labour inspectorates. In the next section, the layer of intermediate outcomes is further developed by means of the concept of capacity. By means of illustration, improved labour administrations and inspections are understood as enhancing the capacity of public authorities to promote and enforce labour standards.

3. *Combining quantitative and qualitative measures:* As noted above, the expected impacts of labour provisions can be multidimensional, ranging from institutional and legal changes to improved working conditions, such as increased wages. Therefore, depending on the type of impact that is being analysed, different methods and data (both quantitative and qualitative) should be used for the analysis. For instance, changes in wage-levels can more easily be measured with quantitative techniques than, say, legal change. The Decent Work indicators or information from the ILO's supervisory mechanisms can be used to examine improvements, deteriorations or inaction from the perspective of bringing the labour code to international standards. For these questions, qualitative methods will probably be more appropriate.

4. *Building explanations for specific links between policy mechanisms and outcomes:* To assess overall effectiveness, micro studies can be combined in meta-analyses. For example, analysis that concentrates on specific impacts, such as the impacts of technical cooperation on the capacity of public authorities, or the impact of monitoring at the firm level, can be included as one part of an overall analytical framework that maps causal pathways and assesses impacts.

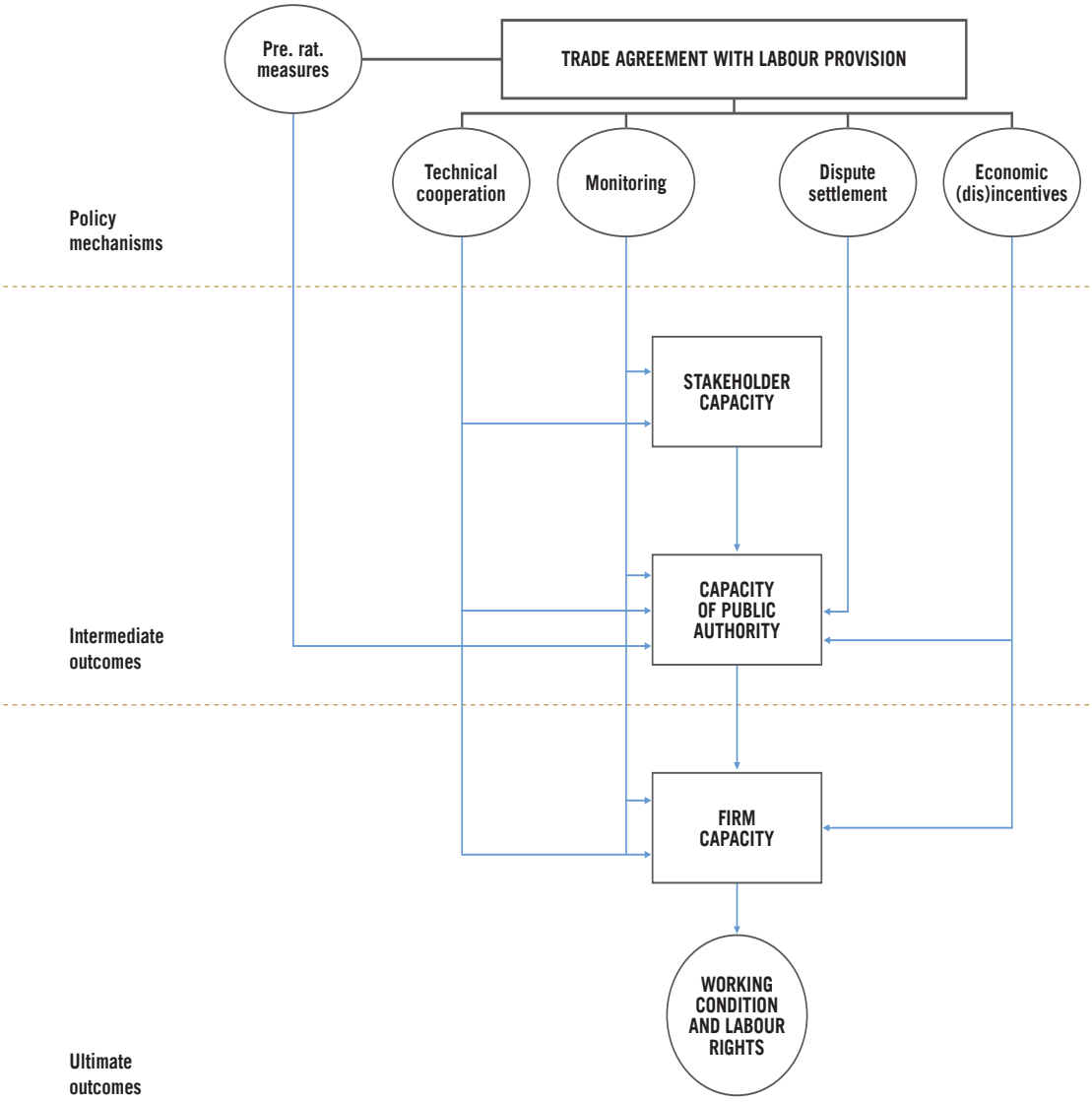
A key challenge in this regard lies in identifying and understanding how the different policy interventions influence change. This means that understanding the process of change is put at the centre, instead of solely focussing on measuring effectiveness at the level of the ultimate beneficiary.

[87] This chapter uses the term "policy interventions related to labour provisions" as some of the mechanisms that are referred to are, stricto sensu, not part of labour provisions. For instance, while pre-ratification measures are an important policy intervention to ensure the effective implementation of labour provisions, it is not part of the labour provision, as it is not inscribed in the agreement itself.

[88] While the main focus of monitoring here is on the role of stakeholders, it may also include monitoring by the state parties for instance through a Sustainable Development Committee.

[89] The emphasis here is on those policy interventions that are particular to the international character of trade agreements. Therefore, these mechanisms relate to what one party can do to support implementation by the other party. An alternative angle would be to examine the possible policy interventions by a party to support the own labour commitments in a trade agreement.

Figure 4.1 Causal pathways of various policy interventions related to labour provisions



How to steer enhanced capacity of public authorities, firms and stakeholders?

The point of departure to measure outcomes of labour provisions is figure 4 .1, which depicts five policy interventions and their expected channels of impact on intermediate and ultimate outcomes. Intermediate outcomes of labour provisions can be measured through improved capacity at the level of the public authority, stakeholders and firms.

Improved capacity may take the form of legal and institutional changes, such as a new labour law, better-trained labour inspectors, or an increased budget of the labour administration.

An important dimension of capacity is not only technical capacity (such as budget, human resources, etc.), but also the capacity of firms and public authorities to actually prioritize the promotion, compliance and enforcement of labour standards. Labour provisions can play an important role in strengthening both technical capacity and the capacity to prioritize. For instance, providing technical cooperation to strengthen the capacity of labour inspectorates helps improve technical capacity. But, also by influencing the policy space of public authorities or the incentive structure of firms helps to foster the compliance with labour rights.

The labour administration may for instance possess the necessary technical capacity to assure compliance with domestic labour law, but may have a limited mandate, may face interference by other administrations or be captured by groups in society that have less interest in enhancing compliance.

Stakeholders, such as social partners, can play a critical role in promoting labour rights by advocating for change towards

public authorities and firms.[90] The establishment of monitoring tools, or the possibility to file petitions, can play an important role in enhancing the political space and incentive structure for both public authorities and firms.

Several cases based on different trade agreements (US-Cambodia (1999), EU-Korea (2011) and US-Jordan (2001)), provide useful examples of the role that labour provisions play in strengthening technical capacity of public authorities, firms and stakeholders. There is also evidence of influencing the policy space and incentive structure in order to shift the priority of governments and firms.

US-Cambodia Bilateral Textiles Agreement

The US-Cambodia Bilateral Textiles Agreement (USCBTA), which was in force between 1999 and 2005, is unique in that it linked systematic firm-level monitoring of working conditions in the garment sector with increased market access for exporting Cambodian firms.[91] While other policy interventions, such as pre-ratification measures and technical cooperation were present, it can be said that the USCBTA placed its primary focus on directly addressing capacity at the firm level, while giving less priority to other areas, such as the technical capacity of public administration.[92]

The inclusion of positive incentives verified by a monitoring program provided a direct incentive for firms to improve their working conditions. International buyers sensitive to reputational risk could factor in a potential supplier's working conditions when choosing between different suppliers. These measures affected the commitment among individual firms to improve their working conditions both by increasing the cost of non-compliance and by rewarding compliant firms.[93]

In addition, since quota increases were awarded to the industry as a whole, it also created an incentive for the government to improve working conditions in the economically important garment sector and also introduced an element of firm-to-firm pressure to improve working conditions.[94]

EU-Korea FTA

The Trade and Sustainable Development chapter of the EU-Korea free trade agreement (FTA) primarily places a focus on monitoring by civil society actors and inter-governmental dialogue. The EU-Korea FTA did not foresee legal or institutional reforms as a requirement for ratification, nor the use of economic sanctions in cases of non-compliance.[95] Instead, the dispute settlement mechanism for labour provisions in the EU-Korea FTA relies on the involvement of stakeholders, transparency, government-to-government consultations and the recourse to an independent panel of experts.[96]

By putting emphasis on monitoring and dialogue, this FTA applies a more indirect approach to enhance the technical capacity and prioritization of mostly government actors to promote, comply with, and enforce labour standards.[97]

Civil society actors are involved through the establishment of domestic civil society advisory committees (DAGs) in both the EU and Korea and a transnational body (Civil Society Forum, CSF) where the members of the domestic advisory committees can meet and speak with one voice to both governments.[97]

For one, the DAGs provide a mechanism for promoting domestic social dialogue and have provided civil society actors with a formal channel through which they can raise comments and criticisms to the governments. In this regard, the EU DAG appears to have been the more active of the two, raising issues to EU officials, who then have brought the concerns up with representatives of the Korean government. The participation of civil society actors also has, according to some scholars, a potential for promoting an increased awareness of the labour situation in Korea.[98]

In regards to the CSF, it has provided a platform where civil society actors from both parties can cooperate, learn from each other's strategies and issue joint advice. Dialogue between the European Commission and the Korean government on labour standards has also been important in this regard, and has primarily been conducted through the Trade and Sustainable Development Committee.

US-Jordan FTA

The US-Jordan agreement provides an example of how civil society actors made an important contribution to increase the capacity of public authorities to promote and ensure compliance with labour standards.

The labour related policy interventions to the US-Jordan Free Trade Agreement target both the public administration

[90] Stakeholders here is understood as an umbrella term, including civil society, non-governmental organisations (NGOs), the social partners and others. The authors do recognize the particular character of workers and employers' organisations, for instance in worker-management relationships, collective bargaining or various forms of social dialogue, including in trade policy.

[91] Polaski (2009); Wells (2006). The case study on USCBTA in Section III provides a more in-depth assessment.

[92] Samaan and Lopez (2015).

[93] Polaski (2009).

[94] Polaski (2009).

[95] The EU will launch a technical cooperation project in collaboration with ILO on labour rights in Vietnam before the ratification of the EU-Vietnam FTA, though.

[96] ILO (2016).

[97] Van Den Putte (2015); ILO (2016).

[98] Van Den Putte (2015).

and firms and highlight the role played by different types of monitoring and economic incentives. Dialogue on labour issues has been conducted primarily through the labour subcommittee. Furthermore, similar to the case of Cambodia, mechanisms for monitoring in the form of public petitions, civil society advisory bodies, as well as an ILO Better Work Programme at the firm level were set up.

Although it is difficult to attribute positive developments solely to the US-Jordan agreement:

- The publication of a report alleging violations such as non-payment of wages, trafficking and forced labour in Jordan's garment sector by Jordanian stakeholders is believed to have played an important role in increasing the administration's commitment to labour concerns in Jordan.[99]
- On the basis of the findings of the report, the US trade-union federation, AFL-CIO, submitted a complaint under the labour provision, which, while not activating the dispute settlement mechanism, led to increased intergovernmental dialogue through the formation of a working group.
- Advocacy from civil society in the form of bringing attention to violations in combination with government-to-government dialogue, contributed to elevate the importance of labour concerns in the Jordanian export sector. As an indication of an increased commitment, the Jordanian government developed a labour action plan that focused on enhancing the technical capacity for monitoring and enforcement.
- Also, in terms of increasing technical capacity, the Jordanian labour ministry has recruited and trained new labour inspectors and taken other measures, such as providing monetary incentives to inspectors for the purpose of improving efficiency and professionalism.

Conclusions

Ultimately, the parties' decision of what type of labour-related policy mechanisms to promote labour standards in the context of trade agreements should be addressed on a case-by-case basis. For instance, if the key barrier to improving labour rights or working conditions is situated at the level of the public authority, mechanisms such as pre-ratification requirements, technical cooperation and dispute settlement are often included. However, instead of addressing the capacity of public administration, some mechanisms generate incentives and disincentives directly at the firm level.

There appears to be some trade-offs between targeting the different levels. For instance, mechanisms that address the firm level can generate quick results, but may not address other potential underlying problems of continued violations, such as weak domestic institutions. Ideally, policy mechanisms would complement each other in such a way that both short- and long-term effects are generated. In this regard, the strengthening of civil society actors could possibly be an important driver in achieving lasting and endogenous change.

This chapter discussed the effectiveness of labour-related policy interventions associated with trade agreements, particularly by defining what effectiveness can mean in this context, and how it can be evaluated and measured. In terms of what effectiveness looks like, this piece argued that intermediate outcomes, mostly in the form of strengthening the capacities of civil society actors, public authorities and firms can contribute to improving working conditions and labour rights. The chapter argued that effectiveness can be evaluated relative to these intermediate outcomes, while also assessing how these are translated in improved working conditions and FPRW.

In terms of measurement, the chapter pointed towards several challenges, such as long causal chains and lack of data, but also proposed methodological possibilities for examining impacts and attributing them to labour provisions. These include: splitting labour provisions up into the specific policy mechanisms, making a distinction between intermediate and ultimate outcomes; addressing the problem of attribution by focusing at the process of change, and by concentrating on specific parts of the causal chain. Breaking the analysis into different parts, i.e. focussing on certain policy mechanisms and their impact on specific aspects of capacity, requires combining qualitative and quantitative methods of measurement.

References

Aissi J., R. Peels and D. Samaan Forthcoming. "Evaluating the effectiveness of labour provisions in trade agreements – a framework for analysis", in *International Labour Review*.

Bazillier, R. and Rana, A., T. Forthcoming. *Social Clauses in Free-trade Agreements: An efficient tool to improve Labor Standards?* Available at: http://www.rdw2015.org/uploads/submission/full_paper/145/bazillier_rana_juillet2015.pdf

Campling, L., Harrison, J., Richardson, B. and Smith, A. (Forthcoming). "Working Beyond the Border? A New Research Agenda for the Evaluation of Labour Standards in EU Trade Agreements", in *International Labour Review*.

Delpech, Q. 2013. *The Effects of the Promotional Dimension of the Labour Provisions in Trade Agreements: The Case of CAFTA-DR*, ILO Research Department Background Paper (Geneva).

Dewan, S and Ronconi L. 2014. *U.S. Free Trade Agreements and Enforcement of Labor Law in Latin America*, IDB Working Paper No. IDB-WP-543. Available at SSRN: http://

[99] Sibbel (2010); ILO (2016).

ssrn.com/abstract=2559639

Häberli C., Marion, J. and Monteiro, A. 2012. *Regional Trade Agreements and domestic labour market regulation*, ILO Employment Working Paper No. 120.

ILO. 2013. *Social Dimensions of Free Trade Agreements. Studies on Growth with Equity.* (Geneva).

ILO. (2016). *Assessment of labour provisions in trade and investment arrangements* (Geneva).

Kim, M. 2012. "Ex Ante Due Diligence: Formation of PTAs and Protection of Labor Rights", in *International Studies Quarterly*. 56(4): 704-719.

Nolan García, K.A. 2009. *Transnational advocacy and labor rights conditionality in the international trading order*. PhD Dissertation at the University of New Mexico. Available at: http://repository.unm.edu/bitstream/handle/1928/10329/Nolan%20Garcia%20FinalMS%20PDF%20VERSION%20Oct%206%202009.pdf?sequence=1.

Postnikov, E. and Bastiaens, I. 2014. "Does Dialogue Work? The Effectiveness of Labor Standards in EU Preferential Trade Agreements", in *Journal of European Public Policy*, 21 (6), pp. 923-940.

Polaski, S. 2003. "Protecting Labor Rights through Trade Agreements: An Analytical Guide", in UC *Davis Journal of International Law & Policy*, 10 (13).

Raess, D. and Sari, D. Forthcoming. *A 'Social Clause' through the Back Door? Labor Provisions in Preferential Trade Agreements*.

Samaan, D., and López M., E. 2015. *The effectiveness of labour provisions in reducing the gender wage gap*, working paper (Geneva, ILO).

Sibbel, L. 2010. *The Labour Provisions in the US- Jordan Free Trade Agreement: Impact and Lessons Learnt*, Americanbar.org. American Bar Association, 26 Apr 2010. Available at: http://apps.americanbar.org/labor/intlcomm/mw/papers/2010/pdf/sibbel.pdf

Van den Putte, L. 2015. "Involving Civil Society in Social Clauses and the Decent Work Agenda", in *Global Labour Journal*, 6 (2), pp. 221-235.

Vogt, J. 2014. "Trade and Investment Arrangements and Labor Rights", in Blecher, L., Stafford, N. K. and Bellamy, G. (eds.): *Corporate responsibility for human rights impact: new expectations and paradigms*. American Bar Association, Washington, D.C.

Wells, D. 2006. "'Best Practice' in the Regulation of International Labor Standards: Lessons of the U.S.-Cambodia Textile Agreement", in *Comparative Labor Law & Policy Journal*, 27 (3).

Further reading

Baser, H. and Morgan, P. 2008. *Study on Capacity, Change and Performance*, ECDPM Discussion Paper, No 59B.

Elliott, K. A. 2011. "Labour Rights", in Chauffour, J-P. and J-C. Maur (eds): *Preferential Trade Agreement Policies for Development: A Handbook*. World Bank Publications.

Government Accountability Office, US. 2014. *Report to Congressional Requesters, Free Trade Agreements: U.S. Partners are Addressing Labor Commitments, but more Monitoring and Enforcement are Needed*. GAO-15-160. Available at: http://www.gao.gov/assets/670/666787.pdf

Kucera, D. 2007. *Qualitative Indicators of Labour Standards: Comparative Methods and Applications*. Social Indicators Research Series. Springer.

Luce, S. and Turner, L. 2012. *Pre-Ratification effects of U.S. trade agreements on labor standards*, IILS Background Paper (Geneva).

Manski, C., F. 1995. *Identification Problems in the Social Sciences*. Cambridge, MA: Harvard University Press.

Peels, R. and Fino, M. 2015. "Pushed out the Door, Back in through the Window: The Role of the ILO in EU and US Trade Agreements in Facilitating the Decent Work Agenda", in *Global Labour Journal*, 6 (2).

Siroën, J., M., Arestoff-Izzo, F., Bazillier, R., Duc, C., and Granger-Sarrazin, C. 2008. *The use, scope and effectiveness of labor and social provisions and sustainable development aspects in bilateral and regional free trade agreements.* European Commission.

Smith, A., Barbu, M., Campling, L., Harrison, J., Richardson, B. 2015. "Global Value Chains and Labour Standards in European Union FTAs". Concept note presented at a workshop titled "*Working Beyond the Border: European Union Trade Agreements and Labour Standards*" held at the ILO (22 Sept).

5 INVOLVING STAKEHOLDERS IN TRADE AGREEMENTS

SUMMARY

A number of countries have set up advisory mechanisms to involve stakeholders, including social partners in the implementation of labour provisions in trade agreements. These mechanisms include both permanent consultative structures, agreement-specific mechanisms, and mechanisms involving broader segments of civil society and the general public.

Evidence shows that social partners' involvement can contribute to an environment that is more favourable for improving labour standards in the long run, including by increasing public awareness on labour issues, enhancing dialogue between governments and civil society, and putting labour issues on the political agenda.

To improve effectiveness, dialogue mechanisms could become more institutionalized, and the accountability of governments towards the mechanisms strengthened.

Why should social partners be involved in trade agreements?

The involvement of social partners has been progressively recognized as an important element in the negotiation and implementation of trade agreements.[100] To some extent, this has its origins in the expanding range of topics regulated by trade agreements. These topics increasingly cover not only labour standards, but also environmental protection, food standards, along with other regulatory matters.[101] (see box 5.1).

In respect of labour issues, a variety of measures have been adopted to involve social partners in the implementation of labour provisions in trade agreements. These measures range from dialogue mechanisms at the national level (for example, through the establishment of domestic advisory groups) to transnational civil society forums. Labour advocates and other stakeholders have expressed disappointment, however, regarding the limited transparency in the policy process and limited involvement overall. Important questions in this regard are: what are the different country approaches, and what is the effectiveness of these different mechanisms in terms of improving labour standards?

What are the different dialogue mechanisms in trade agreements to involve social partners?

Approaches to the involvement of social partners can differ widely from country to country and agreement to agreement.

Participation may take place through **permanent committees**, such as the National Advisory Committee for Labor Provisions of US Free Trade Agreements, which operates under the United States Department of Labor, or through more **agreement-specific mechanisms** such as the EU Domestic Advisory Groups (DAGs). The European Economic and Social Committee (EESC) act as secretariat of the DAGs.

In terms of **inclusiveness,** advisory bodies may target one particular group, for example, worker organizations, or they can be broader and include the voices of workers, employers and other interests, such as consumers, human rights or environmental non-governmental organizations and other bodies. In addition, some agreements establish **transnational me-**

This chapter was written by Lore Van den Putte (adapted by ILO Research Department)

[100] Spalding (2008); Maes (2009); Nolan García (2011); Bartels (2012); Orbie et al. (2016); IILS (2013); Van den Putte (2015).

[101] ILO (2016).

chanisms that provide a forum for the social partners of both countries to interact, such as the Civil Society Forum in the case of the EU-Republic of Korea Free Trade Agreement (FTA) and other recent EU trade agreements.

The establishment of advisory bodies is **mandatory** in some cases, as in the case of more recent agreements of the EU, while for others it is voluntary.

Lastly, participation may involve sharing information, hearing the social partners, and enhancing accountability through providing mechanisms that provide insights on how opinions are taken into consideration.

Box 5.1 Evolution of stakeholder involvement in trade agreements

References to the involvement of stakeholders in trade agreement texts have become more extensive over the past two decades. For instance, the EU–South Africa Agreement (2000) promotes dialogue without specifying any mechanism through which this will take place. In contrast, recent trade agreements concluded by the EU establish civil society mechanisms at both domestic and joint level. Furthermore, for trade agreements concluded as part of a broader Association Agreement, it should be noted that civil society mechanisms are also established with regard to the whole Agreement, in addition to those in the trade pillar. This is for instance the case of the EU–Ukraine Association Agreement (2016)[102], which also devotes an entire chapter to what is termed "civil society cooperation".

With regard to the United States and Canadian trade agreements, the North American Free Trade Agreement (NAFTA), which dates back to 1994, set a precedent in terms of implementation and the involvement of non-State actors as it introduced elements found in later agreements, including mechanisms for reporting, dialogue and accountability.

In later United States and Canadian agreements such as the US–Jordan (2001) or Canada–Chile (1997) agreements, stakeholder involvement is limited to the possibility of establishing advisory groups.m

More recent agreements, such as those for Canada–Costa Rica (2002) and United States–Chile (2004), and succeeding United States and Canadian agreements, also include procedures for submissions filed by the public. Administrations are required to acknowledge receipt of submissions, consider them for review and keep the submitters informed on the status of the review.[103]

In the case of the United States, provisions regarding stakeholder participation in development cooperation were also added – for example, CAFTA–Dominican Republic (2004) – while providing channels for dialogue (public sessions) that were not present in previous agreements. While not yet ratified, the Trans-Pacific Partnership requires each party to maintain or establish and consult national advisory groups.

Starting with the Canada–Peru Trade Agreement (2009), Canadian agreements also include provisions for involvement in development cooperation. The Canada–Honduras (2014) labour cooperation agreement requires the parties to establish or consult existing national advisory groups.

Permanent stakeholder committees

Different countries apply different models for the involvement of stakeholders. In the following paragraphs, a distinction is made between the approaches of Canada, the EU and the United States (see table 5.1).

In the case of the United States, the principal advisory body discussing the implementation of the labour provisions is the National Advisory Committee for Labor Provisions of US Free Trade Agreements, which operates under the US Department of Labor and has been convening once or twice a year since 2011. This mechanism is not agreement-specific and deals with all US trade agreements that contain labour provisions.

In the case of the EU, the EESC convenes regularly and has a balanced composition of employers' and workers' representatives, and what are termed "third interests".

In Canada there is a permanent body in the form of the Advisory Council on Workplace and Labour Affairs, where international labour issues in relation to trade can be discussed. It has not convened, however, since 2012.

[102] The Deep and Comprehensive Free Trade Area became operational on January 2016.

[103] In the case of the EU, there is no such submission procedure. However, it does provide the possibility of communications by the Domestic Advisory Groups to bring violations to the attention of the EC. Stakeholders can also be involved during conflict resolution, for instance by being heard during government consultations or by the panel of experts (e.g. Art. 13.14 and 13.15 of EU-Republic of Korea FTA.

Agreement-specific advisory committees

The EU applies agreement-specific domestic advisory groups (DAGs). The DAG established under the EU–Republic of Korea (2011) Agreement, is the first one and has been meeting several times per year since 2012. Since then several other EU agreements have been concluded and the respective DAGs started their work progressively.

Transnational civil society dialogue

The EU's trade agreements often establish transnational mechanisms in the form of joint consultative committees, civil society forums or both, where stakeholders from all parties are represented. In the past, this has not been without challenges as the establishment of joint consultative committees sometimes has proved difficult.

Towards increased accountability

The role or rights extended to stakeholders in these mechanisms can range from the provision of information to stakeholders and the expression of their views, to provisions expressly taking such roles or rights into consideration.

Apart from informing and consulting stakeholders in the implementation processes, the Canadian, EU and US Governments have made commitments to provide feedback on stakeholders' input. These appear to be most developed in some of the EU's recent agreements, although accountability clauses in US agreements are similar, albeit generally more softly formulated.

While commitments to provide feedback were found in trade agreements by Canada, the EU and the United States, social partners have maintained that there is a lack of formal feedback mechanisms.

Notwithstanding the above, Canadian and US agreements contain a public submissions procedure that requires the respective administrations to acknowledge receipt of submissions filed by the public, consider them for review and keep the submitters informed on the status of the review. In the trade agreements concluded by the EU, there is no such submission process.

Table 5.1 Institutional mechanisms for stakeholder involvement in trade agreements

Country	Implementation phase	Overall characterization
United States	Permanent National Advisory Committee Information provided to, and views sought from, stakeholders; feedback function for submissions	Permanent National Advisory Committee Information provided to, and views sought from, stakeholders; feedback function for submissions
EU	Permanent body on the EU side (the EESC) involved in the establishment of agreement-specific Domestic Advisory Groups Mandatory establishment of advisory bodies and promotion of dialogue between the civil societies of both parties Information sought and provided through domestic advisory groups, feedback mechanism.	Makes use of agreement-specific and transnational mechanisms (domestic advisory groups, joint civil society platforms) Provides and seeks information from stakeholders Elements of accountability (limited in practice
Canada	Permanent mechanism in place but not active (Advisory Council on Workplace and Labour Affairs) Feedback mechanism for submissions	While a mechanism exists, its use is limited in practice

What has been effective in respect of improving labour standards?

It is difficult to assess whether these consultative mechanisms have been effective in the promotion, implementation and enforcement of labour standards. There is evidence of some impact, however, primarily in the form of increased public awareness of labour issues, enhanced social dialogue and a strengthened ability to place labour issues on the political agenda.

In the case of the United States, the impact of its domestic civil society mechanism primarily consists of contributions to enhanced domestic dialogue and cooperation among civil society stakeholders and between them and the Government. For instance, the National Advisory Committee has led to cooperation between labour and business organizations on the supply chain in the Gulf countries.

The US mechanism has also contributed in other ways. These include: increased public awareness on labour issues, for example by providing additional information to worker organizations on the development of cases filed under US trade agreements.

In the case of the EU, the impacts of civil society involve-

ment are more pronounced in the transnational context.

For instance, in the case of the Republic of Korea, the transnational mechanism is considered to have played an important role in pressuring the Government to change the composition of the domestic advisory group and make it more representative. This resulted in improved dialogue between the Government of the Republic of Korea and civil society organizations.

By issuing joint recommendations, participants of the transnational mechanism have put issues on the agenda of both parties to the Agreement. Furthermore, by gaining attention in the media of the Republic of Korea, the mechanism has contributed to increased public awareness for labour issues.

In the case of Canada, there seems to have been little engagement from the side of the Government or, for that matter, from the side of civil society. Various factors may explain this, such as the relatively limited use of the existing mechanism; a general sense of what might be termed "civil society fatigue", and limited follow-up.

Illustrative in this regard are the periodic human rights reports on the Canada-Colombia Trade Agreement, as some organizations questioned the credibility of the overall process and refused to participate.

What are areas of opportunity?

Although the civil society mechanisms under consideration have contributed to an overall environment that is more conducive to the promotion of labour standards, there is room to improve their effectiveness.

In particular, for further impacts to materialize, there are two specific improvements that policymakers could consider.

To start with, more efforts should be made to ensure the **regularity and continuity** of the mechanisms. This could prevent them from becoming inactive owing to the broader political context.

Furthermore, there is a need to enhance the **accountability** of governments towards the mechanisms. This could be done by making strong commitments to give feedback on how social partners and other parts of civil society opinions are reflected in policy implementation, and to provide the necessary mechanisms for this.

References

Bartels, L. 2012. *The Role of Civil Society in Monitoring Free Trade Agreements: European Economic and Social Committee*.

International Institute for Labour Studies. 2013. *The Social Dimensions of Free Trade Agreements*, (Geneva, Institute for Labour Studies).

