International Labour Organization

STUDIES ON GROWTH WITH EQUITY

ASSESSMENT OF LABOUR PROVISIONS IN TRADE AND INVESTMENT ARRANGEMENTS

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FOREWORD

This publication is funded by the Canadian and Swiss Governments, and is part of a larger ILO Research Department project that assesses the impact of labour provisions based on field research, interviews and regional seminars with social partners. It builds on previous research on the effectiveness of labour provisions, entitled *Social dimensions of free trade agreements* (ILO, 2013), which developed a typology of labour provisions and provided an exhaustive mapping of their design.

The methodology used to assess outcomes is based on macro-analysis of 260 trade agreements reported to the WTO (including 71 with labour provisions between 102 economies), and case study analysis of Bangladesh, Cambodia, Central America, Dominican Republic and Republic of Korea with respect to an institutional analysis of national laws and labour institutions. The analysis is supported by interviews with over 50 stakeholders in more than ten countries, including regional seminars held in Toronto, Washington, DC, Lima and New Delhi.

The report has been prepared by Jonas Aissi, Marva Corley-Coulibaly, Elizabeth Echeverria Manrique, Marialaura Fino, Laetitia Fourcade, Takaaki Kizu, Rafael Peels, Daniel Samaan, Pelin Sekerler Richiardi and Christian Viegelahn with research assistance from Jens Schlechter and Carla Chapman. Background research has been provided by Natalia Alshakhanbeh, Elizabeth Boomer, Tequila J. Brooks, Desirée LeClercq, Woori Lee, Carolina Lennon, Elva Lopez Mourelo, Kimberly Nolan Garcia, Elizabeth O'Connor, Myriam Oehri, Sara Rellstab, Daniel Sexton, and Lore Van den Putte. The report has been coordinated by Marva Corley-Coulibaly, under the supervision of Raymond Torres, the Director of the Research Department, and Moazam Mahmood, the a.i. Director of the Research Department.

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LIST OF ABBREVIATIONS

ACP	African, Caribbean and Pacific Group of States
ACWLA	Advisory Council on Workplace and Labour Affairs
AFL–CIO	American Federation of Labor and Congress of Industrial Organizations
AGOA	African Growth and Opportunity Act
ALC	agreement on labour cooperation
ASEAN	Association of South East Asian Nations
BFC	Better Factories Cambodia
BIT	bilateral investment treaty
BLA	Bangladesh Labour Act
BLEU	Belgium-Luxembourg Economic Union
BLFS	Bangladesh Labour Force Survey
CAFTA–DR	Dominican Republic–Central America Free Trade Agreement
CARIFORUM	The Forum of Caribbean Group of African, Caribbean and Pacific States
CAS	Committee on the Application of Standards
CBERA	Caribbean Basin Economy Recovery Act
CBI	Caribbean Basin Initiative
CCALC	Canada–Chile Agreement on Labour Cooperation
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CETA	EU–Canada Comprehensive Economic and Trade Agreement
CFA	Committee of Freedom of Association
CKFTA	Canada–Korea Free Trade Agreement
CRC	Convention on the Rights of the Child
CSF	civil society forum
CSR	corporate social responsibility
CUSBTA	Cambodia–United States Bilateral Textile Agreement
DAG	Domestic Advisory Group
DSM	dispute settlement mechanism
EBA	Everything But Arms
ECOSOC	United Nations Economic and Social Council
ECOWAS	Economic Community of Western African States
EESC	European Economic and Social Committee
EFTA	European Free Trade Association

EFTA CC	European Free Trade Association Consultative Committee
EPA	economic partnership agreement
EU	European Union
EPZ	export processing zone
FDI	foreign direct investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GSCs	global supply chains
GSP	Generalized System of Preferences
HDSA	historically disadvantaged South Africans
HOPE	Haitian Hemispheric Opportunity through Partnership Encouragement Act
ICCPR	International Covenant on Civil and Political Rights
ICSID	International Centre for Settlement of Investment Disputes
IFC	International Finance Corporation
IIA	international investment agreements
IILS	International Institute for Labour Studies
ILC	International Labour Conference
ILO	International Labour Organization
ILRF	International Labor Rights Forum
IPEC	International Programme on the Elimination of Child Labour
ISDS	Investor–State Dispute Settlement
ISO	International Organization of Standardisation
JAPDEVA	Junta de Administración Portuaria y de Desarrollo Económico de la Vertiente Atlántica
LAC	Labour Advisory Committee for Trade Negotiation and Trade Policy
LAP	Labor Action Plan
LCCBM	labour cooperation and capacity-building mechanism
LDCs	least-developed countries
MERCOSUR	Common Market of the Southern Cone
MFN	most-favoured-nation
MNEs	multinational enterprises
MoU	Memorandum of Understanding
NAALC	North American Agreement on Labour Cooperation
NAC	National Advisory Committee for Labor Provisions of US Free Trade Agreements
NAFTA	North American Free Trade Agreement

NAO	National Administration Office
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OSH	occupational safety and health
OTLA	Office of Trade and Labour Affairs
PITAC	Public Interest Trade Advisory Committee
SADC	Southern African Development Community
SCTSD	Sub-Committee on Trade and Sustainable Development
SIAs	sustainability impact assessments
SMEs	small and medium-sized enterprises
TAICNAR	Technical Assistance Improvement and Compliance Needs Assessment and Remediation
TPP	Trans-Pacific Partnership Agreement
TSDC	Trade and Sustainable Development Committee
TTIP	Transatlantic Trade and Investment Partnership
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
USDOL	United States Department of Labor
USGAO	United States Government Accountability Office
USTR	United States Trade Representative
WTO	World Trade Organization
WTO RTA-IS	World Trade Organization Regional Trade Agreement-Information System

EXECUTIVE SUMMARY

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

There has been an exponential increase in trade agreements over the past two decades. Consequently, more trade is conducted within the framework of bilateral and plurilateral trade agreements than outside: almost 55 per cent of goods exported took place within that framework in 2014, compared with 42 per cent in 1995. Furthermore, it is increasingly common for new trade agreements to include labour provisions, and currently a quarter of the value of trade that takes place within the trade agreements framework falls under the scope of such provisions – which were practically inexistent until the mid-1990s. The Trans-Pacific Partnership Agreement (TPP, which has recently been concluded though not yet ratified) and the Transatlantic Trade and Investment Partnership (TTIP, which is still being negotiated), may provide a further significant increase in the incidence of trade that falls within the framework of bilateral or regional agreements with labour provisions.

Trade-related labour provisions take into consideration any standard which addresses labour relations or minimum working terms or conditions, mechanisms for monitoring or promoting compliance, and/or a framework for cooperation. This definition groups together a broad range of labour provisions, including references to workers' rights, as well as frameworks for cooperation.

The first trade agreement to include a binding labour provision was the North American Free Trade Agreement, in 1994. As of December 2015, there were 76 trade agreements in place (covering 135 economies) that include labour provisions, nearly half of which came into existence after 2008. Over 80 per cent of agreements that came into force since 2013 contain such provisions. This figure includes the majority of trade agreements concluded with the main proponents of these provisions, such as

the European Union (EU), the United States and Canada, and their trade counterparts, and it is also increasingly common for such agreements to involve other actors, such as South–South partners, Chile, New Zealand and the European Free Trade Association.

As in the case of trade agreements, there has been a growing reference to labour standards in international investment arrangements (IIAs). Indeed, 12 out of the 31 IIAs concluded in 2014 refer to the protection of labour rights, including ILO instruments.

The purpose of this report is, first, to provide an analysis of the design, implementation and outcomes of labour provisions in unilateral, bilateral and plurilateral trade arrangements, as well as in some IIAs. Second, the report uses this analysis to gain a better understanding of whether and how labour provisions strengthen the framework conditions for decent work under which enterprises and workers operate, including through the involvement of the social partners and the wider public. Finally, the report aims to assess both descriptively and empirically the various contributions of the ILO's work on trade arrangements and to present areas for analysis with respect to implementation and coherence of labour provisions.

… while taking different forms in different countries

In the great majority of trade agreements that include labour provisions the parties commit to not lower their labour standards or derogate from labour law with a view to boosting competitiveness. Labour provisions also aim at ensuring that domestic labour laws are effectively enforced and are consistent with labour standards. Seventy-two per cent of trade-related labour provisions make reference to ILO instruments. Most include legally binding commitments with respect to fundamental principles and rights at work, working terms and conditions, and mechanisms for dispute resolution in case of violation of these obligations. In practice, however, dispute resolution mechanisms have only rarely been triggered, and in the cases where there was a possibility of economic sanctions, only one actually went to arbitration. Instead, the signing parties generally prefer

to engage in dialogue and cooperative activities to prevent and resolve labour disputes.

These trends point to increased awareness by governments (with their social partners) of the need to better align economic and social outcomes. The following examples demonstrate this emphasis:

- In the case of the United States, the focus on the effective enforcement of labour rights includes reforms in labour laws and practices before the agreement is in place (so-called pre-ratification requirements). In addition, once concluded, the agreement often includes cooperative activities to build capacity and monitoring to assess progress.

- In the EU, there is increasing focus on sustainable development which takes into consideration the Decent Work Agenda and ILO fundamental Conventions, *inter alia*. The approach relies on cooperation with trade partners and civil society to monitor progress.

- In Canada, there is an emphasis on the extension of labour rights as the country increases its obligations – going beyond the principles of the 1998 ILO Declaration on Fundamental Principles and Rights at Work– and the stringency of implementation mechanisms.

- In Chile there is a country-specific approach that relies mostly on cooperative activities to find more innovative and far-reaching ways to address issues with respect to labour practices in trading partner countries.

In theory, labour provisions may help improve the social impact

By a number of metrics, trade has had positive impacts, particularly with respect to improving access to markets and lowering the prices of imported goods, which may have improved incomes of certain groups. However, the academic literature presents mixed findings regarding the impact of trade on labour markets, particularly in terms of job quality and income distribution. In particular, income inequality has tended to widen in the

majority of countries since the 1980s, partly due to trade and investment liberalisation. More generally, the winners from trade are not adequately compensating those who lose in terms of jobs and incomes.

The *World Employment and Social Outlook 2015* report on the changing nature of employment lends support to this empirical literature. It found that in a large part of the trade conducted through global supply chains (GSCs), trade tends to generate economic benefits for firms (in terms of higher productivity) but not necessarily for workers (in terms of wages). This disparity is due partly to the asymmetric power dynamics between supplier and lead firms in GSCs, and partly to the weak capacity within governments to implement and monitor labour rights and working terms and conditions effectively.

Indeed, several studies argue that such labour market outcomes depend strongly on institutional factors. In this context, trade-related labour provisions can be regarded as one option to boost the benefits of growth, minimise costs and tackle inequalities.

However, questions also arise as to what extent these provisions have been effective and can be evaluated. The report examines the macro and micro impacts of labour provisions with respect to trade, institutional changes and labour market outcomes.

In practice, the report finds that labour provisions do not harm or divert trade…

Based on empirical analysis, no evidence is found at the cross-country macro level to support the claim that implementation of labour provisions leads to a reduction or diversion of trade flows. Trade agreements boost trade between members of the agreement to a similar extent, irrespective of the existence of labour provisions. According to the estimates, 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. In line with these findings, there is also no

evidence that labour provisions cause trade flows to shift to non-members of the trade agreement.

…while supporting labour market access, particularly for working-age women…

Results show that, on average, trade agreements that contain labour provisions impact positively on labour force participation rates, bringing larger proportions of male and female working-age populations into the labour force and, particularly, increasing the female labour force. One possible explanation for the positive impact on labour force participation rates is that the policy dialogue and awareness raising that is often associated with labour provisions in trade agreements can raise people's expectations of better working conditions, which in turn increases their willingness to enter the labour force. The gender-related aspects of trade and, in particular, labour provisions are highlighted in other key findings of the report. In particular, the emphasis on gender equity (mostly through the principle of non-discrimination in employment and occupation) found in some labour provisions will have had some impact on the closing of gender gaps.

The aggregate cross-country analysis does not indicate any impact of labour provisions on other labour market outcomes. Nevertheless there is the possibility that labour provisions may still have an impact at the country-level, at least in some countries. The evidence suggests that at the country-level, labour provisions are only one of several mechanisms for promoting labour standards. In this respect, implementation mechanisms at the domestic level are a crucial factor in the application of labour provisions.

…and going hand-in-hand with stronger labour market institutions

Additional analyses based on case studies were also undertaken for this report to investigate the extent to which labour provisions may impact on labour market outcomes, positively or negatively.

The case studies were selected on the basis of data availability and whether a sufficient time period had elapsed since conclusion of the trade agreement. Although the findings are not fully generalizable they provide some relevant examples of what has and has not worked in specific country contexts. In each of the cases, capacity-building activities, monitoring and stakeholder involvement were all associated with positive institutional and legal changes and, in some cases, improvements in working conditions at the sectoral level. More specifically, the following findings emerge from the analysis:

- In the case of Dominican Republic-Central America Free Trade Agreement, the challenge has been to address the gaps between labour legislation and its enforcement. In this respect the agreement was helpful in strengthening institutions and capacity building in ministries of labour and the judiciary. There has also been sustained involvement of non-state actors and training of particular stakeholders (e.g. trade unions). This has led to a number of concrete institutional and legal improvements, such as ratification of outstanding ILO fundamental Conventions, increases in the budgets of labour inspectorates and improvements in training. For example, in the Dominican Republic, training has allowed labour inspectors to reconcile compliance and competitiveness in specific areas, such as export processing zones. However, challenges still remain in achieving broad-based improvements, which is reflected in the number of dispute resolutions conducted under this agreement.

- In the Cambodia-US Textile Agreement, implementation has mainly focused on direct intervention at the firm level –largely reflecting weaknesses in the institutional environment. This has meant tying the positive incentive of increased trade to improvements in working conditions at the firm level. The result is improved wages at the firm level, including a reduction of the gender wage gap, and some strengthening of the right to freedom of association.

- In Bangladesh, activities have been undertaken within the framework of a unilateral trade arrangement in the aftermath of the Rana Plaza tragedy. This was facilitated by the close commercial relations that existed

between Bangladesh and the EU prior to the tragedy. Additionally, an Action Plan was implemented within the framework of the US Generalized System of Preferences labour requirements. Achievements include more frequent and improved inspections regarding fire and building safety, and amendments to the Bangladesh Labour Act.

However the impact of labour provisions depends crucially on, first, the extent to which they involve stakeholders, notably social partners…

Importantly, the study suggests that, for labour provisions to be effective they need to involve stakeholders, notably social partners, in the making and implementation of trade agreements. This reflects an overall trend of seeking to make trade negotiations – which have traditionally been conducted between governments, with only limited public participation and insight – less opaque. Explicit references to the involvement of stakeholders in trade agreements have become more common and comprehensive. In part, this development has been driven by the expanding range of issues covered by trade agreements, which can extend to labour standards, environmental protection, health and safety and public procurement, as well as other regulations that can affect the way in which people lead their lives.

In the negotiation phase for a new trade agreement, most of the examined countries set up permanent consultative structures with fixed participation and inclusive mechanisms involving broader segments of civil society and the general public. To promote involvement in the implementation process, some countries, such as the United States and Canada, usually provide an opportunity to consult or establish stakeholder advisory groups on a voluntary basis. In the case of the EU, it is mandatory for both parties to consult with advisory bodies; and there are institutional mechanisms explicitly aimed at promoting dialogue between the civil societies of the trading partner countries. However, the implementation of some of these mechanisms is still limited in practice.

The evidence from this report suggests that progress is being made in enabling labour advocates to promote labour rights. Furthermore,

cross-border civil society coalitions can play a fundamental role in the activation of implementation mechanisms. For example, in the case of the EU–Republic of Korea trade agreement, cross-border dialogue between the domestic advisory groups raised awareness, helped to identify areas for further action with respect to labour rights, and triggered discussions on development cooperation projects.

…second, transparency of trade negotiations and implementation mechanisms…

While governments to a certain extent provide information to and seek the views of stakeholders, stakeholders have expressed limited satisfaction with overall transparency, particularly in negotiation processes. A key additional challenge is to enhance the dimension of accountability. This could be achieved by providing feedback and establishing formal mechanisms to inform stakeholders of how their contributions have been taken into consideration in the decision-making process.

…and third, coherence of trade-related labour provisions with respect to the "right to regulate" as well as ILO standards

Cross-cutting trade agreements that include labour provisions can be very complex, therefore the rules they impose can give rise to some degree of incoherence. There are three main reasons for this. First, there can be a lot of variation between the normative contents of different trade agreements, and also between the implementation mechanisms used by different actors. This suggests there is a need to examine and better understand the different approaches being adopted, to ensure that the overall objective of promoting labour standards through trade agreements can be achieved. Second, non-labour elements of trade agreements, such as provisions on investment protection, may constrain the capacity of governments to implement sustainable policies in other areas, particularly labour. As a response, a "right to regulate" or "policy space" clause is often included in agreements, to balance the concerns of investors on the one hand and the State's ability to achieve legitimate policy objectives on the other. Third,

to an increasing extent ILO instruments are being explicitly referred to in trade agreements, highlighting the possibility of inconsistent application at the national level and across agreements.

ILO expertise, if properly mobilised, can be instrumental in making labour provisions effective

The ILO, in line with its mandate, can contribute to enhanced coherence between labour provisions and the international system of labour standards. This can be done by providing advice and technical expertise, as well as through its development cooperation programmes.

Already, parties to trade agreements have actively sought advice from the ILO concerning the design of labour provisions. Also, the ILO, through the information which is publicly available from its supervisory mechanisms, has occasionally provided an important reference in terms of how best to implement labour provisions. Almost 30 per cent of cases discussed during the Committee on the Application of Standards at the 2015 International Labour Conference made reference to trade agreements.

As well as being a source of advice and information, the ILO can also be involved in the implementation of labour commitments through its cooperative activities, which tend to focus on technical assistance and institutional capacity of trade partners. All areas of ILO involvement are interlinked, as the comments of the ILO's supervisory mechanisms are used to identify the critical areas that technical cooperation can address.

Nevertheless, there is scope for building further coherence between States' obligations as members of the ILO and their relationships with each other in trade arrangements. The trends presented in this paper, and the continued widening of income inequalities, highlight the importance of promoting greater coherence between ILO instruments and labour provisions of trade and investment agreements.

INTRODUCTION

The past two decades have witnessed a fivefold increase in the number of bilateral and pluri-lateral trade agreements, increasing from 46 in 1995 to 265 in 2015.[1] The recently concluded (though not yet ratified) Trans-Pacific Partnership Agreement (TPP) and the currently negotiated Transatlantic Trade and Investment Partnership (TTIP) have also diversified the geographic coverage and increased the economic scope.

Yet "social dumping" and "race to the bottom" are still phrases commonly associated with trade agreements, and there is public scepticism in both advanced and developing economies about the benefits of trade for workers and small and medium-sized enterprises (SMEs) (Pew Research Center, 2014). The statistics cited to support this premise are well known, and include increasing wage inequality, rising unemployment (particularly among vulnerable groups) and falling unionization and collective bargaining rates, among others. Additionally, there are concerns that trade agreements impose significant costs on developing countries by setting in place regulatory frameworks that limit development space, and may require significant investment for the standards to be met (UNCTAD, 2014).

Trade has also been a catalyst for economic growth and development. Accordingly, more focus is being placed by governments (together with social partners) on creating stronger links between the economic and social aspects of trade agreements.[2] In particular, more comprehensive, legally binding environmental and labour provisions in these agreements are being used to attempt to make trade more socially sustainable. Labour provisions are defined as any standard which addresses labour relations or minimum working terms or conditions, mechanisms for monitoring or promoting compliance, and/or a framework for cooperation (based on ILO, 2009).

[1] The figures are based on the trade agreements about which the WTO had received notification as of December 2015.
[2] See, for example, European Commission, 2015; USTR, 2016.