Maes, M. 2009. "Civil society perspectives on EU-ASIA free trade agreements", in *Asia Europe Journal*, 7, pp. 97–107.

Nolan Garcia, K. A. 2011. "Transnational advocates and labor rights enforcement in the North American Free Trade Agreement", in *Latin American Politics and Society*, 53(2), pp. 29–60.

Orbie, J.; Martens, D.; Van den Putte, L. 2016. *Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation*, Centre for the Law of EU External Relations (CLEER), 3, pp. 1–48.

Spalding, R. J. 2008. "Civil society engagement in trade negotiations: CAFTA opposition movements in El Salvador", in *Latin American Politics and Society*, 49(4), pp. 85–114.

Van den Putte, L. 2015. "Involving civil society in social clauses and the decent work agenda", in *Global Labour Journal*, 6(2), pp. 221–235.

Further reading

Del Felice, C. 2012. "Transnational activism and free trade. Exploring the emancipatory potentials of global civil society", in *Voluntas*, 23, pp. 302–327.

Keck, M. E.; Sikkink, K. 2002. "Transnational advocacy networks in international and regional politics", in *International Social Science Journal*, 51(159), pp. 89–101.

Lukas, K.; Steinkellner, A. 2010. *Social Standards in Sustainability Chapters of Bilateral Free Trade Agreements*, Ludwig Boltzmann Institute of Human Rights.

Postnikov, E.; Bastiaens, I. 2014. "Does dialogue work? The effectiveness of labor standards in EU preferential trade agreements", in *Journal of European Public Policy*, 21(6), pp. 923–940.

Van den Putte. Forthcoming. *Assessing the Involvement of Civil Society in the Implementation of Social Provisions in Trade Agreements: Empirical Findings from Canada, the US and the EU*, ILO background paper.

III. CASE STUDIES

6 IMPLEMENTATION OF LABOUR PROVISIONS: THE EXPERIENCE OF CHILE

SUMMARY

Currently, just above 45 per cent of Chile's trade agreements include labour provisions, and half of them were negotiated with another country from the South.

The agreements include commitments based on respect for the fundamental principles of the International Labour Organization (ILO), in particular those outlined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the concept of decent work, and the obligation to enforce national labour legislation. In addition, some agreements refer to compliance with regulations relating to migrant workers.

The main means of implementation are cooperation and dialogue, with a view to sharing experiences and labour practices.

Why does Chile include labour provisions in its trade agreements?

In all, 46 per cent of the trade agreements signed by Chile between 1997 and 2016 included labour provisions.[104] Chile negotiated its first agreement with labour provisions with Canada in 1997. The side agreement on labour cooperation was parallel to the trade agreement signed between the two parties, and similar to the North American Agreement on Labour Cooperation (NAALC). Chile subsequently incorporated labour commitments in its agreements with the European Union and with the United States, and also in the Trans-Pacific Strategic Economic Partnership Agreement (also known as the Transpacific or P4),[105] and in those with China, Colombia, Panama, Peru and Turkey.[106]

The Chilean trend is different from that usually seen in other developing countries, where there has been a reluctance to introduce these provisions for a number of reasons, including fear of protectionist use. In this context, the argument is that labour provisions can be applied beyond the concern for labour rights and instead used to prevent competition from products imported from countries with lower labour costs.[107] To date, those fears have not been substantiated, and what follows is an account of the Chilean experience.

Labour issues were first incorporated into Chile's trade agreements for political reasons. In the first agreement negotiated with Canada, Chile chose to accept the inclusion of labour provisions. This was partly because the model trade agreement used by Canada promoted these provisions and their inclusion was part of a larger trade package in negotiations.[108]

Chile was a country transitioning to a democratic regime. During this period of transition, the different Governments

This chapter was written by Pablo Lazo Grandi

[104] The statistics are based on agreements notified to the World Trade Organization and in force according to the Regional Trade Agreements Database. The agreement with Central America is counted separately for each of the members, and other agreements not considered in the database are not included (such as Chile-Thailand, 2015)

[105] The parties to this agreement are: Chile, Brunei Darussalam, New Zealand and Singapore.

[106] Ibid.

[107] See Compa and Vogt (2001) and Chapter 2 on trade and labour standards this handbook.

[108] Lazo (2009, p. 25).

acknowledged that including labour provisions in trade agreements was compatible with other labour-related objectives. This included an internal agenda of labour reforms to protect the rights of trade unions along with those of individual workers.[109] Both the Executive and the National Congress supported the inclusion of labour provisions in Chilean trade agreements, which became a question of political coherence between the international trade agenda and internal labour policies.

The inclusion, therefore, of labour matters in trade agreements eventually became an important state policy for the Chilean Government. Subsequently, in the negotiations of other agreements (for example, with the United States), trade union and civil society demands became a crucial factor in the inclusion of labour provisions.

What is the Chilean approach to labour provisions?

During trade negotiations, Chile has invited its negotiating partners to consider the inclusion of labour issues in the agreements. The content of these labour provisions presents variations depending on the trading partner concerned and the extent to which it is open to including these issues.

It could be argued, therefore, that each agreement is the result of negotiations in which both sides decided to include a labour provision.

Content of labour provisions and implementation mechanisms in Chile's trade agreements

In respect of their basic commitments, trade agreements concluded by Chile contain obligations that are similar to those of other countries, for example:

- Respect for fundamental principles and rights at work, in particular those referred to in the ILO Declaration on Fundamental Principles and Rights at Work
- The concept of decent work; and
- The obligation to enforce national labour legislation.

For the implementation of labour provisions, Chile relies on dialogue, cooperative activities and dispute resolution.

Cooperative activities constitute the main means of implementation of Chilean trade agreements. In particular these include the exchange of experiences, dialogue, and information between the signatory countries of trade agreements. These cooperative activities normally take place:

- Within the framework of the institutions created by the agreement; and
- Informally in various forums where trade partners participate, as discussed below in the case of Canada.

Some of Chile's trade agreements outline the possibility of activating dispute resolution proceedings in the implementation of labour provisions:[110] The complexity of these mechanisms varies depending on the agreement in question. For example, consultations are provided in the agreements with Panama (2008); Colombia (2009); and Hong Kong, China (2014).

Generally, the incorporation of sanctions or what are referred to as "financial contributions" has not been part of Chilean trade policy.[111] Some trade agreements, however, include sanctions, but this has largely depended on the negotiating partner, such as in the agreements with the United States and Canada.

How have the agreements been implemented?

Chile's experience in the implementation of the labour provisions can be characterized as active in terms of political and social dialogue (including governments and/or the social partners), based on the development of cooperative activities, and with no activation of dispute resolution mechanisms. Table 8.1 includes some examples of implementation activities and key areas (such as **quality of work, employment, governance and corporate social responsibility**) in different trade agreements.

The implementation of the **Canada-Chile Agreement on Labour Cooperation (1997)** stands out. This is because of the various exchanges of legislative experience, and best practice on situations presented in the labour market. The Agreement facilitated dialogue among social partners, bilaterally, internationally and domestically.

The parties formulated a cooperation programme for the implementation of the Agreement, which included technical workshops, lectures, field visits and seminars, as well as the preparation of documents to promote the dissemination of information on labour and social security rights.

Under this Agreement, some labour conflicts have arisen but have always been resolved through informal dialogue. For example, in 2003 workers of a subsidiary of a Canadian company with operations in Chile were reinstated. This occurred after joint action of a transnational coalition of unions sent a letter to the Canadian Prime Minister and linked the violations to the obligations in the Agreement.

With regard to the **EU-Chile Association Agreement (2003)**, activities were carried out that encouraged dialogue between

[109] Ibid.

[110] For a full list, see ILO (2016).

[111] Ibid.

the two partners, including exchanges of information between authorities, experts and representatives of the social partners.

The Agreement generated domestic social dialogue. The main issues addressed included: employment policies (employment services and labour intermediation), gender issues, social welfare schemes (including measures aimed at micro and small enterprises), and occupational safety and health.

Cooperative activities were carried out in broader frameworks. For example, they covered not only the relations between the EU and Chile, but also with Latin America in general.

The various activities with the **United States (2004)** included exchange of information; seminars on occupational safety and health; risk prevention and the environment in mining; and labour inspection. This had an emphasis on hours and wages (for example, in 2009), labour inspection management, activity-planning methods, audit procedures, programmes designed to comply with labour standards, and an evaluation of the impact of activities carried out.

Cooperation and exchange activities have been carried out between officials of the United States Department of Labor, the Department of Labour and Social Welfare and the Directorate of International Relations of the Ministry of Foreign Affairs of Chile.

Technical missions have also been carried out in the area of occupational health and safety and labour law, with the activation of the Points of Contact provided for in the Agreement. The results of these technical missions have served in part as background for the reforms in Chile in the aforementioned areas, including in the education and training of labour inspectors and judges in labour matters.

With regard to the **Trans-Pacific Strategic Economic Partnership Agreement (2006)**, the implementation of the Memorandum of Understanding has been complex owing to the physical and cultural distance between the parties. The parties have used forums, however, such as the International Labour Conference for their dialogue and cooperation activities.[112]

Trade partners have chosen to learn about the different labour systems and have conducted dialogues – not only at governmental level, but also those that include social partners in areas such as vocational training and skills development, in particular of vulnerable groups, youth employment and women, green jobs and corporate social responsibility.

In respect of the **trade agreement with China (2006)**, exchange of information, visits and events focused on social security issues and reforms in this area. Other issues managed through political dialogue have included training for trade unionists, minimum wage fixation, and the role of trade unions.

The experience with Peru (2009) is interesting because, in addition to labour issues, there was also an immigration agenda. In that area, a commitment was made to exchange statistical information on migration and to increase the ease with which the necessary documents to effect immigration procedures could be obtained.

Throughout the implementation of the different agreements, **various activities have been carried out with the support of the ILO**. The ILO contribution consisted of reports, presentations and workshops to assess whether the objectives of the agreements had been met (for example, with the European Union) or providing technical assistance (such as in the case of the P4).

Lastly, it is important to note that there is no evidence of activation of the dispute resolution mechanisms provided by the agreements.

Table 6.1 Examples of implementation activities, key areas and results

Agreement	Implementation activities	Key areas	Results
Canada-Chile	• Cooperative activities: public conferences, seminars, technical visits from Chilean representatives to Canadian entities, exchange of good practices • Informal solution of labour conflicts	• Collective labour rights • New forms of employment • Occupational safety and health (particularly in the mining sector) • Child labour • Gender issues • Small and medium-sized enterprises • The normative content of labour provisions	• Understanding of the legal system of the parties to the Agreement • Acquiring knowledge in the key areas of discussion • Reinstatement of workers and payment of lost salaries
EU-Chile	• Political dialogue: discussion on government strategies, technical visit to Denmark and Spain • Social dialogue: tripartite dialogue and inclusion of scholars • Cooperative activities: drafting of reports, presentations and workshops in collaboration with the ILO	• Public policies related to employment issues • Occupational safety and health • Quality of employment and working conditions, including wages	• Compilation of anti-crisis measures (the creation of a job bank) • Understanding of labour regulation

[112] It should be noted that, parallel to the agreement and the implementation of labour commitments, Brunei Darussalam became a member of the ILO.

United States-Chile	• Political and social dialogue: through the Labour Affairs Council • Cooperative activities: missions of government representatives and drafting of evaluation report; training for mediators of the Chilean Labour Directorate	• Labour inspections • Occupational safety and health • Labour justice reform • Corporate social responsibility	• Impact in labour reform in Chile also in training of labour ministries and judges • Raised awareness in employers (exporters in particular) of corporate social responsibility practices and labour rights implementation
Trans-Pacific Strategic Economic Partnership Agreement	• Political and social dialogue: tripartite meetings • Cooperative activities: technical assistance from the ILO; tripartite workshops and trainings	• Youth employment and training • Human development • Green jobs • Corporate social responsibility • Occupational safety and health • Quality of life and jobs	• Furthering cooperation with the ILO • Deeper understanding of parties challenges and country situations • Promotion of the ILO Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration)

What can we conclude?

Chile's experience in including labour provisions has been positive from a variety of angles. First, no serious contentious situations have arisen with any trading partner. On the contrary, cooperative relations have been strengthened, and issues considered complex were open to be discussed with transparency, and with a tendency to find solutions and share information.

Chilean trade policy has proved to be consistent with regard to fulfilling its labour commitments. In addition, it has generally sought to satisfy the demands of citizens in the country and responded to the political pressure generated around issues in the trade agreements.

Notwithstanding the foregoing, it must be recognized that both Chile and some of its partners in trade face challenges in respect of effective compliance with their legislation and the strengthening of their systems of labour inspection and labour justice. Accordingly, regardless of the existing cooperation between these countries, greater commitments that would make it possible to strengthen the institutions needed to ensure effective compliance with labour commitments in trade agreements should be adopted at the domestic level.

References

Compa, L.; Vogt, J. 2001. "Labour rights in the Generalized System of Preferences: A 20-year review", in *Comparative Labour Law and Policy Journal*, Vol. 22.

ILO. 2016. *Studies on Growth with Equity: Assessment of labour provisions in trade and investment arrangements*, (Geneva).

Lazo, P. 2009. *Trade agreements and their relation to labour standards: The current situation*, International Centre for Trade and Sustainable Development (ICTSD) programme on EPAs and regionalism, issue paper No. 3.

—. 2014. *Implementación de las cláusulas sociales en los tratados de libre comercio. La experiencia de Chile*, background paper (Geneva, ILO).

Further reading

Cortázar, R. 1993. *Política Laboral en el Chile Democrático: Avances y Desafíos en los Noventa*, (Santiago de Chile, Dolmen Ediciones S.A.).

Ebert, F.; Posthuma, A. 2011. *Labour Provisions in Trade Arrangements: Current Trends and Perspectives* (Geneva, ILO).

Heinz, J.; S. Luce. 2010. *Trade Agreements, Labor Standards and Economic Development*, Informe 2/2, 1 September. Available at: http://www.ggt.uqam.ca/IMG/pdf/1LuceS_tradeagreementslaborstandards.pdf [31 Oct. 2016].

7 CASE STUDY ON THE CAMBODIAN TEXTILE SECTOR

SUMMARY

The Cambodia–United States Bilateral Textile Agreement (CUSBTA) was the first agreement of its kind to combine the incentive to increase export quotas with the requirement to make progress on labour rights and working conditions.

The agreement and the Better Factories Cambodia (BFC) programme played a significant role in reducing the gender wage gap in the textile sector.

Credible information on working conditions, obtained through transparent monitoring, played an important role in implementing labour provisions (e.g., making decisions on export quota bonus grants).

However, compliance with national labour laws or international labour standards in the areas of child labour, occupational safety and health and minimum wage remains a challenge.

What has been the trade liberalization process of the Cambodian textile sector?

Cambodia has achieved strong economic growth through rapid trade liberalization, successfully linking its biggest formal employer – the textile sector – with global markets.

- The country's trade liberalization began in the 1980s, when the state trading monopoly was abolished.
- In the 1990s, the country largely removed restrictions on firms and individuals to engage in international trade.[113]
- The country was designated as a least-developed beneficiary country under the **Generalized System of Preferences**[114] of the European Union and that of the United States in 1997.[115]
- Cambodia and the United States concluded a trade agreement called the **Cambodia–United States Bilateral Textile Agreement (CUSBTA)** in 1999.
- Cambodia joined the WTO in 2004.

Among the various trade policy instruments concluded by Cambodia, **CUSBTA** presents a uniquely instructive case, as it is the first agreement of its kind to **link the export quotas bonus to the requirement to improve working conditions.**[116] This agreement required working conditions in the Cambodian textile sector to be monitored and improved, as a prerequisite for the export quota bonus grant.

The novelty of CUSBTA was especially prominent given that the Multi-Fibre Arrangement (MFA) was still in effect during the years when CUSBTA was in force.[117] The MFA restricted the free flow of textile goods through a complex quota system, allowing the importing countries to decide the amount

This chapter was written by Takaaki Kizu

[113] Neak and Robertson (2009).

[114] The Generalized System of Preferences" allows developing countries to pay less or no duties on their exports to developed countries. It is a facility granted to developing countries by developed countries, and as such the preferential treatment is not reciprocal.

[115] Neak and Robertson (2009); Office of United States Trade Representative (2007).

[116] Abrami (2003).

[117] The MFA expired on January 1, 2005.

and types of goods that they admit. As such, the MFA was perceived by many observers as unfavourable to developing countries.[118] In CUSBTA, however, the United States promised that the quotas for Cambodian textile sector would be increased, conditional on improvements in labour rights and working conditions. Thus, the agreement generated strong positive incentives for Cambodian textile factories to improve working conditions.

In order to monitor working conditions at factories, transparent and credible information was needed. However, the public labour inspection of Cambodia could not be reliable in this regard. After 30 years of civil strife, the country was struggling to establish the rule of law. In addition, due to lack of financial resources at the national level, civil servants in Cambodia, including labour inspectors, were severely underpaid. In fact, it was common for public labour inspectors to have second or third jobs, or even receive bribes from employers.[117] Given the insufficient credibility of the public inspection, the use of private auditing, both for-profit and non-profit, was also explored. However, none of the auditing initiatives had the established credibility at the international level.

The Governments of Cambodia and the United States turned to the ILO, seeking its support for credible and transparent monitoring. In 2000, the ILO agreed to the request with the backing of both employers and labour unions in the target countries. This decision was partially facilitated by a commitment from the United States to fund a parallel technical assistance programme for capacity building of the Cambodian labour ministry.[120] As a result, since 2001, compliance of textile factories with labour standards has been monitored through the ILO **Better Factories Cambodia (BFC) programme**.[121]

The Cambodian government issued a ministerial regulation ("Prakas") indicating that exporting textile factories must be registered for BFC monitoring in order to receive the benefits of the export quotas increase. This resulted in the full participation of exporting textile factories in BFC, allowing the BFC programme to monitor the entire sector.[122] Once a factory is registered for BFC monitoring, the BFC dispatches monitoring team comprised of 2 BFC staff members for an unannounced visit which lasts for 2 days. The assessment is conducted in the form of interviews with factory managers and workers based on a list of questions developed by BFC. During the BFC assessment, buyers can also make shadow visits along the BFC staff members, so long as they abide by a protocol in order to maintain the confidentiality of unannounced visit policy. In addition to monitoring, the BFC programme conducts research, publishes reports, and provides advisory and capacity-building training services to factory managers and workers.[123]

With the establishment of BFC monitoring to be run by the ILO, the United States granted Cambodia a 9 per cent export quota bonus in 2000,[124] and in 2001. Both Governments were pleased with the outcomes between 1999 and 2001, and thus decided to extend the agreement for an additional three years –through 2004. A 9 per cent export quota bonus was granted in 2002, and then increased to 12 per cent in 2003 and 18 per cent in 2004. The increase in export quota led to an increase in apparel firms' earnings, and in turn, an increase in tax revenue for the Cambodian Government.[125]

Given the innovative nature of the project, such as **positive incentive mechanism and the new role of an international agency in international governance**, CUSBTA and BFC have attracted considerable attention from policy makers globally. The purpose of this brief is to review the effectiveness of CUSBTA and BFC, while illuminating remaining challenges, and explore the possibility of replicating successful elements of the project.

What were the effects of the agreement on working conditions?

The findings on the effectiveness are twofold:

- First, CUSBTA and the BFC programme played a significant role in reducing the gender wage gap in the Cambodian textile sector.

- Second, other areas such as child labour, occupational safety and health and minimum wage compliance remain challenges.

Empirical evidence suggests that the gender wage gap[126] in the textile sector declined between the pre- and post-CUSBTA periods.[127] Such an improvement, however, is not observed for other manufacturing sectors (see figure 7.1). This suggests that CUSBTA had a significant effect on the **reduction of the gender wage gap**. During the post-agreement period, when the export quota bonus is no longer provided, but the BFC monitoring programme continues, the previously achie-

[118] Abrami (2003).

[119] Polaski (2006).

[120] Freeman and Lawrence (2007).

[121] As of 2007, the BFC programme has become a part of a global partnership between the ILO and the International Finance Corporation (IFC).

[122] Polaski (2006).

[123] Enterprises that are registered for BFC programme can receive services such as assessments, training, and advisory. Buyers registered for BFC programme can receive information on their suppliers, after receiving an authorization from the enterprises.

[124] Inside U.S. Trade (2001).

[125] Polaski (2006).

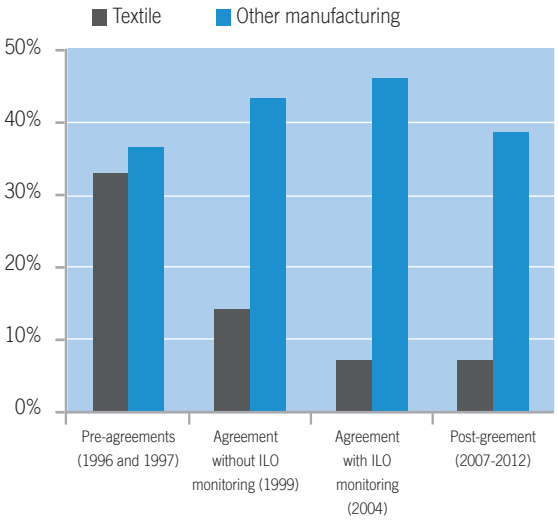
[126] "Gender wage gap" is defined as the difference between the gross average hourly earnings of male and female employees expressed as percentage of gross average hourly earnings of male employees.

[127] Lopez-Mourelo and Samaan (forthcoming).

ved reduction in gender wage gaps appears to be maintained.

Two of the possible channels through which the agreement and BFC programme had positive impact are **promotion of formal textile sector jobs** through export quota increase, and **heightened gender awareness** through BFC training. The expansion of the textile sector, which tends to employ female workers more intensively than some other sectors, promoted formal employment for women. In addition, emphasis on non-discrimination through BFC training might have mitigated downward pressure on female wages even when unit textile prices started to fall as the textile sector became increasingly exposed to international competition. Since BFC's work is directly targeted at wages compliance rather than on wage levels per se,[128] the impact might have been particularly strong for narrowing the gender wage gap (i.e. promotion of non-discrimination).

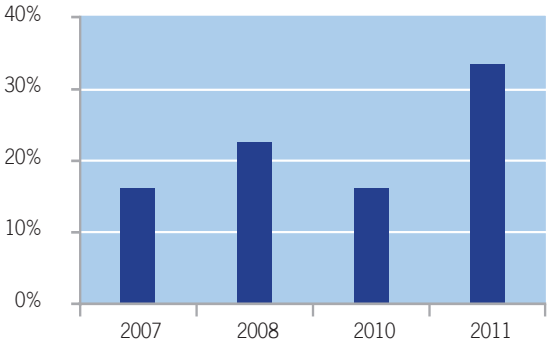
Figure 7.1 Gender wage gap in the textile and other manufacturing sectors by period (percentage)[129]



What are the remaining challenges?

Despite some progress, Cambodia still faces challenges. For instance, the textile sector as a whole seems to use about 20 per cent more **child labour**[130] than the rest of the economy.[131] Perhaps unexpectedly, child labour in the Cambodian textile sector does not appear to have significantly declined since 1996, despite the fact that CUSBTA came into force in 1999, and monitoring through the BFC programme was launched in 2001. In fact, child labour in the Cambodian textile sector increased in 2007, 2008, 2010 and 2011, compared to 1996 (see figure 7.2).[132]

Figure 7.2 Increase of child labour in textile sector relative to 1996 (percentage)[133]



The increase in child labour for the aforementioned years, however, is most likely to not be immediately associated with CUSBTA or the BFC programme, as the increase occurred eight years after CUSBTA came into force, and six years after the launch of the BFC programme. One possible explanation for the increase is that the Cambodian textile sector has grown rapidly not only in terms of the value of export, but also the number of factories and workers.[134] This rapid expansion has led to a surge in the demand for textile workers, particularly in recent years since 2010.[135] Thus, it is possible that child labour might have increased to meet this heightened labour demand. Another explanation is that many workers in Cambodia migrated to neighbouring countries.[136] This might have facilitated outflows of low-skilled worker from Cambodia, and the resultant shortage of low-skilled labour in the country might have been met by the supply of child labour.[137]

In addition to child labour, the question of o**ccupational safety and health** is also found to be a continuing challenge. As much as 96 per cent of the 381 target factories featured in the BFC report did not comply with national legislation or international labour standards on working environment.[138] All areas, except worker accommodation, registered

[128] Robertson (2011).

[129] Gender wage gap is estimated based on a Mincerian wage equation which controls for observable worker characteristics. The data on gender wage gap is based on the Cambodia Socioeconomic Survey (CSES), which is representative for regular resident non-institutional household in Cambodia.

[130] The data on child labour is based on the Cambodia Socioeconomic Survey (CSES). The CSES is a cross-sectional household survey that is representative for regular resident non-institutional household in Cambodia.

[131] Rellstab and Sexton (2014).

[132] A descriptive analysis with more recent data shows that the share of monitored factories with confirmed underage workers have declined from 7 per cent as of May 2012 to 2 per cent as of June 2016, suggesting that there has been some progress in eliminating child labour (ILO and IFC, 2016).

[133] The figure shows only the years for which the coefficients of interest are statistically significant. The data used for estimation cover the years 1997, 1999, 2004, 2007, 2008, 2009, 2010, 2011 and 2012.

[134] Asuyama and Neou (2012).

[135] Number of workers employed in the exporting garment and footwear sector increased by nearly two-fold from around 300,000 in March 2010 to around 600,000 in March 2015 (ILO, 2015).

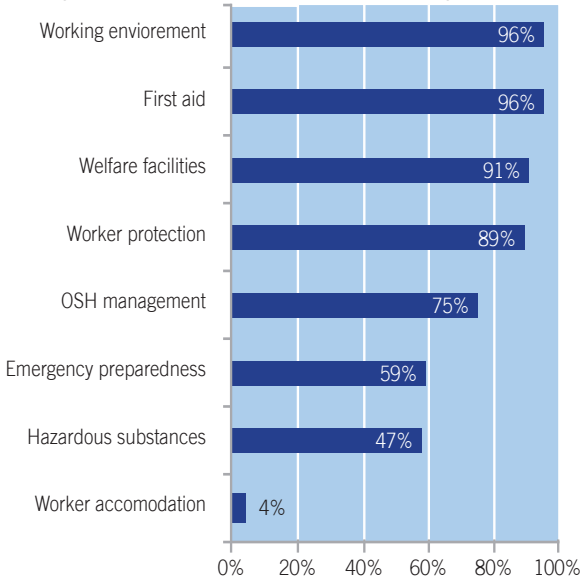
[136] For instance, the number of migrants from Cambodia to Thailand through legal channels increased by 310 per cent, from 4,116 in 2006 to 16,837 in 2011 (Tunon and Rim, 2013).

[137] Rellstab and Sexton (2014).

[138] Compliance in the area of working environment is assessed in terms of noise level, temperature, ventilation and lighting in the factories (ILO and IFC, 2016).

non-compliance rates higher than 50 per cent (see figure 7.3). This means that the majority of the target factories did not comply with national legislation or international labour standards on occupational safety and health.[139] It should be noted that the high non-compliance rates in some areas, such as lighting in the factories, are due to difficulties in meeting the legal requirements that are seen as set too high to be practical.[140] Another reason for high non-compliance rate could be that the costs associated with improvement in occupational health and safety is high; therefore, the compliance in this area might be particularly challenging for the factories given the price competition in the international market.

Figure 7.3 Non-compliance rate (percentage)[141]



Finally, despite the aforementioned improvements in gender wage gap, non-compliance with minimum wage law remains persistent in Cambodia. This is a particularly important issue in the textile sector, given its highly competitive and labour intensive nature. An ILO study[142] shows that one in four (or 25.6 per cent) waged employees in the Cambodian textile sector earns less than the minimum wage. Women are more likely to be underpaid than men.[143] Workers with less than primary education are more likely to be paid less than the minimum wage, relative to workers with upper and lower secondary education. In addition, wage inequality below the minimum wage persists with 8.9 per cent of workers paid less than 80 per cent of the minimum wage.

How can the remaining challenges be addressed?

The factors contributing to poor working conditions are often complex, and as such they require comprehensive solutions. In the case of child labour, poverty and low quality of education might be two important factors that need to be addressed. This is because poverty would increase the opportunity cost of going to school, while the low quality of education would reduce the cost of not attending school. Thus, when combined, poverty and low quality of education can induce households to send children to workplaces rather than schools.

While the BFC programme provides various services to factories and workers such as monitoring, advisory and training, a more comprehensive approach, going beyond factories, might also be needed. A food-for-education programme and the investment in the quality of education programme are two good examples of incentive-based programmes which have been found to be effective in reducing child labour.[144]

Compliance in occupational safety and health also requires comprehensive and systematic solutions. Globally, very few export processing zones have policies and regulations in this area. It is rare for companies to receive services for improving occupational safety and health in their factories.[145] Stronger efforts in developing occupational safety and health management systems and policies are needed.

When striving to achieve minimum wage compliance, it is important to note that increases in minimum wage do not necessarily increase non-compliance, when rigorous monitoring and advisory services are in place. For instance, recent BFC data suggested that, while minimum wage compliance is still a challenge in Cambodia, compliance at the monitored factories in recent years[146] remained more or less stable, despite the fact that minimum wage in the country had increased substantially.[147] In addition to monitoring and advising, the simplicity of the minimum wage system in Cambodia might have played a role in improving workers' knowledge of their entitlements, and employers' knowledge of their responsibilities.[148] This suggests one of the advantages of keeping the level of complexity of minimum wage polies manageable.[149]

[139] The BFC monitoring assesses compliance in the area of occupational safety and health, and other areas of working conditions, based on national legislation. However, when national legislation lacks clarity on relevant issues, international labour standards and good practices are used as benchmarks for assessing compliance.

[140] ILO and IFC (2016).

[141] The data shown in the figure refers to 381 factories monitored between May 2015 and April 2016, as reported in ILO and IFC (2016). The data refers to this specific sample, but not to the whole industry.

[142] Cowgill and Huynh (2016).

[143] Non-compliance rates in the area of minimum wage is 4.4 percentage points higher for women, compared to men (Cowgill and Huynh, 2016).

[144] Jafarey and Lahiri (2005).

[145] UNCTAD (2013).

[146] The data refers to 381 factories monitored between May 2015 and April 2016, as reported in ILO and IFC (2016). The data refers to this specific sample, but not to the whole industry.

[147] Cowgill and Huynh (2016).

[148] Cowgill and Huynh (2016).

[149] ILO (2016).

In order to address wide range of factors giving rise to poor labour practices, close **coordination among various stakeholders** is essential. Indeed, existing studies show that involvement of civil society actors is a pre-condition for labour provisions to be effective.[150]

In the case of BFC, the Royal Government of Cambodia, Garment Manufacturers Association in Cambodia (GMAC) and national trade unions play central roles in the Project Advisory Committee (PAC), providing strategic advice to the programme through biannual meetings. During the PAC meetings, three representatives each from the tripartite constituents review BFC monitoring reports, and define concrete areas of contributions that each player can make based on the latest monitoring results.

In addition, BFC works with international buyers as either participants or partners. As participants, global retailers subscribe to the BFC monitoring reports through an on-line portal. They are also invited to annual buyer forums and two global meetings, and engage with other participating buyers. As partners, buyers sign an agreement with BFC and make certain commitment such as reducing duplicative audits and ease the burdens on suppliers facing multiple audits. In return, the buyers receive enhanced BFC services, such as quarterly calls from BFC for updates on programme developments. They are also invited to national stakeholder forums along with the tripartite constituents.

More comprehensive stakeholder involvement, engaging with the public, has also been carried out. BFC launched an on-line transparency database in 2013, where factory-specific compliance information is publicly disclosed. In addition, the BFC website showcases some of good practices with detailed information, such as particular problems tackled, actions taken and the level of costs associated.

What policy lessons can be learned from the Cambodian textile sector?

The case of Cambodian textiles has important analytical lessons for policy makers elsewhere.[151] Although many challenges remain, there are some successful elements that can be replicated.

- First, the **positive incentive mechanism** is found to be an effective approach to achieving improvements in compliance with national labour laws and international labour standards. The linking of prospective trading, investment opportunities and compliance should be included in policymakers' options.
- Second, **transparent monitoring and credible information on working conditions** are required in order for policymakers to evaluate the effectiveness of labour provisions and its implementation. Auditing, whether public labour inspections or private initiatives, is costly. However, it is also worth noting that effective auditing and resultant improvement in working conditions can bear a number of benefits, such as increased productivity and reduction in costs associated with paying for multiple audits.[152]
- Third, **stakeholder involvements** facilitates effective implementation of labour provisions in areas such as strategic advice to programme implementation and transparent information sharing. The Cambodian textile sector is an example of how the Governments, employers, trade unions, and other non-state actors can work together.

References

Abrami, R. 2003. *Worker rights and global trade: The U.S. – Cambodia bilateral textile trade agreement,* Available at: https://hbr.org [20 Oct. 2016].

Alger, C.F. 1997. "Transnational social movements, world politics and global governance", in J. Smith, C. Chatfield and R. Pagnucco (eds): *Transnational social movements and global politics: Solidarity beyond the state* (Syracuse, NY, Syracuse University press), pp. 260–275.

Asuyama, Y.; Neou, S. 2012. "How has the Cambodian Garment Industry Evolved?", in T, Fukunishi (eds): *Dynamics of the Garment Industry in low-income countries: Experience of Asia and Africa*, (Chiba, IDE-JETRO).

Cameron, M.A; Tomlin, B.W. 2000. *The making of NAFTA: How the deal was done* (Cornell University Press).

Cowgill, M.; Huynh, P. 2016. Weak minimum wage compliance in *Asia's garment industry, Asia-Pacific Garment and Footwear Sector Research Note*, Issue 5, Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_509532.pdf [26 Oct. 2016].

Hafner-Burton, E.M. 2009. *Forced to be good: Why trade agreements boost human rights* (Ithaca, Cornell University Press).

ILO. 2015. *Growth continues for Cambodia's garment and footwear sector*, Cambodia Garment and Footwear Sector Bulletin, No. 1, Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_383562.pdf [3 Nov. 2015].

[150] Alger (1997); Hafner-Burton (2009); Cameron and Tomlin, (2000); and Murillo and Schrank (2005).

[151] Polaski (2006)

[152] ILO and IFC. (2013).

–. 2016. *Minimum wage policy guide*. Available at: http://www.ilo.org/global/topics/wages/minimum-wages/lang--en/index.htm [26 Oct. 2016].

–.; IFC. 2013. *The business case for quality jobs evidence from better work*. Available at: http://betterwork.org/global/wp-content/uploads/Quality-jobs-policy-brief-V2-print_1.pdf [26 Oct. 2016].

–.; –. 2016. *Better factories Cambodia: Garment industry 33rd compliance synthesis report* (Geneva).

Inside U.S. Trade. 2001. *CITA awards Cambodia nine percent quota hike on textile, apparel*. Available at: http://insidetrade.com [20 Oct. 2016].

Jafarey, S.; Lahiri, S. 2005. "Food for education versus school quality: A comparison of policy options to reduce child labour", in *Canadian Journal of Economics*, No. 38, Vol. 2, pp. 394–419.

Lopez Mourelo, E.; Samaan, D. Forthcoming. *The effectiveness of labour provisions in reducing gender wage gap*, Discussion Paper (Geneva, ILO).

Murillo, M.V.; Schrank, A. 2005. "With a little help from my friends: Partisan politics, transnational alliances, and labor rights in Latin America", in *Comparative Political Studies*, Vol. 38, No. 8, pp. 971–999.

Neak, S.; Robertson, R. 2009. "Globalization and working conditions: Evidence from Cambodia", in R. Robertson, D. Brown, G. Pierre and M. L. Sanchez-Puerta (eds): *Globalization, Wages, and the Quality of Jobs: Five Country Studies*, (Washington D.C, World Bank), pp. 97–129.

Office of United States Trade Representative. 2007. *Expanding Cambodia's export opportunities through GSP.* Available at: https://ustr.gov/sites/default/files/uploads/gsp/asset_upload_file828_14816.pdf [30 Oct. 2016].

Polaski, S. 2006. "Combining global and local forces: The case of labor rights in Cambodia", in *World Development*, Vol. 34, No. 5, pp. 919–932.

Rellstab, S.; Sexton, D. 2014. *The effectiveness of labour provisions in the Cambodia-United States bilateral textile agreement for the reduction of child labour in Cambodia*, Discussion Paper (Geneva, ILO).

Robertson, R. 2011. *Apparel wages before and after better factories Cambodia*, Better Work Discussion Paper Series, No. 3 (Geneva, ILO).

Rossi, A.; Robertson, R. 2011. *Better factories Cambodia: An instrument for improving industrial relations in a transnational context*, Center for Global Development Working Paper, No. 256 (Washington D.C.).

Tunon, M.; Rim, K. 2013. *Cross-border labour migration Cambodia: Consideration for the national employment policy*, ILO Asia-Pacific Working Paper Series (Bangkok, ILO).

UNCTAD. 2013. *World Investment Report 2013 Global Value Chains: Investment and Trade for Development* (Geneva).

Further reading

Elliot, K. A.; Freeman, R. B. 2003. *Can Labor standards improve under globalization?* (Washington, D.C., Institute for International Economics).

8

MONITORING TRADE AGREEMENTS: THE CASE OF COLOMBIA

SUMMARY

Mechanisms to monitor the implementation of trade agreements, and to review and assess progress in the realization of the labour commitments that are made, are increasingly common.

These mechanisms are diverse and opportunities exist to conduct more comprehensive monitoring that relies on the active involvement of stakeholders.

Four dimensions are key to assure meaningful monitoring: access to information; assessment; integration into policy making; and transparency and accountability.

Important challenges exist to better integrate different monitoring mechanisms and align overlapping commitments and follow-up mechanisms across agreements.

Innovative monitoring practices

Mechanisms to monitor the implementation of trade agreements, and review and assess progress in the realization of the labour commitments that are made, are increasingly common. Mechanisms are diverse and opportunities exist to conduct more comprehensive and integrated monitoring that relies on the active involvement of stakeholders.

Monitoring is understood as the systematic review of progress over time. In the context of labour provisions, this entails an examination of whether labour commitments are implemented in practice, and progress is made in the promotion, realization and enforcement of labour rights and the improvement of working conditions.

The following four dimensions are taken into consideration:

- *access to information*, e.g. the identification of a baseline, the formulation of indicators and the establishment of a data collection system;
- *assessment*, e.g. measuring progress over time, questioning assumptions and implementation strategies, identifying key challenges and ways to address these;
- *policy making*, e.g. adapt the implementation strategy based on the lessons learned; and
- *transparency and accountability*, e.g. providing information to stakeholders and the wider public on progress made to assure accountability.

Various mechanisms and practices already exist to monitor trade agreements, such as sustainability or human rights impact assessments, Trade and Sustainable Development Committees, Domestic Advisory Groups, or specific action plans. Based on the review of a set of innovative monitoring practices, best practices are identified that deliver insights on how to enhance monitoring of labour commitments in trade agreements and ensure their consistency with the above dimensions.

This chapter examines the cases of the Agreements of the European Union, Canada and the United States with Colombia. It looks at innovative practices to monitor the implementation of labour-related provisions and particular attention is paid to the role of stakeholders herein.

This chapter was written by Rafael Peels and Elizabeth Echeverria M.

Is there a need for enhanced alignment?

Whereas Canada, the European Union and the United States apply different approaches with regard to the implementation of labour commitments in the trade agreements with Colombia, there has been an important focus on monitoring. The main difference between the various approaches is the level of detail, i.e. identifying specific and time-bound commitments, and consistent application. This has important implications for the potential involvement of stakeholders. Also, seen the strong overlap in commitments incorporated in the different trade agreements, there are important opportunities to enhance alignment.

The Canada-Colombia trade agreement, is the first Canadian trade agreement that incorporates an obligation for each of the parties to conduct an annual Human Rights Impact Assessment (HRIA).

In the case of the trade agreement between the United States and Colombia, a technical cooperation project has been developed - the US-Colombia Labor Action Plan - to address long standing issues on the violation of labour rights in Colombia. This Action Plan defines clear timetables for reporting, encourages the involvement of the tripartite partners and shapes a framework for enhanced monitoring.

Recent EU agreements, also provide for the review, monitoring and assessment of the impact of the implementation of the agreement on trade and sustainable development. The European Parliament (EP) adopted a Resolution calling for the establishment of a transparent and binding Roadmap to tackle challenges in the context of the EU-Colombia/Peru trade agreement.

Monitoring is often taking place through existing institutional mechanisms, such as the National Contact Points or Ministerial Committees on Trade and Sustainable Development that hold the mandate to monitor the implementation of the trade agreements. Nevertheless, also stakeholders have their role in the review, monitoring and assessment of the implementation of trade agreements, for instance through Labour or Domestic Advisory Committees.

Also technical cooperation projects have been developed to closely monitor progress on labour commitments, or dispute settlement mechanisms have been used in combination with Action Plans that enable close follow-up and the involvement of stakeholders (see in this handbook chapters on "*Experiences of stakeholders in conflict resolution" and "Involving stakeholders in trade agreements*").

What can we learn from the US-Colombia Labor Action Plan?

Through the United States-Colombia Trade Promotion Agreement (TPA), the United States Administration has sought to address some of the longest-standing concerns about labour rights and working conditions in Colombia. In 2006, when the US Administration concluded the Colombia TPA, the State Department's Human Rights Report identified a range of labour concerns in Colombia, including violence and discrimination against trade union members to discourage workers from joining unions and engaging in union activity; impunity for acts of labour-related violence; a proliferation of fake worker "cooperatives" that were used to undermine workers' rights; and use of "collective pacts" with favourable terms negotiated directly with individual workers to weaken existing unions and avoid collective bargaining.

To address these issues, a cooperation plan - the Colombian Action Plan Related to Labor Rights - was negotiated and centred on: increased capacity of the labour ministry, criminal justice reform, the (mis)use of cooperatives and temporary service agencies, the right to organize and bargain collectively, protection of labour activists, and essential services. The plan defines clear timetables for reporting, encourages the involvement of the tripartite partners and shapes a framework for enhanced monitoring. It also stipulates the collaboration with the ILO in the implementation of the plan.

Although civil society organizations, including North-American and Colombian trade unions, have criticized the limited effectiveness of the Action Plan,[153] various challenges have been addressed by the Colombian government in close follow-up by the United States Administration.[154]

Some of the main outcomes include:[155]

- Hiring and training new labour inspectorates in the period of four years. The training included alternative methods for dispute resolution and conciliation.

- Regarding the right to freedom of association and collective bargaining different measures were implemented: criminal penalties for employers undermining these rights; the expansion of the government protection pro-

[153] E.g. Esculea Nacional Sindical, confederacíon de Trabajadores de Colombia, Central Unitaria de Trabajadores de Colombia and Red Colombiana de Accíon Frente al Libre Comercio (RECALCA). See WOLA (2014) and AFL-CIO (2014).

[154] E.g. USDOL and Executive Office of the President of the US (2016). The Colombian Labor Action Plan: A Five Year Update. https://www.dol.gov/ilab/reports/pdf/2016_Colombia_action_plan_report_FINAL.pdf; and USDOL and Executive Office of the President of the US (2015). Standing Up for Workers:

[155] See Colombia Labor Action Plan accomplishments to date. Available at: https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2011/june/colombian-action-plan-related-labor-rights-accomplishmen. See also: https://ustr.gov/uscolombiatpa/labor

gramme not only for union leaders but also for workers trying to organize, among others; increasing the budget of the Prosecutor General's Office's to enhance the institutional capacity and to expand personnel and measures designed to reduce impunity concerning crimes towards trade unionists (this includes training for those in charge of investigating and enforce the law).

What distinguishes the US-Colombia LAP from other labour-related policy interventions in the context of trade agreements, is the level of detail in the identification of clearly time-bound goals that shape a framework for labour advocates to closely monitor the labour commitments under the US-Colombia FTA.

The European Union-Colombia/Peru Trade Agreement

In the case of the EU trade agreement with Colombia and Peru (in force since 2013), concerns regarding the labour situation in Colombia were similar as those addressed in the US-Colombia TPA. In response, the European Parliament (EP) adopted a Resolution (2012) calling for the establishment of a Road Map to monitor similar concerns as those addressed in the US-Colombia Labor Action Plan. Further, the European Commission commits to conduct impact assessments to inform on progress that has been made in the implementation of the agreement, including the Trade and Sustainable Development Chapter. These are specified in the EU-Colombia/Peru trade agreement and complemented by Regulation (EU) No 19/2013.

The European Parliament Roadmap with Colombia

The European Parliament (EP) adopted in 2012 a Resolution calling for the establishment of a transparent and binding Roadmap to tackle similar challenges as in the US-Colombia TPA (see box 8.1).[156]

The Colombian Government has submitted an Action Plan on how to follow-up on the various concerns addressed in the EP Resolution. Although, certain actions have been taken (e.g. various visits to Colombia to consult with stakeholders), the Roadmap has been criticized for its lack of detail and practical follow-up.

Box 8.1 Alignment between EU Roadmap and US-Colombia LAP

The EP Resolution argues for a strong alignment between the Roadmap and the US-Colombia LAP. To comply with the commitments, the resolution calls for time-bound commitments and clear targets and results, particularly with respect to:

- Enforcement and implementation of legislation and policies in the following areas: freedom of association and collective bargaining, protection of the informal sector, and practices such as outsourcing and disguised labour relationships (for example, the use of cooperatives).
- Enhanced labour inspections. In this case labour inspectorates should be able to impose fines when certain violations are found. For instance, unjustified dismissals and threatening behaviour or harassment against trade unionists.
- The development of a valid and authentic social dialog at the enterprise level.
- Improving investigatory mechanisms and an effective application of sanctions to criminal offenders.
- Providing assistance to the Colombian Government (via the European Commission) in order to implement the commitments and report on the progress achieved.

Review, monitoring and assessment of the EU-Colombia/Peru trade agreement

Similar as other recent EU trade agreements, additional monitoring mechanisms are provided to follow-up the implementation of the labour commitments under the trade agreement with Colombia.[157] These are defined in the EU-Colombia/Peru trade agreement; complemented by Regulation (EU) No 19/2013; and in line with the EC's "*Trade for All*" strategy. Hence, the EC commits to conduct impact assessments to inform on progress that has been made in the implementation of the agreement, including the Trade and Sustainable Development Chapter.

The text of the agreement stipulates that the each Party com-

[156] European Parliament resolution of 13 June 2012 on the EU trade agreement with Colombia and Peru (2012/2628(RSP)). http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0249+0+DOC+XML+V0//EN

[157] See Art. 279, 280 and 286 of the EU-Colombia and Peru Trade Agreement.

mits to review, monitor and assess the impact of the implementation of this Agreement on labour and environment, as it deems appropriate, through its respective domestic and participative processes.[158] This opens the door for increased involvement of stakeholders in monitoring and assessing the impacts of the implementation of the labour provision.

Further, the agreement while specifying the functions of the Sub-committee on Trade and Sustainable Development, encompass, the follow-up of the implementation of the trade and sustainable development chapter, the submission of recommendations to the Trade Committee, the identification of potential areas of cooperation, and to assess impacts, when appropriate, of the impact of the implementation of the Agreement on labour and environment.[159]

Also Art. 286 of the agreement deals with cooperation on trade and sustainable development, and provides for various activities related to the evaluation of impacts of the agreement. This includes activities aimed at improving the methodologies for such evaluation.

In addition to the EU-Colombia/Peru trade agreement's monitoring commitments; these are complemented by a parallel agreement (Regulation (EU) No 19/2013). It commits to annual reporting to the European Parliament on the application, implementation and fulfilment of obligations of the EU-Colombia/Peru Trade Agreement.[160]

In February 2016, the EC submitted its second annual report that also addresses the implementation of the Trade and Sustainable Development Chapter.[161] The report provides information on the meetings of the Committee on Trade and Sustainable Development; of the discussions held during the civil society meetings (domestic consultation and Sub-Committee sessions with civil society); and on the implementation of the labour commitments that are made in the agreement (See box 8.2). Seen the general and descriptive nature of the information in the report, questions can be raised with regard to whether this permits meaningful monitoring and involvement of stakeholders.

Box 8.2 Second Annual Report on the Implementation of the EU-Colombia/Peru Trade Agreement

The Second Annual Report on the Implementation of the EU-Colombia/Peru trade agreement, highlights the Colombian National Development Plan. The plan covers different aspects such as decent work for all embedded in a national policy and continuous efforts to facilitate and strengthen the work lf labour inspectors (for example, collection of fines and issues with respect to outsourcing and collective bargaining).

In the area of social dialogue, the re-launched Special Committee on Resolution of Conflict (CECOIT)[162] has made an important contribution. Also improvements in collective bargaining for the public sector have been observed. The report shows appreciation with respect to the efforts of the Colombia Government, however also acknowledged that some issues remain outstanding.

The report also gives an update on both the process and substance of the meetings of the respective domestic mechanisms for consultation with civil society, such as the EU Domestic Advisory Group (DAG). In this regard, a joint statement was made by EU and Colombian representatives that called for more interaction between the groups.

On the way forward, Colombia and Peru a potential area for cooperation was identified in order to better provide information to these countries about the assessment methods of the EU with respect to the trade and sustainable development chapter. Furthermore, another area of interest includes collaboration in Corporate Social Responsibility (CSR) issues (in the textile and mineral sectors) with support of the Organization for Economic Cooperation and Development (see also chapter on "*Corporate social responsibility in trade agreements*" in this handbook).[163]

Canada-Colombia Agreement on Labour Cooperation

The Canada-Colombia Agreement on Labour Cooperation (CCOALC) came into effect in 2011 and is a parallel agreement to the Canada-Colombia Free Trade Agreement (CCFTA, 2011).

Similar as in other trade agreements, various monitoring commitments are made and procedures to involve stakeholders are provided in the CCOALC.

[158] Art. 279 of the EU-Colombia and Peru Trade Agreement.

[159] Art. 280(6).

[160] Regulation (EU) No 19/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0019&from=EN

[161] See Point 4 of European Commission (2016c).

[162] About the CETCOIT initial work see "Intervention of Karen Curtis, Deputy Director of the ILO Office International Labour Standards Department", European Parliament International Trade Committee (12 July 2012). Available at: http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/genericdocument/wcms_185243.pdf

[163] European Commission (2016c).

The Parties, for instance, commit to establish a Ministerial Council and to convene or consult a National Labour Committee, comprising members of the public, including the social partners. The Ministerial Council has the mandate to oversee the implementation of the Agreement and review progress under it. It states that review should include consultation with the public and representatives of labour and business organizations.[164]

The CCFTA, however, is the first and the only trade agreement from Canada that contains the obligation to conduct a Human Rights Impact Assessment (HRIA).[165] A separate agreement between the Parties has been negotiated: The Agreement Concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia (entered into force in 2011). This agreement established an obligation for the parties to conduct yearly self-assessments on trade agreements' human rights implications,[166] which also includes labour rights. Since the entry into force of the agreement, five HRIAs have been conducted and made public.

The methodology of the HRIA, however, has been criticized for its limited scope and effectiveness. Civil society actors called for the report to be conducted by an independent body and for the Canadian government to develop an impartial, credible, effective process to analyse and act upon the findings. Furthermore, they have suggested for a deeper commitment of the respective Parliaments in order to make effective the commitments adopted in the CCOFTA. For example, this could be done by having special hearings before the Parliaments (or the appropriate committees) where relevant stakeholders (witnesses) can provide testimony.[167]

An additional opportunity is to also look at the Corporate Social Responsibility (CSR) of Canadian companies in their activities in Colombia, particularly in the mining sector.[168] A first step to address these criticisms has been the increased consultation of civil society, both through online consultations and meetings with companies and industry associations in relevant economic sectors, trade unions, the Colombian Government, academics and NGOs.

What are areas of opportunity?

This chapter has explored diverse mechanisms and practices to monitor the implementation of trade agreements, review and assess progress in the realization of the labour commitments that are made. Whereas countries have applied different, and often explored innovative, approaches, it is too early to assess and compare the effectiveness of these. It has become clear, however, that:

- Opportunities exist to develop more comprehensive monitoring frameworks that assure meaningful involvement of stakeholders and that are consistent with the four core dimensions: access to information; assessment; policy making; and transparency and accountability.

- Challenges exist to enhance the integration of different monitoring mechanisms (for instance in the fields of dispute settlement, technical cooperation, stakeholder involvement to impact assessment). Further, improving the alignment (coherence) of overlapping labour commitments and follow-up mechanisms across agreements may create efficiency gains.

References

AFL-CIO. 2014. Making the Colombia Labor Action Plan Work for Workers. http://www.aflcio.org/content/download/123141/3414471/April2014_ColombiaReport.pdf

European Commission. 2016a. *The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015*. Joint Staff Working Document (SWD(2016)8final). Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:-52016SC0008&from=EN

-. 2016b. Report on the Generalised Scheme of Preferences covering the period 2014-2015 Brussels. Report from the Commission to the European Parliament and Council (COM(2016) 29 final) Available at: http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154180.pdf

-. 2016c. Second Annual Report on the Implementation of the EU-Colombia/Peru Trade Agreement. Report from the Commission to the European Parliament and Council. (COM(2016) 58 final). Available at: https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-58-EN-F1-1.PDF

International Labour Organization (ILO). 2016. Assessment of labour provisions in trade and investment arrangements (Geneva, ILO).

-. 2014. Rules of the Game: a brief introduction to International Labour Standards (Geneva, ILO). Available at: http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_318141/lang--en/index.htm

-. 2013. Studies on growth with equity: Social dimensions of free trade agreements (Geneva, International Institute for Labour Studies (IILS)).

Rochlin, J. 2014. A golden opportunity lost: Canada's human rights impact assessment and the free trade agreement with

[164] Art. 7-8. See http://www.labour.gc.ca/eng/relations/international/agreements/lca_colombia.shtml#ccalc

[165] Rochlin (2014).

[166] See http://www.treaty-accord.gc.ca/text-texte.aspx?id=105278

[167] United Steelworkers (2016).

[168] Rochlin (2014).

Colombia, in The International Journal of Human Rights, 18: 4-5, pp. 545-566.

United States Trade Representative, Official Blog (USTR). 2015. The Colombian Labor Action Plan at Four Years: Progress and Continuing Challenges (April). Available at: https://ustr.gov/about-us/policy-offices/press-office/blog/2015/april/colombian-labor-action-plan-four-years-progress

United Steelworkers. 2016. "*Five years of Human Rights Impacts. The Canada-Colombia Free Trade Agreement and the Future of Peace and Prosperity in Colombia*". Submission by the United Steelworkers Concerning the Annual Reports on Human Rights and Free Trade between Canada and Colombia. Available at: http://www.usw.ca/news/publications/policy-research-and-submissions/story-document/2016.03-C-COFTA-HRIA-Submission.pdf

Van den Putte, L. 2015. "Involving civil society in social clauses and the Decent Work Agenda" in Global Labour Journal, Vol. 6, No. 2, pp. 221–235.

Washington Office on Latin America (WOLA). 2014. "Three years of noncompliance with the Obama-Santos Labor Action Plan". https://www.wola.org/sites/default/files/Colombia/Labor/ENS%20LAP%20Report%20English%20translation.pdf

Further reading

Elliot, Aissi, J. et al. (Forthcoming). Evaluating the effectiveness of labour provisions in trade agreements – A synthesis, International Labour Review.

Douglas, W. A. et al. 2004. An Effective Confluence of Forces in Support of Workers' Rights: ILO Standards, US Trade Laws, Unions, and NGOs, Human Rights Quarterly, Vol. 26, pp. 273-99.

Graubart, J. 2008. Legalizing transnational activism: The struggle to gain social change from NAFTA's citizen petitions (Penn State Press).

Murillo, M.V.; Schrank, A. 2005. "With a little help from my friends: Partisan politics, transnational alliances, and labor rights in Latin America" in Comparative Political Studies, Vol. 38, No. 8, pp. 971–999.

Nolan García, K.A. 2011. "Transnational advocates and labor rights enforcement in the North American Free Trade Agreement" in Latin American Politics and Society, Vol. 53, No. 2, pp. 29–60.

Peels, R.; Echeverria M., E.; Aissi, J.; Schneider, A. 2016. *Corporate Social Responsibility (CSR) in International Trade and Investment Agreements: Implications for States, Business and Workers*, ILO Research Paper No. 13, ILO Research Paper Series, (Geneva, ILO). Available at: http://www.ilo.org/global/research/papers/WCMS_476193/lang--en/index.htm [7 Nov. 2016].

9 EXPERIENCES OF STAKEHOLDERS IN CONFLICT RESOLUTION: THE CASES OF ASIAN AND LATIN AMERICAN COUNTRIES

SUMMARY

Labour advocates have played an important role in activating the various mechanisms provided under the labour provisions in trade agreements, particularly mechanisms for conflict resolution.

The collaboration among civil society organizations across borders has played a fundamental role in the activation of these mechanisms.

There are interesting examples of combining different options provided under trade agreements, such as dispute settlement, technical cooperation and monitoring.

Active role of stakeholders in conflict resolution

Trade unions and other labour advocates have played an important role in the implementation of labour provisions. Their active involvement has made important contributions to labour law reforms, the strengthening of labour inspectorates and/or increased awareness among policy makers and the wider public.[169]

They have not only been involved in consultative structures, such as Domestic Advisory Groups (see the chapter on "*Involving stakeholders in trade agreements*"), but also in filing submissions when it is believed that a party to the agreement is not complying with the labour provisions.[170] The large majority of cases that have been dealt with under conflict resolution mechanisms have been started by trade unions, often in collaboration with other labour advocates.

An important outcome of conflict resolution mechanisms has been the increase in technical cooperation and the establishment of frameworks for increased monitoring. These often include capacity building of civil society organizations or establishing a framework that permits increased follow-up by stakeholders (e.g. through the United States-Colombia Labor Action Plan).

Looking at various cases of Asian and Latin American countries (the trade agreements between Canada and Colombia; the European Union and the Republic of Korea; and the United States, the Dominican Republic and Central-America); this chapter examines the role of trade unions and other labour advocates during conflict resolution. It also looks at the outcomes of these disputes and how these provide additional opportunities for stakeholders to be involved in the implementation of trade agreements.

This chapter was written by Rafael Peels and Elizabeth Echeverria M.

[169] The primary source of this chapter is ILO (2016).

[170] Whereas the Canadian and US trade agreements provide for a feedback mechanism on public submissions, this is less specified in the case of the EU. An interesting development, however, is for example the EU-Republic of Korea agreement, that specifies the role of the domestic advisory group in bringing to the attention (through communications) of the governments alleged violations of the trade and sustainable development chapter and requesting the activation of the conflict resolution mechanism. This does not mean, however, that government consultations will necessarily be held, but further follow-up can be provided at the Trade and Sustainable Development Committee.

The central role of Domestic Advisory Groups in the EU-Republic of Korea Trade Agreement

In the case of the EU-Republic of Korea trade agreement, the resolution of conflicts is based on consultations, persuasion, active involvement of the Domestic Advisory Groups (DAGs), and follow-up by the Civil Society Forum and the Trade and Sustainable Development Committee.

This case provides an insight into trade union action directed towards the European Commission (EC) seeking a Korean commitment to respect ILO core labour standards. Although, no labour disputes have been brought to the dispute settlement body, European trade unions, mostly through the European Trade Union Confederation (ETUC) collaborating with their Korean counterparts, have sought to address issues with respect to labour and human rights violations. This has been done through letters and public statements to European Commission and Parliament.