This is an interesting development in the trade and labour debate since one of the major stalemates in multilateral trade negotiations has been trade-related labour provisions, the inclusion of which has been opposed by a bloc of emerging and developing country governments (see especially the Seattle ministerial meeting, 1999),[3] including some non-governmental organizations (NGOs) and trade unions (Orbie and Tortell, 2009). One of the reasons for this opposition is related to the argument that the "social clause" could be a veiled attempt at protecting local businesses and jobs in developed economies. Although no empirical evidence has been found to support the claim that enforcement of labour standards decreases trade, or that countries which do not respect labour standards have better growth prospects (Kucera, 2002), strong opposition resulted in the exclusion of issues related to labour standards from the World Trade Organization (WTO) agenda and in the recognition of the International Labour Office (ILO) as the competent agency for labour and social issues.[4]

The stalling of negotiations in 2008 (owing mainly to disputes over agriculture and trade in goods), and limited progress in recent years, leaves the future of the multilateral trade agenda open.[5] Ironically, this stalemate in multilateral negotiations has created more space for trade-related labour provisions to evolve outside the WTO framework. This new trade framework provided by bi- and pluri-lateral trade agreements is wider with respect to integration of markets, and deeper with respect to integration of different regulatory settings. Some would even argue that this new framework is better suited to deal with the increasingly fragmented system of global production,[6] mainly because it includes many additional areas normally excluded from that framework, such as labour issues, or goes further

[3] Available at: https://www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/brief16_e.htm.

[4] The Doha Ministerial Declaration (2001) reaffirmed the declaration made at the Singapore Ministerial Conference (1996) and, while recognizing commitment to core labour standards, deferred the setting and dealing of such standards to the ILO. Available at: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm.

[5] The most recent Doha Round, which started in 2001, has still not concluded. But there has been the approval of two packages in recent years (Bali in 2013 and Nairobi in 2015). In Nairobi: "Ministers acknowledged that members 'have different views' on how to address the future of the Doha Round negotiations but noted the 'strong commitment of all members to advance negotiations on the remaining Doha issues'." See https://www.wto.org/english/news_e/news15_e/mc10_19dec15_e.htm).

[6] It is argued that the insufficiency of the multilateral framework for dealing with the issues of the changing world of trade, including the new fragmented types of production systems (Baldwin, 2014, p. 261) and the role of emerging actors, has contributed to the rise of deep agreements (Wolfe, 2015). However, some also underline that strengthening the multilateral trading system is essential in order to promote the coherence of international trade frameworks and leave some space to developing countries (see, for example, Cortez and Arda, 2014).

in the areas already falling under the WTO mandate, such as investment measures and intellectual property.

In this respect, the number of trade agreements including labour provisions has significantly increased in the past decade: nearly half of trade agreements with labour provisions entered into force since 2008, and are becoming a common tool for promoting labour standards. Additionally, labour provisions in trade and investment arrangements[7] have become increasingly comprehensive, with parties usually committing to not lower labour standards and labour law and ensure that domestic labour laws are effectively enforced. A striking example is TPP, which has the ambition of including one of the most comprehensive labour chapters (see Chapter 1). Evidence also indicates that the International Labour Organization's 1998 Declaration on Fundamental Principles and Rights at Work is increasingly being used as a baseline reference for labour standards.[8]

Nonetheless, the inclusion and expansion of labour provisions have raised questions about their overall impact. What effect, if any, do these provisions have on labour practices and working conditions in partner countries? How are these provisions implemented and is there scope for improvement? This report attempts to answer these questions through a careful analysis of the design, implementation and outcomes of labour provisions in unilateral, bilateral and pluri-lateral arrangements. Specifically, this report provides an analysis of whether and how labour provisions strengthen the framework conditions for decent work under which firms and workers operate.

This report is part of a larger ILO project (funded by the Canadian and Swiss Governments) that assesses the impact of labour provisions based on field research, interviews and country seminars with social partners.

[7] It should be noted that the term "trade arrangements" is used to refer to all types of existing arrangements, including unilateral, bilateral, regional or pluri-lateral. The term "trade agreements" is used to refer to schemes that are the result of a negotiation or an agreement between two or more parties. In this respect, unilateral and non-reciprocal schemes are excluded when referring to trade agreements.

[8] In the context of this report the reference to labour standards includes those labour rights and principles which have been "universally" recognized by ILO members irrespective of whether they have ratified the correlative ILO Conventions and Protocols, or that they apply related Recommendations. Therefore, any reference to labour standards should not be confused with "international labour standards" (see more in Chapter 4, box 4.1).

It builds on previous research on the effectiveness of labour provisions (ILO, 2013), which developed a typology of labour provisions and provided an exhaustive mapping of their design. This report broadens the previous framework by (i) increasing the scope of arrangements to include other economic regulatory arrangements such as investment agreements and unilateral arrangements (box 1.1), (ii) deepening the analysis of how labour provisions are implemented and followed, and (iii) focusing on the role of stakeholders and the ILO.

The methodology used to assess outcomes is based on macro-analysis of 260 trade agreements reported to the WTO (including 71 with labour provisions between 102 economies), and case study analysis of Bangladesh, Cambodia, Central America, Dominican Republic and Republic of Korea with respect to an institutional analysis of national laws and labour institutions. The analysis is supported by interviews with over 50 stakeholders in more than ten countries, including regional seminars held in Toronto, Washington, DC, Lima and New Delhi.

The report is structured as follows. Chapter 1 provides an overview of the trends in labour provisions in trade and investment arrangements in the past decade, focusing on their increase in scale and scope. It analyses the evolution of various types of arrangements – unilateral and bilateral – focusing on the models of the United States, the European Union (EU), Canada and Chile as the key proponents. In this respect, the chapter is intended to show an understanding of how the obligations and dispute settlement mechanisms in the different models have evolved in order to achieve the stated objective of the labour provisions.

Chapter 2 provides insight into the question of whether labour provisions achieve their objectives by assessing their socio-economic outcomes. More precisely, it explores the effects of labour provisions at the cross-country macro-level and through the analysis of three case studies. The cross-country analysis focuses on whether the inclusion of labour provisions in trade agreements may have an impact on labour markets and trade that is significantly different from non-inclusion, while the country-level analysis

Box I.1 Overview of the different kinds of trade and investment arrangements

The WTO provides for a multitude of trade agreements under its purview. For the purpose of this report, multilateral trade agreements are defined as those that apply to all WTO members, such as the General Agreement on Tariffs and Trade (GATT) or the General Agreement on Trade in Services (GATS). Free trade agreements are agreements concluded between two or more States with the principal aim of eliminating barriers to imports from members.[1] It is an exception to GATT's most-favoured-nation (MFN) principle, because members of free trade agreements may grant each other more favourable treatment than other WTO members. Pluri-lateral trade agreements are trade agreements concluded between three or more States, while bilateral trade agreements are concluded between two entities in which each could be a State, customs union or trading bloc. Unilateral trade arrangements represent another exemption from the MFN principle, as within the framework of these agreements non-reciprocal advantages are granted to developing countries.

There are also international investment arrangements (IIAs), such as bilateral investment treaties (BITs) or an agreement on investment that can be included in a larger economic agreement, like a free trade agreement. Often, investment chapters in larger economic agreements and BITs are nearly identical in coverage and scope. Today there are more than 3,000 IIAs. Some free trade agreements and BITs include an Investor–State Dispute Settlement (ISDS), which forms the basis of a unilateral offer on behalf of the host State to arbitrate a dispute with an investor. Arbitration would take place according to the rules agreed upon in the arrangement; for example, the International Centre for Settlement of Investment Disputes (ICSID) could offer institutional and procedural support to conciliation commissions or arbitral tribunals.

[1] GATT, Article XXIV.

starts from the premise that a better understanding of the design and implementation mechanisms is of paramount importance for determining their impacts. In this respect the case studies focus on the interconnection between legal reforms, capacity-building and monitoring mechanisms – with the support of social dialogue – on labour market outcomes.

Chapter 3 explores the mechanisms that are provided for a stronger participation of the key actors in the design, implementation and dispute settlement phases of trade and investment arrangements, and attempts to better understand how they function in theory and practice. In this respect, it considers how stakeholders, including international coalitions, have made use of the multitude of instruments (from legal instruments to

development cooperation) to promote labour standards and have increasingly entered into international collaborations.

Finally, Chapter 4 highlights the importance of coherence and the role of the ILO in achieving the objectives of labour provisions from the perspective of institutional coherence. In this respect, the ILO has been actively involved in providing advice and technical assistance to countries to better apply their existing international labour obligations, guided by the outcomes of the ILO supervisory system and upon the request of the member States, as well as in the actual implementation of labour commitments through development cooperation projects.

REFERENCES

Baldwin, R. 2014. "WTO 2.0: Governance of 21st century trade", in *Review of International Organizations*, Vol. 9, No. 2, pp. 261–283.

Cortez, A.L.; Arda, M. 2014. *Global trade rules for supporting development in the post-2015 era*. CDP Background Paper No.19 (UNDESA).

European Commission. 2015. *Trade for all: Towards a more responsible trade and investment policy* (Luxembourg).

ILO. 2009. *World of Work Report 2009: The Global Job Crisis and beyond* (Geneva, International Institute for Labour Studies (IILS)).

Kucera, D. 2002. "Core labor standards and foreign direct investment", in *International Labour Review*, Vol. 141, Nos 1–2, pp. 31–69.

Orbie, J.; Tortell, L. 2009. "The New GSP+ beneficiaries: Ticking the box or truly consistent with ILO findings?", in *European Foreign Affairs Review*, Vol. 14.

Pew Research Center. 2014. *Faith and skepticism about trade, foreign investment*. Available at: http://www.pewglobal.org/2014/09/16/faith-and-skepticism-about-trade-foreign-investment/.

UNCTAD. 2014. *Trade and Development Report, 2014: Global governance and policy space for development* (New York and Geneva).

USTR. 2016. *Issue areas: Labor*.

Wolfe, R. 2015. "First diagnose, then treat: What ails the Doha Round?", in *World Trade Review*, Vol. 14, No.1, pp. 7–28.

CHAPTER 1
EVOLUTION OF LABOUR PROVISIONS IN TRADE AND INVESTMENT ARRANGEMENTS

KEY FINDINGS

- Labour provisions are becoming a common tool for promoting labour standards, with over 80 per cent of agreements entering into force since 2013 including them.

- This increase in labour provisions is not only due to the number of trade agreements being concluded among major proponents of them, such as Canada, the EU and the United States, but also increasingly among emerging actors, such as Chile, the European Free Trade Association (EFTA), New Zealand and a number of South–South partners. Along with the increase in trade agreements, IIAs include more references to labour standards.

- Additionally, labour provisions in trade and investment arrangements have become increasingly comprehensive, with parties usually committing to maintain labour standards and labour law and to ensure that domestic labour laws are enforced effectively. Evidence indicates that the ILO's 1998 Declaration on Fundamental Principles and Rights at Work is used as a baseline reference for labour standards in the majority of cases.

- Even though most trade agreements foresee a dispute settlement mechanism to remedy labour issues, such mechanisms have rarely been activated. Of the cases where it has, only one has gone to arbitration. Instead, the signing parties tend to engage in dialogue and cooperative activities to resolve and prevent labour disputes.

- EU and US unilateral trade arrangements also include labour provisions. US labour clauses cover an increased number of labour rights, including

the prohibition of the worst forms of child labour since 2002, while under the EU GSP+ the ratification and effective implementation of the ILO's fundamental Conventions has been included since 2005. In both EU and US programmes, there are mechanisms in place for the suspension of benefits if developing countries do not uphold the eligibility criteria. However, in the EU's unilateral system of preferences there has been a shift from a sanctions-based approach –threat of temporary withdrawal of the preferences – to a twofold "carrot and stick" approach – the introduction of special incentives arrangements including criteria concerning labour rights, which started in 1998 with the introduction of the GSP+.

INTRODUCTION

In recent years, States have been increasingly proactive in promoting and protecting labour rights through trade and investment arrangements. This chapter examines the trends in labour provisions included in trade and investment arrangements, and analyses the evolution of different approaches related to the alignment between trade and labour policies. Section A analyses the trends in labour provisions in different trade and investment arrangements, while section B focuses on unilateral trade arrangements. This takes into consideration historical sequences of events, as the first labour clauses were included in unilateral arrangements.[9] Section C develops a typology for the evolution of labour provisions in trade and investment agreements in Canada, Chile, the EU and the United States, as they have active policies to consistently include labour provisions in their agreements. Section D presents conclusions.

[9] The passage of the 1984 amendment and the inclusion of labour clauses in the US GSP had a spillover effect on other trade relationships (Compa and Vogt, 2001).

A LABOUR PROVISIONS IN TRADE AND INVESTMENT ARRANGEMENTS: AN OVERVIEW OF TRENDS

Labour provisions are currently included in unilateral trade arrangements, trade agreements, IIAs and investment policies of development finance institutions. ILO (2009) provided an overview of labour provisions in unilateral arrangements, along with detailed analysis of labour provisions in development finance institutions, while ILO (2013) mapped labour provisions in free trade agreements. This section adds to that analysis with an update on the trends in labour provisions in trade agreements, including investment agreements, and develops a modified typology for labour provisions. More explicitly, labour provisions take into consideration the following:

i) any standard which addresses labour relations (for example, with reference to international labour standards) or minimum working conditions and terms of employment (for example, occupational safety and health (OSH), minimum wages and hours of work);

(ii) any mechanism to promote compliance with the standards set, under national law or in the trade agreement; and

(iii) any framework for cooperative activities, dialogue and/or monitoring of labour issues (for example, development cooperation, established bodies for facilitating consultation between the parties or regular dialogue).

Most trade agreements with labour provisions include references to workers' rights or minimum standards, as well as frameworks for cooperation. Particularly among emerging actors, the majority of labour provisions are based solely on cooperative activities. This has been referred to in previous reports as "promotional activities" or "a promotional approach" (ILO, 2009, 2013). Indeed, such activities could further be considered to include essential programmes to address implementation gaps at the institutional level as well as binding labour commitments.

Labour provision trends in trade agreements

The first inclusion of a binding labour provision in a trade agreement was in the North American Agreement on Labour Cooperation (NAALC) in 1994;[10] there are currently 75 trade agreements that include labour provisions, covering 107 economies (figure 1.1). This represents more than one-quarter (28 per cent) of the trade agreements which the WTO has been notified of, and which are currently in force.[11] In fact, nearly half of trade agreements with labour provisions came into existence since 2008 and over 80 per cent of agreements entering into force since 2013 included them – with the increase being attributable not just to the conclusion of agreements among the entities most active in promoting labour provisions, such as Canada, the EU and the United States, but also countries such as Chile (13), New Zealand (eight) and Switzerland (six).[12] Among them are also examples of South–South agreements with labour provisions, including the Nicaragua–Chinese Taipei (2008), Peru–China (2010), Turkey–Chile (2011), Costa Rica–Singapore (2013), Republic of Korea–Turkey (2013) and Hong Kong–Chile (2014) agreements (figure 1.1(b)).

Such an increase in numbers suggests that labour provisions are becoming a common tool for promoting labour standards in trade agreements. Labour provisions have also been evolving, with respect to design, implementation and enforcement mechanisms, as the following sections show.

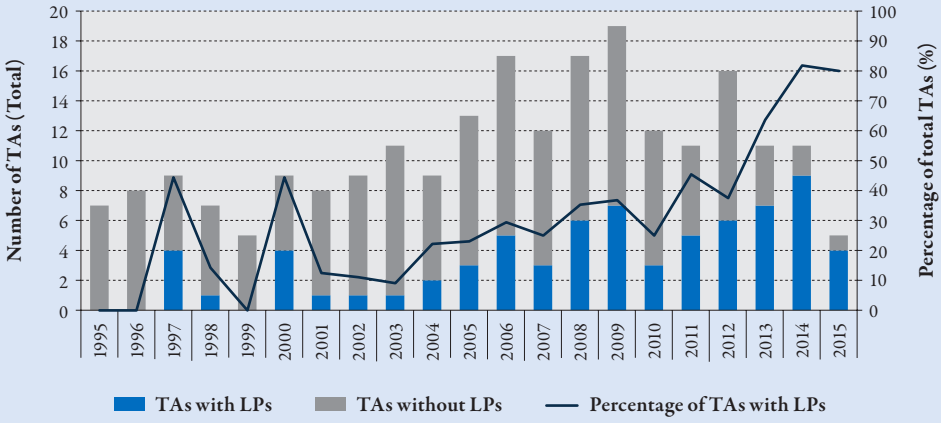
Labour provisions trends in unilateral trade arrangements

With regard to unilateral trade arrangements, only the EU and the United States include labour provisions in their unilateral programmes. The United States' first unilateral preference programme, called the Generalized System of Preferences (GSP), was instituted in 1974 and has been renewed periodically since.[13] Currently there are 122 designated beneficiary countries, of which 94 benefit from preferential market access (figure 1.2). These numbers include countries eligible for regionally based

[10] ECOWAS included a non-binding labour provision in 1993.
[11] Some 265 as of December 2015.
[12] This includes the agreements concluded by Switzerland as a member of the EFTA.
[13] On 29 June 2015, the US President signed the Trade Preferences Extension Act of 2015 and retroactively extended the GSP until 31 Dec. 2017. The US programme for the Andean region (Plurinational State of Bolivia, Ecuador, Columbia and Peru) expired on 31 July 2013.

Figure 1.1 Trade agreements with and without labour provisions

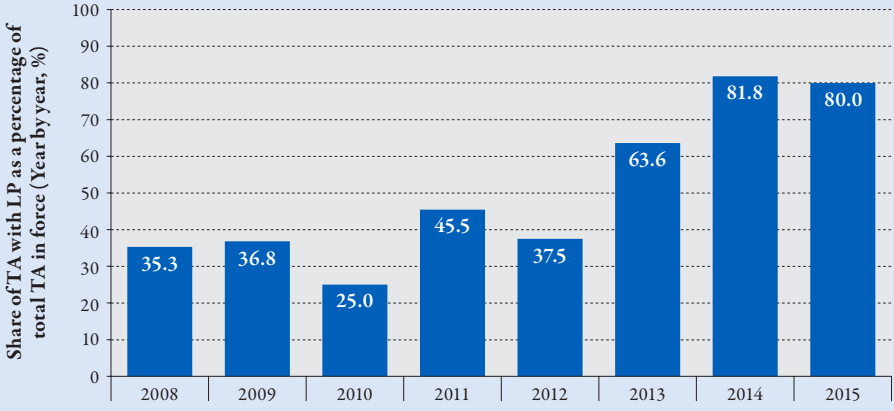
(a) Number of trade agreements with and without labour provisions, 1995–2015



Note: The data shown in the figure was retrieved from the WTO Regional Trade Agreements Information System (RTA-IS) in December 2015.

Source: WTO RTA–IS database.

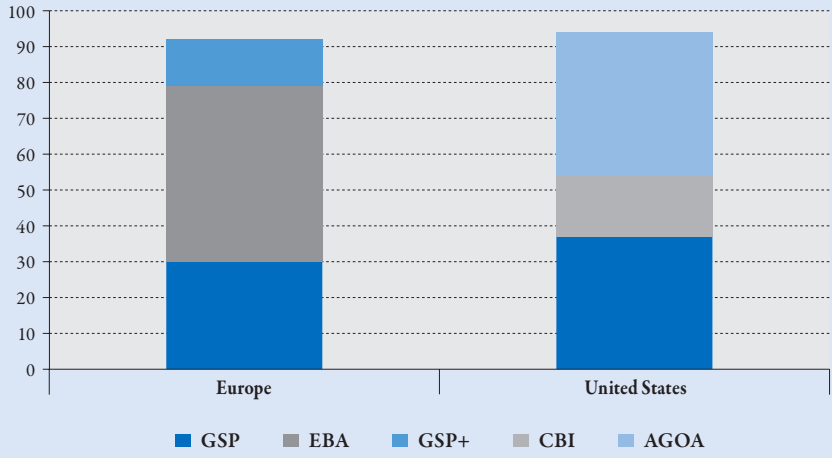
(b) Trade agreements with labour provisions (percentage of total number of agreements entered into force, 2008–15)



Note: 2008 agreements are Japan-Philippines, EU-CARIFORUM, China-New Zealand, Panama-Chile, Nicaragua-Chinese Taipei and EU-Montenegro. 2009 agreements are Australia-Chile, Canada-Peru, Chile-Colombia, Japan-Switzerland, Peru-Chile, United States-Oman and United States-Peru. 2010 agreements are ASEAN-Australia-New Zealand,* New Zealand-Malaysia and Peru-China. 2011 agreements are Canada-Colombia, EU-Republic of Korea, Peru-Republic of Korea, Hong Kong-New Zealand and Turkey-Chile. 2012 agreements are Canada-Jordan, EFTA-Hong Kong, EFTA-Montenegro, United States-Colombia, United States-Republic of Korea and United States-Panama. 2013 agreements are Canada-Panama, Costa Rica-Singapore, EU-Colombia and Peru, EU-Central America, Republic of Korea-Turkey, Malaysia-Australia and New Zealand-Taiwan, China. 2014 agreements are Australia-Republic of Korea, Canada-Honduras, EFTA-Central America, EU-Cameroon, EU-Georgia, EU-Republic of Moldova, Hong Kong-Chile, Iceland-China and Switzerland-China. 2015 agreements are Canada-Republic of Korea, EFTA-Bosnia Herzegovina, Eurasian Economic Union (EAEU) and Republic of Korea-New Zealand. *In the context of the Association of South East Asian Nations (ASEAN), Australia-New Zealand, a bilateral memorandum of agreement on labour cooperation between New Zealand and the Philippines, was signed. The data shown in the figure was retrieved from the WTO RTA-IS database in December 2015.

Source: WTO RTA–IS database.

Figure 1.2. Countries benefiting from EU and US unilateral arrangements, by programme



Note: The figure represents the total number of countries benefiting from the different programmes without overlap.

Source: Compiled by the Research Department, based on data provided by the United States Trade Representative (USTR) and the EU Commission.

US preference programmes supporting countries in sub-Saharan Africa and the Caribbean through the provision of duty-free treatment for a range of products otherwise excluded from the GSP. These are the African Growth and Opportunity Act (AGOA), currently with 40 beneficiaries,[14] and the Caribbean Basin Initiative (CBI), currently with 17 beneficiary countries,[15] including the Haitian Hemispheric Opportunity through Partnership Encouragement Act (HOPE).[16] Labour requirements apply in a similar way to all US programmes, as described below, with the exception of the HOPE, which specifically targets individual producers (see box 1.2).

The EU currently has one general and two special arrangements that offer trade benefits to a total of 92 countries. Since 2001, the least-developed countries (LDCs) have been beneficiaries under the Everything But Arms (EBA) scheme, which currently provides 49 eligible countries with full duty-free and quota-free access to the EU for all exports, with the exception of arms and armaments. Meanwhile, 13 countries are currently

[14] The Trade Preferences Extension Act of 2015 extends the AGOA until 2025.
[15] The CBI is implemented through the Caribbean Basin Economic Recovery Act (CBERA), which will remain in effect until 30 Sep. 2020.
[16] The Trade Preferences Extension Act of 2015 extends HOPE until 2025.

Box 1.2 HOPE and the non-compliance of individual producers

The United States passed legislation under the CBI programme in 2006 to provide additional trade concessions to Haiti. HOPE I granted duty-free treatment for certain apparel imports, provided Haiti met the eligibility criteria, that is, to protect or make progress towards protecting internationally recognized workers' rights, and not to engage in gross violations of internationally recognized human rights. In 2008, Congress amended HOPE (HOPE II), requiring Haiti to create a new labour compliance programme, the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) program, operated by the ILO (through Better Work Haiti). Within the implementation of this programme, a biannual report by the ILO assesses compliance with core labour standards, as defined by the 1998 ILO Declaration, as well as with Haiti's labour laws that ensure acceptable conditions of work with respect to minimum wages, hours of work and OSH. The US President considers the findings of the biannual report in assessing labour requirements. HOPE II also created a Labor Ombudsperson to oversee the compliance programme. The monitoring and development cooperation includes social partners through a tripartite committee and the ILO.[1]

Since 2012, four producers were found not in compliance with core labour standards, specifically freedom of association and forced labour, and although this did not lead to suspension of benefits, the following steps were taken:

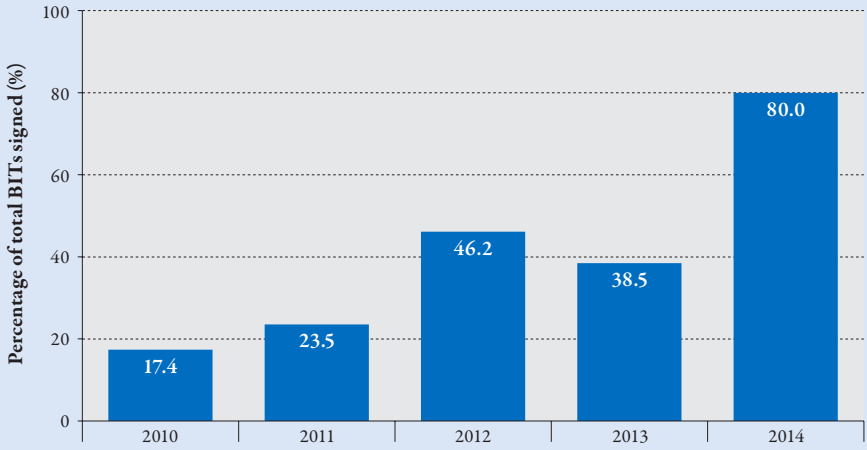
- Sewing International, S.A. has worked with the United States Department of Labor (USDOL) to develop new policies against sexual harassment and forced labour but it has not reinstated the 146 workers that were dismissed for exercising their right to organize (USTR, 2012, 2013a).
- Inter-American Wovens, S.A. committed to reinstate 25 workers who were dismissed for exercising their right to freedom of association and has amended work schedules that exceeded the legal limit (USTR, 2012, 2013a, 2014d, 2015b).
- One World Apparel, S.A. (OWA) fired six union leaders and denied other union officials access to the factory. OWA did reinstate five of the six union leaders and is working with the Labor Ombudswoman and the President of the HOPE Commission towards a plan to reinstate the sixth union leader. The HOPE Commission also provided freedom of association training for OWA management (USTR, 2012).
- Modas Gloria Apparel (MGA) committed to rehire all the workers whose contracts it had terminated (USTR, 2014d, 2015b).

[1] The monitoring activities involving the ILO are related to the reports released in the framework of Better Work Haiti. It should be noted that ILO involvement in technical assistance with Haiti in the context of GSP is exceptional as a result of the legislation passed in this specific case (US Code, Title 19, Sec. 2703a (3)(A)).

beneficiaries of enhanced trade incentives under the GSP+, provided they respect core human and labour rights, and environmental and good governance standards (figure 1.3).[17]

[17] Of the current beneficiaries, Costa Rica, El Salvador, Guatemala, Panama and Peru will cease being GSP+ beneficiaries in 2016 due to the free trade agreement with the EU. More countries can apply over time to become GSP+ beneficiaries.

Figure 1.3. BITs with labour provisions as percentage of all BITs entered into force, 2010–14



Note: The analysis includes BITs signed between 2010 and 2014, for which the text is available. 2010 agreements were Austria-Tajikistan, Senegal-Turkey, BLEU-Montengro and Austria-Kazakhstan. 2011 agreements were Keny-Slovakia, Azerbaijan-Turkey, Colombia-Japan and Japan-Papua New Guinea. 2012 agreements were Gabon-Turkey, Iraq-Japan, Pakistan-Turkey, Cameroon-Turkey, Bangladesh-Turkey and Japan-Kuwait. 2013 agreements were Japan-Myanmar, Guatemala-Trinidad and Tobago, Japan-Mozambique, Austria-Nigeria and Benin-Canada. 2014 agreements were Canada-Côte d'Ivoire, Canada-Mali, Canada-Senegal, Japan-Kazakhstan, Canada-Serbia, Columbia-Turkey, Canada-Nigeria and Cameroon-Canada.

Source: United Nations Conference on Trade and Development (UNCTAD) Investment Policy Hub. Available at: http://investmentpolicyhub.unctad.org/IIA.

Labour provisions trends in international investment arrangements

Along with the increase in regional and bilateral trade agreements, there are a large number of IIAs which include labour provisions. This reflects, in part, a priority at national and international levels to address sustainable development through investment policies (UNCTAD, 2015).

IIAs originally focused on the protection of investments and did not aim to address labour or employment matters.[18] The first non-binding reference to the promotion of workers' well-being and the respect for fundamental

[18] BITs are agreements between two countries to protect and promote investment of one country in the territory of another; other IIAs consist of economic integration agreements, such as trade agreements and economic partnership arrangements that include investment provisions (UNCTAD, 2006). There are 2,227 BITs (agreements between two countries regarding promotion and protection of investments made by investors from respective countries in each other's territory) currently in force, and 275 other IIAs (UNCTAD, 2015). The first BIT was concluded in 1959 between Germany and Pakistan (Boie, 2012).

workers' rights appeared in 1994 when the BIT between the United States and Poland entered into force.

Since then, the consideration of social issues in all IIAs has increased, including in trade agreements with substantial investment chapters. The UNCTAD *World Investment Report* (2015) shows that nearly 40 per cent of IIAs concluded in 2014 (12 out of 31) refer to the protection of labour rights. Moreover, of the 76 BITs that were signed between 2010 and 2014, an increasing share includes labour provisions (figure 1.3). The majority of these agreements are North–South treaties, but about one-third of the BITs signed with labour provisions are between South–South partners. In other IIAs, a large proportion of which are investment chapters in trade agreements or economic partnership agreements (EPAs), labour provisions are also increasingly being included.

The large proportion of South–South partners could be owing to the fact that the majority of foreign direct investment (FDI) is received by developing countries (55 per cent of global FDI flows), and increasingly they are investing in other countries (one-third of global outflows). Therefore, their interests span protection of investors and their assets on the one hand, and protection of the interests of the host country on the other. However, the settlement of investment disputes has raised issues about the conflict between the protection of investments and the policy space of the host country (see box 1.3).

Consequently, in some emerging economies there has been a freeze on IIAs, as the countries review their investment policies. For example, the Government of India recently decided to suspend all negotiations of new IIAs, and since 2012 the Government of South Africa has terminated its BITs with Belgium and Luxembourg, Germany, Spain, Switzerland and the Netherlands. Furthermore, in July 2012, the South African Department of Trade and Industry announced that it would refrain from entering into new BITs unless compelling economic and political circumstances required it. There are additional emerging economies that are showing a shift away from BITs; for example, Plurinational State of Bolivia, Ecuador

Box 1.3 Investment disputes on labour issues

A sample of ISDS cases make clear the labour dimension of a potential conflict between the protection of investments and the policy space of the host country:

- *Foresti et al.* v. *South Africa*. The claimants alleged that South Africa breached its obligations under its BITs with Italy and Luxembourg based on the promulgation of labour and social regulatory measures intended to address the disenfranchisement of historically disadvantaged South Africans (HDSAs). The new legislation encouraged greater ownership of mining industry assets by HDSAs by requiring 26 per cent HDSA ownership of mining assets by 2014, and by increasing the percentage of HDSAs in management positions. The new measures allegedly consisted of unlawful indirect expropriation because it extinguished the claimants' mineral rights, and sufficient compensation was not paid, the claimants received no due process and the expropriation was discriminatory.
- *Veolia* v. *Egypt*. A French utility company brought a claim against Egypt and sought €82 million in compensation, partially in response to the city of Alexandria raising its minimum wage.
- *Noble Ventures, Inc.* v. *Romania*. An American company alleged Romania breached its obligation to provide full protection and security under its BIT with the United States because illegal strikes in the country resulted in the company's property being stolen or destroyed and its staff being subject to confinement and physical assault.

There are several ways for States to preserve their right to regulate for rebalancing investor and host State interests in IIAs (labour exceptions, labour veto, liability defence and counterclaims). The careful drafting of labour exceptions could serve this purpose. Indeed, certain sectors and subject matters can be excluded by the overall investment protection granted to investors in order to allow the State to meet public policy objectives, such as the protection and promotion of workers' rights (Vandevelde, 2013).

In case of non-compliance of the investor with the labour standards incorporated in a BIT, an arbitral proceeding against a host State could be blocked – "labour veto" – by the competent national authorities of both host and investor States, or by an international and independent body (Agustí-Panareda and Puig, 2015). As a liability defence, a State may argue that an investment was not made in accordance with host State law, and thus challenge the legality of the investment. The State could also invoke an investor's non-compliance with labour laws as an issue for the merits, that is, a legal investment was made, as envisioned by the treaty, but the investor did not comply with domestic labour standards in the course of the investment.[1] The investor's conduct would be taken into consideration when determining the State's alleged breaches of an IIA, especially in the determination of an allegation of a breach of the fair and equitable treatment standard (Prislan and Zandvliet, 2013).

Finally, a host State could invoke its own labour laws in a counterclaim. However, a counterclaim must fall within the scope of the dispute settlement clause of the IIA and must either arise directly out of the subject matter of the dispute or have a close connection with the primary claim. Consequently, this depends on treaty drafting and the choice of dispute settlement mechanism (Bjorklund, 2013).

[1] This defence would probably be limited to circumstances where the investment clearly pursues an illegitimate business purpose and involves blatant illegalities, such as using child labour or discriminatory hiring practices. This defence would also probably depend on the IIA's language.

and the Bolivarian Republic of Venezuela have terminated several BITs and denounced the ICSID Convention because of problems identified in the mechanism for dispute settlement.[19]

[19] Ranjan (2012). Indeed, there is some tension perceived in IIAs in relation to the ISDS. Investor–State arbitration could conceivably reduce the space for policy development with respect to changes in domestic labour regulations, as the threat of being sued by investors would deter governments from enacting new legislation, including in labour matters and the protection of worker rights (Prislan and Zandvliet, 2013).

B EVOLUTION OF LABOUR PROVISIONS IN EU AND US UNILATERAL TRADE ARRANGEMENTS

The WTO legal framework, recognizes exemptions for unilateral trade arrangements to (a) increase the export earnings of developing countries, (b) promote their industrialization, and (c) accelerate their rates of economic growth, including special measures in favour of the LDCs (UNCTAD, 1968; GATT, 1979). Developed countries that adopt unilateral programmes are not mandated on specific content or procedures, provided that mechanisms are implemented to facilitate trade from developing countries and do not raise barriers to the trade of other countries (GATT, 1971). Although a number of countries (Australia, Canada, Iceland, Japan, New Zealand, Norway, Russian Federation, Switzerland and Turkey) offer unilateral trade arrangements to eligible beneficiary developing countries, only the EU and the United States attach to these programmes labour provisions, that is, the principle that a country must meet certain criteria on labour matters to gain access to a beneficial treatment.[20] In this regard, the United States defines an exhaustive list of "internationally recognized worker rights",[21] while the EU links labour requirements to the eight fundamental ILO Conventions.

In both EU and US programmes, there are mechanisms in place for the suspension of benefits if developing countries do not uphold the eligibility criteria. However, in the EU unilateral system of preferences there has been a shift from a sanctions-based approach to a twofold "carrot and stick" approach. In 1995, there was in place the threat of temporary withdrawal of preferences, but this shifted in 1998 with the introduction of the GSP+ program (see next section) that includes special incentives arrangements with criteria concerning labour rights.

[20] In the case of the United States the intent is to prevent "social dumping", since "a natural comparative advantage in lower labour costs due to a country's level of development is acceptable in global trade" but not an advantage based on exploitation of workers and restriction of labour rights (Compa and Vogt, 2001).

[21] The term "internationally recognized worker rights" includes the rights of association, to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labour, minimum age for the employment of children, a prohibition on the worst forms of child labour (including slavery or similar practices and the use, procuring or offering of a child for prostitution and illegal activities, among others) and acceptable working conditions of work with respect to minimum wages, hours of work, and occupational safety and health. US Code, Title 19, Sec. 2497 (4) and (6).

The United States: "Internationally recognized worker rights"

The first labour clause was introduced in 1984 by an amendment to the US GSP. It established conditions for eligibility as well as a mechanism for non-compliance. Under the conditions of the US programmes any country that "has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country" is not eligible for duty-free treatment. Acceptable conditions of work with respect to minimum wages, hours of work and OSH are included in an exhaustive list of international worker rights, which also includes freedom of association, the right to bargain collectively, a prohibition on the use of any form of forced or compulsory labour, a minimum age for the employment of children and a prohibition on the worst forms of child labour.[22] However, as a result of a complex political compromise, there is no mention of the principle of non-discrimination. ILO Conventions are not referenced to give meaning to these provisions, except indirectly in the case of the worst forms of child labour.[23]

The US President submits an annual report to Congress on the status of internationally recognized worker rights within each beneficiary developing country, including the findings of the Secretary of Labor with respect to the country's implementation of its international commitments to eliminate the worst forms of child labour. Non-compliance with labour provisions could result in withdrawal, suspension or limitation of trade benefits. Additionally, third parties may also file a submission to challenge a country's GSP eligibility based on non-compliance with labour criteria during annual and general reviews. An intergovernmental agency, the Trade Policy Staff Committee, decides whether to accept a case for review and further examination. This Committee is chaired by the office of the USTR. But ultimately, the US President, taking into consideration the recommendations of the USTR, determines whether to withdraw, suspend or limit trade benefits (Jones, 2015).

[22] When the programme was renewed under the Trade Act of 2002, the prohibition on the worst forms of child labour was added to the list, pursuant to the trade objectives of the Bipartisan Trade Promotion Authority Act of 2002, which included the promotion of "universal ratification and full compliance with ILO Convention No. 182". On the political process that led to the inclusion of labour clauses in American trade policies, see Compa and Vogt (2001).

[23] While not explicitly referred in the US GSP, the definition of "the worst forms of child labour", in Art. 3 of the Worst Forms of Child Labour Convention, 1999 (No. 182) is used to define the same term in US GSP legislation.

Preferential trade benefits have been withdrawn by the United States in four country cases and, to date, benefits have not been reinstated.[24] The withdrawals in three countries were based on the GSP, while one was based on the AGOA:

- In Myanmar it was owing to the practice of forced labour (1989).[25]
- In Belarus it was owing to the country's failure to take steps to afford the rights to freedom of association and collective bargaining (2000).[26]
- In Bangladesh it was because of insufficient progress in affording Bangladeshi workers' rights associated with freedom of association, collective bargaining and safe working conditions (2013) (USTR, 2013b; 2015a). Following the suspension in Bangladesh the Governments of Bangladesh and the United States agreed on an Action Plan. In addition, the Sustainability Compact was launched jointly with Bangladesh and the EU, with the ILO in a monitoring and facilitating role (see Chapter 2).
- On 1 January 2015, benefits were withdrawn for Swaziland under the AGOA, based on the failure to protect freedom of association and the right to organize (USTR, 2014a). The USTR expressed particular concern over the lack of legal recognition for workers' and employers' federations, and the use of security forces and arbitrary arrests to stifle peaceful demonstrations in Swaziland. During discussions in the 2015, the ILO Committee on the Application of Standards (CAS), the US Government representative and the US Worker member mentioned poor compliance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as a basis for the AGOA suspension.[27]

[24] Reviews or investigations pending in seven countries: Fiji, Georgia, Iraq, Niger, Philippines, Sri Lanka and Uzbekistan. In the past, several other countries have seen their GSP's privileges terminated for reasons of worker's rights, including Nicaragua (1985), Paraguay (1987), Chile (1988) and Liberia (1990). Eventually, the benefits were reinstated by Congress (UNCTAD, 2010).

[25] In Nov. 2014 Denmark, Japan, Myanmar, United States and the ILO launched the Initiative to Promote Fundamental Labor Rights and Practices in Myanmar, to support labour law reforms in Myanmar (USTR, 2014b).

[26] US Department of State (2008); Compa and Vogt (2001). Belarus is no longer eligible to be a GSP beneficiary because the World Bank has classified it as an upper-middle-income country.

[27] Swaziland's case was analysed 14 times between 1996 and 2015 by the CAS for non-compliance with ILO Convention No. 87. Two ILO tripartite high-level missions were sent to the country in Oct. 2010 and in Jan. 2014 and "concluded that for the past ten years there had been no progress whatsoever in terms of the protection of the right to freedom of association".

The EU: Linking labour requirements to the fundamental ILO Conventions

Under EU arrangements, both the eligibility criteria and the suspension procedures of the GSP+ have been linked, at different levels, to compliance with ILO Conventions, and their underlying principles and monitoring procedures (Velluti, 2014).

With regard to eligibility criteria, while the first special incentive arrangements required incorporation in domestic legislation and effective implementation of the right to organize and to bargain collectively, as well as the establishment of a minimum age for admission to employment, the most recent special incentive for sustainable development and good governance (GSP+) requires the commitment by the State concerned (a) to ensure the effective implementation of a set of 27 international Conventions, including the eight fundamental ILO Conventions, (b) to accept the reporting requirements under the relevant Conventions, and (c) that the relevant monitoring bodies (under those Conventions) do not identify serious failure to effectively implement any of those Conventions.