Under the agreement, in case of conflict, the parties may formally consult one another and are required to take ILO activities into consideration, and they may request advice from the ILO or other relevant international bodies. If consultations fail or the issue requires further discussion, the parties may request that the Trade and Sustainable Development Committee (TSDC) be convened to resolve the matter. If a solution is not reached (through consultations or the meeting of the TSDC), a party may request that a panel of experts be convened to resolve it. The experts will issue a report with findings and recommendations for the parties, which, ultimately, decide the appropriate measures to take while trying to accommodate these recommendations.[171]

There is no public submission procedure for individuals, labour advocates or other stakeholders. Nevertheless, they can, through the communications of the DAG to the contact points, draw attention to specific matters under the trade and sustainable development chapter. Furthermore, they can also be involved during conflict resolution. The Agreement between the EU and the Republic of Korea states that during government consultations, the Trade and Sustainable Development Committee may seek the advice of the DAGs. Further, at the level of third-party review, the panel of experts can seek information and advice from DAGs.[172]

The EU DAG, since May 2013, issued an opinion on "Fundamental rights at work in the Republic of Korea, identification of areas for action". This document is particularly important as it has set the basis for discussions and follow-up in the identified areas to further labour rights.[173] Also the Republic of Korea DAG issued opinions in 2013, for instance on freedom of association and on forced labour.

In January 2014, the EU DAG asked the European Commission to activate the conflict resolution mechanism and to proceed with consultations due to the Republic of Korea violating its commitments under the agreement. This triggered an exchange of letters between the EU DAG and the Commission, and between the Commission and the Korean authorities, concerning the Republic of Korea's ratification and implementation of the ILO fundamental Conventions.

Furthermore, follow-up has been provided by the Civil Society Forum and the Trade and Sustainable Development Committee. The product of the close follow-up has led to re-engagement in regular technical dialogue with the ILO and efforts to effectively implement the ratified Conventions, as well as to ratifying the remaining core Conventions (the priority and the up-to-date Conventions as well).

It should be noted that even though the attention has been more focalized in the Republic of Korea, the commitments and follow-up refer to both parties' actions to further labour rights. Moreover, a continuous exchange of information is held accompanied by cooperative efforts. For instance, the parties have launched a project with particular emphasis on the implementation of the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Combining dispute settlement and technical cooperation: the case of CAFTA-DR

The Dominican Republic-Central-America Free Trade Agreement (CAFTA-DR) is unique as it is the only bilateral trade agreement so far where an arbitral panel has been established to solve a conflict related to the lack of compliance with the labour provision. Labour advocates have played a key role in activating the dispute settlement mechanism, which has been used in combination with the establishment of an "*Action Plans*", identifying more detailed and time-bound benchmarks for monitoring (see Box 9.1 for the case of Honduras).

The first labour submission under CAFTA-DR was filed in April 2008. The petitioners included the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and six Guatemalan labour unions. The submission alleged that Guatemala had violated its labour obligations under the labour chapter of the CAFTA-DR. In particular with respect to the shared commitment to the 1998 ILO Declaration, enforcement of labour laws, and access to a fair and efficient court system. Hence, the arguments included that labour conditions in the country have remained unchanged or have worsened since the trade agreement

[171] E.g. Art. 13.14 and 13.15 of EU-Republic of Korea.

[172] Ibid.

[173] European Union Domestic Advisory Group (2013).

was ratified; that the level of physical violence against trade unionists increased; that violations of freedom of association and collective bargaining continued apace; and that access to fair and efficient administrative or judicial tribunals remained elusive.[174]

The submission was built around five examples. One of the examples for instance deals with port workers, where the Government was believed to have failed: to effectively enforce the labour laws as to each of the violations, and to have adequately investigated death threats and the assassination of various trade unionists.[175]

The Office of Trade and Labor Affairs (OTLA) accepted the submission and issued its report of review with its findings and recommendations in January 2009. In July 2010, after Guatemala was not able to comply with the recommendations of the report, the United States, proceed as established in the Agreement by requesting formal consultations with Guatemala.

The consultations and, the further meeting of the Free Trade Commission of the Agreements did not find a solution to the matter. Therefore, after the United States requested the establishment of an arbitral panel alleging that Guatemala had failed to effectively enforce its labour law (which is the only provision that can be subject to arbitration under the Agreement).

In an effort to find a solution of the issue before entering in a formal arbitration procedure, both parties agreed to suspend the process. The suspension was subject to the implementation of an Enforcement Plan to address the labour law enforcement issues raised by the United States and to monitor the Plan's implementation. In April 2013, the U.S. and Guatemalan Governments agreed to an 18-point Enforcement Plan, in which Guatemala committed to take action in six key areas. The parties agreed to continue the suspension of the panel's work as progress toward the main areas of the Enforcement Plan continued. These where:

- Strengthening the Ministry of Labour to enforce labour laws;
- Ensuring payment to workers when factories suddenly close;
- Improving enforcement of court orders;
- Ensuring export companies comply with labour laws; and
- Transparency and coordination.

The Enforcement Plan identified time-bound and detailed indicators that establish a framework for civil society to closely monitor progress. For example, one dimension of improving the enforcement of court orders entailed, within 75 days, to publish on the website the details of a monitoring plan.

Further, in the area of transparency and coordination, the Enforcement Plan addresses:

- *Stakeholder Input*: Guatemala is required to publicize the Enforcement Plan and meet with the Tripartite Commission, in conformity with ILO Convention 144 on Tripartite Consultation, and with other interested parties, as appropriate, to review its implementation;

- *Access to information*: Guatemala is required to publish data concerning labour complaints, inspections, violations, and Court orders.

In spite of some efforts to comply, in September 2014, the United States Trade Representative (USTR) resumed the dispute settlement procedures. The main reason was that crucial elements of the Enforcement Plan remained.

The procedures allow for the participation of non-governmental organization in the filing of written views (or submissions) to the Panel. In total, the arbitral panel received eight non-governmental submissions (April 2015). Three of these requested the panel to find Guatemala in violation of the commitment to effectively enforce labour laws (including one of the AFL-CIO).[176]

By September 2016 the Arbitral Panel issued its initial panel report, which has been distributed to the parties for comments, but not released to the public yet. The parties have agreed to send comments by 12 December 2016. According to the agreement the panel shall issue the final report and present it to the parties, within 30 days of the presentation of the initial report (this deadline might not be met due to the extension of the commenting period). After it is presented to the parties it should be made public within 15 days.

If Guatemala is found in non-compliance, the parties may reach an agreement to solve the matter. However, if an agreement is not reached or the United States considered that the agreement was unsuccessfully fulfilled, the United States may request to the panel the imposition of an annual monetary assessment up to US$15 million. If the latter is the case, a labour fund must be constituted by the trade ministers of the parties. The amount shall be destined to solve the labour issues. However, if the amount is not paid to the fund, the suspension of trade benefits could apply to secure the amount.[177]

[174] See public submission available at: https://www.dol.gov/ilab/reports/pdf/GuatemalaSub.pdf

[175] The failure of the Government action in this example, was with respect to the behaviour of the employer, which: failed to bargain in good faith as required by law; unlawfully dismissed union members and subsequently failed to reinstate workers pursuant to a judicial order; and attempted to form a management-dominated union in order to displace the existing union.

[1756] The remaining submissions suggested that Guatemala was in compliance with its obligations under the agreement.

[177] For similar process see box 9.1.

Box 9.1 The case of Honduras

In 2012, a labour submission was filed under CAFTA-DR by the AFL-CIO and 26 trade unions and civil society organizations from Honduras with respect to the labour situation in Honduras.

The submission alleged the failure of the government of Honduras to effectively enforce its labour laws and to comply with its commitments under CAFTA-DR. It pays particular attention to three export-related sectors: manufacturing, agriculture, and port operations. The submission also notes that workers in Honduras have continued to see violations of their rights of freedom of association, collective bargaining and acceptable conditions of work. Further, it states the lack of access of workers to tribunals, either judicial or administrative, that are efficient and transparent. The use of child labour, particularly in the agricultural sector, is also highlighted as a serious concern, as well as women's discrimination in the manufacturing sector (see also chapter 13 in this handbook).[178]

In response to the petition, dialogue and regular meetings were held between both countries and involved representatives from unions and nongovernmental organizations (NGOs). Further, OTLA, in the report of review, recommended the development of a monitoring and action plan, with the intention to develop time-bound steps and benchmarks to measure progress.

The plan, released in mid-December 2015, identifies not only intended outcomes, for example, improvements in the labour inspectorates to promote better law enforcement, to remedy labour law violations and to enhance institutional cooperation, but also time-bound steps, and benchmarks to measure progress.

It provides for improved engagement with the public, mainly the social partners, and includes a section on transparency, outreach and engagement, which covers not only capacity building activities and training, but also calls for support from employer associations and worker organizations to ensure the sustainability of the Honduran Government efforts.[179]

The first case of public submissions under Canadian agreements[180]

Aside from the different public submissions filed under the North American Free Trade Agreement (1994), no other Canadian agreement has been utilized by stakeholders with respect to public communications.

It has been only recently, on 15 July 2016, that the Canada's National Administration Office (NAO)[181] accepted for review the public communication "*Concerning the failure of the Government of Colombia to comply with the Canada-Colombia Agreement on Labour Cooperation*". The Canadian Labour Congress and five Colombian labour organizations, filed the submission on 20 May 2016.

The public communication alleges that the Government of Colombia failed to comply with its commitments under the labour agreement, particularly in the areas of:

- freedom of association and the right to collective bargaining;
- enforcement of labour laws;
- derogation from labour laws in order to encourage trade and foreign investment; and
- timely access to labour justice.

The NAO has determined that the public communication meets all of the eligibility and technical requirements and will review the complaint in accordance with established procedures.

The Canada-Colombia Agreement on Labour Cooperation came into effect in 2011 and is a parallel agreement to the Canada-Colombia Free Trade Agreement (CCFTA, 2011). The public communication process, included under the CCOALC, allows stakeholders to voice their concerns to governments about the enforcement of labour laws in the agreement's partner country and provides a formal channel for governments to review these concerns.

In general, Canadian trade agreements provide for a mechanism to solve conflicts. After the public communications has been accepted, the NAO will decide on recommending further action such as general consultations or ministerial consultations. According to the particular agreement under discussion the process (after concluding ministerial consultations) may lead to the establishment of a review panel only if the issues are trade-related.[182] For the implementation of the final report of the review panel, the parties may agree on an action plan to comply, and in case of non-compliance there is the possibility of a monetary assessment.

[178] See more in AFL-CIO (2012).

[179] ILO (2016, p. 145).

[180] The text of the communication is not publicly available. For some initial information see: http://www.labour.gc.ca/eng/relations/international/agreements/colombia/2016-1.shtml

[181] The NAO is established to receive communications from the parties to trade agreements, but also to monitor and enforce labour provisions.

[182] Other requirements include the other party's failure through a persistent pattern of failure to effectively enforce its labour law or a failure to comply with labour obligations with respect to the 1998 Declaration on Fundamental Principles and Rights at Work.

[183] See also the chapter on the typology of labour provisions in this handbook.

What are areas of opportunity?

Social partners have an important role to play in activating the various mechanisms that are provided under trade agreements, particularly in the activation of diverse mechanisms for conflict resolution.

The chapter finds that notwithstanding the different approaches applied by Canada, the European Union and the United States with respect to the enforcement of labour provisions; in all the cases, stakeholders have been key in activating mechanisms to resolve conflicts.

The activation of the dispute settlement mechanism has also had important side-effects, for instance, through the development of technical cooperation projects or the establishment of monitoring mechanisms.

Often, trade unions and labour advocates have collaborated across national borders in the submission of complaints on the violation of labour commitments made under the trade agreements.

Important challenges, however, exist to enhance the integration of different monitoring and enforcement mechanisms, ranging from the fields of conflict resolution, technical cooperation, stakeholders' involvement to impact assessment. Further, opportunities exist to enhance alignment across agreements that contain overlapping commitments and follow-up mechanisms.

References

AFL-CIO. 2012. The AFL-CIO Joins Honduran Trade Unions in Filing a Petition with Department of Labor against Honduran Government for Failing to Enforce Labor Laws under Trade Agreement. Available at: http://www.aflcio.org/Press-Room/Press-Releases/The-AFL-CIO-Joins-Honduran-Trade-Unions-in-Filing-a-Petition-with-Department-of-Labor-against-Honduran-Government-for-Failing-to-Enforce-Labor-Laws-under-Trade-Agreement

European Union Domestic Advisory Group. 2013. *OPINION on the Fundamental rights at work in the Republic of Korea, identification of areas for action*. Available at: http://www.eesc.europa.eu/resources/docs/eu-dag-opinion-on-labour-standards_en.pdf

International Labour Organization (ILO). 2016. Assessment of labour provisions in trade and investment arrangements (Geneva, ILO).

United States Trade Representative, Official Blog (USTR). 2015. The Colombian Labor Action Plan at Four Years: Progress and Continuing Challenges (April). Available at: https://ustr.gov/about-us/policy-offices/press-office/blog/2015/april/colombian-labor-action-plan-four-years-progress

Van den Putte, L. 2015. "Involving civil society in social clauses and the Decent Work Agenda" in Global Labour Journal, Vol. 6, No. 2, pp. 221–235.

Further reading

Aissi, J. et al. (Forthcoming). Evaluating the effectiveness of labour provisions in trade agreements – A synthesis, International Labour Review.

Alger, C.F. 1997. "Transnational social movements, world politics and global governance", in J. Smith, C. Chatfield and R. Pagnucco (eds): Transnational social movements and global politics: Solidarity beyond the state (Syracuse, NY, Syracuse University press), pp. 260–275.

Compa, L. 2001. "NAFTA's labor side agreement and international labor solidarity", in Antipode, Vol. 33 (July, Cornell University), pp. 451–467.

Douglas, W. A. et al. 2004. An Effective Confluence of Forces in Support of Workers' Rights: ILO Standards, US Trade Laws, Unions, and NGOs, Human Rights Quarterly, Vol. 26, pp. 273-99.

Graubart, J. 2008. Legalizing transnational activism: The struggle to gain social change from NAFTA's citizen petitions (Penn State Press).

Kay, T. 2005. "Labor transnationalism and global governance: The impact of NAFTA on transnational labor relationships in North America" in American Journal of Sociology, Vol. 111, No. 3, pp. 715–756.

International Labour Organization (ILO). 2013. Studies on growth with equity: Social dimensions of free trade agreements (Geneva, International Institute for Labour Studies (IILS)).

Murillo, M.V.; Schrank, A. 2005. "With a little help from my friends: Partisan politics, transnational alliances, and labor rights in Latin America" in Comparative Political Studies, Vol. 38, No. 8, pp. 971–999.

Nolan García, K.A. 2011. "Transnational advocates and labor rights enforcement in the North American Free Trade Agreement" in Latin American Politics and Society, Vol. 53, No. 2, pp. 29–60.

Postnikov, E.; Bastiaens, I. 2014. "Does dialogue work? The effectiveness of labor standards in EU preferential trade agreements" in Journal of European Public Policy, Vol. 21, Issue 6, pp. 923–940.

Rochlin, J. 2014. A golden opportunity lost: Canada's human rights impact assessment and the free trade agreement with Colombia, in The International Journal of Human Rights, 18: 4-5, pp. 545-566.

10 PROMOTING LABOUR RIGHTS: EXPERIENCES OF MEXICO AND MOROCCO WITH THE EUROPEAN UNION AND THE UNITED STATES

SUMMARY

Mexican and Moroccan agreements with the United States and the European Union include means to promote labour rights: enforcement mechanisms, cooperative activities, and cross-national dialogue.

The agreements analysed in the chapter feature implementation mechanisms that are applicable to the labour provisions, the human rights clauses or the commitment to cooperate on social issues.

Some mechanisms are used more frequently than others, but they are partly interrelated.

Indications of implementation with the objective of promoting labour rights have been found as having impacts in areas such as awareness raising, and political and technical capacity. There is still scope, however, for improvement.

How are labour rights promoted in the agreements?

Mexico and Morocco have institutionalized their trade relations with the United States and the European Union (EU) through four agreements concluded between 1992 and 2004:

- North American Free Trade Agreement (NAFTA, signed in 1992 and in force since 1994);
- EU-Mexico Economic Partnership, Political Coordination, and Cooperation Agreement (also referred to as EU-Mexico Global Agreement (GA), signed in 1997 and in force since 2000);
- United States-Morocco Free Trade Agreement (United States-Morocco FTA, signed in 2004 and in force since 2006);
- EU-Morocco Association Agreement (EU-Morocco AA, signed in 1996 and in force since 2000).

The agreements between these parties, although covering different generations of trade agreements and different political frameworks, have a number of elements in common. In particular, in each agreement there are implementation mechanisms, for the promotion of labour standards, such as cooperative activities, cross-national dialogue, and enforcement mechanisms.

In the agreements with the United States, reference to labour standards and mechanisms for implementation include labour provisions in line with and as defined by the ILO (2016), respectively.[183] In the case of the EU, labour issues are addressed in the larger context of the human rights framework. The agreements with the EU include a human rights clause and a commitment to cooperate in human rights and social matters.[184] The human rights clause requires both parties to respect the fundamental human rights as proclaimed in the Universal Declaration of Human Rights, of which core labour standards form part (see the chapter on trade and labour standards linkage in this handbook).[185] Both agree-

This chapter was written by Myriam Oehri (adapted by the ILO Research Department)

[184] Bartels (2013).

[185] According to the European Commission (2003), "'essential element' clauses […] can be used to promote dialogue and co-operation between partners through encouraging joint actions for democratization and Human Rights, including the effective implementation of international Human Rights instruments and the prevention of crises through the establishment of a consistent and long-term cooperative relationship" (EU Commission 2003, p. 11; see also Bartels 2004, p. 370).

ments with the EU are in a process of renegotiation and modernization.[186]

Three different implementation mechanisms included in the United States and EU agreements are examined in table 10.1: cooperative activities (such as technical assistance and capacity-building); cross-national dialogue (between governments; civil societies, or public-private); and enforcement mechanisms (including consultations, dispute settlement, and the possibility of sanctions). The remainder of the chapter elaborates on these mechanisms.

Table 10.1 Implementation mechanisms to promote labour rights

	Cooperative activities	Cross-national dialogue	Enforcement mechanism
NAALC	Broad range of cooperative activities in labour affairs	Cross- national dialogue through the Commission for Labour Cooperation with public session	Enforcement of labour rights with possibility of financial and trade sanctions
United States-Morocco FTA	Broad range of cooperative activities in labour affairs through the Labour Cooperation Mechanism	Cross-national dialogue through the Subcommittee on Labour Affairs with public session	Enforcement of labour rights with the possibility of financial sanctions
EU-Mexico GA	Broad range of cooperative activities on human rights and social affairs	Cross-national dialogue through the Joint Committee and special committee or body	Enforcement of labour rights as part of human rights, with the possibility of "appropriate measures"[187]
EU-Morocco AA	Broad range of cooperative activities on human rights and social affairs	Cross-national dialogue through the Association Council and a working party	Enforcement of labour rights as part of human rights with the possibility of "appropriate measures"

How have the agreements been implemented in Mexico?

Experience with the NAALC

The North American Agreement on Labor Cooperation (NAALC) is the side agreement to the North American Free Trade Agreement (NAFTA), which regulates labour issues. All three mechanisms, which are cooperative activities, cross-national dialogue and enforcement mechanisms, have been activated and contributed to the promotion and protection of labour rights in Mexico.

In practice, **cooperative activities** cover a wide range of labour issues, such as occupational safety and health, child labour, and migrant workers, among others. The number of cooperative activities, however, has decreased over time – from 16 activities conducted in the first year to one or two per year in the period 2001–2009. These activities had positive impacts on Mexican labour practices, for example, strengthening the capacities of trade unions, generating transnational networks and raising workers' awareness about their rights.[188] Even though the improvements achieved through cooperative activities have been acknowledged by different stakeholders, some issues have hindered the efficacy of the collaboration. For instance, concerns have been expressed with regard to the lack of professionalism among Mexican labour agency officials.[189]

Cross-national dialogues were carried out regularly between US and Mexican officials to address labour issues. These dialogues were facilitated by the NAALC Commission for Labour Cooperation, which consisted of a Secretariat and a Council of labour ministers.[190] The meetings normally concluded with public sessions to provide a space for questions and information sharing with stakeholders. Even though the number of meetings has decreased over the years, both parties have not ceased communication entirely. Labour-related conversations have occurred in other settings, or have been triggered in the context of labour submissions.

With respect to **enforcement mechanisms**, the United States has received more than 20 submissions alleging labour right violations in Mexico from United States, Mexican, or in-

[186] European Commission (2015).

[187] "Appropriate measures" may be adopted by the parties to the trade agreement when violations of the human rights clause occur. This could imply partial or total suspension of the agreement, among other measures. Bartels (2005).

[188] Aspinwall (2013, pp. 94–95, 121); Finbow (2006, p. 214–218); Nolan Garcia, (2011, p. 100).

[189] Aspinwall (2013, p. 101).

[190] The Commission's secretariat was closed in 2010 (Nolan Garcia, 2011, p. 102).

ternational trade unions and their confederations, and other civil society members.[191] The enforcement mechanism provides for a comprehensive follow-up procedure. This procedure could reach the phase involving a committee of experts and an arbitral panel with the possibility of sanctions, but only when the labour violations are related to occupational safety and health, child labour and the technical minimum wage.[192] Cases related to labour violations of freedom of association, collective bargaining, and the right to strike are limited to the solution of conflicts through ministerial consultations.

No submission, however, has gone beyond the level of ministerial consultations. This is mainly because amicable solutions are preferred in resolving issues, rather than triggering a dispute that could end in sanctions.[193]

The enforcement mechanism has positively influenced Mexico's labour environment in some aspects:

- For instance, the conclusion of ministerial agreements as a result of ministerial consultations has helped to reinforce commitments to protect labour rights. The ministerial agreements generally included commitments to exchange information, to hold conferences and/or seminars, to enhance cooperation and to develop research. The main issues covered were those of the submissions for instance freedom of association, the right to organize, or non-discrimination in employment and occupation.

Moreover, the submissions have raised awareness of labour rights and practices, for example through the media, or as part of larger advocacy campaigns.[194] They also contributed to transnational cooperation among trade unions and civil society of the countries party to the agreement.[195]

Some obstacles to the promotion of labour rights have also been identified, however, such as the limited political commitment displayed by authorities to the sustained follow-up of the process of submissions. An example is the lack of transparency in providing information to the groups and trade unions that filed the submissions about the status of the procedure.[196]

Experience with the EU-Mexico Economic Partnership, Political Coordination, and Cooperation Agreement

In the context of the EU-Mexico Global Agreement, the cooperative activities and cross-national dialogue addressed labour matters in the following ways:

The EU has supported various **cooperative activities** regarding human rights with a focus on labour:

- For example, the EU funded the project with the aim of guaranteeing labour rights of young people in the state of Chiapas. To that end the project trained 200 young individuals from different civil society organizations, employers and government actors in the region in assessment methods for working conditions. The effects of the project also included the establishment of labour rights dialogue between different sectors in Mexico.

- In addition, the 2010 Joint Executive Plan under the agreement established commitments to collaborate on the ILO Decent Work Agenda. It included activities such as exchange of information and best practices on issues such as occupational safety and health.

There is still scope, however, for improvement in EU-Mexico collaboration, particularly regarding the number of labour-related projects and the budgets provided for them.

Mexico and the EU have also promoted **cross-national dialogue** including civil society actors. The first Civil Society Forum was organized in Brussels in 2002 and has been held every two years since. As labour issues were not the main focus of the Forum, however, Mexican and European labour representatives coordinated to meet in a different setting. The EU-Mexico Trade Union Meeting was created and meetings were held regularly to enhance the functioning of the EU-Mexico Economic Partnership, Political Coordination, and Cooperation Agreement regarding labour rights.

Finally, the **enforcement mechanism**, as provided for in the EU-Mexico Global Agreement, has to date not been activated.[197]

While this chapter is concerned with the current agreement, it should be noted that the EU and Mexico have started a renegotiation and modernization process of the agreement. In the first round of negotiations (June 2016), the two parties agreed on the importance of including a chapter on trade and sustainable development. Furthermore, the recently available summary of the impact assessment qualifies the renegotiation as a means of strengthening respect for human rights and the application of ILO Conventions already ratified by Mexico, and of furnishing support towards a future ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).[198]

[191] Information available on the US Department of Labor website at: http://www.dol.gov/ilab/trade/agreements/naalc.htm [2 Nov. 2016].

[192] ILO (2013, p. 43).

[193] Compa and Brooks (2014, p. 26).

[194] ILO (2013, p. 50).

[195] Kay (2011).

[196] Aspinawall (2013, p. 97); Nolan Garcia (2011, p. 104).

[197] Oehri (2015, pp. 741–742).

[198] European Commission (2015).

How have the agreements been implemented in Morocco?

Experience with the United States-Morocco Free Trade Agreement

In order to improve labour conditions in Morocco, both parties have placed emphasis on cooperative activities and cross-national dialogue:

Cooperative activities under the agreement range from study visits and joint conferences to workshops and seminars. These activities have been effective in promoting labour rights to some extent. For example, in 2007, a capacity-building project was conducted for government representatives of the Moroccan Ministry of Labour and social partners on labour rights obligations. The project achieved most of its objectives and was highly appreciated by stakeholders. The impacts of the implemented projects are expected to be sustainable over time – the activities also included the creation of training manuals (on labour inspections' procedures); and the formation of trainers' networks to capacity building. Nevertheless, cooperation between the United States and Morocco can still be improved by addressing the lack of funding issues on particular labour rights.

Cross-national dialogue between the United States and Morocco, through the Subcommittee on Labour Affairs has also proved to be a useful tool in promoting labour rights and improving labour conditions. Through such dialogue, the US and Moroccan authorities have evaluated past activities and identified priorities for future cooperation. The US delegation has also organized meetings with Moroccan civil society to discuss labour-related issues.[199]

Both cross-national dialogue and cooperative activities have made Moroccan stakeholders aware of the opportunities afforded by the Free Trade Agreement mechanism to cooperate transnationally.

Since the United States-Morocco Free Trade Agreement came into force in 2006, its **enforcement mechanisms** have not been activated. Neither of the parties has filed public submissions reporting labour rights violations from their counterparts.[200]

Experience with the EU-Morocco Association Agreement

The European Union and Morocco are instead focusing on cooperative projects and social dialogue to address the Moroccan labour situation.

Cooperative activities may be conducted bilaterally (ongoing programmes in Morocco are funded by the EU as well as any of the Member States of the EU) or in coordination with international or regional organizations. For example, from 2008 to 2010 the EU funded a project to strengthening the role of trade union actors in the promotion of legal, social, economic and cultural rights of workers. Strengthening social dialogue in Morocco is also part of EU supported projects on employment and labour in the framework of the Union for the Mediterranean.[201] This goes beyond the bilateral EU-Morocco agreement but is very relevant for promoting decent work in the region.

Moreover, the agreement establishes regular **cross-national dialogue**s at the ministerial and senior official level, and any other diplomatic means to discuss social issues. Since 2001, the EU and Morocco have met frequently in the Working Group on Social Affairs and Migration, which included officials from the European Commission, EU Member States and Morocco. In this framework, conversations are held about relevant labour-related issues and policy implementation For example, in 2013 the discussions included topics related to the ratification and effective implementation of ILO Conventions. Both parties also exchange information and best practices through such dialogues.

Similar to the United States-Morocco Free Trade Agreement, the **enforcement mechanism** of the EU-Morocco Association Agreement has never been activated.[202]

Since March 2013, this agreement has been under renegotiation, with a view to its modernization and development into what is designated a Deep and Comprehensive Free Trade Area (DCFTA).

Table 10.2 summarizes examples of implementation activities, key areas, and results in the promotion of labor standards in Mexico and Morocco

[199] Oehri (2015, pp. 740–741).

[200] Information available on the US Department of Labor website at: http://www.dol.gov/ilab/trade/agreements/fta-subs.htm [2 Nov. 2016].

[201] For example, the Union for the Mediterranean, Ministerial Conference on Employment and Labour held on 27 September, 2016. Also, the EU has provided financial support for the regional 'Pilot project for the promotion of social dialogue' implemented in Morocco, Tunisia and Jordan as priority countries but also including regional activities. Information available on the EU website at: http://ec.europa.eu/social/main.jsp?langId=en&catId=87&eventsId=1156&furtherEvents=yes [15 Nov. 2016].

[202] Oehri (2015, pp. 741–742).

Table 10.2 Examples of implementation activities, key areas and results

Agreement	Implementation activities	Key areas	Results
NAALC	• Cooperative activities: workshops, best practice seminars, technical support, capacity-building activities (for independent unions) • Cross-national dialogue: Commission for Labour Cooperation meetings, public sessions • Enforcement mechanism: activated by public submissions up to ministerial consultations	• Freedom of association • Employment discrimination • Occupational safety and health • Gender issues • Migrant labour	• Ministerial agreements to tackle labour challenges • Media's awareness of labour-related issues • Impact on labour law reform • Strengthening of relationship of the United States' and Mexico's trade unions
EU-Mexico GA	• Cooperative activities: training (of civil society, employers, and government stakeholders), exchange of information and best practices • Cross-national dialogue: Civil Society Forum and Trade Union Meeting • No use of enforcement mechanism	• Labour rights and working conditions • Youth employment • Occupational safety and health • Migrant labour • ILO Decent Work Agenda	• Raising young people's awareness of labour rights • Strengthening trade unions' capacities • Establishing cross-sector dialogue
United States-Morocco FTA	• Cooperative activities: capacity building, training modules (including education of employers and workers on rights and obligations under the law) • Cross-national dialogue: Subcommittee on Labour Affairs meetings, public sessions • No use of enforcement mechanism	• Labour rights in general • Gender issues • Labour inspections • Child labour	• Training manuals for employers and workers and manuals of inspectors' procedures • Establishing trainers' networks • Improving mediation and conciliation climate
EU-Morocco AA	• Cooperative activities: peer-to-peer consultations, cross-sector dialogue, exchange of information and best practices • Cross-national dialogue: Working Party on Social Affairs and Migration meetings • No use of enforcement mechanism	• Labour rights in general • Freedom of association • Trade unions capacity enhancement • Social security • Labour policy • Implementation of ILO Conventions	• Exchange of information and best practices • Rising awareness of trade union rights

What can we conclude?

In the case of Mexico and Morocco, commitments related to labour in their agreements with the United States and the EU (included in labour provisions or in the broader framework of human rights and social affairs) have been implemented to a certain extent. The three main implementation means comprise cooperative activities, cross-national dialogues, and enforcement mechanisms. Compared to the other two instruments, the enforcement mechanisms have not been fully used. Out of the four agreements examined, only the NAALC enforcement procedure has been activated. Cooperative activities and cross-national dialogues have been carried out more frequently to improve the protection and promotion of labour rights. Even though all three mechanisms have been effective to some extent, there is still scope for further development.

Moreover, there is an interrelation between the three mechanisms. In fact, enforcement mechanisms, whether activated or not, serve as a useful step towards triggering and increasing cooperative activities (NAALC, United States-Morocco Free Trade Agreement). Cross-national dialogues are also crucial to evaluating past and facilitating future labour cooperation between partner states (NAALC, EU-Mexico Global Agreement, United States-Morocco Free Trade Agreement, and EU-Morocco Association Agreement). Authorities and policymakers are therefore well advised to further investigate actual and potential synergies between the different implementation mechanisms to increase their effectiveness on the ground.

References

Aspinwall, M. 2013. *Side Effects. Mexican Governance under NAFTA's Labor and Environmental Agreements* (Stanford University Press, Stanford).

Bartels, L. (2004). "A Legal Analysis of Human Rights Clauses in the European Union's Euro-Mediterranean Association Agreements", in *Mediterranean Politics*, Vol. 9, No. 3, pp. 368–395.

Bartels, L. 2005. *Human Rights and Democracy Clauses in the EU's International Agreements. Directorate-General for External Policies of the Union*. Available at: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/nt/584/584520/584520en.pdf [2 Nov. 2016].

Compa, L.; Brooks, T. 2014. *The North American Free Trade Agreement (NAFTA), North American Agreement on Labor Cooperation (NAALC) and Labor Provisions in other North American Free Trade Agreements*, Wolters Kluwer Law and Business.

European Commission. 2003. European Commission Communication on Reinvigorating EU Actions on Human Rights and Democratisation with Mediterranean Partners: Strategic Guidelines, COM (2003) 294.

European Commission. 2015. *Executive Summary of the Impact Assessment Accompanying the document Recommendation for a Council Decision authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to open negotiations and negotiate with Mexico a modernised Global Agreement*, Commission Staff Working Document, (Brussels, 16 December).

Finbow, R.G. 2006. *The Limits of Regionalism, NAFTA's Labour Accord* (Ashgate Publishing Company, Burlington).

ILO. 2016. *Studies on Growth with Equity: Assessment of Labour Provisions in Trade and Investment Arrangements*, (Geneva, Research Department).

—. 2013. *Studies on Growth with Equity. Social Dimensions of Free Trade Agreements*, (Geneva, IILS).

Kay, T. 2011. *NAFTA and the Politics of Labor Transnationalism* (Cambridge University Press, Cambridge).

Nolan García, K.A. 2011. "The evolution of United States Mexico labor cooperation (1994-2009): achievements and challenges", in *Politics & Policy*, Vol. 39, No. 1, pp. 91–117.

Oehri, M. 2015. "Comparing US and EU labour governance 'near and far' – hierarchy vs network?", in *Journal of European Public Policy*, Vol. 22, No. 5, pp. 731–749.

US Department of Labor website at http://www.dol.gov/ilab/trade/agreements/fta-subs.htm [2 Nov. 2016].

US Department of Labor website at http://www.dol.gov/ilab/trade/agreements/naalc.htm [2 Nov. 2016].

Further reading

Behrens, M.; Janusch, H. 2012. "Great 'Normative Power': The European and American trade approaches with Chile and Mexico", in *European Foreign Affairs Review*, Vol. 17, No. 3, pp. 367–386.

Brower, A. 2008. "Rethinking NAFTA's NAALC Provisions: The Effectiveness of its Dispute Resolution System on the Protection of Mexican Migrant Workers in the United States", in *Indiana International and Comparative Law Review*, Vol. 18, No. 1, pp. 153–188.

Grynberg, R.; Qalo, V. 2006. "Labour standards in US and EU Preferential Trade Agreements", in *Journal of World Trade*, Vol. 40, No. 4, pp. 619–53.

Kerremans, B.; Martins Gistelinck, M. 2009. "Interest aggregation, political parties, labour standards and trade: differences in the US and EU approaches to the inclusion of labour standards in international trade agreements", in *European Foreign Affairs Review*, Vol. 14, No. 5, pp. 683–701.

Oehri, M. forthcoming. *US and EU External Labor Governance: Workers' Rights Promotion in Trade Agreements and in Practice* (Palgrave Macmillan, Basingstoke, Hampshire).

11 LABOUR PROVISIONS IN THE EUROPEAN UNION-REPUBLIC OF MOLDOVA ASSOCIATION AGREEMENT

SUMMARY [203]

The European Union-Republic of Moldova Association Agreement is one of the new generation of EU free trade agreements, which treat labour provisions through a distinct chapter on trade and sustainable development.

The Agreement also requires the approximation of the Republic of Moldova's legal frameworks with EU law in relation to employment and occupational health and safety directives over a 10-year period.

There are limits to the ability of the Agreement's approach based on civil society integration to affect meaningful change in relation to the most important labour issues

Background to the European Union-Republic of Moldova Association Agreement

The Republic of Moldova and the European Union (EU) signed an Association Agreement in June 2014, which was provisionally applied until its full implementation in 2016. There are two main elements to the Agreement: a "political agreement" for progressive engagement with the EU with respect to domestic reform in the Republic of Moldova, and the establishment of a so-called "deep and comprehensive free trade area" (DCFTA) over a 10-year transitional period. The Association Agreement, which forms part of the EU's approach to its European Neighbourhood Policy, aims to build good neighbourly relations and includes a wider set of provisions than a standard free trade agreement. Association Agreements apply to three of the EU Eastern European partners (Georgia, Republic of Moldova and Ukraine).

Prior to the Association Agreement, goods exports to the EU had witnessed tariff and quota liberalization, and agricultural exports had seen improved access to the EU market under the Autonomous Trade Preferences Agreement (2008–14), its predecessors, the Partnership and Cooperation Agreement (July 1998),[204] the Generalized System of Preferences (GSP – 1998–2005), and the special incentive arrangements for sustainable development and good governance under the GSP, known as the "GSP+".

The Association Agreement has been a mechanism by which pro-EU political forces and the post-2009 Government in the Republic of Moldova sought to transform the country's external relations in the face of continuing Russian influence in the so-called "frozen conflict" in the Dniester region, to which the DCFTA was applied in practice only after some delay in January 2016.

This chapter was written by Adrian Smith, Mirela Barbu, James Harrison, Liam Campling and Ben Richardson

[203] This contribution arises from research undertaken as part of a UK Economic and Social Research Council-funded project entitled "Working Beyond the Border: European Union Trade Agreements and Labour Standards" (award number: ES/M009343/1).

[204] The Partnership and Cooperation Agreement provided most-favoured-nation status for trade in goods and the removal of quantitative restrictions, with the exception of textiles and clothing products, which were regulated under a separate agreement dating back to 14 May 1993. COM(1993) 101 FINAL: available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51993PC0101(03)&rid=1 [16 Nov. 2016]. This was an updated version of the December 1989 EU-USSR textiles agreement (applied from January 1990 until end of 1992) in which quantitative restrictions on textile and clothing imports to the European Community were partially maintained.

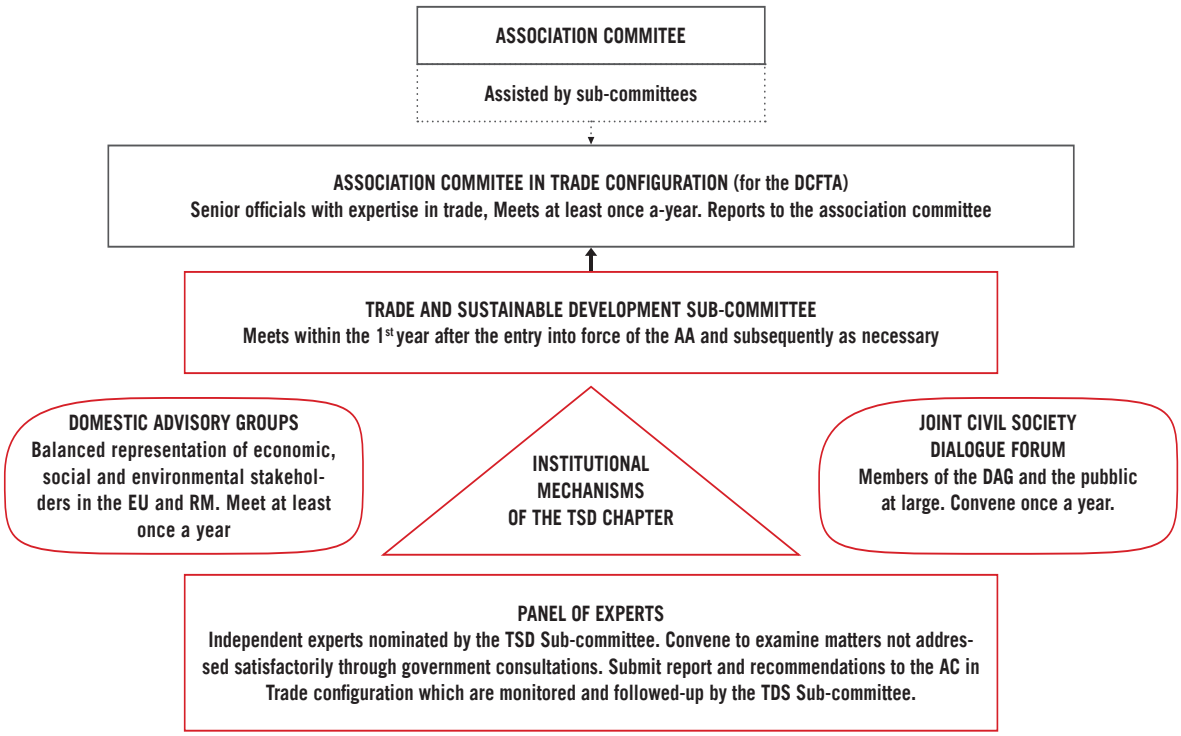
What is the content and scope of the labour provisions in the Agreement?

Where labour provisions are concerned, the EU-Republic of Moldova Association Agreement has replaced arrangements that were established in the earlier GSP+ and Autonomous Trade Preference agreements, both of which were subject to ratification by the Republic of Moldova and implementation of a range of ILO Conventions and other human rights agreements and commitments to good governance and sustainable development. By the time the Association Agreement was signed, the Republic of Moldova had already ratified all eight ILO core (fundamental) conventions, all four governance conventions, and 30 (out of 177) technical conventions. Five of the eight core Conventions had been ratified prior to the establishment of the GSP+ arrangements.

There are two primary mechanisms by which labour provisions and working conditions are regulated in the current Association Agreement. First, there is a trade and sustainable development chapter in the DCFTA, which has been part of the EU's approach to all its trade agreements since the 2011 EU-Republic of Korea Free Trade Agreement. This chapter combines a series of commitments relating to both labour standards and environmental matters. The labour provisions make reference to the obligations arising from the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the Decent Work Agenda, and focus on the eight fundamental labour standards conventions; a series of procedural commitments; and a number of new institutional mechanisms for implementation, which operate on the basis of the procedural commitments (see Barbu et al., 2016). The primary obligations relate to "respecting, promoting and realizing in their law and practice" the fundamental conventions of the ILO[205] and priority and other ILO conventions that have been ratified by the parties (appendix 11.1, section I).

The procedural commitments relate to transparency, dialogue and cooperation between social actors, and a commitment to impact assessment (see below). The institutional mechanisms (figure 11.1) include the establishment of (i) an intergovernmental Trade and Sustainable Development Sub-Committee; (ii) Domestic Advisory Groups (DAGs) in Moldova and the EU to provide advice on sustainable development matters and which consist of business, trade union and civil society representatives, (iii) a Joint Civil Society Dialogue Forum (JCSDF) to enable dialogue between the DAGs, and (iv) a Panel of Experts in the situation where inter-governmental dispute settlement mechanisms are unsuccessful. All these institutional mechanisms are new in the Republic of Moldova and this approach is similar to that taken in the other EU Association Agreements with Eastern European neighbours (Georgia and Ukraine) and all other free trade agreements subsequent to that with the Republic of Korea. The focus is on civil society involvement and capacity building "and not trade sanctions [to] ensure effective implementation of the trade and sustainable development chapter".[206]

Figure 11.1 Institutional trade and sustainable development framework for the DCFTA



[205] These are: (a) Minimum Age Convention, 1973 (No. 138); (b) Worst Forms of Child Labour Convention, 1999 (No. 182); (c) Forced Labour Convention, 1930 (No. 29); (d) Abolition of Forced Labour Convention, 1957 (No. 105); (e) Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); (f) Right to Organize and Collective Bargaining Convention, 1949 (No. 98); (g) Discrimination (Employment and Occupation) Convention, 1958 (No. 111); (h) Equal Remuneration Convention, 1951 (No. 100). See ILO 1988 Declaration on Fundamental Principles and Rights at Work and Viederman and Klett (2007, p. 58).

[206] European Commission (2015).

Second, the non-trade chapters of the Association Agreement also contain a number of provisions on the approximation of the Republic of Moldova's legislation to that of the EU, the so-called aquis comunautaire. Where labour issues are concerned, this involves approximation of eight EU directives relating to labour law within three or four years, six EU directives relating to anti-discrimination and gender equality, and 25 directives relating to health and safety at work within a period of between three and ten years (appendix 11.1, section II).[207]

How has the Agreement been implemented so far?

Key labour and employment issues in the Republic of Moldova

Implementation of the Association Agreement and the provisions under the trade and sustainable development chapter is taking place in a context where the Moldovan economy is one of the poorest[208] and most unequal in Europe,[209] has witnessed high levels of outmigration of the economically active population, and has recently suffered a banking crisis resulting from the alleged theft of $1 billion, equivalent to some 12 per cent of the country's GDP, which precipitated economic and political upheavals. The resolution of labour issues through the institutional mechanisms established in the Agreement is affected by these more extensive factors. A number of labour market and employment rights challenges are apparent in the Republic of Moldova. These include:

- Issues with child labour, especially in the agricultural sector, and child trafficking and begging;[210]
- High levels of informality in the labour market encompassing around one third of employment,[211] especially in agriculture; trade, hotels and restaurants; and construction, with a greater preponderance in rural areas;[212]
- An employment rate of only 39 per cent and low unemployment due to high levels of outmigration of the economically active population[213] and retirement;
- A tightening of labour supply in the Republic of Moldova due to outmigration, with consequent pressure on wages and other non-wage elements in certain sectors;
- An overall preponderance of low wages and high poverty levels, with workers unable to sustain a basic standard of living in sectors such as clothing (which is an important industry for formal waged employment) despite the wage increase pressures noted above;[214]
- Restrictions on the labour inspection system of the Republic of Moldova when it comes to identifying violations of labour law.

An ILO report has argued that "the Labour Inspectorate is constrained by the provision of [Law no.131 of 8 June 2012 regarding state control of entrepreneurial activity] …, which obliges the … [Inspectorate] to notify any firm five days prior to an inspection. This regulatory framework [which arose out of earlier concerns regarding bribery of state officials] contradicts the best international practices and ILO standards, and is also inconsistent, with some laws stipulating penalties for informal employment and others limiting enforcement".[215] The report recognizes the very significant impact on the ability of the Labour Inspectorate to identify instances of contravention of legal frameworks.[216]

One of the challenges arising, therefore, in implementation of the labour provisions under the trade and sustainable development chapter and, more generally, in the Association Agreement is that several of these key labour issues arising from the dynamics of the labour market in the Republic of Moldova (except child labour and labour inspection) are not fully captured under the ILO fundamental and priority conventions framework, which is at the core of the trade and sustainable development chapter.[217]

Implementation of the labour provisions in the Association Agreement

It is important to note that the institutional mechanisms under the trade and sustainable development chapter, such as the Domestic Advisory Groups and joint forums, have only been established since the provisional coming into force of the Agreement in 1 September 2014, when the DCFTA element of the Agreement was provisionally applied, and with the first meetings taking place in July 2015. As with other EU experiences relating to implementation of the trade and sustainable development chapter.[218] a lack of procedural clarity in the chapter has resulted in an initial (and at times quite lengthy) process of establishing the working methods of the key institutional mechanisms, namely, the Domestic Advi-

[207] Emerson and Cenuşa (2016).
[208] GDP PPP per capita in 2014 was $5,038.
[209] ILO (2016b).
[210] US DoL (2015).
[211] ILO (2016a); CEPS (2016).
[212] ILO (2016a).
[213] Emerson and Cenuşa (2016).
[214] CCC (2014).
[215] ILO (2016a, p. 67)
[216] ILO (2016a, p. 68)
[217] See also Emerson and Cenuşa (2016).
[218] Harrison et al. (2016).

sory Groups and the joint civil society dialogue forums in which civil society organizations play a central role.[219]

In the Republic of Moldova, the banking and wider economic and political crisis mentioned above has meant that the ability to make substantive progress in relation to discussions of labour standards and environmental conditions has been limited, as attention has been focused elsewhere. While there is some discussion of labour provisions issues in these institutions, there is scant evidence that they are providing a mechanism by which substantive progress can be achieved.

Civil society engagement: The first meeting of the Joint Civil Society Dialogue Forum, established under Article 377 of the DCFTA and including Domestic Advisory Groups from the EU and the Republic of Moldova, took place in July 2015. Discussions mainly focused on the broad framework of governmental commitment to the DCFTA and transparency and accountability, and private sector competitiveness. There was also a brief mention of the need to resist interference in the activity of trade unions, to combat informal employment via the more robust implementation of regulatory mechanisms, to strengthen domestic enforcement of ILO labour standards and EU employment directives, and an aspiration to undertake – following governmental approval of the required methodology – impact assessment of the DCFTA.[220] A second meeting was held via video conference in October 2016, with a particular focus on renewable energy, with limited mention of labour provisions. Consequently, the ability of the key institutional mechanism in the DCFTA to address and monitor labour provisions in a substantive way appears, based on this evidence, to be somewhat limited in the context of the wider political and economic crisis in the Republic of Moldova.

Discussions between the Moldovan government and European Commission: The Subcommittee on Trade and Sustainable Development, established under Article 376 of the DCFTA, first met in July 2015, and emphasised a commitment to "consulting and cooperating on trade-related labour issues".[221] Attention was paid to the eight ILO Fundamental Conventions, with two labour issues providing the focus for discussion:

- In respect of **child labour**, the Subcommittee highlighted the importance of continuing to implement the National Action Plan in this area and continued monitoring.

- In respect of the **labour inspectorate** issues identified above, "the Republic of Moldova is encouraged to ensure that the State Labour Inspection can effectively perform its task in compliance with the ILO [Governance] Convention on Labour Inspection".[222] As noted above, this case was brought by the Moldovan Confederation of Trade Unions to an ILO commission of inquiry in 2013, with a report in 2015 followed by an ILO Governing Body decision.[223] The inquiry found that the Government of the Republic of Moldova had not effectively implemented the Labour Inspection Convention through its adoption of Law 131 on State Control in June 2012.[224] Amendments to Law 131 in 2016 have, in the view of several key actors, not resolved the contraventions of Convention 81. Through limiting the number of inspections per year in a single company, continuing to require that notice be given to employers prior to an inspection, and reducing the range of areas of work to be included under the competence of the State Labour Inspection by not including occupational health and safety the amendments are likely to reduce the ability to conduct effective inspection.

Panel of experts: A key element included in the trade and sustainable development chapter with the aim of facilitating dispute resolution is the panel of experts. Under Article 378 of the DCFTA, a party to the agreement can request "consultations" on any aspect of the trade and sustainable development chapter, which may be referred to the Subcommittee on Trade and Sustainable Development, and may seek advice from the ILO and Domestic Advisory Groups (although it remains doubtful whether they have the capacity to advise on labour issues, given their membership). In the absence of intergovernmental resolution, a party may request the input of a "panel of experts" to adjudicate and make non-binding recommendations. While experts have been appointed in the Republic of Moldova who can potentially serve on future panels, awareness of the process among panellists appears limited and training non-existent.

Civil Society Platform: The wider Association Agreement contains provision for civil society dialogue and monitoring of the Agreement in the form of the Civil Society Platform, the first meeting of which was held in Brussels in May 2016. Alongside a long list of priority areas for reform, including fighting corruption, reform of the judiciary and combating banking fraud and crises, the Civil Society Platform noted the importance of "promoting active labour policies for productive and decent work for all".[225]

The Platform reiterated the need for the Government of the Republic of Moldova to comply with all its commitments to ILO conventions, the provisions of the European Social Charter and, where appropriate, the EU *acquis*; encouraged

[219] See also Orbie et al. (2016).

[220] Joint Civil Society Dialogue Forum (2015).

[221] Subcommittee on Trade and Sustainable Development (2016 p. 1).

[222] Subcommittee on Trade and Sustainable Development (2015, pp. 2-3).

[223] See ILO (2015).

[224] The report noted that inspectors have to obtain prior permission of employers to undertake an inspection, have to provide notice to employers, and are not able to undertake unscheduled inspections.

[225] CSP (2016, p. 1).

the Moldovan Government to modernize labour legislation in consultation with the social partners; and urged the Government to enhance the status of decisions of the National Commission for consultations and collective bargaining.[226] It is presently unclear what impact these declarations will have on meaningful government action.

Association Agreement consequences for labour provisions: The Republic of Moldova passed two laws with a view to gradually approximate its legislation to EU labour law. These laws related to the obligation of employers to inform employees of the conditions applicable to a contract or employment relationship,[227] and the framework agreement on fixed-term work.[228] In addition, ten health and safety at work obligations have been transposed into Moldovan law and two Directives have been partially transposed in the areas of anti-discrimination and gender. The remaining Association Agreement provisions relating to labour are yet to be incorporated in the law of the Republic of Moldova.[229]

Conclusions: Overall, the EU's approach to the trade and sustainable development chapter and the wider Association Agreement implementation concerned with labour provisions focuses on the role of civil society involvement and monitoring rather than trade sanctions. This analysis suggests that, while the three primary institutional mechanisms under the trade and sustainable development chapter for addressing labour issues in the Agreement have provided forums for discussion, they did not, at the outset, provide a mechanism for effectively raising and addressing issues related to labour standards violations or for their close monitoring, and have gone little further than, at best, statements of encouragement of action. The institutional mechanisms set up in the trade and sustainable development chapter, for example, appear not to have provided an effective mechanism for resolution of the continued limitations on labour inspection. The meaningful engagement of government, and the proper resourcing and capacity of the institutional mechanisms to make real progress on labour provisions appear constrained.

What are the areas of opportunity in the implementation of the Association Agreement?

There are a number of areas where attention could be paid to clarifying arrangements and more effective implementation of the labour provisions in the Association Agreement, as outlined below.

Membership of civil society organizations in key trade and sustainable development institutions: One of the challenges faced in the implementation process, which relies on the close involvement of civil society organizations for the raising of issues and monitoring, is the way in which these organizations are often constituted in the formerly Communist States. The civil society organization sector in the Republic of Moldova is small and relatively young. Consequently, there is a tendency for the same groups to be represented in the many fora and institutions established by the Association Agreement. This leads to a blurring of competencies between the various groups with similar membership.

Added to this, several of the key civil society organization participants are think tanks, consultancy organizations and public policy institutes. The only non-governmental organizations representative of particular sectoral (labour or environmental) interests involved in the Domestic Advisory Group of the Republic of Moldova appear to be two environmental non-governmental organizations. The National Trade Union Confederation is also involved in this advisory group, but its presence is outweighed by representation from four different business associations. Consequently, the capacity to represent the interests of workers, in a meaningful way, is limited. It is therefore necessary to ensure that the Domestic Advisory Groups are properly representative of their constituents, with the necessary expertise: as things stand, it is unclear whether these groups are acting as representative bodies or as a group of interested parties. The question also arises as to whether the members of the domestic advisory groups adequately cover the right areas (for example, non-unionized labour, informal employment, and others).

Resources for civil society engagement: A common complaint among civil society organizations involved in the institutions of the Association Agreement is the lack of resources to support meaningful engagement. There is no secretariat support for the domestic advisory group of the Republic of Moldova; many civil society organizations were unable to secure funding for travel to joint meetings in Brussels; and there is a danger in the EU that the proliferation of free trade agreements will lead to what we may term "domestic advisory group fatigue" and the inability of a limited number of EU-based civil society organizations to participate, given their own capacity limitations.

Monitoring: The DCFTAs provides for a range of monitoring mechanisms (box 1), but there is a need to:

- develop a process and a consistent methodology for the monitoring of the trade and sustainable development impacts of the DCFTA from the outset of implementation, and one that goes beyond the mere raising of issues by domestic advisory groups;

[226] CSP (2016, p. 2).

[227] Council Directive 91/533/EEC of 14 Oct 1991

[228] Council Directive 1999/70/EC of 28 June 1999.

[229] Emerson and Cenuşa (2016).

- commit adequate resourcing to the monitoring process from the time of DCFTA coming into force;
- consider developing an approach to monitoring which is based on enabling those most affected by labour provisions to engage fully in the process.

Box 11.1 DCFTA commitments with regard to the monitoring of trade and sustainable development

- Article 374 of Chapter 13 of the Association Agreement commits the parties "to reviewing, monitoring and assessing the impact of the implementation" of the trade and sustainable development chapter through their respective civil society processes and institutions and those set up by the Agreement, for example, the Domestic Advisory Groups and the Joint Civil Society Forum.
- Article 375 of Chapter 13 of the Agreement commits the parties to working together on methodologies and indicators for trade sustainability impact assessments; the impact of labour and environment regulations, norms and standards on trade and investment; the impact of trade and investment rules on labour and environmental law; and the positive and negative impacts of the DCFTA on sustainable development.
- All these approaches draw upon a framework driven by existing participative processes and institutions – such as Domestic Advisory Groups – and by sustainability impact assessments.

Clarification of the aims and scope of the trade and sustainable development approach: there is some ambiguity in interpretation among key stakeholders as to whether the purpose of the institutional structures, and the trade and sustainable development chapters in general, relate to *trade-related labour issues, or labour problems and the violation of labour standards in general*, irrespective of whether they are linked to trade. [230]

Mainstreaming sustainable development across the Agreement: consideration could be given to implementing an approach to trade and sustainable development across all chapters of the Agreement to achieve a truly far-reaching trade and sustainability agenda, which would integrate the labour provisions in the Agreement more fully with those of the trade and sustainable development chapter. This would have the benefit of moving beyond an approach that separates out the trade and sustainable development provisions from the wider trade agenda and other parts of the Agreement.

In order to enhance effective implementation of the provisions under the trade and sustainable development chapter,**more comprehensive training** is required for key stakeholders new to the EU's approach to labour provisions in free trade agreements, including members of the domestic advisory group and the panel of experts, that goes beyond the so-called "learning by doing" approach and looks at expectations and roles.

Separating the environmental and labour aspects of trade and sustainable development institutionally, as they involve different social interests and partners, to enable more effective engagement on each.[231]

Recognizing and responding effectively to the responsibility of lead-firm corporate stakeholders in global value chains for the governance and monitoring of labour standards in the Republic of Moldova: It is now widely recognized that improvements in labour standards and working conditions rely upon the conditions created for supplier firms by lead firms, and the extent to which lead firms pressurize supplier firms in relation to cost reduction, time to delivery, and other factors.[232] Inter-firm power relations thus set limits to the ability of legally formulated labour standards to be implemented in workplaces. Consequently, future consideration could be given to:

- opportunities for the development of approaches to the joint liability of lead firms and buyers, and of supplier firms, for labour standards and working conditions in global value chains;[233]
- the development of *full* disclosure by lead firms and *complete* transparency in supply chains with regard to compliance with a minimum set of labour standards;[234]
- the embedding of worker-led social responsibility (capacity-building to ensure that workers have a voice in the workplace, where possible in conjunction with trade unions) throughout the monitoring and reporting processes and to enable employees to provide continuous monitoring of workplace conditions, thereby more fully integrating key constituencies into the implementation process of the trade and sustainable development chapter. .[235]

[230] Harrison et al. (2016).

[231] See Van den Putte et al. (2015)

[232] Mayer and Pickles (2010), Barbu et al. (2016).

[233] See Anner et al. (2013) in relation to the Bangladesh Accord on Building and Fire Safety as a response to the Rana Plaza disaster.

[234] Rawling (2015).

[235] See also Marx and Wouters (2015).

References

Anner, M.; Bair, J.; Blasi, J. 2013 "Towards joint liability in global supply chains: addressing the root causes of labour violations in international subcontracting networks", in *Journal of Comparative Labor Review and Policy,* 35(1): pp. 1-43.

Barbu, M.; Smith, A.; Campling, L.; Harrison, J.; Richardson, B. 2016. *Global Value Chains and Labour Standards in the European Union's Free Trade Agreements*, paper presented at the workshop on global production networks and social upgrading: Labour and Beyond Workshop, University of Manchester, May 2016 and at the tenth European Urban and Regional Studies conference, Chania, Greece, September 2016. Available from the authors.

Emerson, M.; Cenuşa, D. 2016. *Deepening EU-Moldovan Relations: What, Why and How?* London: Rowman and Littlefield.

Civil Society Platform. 2016. *Joint Declaration*, first meeting, Brussels, 10 May 2016.

Clean Clothes Campaign (CCC). 2014. *Moldova Factsheet.* Available at: https://cleanclothes.org/resources/publications/factsheets/stitched-up-moldova-factsheet/view [16 Nov. 2016].

European Commission. 2015. *Civil Society's Role in the DCFTAs*, presentation to the Eastern Partnership, Civil Society Forum, Georgia, September 2015.

Harrison, J.; Barbu, M.; Campling, L.; Richardson, B.; Smith, A. 2016. "Governing labour standards through trade agreements: limits of the European Union's Trade and Sustainable Development Chapters", paper available from the authors.