With regard to the suspension of benefits, in 1995 the only grounds for temporary withdrawal were the export of goods made by prison labour and the practice of forced labour, while in the most recent arrangements benefits can also be withdrawn in cases of serious and systematic violations of principles laid down in the eight fundamental ILO Conventions. During the procedure for temporary withdrawal, the European Commission monitors the implementation of the international Conventions in cooperation with the relevant monitoring bodies, examines their conclusions and recommendations, and presents a report to the European Parliament and to the Council every two years. Indeed, it does so taking into consideration the conclusions and recommendations of ILO supervisory bodies as well as views of civil society, NGOs, social partners, the European Parliament and the Council (European Commission, 2016).

At the time of writing, no investigation had been launched under the most recent EU arrangements of 2014.[28] However, three countries have had their benefits suspended under previous arrangements:

- In 1996, the EU withdrew GSP trade benefits to Myanmar, with benefits reinstated in 2012.[29]

- In December 2006, Belarus's benefits were withdrawn following an investigation based on the 2004 report of the ILO's Commission of Inquiry for violation of ILO Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Benefits were not reinstated and Belarus is no longer eligible to be a GSP beneficiary because of its reclassification as an upper-middle-income country (Orbie and Portela, 2014; ILO, 2004).

- In February 2010 the EU withdrew GSP+ benefits from Sri Lanka, granting it only standard GSP benefits.[30] This was following an investigation, under the 2008 GSP, based on the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the Convention Against Torture (CAT).

In addition, in 2008 there was an investigation into freedom of association in El Salvador, although it was concluded without the suspension of benefits. Finally, even though the EU did not suspend Bangladesh's preferential market access under its unilateral trade arrangement (in response to the collapse of Rana Plaza), it participates in the Bangladesh Sustainability Compact alongside the Governments of Bangladesh and the United States, with the ILO in a monitoring and facilitating role (see Chapter 2).

[28] On the application of labour requirements in the EU GSP see Vogt (2015), Ebert (2009), Orbie and Tortell (2009).

[29] EU (2013). In 1996 a complaint was presented by the workers' delegates under Art. 26 of the ILO Constitution against the Government of Myanmar for non-observance of the Forced Labour Convention, 1930 (No. 29) (Report of the Commission of Inquiry, Geneva, 2 July 1998). Later on, in 2012, the ILC determined that "serious and systematic violations" of Convention No. 29 had not persisted in the country (ILO, 2012).

[30] However, the reasons for the withdrawal are not related to labour.

C TRADE AGREEMENTS

This section analyses the design of labour provisions included in different generations and approaches of trade agreements, with the objective of better understanding the evolution of the approaches with regard to labour obligations and dispute settlement mechanisms. Indeed, numerous studies focusing on the application of trade agreements' labour mechanisms reveal that dispute settlement mechanisms are less frequently and less completely activated than cooperative measures (Behrens and Janosch, 2012; ILO, 2013; Oehri, 2015; Oehri, forthcoming). This section refers to agreements already in force, and focuses on Canada, Chile, the EU and the United States because many trade agreements with labour provisions include them (almost 60 per cent of all agreements with labour provisions). Recent developments in the evolution of labour provisions for three of the countries included in this section (Canada, Chile and the United States) deserve particular attention due to the TPP (box 1.4).

Box 1.4 Labour provisions in the TPP: A look into the future?

The TPP is a mega-regional trade agreement concluded among 12 countries.[1] With negotiations starting in 2010 and concluding in October 2015, this trade agreement was signed on 4 February 2016, but is not currently in force as ratification processes are ongoing in all the parties to the agreement.[2] The agreement consists of 30 chapters, covering new and cross-cutting issues, such as competitiveness and business facilitation, development, state-owned enterprises and SMEs.

At the negotiation stage the different approaches of the parties were discussed regarding labour provisions – for instance, the position of those countries that do not regularly include labour provisions in their trade agreements (for example, Mexico and Viet Nam) and those including labour provisions but with different types of obligations and implementation mechanisms (for example, New Zealand, Chile, Japan, Canada and the United States). The final text of the TPP presents some interesting developments with respect to legal and institutional pre-ratification commitments such as: the signing of labour action plans to protect labour rights including the right to strike; an obligation to particularly adopt measures and discourage forced or compulsory labour; the adoption and implementation of effective cooperative activities with measurable outcomes, independent monitoring and ensuring complementarities; and enhanced transparency, among others:

Box 1.4 Labour provisions in the TPP: A look into the future? (cont.)

Expanded obligations for acceptable conditions of work: In addition to the labour rights enshrined in the 1998 ILO Declaration, the 12 parties to the agreement also shall adopt and maintain laws and practice governing "acceptable conditions of work" with respect to minimum wages, hours of work and OSH (Article 19.3.2).

Corporate social responsibility (CSR): The parties commit to encourage enterprises to adopt labour-related CSR initiatives (Article 19.7).

Particular focus against forced labour: The agreement also focuses on the elimination of forced and compulsory labour including child labour. The parties are obliged to discourage, through initiatives considered appropriate, the importation of goods produced in this manner (the measures must be consistent with WTO obligations) (Article 19.6).

Cooperation and cooperative labour dialogue: As in previous agreements of many of the parties to the TPP, cooperation is an important aspect. However, the TPP expands the content by establishing guiding principles for cooperative activities, including: relevance of capacity and capability-building activities; generation of measurable, positive and meaningful labour outcomes; complementarity with existing regional and multilateral initiatives to address labour issues; and transparency and public participation (including collaboration with the social partners and other organizations such as the ILO). This is an important evolution from previous agreements to make more effective the cooperative activities (Article 19.10) (see, for example, the CAFTA–DR assessment in Chapter 2). Furthermore, a new implementation mechanism is added where the parties may request a dialogue (in person or through technological means) with another party in relation to the labour provisions, where the parties when addressing the issues shall document their outcomes and decide on a course of action such as the development and implementation of action plans with specific and verifiable steps and including independent verification of compliance (which can be performed by ILO) (Article 19.11).

Review of the implementation of labour provisions: A Labour Council is created to review the implementation of the labour chapter to ensure its effective operation (Article 19.12).

Pre-ratification requirements (labour action plans): To ensure that countries are able to meet the commitments adopted under the labour provisions in the TPP before its entry into force (and before ratification discussions in the legislative bodies), the United States negotiated different action plans with Malaysia, Brunei and Viet Nam, which are legally linked to the TPP: "Labour Consistency Plans" with Malaysia and Brunei, and a "Plan for the Enhancement of Trade and Labour Relations" with Viet Nam.[3] The plans require the countries to implement legal and institutional reforms, according to their particular conditions, to comply with the obligations laid out in the labour chapter of the agreement:

- *Legal reforms to protect labour rights as stated in the 1998 ILO Declaration and acceptable conditions of work:* The three countries are required to implement reforms regarding forced labour and discrimination, for example to prohibit or enforce

legislation banning the withholding of passports, or to remove prohibitions on the employment of women in certain occupations, and for Malaysia particular reforms address human trafficking. All three countries also must implement several reforms to protect the right to freedom of association, collective bargaining and the right to strike.[4] With respect to child labour, Brunei and Malaysia must undertake legal reforms, for instance to prohibit certain hazardous work for people under 18 years old. Finally, Brunei shall enact laws to provide for minimum wages in the private sector.

- *Institutional reforms and capacity-building for effective implementation of legal reforms:* Regarding institutional reforms, the three countries shall adequately train labour inspectors, provide the necessary resources to implement the legal changes, and establish new administrative procedures, among others. Where the countries need it, technical assistance shall be requested from the US, the other TPP partners and the ILO.
- *Monitoring and effective compliance of the action plans:* The lack of compliance of the plan in Viet Nam may lead to suspension of tariff phase-outs. To monitor compliance, at least for ten years, Viet Nam's plan provides for the establishment of an "independent labour expert committee". For Malaysia and Brunei an intergovernmental mechanism will be put in place to monitor compliance for ten years after the entry into force of the agreement.[5]
- *Application of dispute settlement:* All three plans are legally binding, linked to the TPP, and subject to general dispute settlement under the agreement with certain exceptions (see Part VII of the three plans, and also Part VIII of the plan with Viet Nam).

Dispute settlement: In case of disputes in the application and effective compliance of labour provisions, a dispute settlement mechanism is provided and applies to all the provisions in the agreement (not only labour). However, some particular features apply only to labour provisions; for instance, that in the case of public submissions the submitters receive timely responses (Article 19.9.3). Furthermore, the parties do not have recourse to the dispute settlement mechanism applicable to the agreement until labour consultations have been exhausted (Article 19.15.13). Also, as referred to before, a mechanism for cooperative labour dialogue is included, which can be used at any time during a dispute (Article 19.15.14).

[1] Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Viet Nam. Colombia, Costa Rica and Republic of Korea have also expressed an interest in joining the TPP.[2] There are different possibilities for the entry into force of the agreement; however, it is contingent on ratification – only after all the original signatories have ratified, or at least six of them that together account for the 85 per cent of the region's gross domestic product (GDP) in 2013. For details about the ratification options, see Article 30.5 of the TPP.[3] There are differences between the plans with respect to institutions created by the plan, content of the commitments undertaken, institutional arrangements and application of sanctions.[4] To name but a few of the reforms: Malaysia shall amend their law with respect to the discretion of the government in registration and cancellation of trade union registries, also provide for the amendment of certain legislation to remove broad restrictions on collective bargaining, and finally shall remove penal sanctions for peaceful strikes. Viet Nam shall ensure the autonomy of trade unions in their operations, also that all labour unions receive the same treatment before the government and to not favour one trade union in particular, to enact a prohibition to the employer to interfere in trade union activity, and to allow strikes in the exploration and exploitation of oil and gas.[5] See "Malaysia–United States Labour Consistency Plan", "United States Viet Nam Plan for the Enhancement of Trade and Labour Relations" and "Brunei Darussalam–United States Labour Consistency Plan".

Design of labour provisions: Different generations of trade agreements

Evidence shows that Canada, Chile, EU and United States have included labour provisions in trade agreements with reference to an increasing number of labour rights and principles and referencing additional sources of labour standards. In the great majority of agreements that include labour provisions, parties commit not to lower labour standards and not to derogate from labour law, and to ensure that domestic labour laws are effectively enforced and consistent with certain labour rights and principles.[31] Increasingly, the ILO's 1998 Declaration on Fundamental Principles and Rights at Work is used as a baseline reference for these standards. Reference is made to other instruments as well, such as the United Nations Economic and Social Council (ECOSOC) Ministerial Declaration on Generating Full and Productive Employment and Decent Work for All (2006)[32] and the ILO Declaration on Social Justice for a Fair Globalization (2008)[33] (table 1.1). [34]

Table 1.1. Labour-related instruments and protections referred to in trade agreements concluded by Canada, the EU and the United States since 2009

	EU	United States	Canada
1998 ILO Declaration on Fundamental Principles and Rights at Work	X	X	X
Effective implementation of national labour laws	X	X	X
Access to national tribunals	–	X	X
Acceptable conditions of work (minimum wages, hours of work and OSH)	–	X	X
Migrant workers' non-discrimination	Peru and Colombia	–	X
Effective implementation of ILO Conventions	Central America, Colombia/Peru and Korea	–	–
Decent Work Agenda	X	–	Honduras, Peru, Colombia, Jordan, Panama

Source: ILO Research Department, based on the analysis of trade agreements. Note: Chilean agreements are assessed in table 1.3.

[31] Some countries, such as Austria, Belgium, Japan, Switzerland and United States, also incorporate relatively comprehensive labour provisions in their most recent BIT models, which refer to international labour standards and contain a non-lowering of standards clause. In addition, the article on investment and labour issues included in Belgian BITs explicitly recognizes the right of each party to establish its own domestic labour standards, while still striving to ensure consistency with international labour standards.

[32] Available at http://www.un.org/en/ecosoc/docs/pdfs/ecosoc_book_2006.pdf

[33] Available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_371208.pdf

[34] After 2009, similar instruments were introduced by different countries, allowing comparisons between them.

In addition to the evolution of the obligations included in labour provisions (table 1.2), this section analyses the mechanisms in place for dispute settlement in cases of violation of obligations.[35] In this regard, both Canada and the United States include an enforcement mechanism which provides for the establishment of an arbitral panel with the potential for monetary assessment and other economic sanctions, while the EU approach is based on consultations and persuasion.

EU: Sustainable development

EU agreements have evolved from primarily focusing on migrant workers in the first generation, to creating a new framework in the fourth generation to protect labour rights and enhance sustainable development for all workers.[36]

Obligations

The first references to labour issues in EU trade agreements date back to the conclusion of seven Euro–Mediterranean association agreements between 1995 and 2002, covering Algeria, Egypt, Israel, Jordan, Lebanon, Morocco and Tunisia (in force since 2005, 2004, 2000, 2002, 2003, 2000 and 1998, respectively).[37] The agreements set out the conditions for economic, social and cultural cooperation between the EU and each partner country within the context of a gradual trade liberalization in the Mediterranean area. While they share a similar structure, the agreements provide for specific arrangements with each partner State.

The agreements with Algeria, Morocco[38] and Tunisia require the parties not to discriminate against workers based on nationality with regard to working conditions, remuneration and dismissal, and social security. Furthermore, all these agreements call for cooperation in social matters

[35] The different approaches to implementation of the agreements through cooperative activities for fostering adherence to international labour standards in selected cases are analysed in Chapter 4.
[36] The EU's sustainable development chapters include both labour and environment, while the United States has kept these areas separate in its trade agreements.
[37] The Syrian Arab Republic, Turkey and the Palestine Liberation Organization (PLO) on behalf of the Palestinian Authority are also included in the Euro–Mediterranean Partnership. While the Syrian Arab Republic and the EU finished negotiating an association agreement in 2012, which has not yet been signed, the customs union with Turkey (1995) and the EU–PLO association agreement (1997) do not include labour provisions.
[38] Negotiations for a Deep and Comprehensive Free Trade Area (DCFTA) to extend the scope of the association agreement between the EU and Morocco were launched on 1 Mar. 2013.

with regard to social dialogue and, in particular, living and working conditions of migrant workers.[39] The focus on non-discrimination of migrant workers' rights seems to complement policies on the regulation of migration patterns in the Euro–Mediterranean area, given the geographic proximity and considerable migration flows (Cassarino, 2008).

The EU began to reference labour standards beyond non-discrimination against migrant workers in a second generation of trade agreements concluded between 1999 and 2002 with Chile (partially in force since 2003, and fully in 2005) and South Africa (2000). The agreements recognize the importance of social development and call for the respect of basic social rights through the promotion of cooperative activities relating to international labour standards, covering, among other areas, development and modernization of labour relations, working conditions, social welfare and employment security, promotion of vocational training and development of human resources, and promotion of social dialogue.

The EPA between the EU and the Forum of Caribbean Group of African, Caribbean and Pacific States (CARIFORUM), concluded in 2008, can be characterized as a special third-generation agreement.[40] Because of the different rationale of the EPA, which goes beyond traditional free trade agreements, the agreement is the first to include obligations relating to international labour standards and reference the 1998 ILO Declaration. The agreement contains additional labour provisions concerning foreign investors in the investment chapter, and it is the only EU agreement that submits labour provisions to sanction-based arbitral dispute settlement. In addition, the agreement establishes the first ad hoc dispute settlement mechanism for labour provisions in an EU trade agreement. Finally, it emphasizes cooperation for the formulation of national social and labour legislation, and the enforcement of national legislation and work regulations through the exchange of information, as well as education and awareness-raising programmes.

[39] This did not include the agreement with Israel, for example Article 69(3)(a) of the EU–Morocco association agreement.

[40] EPAs are specific trade and development partnerships negotiated by the EU with the 78 African, Caribbean and Pacific Group of States (ACP) countries, which aim to contribute to development, growth and job creation. EPAs are based on the ACP–EU agreement signed in Cotonou in 2000.

Since the agreement with the Republic of Korea (concluded in 2009, but in force since 2011), the EU's current and fourth generation of trade agreements includes a sustainable development chapter – a new framework for integrating labour provisions into trade agreements. The framework reflects the commitment to promoting sustainable development through trade policy.[41] In addition to the previous obligations, agreements with Central America, Colombia and Peru, Georgia, Moldova, Republic of Korea and Ukraine (in force since 2013, 2013 (provisionally), 2014, 2014 and 2014, respectively) all reference the 1998 ILO Declaration, the United Nations (UN) Declaration on Full Employment and Decent Work, the goal of achieving high levels of labour protection, commitments with regard to the fundamental principles and rights at work, and the eight fundamental ILO Conventions.

It should be noted that there are differences in some of the labour provisions, which reflect the individual circumstances of parties. For example, given the high migration rate, the agreement with Colombia and Peru includes a specific article dedicated to the elimination of discrimination against migrant workers; the agreement with Central America refers to the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), because of the significant number of indigenous peoples in the area; and the agreement with Moldova references the CRC because of the high number of documented cases of widespread child labour in trafficking, hazardous work in agriculture, and the construction and transportation sectors (ILO, 2010).

Dispute settlement mechanism

The EU's approach to dispute settlement is based on consultations and persuasion through political pressure. If a resolution is not achieved the matter goes to third-party independent review. This approach is in contrast to Canada and the United States in that there is no possibility of monetary sanctions or suspension of trade benefits, except in the EU–CARIFORUM agreement.

[41] As called for in the European Council's Strategy adopted in 2006, in a Communication of the Commission of the same year and in a policy paper released by EU Trade Commission in 2015 (European Council, 2006; European Commission, 2015).

Parties are required to consult one another and take ILO's, and other relevant bodies, activities into consideration to promote cooperation and coherence between the work of the parties to the agreements and these organizations' work, and they may request advice from the ILO or other relevant international bodies in order to fully examine the matters. If consultations fail, the parties may request that the Trade and Sustainable Development Sub-Committee be convened to resolve the matter by mutual agreement. If a solution is not reached, a party may request that a panel or group 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. At the time of writing, no labour disputes have been brought to the dispute settlement body. However, the case of the EU–Republic of Korea agreement provides insight into the consultative process when there is a perceived lack of progress by stakeholders (see Chapter 3).

The United States: Effective enforcement of domestic laws

Every US trade agreement since the North American Free Trade Agreement (NAFTA) has included labour provisions, which have become increasingly more progressive in extending to all labour rights the same mechanisms of enforcement initially applied in full only to some rights.[42] In general terms, the US approach can be characterized by four generations of trade agreements based upon the inclusion of labour provisions.[43]

Obligations

In the NAALC (1994), parties undertook commitments with regard to 11 labour principles. They committed to ensure that labour laws reflected high labour standards and agreed to strive to improve those standards. The parties also agreed to "effectively enforce" their domestic labour laws and to provide for procedural guarantees (such as access to impartial tribunals; fair, equitable and transparent proceedings; and remedies to ensure enforcement). Indeed, the NAALC was created to address widespread concerns during the 1992 US presidential campaign about stability of

[42] The first US trade agreement that contains labour provisions is the NAALC concluded in 1994, a NAFTA side agreement between Canada, Mexico and the United States.
[43] On the US models, see Bolle (2016).

American jobs due to perceived lower and poorly applied labour standards in Mexico.[44]

The US–Jordan agreement is the only second-generation free trade agreement. Concluded two years after the adoption of the 1998 ILO Declaration, the agreement eliminates any reference to the NAALC's 11 labour principles, and references both the 1998 Declaration and "internationally recognized labor rights", which include acceptable work conditions (wages, hours and OSH) and three of the four fundamental labour rights recognized under the 1998 Declaration, excluding the anti-discrimination standard, as with the labour clause of the US GSP. In this agreement, the United States introduces a provision which requires the parties to strive to ensure that (a) they do not waive or derogate from domestic labour laws as a means to encourage trade, and (b) the labour rights and principles referred to in the agreement are recognized and protected by domestic law. The agreement includes an obligation to not fail to effectively enforce domestic labour law in a sustained or recurring manner that would affect trade between the parties.[45]

The trade agreements signed between 2003 and 2006 with Australia, Bahrain, Chile, the Dominican Republic–Central America Free Trade Agreement (CAFTA–DR) countries,[46] Morocco (in force since 2006), Oman (in force since 2009) and Singapore (in force since 2004) all fall within the third-generation model. These seven agreements were negotiated pursuant to the trade objectives listed in the Bipartisan Trade Promotion Authority Act of 2002, which included the promotion of "worker rights and the rights of children consistent with the core labor standards of the ILO" and "universal ratification and full compliance with ILO Convention No. 182".[47] Indeed, the agreements specifically reference the Worst Forms of Child Labour Convention, 1999 (No. 182), not as established by the Bipartisan Trade Promotion Authority Act of

[44] The protection of worker rights and the environment was indeed included in the presidential campaign in 1992, although NAFTA was already under negotiation (Bieszczat, 2008).
[45] The parties shall consider cooperative activities because they represent opportunities to improve labour standards.
[46] The agreement was signed by all the parties involved in 2004. However, it entered into force at different moments. For El Salvador and the United States it was on 1 Mar. 2006, for Honduras and Nicaragua – 1 Apr. 2006, for Guatemala – 1 July 2006, Dominican Republic – 1 Mar. 2007 and Costa Rica – 1 Jan. 2009.
[47] US Code, Title 19, Ch. 24, Bipartisan Trade Promotion Authority, Sec. 3801(a)(6), (9).

2002, but in order to guide cooperative activities.[48] Furthermore, these agreements include procedural guarantees similar to those in NAALC. Third-generation agreements have been criticized by labour advocates for several reasons, namely, the difficulty of challenging one party's violation because of the exclusion of the recourse to dispute settlement for those provisions, and the exclusion of the principle of non-discrimination (Vogt, 2014).[49]

The fourth and most recent generation of agreements – signed with Colombia, Republic of Korea, Panama and Peru in 2006 and 2007 (all in force since 2012, except for that with Peru, which has been in force since 2009) – reference the 1998 declaration and each of the fundamental principles and labour rights recognized in it, including the principle of non-discrimination, and the obligations are more far-reaching, in that the hortatory language is eliminated.[50] Indeed, the parties agree to incorporate these rights into domestic law and not to derogate from domestic law.

Dispute settlement mechanism

Dispute settlement has also evolved throughout the generations of trade agreements, based mainly on which labour principles could go to dispute settlement. The decisions of the dispute settlement mechanism of labour provisions under the NAALC are binding. If the panel's decision is not observed and implemented, a monetary fine may be imposed; if that is not paid, it can be enforced through proportionate trade sanctions. Only three labour principles can go to dispute settlement: child labour, OSH and minimum wage technical standards. No case so far has gone to a panel of experts or dispute settlement, only to ministerial consultations. One explanation may be that States' parties to the NAALC prefer to settle complaints on an amicable basis rather than through the dispute settlement mechanism (ILO, 2013). The US trade agreements after NAFTA can be divided into two groups based on the differences in the dispute settlement

[48] However, the agreement with Australia does not refer to ILO Convention No. 182.
[49] In this regard, Vogt (2014) points out that this generation of agreements are a "retreat from the then high-water mark for labour rights" that the US–Jordan agreement established.
[50] For instance, in the agreement with Oman the parties *shall strive to ensure* that the principles in the 1998 ILO Declaration and the internationally recognized labour rights are recognized and protected by each party's law (Art. 16.1.1), whereas in the agreement with the Republic of Korea the parties *shall adopt and maintain* in their statutes, regulations and practices the rights as established in the 1998 ILO Declaration (Article 19.2).

mechanisms. Both groups call for parties to consult with one another, and for a committee or council to review the matter prior to the setting up of an arbitral panel if consultations fail. The third-generation trade agreements provide for arbitration only when a country fails to comply with the obligation to effectively enforce its labour laws, while second- and fourth-generation trade agreements permit arbitration for all provisions in the labour chapter in parallel with more stringent obligations.

Although not required by US trade agreements, the United States requests formal consultations with its trading partners only after the USDOL has reviewed a submission and issued a report recommending formal consultations.[51] All attempts are made to remedy the situation through investigations and consultations. The goal of these implementation mechanisms is not to apply sanctions, although arbitration may result in a monetary assessment or suspension of benefits. At the time of this writing, the only example of state-to-state arbitration on the enforcement of labour standards is the ongoing arbitration between Guatemala and the United States (box 1.5).

Box 1.5 The Guatemala case

In April 2008, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and six Guatemalan labour unions filed a public submission with the Office of Trade and Labour Affairs (OTLA) alleging that Guatemala had violated its labour obligations under Chapter 16 of the CAFTA–DR. Specifically, the submission alleged that Guatemala violated Articles 16.1, 16.2 and 16.3 concerning a shared commitment to the 1998 ILO Declaration, enforcement of labour laws, and access to a fair and efficient court system. The submission focused on five examples as representative of the violations. The OTLA accepted the submission and issued its findings and recommendations in January 2009. In July 2010, after Guatemala's actions proved insufficient to address the concerns raised in the report, the United States requested formal consultations with Guatemala under the CAFTA–DR.

[51] Ineffective enforcement of domestic labour law has been reported in Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico and Peru. Only in Honduras did the OTLA recommend formal consultations for reported violations of the labour provisions of the CAFTA–DR with respect to freedom of association, the right to organize and collectively bargain, minimum age of employment and the worst forms of child labour, and acceptable working conditions (USGAO, 2014; USDOL and Honduran Secretariat of Labor and Social Security, 2015).

Box 1.5 The Guatemala case (cont.)

In August 2011, after consultations and a meeting of the CAFTA–DR Free Trade Commission failed to resolve the matter, the United States requested the establishment of an arbitral panel under Article 20.6 of the CAFTA–DR alleging that Guatemala had failed to effectively enforce its labour law in violation of Article 16.2.1(a). However, dispute settlement proceedings were suspended in an effort to reach agreement on 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 United States 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 towards the key areas of the Enforcement Plan continued.

In September 2014, the USTR announced that the United States would proceed with its labour enforcement dispute settlement proceedings against Guatemala as critical items under the Enforcement Plan remained outstanding (USTR, 2014c). The United States' initial written submission to the arbitral panel alleged that Guatemala had failed to effectively enforce its labour laws in a sustained or recurring course of inaction on at least 402 occasions and requested the panel to assess the alleged violation of Article 16.2.1(a) of the CAFTA–DR (In the Matter of Guatemala, 2015a). In its initial written submission, Guatemala asked the panel to reject the US claims, arguing that the panel does not have jurisdiction over the complaint, that the United States had not established a prima facie case, and that some of the US evidence is flawed and unreliable because it is derived from anonymous sources (In the Matter of Guatemala, 2015b).

On 16 March 2015, the United States submitted its rebuttal in which it explained the necessity of using redacted documents and not disclosing the identity of workers that had provided statements (In the matter of Guatemala, 2015c). The United States alleged that Guatemala incorrectly interpreted Article 16.2.1(a) of the CAFTA–DR by introducing requirements not found in the Article, such as a deliberate government policy, and by arguing that enforcement referred only to the activities of executive branch actors. The United States also contended that intent to affect trade is not required under Article 16.2.1(a), as Guatemala had argued in its initial written submission. The United States argued that Guatemala had failed to effectively enforce its labour laws in a sustained and recurring course of inaction, and in a manner affecting trade by (i) not acting to promote compliance with court orders requiring reinstatement, back pay and fines, (ii) not conducting inspections in accordance with the Guatemala Labour code and not imposing penalties as required by Guatemalan law on 197 occasions at 80 different locations, and (iii) by failing to register unions and institute conciliation processes in a timely fashion.

In its rebuttal submission, submitted on 27 April 2015, Guatemala alleged that the Enforcement Plan was being faithfully executed and that the United States initiated the dispute settlement proceedings against Guatemala for short-term political gain. Guatemala argued that the panel should dismiss the US complaint because (a) the United States incorrectly interpreted Article 16.2.1(a) of the CAFTA–DR, (b) the United States used the "testimony of secret witnesses," claiming that evidence though such testimony is unreliable, and (c) contrary to the United States' allegations,

Box 1.5 The Guatemala case (cont.)

Guatemala has not been inactive in enforcing its labour laws. Furthermore, Guatemala noted several instances in which the United States allegedly failed to effectively enforce its labour law as well (In the Matter of Guatemala, 2015d).

Eight non-governmental entity submissions were submitted to the panel on 27 April 2015, including a submission by the AFL–CIO, one of the organizations that filed the initial public submission with the OTLA (In the Matter of Guatemala, 2015e). Three of these submissions, including the AFL–CIO submission, urged the panel to find Guatemala in violation of Article 16.2.1(a), and the remaining five submissions argued that Guatemala was not in violation of its obligations under Chapter 16 of the CAFTA–DR.

On 2 June 2015, the United States and Guatemala presented their arguments in a hearing before the arbitral panel in Guatemala City. Their statements generally reflected the arguments they made in their submissions. Following the hearing, the parties submitted answers to written questions from the panel as well as supplementary written submissions.

The panel's work was suspended in November 2015 due to the resignation and replacement of a member of the arbitral panel. In February 2016, the panel announced to the parties that it intended to deliver its initial report to the parties on or before 22 June 2016. Under Chapter 20 of the CAFTA–DR, the final report must be issued within 30 days of the initial report unless the parties agree otherwise. The CAFTA–DR also provides that if the panel finds against Guatemala, the panel may, at the request of the United States, impose an annual monetary assessment up to US$15 million, if the disputing parties are unable to reach agreement on a resolution of the matter or, after reaching agreement, the United States considers that Guatemala has failed to observe the terms of the agreement. Any monetary assessment is to be paid into a fund established by the trade ministers of the disputing parties and expended at their direction on appropriate labour initiatives, including efforts to enhance labour law enforcement. In the case of non-compliance, trade benefits could be suspended (CAFTA–DR, Chapter 20) to collect the assessment or otherwise secure compliance.

Canada: Progressive extension of labour rights protection

Canada, also party to the NAALC (1994), has continued to increase both obligations undertaken in labour provisions – going beyond the principles of the 1998 ILO Declaration – and in the stringency of implementation mechanisms, moving from a two-tier system to a mechanism covering all labour rights. There are five generations of Canadian trade agreements. The first- to the fourth-generation agreements on labour cooperation (ALCs) were

negotiated parallel to a free trade agreement; for the fifth generation (with the Republic of Korea) a labour chapter was included in the agreement.[52]

Obligations

The Canada–Chile Agreement on Labour Cooperation (CCALC) (in force since 1997), concluded two years after the NAALC, is also part of Canada's first-generation agreements.[53] The CCALC includes the same 11 labour areas of focus and calls for the parties to promote compliance with and effectively enforce domestic labour laws.[54]

Canada's second-generation agreements only include the 2001 trade agreement with Costa Rica (in force since 2002). The objectives of the ALC are to improve working conditions and living standards, and to promote the fundamental labour rights included in the 1998 ILO Declaration. In addition, but without establishing common minimum standards for their domestic laws, parties also agree to extend the promotion of labour standards pertaining to minimum working conditions and the prevention of, and compensation for, cases of occupational injuries or illnesses.

In Canada's third-generation ALCs, concluded in 2008 with Colombia and Peru (in force since 2011 and 2009, respectively), Canada introduces, for the first time, a binding non-derogation clause prohibiting the parties from waiving or derogating from domestic labour law "in a manner that weakens or reduces adherence to the internationally recognized labour principles and rights" in order to encourage trade or investment. The parties commit to the fundamental labour principles and rights at work as well as to additional standards as described in the ILO's Decent Work Agenda.[55] Furthermore, the protection of migrant workers, which was

[52] The first to fourth generations of Canadian agreements mirror the NAALC and even in the fifth generation (Republic of Korea), the labour chapter has its own dispute settlement. Contrastingly, US free trade agreements have included a labour chapter subject to the dispute settlement provision for the agreement.

[53] One reason the CCALC so closely resembles the NAALC is that in 1994 the leaders of Canada, Mexico and the United States agreed to admit Chile to NAFTA at the Summit of Americas. However, when the US President was unable to obtain a Trade Preference Act, Chile refused to negotiate with the United States and instead negotiated and concluded the CCALC in 1996 (Miller, 1996).

[54] Art. 3(1)(a)–(g) of the CCALC. There are seven suggested methods for enforcing labour standards. The appointment of labour inspectors for monitoring compliance and investigating violations and the possibility to initiate, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of labour laws are included in subsequent agreements.

[55] However, no express commitment to the Decent Work Agenda is made, and the reference is only relevant for the two-tier enforcement mechanism, as discussed below. ILO Convention No. 182 is also referenced in the annexes.

originally included in NAFTA, is maintained in Canada's ALCs, in contrast to US labour provisions.

The fourth-generation agreements concluded between 2009 and 2013 resemble the third-generation agreements, except that these agreements with Honduras, Jordan and Panama (in force since 2014, 2012 and 2013, respectively), include more specific provisions pertaining to prevention of and compensation for occupational injuries and illnesses. These agreements divorce the definition of these obligations from the 1998 ILO Declaration and the Decent Work Agenda, with important consequences for dispute settlement mechanisms, as explained below.[56] Canada's most recent trade agreement, concluded in 2014 and in force since 2015, with the Republic of Korea (the Canada–Korea Free Trade Agreement (CKFTA)) constitutes a fifth generation and establishes the same obligations pertaining to eight international labour rights referred to in previous generations,[57] with a difference for dispute settlement (see below).[58]

Dispute settlement mechanism

The Canadian National Administration Office (NAO) reviews all public communications submitted under Canadian ALCs or labour chapters of Canadian trade agreements, and ultimately decides whether to recommend ministerial consultations at the end of a review period. At the time of writing, the NAO has not publicly released any information concerning alleged labour violations other than under the NAALC (Government of Canada, 2015).

All labour disputes in first-generation agreements are subject to consultations. Like the two-tier system of implementation under NAALC, only matters related to OSH, child labour and minimum wages may be resolved through arbitration. If there is a persistent pattern of failure to enforce domestic labour laws, a review panel may be convened in the second-generation agreements; only "reasonable and appropriate measures" may be taken, but fines are excluded.

[56] See, for example, Art. 1.1. Canada–Honduras ALC.

[57] Art. 18.2 establishes the obligation of the parties to ensure that their labour laws embody and provide protection for the principles concerning the internationally recognized labour rights, including the four fundamental principles and rights at work and an additional four: acceptable minimum employment standards; the prevention of occupational injuries and illnesses; compensation in cases of occupational injuries or illnesses; and non-discrimination in respect of working conditions for migrant workers.

[58] The parties affirm their ILO commitments under the 1998 ILO Declaration (CKFTA, Art. 18.2).

Table 1.2. Evolution of labour provisions in trade agreements concluded by Canada, the EU and the United States

Generation/ period	Selected trade partners included	Specific features of labour provisions	Dispute settlement mechanism (DSM) on labour issues
European Union			
First (1995–2002)	• Seven Euro–Mediterranean countries	• Non-discrimination of migrant workers (Algeria, Morocco and Tunisia) • Cooperation in social matters	• Not applicable
Second (1999–2002)	• Chile, South Africa	• Respect for basic social rights through the promotion of cooperative activities related to international labour standards	• Not applicable
Third (2008)	• CARIFORUM	• First to include obligations related to international labour standards • Reference to 1998 Declaration (from this generation onwards)	• First ad hoc DSM for labour provisions; only agreement with sanction-based arbitral DSM
Fourth (2009–current)	• Central America, Colombia, Georgia, Korea (Republic of), Moldova, Peru	• Reference to 1998 Declaration; DWA; fundamental ILO Conventions; UN Declaration on Full Employment and Decent Work • Specific variations (e.g. migrants, indigenous populations)	• Consultations; third-party independent review; recommendations
United States			
First (1994)	• NAFTA	• 11 labour principles • Promote compliance with and effectively enforce domestic labour laws • Procedural guarantees (access to impartial and independent tribunals; fair, equitable and transparent proceedings; remedies to ensure enforcement)	• Arbitral panel (labour exclusive) limited to certain labour principles; monetary assessment to be directed towards enforcement and ultimately trade sanctions of an amount no greater than the monetary assessment
Second (2000)	• US–Jordan	• 1998 Declaration (strive to ensure that such labour principles and internationally recognized labour rights are protected in domestic law) • Effective enforcement of labour laws (excluding non-discrimination) • Internationally recognized labour rights and acceptable work conditions (minimum wages, hours and OSH) • Obligation of effort: non-derogation clause, and protection of labour standards by domestic law	• Regular DSM of the agreement; trade sanctions
Third (2003–06)	• Australia, Bahrain, Chile (CAFTA–DR), Morocco, Oman and Singapore	• Same as second generation, plus: • Procedural guarantees (access to impartial and independent tribunals; fair, equitable and transparent proceedings; remedies to ensure enforcement)	• DSM (modified) exclusive for certain obligations (only when countries fail to effectively enforce labour law; possible annual monetary assessment)

Table 1.2. Evolution of labour provisions in trade agreements concluded by Canada, the EU and the United States (cont.)

Generation/ period	Selected trade partners included	Specific features of labour provisions	Dispute settlement mechanism (DSM) on labour issues
Fourth (2006)	• Colombia, Republic of Korea, Panama and Peru	• Reference to 1998 Declaration (as obligation to ensure rights from this generation onwards) • Obligations: to incorporate labour rights and principles in domestic law and non-derogation clause (including non-discrimination from this generation onwards)	• Arbitral panel for all provisions; monetary assessment based on amount of trade effect or trade sanction
Canada			
First (1994–96)	• NAFTA, Chile	• 11 labour principles • Promote compliance with and effectively enforce domestic labour laws	• Arbitral panel (labour exclusive) limited to certain obligations/ rights; monetary sanctions (trade sanctions only in NAFTA)
Second (2001)	• Costa Rica	• Promote compliance with and effectively enforce domestic labour laws • ALC objectives: Improve working conditions and living standards • Promote fundamental labour rights included in 1998 Declaration, plus minimum working conditions and prevention/compensation in occupational injuries	• No trade or economic sanctions (adoption of "reasonable and appropriate measures")
Third (2008)	• Colombia; Peru	• Binding non-derogation clause • Fundamental ILO standards • Decent Work Agenda; migrant workers	• Review panel limited to 1998 ILO Declaration; monetary sanctions
Fourth (2009–13)	• Honduras, Jordan, Panama	• Third-generation and more specific provisions pertaining to prevention of and compensation for occupational injuries and illnesses • Divorce definition of obligations from the 1998 Declaration and the Decent Work Agenda	• Review panel limited to 1998 ILO Declaration; monetary sanctions
Fifth (2014)	• Republic of Korea	• Same obligations pertaining to eight labour rights referred to in previous generations	• Review panel to all labour obligations; monetary sanctions

Notably, the third- and fourth-generation ALCs limit the jurisdiction of the review panel to the extent the obligations refer to the 1998 ILO Declaration, while only consultations are available for the additional rights "more closely related to the ILO's Decent Work Agenda". These ALCs

also reintroduce the possibility of monetary reparations for failure to remedy a violation pursuant to the panel's final report, which was available under first-generation ALCs. Importantly, the most recent fifth-generation agreement with the Republic of Korea extends the panel's review to all labour obligations.

Chile: Country-based approaches

Since the agreements negotiated with Canada (1997), the EU (partially in force since 2003 and fully in 2005), and the United States (2004), Chile has pursued the inclusion of labour provisions in its trade agreements as part of its trade agenda (Lazo, 2009).[59]

Forty-five per cent of Chilean trade agreements in force between 1997 and 2016[60] include labour provisions.[61] The inclusion or not of labour provisions in Chile's trade agreements and their content seems to be the result of a negotiation-based process conducted according to the trade partner involved.[62] Hence, a characterization by generations linked to specific periods of time presents more challenges in Chilean agreements compared to those of Canada, the EU and the United States.[63] The variations in commitments are country-specific, but with some key consistent elements (table 1.3).

All labour provisions included in the different agreements, either included directly in the labour chapters or in parallel agreements or memoranda of understanding (MoUs), have cooperation as their main approach: mainly through cooperative activities including exchanges of information, cooperation in regional and multilateral forums, dialogues, seminars and private

[59] One reason for this approach is political coherence, which seeks to align both the content of the labour provisions included in the agreements and the national labour objectives of Chilean governments (Lazo, 2014).

[60] Whether the WTO has been notified of them or not.

[61] In the case of the agreement with Japan, a Joint Statement made by the Ministries of Trade of both parties on the "Occasion of the signing of the agreement" included a confirmation and reaffirmation of the parties towards their obligations as ILO members, and their commitments towards the 1998 ILO Declaration. As this is only a statement at a chancellery level (Lazo, 2009) it is not included in the models explored.

[62] Agreements negotiated by Chile in the same period (1997–2016) that do not include labour provisions are: Mexico (1999), Central America (2002), EFTA (2004) (a reference in the introduction towards improving working conditions and living standards), Republic of Korea (2004), India (2007), Malaysia (2012), Viet Nam (2014) and Pacific Alliance (2015). One reason to negotiate labour provisions or not is that not all Chilean trade partners are willing to include labour issues in their trade agreements. For example, see Kolben (2006) in the case of India.