International Labour Office. 2015. *Report to the Director-General: Sixth Supplementary Report: Report of the Committee Set Up to Examine the Representation Alleging Non-Observance by the Republic of Moldova of the Labour Inspection Convention, 1947 (No.81), Submitted Under Article 24 of the ILO Constitution by the National Confederation of Trade Unions of Moldova* (CNSM), ILO Governing Body, 323rd Session, Geneva, 12–27 March GB.323/INS/11/6.

International Labour Office. 2015. *Report of the Director-General: Report of the Committee set up to examine the representation alleging non-observance by the Republic of Moldova of the Labour Inspection Convention, 1947 (No. 81), submitted under article 24 of the ILO Constitution by the National Confederation of Trade Unions of Moldova (CNSM)*. GB.323/INS/11/6. ILO: Geneva.

International Labour Organization. 1998. *ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up*, ILO: Geneva.

—. 2016a. *The Informal Economy in the Republic of Moldova: A Comprehensive* Review, ILO: Geneva.

—. 2016b. *Moldova: Decent Work Country Programme 2016–2020*, ILO: Chisinau.

Joint Civil Society Dialogue Forum. 2015. *Declaration of the 1st Meeting of the Republic of Moldova–European Union Joint Civil Society Dialogue Forum*, Chisinau, Moldova, 8 July 2015.

Marx, A.; Wouters, J. 2015. "Redesigning enforcement in private labor regulation. Will it work?" in *International Labour Review*, postprint 10.1111/j.1564-913X.2015.00040.x.

Mayer, F.; Pickles, J. 2010. "Re-embedding governance: global apparel value chains and decent work", in *Capturing the Gains Working Paper* 2010/01. Available at: http://www.capturingthegains.org/pdf/ctg-wp-2010-01.pdf [16 Nov. 2016].

Orbie, J.; Martens, D.; Van den Putte, L. 2016. *Civil Society Meetings in European Union Trade Agreements: Features, Purposes and Evaluation*, Centre for the Law of EU External Relations, Asser Institute, The Netherlands, CLEER Paper 2016/3.

Rawling M. 2015. "Legislative regulation of global value chains to protect workers: A preliminary assessment", in *The Economic and Labour Relations Review* 26(4): pp. 660–677.

Subcommittee on Trade and Sustainable Development. 2015. *1st Meeting of the Republic of Moldova–European Union Sub-Committee on Trade and Sustainable Development: Joint Statement to the Civil Society Forum*, Chisinau, Moldova, 7 July 2015.

US Department of Labor. 2015. *Moldova*, Washington, D.C.

Van den Putte, L.; Orbie, J.; Bossuyt, F.; Martens, D.; De Ville, F. 2015. "What social face of the new EU trade agreements? Beyond the 'soft' approach", *ETUI Policy Brief*, No. 3/2015.

Viederman, D.; Klett, E. 2007. "Country-level assessment of labour conditions in emerging markets: an approach for institutional investors", in Kucera, D. (ed.) *Qualitative Indicators of Labour Standards*, Dordrecht: Springer; pp. 57–82.

Further reading

Emerson, M.; Cenuşa, D. 2016. *Deepening EU-Moldovan Relations: What, Why and How?* London: Rowman and Littlefield.

Campling, L.; Harrison, J.; Richardson, B.; Smith, A. 2015. "Working beyond the border? A new research agenda for the evaluation of labour standards in EU trade agreements", in *International Labour Review,* postprint: 10.1111/j.1564-913X.2015.00037.x.

Appendix 11.1 Labour provisions in the EU-Republic of Moldova Association Agreement and the Deep and Comprehensive Free Trade Agreement

AA/DCFTA CHAPTER	ASSOCIATION AGREEMENT	DCFTA CHAPTER
I. Trade and sustainable development chapter		
ILO Fundamental Conventions		
Freedom of association		X
Right to collective bargaining		X
Elimination of all forms of forced or compulsory labour		X
Effective abolition of child labour		X
Elimination of discrimination in respect of employment & occupation		X
Other commitments		
Effectively implement in law and practice the ratified priority and other ILO conventions		X
Commitment to full employment		X
Commitment to productive employment		X
Ratification of other remaining priority and other conventions		X
Recognizing the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity		X
Promoting corporate social responsibility [by drawing on the OECD Guidelines for Multinational Enterprises, the UN Global Compact, and the ILO Tripartite Declaration of Principles concerning MNEs and Social Policy]		X
No waiver or derogation from, or offer to waive or derogate from, environmental or labour law as an encouragement for trade or the establishment, acquisition, expansion or retention of an investment of an investor in its territory		X
Not failing to effectively enforce environmental and labour law, as an encouragement for trade or investment		X
II. Other areas of the Association Agreement		
Cooperation (exchange of information and best practices) in the following areas of employment and social policy:		
Poverty reduction and enhancement of social cohesion	X	
Employment policy (more and better jobs with decent working conditions and reducing informal employment)	X	
Promoting active labour market measures	X	
Fostering more inclusive labour markets (disability and minorities)	X	
Management of labour migration	X	
Enhancing gender equality and equal opportunities	X	
Modernizing social protection systems	X	
Promoting social dialogue	X	
Promoting health and safety at work	X	
Regular dialogue	X	

AA/DCFTA CHAPTER	ASSOCIATION AGREEMENT	DCFTA CHAPTER
Alignment of legislation with that of the EU [years in square parentheses indicate the agreed number of years for implementation]:		
Employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (Council Directive 91/533/EEC of 14 October 1991) [four years]	X X	
Framework agreement on fixed-term work concluded by the European Trade Union Confederation; the Union of Industries of the European Community; and the European Centre for Public Enterprise. (Council Directive 1999/70/EC of 28 June 1999) [four years]	X	
Framework agreement on part-time work concluded by UNICE, CEEP and ETUC — Annex: Framework agreement on part-time work (Council Directive 97/81/EC of 15 December 1997) [three years]	X	
Measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (Council Directive 91/383/EEC of 25 June 1991) [three years]	X	
Approximation of the laws of the Member States relating to collective redundancies (Council Directive 98/59/EC of 20 July 1998) [four years]	X	
Approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (Council Directive 2001/23/EC of 12 March 2001) [three years]	X	
Framework for informing and consulting employees in the European Community — Joint declaration of the European Parliament, the Council and the Commission on employee representation (Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002) [three years]	X	
Organization of working time (Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003) [four years]	X	
Equal treatment between persons irrespective of racial or ethnic origin (Council Directive 2000/43/EC of 29 June 2000) [four years]	X	
Equal treatment in employment and occupation (Council Directive 2000/78/EC of 27 November 2000) [four years]	X	
Equal opportunities and equal treatment of men and women in matters of employment and occupation (Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006) [three years]	X	
Equal treatment between men and women in the access to and supply of goods and services (Council Directive 2004/113/EC of 13 December 2004) [three years]	X	
Measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (Council Directive 92/85/EEC of 19 October 1992; tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) [three years]	X	
Equal treatment for men and women in matters of social security (Council Directive 79/7/EEC of 19 December 1978) [four years]	X	
25 Health and Safety at Work Directives [3–10 years]	X	

IV. SPECIFIC ISSUES

GENDER CONSIDERATIONS IN TRADE AGREEMENTS

12

SUMMARY

Gender references in trade agreements are part of a variety of policy options designed to address gender-based inequalities. Currently, about one out of four trade agreements that are in force, and notified to the World Trade Organization, include such references.

Most of the agreements with gender references include advanced economies as one party to the agreement. Developing and emerging economies, however, have also included these references.

Dialogue and cooperation are the main implementation mechanisms for gender references in trade agreements. But, when they are part of labour provisions, the scope is broader as the same mechanisms for implementation apply to the gender reference, ranging from stakeholder involvement and monitoring to dispute settlement.

What is the link between trade and gender?

Trade liberalization can have gender impacts on all economic actors, presenting both challenges and opportunities, particularly for women. The literature shows that trade affects the distribution of income and resources influencing the structures of production, consumption patterns and revenue expenditure, and that this in turn has different impacts on women and men.[236]

Changing economic circumstances globally, including increased trade, have had positive impacts with respect to overall employment gains. In some instances, these circumstances have also been accompanied by the perpetuation or the increase of gender-based inequalities.[237] This largely depends on the sector, the industrial composition, and the level of development of the economy in question:

- In economies where agriculture is predominantly an export activity (as in sub-Saharan Africa), the limitations in property rights for women and their condition as unpaid family workers may continue to undermine the status of women and girls (Fontana et al., 1998).[238]
- Other studies highlight women as a source of competitive advantage. For instance, in comparison to men, women receive lower wages and have fewer labour protections.[239]

In the long term, gender inequalities could result in negative outcomes for economic growth and development.[240]

This chapter was written by Elizabeth Echeverria M. and Ngoc-Han Tran

[236] See more in UNCTAD (2014). For findings with respect to gender impacts of labour provisions and trade see "Links between trade and labour: an overview of the theory and evidence" in this handbook and ILO (2016).

[237] Gender equality has increasingly been considered as a key dimension in the general debate on how to achieve sustainable development; see True (2014). The 2030 Agenda for Sustainable Development addresses gender issues through a comprehensive goal – Goal 5 – which seeks to achieve gender equality and empower all women and girls. It intends to tackle most of the structural causes of gender inequalities.

[238] UNCTAD (2004), notes that deciding whether trade liberalization has brought benefits to women or not is not a solved issue and that case studies with a gender-disaggregated analysis of trade must be conducted.

[239] Seguino (1997); Busse and Spielman (2006); Elson et al. (2007).

[240] See more in UNCTAD (2004); Korinek (2005). In this context development is also considered as a human rights issue that covers gender, education, access to basic necessities and other issues (Rolland, 2012).

In parallel, trade relations are increasingly being governed by bilateral and multilateral trade agreements, to the extent that more than half of exported goods fall within the framework of these agreements.[241] These agreements further trade liberalization, and they have also expanded their coverage to a variety of areas, such as the environment, labour and e-commerce, among others.

However, these agreements and the trade policies behind them have generally been seen as gender-neutral.[242] Throughout the different agreements, some exceptions to this neutrality have been observed. Some trade agreements, in force or under negotiation, have considered gender aspects. These are included in trade policies, impact assessments, or direct considerations in the agreements.

Indeed, the inclusion of gender considerations in the negotiation, the texts and the implementation of trade agreements may constitute one of many instruments available to advance gender equality and women's empowerment.[243] In general, however, these issues have been under-explored.

Research findings show that **the inclusion of gender references or provisions is becoming increasingly** common. For the purposes of this chapter, gender references or provisions allude to gender issues that can either be included in the labour provisions or elsewhere in the agreement: [244]

- **Included in the labour provisions:** Gender references can be exclusively mentioned as part of the labour provisions. One example of this may be when the agreement makes reference to the Declaration of Fundamental Principles and Rights at Work (1998) or the principle of the elimination of discrimination in respect of employment and occupation.[245] The agreements that set a framework for cooperation in labour matters, including gender issues, are also included in this category.[246]

- **Independent of the labour provisions:** References to gender issues that are located in the preamble of trade agreements, in general frameworks for cooperation or in annexes to the agreement. These are generally references to gender equality, women's empowerment, women's protection and education, and cooperation, dialogue and monitoring related to gender matters, among other aspects.[247]

What are the trends?

This section of the chapter aims to present the different the trends in the inclusion of gender references in trade agreements, the location and scope of these references and the available implementation mechanisms. Trade agreements in force, and notified to the World Trade Organization (WTO), have been examined. Lastly, possible gender references in agreements under negotiation or those that have been recently signed are discussed.

Trends in gender references

- **Trade agreements that include gender references** have increased significantly, from three in 1994 to 80 in 2016.[248]

- In addition, the share of trade agreements entering into force that include gender considerations or provisions is increasing (figure 12.1). Between 1995 and 1999, 13.5 per cent of trade agreements that entered into force included gender references. This figure rose to almost 50 per cent between 2010 and 2016.

[241] See Section I of this handbook: "Introduction to labour provisions: trends and issues".

[242] This means that the texts of the agreements generally do not propose a differentiated treatment between men and women, but, as established before, when trade agreements enter into effect the results are not gender-neutral.

[243] UNCTAD (2014); Wagner (2013).

[244] While the term

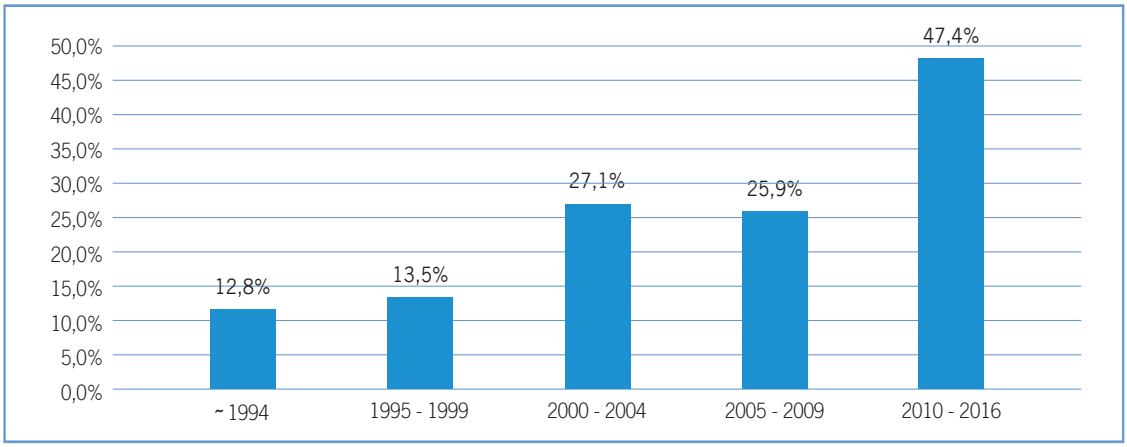
[245] Notably some agreements of the European Union, make explicit reference to the commitment of the parties to "respecting, promoting and realising" in law and practice the core labour standards as they are included in the fundamental Conventions of the ILO (for example Article 365(2) of EU-Moldova trade agreement). Therefore, the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) must be included as part of the commitment adopted by the parties.

[246] Some agreements make reference to the Decent Work Agenda, which includes gender equality as a cross-cutting objective.

[247] Villup (2015) points out that in the EU approach gender equality is also subject to human rights provisions.

[248] The figures are based on the trade agreements notified to the WTO and in force as of September 2016.

Figure 12.1 Percentage of trade agreements with gender references



More than half of the agreements with gender references include the European Union, the United States or Canada as a trade partner. Between 1995 and 2016, 30 per cent of these trade agreements included the European Union as a trade partner (see box 12.1), while 13.8 per cent included the United States and 10 per cent included Canada

Box 12.1 EU's trade policy and its relation to gender equality

Gender equality is regarded as one of the fundamental values of the European Union.[249] Hence, according to the fundamental treaties of the Union, the gender dimension should be incorporated in all EU activities, including trade. By promoting the inclusion of gender issues in its trade agreements, the EU aims to foster gender equality and women's empowerment in its trading partner states.

In the Strategy for Equality between Women and Men (2010-2015), the EU emphasized the integration of gender dimensions in EU trade policy, as part of a wider framework of sustainable development. Similarly, the Gender Action Plan (2016-2020) proposes as part of its objective of "access to decent work for women of all ages" activities such as analyzing the impact of trade on gender equality in trade negotiations.

In practice, the EU has been undertaking *ex-ante* and *ex-post* assessments to evaluate the impacts of trade agreements on gender equality. To date, there are 20 completed Sustainability Impact Assessments (SIAs) and 4 on-going SIAs on the trade agreements under negotiation between the EU and its partner countries. They all have included some gender aspects, ranging from minimal to comprehensive analysis. For instance, with respect to agreements under negotiation the EU-Japan SIA (Final report) includes an analysis on the possible impact of the agreement on gender equality in the workforce and the effects on growth, as well as the relationship with ILO commitments on non-discrimination.

The EU conducted both an *ex-ante* SIA and an *ex-post* evaluation of the EU-Chile agreement based on a sectoral perspective. The *ex-ante* analysis of the EU-Chile agreement analyzed the impacts of trade on gender equality, with a focus on women's labor market participation, wage gaps and working conditions. It suggested that the Agreement would have significant impact on increasing employment in Chile, particularly in the agricultural sector (p. 211). The EU-Chile *ex-post* analysis showed that some of the impacts anticipated in the *ex-ante* evaluation materialized. In fact, women benefited greatly from the expansion of agricultural exports, which had led to higher female employment in the sector. On average, the poverty rate for women had decreased over time (from 19% of women classified as poor in 2003 to 12% in 2009) (p. 200). However, their employment was more seasonal and temporary. In addition, there was still a persistent wage gap between men and women (p. 204).

Location and scope

There are different approaches with respect to the content of gender provisions. Most cases, however, refer to cooperation on gender matters. Some approaches are more detailed than others. For example some agreements only mandate cooperation on gender issues (e.g. Chile-Turkey), while others include more explicit language with respect to the role

[249] See Article 2, Treaty on European Union. Also, Article 8 of the Treaty on the Functioning of the European Union states that: "In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women."

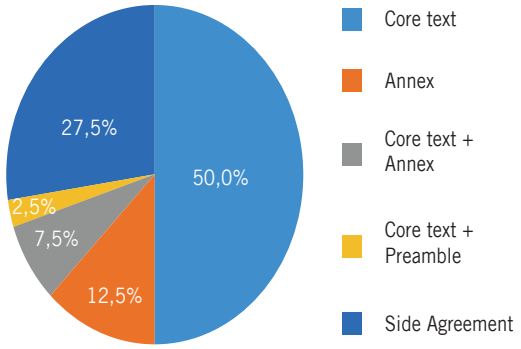
of women in development (Common Market for Eastern and Southern Africa (COMESA)).[250]

The location of the provisions in a trade agreement affects its strength and the mechanisms available for implementation. Thus, in the **preamble**, references are deemed to be non-binding or weak.[251] They can be used as guidelines, however, for interpretation of the text,[252] and there are no agreements where gender references are restricted to the preamble.

References in the **core text** may be binding or non-binding. They are subject to different implementation mechanisms, depending on whether they are in the labour provision or in a different part of the text of the trade agreement. This can be exemplified in the case of the **reference to the principle of non-discrimination in occupation and employment in labour provisions**, which can be implemented through monitoring (via stakeholder involvement in some cases), cooperative activities for labour issues, and dispute settlement (see below).

- About 3 per cent of trade agreements reference gender issues in both the core text and the preamble (see figure 12.2).
- Half of trade agreements incorporate gender references in the core text: 13 agreements include gender only in labour provisions, 16 in a different part of the core text of the overall agreement, and 11 in both the labour provision and elsewhere in the overall agreement.

Figure 12.2 Location of gender references in trade agreements



- Gender references are also included in just above 27 per cent of side agreements on labour –[253] this is mostly in the case of Canadian agreements.
- Approximately 13 per cent of trade agreements include gender references in an **annex** that complements the commitments adopted by the parties. For example, the agreements provide for priority areas in capacity-building, but the annex specifies that the promotion of entrepreneurship among women would be an area in which assistance might be provided (European Union–Cameroon Annex 1).[254]

What are the main mechanisms for implementation?

Generally the main mechanisms for the implementation of gender provisions in trade agreements are found in the shape of **cooperative activities and dialogue**. Cooperation covers exchange of information and best practices, research, technical assistance, the promotion of actions and programmes with the purpose of encouraging gender equality, women's empowerment and protection.

The cooperative efforts under the broader framework of the agreements can be found as **cooperation on social issues**; commitments to expand education opportunities for women; targeting an exclusive economic sector for cooperation on gender issues (e.g. Peru–China Article 164 on agricultural cooperation); or wider references to the role of women in development (e.g., COMESA).[255]

Some agreements of the European Union (particularly Association Agreements, with a trade pillar or including a Deep and Comprehensive Free Trade Area), make reference to the commitments in social or political pillars. In these agreements, similar provisions are found as those mentioned above, and while they are not related to trade, they are part of the overall agreement and taken into consideration in this chapter.

When gender references are found **in labour provisions**, the same mechanisms for implementation apply to the gender

[250] Another example is found in the Association Agreement and Deep and Comprehensive Free Trade Area of the European Union with the Republic of Moldova. In the agreement the parties commit to strengthen dialogue and cooperation in different areas such as gender equality, including the protection of "equal opportunities between men and women, as well as combating discrimination on all grounds". For details of the agreement see "Labour provisions in the European Union-Republic of Moldova Association Agreement and Deep and Comprehensive Free Trade Agreement" in this handbook.

[251] Bartels (2014).

[252] This is according to Article 31 of the 1969 Vienna Convention on the Law of the Treaties. See also Bourgeois, et al. (2007).

[253] Side agreements or parallel agreements are not part of the core text of the treaties, but are a separate document negotiated by the parties that complements or includes additional commitments to the main trade agreement.

[254] In provisional application since 2014.

[255] The Cotonou Agreement, which provides the legal basis of the Economic Partnership Agreements between the European Union and the Africa, Asia and the Pacific (ACP) group of countries, explicitly states that parties should respect international conventions regarding women's rights and gender equality, and commit themselves to including a gender perspective in all areas of cooperation.

reference, ranging from stakeholder involvement and monitoring to dispute settlement.

In terms of cooperation, one example is the project on the ILO **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**, under the European Union–Republic of Korea trade agreement. It was launched in April 2016, with the purpose of identifying obstacles, lessons learned and best practices to promote compliance with the Convention and to develop policy recommendations.[256]

Also under the framework of the EU-Central America trade agreement, a workshop was held before the joint meeting of the European and Central American civil society Advisory Groups (June, 2016). The workshop dealt, among other issues, with women's empowerment and economic growth, and the importance of taking measures to eliminate inequalities and ensure equal access to resources, training, employment, etc.

Gender dimensions in labour provisions have also been activated through the **public submissions filed by different stakeholders**, when they consider that a trading partner is not complying with the labour provisions. The submissions, after following the corresponding process, hold the potential to trigger the dispute settlement mechanism (that may include formal government consultations, an arbitration panel, and the possibility of sanctions).[257]

Public submissions that make reference to gender dimensions have been filed in the framework of some agreements with the United States. For example, a **gender-based labour submission was filed in 1997** under the North American Agreement on Labour Cooperation,[258] alleging that pregnancy tests were conducted in Mexican *maquilas* as a condition for employment. After the public report was issued by the National Administrative Office, Mexico adopted a revised policy on this issue, triggering further legal changes. Some multinational companies with operations in Mexico gave commitments to stop such practices.[259]

Under the United States–Central America–Dominican Republic Trade Agreement, a labour submission was filed by trade unions of the United States and Honduras.[260] The submission contained one section dedicated to the working conditions of women in export-processing zones. The main focus was on the garment industry, where the wages are lower than in other manufacturing industries, longer hours of work have been reported, and the workforce is predominantly female.[261] In this case, a public report was issued and a labour rights monitoring and action plan was devised to enhance labour law enforcement and strengthen labour inspectorates to prevent and remedy labour violations.[262]

Are there new approaches and areas of opportunity?

Some trade agreements that have not yet been ratified include gender provisions. For instance, the Trans-Pacific Partnership Agreement includes a section on women and economic growth, in its chapter 23 on development. This approach acknowledges the importance of women's equality and empowerment to development.[263]

Furthermore, the European Union has consistently included gender issues in its impact assessments since 2002. For example, the **Sustainability Impact Assessment** on the European Union–Japan Trade Agreement (Final Interim Technical Report, July 2015) includes an analysis of gender equality, focusing on the gender gap in employment and wages of both parties.[264]

Negotiations between developing and emerging countries also address gender issues in preliminary statements, as in the case of the agreement between Chile and Uruguay. The agreement was recently concluded (in October 2016), and the gender chapter has been regarded as one of the most innovative of all trade agreements worldwide, in respect of its quest to emphasize the **role of women in inclusive economic growth, trade and investment**. It also promotes gender equality through **women's economic development**. Furthermore, it is innovative among other aspects, because it includes a com-

[256] The project is being carried out by an external consultant. An inception report on the project will be shared with civil society and stakeholders in future meetings.

[257] Stakeholders may file public submissions in the framework of some agreements (for example those from the United States and Canada). Once submissions have been accepted for review (this does not imply any decision on the merits of the allegations) by the corresponding authority of one Party to the agreement (for example, the Office of Trade and Labour Affairs of the United States Department of Labour) there is a follow-up process previous to the formal activation of the dispute settlement mechanism. A report of review is issued by the authority, and depending on the findings, the responsible authority could recommend different avenues to resolve the issues. For example, engaging in dialogue through the institutional arrangements of the agreements along with time-bound monitoring, the development of action plans, and/or cooperative labour consultations.

[258] The submission (US NAO case number 9701) was filed by Human Rights Watch, the International Labour Rights Fund and the Mexico-based Asociación Nacional de Abogados Democráticos (National Association of Democratic Lawyers)

[259] For details see ILO (2013), and Compa and Brooks (2014).

[260] US Submission 2012-01 (Honduras).

[261] This topic has also been discussed by the Committee of Experts on the Application of Conventions and Recommendations through the examination of the Equal Remuneration Convention, 1951 (No. 100), by the Government of Honduras (Direct Request adopted 2014 and published at the 104th ILC session, 2015).

[262] ILO (2016).

[263] Gender-related issues are also addressed in the labour provisions of the agreement and the cooperation and capacity-building chapter.

[264] See box 12.1 for further information.

mitment of the parties to **effectively apply their regulation, policies and good practice** to achieve gender equality. Finally, it provides for **institutional arrangements** to implement the provisions, such as the creation of a gender committee.[265]

Although some trade parties have made efforts to incorporate gender provisions in their agreements, there are additional areas of opportunity.

- First, gender-related commitments could be better tailored to the economic and political contexts of the countries involved. In this respect, the use of available implementation mechanisms for labour provisions could be further explored to enhance the implementation of their gender content. For example, all cooperative activities could consider gender aspects and impacts.

- Second, more research could be done on the actions being taken by the countries that are parties to trade agreements with gender references. This to determine the impact of the references in addressing and tackling the gender issues mentioned.

- Third, there is an important area of opportunity in the implementation of *ex-ante* gender analyses of trade arrangements. These types of analyses might be useful in order to negotiate and develop more specific gender provisions as well as to identify possible flanking measures that, if implemented effectively, may help in addressing the issues encountered by women as a result of trade liberalization.

References

Bartels, L. 2015. "Social issues in regional trade agreements: labour, environment and human rights", in Simon Lester, Bryan Mercurio and Lorand Bartels (eds): *Bilateral and Regional Trade Agreements*, (second edition) (CUP, 2015).

Bell, M. 2011. "Principle of equal treatment: widening and deepening", in P. Craig and G. de Burca (eds): *The Evolution of EU Law* (second edition), (Oxford University Press), pp. 611–639.

Bourgeois, J. et al. 2007. *A comparative analysis of selected provisions in free trade agreements*. Commissioned by DG TRADE. Available at: http://trade.ec.europa.eu/doclib/docs/2008/march/tradoc_138103.pdf [4 April 2016].

Busse M.; Spielmann C. 2006. "Gender inequality and trade", in *Review of International Economics*, 14 (3): 362–379.
Compa, L; Brooks, T. 2014. *The North American Free Trade Agreement (NAFTA), North American Agreement on Labor Cooperation (NAALC) and Labor Provisions in other North American Free Trade Agreements* (Wolters Kluwer).

Elson, D.; Grown, C.; Cagatay, N. 2007. "Mainstream, heterodox and feminist trade theory", in van Staveren, I., Elson, D., Grown, C.; Cagatay, N. (eds.) 2007. *The Feminist Economics of Trade* (Oxon: Routledge).

Fontana, M.; Joekes, S.; Masika, R. 1998. "Global Trade expansion and liberalisation: gender issues and impacts", Institute of Development Studies, Report No. 42
ILO. 2016. Studies on Growth with Equity: Assessment of labour provisions in trade and investment arrangements (Geneva, Research Department).

—. 2013. Studies on growth with equity. Social dimensions of free trade agreements. (Geneva, IILS).

Korinek, J. 2005. *Trade and gender: Issues and interactions*, OECD Trade Policy Working Paper No. 24.

Koukoulis Spiliotopoulos, S. 2008. "The Lisbon Treaty and the Charter of Fundamental Rights: maintaining and developing the acquis in gender equality", *European Gender Equality Law Review*, No. 1.

Rolland, S. 2012. *Development at the WTO*. Oxford University Press.

Seguino, S. 1997. "Gender wage inequality and export-led growth in South Korea", in J*ournal of Development, Studies* 34(2), pp. 102-32.

True, J. 2014. "The Global Governance of Gender", in *Handbook of the International Political Economy of Governance*, Payne, A.; Phillips, N. (eds), p. 329.

United Nations Conference on Trade and Development (UNCTAD). 2014. *Virtual Institute teaching material on Trade and Gender*, Vol 1.

—. 2004. *Trade and Gender: Opportunities and Challenges for Developing Countries*, Tran-Nguyen, A., and Beviglia Zampetti, A. (eds.) (Geneva, UNCTAD).

Wagner, C. Z. 2012. "Looking at regional trade agreements through the lens of gender", in *Saint Louis University Public Law Review*, Vol. XXI, 497

[265] Chile-Uruguay trade agreement (chapter 14).

Further reading

Garcia, M.; Masselot, A. 2015. "The value of gender equality in EU – Asian trade policy: an assessment of the EU's ability to implement its own legal obligations", in A. Björkdahl, N. Chaban, J. Leslie and A. Masselot (eds.): *Importing EU Norms: Conceptual Framework and Empirical Findings*, (United Nations University Series on Regionalism, Vol. 8, 2015).

Gibb, H. 2003. "Gender, trade and the WTO", speaking notes for the WTO Public Symposium.

Jackson, J.; Wedderburn, J. 2009. "Gender and the Economic Partnership Agreement: an analysis of the potential gender effects of the CARIFORUM-EU EPA", in *Caribbean Development Report*, Vol. 2.