[63] The agreements with Canada, EU and the United States are not addressed in this section as they were the subject of analysis in previous sections.

sector cooperation, among others. Also, particular topics are named in some agreements as the target of cooperation, including but not limited to decent work, working conditions, fundamental principles and rights at work, social dialogue and labour inspections. Also, all the agreements provide for some institutional mechanism to facilitate implementation.

In practice, the cooperative approach has been implemented. For instance, in the agreement with Brunei, New Zealand and Singapore (2006) ("P4" or Trans-Pacific Strategic Economic Partnership), the parties have participated in meetings (governmental or tripartite), and workshops involving ILO technical assistance. Furthermore, parallel to the implementation of the agreement, Brunei Darussalam became an ILO member (Lazo, 2014). Other activities have been implemented such as seminars (with most of the trade partners), and exchange of information and visits to discuss topics such as migration (with Peru), social security (with China), employment policies (with the EU) and OSH (with Canada).[64] Inclusion of the social partners in activities related to CSR have also been implemented (for example, with the United States and the P4).

Obligations

In the agreement with China (2006) and its parallel MoU on labour and social security cooperation, which is the first with labour provisions after the agreements with Canada, the EU and the United States, there is no explicit reference to international labour standards or to other ILO instruments, but the parties undertake a general obligation to cooperate in particular labour issues including decent work and social security.

The agreement with Australia (2009) also mostly encompasses an agreement to cooperate based on the concept of decent work, but also includes reference to the 1998 ILO Declaration. In contrast, the economic cooperation chapter of the agreement with Thailand (2015) does not include references to the ILO or its instruments. The parties, however, recognize that it is inappropriate to encourage trade or investment by weakening or reducing labour laws and protections (which is present in other agreements, as reflected in table 1.3).

[64] For detail on the activities implementing the agreements see Lazo (2014).

Table 1.3. Characterization of labour provisions in Chilean trade agreements

Trade agreement/side agreement or MoU	Reference to ILO membership and instruments	Not to encourage trade or investment by weakening labour laws	Effective enforcement of labour laws	Inclusion of internationally recognized labour rights in domestic law	Institutional arrangements	Civil society participation	Dispute resolution (consultations)
(1) China (2006)	No (but the introduction considers the ILO objectives)	No	No	No	Appointment of national coordinators	No	No
(2) Australia (2009)	Yes	No	No	No	Cooperation Committee (reporting to the Joint Committee of the agreement)	Not explicitly (interaction with "relevant entities")	No
(3) Thailand (2015)	No	Yes	No	No	National contact points, Cooperation Committee, possibility to establish ad hoc working groups	Not explicitly (interaction with "relevant entities")	No (the chapter is expressly excluded from dispute settlement)
(4) Brunei, New Zealand, and Singapore (2006); Hong Kong, China (2014)	Yes	Yes	No	Yes	National contact points, joint meetings	Yes (consult stakeholders and public)	Consultations
(5) Turkey (2011)	Yes	Yes	Yes	Yes	National contact points, sub-committees or working groups established by the Joint Committee	No	Yes (mechanism of the agreement and possibility of suspension of concessions or obligations)
(6) Peru (2009)	Yes	Yes	Yes	Yes	Joint Labour and Migration Cooperation Committee	Yes (mainly for cooperation)	No
(7) Panama (2008), Colombia (2009)	Yes	Yes	Yes	Yes	National contact points, Joint Labour Cooperation Committee (Panama) high-level meetings (Colombia)	Yes (mainly for cooperation)	Consultations (the chapter is expressly excluded from the agreement's dispute settlement mechanism)

Source: ILO Research Department based on analysis of Chilean trade agreements (Lazo, 2014; Ebert and Posthuma, 2011).

In the MoUs parallel to the agreements with Brunei, New Zealand and Singapore (2006) and Hong Kong, China (2014), the parties reaffirm their commitments towards the 1998 ILO Declaration, and agree on striving or working to ensure the inclusion and protection in domestic laws of the principles set out in the parties' international labour commitments. These agreements also provide for civil society participation and a mechanism to solve disputes (see section below).

In the agreement with Turkey (2011), the parties reaffirm their commitments not only towards the 1998 ILO Declaration, but also as ILO members. Compared with the P4 and the agreement with Hong Kong, China, an obligation is added for the effective enforcement of labour laws, but it does not provide for civil society involvement or consultations to solve disputes. Similar commitments are found in the agreement with Peru (2009). However, the MoU expands its coverage to protect migrant workers in accordance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It also provides for civil society participation (including workers and employers) to identify areas and activities for cooperation.

Finally, in the labour cooperation agreement parallel to the agreement with Panama (2008) and the labour chapter in the agreement with Colombia (2009), the same commitments from the previously mentioned Chilean agreements are included (except for migration), but these agreements with Colombia and Panama delve into the definition of labour or national laws and coverage.[65] Moreover, a consultation mechanism to solve disputes is included.

Dispute settlement mechanism

Only four Chilean agreements include a mechanism for dispute resolution in the shape of consultations applicable to labour issues (that is, P4; Hong Kong, China; Panama; and Colombia), and one allows for the application of the general dispute settlement mechanism of the agreement

[65] Labour legislation refers to laws and regulations of each party related to the internationally recognized rights of: freedom of association and collective bargaining; prohibition of all forms of forced or compulsory labour, minimum working age and eradication of the worst forms of child labour; elimination of discrimination in employment and occupation; and acceptable working conditions with respect to wages, working hours and occupational health and safety.

(Turkey). However, no monetary or trade sanctions are provided for.[66] The agreements emphasize that issues with respect to the interpretation, implementation or application of the labour provisions shall be addressed first through dialogue and cooperation. In the process, consultations are requested by the parties through their national contact points. If the parties do not resolve the issue through the contact points, the dispute shall be addressed at high-level meetings, in the agreement with Colombia, while in the agreement with Panama the parties may present the issue to the Joint Committee on Labour Cooperation. In the case of the P4 or the Hong Kong, China agreement, the issue may be solved at a joint meeting of the interested parties for discussion and consultations. In the case of the agreement with Turkey, parties are allowed to activate the dispute settlement mechanism (when cooperation, consultations or the Joint Committee do not resolve the matter), for example when the other party fails to comply with its obligations under the agreement. This may result as a last resource in the establishment of an arbitration panel and a final binding report. If a party fails to comply (within a reasonable period of time), parties may negotiate mutually satisfactory compensation, but if this is not possible, ultimately the complaining party may suspend concessions or other obligations.[67] To date, there is no evidence of the activation of the dispute settlement mechanism in any of these agreements.

[66] In Chilean agreements the mechanisms for dispute resolution are labour specific. The general dispute settlement mechanism applicable to all the agreement, generally (except with the case of Turkey) does not apply to labour matters.

[67] To apply these measures, Art. 48 of the agreement provides for the procedure.

D CONCLUSIONS

This chapter shows that a growing number of countries consider the promotion and protection of labour standards as an underlying dimension of trade policy. This is reflected in trade policy strategy documents, but also in the increasing number of trade arrangements including labour provisions. The increased reference to labour standards in trade agreements reveals that trade and social policies are considered by the trade partners as interconnected and mutually reinforcing pillars of development strategies. Moreover, the evolution of labour provisions, particularly among the key proponents, reflects the more comprehensive promotion of labour rights in the agreements.

Different countries adopt different approaches for including labour provisions in trade and unilateral arrangements. In the case of the United States the focus on the effective enforcement of labour rights has been implemented in varying ways. This includes pre-ratification requirements regarding reforms in labour laws and practices, coupled with cooperative activities and monitoring reports to build capacity and assess progress. In the EU, the focus of the model on sustainable development also takes into consideration a number of innovative tools, such as the ILO's Decent Work Agenda, ILO fundamental Conventions and the UN Declaration on Full Employment and Decent Work, to promote dialogue and set the framework conditions for decent work. Canada's emphasis on the progressive extension of labour rights and Chile's country-specific approach towards cooperative activities also reflect this trend towards finding more innovative and far-reaching ways to address issues with respect to labour practices.

However, regardless of the approach to labour provisions, the report finds that the objectives of countries are shared: to improve the social benefits of trade for workers while promoting sustainable enterprises. This requires implementation strategies that involve all stakeholders – governments, trade unions and employer organizations. The implementation and

outcomes are further assessed in the following chapters with respect to socio-economic outcomes and institutional mechanisms that involve the participation of different stakeholders.

REFERENCES

Agustí-Panareda, J.; Puig. S. 2015. "Labor Protection and Investment Regulation: Promoting a Virtuous Circle", in *Stanford Journal of International Law*, Vol. 51, pp. 105–117.

Behrens, M.; Janosch, 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.

Bieszczat, F. 2008. "Labor provisions in trade agreements: From the NAALC to now", in *Chicago-Kent Law Review*, Vol. 83, No. 3, pp. 1387–1408.

Bjorklund, A.K. 2013. "The role of counterclaims in rebalancing investment law", in *Lewis & Clark Law Review*, No. 17, pp. 461–480.

Boie, B. 2012, *Labour related provisions in international investment agreements*, Employment Working Paper No. 126 (ILO).

Bolle, M.J. 2016. *Overview of labor enforcement issues in free trade agreements* (Washington, DC, Congressional Research Service).

Cassarino, J-P. 2008. *Patterns of circular migration in the Euro–Mediterranean area: Implications for policy-making* (Badia Fiesolana, European University Institute).

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

Ebert, F. 2009. *Between political goodwill and WTO-law: Human rights conditionality in the Community's new scheme of Generalised Tariff Preferences (GSP)* ZERP Working Paper Series 8/2009.

—; Posthuma, A. 2011. *Labour provisions in trade arrangements: Current trends and perspectives* (Geneva, International Institute for Labour Studies (IILS), ILO).

European Commission. 2016. *The EU Special Incentive Arrangement for Sustainable*

Development and Good Governance ('GSP+') covering the period 2014 – 2015. Joint Staff Working Document, 28 January (Brussels).

—. 2015. *Trade for all: Towards a more responsible trade and investment policy* (Luxembourg).

European Council. 2006. *Review of the EU Sustainable Development Strategy (EU SDS) Renewed Strategy*, 26 June (Brussels), Annex.

General Agreement on Tariffs and Trade (GATT). 1971. *Generalized System of Preferences*; Decision of 25 June 1971, L/3545 (June 28). Available at: https://www.wto.org/gatt_docs/English/SULPDF/90840258.pdf.

—. 1979. *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*; Decision of 28 November 1979, L/4903 (December 3, 1979)

Government of Canada. 2015. *Negotiating and implementing international labour cooperation agreements*.

In the Matter of Guatemala. 2015a. *Initial written submission of the United States*, Before the Arbitral Panel of the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA–DR, Nov. Available at: https://ustr.gov/sites/default/files/US%20Initial%20Written%20Submission.pdf.

—. 2015b. *Initial written submission of Guatemala*, Feb. Available at: https://ustr.gov/sites/default/files/enforcement/labor/NON-CONFIDENTIAL%20-%20Guatemala%20-%20Initial%20written%20communication%20%202-02-2015.pdf.

—. 2015c. *Rebuttal submission of the United States*, Mar. Available at: https://ustr.gov/sites/default/files/files/Issue_Areas/Labor/US%20Rebuttal%20Submission.pdf.

—. 2015d. *Rebuttal submission of Guatemala*, Apr. Available at: https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/WTO/Pending/Rebuttal%20Submission%20of%20Guatemala.pdf.

—. 2015e. *Written views of the American Federation of Labor–Congress of Industrial Organization*, Apr. Available at: https://ustr.gov/sites/default/files/enforcement/DS/Submissions%20of%20NonGovernmental%20Entities.pdf.

Inside US Trade. 2015. "Initial ruling in US–Guatemala labor case delayed by three months", Nov. 2015.

ILO. 2004. *Report of the Commission of Inquiry appointed under Article 26 of the Constitution of the International Labour Organization to examine the Observance by the Government of the Republic of Belarus of the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*.

—. 2009. *World of Work Report 2009: The Global Job Crisis and beyond* (Geneva, International Institute for Labour Studies (IILS)).

—. 2010. *Exploatarea Copilului – Condamnare la Sărăcie: Rolul și responsabilitățile actorilor sociali în acțiunile de prevenire și combatere a muncii copiilor în Republica Moldova* [Exploitation of child labour – Condemning poverty: The role and responsibilities of social actors involved in prevention and combating of child labour in the Republic of Moldova] (Geneva, International Programme on the Elimination of Child Labour (IPEC)).

—. 2012. *Resolutions adopted by the International Labour Conference at its 101st Session*, International Labour Conference (ILC), 101st Session, Geneva, 2012.

—. 2013. *Studies on growth with equity. Social dimensions of free trade agreements* (Geneva, IILS).

Jones, V.C. 2015. *Generalized System of Preferences: Background and Renewal Debate* (Washington, DC, Congressional Research Service).

Kolben, K. 2006. "The New Politics of Linkage: India's Opposition to the Worker's Rights Clause", in *Indiana Journal of Global Legal Studies*, Vol. 13, No. 1, Article 8, pp. 225–259.

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 Research Department).

Miller, M.A. 1996. "Will the circle be unbroken? Chile's accession to the NAFTA and the fast-track debate", in *Valparaiso University Law Review*, Vol. 31, No. 1, pp. 153–190.

Oehri, M. 2015. "US and EU Labor Governance in the Dominican Republic: Contrasting the CAFTA–DR and the CARIFORUM–EPA de jure and de facto", in *Bulletin of Comparative Labor Relations*, Vol. 89, pp. 93–112.

—. Forthcoming. *Comparing the Effectiveness of Different Implementation Mechanisms in the Promotion of Labor Provisions in US and EU FTAs: The Empirical Evidence from Mexico, Morocco, and the Dominican Republic*, background paper (Geneva, ILO Research Department).

Orbie, J.; Portela, C. 2014. "Sanctions under the EU Generalized System of Preferences and foreign policy: Coherence by accident?", in *Contemporary Politics*, Vol. 20, No. 1, pp. 63–76.

Orbie, J.; Tortell, L. 2009. "The New GSP+ beneficiaries: Ticking the box or truly consistent with ILO findings?", in *European Foreign Affairs Review*, Vol. 14.

Prislan, V.; Zandvliet, R. 2013. "Labour provisions in international investment agreements: Prospects for sustainable development", in *Yearbook of International Investment Law and Policy 2012/2013* (New York, Oxford University Press).

Ranjan, P. 2012. *India's international investment agreements and India's regulatory power as a host nation* (London).

UNCTAD. 1968. *Expansion and Diversification of Exports of Manufactures of Developing Countries,* Resolution 21(II). Available at: http://unctad.org/en/Docs/td97vol1_en.pdf.

—.2006. *Investment provisions in economic integration agreements* (New York and Geneva).

—. 2010. *Generalized System of Preferences: Handbook on the Scheme of the United States of America* (New York and Geneva).

—. 2015. *World Investment Report: Reforming international investment governanc*e (New York and Geneva).

USDOL; Honduran Secretariat of Labor and Social Security. 2015. *Joint statement of the United States Department of Labor and Honduran Secretariat of Labor and Social Security regarding the Public Report of Review on U.S. Submission 2012-01 (Honduras).*

US Department of State. 2008. *Belarus*, background note.

United States Government Accountability Office (USGAO). 2014. *Free trade agreements: US partners are addressing labor commitments, but more monitoring and enforcement are needed*, report to Congressional Requesters, U.S. GAO-15-160.

USTR. 2012. *Hope II 2012 USTR annual report on the Implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) program and assessment of producer eligibility.*

—. 2013a. *Hope II 2013 USTR annual report on the Implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) program and assessment of producer eligibility.*

—. 2013b. *Statement by the US Government on labor rights and factory safety in Bangladesh*. Available at: http://www.state.gov/r/pa/prs/ps/2013/07/212209.htm.

—. 2014a. *Fact sheet: New initiative to improve labor rights in Burma*. Available at: https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2014/November/New-Initiative-to-Improve-Labor-Rights-in-Burma.

—. 2014b. *President Obama removes Swaziland, reinstates Madagascar for AGOA benefit.* Available at: https://ustr.gov/about-us/policy-offices/press-office/press-

releases/2014/June/President-Obama-removes-Swaziland-reinstates-Madagascar-for-AGOA-Benefits.

—. 2014c. *United States proceeds with labor enforcement case against Guatemala*. Available at: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2014/September/United-States-Proceeds-with-Labor-Enforcement-Case-Against-Guatemala.

—. 2014d. *Hope II 2014 USTR annual report on the Implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) program and assessment of producer eligibility.*

—. 2015a. *GSP review of Bangladesh recognizes progress, urges that more needs to be done on worker safety and rights*. Available at: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2014/July/GSP-Action-Plan-Review-Finds-Need-to-Improve-Worker-Rights-Safety-in-Bangladesh.

—. 2015b. *Hope II 2015 USTR Annual Report on the Implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) program and assessment of producer eligibility.*

Vandevelde, K. 2013. "Rebalancing through exceptions", in *Lewis & Clark Law Review*, Vol. 17, No. 2, pp. 449–459.

Velluti, S. 2014. "The trade-labour linkage in the EU's Generalized System of Preferences", in *Studia Diplomatica* LXVII-1, pp. 93–106.

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

—. 2015. "A little less conversation: The EU and the (non) application of the labour conditionality principle in the Generalised System of Preferences (GSP)", in *The International Journal of Comparative Labour Law and Industrial Relations*, Vol. 31, No. 3.

CHAPTER 2
LINKING LABOUR PROVISIONS AND WORKING CONDITIONS

KEY FINDINGS

- This chapter assesses the outcomes of labour provisions with respect to their impact on trade, labour rights and working conditions. It develops a framework that identifies four key institutional mechanisms that have been used as policy tools in previous agreements to implement labour provisions in different countries and assess the outcomes.

- The initial findings of the empirical analysis at the aggregate level show that labour provisions, on average, have a positive effect on labour force participation rates, bringing larger proportions of male and female working age populations into the labour force and, particularly, increasing the female labour force. The analysis does not indicate any impact of labour provisions on other labour market outcomes. However, there is the possibility that labour provisions may still have an impact at the country-level, at least in some countries.

- The chapter also finds that there is no evidence to support the claim that implementation and enforcement of labour standards leads to reduced trade. The findings show that trade agreements, with or without labour provisions, boost trade between members of the agreement to a similar extent. For country-partner pairs that have a trade agreement with labour provisions in force, bilateral trade is estimated to be on average 28 per cent greater than what would be expected without such an agreement, based on the economic size of countries, geographical distance and other characteristics. In line with these findings, there is also no evidence that labour provisions shift trade flows to non-members of the trade agreement.

- Country analysis provides more detail on the implementation of labour provisions in trade agreements and overall impacts with respect

to working conditions. The findings are differentiated: for example, in the case of CAFTA–DR, capacity-building, encouraged by sustained involvement of non-state actors, led to a number of concrete institutional and legal improvements, such as an increase in the number of labour inspectorates and judges and improvements in training; whereas in the case of the Cambodia–US Bilateral Textile Agreement (CUSBTA), strong firm-level intervention, such as monitoring and compliance, improved wages at the firm level, including the gender wage gap. In Bangladesh, the Rana Plaza tragedy triggered a number of activities linked to the unilateral arrangements, including multi-stakeholder initiatives such as the Sustainability Compact.

- These findings highlight the relationship between legal reforms, capacity-building and monitoring mechanisms – with the support of social dialogue – and labour market outcomes. However, the sustainability of impacts remains a key challenge, that is, how to foster long-term and broad-based changes in labour market outcomes. For this, complementary domestic policies play a crucial role.

INTRODUCTION

Trade has had beneficial impacts, particularly with respect to improving access to markets and lowering the prices of imported goods, which may have improved incomes of certain groups. However, the literature presents mixed findings regarding the impact of trade on labour markets, particularly in terms of job quality and income distribution. In particular, income inequality has tended to widen in the majority of countries since the 1980s, partly due to trade and investment liberalisation.

Indeed, several studies argue that such labour market outcomes depend strongly on institutional factors. In this context trade related labour provisions can be regarded as one option to boost the benefits of growth, while tackling inequalities, by taking into account framework conditions in terms of promoting minimum standards with respect to core labour

rights. These framework conditions can also be considered a prerequisite for leveling the playing field in the race towards sustainable development (Doumbia-Henry and Gravel, 2006).

This chapter is a first attempt to assess the labour market impacts in countries that are party to trade agreements with labour provisions. The assessment is done both directly through an empirical cross-country analysis and indirectly through an analysis of implementation mechanisms in several countries. Although, many agreements with labour provisions have only recently concluded and it may be premature in a number of cases to see impacts, the analysis is based on the broad range of labour provisions implemented over the past 20+ years.

The chapter begins by providing a brief review of what is known about the link between trade and labour market outcomes. Section B develops a general analytical framework based on policy levers used in the implementation of labour provisions to assess effectiveness. The impact of labour provisions on various labour market indicators and trade from a cross country perspective is assessed in section C. This analysis focuses on whether the inclusion of labour provisions in trade agreements may have an impact on labour markets and trade that is significantly different from non-inclusion. Finally, section D presents detailed case studies of countries that have unilateral and bilateral trade agreements with the EU and the United States. The case studies start from the premise that a better understanding of the design and implementation mechanisms is of paramount importance for determining their impacts. In this respect, they focus on the interconnection between legal reforms, capacity-building and monitoring mechanism- with the support of social dialogue- and the labour market outcomes.

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

The chapter begins by examining the link between trade and different aspects of employment based on the literature. This is challenging at both theoretical and empirical levels. First, it is difficult to draw a general conclusion from the various studies. Their findings are largely affected by different assumptions made (such as full employment, perfect competition or constant returns to scale), indicators used (for example, to account for trade, tariffs or volumes of exports and imports) and econometric techniques (for example, time series analysis, difference in differences or computable general equilibrium). More importantly, 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. With this in mind, the section presents a short summary of key findings with respect to employment and quality of jobs.

Employment creation

The theoretical stance with respect to the impact of trade on employment has substantially evolved over the past three decades. Traditional trade theory,[68] assuming full employment, emphasizes employment shifts across industries as the result of trade, but does not consider changes in the overall number of employed workers. Thus, in an attempt to better understand trade outcomes, newer theories have explored different mechanisms,[69] and opened up space for exploring the impact of trade on job creation from different angles.

From an empirical point of view, there seems to be a positive (negative) relationship between trade and employment creation (unemployment rate) at the aggregate level.[70] However, there is a lot of heterogeneity, both at

[68] For instance, according to the Heckscher–Ohlin model, countries specialize in the production of the goods which use the most abundant factor.
[69] For example, on intra-industry trade (Helpman and Krugman, 1985) and on firm heterogeneity (Melitz, 2003; Helpman et al., 2012).
[70] See, for example, Felbermayr, Larch and Lechthaler (2013); Dutt, Mitra and Ranjan (2009); McMillan and Verduzco (2011).

country and sector levels. A number of studies find that growing trade leads to an increased probability of unemployment and employment destruction, especially in manufacturing and agriculture,[71] resulting in a change in the labour composition across sectors. Others estimate net employment gains that surpass job destruction.[72] There is also evidence of both job creation and destruction within the same sectors, explained by the change in the labour demand for different skill categories on the one hand (high and low skill),[73] and different types of firms on the other (high- and low-productivity firms).[74]

Quality of jobs

In addition to changes in the number of jobs, there may be impacts with respect to changes in job quality. This has led, for example, to the analysis of whether increased trade leads to more informal employment. Similar to theoretical studies,[75] empirical studies have produced mixed results, although they point to an increase in informality, mainly due to increased competition.[76] 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 provide better working conditions.[77]

Another highly debated 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.[78] 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

[71] For example, Weisbrot, Lefebvre and Sammut (2014); Peluffo (2013); Trefler (2004).
[72] For ASEAN countries, see Plummer, Petri and Zhai (2014).
[73] See Crinò (2010) for service in Italy.
[74] See Melitz and Redding (2014) for references.
[75] From a theoretical point of view, trade can impact informality both negatively and positively according to the mechanisms in play. For example, on the one hand, increased foreign competition can lead to a higher probability of formal workers being dismissed (Goldberg and Pavcnik, 2003). On the other hand, as exporting firms have a higher probability of being subject to scrutiny (exports have to cross customs), they might be discouraged from hiring informal workers (Paz, 2014).
[76] See Munro (2011) for a list of studies and Acosta and Montes-Rojas (2013) for Argentina.
[77] See Aleman-Castilla (2006) for the impact of NAFTA in Mexico. In this regard, the ILO Transition from Informal to Formal Economy Recommendation (2015) is an important step providing a way forward. It stipulates that member States adopt comprehensive employment policies including those related to trade and those promoting sustainable enterprises in order to restrain informal employment.
[78] Stolper–Samuelson theorem.

phenomenon should be observed in developing countries. However, since the 1980s, 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- and low-skill workers) have been observed. New theories have pointed to disparities at the firm level and labour market frictions to explain such trends.[79] What emerges is that there is probably no single directional impact of trade on wage inequality, and other factors such as firm-level heterogeneity and institutional responses are crucial in determining the impact of trade (Helpman, Itskhoki and Redding, 2011; Pavcnik, 2011).

But, from an empirical perspective, a considerable number of studies seem to agree that increased trade leads to higher wage inequality (OECD, 2013; Rosnick, 2013; Krugman, 2008; Feenstra and Hanson 2001). Some argue that the magnitude of this impact is low compared with the role played by skill-biased technological change.[80] In the case of trade agreements, findings also point to an increasing effect of trade on wage dispersion, or at least they indicate no significant inequality-reducing impact.[81]

From a gender perspective, a number of studies find that trade liberalization creates employment opportunities for women and leads to a decrease in the gender wage gap (Oostendorp, 2009; Klein, Moser and Urban, 2010). Such an outcome might stem from a rise in demand for unskilled labour or an increase in female productivity due to trade, but also from the improvement of women's economic rights through spillover effects from high-standard countries via trade (Neumayer and De Soysa, 2011).[82] However, wage differentials and barriers still exist for women entering the labour market. In this regard, many studies highlight that other factors such as skills, firm-level and sectorial differences, and country-specific conditions are crucial in determining how women benefit from trade

[79] See Harrison, McLaren, and McMillan (2011) for an overview.
[80] See, for example, Jaumotte, Lall and Papageorgiou (2013); Katz and Autor (1999). However, it has also been argued that trade can modify the production methods by firms and accelerate the technological change, so the impact of SBTC on inequality "can be traced back" to trade (Krugman, Obstfeld and Melitz, 2012, p. 96).
[81] See Aleman-Castilla (2006) for Mexico after NAFTA, and Peluffo (2013) for Uruguay after the Common Market of the Southern Cone (MERCOSUR).
[82] Neumayer and De Soysa (2011) examine the impact on both legislative changes and enforcement of laws.

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

Overall, 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 (Amiti and Davis, 2012; OECD, 2011). In this context, including measures in trade agreements to promote labour standards domestically and in third-party countries has been one option used. However, questions also arise about to what extent these provisions have been effective and how this can be evaluated. The remainder of the chapter aims to provide insight into this question.

B ASSESSING THE IMPACT OF LABOUR PROVISIONS

The causality chain from including labour provisions in an international agreement among countries to actual working conditions and labour rights at the firm level is complex.[83] Indeed, working conditions may be influenced by a number of factors at the macro- and micro-levels, including labour laws and legislation, labour market institutions, management decisions, culture and the state of technology, to name but a few.

In practice, trade agreements with labour provisions consist of several key policy mechanisms that are used in varying ways. This section briefly lays out these mechanisms and discusses their links with working conditions.

Figure 2.1 describes five main policy levers that are typically included in the form of labour provisions in trade agreements, and their causal pathways for impacting working conditions and labour rights. The figure and description of the policy levers are drawn from Aissi, et al. (Forthcoming):

i. *Pre-ratification measures* consist of institutional or legal reforms that have to be made as a prerequisite for the agreement's ratification. This policy lever differs from the others as it is not part of the actual agreement, but a pre-condition for its ratification. Such pre-ratification measures usually consist of adjusting labour laws to international labour standards, but can as well, as for example in the CAFTA–DR case, aim at improving the technical enforcement capacity of one of the partner countries (usually the less-developed country).

ii. *Technical cooperation* consists of all measures that provide technical assistance and financial resources to the partner country. Technical cooperation generally aims at developing state capacity, but it can as well be directed towards stakeholders capacity or firm capacity, for example through the training of managers and compliance officers, or the strengthening of institutions for dialogue and collective bargaining.

[83] The limitations of empirical work in this regard are also stressed by OECD (1996), Witte (2008) and Salem and Rozental (2012).

iii. *Monitoring* activities are a systematic review of the progress delivered through other policy levels over a certain period of time. This aims at increasing transparency and informing actors about the actual situation regarding labour-related issues. Monitoring can take the form of state-to-state progress reports, involvement of the stakeholders, for example through filing of petitions that may lead to the launch of a dispute settlement process, or public–private partnerships (for example, monitoring at the firm level as in the ILO/IFC Better Work Programmes).

iv. *Dispute settlement* can take the form of government-to-government consultations, the use of expert panels as in the case of EU agreements, or arbitration and the succeeding threat of sanctions that is often present in US and Canadian agreements. Dispute settlement mechanisms intend to react to state capacity failing, but can also outline peculiar firms or infractions (see Chapter 3) and thereby possibly trigger action at the firm level.

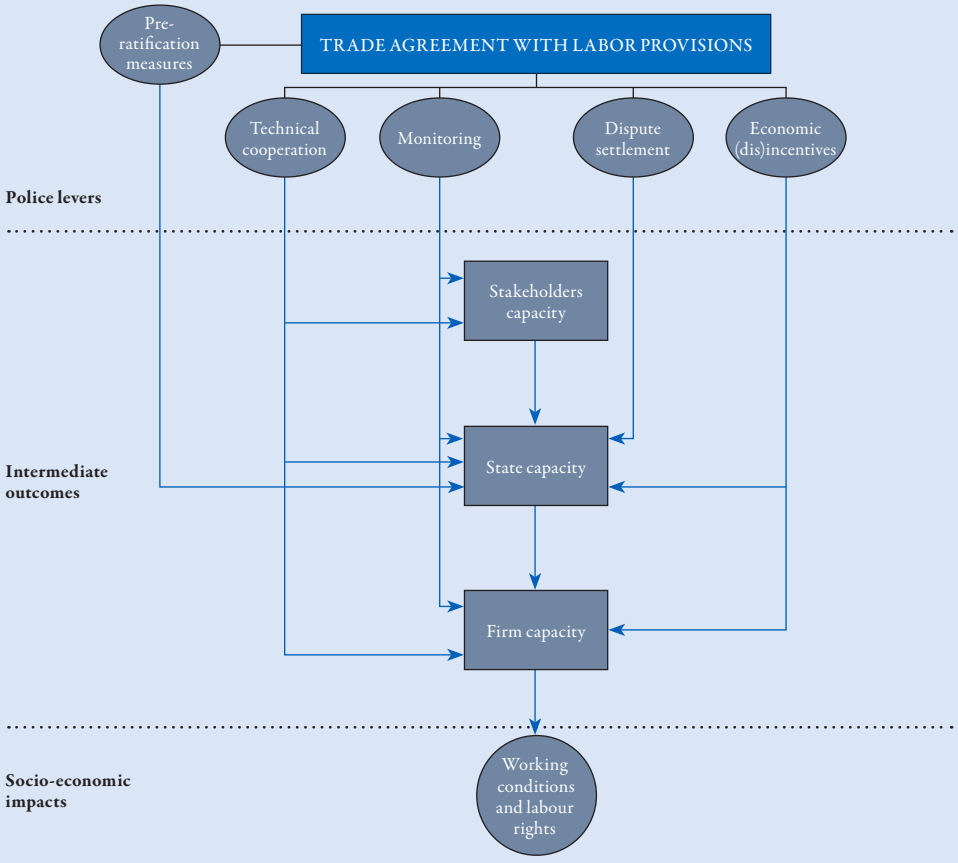
v. *Economic (dis)incentives* consist of economic benefits or costs that occur in cases of compliance or non-compliance with measures agreed upon in the labour provisions. Possible examples are increased exports quotas under compliance or penalty payments when compliance lags behind. Incentives and disincentives can be implemented at the state and the firm level and should be combined with a monitoring mechanism or an improvement in their efficacy.

The main idea of Figure 2.1 is to illustrate that labour provisions consist of a specific mix of the five policy levers and that they usually aim at improving the capacity of the state, firms and stakeholders. This can then lead to actual improvements of labour rights and working conditions at the firm level. Thus, labour provisions can help in changing the institutional framework in which firms and workers operate.

An important factor for an impact of labour provisions on working conditions is a State's capacity to enforce labour provisions, while a lack of

political prioritization can be a key barrier to effectiveness. Factors that may alleviate a deficiency in political will could include strengthening transparency and accountability, for example, by promoting a participatory democracy. In this regard, the strengthening of social dialogue has been argued to be a crucial factor, as it can increase the societal pressure on improving working conditions.

Figure 2.1. Labour provisions and working conditions: The causal pathways of various policy levers



Source: ILO Research Department.

In the design of labour provisions for a specific agreement, it is therefore important to first analyse strengths and weaknesses of existing institutional factors and the links between them (for example, the institutions or engagement of social partners). The choice of policy levers that are manifested in labour provisions should then reflect the country-specific circumstances concerning the capacity of the state, firms and stakeholders. Figure 2.1 does not depict possible economic side effects, such as trade distortions or negative employment effects that may or may not arise as a consequence of the policy levers. These unintended effects are often one of the justifications for the non-inclusion of labour provisions in trade agreements and are examined in more detail in section C.

C ASSESSMENT OF LABOUR PROVISIONS: CROSS-COUNTRY MACRO-IMPACTS?

Based on the above framework, this section provides empirical evidence on the impact of labour provisions at the cross-country macro-level. The analysis aims to establish a relationship between the inclusion of labour provisions in trade agreements and selected labour market indicators. It then addresses the economic side effects (or unintended effects) by investigating whether labour provisions impact trade flows between countries.

Labour provisions, ratifications of ILO Conventions and labour market outcomes

The effect of labour provisions on working conditions is often indirect and might take a number of years to materialize in institutional changes, and in labour market outcomes (see box 2.1). However, given that two decades have already passed since the passage of the first trade agreement including labour provisions, and that the number of this type of agreement has been increasing in subsequent years, some discernible impacts might have already manifested in changes in labour market outcomes. It should be noted, however, that evidence with respect to the effectiveness of labour provisions in trade agreements is relatively sparse (see box 2.2).

The framework presented in section B suggests that the impacts of labour provisions would first manifest in legal and institutional spheres, which would then translate into changes in labour market outcomes. One possible impact of labour provisions could be an accelerated rate of ratifications of ILO fundamental Conventions, since in some cases these ratifications are required to obtain (or maintain) the benefits of a trade arrangement. This is evidenced particularly in the case of the EU GSP+, where eligibility criteria have been linked to ratification of ILO fundamental Conventions (see Chapter 1). For example, in the period of 2005 to 2006, the Plurinational State of Bolivia, Colombia, the Bolivarian Republic of Venezuela, Mongolia and El Salvador ratified one or more ILO

Box 2.1 Methodological considerations and challenges in assessing the macro-impact of labour provisions on working conditions

The effectiveness of labour provisions in improving working conditions can be assessed on an ex-ante or ex-post basis. Both approaches entail certain challenges that are not easily overcome and may limit the scope of the analysis. Ex-ante assessments look at the impact on working conditions before the implementation of the labour provisions and of the related policy levers, and before any data are available. They provide a prediction of what would happen to working conditions and other variables of interest if labour provisions were included in trade agreements. Ex-ante assessment tools usually produce best results when the relevant mechanisms are well known and well specified. However, as figure 2.1 has shown, the exact mechanism of how policy levers affect working conditions is ambiguous and complex.

Ex-post evaluations, which this chapter almost exclusively uses, use actual data. Such empirical strategies also face certain challenges. First, "working conditions" refer to a number of "subjects that affect the employment relationship and workers' well-being in the workplace" (ILO, 2013a, p.1) comprising from working hours, rest periods, annual leave, work schedules, to compensation (including minimum wages) and employment contracts, procedures and termination, as well as the physical conditions (for instance OSH) of the workplace.

The ILO has adopted more than 180 Conventions and about 200 Recommendations "aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity" (ILO, 2014, p.7). Analysing or measuring working conditions "in general", that is, without further specification, is therefore hardly possible. Only if labour provisions in trade agreements are sufficiently specified can an attempt be made to measure quantitatively their impact on working conditions.

Second, many of these statistics require rich micro-datasets that often need to be derived from household and labour force surveys. For many developing countries, such data are not available or comparable over the relevant years. But, labour provisions in trade agreements are particularly common in agreements with developing countries. This lack of data imposes severe restrictions on the extent to which quantitative analyses can be carried out. In cases where the labour provisions in trade agreements are not further specified, that is, when certain issues that are to be targeted are not clearly defined (for example, child labour, working hours, discrimination), measurement is generally not possible and a quantitative analysis cannot be pursued. The recent nature of many labour provisions in trade agreements also leaves researchers with few data points over time that are often not sufficient to arrive at strong conclusions.

Generally, more data points are available on the macro-level, but most working conditions cannot be measured on this level. While some proxies do exist, for example wages or labour force participation rates, these variables are subject to a multitude of potential impact factors at the macro-level.

Box 2.2 What does the literature say about the impact of labour provisions on working conditions?

Regarding ex-post analysis, Witte (2008) points out that the lack of literature about the effectiveness of labour provisions in trade agreements is mainly due to the recentness of the provisions' enactment, but also the lack of a generally accepted theory about how labour provisions affect working conditions. Several studies exist but have shown limited impact.

OECD (1996) evaluates – while providing little empirical evidence – how core labour standards can impact economic outcomes like wages and productivity. The ex-ante evaluation of economic impacts carried out by OECD (1996) is confined to a qualitative analysis. Indeed, a quantitative ex-ante analysis would require setting up a system of structural equations that quantify main variables and specify the causality mechanism. Such a theoretical model does not exist at this stage and would require a better understanding of the links between labour standards and economic variables.

Doumbia-Henry and Gravel (2006) state that current literature does not provide for coming to any conclusion concerning effective respect for labour rights. Salem and Rozental (2012) underline that there is a lack of qualitative as well as quantitative studies assessing the effects of labour provisions in trade agreements on working conditions. According to them, the lack of cross-country data and the challenge in measuring labour standards compliance are the main reasons for the scarcity of empirical studies.

If no general conclusion about the impact of free trade agreements on working conditions is available, the impact of several particular agreements on transnational dialogue and union formation has nonetheless been assessed. Concerning the impact of the NAALC, for which some analyses are available, Witte (2008) makes reference to Fimbow (2006), Clyde Hufbauer et al. (2006), Clarke (2007), Teague (2003) and Human Rights Watch (2001). These articles share the conclusion that there is a "limited or zero impact on working conditions within signatory states" (Witte 2008, p. 47), although Kay (2005) raises an interesting impact, namely the creation of "viable transnational relationships" (p. 765) between labour unions. Nevertheless, these studies do not make quantitative or systematic analyses of the working conditions before and after the conclusion of the NAALC. Outside the NAALC, Witte (2008) mentions ILO (2005), which notes a general improvement of labour conditions in Cambodia resulting from the US agreement, and a significant increase in the possibility of forming trade unions.

Some other studies assess the impact of certain free trade agreements on enhancement of domestic capacity. In an ex-post quantitative analysis, Dewan and Ronconi (2014) employs a difference in differences approach to determine the effectiveness of US free trade agreements with Latin American countries with regard to enforcement. They find that signing a free trade agreement produced a 20 per cent increase in the number of labour inspectors and a 60 per cent increase in the number of inspections. They speculate that the type of labour provision included in the agreements accounts for the heterogeneous effects of the agreements on labour inspection.

Box 2.2 What does the literature say about the impact of labour provisions on working conditions? (cont.)

In addition, a number of studies emphasize the use of positive incentives compared to economic sanctions. They stress the rare use, ineffectiveness and adverse impact of sanctions and partially attribute the relative success of the Cambodia–US Bilateral Textile Agreement (CUSBTA) to the use of positive incentives (Banks, 2011; Berik and van der Meulen Rodgers, 2010; Doumbia-Henry and Gravel, 2006; Orbie and Tortell, 2009; Polaski, 2009; Siroën et al., 2008; Yaraslau, 2008; Wells, 2006).

Finally, still regarding ex-post quantitative analysis, Salem and Rozental (2012) point out the methodological problem of endogeneity, grounded on the premise that nations possessing high labour standards will include labour provisions in their trade agreements more easily. Flanagan (2003), using a special statistical technique, and data of 100 countries, has reached the conclusion that ratification of ILO Conventions does not improve labour conditions, but rather ratification is determined by the already existing working conditions in the country.