Luce, Stephanie. 2005. *The case for international labour standards: a "Northern" perspective*, IDS Working Paper 250, Institute of Development Studies.

UNCTAD. 2009. "Mainstreaming gender in trade policy".

Villup, E. 2015. *The EU's Trade Policy: from gender-blind to gender-sensitive?* Policy Department, European Parliament.

Viteri, W. 2015. *A gender lens on the Trans Pacific Partnership Agreement*, JERA International, Young Women's Program Research.

WTO. 2003. "Is trade liberalization a window of opportunity for women?".

13

HOW TRADE POLICY AFFECTS FIRMS AND WORKERS IN GLOBAL SUPPLY CHAINS: AN OVERVIEW

SUMMARY

Trade agreements have been the main contributors to the rapid decline in import tariffs that has been observed over recent years. As these agreements do not necessarily cover non-tariff measures, they provide signatories with some flexibility in the use of such alternative barriers to trade.

Especially when firms are organizing their production in global supply chains, they heavily rely on imported inputs that enter their production process. The access to a wide variety of high quality inputs is beneficial for firms' performance, with gains likely to be at least partially passed on to workers. Adverse effects of policies that restrict firms' access to inputs are magnified in the context of global supply chains, where inputs cross borders multiple times.

Trade policy has an impact on how and where firms set up their global production networks. Such networks in many cases create decent jobs, but there are also cases where basic labour standards are violated and the quality of jobs is poor.

Any adverse effects of trade policies should always be mitigated through an appropriate policy mix. Labour market institutions that provide a cushion to those that are disadvantaged play an important role, as well as efforts to improve labour standards in global supply chains. Labour provisions in trade agreements can potentially provide an entry point for stakeholders to discuss these issues.

Trade policy and trade agreements: what are the trends?

The United Nations 2030 Agenda for Sustainable Development, which came into force in January 2016, places emphasis on the promotion of inclusiveness and sustainability of economic growth and decent work. Trade plays an important role in the achievement of the **Sustainable Development Goals**, as it can provide an engine for economic growth and poverty reduction. The integration of trade and economic and social development policies is one aspect, which was also highlighted at the 14th UN Conference on Trade and Development in Nairobi in July 2016, where it was noted that, "regional integration can be an important catalyst to reduce trade barriers, implement policy reforms, decrease trade costs, and increase developing country participation in regional and global value chains".[266]

Bilateral and plurilateral trade agreements are contributing to the lowering of trade barriers. Given the standstill in multilateral trade negotiations, the conclusion of such trade agreements has been the main contributor to the global decline in average import tariffs, from 14 per cent in 1995 to 5.5 per cent in 2014.[267]

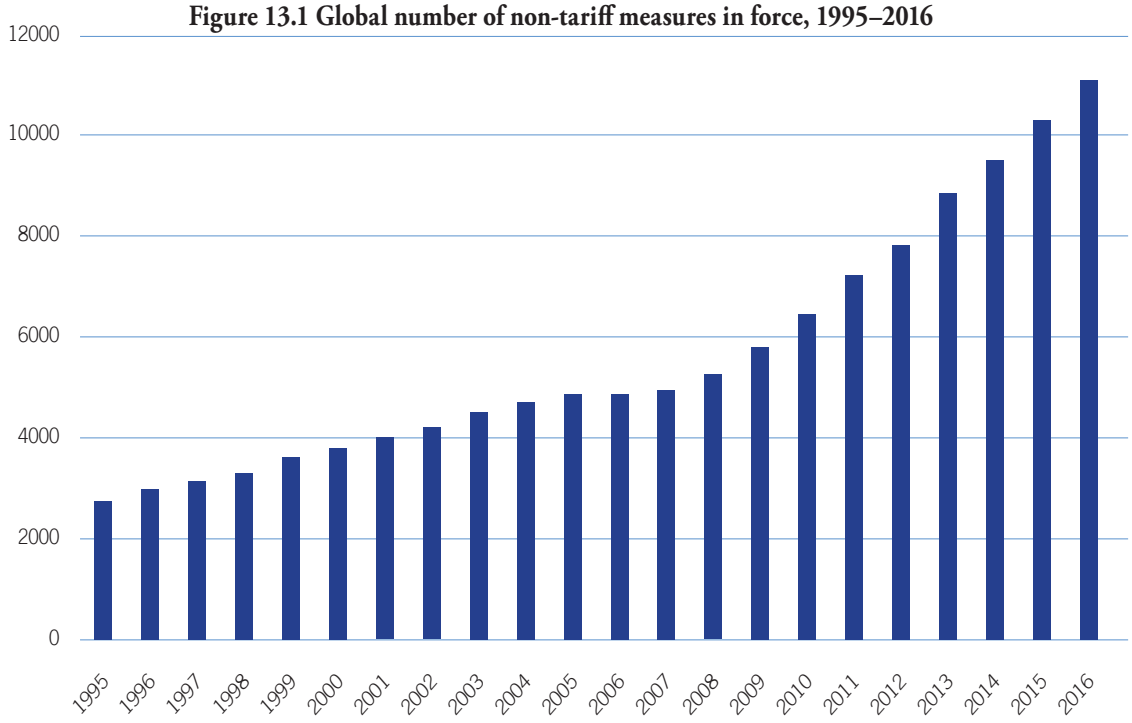
This chapter was written by Christian Viegelahn

[266] See paragraph 29 of the Nairobi Agreement, available at: http://unctad.org/meetings/en/SessionalDocuments/td519add2_en.pdf

[267] This average import tariff was calculated on the basis of data from World Bank's World Integrated Trade Solution (WITS) database.

At the same time, trade barriers are still used, not necessarily taking the form of traditional **import tariffs**, but also coming along in the form of **non-tariff measures**. These non-tariff measures include restrictions such as local content requirements, import licensing schemes, technical barriers to trade or contingent trade protection measures.[268] In some instances, the use of non-tariff measures may be introduced for public policy reasons, such as the protection of environmental or consumer safety standards, or the combat of unfair trade practices such as dumping or subsidies. There, however, has been a growing consensus among observers that some of these barriers are also used to protect domestic industries from import competition.[269] The global number of non-tariff measures that are in force has quadrupled between 1995 and 2016, as shown in figure 13.1.

Figure 13.1 Global number of non-tariff measures in force, 1995–2016



Source: WTO I-TIP goods database

Policymakers may introduce or remove barriers to trade, and they may (or may not) do this for good reasons. Nevertheless, it is crucial to understand the trade-offs of these trade policy decisions, anticipate the expected effects of these decisions correctly, and implement policies that can provide a cushion to those that are disadvantaged, in order to support the creation of decent jobs and inclusive growth.

Stakeholders should have an interest to be aware of the effects that the introduction or removal of trade barriers can have. The effects of trade policies, however, are not straightforward to assess in a world in which production takes place within complex global production networks and supply chain configurations, and in which the introduction or removal of trade barriers affects different stakeholders differently.

This chapter provides some insights and discusses how domestic and foreign firms and workers in global supply chains can be affected by trade barriers imposed on imports.

How does trade policy affect domestic firms and workers in global supply chains?

Trade barriers on imports can affect domestic firms that compete with importers, and those that use imported inputs in their production process.[270] Both of these impacts have consequences for workers that are employed by these firms.

[268] *Local content requirements* are policy measures that require a certain share of inputs used in the production process to be sourced domestically. *Importing licensing schemes* make a license for firms obligatory in order to import certain goods. *Technical barriers to trade* refer to technical requirements and standards that products are required to fulfil. *Contingent trade protection* such as antidumping or safeguard actions allow the temporary imposition of import tariffs under certain conditions. Even though contingent trade protection measures can take the form of a tariff, they are nevertheless usually labelled as non-tariff measures.

[269] Non-tariff measures, when used for protectionist purposes, are often referred to as "disguised protectionism". See, for example, ESCAP (2015).

[270] These two types of firms may include both, firms whose products are only sold domestically and firms that also serve export markets.

Trade policy impacts domestic import-competing firms

When trade barriers on imports are removed, **domestic producers** face increased import competition on the domestic market. The increased competition may cause some firms to exit the market and lead to job losses. In addition, domestic and foreign **suppliers** of these firms along the product's **domestic and global supply chain** may be adversely affected.

When trade barriers are put in place, domestic producers of the respective products are shielded from increased product market competition. This may at least delay the market exit of firms and obviate immediate job dismissals. It is also likely to have a similar impact on these firms' suppliers.[271]

Trade policy impacts firms that use imported inputs

A large number of firms source their inputs into production from abroad. When trade barriers are removed, these firms enjoy free access to foreign inputs. It has been shown in both theoretical and empirical research that access to foreign inputs is a key determinant of firm performance. This is because these inputs provide **importers** with opportunities to learn from new technologies, gain access to higher quality inputs and have a wider variety of inputs from which to choose.

Trade barriers that restrict the access to inputs can have adverse effects on firms that import some of their inputs.[272] It can also affect the input and output choice of these firms. For example, when the costs of an imported input rise, multi-product firms in particular may be inclined to reallocate resources away from the production line that makes use of this input, which in turn can adversely affect their performance.[273]

In an environment where some firms purchase their inputs locally, while others source internationally through global supply chains, trade barriers can also impact on product market competition. When a government decides to introduce a trade barrier on inputs required for production in a given sector, this will weaken the competitive position of those firms that import these inputs and have to absorb the costs related to trade protection. In contrast, firms that source their inputs domestically do not have to incur any additional costs.

With production taking place in various countries, inputs into production may cross borders multiple times, and at various stages of the production process. In global supply chains, trade barriers might apply more than once to an input, which can increase the cost of the input substantially and magnify any adverse effects on firms that rely on imported inputs. In addition, some of the adverse effects on these firms may be passed on to other suppliers, thereby magnifying the impact.

Trade policy impacts workers in importing firms

Losses incurred or gains realized due to trade policy are likely, at least partially, to be passed on to workers, not only with respect to employment, but other labour market outcomes. For example, it has been shown that firms with better access to foreign inputs pay higher wages to their workers.[274]

How does trade policy affect foreign firms and workers in global supply chains?

Trade policy affects foreign exporters and their suppliers

Trade policies not only impact domestic firms and workers, but also those located in other countries. The removal of trade barriers for **foreign exporters** will decrease the price of their exported products and increase export demand, which can then increase the number of jobs that are dependent on these exports. The introduction of trade barriers will have the opposite effect.[275]

In this context, trade policies can lead to cross-sectorial effects, where the introduction or removal of trade barriers applied to exports from one sector also has an effect on other sectors that provide inputs used in the production of these exports.[276]

Figure 13.2 shows the estimated impact of a one percentage point reduction of the domestic import tariff on manufactured goods, on the number of foreign manufacturing and services jobs, which depend on the affected trade flow. These jobs are composed of jobs within the affected exporting firms and their suppliers. For example, a one percentage point reduction in the tariff is estimated to increase the number of these jobs by on average more than three per cent in both the manufacturing and the services sector.

[271] Konings and Vandenbussche (2008), however, show that not all import-competing firms can benefit to the same extent from trade barriers on imports.

[272] For example, Amiti and Konings (2007), Kugler and Verhoogen (2012), and Goldberg et al. (2010) find evidence for the link between access to foreign inputs and firm performance.

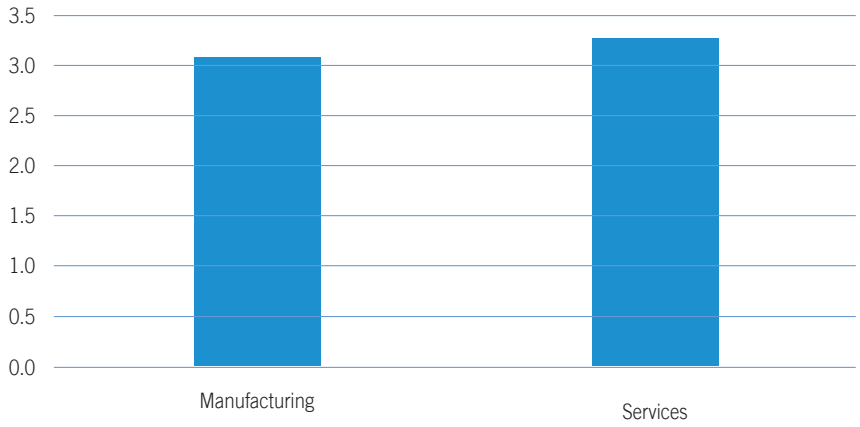
[273] See Vandenbussche and Viegelahn (2016) who show these effects both theoretically and empirically, based on Indian data.

[274] See, for example, Amiti and Davis (2011) who provide evidence for Indonesia.

[275] There can also be adverse effects of trade barriers on foreign workers in terms of income losses. For example, US antidumping measures imposed on catfish imported from Viet Nam have been shown to adversely affect the income of Vietnamese fishers (Brambilla et al., 2012).

[276] See Kühn and Viegelahn (forthcoming) for some evidence based on simulations and data.

Figure 13.2 Estimated impact of a 1 percentage point reduction of the average goods tariff on related jobs, by sector (per cent)



Note: The estimated impacts shown in the figure are statistically significant at the 1 per cent level.
Source: Kühn and Viegelahn (forthcoming).

Trade policy can create jobs both of decent and of poor quality

Trade policy is an important determinant of how and where firms set up their **global production networks**.[277] The jobs that are created in foreign countries through these global production networks can play an important part in the development of countries, contributing to economic growth, poverty reduction, job creation and entrepreneurship.

At the same time, it is vital that at least basic labour standards with regards to **occupational safety and health**, wages and working time are respected. Often this is the case, with jobs providing livelihood for millions of workers. There are, however, also cases of failures within global supply chains, where basic labour standards have been violated, leading to adverse effects on workers that form part of global supply chains.[278] Poor safety conditions, low wages, excessive and volatile working hours and the extensive use of short-term contracts are observed in some sectors and countries.[279]

How can trade policy be sustainable and inclusive?

Trade policies affect different stakeholders differently. Especially in times where production is highly fragmented across borders, governments will most likely face factions of both winners and losers from trade policy at the same time. The effects of trade policies on domestic firms and workers are heterogeneous and depend on who or what is under consideration. Trade policies also affects workers in foreign countries, can generate or destroy jobs, and can generate jobs of decent quality or poor quality.

It is hence important to accompany trade policies with a policy mix that is able to mitigate any adverse impacts, and provide cushions to those that are disadvantaged by these policies. Labour market and social protection institutions and actors can guarantee a certain degree of employment protection, a minimum wage and social protection floors and systems.[280]Active labour market policies can support workers that have lost their jobs to find a new job, for example by offering training that increases their human capital and increases their probability to find a new job.[281]

With regards to labour standards in global supply chains, efforts to ensure that labour standards are respected are being stepped up. The recently set-up *Vision Zero Fund* that aims to prevent work-related deaths, injuries and diseases in global supply chains, and the *Resolution concerning decent work in global supply chains*, adopted at the International Labour Conference in June 2016, are steps in that direction. Also labour provisions in trade agreements can potentially provide an entry point for stakeholders to discuss issues related to decent jobs in global supply chains.

[277] See, for example, Curran (2015).

[278] The Rana Plaza collapse of a garment factory in Bangladesh is an example, where the failure to comply with certain labour standards led to the deaths of more than a thousand workers.

[279] See ILO (2015) for an overview.

[280] According to the ILO (2014), 73 per cent of the world population is not covered by adequate social protection.

[281] According to the OECD (2004), a 10 per cent increase in the time spent by an adult on education or training can be associated with a fall in the probability of being unemployed of almost 0.2 percentage points.

References

Amiti, M.; Davis, D.R. 2011. "Trade, firms, and wages: theory and evidence", in *Review of Economic Studies*, Vol. 79, pp. 1–36.

Amiti M.; Konings, J. 2007. "Trade liberalization, intermediate inputs, and productivity: evidence from Indonesia", in *American Economic Review*, Vol. 97, No. 5, pp. 1611–1638.

Brambilla, I.; Porto, G.; Tarozzi, A. 2012. "Adjusting to trade policy: evidence from U.S. antidumping duties on Vietnamese catfish", in *Review of Economics and Statistics*, Vol. 94, No. 1, pp. 304–319.

Curran, L. 2015. "The impact of trade policy on global production networks: the solar panel case", in *Review of International Political Economy*, Vol. 22, No. 5. pp. 1025-54.

ESCAP. 2015. "Trade and non-tariff barriers: impacts in the Asia-Pacific region", in *Emerging Issues in Trade and Investment*, Vol. 1, Economic and Social Commission for Asia and the Pacific (Bangkok).

Goldberg, P. K.; Khandelwal, A., Pavcnik, N.; Topalova, P. 2010. "Imported intermediate inputs and domestic product growth: evidence from India", in *Quarterly Journal of Economics*, Vol. 125, No. 4, pp. 1727–1767.

ILO. 2015. *World Employment and Social Outlook: The Changing Nature of Jobs*, International Labour Office (Geneva).

ILO. 2014. *World Social Protection Report 2014/15: Building Economic Recovery, Inclusive Development and Social Justice*, International Labour Office (Geneva).

Konings, J.; Vandenbussche, H. 2008. "Heterogeneous responses of firms to trade protection", in *Journal of International Economics*, Vol. 76, No. 2, , pp. 371–383.

Kugler M.; Verhoogen, E. 2012. "Prices, plant size, and product quality", in *Review of Economic Studies*, Vol. 79, pp. 307–339.

Kühn, S.; Viegelahn, C. Forthcoming. *Foreign Trade Barriers and Jobs in Global Supply Chains*, ILO Research Paper (Geneva).

OECD. 2004. "Improving skills for more and better jobs: Does training make a difference?" in: *OECD Employment Outlook 2004*, Organization for Economic Co-operation and Development (Paris).

Vandenbussche, H.; Viegelahn, C. 2016. *Input Reallocation Within Firms*, CEPR Discussion Paper No. 11395 (London).

Further reading

Bernard, A.B.; Jensen, J.B.; Redding, S.J.; Schott, P.K. 2007. "Firms in international trade", in *Journal of Economic Perspectives*, Vol. 21, No. 3, pp. 105–130.

Wagner, J. 2012. "International trade and firm performance: a survey of empirical studies since 2006", in *Review of World Economics*, Vol. 148, No. 2, pp. 235–267.

14 CORPORATE SOCIAL RESPONSIBILITY IN TRADE AGREEMENTS

SUMMARY

Trade agreements increasingly include more frequent and stronger references to corporate social responsibility (CSR).

By and large, references to CSR tend to be limited, in particular in older trade agreements to declaratory language enunciating general principles, with limited reference to existing frameworks, such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), the UN Global Compact, or the Organization for Economic Cooperation and Development (OECD) Guidelines. A number of recent trade agreements include explicit references to these frameworks.

Most of the agreements that make reference to CSR principles, however, provide some institutional mechanisms that also have the potential to deal with CSR issues.

CSR provisions have different implications, and hold a different potential, for workers, businesses and governments.

Corporate social responsibility: an increasingly important reality

Businesses have increasingly adopted corporate social responsibility (CSR) schemes to promote responsible practices, including respect for labour rights, in their activities worldwide.

CSR practices may take various forms, ranging from codes of conduct and the establishment of auditing mechanisms and processes for due diligence in respect of human rights, to the revision of purchasing and pricing practices.[282]

This is particularly important in a context where multinational enterprises in global supply chains develop activities in economies that may often lack the domestic regulatory and institutional capacity to effectively implement, monitor and enforce labour regulation. In this regard, civil society has played an important role in exerting pressure and drawing public attention to the challenges of responsible business conduct worldwide.

While initially CSR initiatives were regarded as merely voluntarily and private, **governments are now steadily incorporating these schemes into their public policies**. This results in the creation of what may be termed a "policy hybrid", where the boundaries between private and public regulation are blurred.[283] The incorporation of CSR clauses in trade agreements is a good example in this regard (see box 14.1).

For example, the European Parliament requested the integration of CSR provisions in all forthcoming trade and investment agreements negotiated by the EU.[284] Furthermore, the

This chapter was written by Rafael Peels, Elizabeth Echeverria M., Jonas Aissi and Anselm Schneider

[282] For the purposes of this chapter, CSR initiatives are seen in a broad sense and go beyond the traditional purely private and voluntary understanding.

[283] Aaronson (2007); Aaronson and Zimmerman (2008).

[284] European Parliament (2011); European Parliament (2010).

new EU Trade Policy states that "EU's trade and investment policy must respond to consumers' concerns by reinforcing corporate social responsibility initiatives and due diligence across the production chains".[285]

Similarly, Canada introduced a CSR strategy seeking to reinforce, in particular, the extractive sector operating overseas. The strategy calls for "the inclusion of voluntary provisions for CSR in all Foreign and Investment Promotion and Protection Agreements and Free Trade Agreements signed since 2010".[286]

This chapter discusses CSR provisions in trade agreements, covering Canada, the European Free Trade Association (EFTA), the EU, the United States, and others.[287] It also examines the possible implications for States, business and workers.

Box 14.1 Why is CSR referred to in trade agreements?

The negotiating parties may have different motivations to include CSR language in trade agreements. The following rationales can be distinguished as some of the main drivers for CSR. However, these rationales do not necessarily apply equally to all the trade parties pursuing to include CSR provisions in trade agreements.

As the scope of trade agreements has expanded over time to include other issues of public interest such as investment, labour standards, environmental protection and public procurement, the incorporation of CSR provisions can be considered a logical further extension.

Moreover, trade and investment agreements have been perceived by many civil society organizations as granting more rights for businesses and investors (for example, access to markets, to a specific dispute settlement mechanism, etc.), than responsibilities. Consequently, CSR provisions may: (i) outweigh rights and responsibilities for businesses; and (ii) recognize the role of businesses in promoting labour rights in a complementary manner to the role of States.

In addition, CSR clauses may enhance coherence in CSR initiatives by encouraging businesses to adopt those initiatives that are referred to in the agreements and recognized as authoritative sources (for example, the OECD Guidelines for Multinational Enterprises or the ILO MNE Declaration).

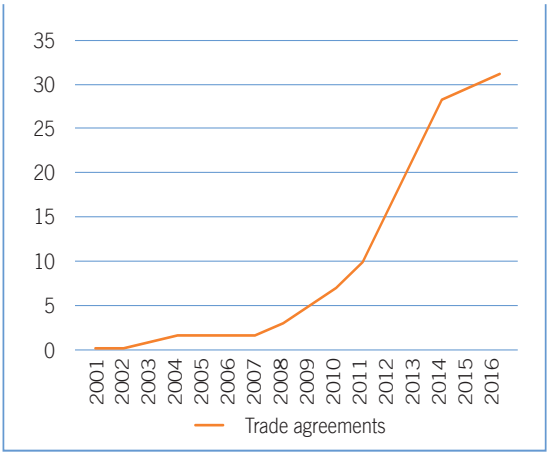
A final argument relies on economic leverage, that is, that the potential economic benefits of entering into a trade or investment agreement may be used to leverage responsible business conduct.

What are the main characteristics and evolution of CSR provisions?

Overall, only a limited number of trade agreements make reference to CSR. Since 2010, however, these references have been increasing (see figure 14.1).[288] To date, about 35 trade agreements make such reference. Recent agreements (signed but are not yet in force, or still under negotiation) that make direct reference to CSR and labour include the Trans-Pacific Partnership (TPP),[289] the Comprehensive Economic and Trade Agreement negotiated between the EU and Canada, and the EU-Viet Nam Free Trade Agreement.[290]

When forming part of a trade agreement, CSR provisions are provisions negotiated between States with direct impacts for them, for instance to cooperate on CSR, to encourage enterprises to voluntarily incorporate in their activities CSR mechanisms, or to facilitate and promote trade in goods that are subject to CSR schemes.[291]

Figure 14.1: CSR provisions in trade agreements



[285] European Commission (2015, p. 20).

[286] Government of Canada (2014, p. 15).

[287] See Peels et al. (2016) and Peels and Schneider (2014) for an in-depth assessment.

[288] CSR references are understood as a mixture of terms, including principles and instruments, that are associated with CSR – "CSR", "corporate", "voluntary", "self-regulation", "OECD", "global compact", "responsibility", "OECD Guidelines for Multinational Corporations", "Global Reporting Initiative", "Guiding Principles on Business and Human Rights", "ILO MNE Declaration" and "ISO 26000".

[289] The trade parties to the TPP are: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Viet Nam.

[290] All of these agreements are concluded but not yet in force.

[291] It has been argued that these are "double soft" references, in cases where soft language is used in terms of States' commitment to purely voluntary CSR engagement of the private sector (Prislan and Zandliev, 2013).

The provisions adopted are generally soft but are growing stronger in more recent agreements. Some commitments are stronger than others, for example some States commit themselves to making an **effort to promote CSR** ("shall strive to promote") and others directly c**ommit to encourage** businesses to adopt CSR policies ("shall encourage").

While only a limited number of agreements make precise reference to a particular CSR instrument, a positive evolution can be noted. This means that reference is increasingly made to instruments as the OECD Guidelines, the United Nations Global Compact, and the ILO MNE Declaration.

Reference to CSR can generally be found in the preamble of the agreement, in a labour cooperation agreement or mechanism, in the investment chapter, or in the trade and sustainable development chapters. As a trend, CSR provisions have increasingly been incorporated in the core text of the agreements.

In some cases, there is an overlap between the labour provisions and CSR provisions. This may occur, for instance, when they are found in the labour or sustainable development chapters or when they make references to international labour standards or other ILO instruments, such as the ILO MNE Declaration. This has implications primarily for implementation because the same mechanisms that are applicable to the labour provisions may also apply to the CSR provisions.

There could be extraterritorial implications related to CSR provisions. An example of this is when States encourage enterprises operating within their territory or subject to their jurisdiction to adopt CSR policies and to apply these policies in their operations (that is, in home and host countries).

What are the different approaches?

CSR provisions are generally found in trade agreements, with countries and regions that include labour and sustainable development provisions in their agreements. This is mostly the case of agreements where Canada, the European Union, the European Free Trade Association, and developing countries such as Chile are trade partners.

Approach of Canada

In Canadian agreements, CSR provisions may be incorporated in the preamble, in the preamble of the side agreements on labour (Agreements on Labour Cooperation), as part of investment chapters, or – more recently – directly in the labour chapters.[292]

Canadian trade agreements generally do not make reference to specific CSR instruments but refer to "internationally recognized corporate social responsibility standards and principles and/or statements of principle that have been endorsed or are supported by the Parties". The Government of Canada, however, has publicly endorsed certain CSR standards, guidelines and initiatives that include, for example: ISO 26000, the ILO MNE Declaration, the OCED Guidelines, the Global Reporting Initiative Guideline, the UN Guiding Principles on Business and Human Rights, and the UN Global Compact.[293]

More recent agreements involving Canada, the United States and Chile, in particular the TPP, incorporate CSR references in their chapters on investment and labour, while providing for higher levels of commitment through phraseological gradations (for example, from "should encourage" to "shall endeavour to encourage").[294]

What is important is that the agreement in this regard does not establish any territorial limit for the obligation of the parties. Accordingly, parties could encourage all enterprises in their territories and abroad (linked to the agreements) to adopt CSR initiatives.

Technically, the mechanisms of the labour chapter apply also to the CSR clause, such as cooperative activities, cooperative labour dialogue, and follow-up through institutional arrangements (for example, the Labour Council).

Approach of the European Union

In the case of the EU, the agreements have evolved since the first reference to CSR in an EU trade agreement – the Joint Declaration concerning Guidelines to Investors, developed in parallel to the agreement with Chile (2004). This inclusion of CSR references only included a weak reminder to MNEs to adopt the OECD Guidelines for Multinational Enterprises.

Gradually, CSR language has been integrated in the trade and sustainable development chapters of the agreements. The latest agreement with Viet Nam (not yet in force) promotes an increased level of commitment for States to CSR in different aspects of the agreement. For instance:

- It establishes that the parties **shall encourage**, in accordance to their own laws and policies, the development of and participation in CSR schemes.
- In addition, the parties recognize the importance of voluntary initiatives to achieve and maintain high levels of labour protection and to complement domestic regulatory measures.
- It includes agreement to cooperate on CSR and a commitment to take into account and promote relevant CSR instruments.

[292] E.g., Canada-Peru (2009), Canada-Colombia (2011) and Canada-Panama (2013).

[293] See Government of Canada (2015).

[294] Article 19.7 of the TPP.

The specific commitments adopted evolved from general references to internationally agreed guidelines, to particular CSR instruments, such as the OECD Guidelines,[295] the UN Global Compact, and the ILO MNE Declaration.[296]

As in the case of Canada, the implementation mechanisms that are provided in the trade and sustainable development chapter (for example, monitoring, technical cooperation, conflict resolution and others) apply to the CSR clause.

Have CSR clauses been applied in practice?

While the inclusion of CSR references is still recent and practical experiences are therefore limited, there are some examples that give insights into the application of these clauses.

Interestingly, regardless of the lack of inclusion of a CSR provision in the agreement, CSR issues – and, in particular, cooperative activities – have been dealt with in the **Transpacific Strategic Economic Partnership Agreement (2006)**. For example, in 2014 a tripartite workshop was held on corporate social responsibility, with a particular emphasis on achieving a better understanding of the ILO MNE Declaration.[297]

Under the **EU-Republic of Korea Agreement (2013)** a close follow-up of CSR commitments has been provided by the institutions established under the trade and sustainable development chapter – most notably, in the Committee on Trade and Sustainable Development, the Domestic Advisory Group in the respective countries and the joint Civil Society Forum. Meetings in all these forums have included discussions on CSR practices.

In addition, CSR has been identified as a potential area for technical cooperation. Thus, multinational enterprises operating in the EU and the Republic of Korea are subject to joint surveillance in respect of their compliance with the principles of the OECD Guidelines, the UN Guiding Principles on Business and Human Rights, the UN Global Compact, and ISO 26000 (CSF, 2014).

What are the implications for governments and the social partners?

CSR provisions are mainly directed at States. Thus, by negotiating the inclusion of these provisions in trade agreements, States can help to encourage responsible business behaviour and enhance coherence in the diverse field of CSR.

The inclusion even of relatively soft references to CSR in the context of binding agreements could help to hold States **accountable** for business compliance with CSR provisions through the implementation mechanisms provided in the agreements.

Increased coherence in the adoption of CSR instruments may have a direct impact on businesses' CSR commitments and trigger a race to the top.[298] Furthermore, the incorporation of CSR in trade agreements is a strong acknowledgement of the role played by businesses in promoting labour standards and improved working conditions. Consequently, corporations might be scrutinized by stakeholders and the wider public through the implementation mechanisms provided in the agreements. Enterprises could also benefit from the cooperative projects on CSR to build their capacities and better implement the initiatives adopted. The combination of both CSR clauses and labour provisions in trade agreements can also strengthen concerted actions on decent work in global supply chains.

Finally, workers' organizations hold the potential to play an important role in the activation of CSR clauses, for instance through the implementation mechanisms provided in the trade agreements. In addition, labour advocates may combine advocacy on CSR with labour rights and human rights.

References

Aaronson, S. 2007. "A match made in the corporate and public interest: marrying voluntary CSR initiatives and the WTO", in *Journal of World Trade*, 41(3), pp. 629–659.

Aaronson, S.; Zimmerman, J.M. 2008. *Trade Imbalance. The Struggle to Weigh Human Rights Concerns in Trade Policy Making*, (Cambridge, MA, Cambridge University Press).

European Parliament. 2011. *European Parliament Resolution of 6 April 2011 on the Future European Investment Policy*, (2010/2203(INI). Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0141+0+DOC+XML+V0//EN [7 Nov. 2016].

—. 2010. *European Parliament Resolution of 25 November 2010 on Corporate Social Responsibility in International Trade Agreements*, (2009/2201(INI). Available at: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010-0446 [7 Nov. 2016].

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

Government of Canada. 2015. *Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia*. Available at: http://www.canadainternational.gc.ca/

[295] For example, in the agreements with the Republic of Korea (2013), Colombia-Peru (2013), and EU-Central America (2013) there is explicit reference to CSR instruments.

[296] The EU, in its recent agreements with Georgia, the Republic of Moldova and Ukraine (all 2014).

[297] Lazo Grandi (2014).

[298] Sabel et al (2000).

colombia-colombie/bilateral_relations_bilaterales/rep-hrft-co_2014-dple-rapp.aspx?lang=eng [7 Nov. 2016].

Lazo Grandi, P. 2014. *Implementación de las cláusulas sociales en los tratados de libre comercio. La experiencia de Chile*, background paper (Geneva, ILO Research Department).

Peels, R.; Schneider, A. 2014. "The potential role of the ILO to enhance institutional coherence on corporate social responsibility", in *International Trade and Investment Agreements*, Bulletin of Comparative Labour Relations, 89.

Peels, R.; Echeverria M., E.; Aissi, J.; Schneider, A. 2016. *Corporate Social Responsibility (CSR) in International Trade and Investment Agreements: Implications for States, Business and Workers*, ILO Research Paper No. 13, ILO Research Paper Series, (Geneva, ILO). Available at: http://www.ilo.org/global/research/papers/WCMS_476193/lang--en/index.htm [7 Nov. 2016].

Prislan, V.; Zandvliet, R. 2013. "Labor provisions in international investment agreements: prospects for sustainable development", in Bjorklund, A. (ed.) *Yearbook of International Investment Law and Policy*, (Oxford, Oxford University Press).

Sabel, C., O'Rourke, D., & Fung, A. 2000. *Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace*. KSG Working Paper No. 00-010.

Further reading

Abbott, K.; Keohane, R.; Moravcsik, A.; Slaughter, A.; Snidal, D. 2000. "The concept of legalization", in *International Organization*, 54(3), pp. 401–419.

Blecher, L.; Stafford, N. K.; Bellamy, G. 2014. *Corporate Responsibility for Human Rights Impact: New Expectations and Paradigms*, (Washington, DC, American Bar Association).

Clavet, R. 2008. "Introduction", in *Governance, International Law & Corporate Social Responsibility*, (Geneva, ILO).

De Schutter, O.; Ramasatry, A.; Taylor M. B.; Thompson, R. C. 2012. *Human Rights Due Diligence: The Role of States. International Corporate Accountability Roundtable*. Available at: <http://icar.ngo/wp-content/uploads/2012/12/Human-Rights-Due-Diligence-The-Role-of-States.pdf> [7 Nov. 2016].

Diller, J. 2013. "International labour law and challenge of pluralism in the international order", in *Manchester Journal of International Economic Law*, 10(2), pp. 128–147.

Fransen, L. 2012. T*he Embeddedness of Responsible Business Practice: National Institutional Environments and Corporate Social Responsibility*, Osgoode CLPE Research Paper No. 14/2012.

Gond, J.; Kang, N.; Moon, J. 2011). "The government of self-regulation: On the comparative dynamics of corporate social responsibility", in *Economy and Society*, 40(4), pp. 640–671.

Kirton J.J.; Trebilcock, M.J. (eds.) *Hard Choices, Soft Law. Voluntary Standards in Global Trade, Environment And Social Governance*, (Surrey, Ashgate).

Marx, A.; Wouters, J.; Rayp, G.; Beke, L. 2015. *Global Governance of Labour Rights*, (Leuven, Leuven Center for Global Governance).

Mooney, L. 2015. "Promoting the rule of law in the intersection of business, human rights, and sustainability", in *Georgetown Journal of International Law*, 46(4), pp. 1135–1150.

Muchlinski, P. 2007. *Multinational Enterprises and the Law*, (Oxford, Oxford University Press).

Ruggie, J. 2014. "Global governance and 'new governance theory': lessons from business and human rights", in *Global Governance*, 20, pp. 5–17.

Scherer, A.; Palazzo, G. 2011. "The new political role of business in a globalized world – a review of a new perspective on CSR and its implications for the firm, governance, and democracy", in *Journal of Management Studies*, 48(4), pp. 899–931.

Waleson, J. 2015. "Corporate social responsibility in EU comprehensive free trade agreements: towards sustainable trade and investment", in Legal Issues of Economic Integration, 42(2), pp. 143–174.

15 GOVERNANCE SPILLOVERS OF LABOUR PROVISIONS IN FREE TRADE AGREEMENTS

SUMMARY

The labour provisions in trade agreements have both direct and indirect effects upon governance. Policymakers designed these provisions to improve the governance of labour rights, but they may also have unanticipated side-effects. These provisions:

- empower workers and other citizens;
- facilitate a feedback loop between the government and its citizens on a broad range of issues affecting trade;
- promote wage and income equality, which is conducive to development, social cohesion and democracy.[299]
- help policymakers to better integrate labour rights with other public policies (such as fiscal policy, anti-corruption policies, or criminal laws);
- help citizens and policymakers gradually to improve governance, increase productivity, and advance social cohesion in the community.

What do we know about labour rights provisions in trade agreements?

Labour rights provisions in trade agreements are designed to improve labour rights governance and to empower workers. But they can also affect governance more broadly. In the absence of a specific, internationally accepted definition of **good governance**, herein we use the definition formulated by the United Nations Development Programme "mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights…and mediate their differences".[300] Good governance follows the rule of law and is transparent, responsive, equitable, effective, and efficient.[301]

Here is how this process may play out. When country A participates in a free trade agreement (FTA) with one or more countries, country A's policymakers and citizens know that policymakers and citizens in their FTA partner countries are watching their behavior. Hence trade agreements have a "sunshine effect".[302] Government officials in country A are likely to improve their respect for labour rights because they know their counterparts are watching them closely. In addition, Canada, the European Union (EU) and the United States (US), include language that require that citizens in their trade partner countries be advised and educated about their labour rights under law and have opportunities to comment on trade-related provisions.[303] In so doing, these trade agreements help empower not just individuals as workers, but as citizens too.

Taken in sum, over time, these provisions can encourage governments to create a feedback loop, involving the public more in trade policy deliberations and in turn facilitating greater accountability in labour rights and other forms of governance.[304] Moreover, they can facilitate worker-business cooperation and mutual trust, which in turn will enhance

This chapter was written by Susan Ariel Aaronson

[299] Betcherman (2012).

[300] Zainab (2016).

[301] UNESCAP (2009).

[302] As an example, Sandra Polaski notes that, with the Cambodia textile agreements, "sunshine" was a form of leverage to ensure that the business sector respected labour rights and the Government monitored labour rights conditions (Polaski, 2006).

[303] See, for example, CAFTA-DR.

[304] Rodrik (2016); Aaronson (2015b).

economic performance and productivity.[305]

The labour rights provisions in trade agreements can create a virtuous circle of economic growth and governance. If workers are empowered and able to join unions, over time managers and workers learn to develop shared solutions to improving productivity and facilitating stable growth. Businesses benefit from collective agreements, as conditions are more predictable and accountable. Society, as a whole, learns how to accommodate conflicting interests through consultation and negotiation.[306] Gradually, investors will take note of those States that respect workers' rights and will see that they can be trusted to enforce property rights, uphold the rule of law, and act in an even-handed, impartial manner.[307]

Herein, we focus on EU, Canadian and US FTAs to examine whether and how labour rights provisions improve governance. We examine only those free trade agreements where the parties are treated as equals during the implementation phase with reciprocal trade obligations.[308] Thus, we do not include the EU economic partnership agreements (EPAs), which the EU defines as trade and development agreements negotiated between the EU and African, Caribbean and Pacific trade ppartners engaged in regional economic integration processes.[309] We also do not examine EU association agreements with countries in the Eastern Partnership closer to EU standards and norms. These agreements comprise a broad range of issues, including employment and social policy and the establishment of a Deep and Comprehensive Free Trade Area between the EU and the partner country.

Each of the three trade giants takes a different approach to labour rights. The EU includes labour rights provisions in the legally-binding sustainable development chapter, which also focuses on human rights and governance, own, as with the United States or Canada. The EU did not include labour rights language in all of its FTAs. However, Colombia and Peru (2013), Republic of Korea (2015), and Ukraine (2016) do include labour rights provisions.[310] If the Comprehensive Economic and Trade Agreement (CETA, between the EU and Canada) is approved, it will also have labour rights language.

These recent EU FTAs commit the parties to the ILO's Core Labour Standards, to the ratification of the ILO fundamental Conventions, and to the effective implementation of all ratified Conventions. The parties to the agreements also agree that they will not use labour standards for the purposes of disguised protectionism, that they will uphold their own existing domestic labour laws, that they will not waive or fail to effectively enforce such laws to encourage trade or investment, and that they shall strive to ensure that their relevant laws and policies provide for and encourage high levels of labour protection.[311] The EU agreements also require the establishment of a joint committee comprising representatives of the two parties who will oversee the implementation of the chapter, accompanied by civil society mechanisms of various types.[312] Finally, the EU includes a dispute settlement mechanism in its trade and sustainable development chapter. If the two parties cannot find common ground on consultations, independent panel of experts will review.

The United States has FTAs with labour provisions with 19 countries, the most recent of which came into force in 2012 (Panama, Korea, and Colombia). Canada has seven FTAs with labour rights provisions in force, including the North American Free Trade Agreement (NAFTA), one of which is too recent to assess (Republic of Korea, 2015).[313] However, the EU's FTAs are very new and hence we have less information about the effects of these provisions on governance than in the case of Canadian or US FTAs with labour provisions.

The US, EU, and Canada have revised their labour provisions over time, learning what works and what does not, how to improve enforcement, and how to empower workers. The United States has five generations of approaches to these issues, although the latest generation, found in the Trans-Pacific Partnership Agreement, has not yet been approved by Congress.[314] After 2005, the United States put labour provisions at the core of the agreement, which required parties to "effectively enforce their own labour laws", and included public education and participation provisions. After 2007, the United States again revised its approach and required parties to adapt and maintain fundamental labour rights, effectively enforce their own labour laws and not waive or derogate from laws implementing fundamental labour rights. Signatories can apply normal trade sanctions and dispute settlement to all labour provisions.[315]

Until recently, the labour provisions in Canadian FTAs were contained in side agreements. However, Canada's newest trade agre-

[305] Maskus (1997).

[306] Sengenberger (2005).

[307] Kucera and Principi (2014); Kucera (2002).

[308] Marx et al. (2016, p. 599).

[309] See http://ec.europa.eu/trade/policy/countries-and-regions/agreements/index_en.htm [8 Nov. 2016]; and http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/[8 Nov. 2016].

[310] See http://ec.europa.eu/trade/policy/countries-and-regions/agreements/ [8 Nov. 2016].

[311] Bartels (2013); See, for example, Art. 268, EU FTA with Colombia and Peru. Some EU FTA's (e.g. EU-Korea) also include commitments on effectively implementing the ILO Conventions that respectively the EU Member States and Korea have ratified. In some EU FTAs both Parties also agree to make sustained efforts to the ratification of ILO priority Conventions as well as other ILO Conventions classified by ILO as up to date Conventions.

[312] See the chapter in this handbook on involving social partners in trade agreements. See also ILO (2016).

[313] The Canada-EU FTA has not been approved by either parliament as of this writing and is not in effect.

[314] DOL and USTR (2015).

[315] DOL and USTR (2015, p. 49).

ements (with the EU and Korea) include labour rights in a separate chapter.[316] Canada's labour rights chapters are legally binding. Should a party not comply with these provisions, it could be fined (after the completion of the specific procedures to that effect).

We do not know how effective these three approaches are, but each has benefits for labour rights and governance

Scholars and policymakers are just beginning to use quantitative data sets to examine the effects of these different approaches to labour provisions over time, and also to compare different approaches. Thus, we do not yet know if any of these approaches is generally more effective than any other. We do know, however, that they all want to reach the same goal – to help trade partners uphold or improve the governance of labour rights and to empower workers.

Some scholars who have tried to compare these effects using statistical data have hypothesized that governments such as those of the United States and Canada, which focus on labour rights enforcement, will be better able to get those FTA partners with inadequate labour rights governance to monitor, enforce, and invest in labour rights.[317] They assert that a disincentive based approach is more likely to yield labor rights results (this includes consultations, and if that does not yield change, to trigger trade disputes, sanctions or fines to encourage compliance). These scholars also note that by focusing on enforcement, the demandeur countries signal that the protection of labour rights is essential to building trust and cementing good trade relations.

However, one can also argue that by focusing on labor rights and not other human rights, the US and Canada may, without intent, convey that certain human rights are more important than other human rights or that human rights are divisible, which is not how they are understood in international law. Hence, the EU's broader focus on human rights coherence, sustainable development and enhanced governance might yield better results over time for several reasons. First, labour rights such as the right to work, freedom of assembly, association, a ban on slave labour and the right to fair remuneration, are also human rights delineated in the Universal Declaration of Human Rights.[318] Moreover, these rights are important to democracy. According to the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, "freedom of peaceful assembly and association are foundational rights…essential to human dignity…and democracy. They are the gateway to all other rights."[319]

Secondly, by focusing on labor rights as part of broader human rights language, EU policymakers signal the indivisibility and universality of human rights as well as the close ties between the protection of human rights and stable democratic governance. Hence, the EU may be better able to convince its FTA partners to take a more holistic approach to human rights and good governance. In turn, one can argue that governments understand the indivisibility of human rights will have more opportunities to learn how to govern human rights including labor rights. It is not easy to protect, respect and remedy human rights—it takes governance prowess. There are times when governments must actively intervene in markets (for example, when workers are discriminated against) and times when they should not intervene (for example, when workers practice freedom of association).[320] As government officials learn how to respect human rights, including labor rights, they will build trust among workers and businesses. Moreover, these states will signal to their citizens that the process of labour rights governance (and governance in general) is fair and effective.[321]

How might implementation of labour provisions impact on worker empowerment?

Governance spillovers may occur through worker empowerment leading to sustainable growth, a more productive economy and a more inclusive society.

While research tend to focus on the enforcement of labour provisions, few researchers have focused their attention on how these agreements may affect worker empowerment. The United States, the European Union, and Canada have developed provisions dedicated to increasing the ability of workers to demand labour rights and influence labour rights governance. While all three include language creating consultative bodies to advice on labour rights, the US and EU have specific language on public awareness and education to build a demand for labour rights.

Since 2005, US agreements have included provisions in the labour rights chapter related to procedural guarantees and public awareness. US policymakers significantly strengthened those provisions in the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) and later FTAs. The enhanced provisions require parties to encourage public participation in the development of labour rights policies. They also require that all persons have "appropriate access to tribunals," that the "proceedings are fair, equitable, and transparent…open to the public", give all parties the right to seek review "and, where warranted, correction of final decisions". Moreover, "each Party shall promote public awareness of its la-

[316] Government of Canada, "Negotiating and Implementing International Labor Cooperation Agreements" http://tinyurl.com/hwkkdps

[317] Luce (2013); Dewan and Ronconi (2014).

[318] See http://www.un.org/en/universal-declaration-human-rights/ [9 Nov. 2016].

[319] Kiai (2016).

[320] Aaronson and Zimmerman (2007); Aaronson (2015a).

[321] Postnikov and Bastiaens (2014).

bour laws" by educating the public about labour rights and by ensuring information that the public can obtain information about labour rights. Finally, the parties are encouraged to "convene a new, or consult an existing, national labour advisory or consultative committee, comprising members of its public, including representatives of its labour and business organizations, to provide views on any issues related to this Chapter".[322] Taken in sum, these provisions could empower workers (the demand side of labour rights) through rules on public awareness, public participation, and due process rights.[323]

Canada also requires public awareness of labour laws in its labour cooperation agreements. For example, in the Canada-Panama agreement, the parties must also inform the public about labour laws and allow public comment.[324]

In the sustainable development chapters of EU FTAs, each party is required to "consult domestic labour and environment or sustainable development committees or groups, or create such committees or groups when they do not exist" (EU–Colombia and Peru trade agreement, art. 281). The EU also includes language mandating transparency. These provisions state that when parties develop, introduce, and implement any measures aimed at protecting labour conditions that affect trade between the Parties, they must make these measures public with due notice and public consultation (EU-Korea trade agreement, article 13.9).

No one has yet done a study as to whether these provisions and consultative bodies actually empower workers. Nonetheless, in a 2016 study of trade and labor rights, the ILO noted that "the impact of labour provisions depends crucially on, first, the extent to which they involve stakeholders, notably social partners such as unions and NGOs".[325] Workers who are aware of their rights and able to challenge firm and government behaviour are empowered. Over time, empowered workers can promote greater income equality through improved productivity and better share in profits through wage increases. Some analysts argue that this process can advance development, social cohesion and democracy and ensure that more people meet their potential.[326] Moreover, these provisions may help to legitimize trade agreements and help them to gain a base of public support.[327]

Is there evidence of governance spillovers?

Empowering guest workers [328]

Since joining NAFTA, Mexican trade policy has become more responsive to public concerns about labour rights. For example, the Mexican Government, which was long chided for its unwillingness to respect labour rights, began to work internationally to protect its citizens' labour rights. In September 2009, Mexican consulates attempted to educate Mexican guest workers in the United States regarding their labour rights.[329]

In 2013, with help from US and Mexican civil society groups, guest workers came together to form the Sinaloa Temporary Workers Coalition to defend the rights of guest workers in Mexico and abroad. In 2014, the group complained to the Mexican Ministry of Labour regarding recruitment fees. The Ministry investigated and found 27 violations of the law, resulting in fines. In this example, Mexicans held their Government accountable for violations of the law at home. The process educated Mexican policymakers about the situation of Mexican guest workers in the United States and empowered Mexican workers. [330]

Policy coherence: linking labour and tax policies to improve labour rights governance

Guatemala is one of the members of the US FTA CAFTA-DR. The US Trade Representative and the US Department of Labor noted issues in Guatemala relating to labour rights and governance. Both recognized the need to link tax and labour rights policies and to provide incentives to adherence and, in response, Guatemala published its Ministerial Accords. These Accords created a public comment process as part of the review of applications by export companies for certain tax benefits and require rejection of applications from companies that are found to have violated labour laws. They also establish a streamlined process to revoke the tax benefits for existing beneficiaries that violate labour laws and publish the names of companies whose benefits are withdrawn.

The new regulations require the Ministry of Labour to conduct annual inspections of all enterprises receiving special tax benefits.[331] This strategy made labour rights a key priority for the Government, integrated it with trade and fiscal policy, and helped the Government become more accountable to its firms and workers – an unanticipated spillover.

Policy coherence: linking the criminal code and workers' rights in Colombia

Colombia has also taken steps to reduce impunity and make it harder for anti-unionists to use violence, including murder, against union officials.

[322] https://ustr.gov/sites/default/files/uploads/agreements/cafta/asset_upload_file320_3936.pdf [8 Nov. 2016].

[323] DOL and USTR (2015, p. 1).

[324] See Canada/Panama FTA, Art. 6 and 10.

[325] ILO (2016, pp. 7–8).

[326] Sengenberger (2005); Betcherman (2012).

[327] Aaronson and Zimmerman (2007, p. 173).

[328] Guest workers are individuals who have temporary permission to work in another country.

[329] Aaronson and Zimmerman (2007).

[330] Eulick (2015).

[331] DOL and USTR (2015, p. 12).

In 2011, as specified in the action plan associated with the US-Colombia FTA, the Colombian Congress reformed the country's criminal code, establishing criminal penalties and possible imprisonment for employers that undermine the right to organize and bargain collectively, including by extending better conditions to non-union workers through collective pacts. The Colombian Government also enacted new legal provisions and regulations in 2011 and 2013 to prohibit, and to punish with significant fines, the misuse of cooperatives and other employment relationships that undermine workers' rights. In 2011, the Government increased the number of labour inspectors from 424 to 718. In 2015, the Colombian Constitutional Court strengthened the ability of inspectors to investigate a lack of protection for contingent workers. [332]

A recent study by Marx et al. (2016) found that, although Colombia has "established a fairly robust legal and institutional framework to protect labour rights, compliance is problematic, because while the laws were good, the government lacked capacity given the size of the country and the magnitude of labour rights problems".[333] A more coherent approach, which links labour rights and criminal law, could gradually yield better labour rights governance and results for workers.

Involving and empowering civil society in FTA partners: the EU takes a coordinated approach

EU policymakers recognize that including labour rights provisions in FTAs and providing capacity-building assistance to trade partners are important but not, on their own, sufficient to empower workers and civil society. Some studies have asserted that officials need to do more to empower citizens to monitor their own governments' labour rights obligations in domestic law and in international – including trade – agreements. These studies have asserted that dialogue should not be just box ticking, but should include greater transparency and consultation in rulemaking.[334]

The EU has been trying to respond to such concerns. Since 2014, EU delegations abroad have been developing country roadmaps to engage with local civil society and in so doing, build up civil society in a broad range of partner countries – irrespective of whether they have a trade agreement in place with the EU or not. In countries such as Peru, this type of support could gradually alter policymakers' negative attitudes about unions and about labour rights.[335] Moreover, civil society groups will gain a stake in the success of these provisions and will carefully monitor and hold government to account. In so doing, they will gain greater insights as to how to improve governance.

Conclusion

Labour rights provisions may have unanticipated spillovers. As policymakers learn how to effectively protect and respect workers' rights, they are also learning how to govern effectively and transparently and respond to public comment. Likewise, workers are learning to influence and trust their government. Moreover, over time countries that learn to improve labor rights governance are likely to build trust in effective governance and be better able to develop solutions to complex problems.[336]

There is growing evidence that countries that protect labour rights implicitly signal to traders and investors that they are advantageous places to do business. Governments that protect labour rights are likely to attract investment over the long term and reap benefits in productivity and growth. After all, through their ideas and hard work, people are the principal wealth of nations.[337]

References

Aaronson, S. A. 2015a. "A match made in the public interest? The wedding of human rights and trade," in The Political Economy of Trade, Martin, l. (ed,) (Oxford University Press).

—. 2015b. Working by Design: New Ideas to Empower US and European Workers in TTIP, May 2015b, IIEP. Available at: https://www2.gwu.edu/~iiep/events/Working_for_All/summary.pdf [8 Nov. 2016].

Aaronson, S. A.; Zimmerman, J. 2007. Trade Imbalance: the Struggle to Weigh Human Rights Concerns in Trade Policymaking, (Cambridge University Press).

Bartels, L. 2013. "Human rights and sustainable development obligations in EU free trade agreements", in 40 Legal Issues of Economic Integration, Issue 4, pp. 297–313.

Betcherman, G. 2012. Labour Market Institutions: A Review of the Literature, World Bank Policy Research Paper, 6276. Available at: http://library1.nida.ac.th/worldbankf/fulltext/wps06276.pdf [8 Nov. 2016].

Dewan, S.; Ronconi, L. 2014. US Free Trade Agreements and Enforcement of Labour Law in Latin America, IDB Working Paper Series No. IDB-WP-543, November 2014.

Eulick, W. 2015. Mexico's first union for guest workers fights abuses at home and in US, in CSMonitor.com, 28 December. Available at: http://www.csmonitor.com/World/Americas/2015/1228/Mexico-s-first-union-for-guest-workers-fights-abuses-at-home-and-in-US

[332] DOL and USTR (2015, pp. 22–23).

[333] Marx et al. (2016, p. 597).

[334] Marx et al. (2016)

[335] Obie and Van den Putte (2016, p. 35).

[336] Sengenberger (2005).

[337] Aaronson and Zimmerman (2007, pp. 193–196).

Kiai, M. 2016. Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, UNHCR, A/71/385, 14 Sept., 2016, 1, para. 1.

Kucera, D. 2002. Core Labour Standards and FDI. Available at: http://earthmind.net/fdi/misc/ilr-labour-standards-fdi.pdf [8 Nov. 2016].

Kucera, D.; Principi, M. 2014. "Democracy and foreign direct investment at the industry level: Evidence for US multinationals" in Review of World Economic Vol. 150, Number 3, pp. 595–617. Available at: https://www.researchgate.net/publication/271630317_Democracy_and_foreign_direct_investment_at_the_industry_level_Evidence_for_US_multinationals [8 Nov. 2016].

Luce, S. 2013. Labor Standards and Trade Agreements: The Impact of Trade Negotiations on Country Adoption of Freedom of Association and Collective Bargaining, U.S. Department of Labor. Available at: http://url.ie/zpp4 [8 Nov. 2016].

Marx, A. et al. 2016. "The Protection of labour rights in trade agreements: the case of the EU-Colombia Agreement", in the Journal of World Trade 50, no. 4 (2016) 587–610.

Maskus, K. E. 1997. Should Core Labour Standards Be Imposed Through International Trade Policy, paper prepared for the World Bank International Trade Division. Available at: https://www.researchgate.net/publication/23548892_Should_Core_Labour_Standards_Be_Imposed_Through_International_Trade_Policy [8 Nov. 2016].

Orbie, J.; Van Den Putte, L. 2016. Labor Rights in Peru and the EU Trade Agreement: Compliance with the Commitments under the sustainable Development Chapter, (Vienna, OFSE, Austrian Foundation for Development Research), Working Paper 58.

Polaski, S. 2006. "Combining global and local forces: the case of labor rights in Cambodia", in World Development 34, no.5. Available at: http://carnegieendowment.org/files/WDCambodia1.pdf [8 Nov. 2016].

Postnikov, E.; Bastiaens, I. 2014. "Does dialogue work? The effectiveness of labour standards in EU preferential trade agreements", in Journal of European Public Policy, 21, 2014: 6, pp. 923–940.

Rodrik, D. 2016. Put Globalization to Work for Democracies, The New York Times. Available at: http://www.nytimes.com/2016/09/18/opinion/sunday/put-globalization-to-work-for-democracies.html?_r=1 [17 Sept. 2016].

Sengenberger, W. 2005. Globalization and Social Progress: The Role and Impact of International Labour Standards (Friedrich Ebert Stiftung, Bonn, Germany).

United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP). 2009. What is Good Governance? Available at: http://www.org/resources/what-good-governance [8 Nov. 2016].

US Department of Labor. 2009. Progress in Implementing Capacity-Building Provisions Under the Labour Chapter of the Dominican Republic-Central America-United States Free Trade Agreement, January 14.

US Department of Labor and the US Trade Representative. 2015. Standing Up for Workers: Promoting Labor Rights through Trade, February. Available at: https://www.dol.gov/ilab/reports/pdf/USTR%20DOL%20Trade%20-%20Labour%20Report%20-%20Final.pdf [8 Nov. 2016].

Zainab, U. 2016. Defining Governance, Mo Ibrahim Foundation, 17 August. Available at: http://mo.ibrahim.foundation/news/2016/defining-governance/ [8 Nov. 2016].

Further reading

Aaronson, S. A. 2015. Working by Design: New Ideas to Empower US and European Workers in TTIP, May 2015, IIEP Available at: https://www2.gwu.edu/~iiep/events/Working_for_All/summary.pdf [8 Nov. 2016].

Aaronson, S. A.; Rodwan Abouharb, M. 2011. "Unexpected bedfellows: the GATT, the WTO and some democratic rights", in International Studies Quarterly 55, no. 2, pp. 379–408.

Campling, L. et al. Forthcoming. "Working beyond the border? A new research agenda for the evaluation of labour standards in EU trade agreements", in the International Labour Review.

Elliott, K. A. 2011. "Labour rights", in Chauffour and Maur (eds.): Preferential Trade Agreement Policies for Development: A Handbook, World Bank.

GAO, 2014. Free Trade Agreements: US Partners Are Addressing Labour Commitments but More Monitoring and Enforcement are Needed, GAO 15–160, November 6.

Phelan, C. (ed.). 2004. "Labour history symposium", in Labour History 45, pp. 497–535. Available at: http://udspace.udel.edu/bitstream/handle/19716/5500/Engelhardt,%20Dustin.pdf?sequence=1 [8 Nov. 2016], citing Freeman, R.; Elliott K. A. 2003. Can Labour Standards Improve Under Globalization?, (Washington, D.C, Peterson Institute).

US Department of Labour and the US Trade Representative. 2015. Standing Up for Workers: Promoting Labour Rights through Trade, February. Available at: https://ustr.gov/sites/default/files/USTR%20DOL%20Trade%20-%20Labor%20Report%20-%20Final.pdf