[1] For example, Bazillier and Rana (2015) and World Bank (forthcoming).

fundamental Conventions (Orbie and Tortell, 2009; De Schutter, 2015). However, a comparison of the ratification rate of countries that concluded trade agreements, with or without labour provisions, with Canada, the EU and the United States has shown that there is no significant difference in the ratification rate (see Appendix I).[84] This finding could be explained, however, by other factors at work in non-labour provision contexts, such as ratification campaigns and advisory services aimed at ratification conducted by the ILO in the country concerned.

Based on the above mentioned framework, a logical approach to disentangling the link between labour provisions and working conditions is to first investigate the impact of labour provisions on changes in key policy mechanisms, and then to explore possible linkages between changes in policy mechanisms and firm-level working conditions.

[84] The timeframe considered for the ratification of ILO Conventions starts with the initiation of the negotiations of a trade agreement and ends three years after its entry into force. Countries signing trade agreements without labour provisions ratified 1.68 Conventions on average (22 per cent of all possible core Conventions that could have been signed throughout the observed period of time), whereas countries signing trade agreements with labour provisions ratified one Convention on average (12.5 per cent).

However, changes in laws and institutions are often difficult to quantify – leading to scarce measurable data on these subjects.[85]

For this reason we use a direct approach since some working conditions are easier to quantify (for example, wages), and thus benefit from better data availability. The methodology used are fixed effect regressions of selected labour market outcomes on trade agreements with and without labour provisions based on macro-data between 1991 and 2014.[86] Aside from trade agreements with and without labour provisions, the regressions take into account several other variables that may have an impact on labour market outcomes. This includes country-level differences in levels and growth rates of GDP, FDI inflows, trade openness and natural resource rents. Also time-invariant country characteristics and effects that are specific to certain years but common to all countries are considered. The data were collected by the ILO on 169 countries and territories that have 260 trade agreements in force, of which 71 trade agreements included labour provisions, as at the end of 2014 (see Appendix II for more details on data and methodology).[87]

Several labour market outcomes were selected as dependent variables based on the following criteria: (i) relevance to the standards identified by the ILO's 1998 Declaration on Fundamental Principles and Rights at Work and its follow-up as core labour standards;[88] (ii) relevance to the indicators identified in the literature; and (iii) data availability. The dependent variables considered in the analysis are real wages (in terms of levels and growth rates), labour force participation rates, share of vulnerable employment,[89] and gender gaps in all the variables (see Appendix II for more details on variables considered and data sources).[90]

[85] Aleksynska and Schindler (2011) constructed a panel database on labour market regulations in 91 countries between 1980 and 2005. However, given that the proliferation of labour provisions accelerated after 2005, this database was not suitable for the analysis in the current chapter.

[86] Robustness checks on the results from the fixed-effects regressions suggest that the coefficients on the dummy variable that captures the effect of labour provisions are robust to various specifications using different combinations of the following control variables: real GDP growth, real GDP per capita, FDI inflow as a share of GDP, trade openness and total natural resource rents.

[87] Depending on different specifications, regression analyses take into account up to 108 countries and territories, with the number of observations up to 2,267.

[88] Based on the ILO's 1998 Declaration, the following four categories are identified as core labour standards: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour, and the elimination of discrimination in respect of employment and occupation.

[89] Vulnerable employment consists of own-account workers and unpaid family workers.

[90] Despite the high relevance to the core labour standards, indicators pertaining to freedom of association and collective bargaining, forced labour and child labour could not be considered in this analysis due to limited data availability.

The results of the estimations are twofold:

- First, it is found that labour provisions are associated with higher labour force participation rates, bringing larger proportions of male and female working age populations into the labour force and, particularly, increasing the female labour force.

- Second, the regression analysis found no other statistically significant relationship between labour provisions and labour market outcomes such as wages, share of vulnerable employment or gender gaps in those outcomes at the aggregate level. The implication of these findings is that labour provisions are, on average, associated with improvements in labour market access by working age populations, particularly women, and at least do not lead to the deterioration of other labour standards in the light of the absence of any negative effects. However, there is still the possibility that labour provisions may have an impact at the country-level, at least in some countries. Thus, further analysis at the country-level is crucial, pointing to the need for improved labour market indicators.

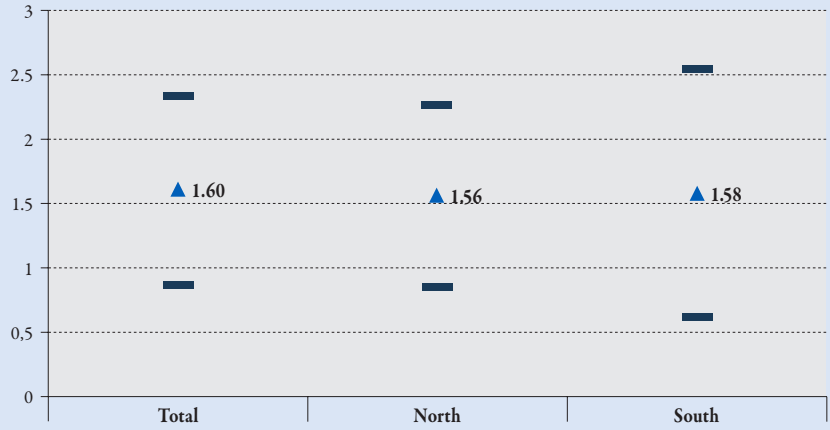
Figure 2.2 illustrates the estimated relationships between labour provisions and labour force participations rates by country groups. The relationship is significant and positive for all the country groups. The conclusion of new trade agreements with labour provisions or inclusion of labour provisions in the existing trade agreements[91] has positive effects on labour force participation rates, by 1.60 percentage points across all the sample countries, by 1.56 percentage points in the North, and by 1.58 percentage points in the South.[92] Thus, the regression analysis shows some discernible improvements in labour market access after the conclusions of labour provisions.

The channels through which labour provisions can affect labour force participation rates are largely unknown. However, one possible explanation is that labour provisions and related policy dialogue and awareness-raising

[91] Labour provisions can be included in trade agreements at the time of or after the conclusion of an agreement. As a case in point for the latter, the ASEAN free trade area and the ILO enacted the Cooperation Agreement in 2007.

[92] Note that, due to the presence of additional explanatory variables in the model, the coefficient estimated for the full sample does not need to lie in between the coefficients for the two sub-samples.

Figure 2.2. The estimated impact of labour provisions on labour force participation rate (percentage point change)



Note: This figure shows the estimated impact (in percentage points) of labour provisions on the labour force participation rate. The figure includes point estimates and the 90 per cent confidence interval, indicating a positive and statistically significant impact. The sample countries are classified into North and South based on the UNCTAD country group classification. The North countries include developed economies, and South the rest. Note that, due to the presence of additional explanatory variables in the model, the coefficient estimated for the full sample does not need to lie in between the coefficients for the two sub-samples. See Appendix II for more details on the estimation methodology.

Source: ILO Research Department estimates.

can influence people's expectations of better working conditions, and in turn increase their willingness to enter the labour force. Labour force participation rates can rise when people are induced to work by either observing actual improvements in labour market performance, or simply having the expectation of such improvements.[93] In sum, considering the role of expectation in labour supply decisions, one might reasonably deduce that conclusion of labour provisions can be positively associated with labour force participation rates, even before labour provisions lead to changes in institutions, and improvements are materialized in other working conditions.

From the perspective of non-discrimination, an increase in the labour force participation rate should occur without widening the gender gap. In the dataset, the average female labour force participation rate is lower than

[93] An empirical study by Donner and Lazer (1974) postulates that potential labour market participants may decide to participate or not to in the labour force, based on their expectations of finding a satisfactory job.

that of the male by 24.1 per cent.[94] The closing of this gap indicates promotion of non-discrimination in labour market access, although quality of employment might remain a concern.

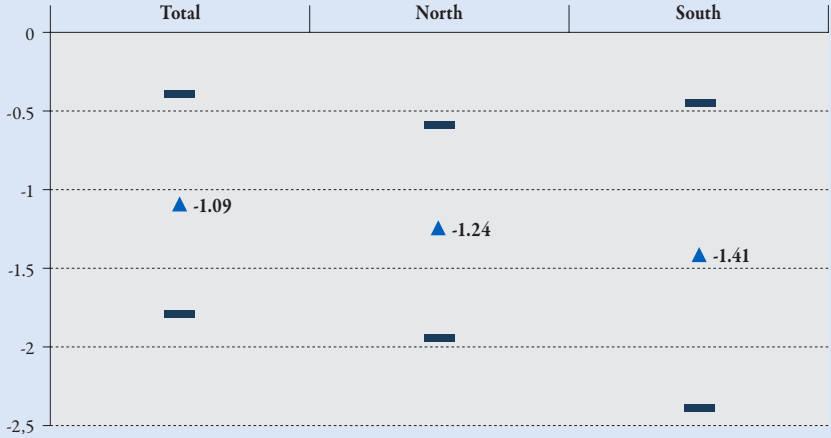
Figure 2.3 illustrates the estimated relationship between labour provisions and gender gaps in labour force participation rates. As can been seen in the figure, the conclusion of new trade agreements with labour provisions or the inclusion of labour provisions in the existing trade agreements has effects on reduction of the gender gap in labour force participation rates in total sample countries by 1.09 percentage points, in the North by 1.24 percentage points and in the South by 1.41 percentage points.[95] One possible interpretation of these results is that the emphasis on gender equity in some labour provisions might have had some effects on the closing of gender gaps (see section D for detailed discussions).

Nevertheless, no statistically significant relationship was identified between labour provisions and labour market outcomes such as wages, and share of vulnerable employment. But, such a macro-level analysis may not be sufficient to understand the scope of the implementation of labour provisions or the other variables at work in the economy that affect the labour market. In fact, country by country descriptive analyses have shown that countries can experience either an improvement or deterioration in working conditions, after concluding trade agreements with labour provisions. Some countries that concluded trade agreements with labour provisions indeed experienced continuous improvements in real wage levels (for example, Costa Rica, Jordan, Republic of Korea, Mauritius and Mexico), while other countries that concluded trade agreements with labour provisions experienced deterioration (for example, El Salvador, Jamaica, Lesotho, Paraguay and Peru). In terms of the gender wage gap, in most countries where data are available and that have signed trade agreements with labour provisions, gender wage gaps were reduced (Costa Rica, Ecuador, El Salvador, Honduras, Mexico, Panama, Peru and Philippines). This implies that conclusion of labour provisions is only a part of the

[94] The gender gap is obtained by subtracting the male labour force participation rate from that of the female rate.

[95] Note that, owing to the presence of additional explanatory variables in the model, the coefficient estimated for the full sample does not need to lie in between the coefficients for the two sub-samples.

Figure 2.3. The estimated impact of labour provisions on gender gap in labour force participation rate (percentage point change)



Note: This figure shows the estimated impact (in percentage points) of labour provisions on the gender gap in labour force participation rates. The figure includes point estimates and the 90 per cent confidence interval, indicating a negative and statistically significant impact. The sample countries are classified into North and South based on the UNCTAD country group classification. The North countries include developed economies, and South the rest. Note that, due to the presence of additional explanatory variables in the model, the coefficient for the full sample does not need to lie in between the coefficients for the two sub-samples. See Appendix II for more details on the estimation methodology.

Source: ILO Research Department estimates.

mechanisms for promoting labour standards, and that implementation mechanisms at the domestic level might play a more significant role than labour provisions as such.[96]

There is a possibility that certain country or labour provision specific factors are unaccounted for in the aggregate analysis. For example, labour provisions may have an immediate effect in some countries, but may have an effect that only comes with a lag of several years in other countries. These are factors that a regression at the aggregate level cannot consider.

Labour provisions and trade

There are various channels through which labour provisions in trade agreements can affect trade flows. One of these channels is the cost channel:

[96] Indeed, the abovementioned country by country descriptive analyses do not separate the effect of labour provisions from other factors, as they do not take into account individual country characteristics or time-variant factors.

labour provisions may be associated with additional costs for firms owing to the need to comply with labour standards. These costs are likely to be passed on, at least partially, to consumers or users of the firms' products. As a result of a higher price for domestically produced goods, imports rise and exports decline. In the context of global supply chains, exports of supplier firms to lead firms located in other countries are also likely to decline, as lead firms might look for cheaper suppliers elsewhere.

Another channel through which labour provisions can have an impact on trade flows is productivity: if labour provisions lead to improved working conditions, workers are likely to become more productive,[97] which boosts firms' competitiveness, allowing them to gain a larger share of both domestic and foreign markets. As a result, exports will increase and imports will decline. The effects are thus the opposite of those that occur through the production cost channel.[98]

A final channel through which labour provisions can impact trade flows is the demand channel: if consumers' preferences are for products produced in decent and fair working conditions, complying with labour provisions will lead to increased demand.[99] Such a reputational effect of labour provisions could also attract global production networks and induce a country's participation in global value chains. A positive link between consumer demand and labour provisions in trade agreements will then lead to an increase in exports of domestic firms.

This section investigates whether trade agreements with labour provisions have a significantly different impact on trade flows than trade agreements without labour provisions. It presents the results of a standard gravity model of trade that explains bilateral exports between 162 countries between 1995 and 2014. The analysis takes into account the same data

[97] See, for example, Brown et al. (2015) for some evidence on working conditions and productivity in Vietnamese apparel factories.

[98] The presence of an impact through both the cost and the productivity channel is likely to depend to a large extent on the degree to which labour provisions are legally binding. Some firms might already comply with the labour standards referred to in the labour provisions before the trade agreement comes into force; in this case labour provisions are not likely to induce any further changes in working conditions, implying that there will not be any impact on trade through higher production costs and higher productivity of workers.

[99] Recent factory-level evidence for Cambodia on the importance of reputation-sensitive buyers for compliance with labour standards suggests that the role of this demand channel can be economically significant (Brown, Deheija and Robertson, 2013).

used in previous analyses (for more details on data and methodology, see Appendix III).

Figure 2.4 shows the estimated impact of trade agreements with and without labour provisions between 1995 and 2014. In general, trade agreements both with and without labour provisions are estimated to significantly increase trade flows. According to the estimates, 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. These two impacts are statistically not different from each

Figure 2.4. Estimated impact of trade agreements with and without labour provisions on trade; selected time periods (per cent)

Notes: This figure shows the estimated percentage impact of trade agreements with and without labour provisions on the bilateral trade value of countries that concluded the agreement. If the 90 per cent confidence interval comprises the estimated impact of trade agreements without labour provisions on trade flows, the differential impact of labour provisions is not statistically significant. Trade agreements with labour provisions are in this case not estimated to have an impact that is different from trade agreements without labour provisions. See Appendix III for more details on the estimation methodology.

Source: ILO Research Department estimates.

other, suggesting that trade agreements with labour provisions are on average not very different from trade agreements without labour provisions in respect to their impact on trade.

In addition, trade agreements with and without labour provisions do not have a significantly different impact on trade between developed economies (North–North), or exports from developing to developed economies (South–North). Trade agreements that include labour provisions are found to even have a significantly stronger positive impact on trade flows for trade between developing economies (South–South) and exports from developed to developing economies (North–South).[100]

Trade agreements can also have an impact on trade flows between members and non-members of the agreement. These trade diversion effects occur if the agreement creates trade between members at the expense of trade between members and non-members. The effect on import diversion is estimated to be insignificant for both trade agreements with and without labour provisions, without any significant difference between the two types of trade agreements. However, there is evidence for export diversion, in particular for trade agreements that include labour provisions, suggesting that countries that are members of the agreement export less to non-member countries than would be expected. If firms switched to trading partners located in non-member countries as a result of the labour provisions, the opposite result would be expected. On these grounds, there is no evidence that trade flows are shifted to non-members of the agreement if labour provisions are included in a trade agreement.

In summary, this section does not find any evidence that would support the claim that trading partners that conclude a trade agreement with labour provisions trade less with each other because of these provisions. There is some evidence that exports of members to non-members of a trade agreement decrease more if labour provisions are included into the agreement, suggesting that export diversion effects might be stronger in agreements with labour provisions.

[100] Economies are classified as developed and developing economies according to the World Bank income classifications, where high-income and upper-middle-income countries are developed economies and lower-middle-income and low-income countries are developing economies.

D LESSONS FROM COUNTRY CASE STUDIES

The empirical macro-level analysis conducted in section C reveals statistically significant evidence suggesting that labour provisions have some positive implications for the labour market. This section provides some micro-level evidence identifying the factors and mechanisms linking labour provisions and labour market outcomes. The analysis highlights which of the policy levers detailed in section B have been used in each country case, as well as the assessed impacts of their use.

These cases were chosen based on (i) data availability, (ii) timeframe that labour provisions were implemented, and (iii) relevance of implementation mechanisms. As such, the findings from these cases may not be fully generalized, but do provide examples of what has and has not worked in country-specific instances.

CAFTA–DR illustrates the case of an agreement where weak labour institutions and poor working conditions in Central America resulted in (for the first time in a US trade agreement) the introduction of the concept of capacity-building. In addition, the trade agreement has been in force for almost a decade for most of its parties, which provides enough time for ex-post analysis. Second, Cambodia was chosen because it is an emblematic case of labour provisions followed up with a very detailed monitoring mechanism. In addition, extensive data and knowledge exist for this case. Finally, Bangladesh was chosen because it provides an example of unilateral trade arrangements including labour provisions, which differs in nature from the bilateral trade agreements studied previously.

Although the findings are differentiated, a common thread throughout the case studies is the role of legal reforms, capacity-building and monitoring mechanisms, with the support of social dialogue in impacting labour market outcomes (table 2.1). These aspects of implementation and outcomes are examined in more detailed in the remainder of the chapter. In Chapter 3 the theme of stakeholder involvement is continued and examined more carefully across a broader set of countries.

Table 2.1 Examples of the effects of policy levers and implementation actions

Country/ Case	Agreement	Policy levers and other implementation actions	Effects
Central America and the Dominican Republic	CAFTA-DR (2006/2009)*	• Pre-ratification measures • Technical cooperation and capacity-building to improve implementation gaps • Stakeholder involvement • Monitoring and progress reports • Dispute settlement	• Some ratifications of ILO Conventions (e.g. El Salvador) and legislative changes (EPZs) • ILO Verification project: Increased Ministries of Labour budgets, number of inspectors and inspections and number of judges • Legal, political and institutional outcomes (see chapter 3)
Cambodia	Cambodia-United States Bilateral Textile Agreement (1999 until 2004)	• Pre-ratification measures • Stakeholder involvement • Monitoring and progress reports at the firm level • Positive incentives	• Strengthened freedom of association • Decrease in gender wage gaps
Bangladesh	Unilateral trade arrangements (EU and US)	• Stakeholder involvement • Capacity-building activities • Monitoring	• More frequent and improved inspections • Amendments to the Bangladesh Labour Act

* Different years of entry into force for each of the parties to the agreement. See chapter 1.

CAFTA–DR: Addressing the gap between law and enforcement

CAFTA–DR (signed in 2004) is a case where efforts have been made to bridge the gap between law and enforcement, and strengthen institutional capacities in the region. Improvements, albeit limited, have been seen from measures taken prior to the ratification of the agreement, including changes in legislation and their interplay with development cooperation, monitoring and dispute settlement. Intergovernmental dialogue and the political prioritization of labour issues also played a key role.[101] However, broad-based improvements have not been found and challenges such as sustainability of impacts remain.[102]

[101] Nolan García and O'Connor (forthcoming) suggest that variations in labour protections in the region have been largely due to domestic political changes in each country, and more pro-labour policies of new governments.
[102] For example, levels of violence against trade unionists (USGAO, 2014).

Pre-ratification changes to improve law enforcement, with respect to discrimination, freedom of association and collective bargaining

In 2002, when CAFTA–DR negotiations were announced, labour laws in Central America were widely in compliance with the ILO's fundamental Conventions and almost all the countries in the region had ratified these Conventions (except for El Salvador). However, there were gaps in legislation and enforcement of laws related to freedom of association, collective bargaining and discrimination.[103] Addressing this became a crucial element to CAFTA–DR's ratification in the United States (USTR, 2005b; Delpech, 2013).

The United States engaged in dialogue with its negotiating parties, and designed and established a long-term strategy to progressively strengthen the application of labour standards through capacity-building of domestic institutions, starting prior to and continuing after the ratification of the agreement.[104] The "White Paper"[105] identified labour priorities (that is, strengthening of institutions, combating discrimination – including gender discrimination – the worst forms of child labour and promoting a culture of compliance), and sectors and areas where specific labour violations occurred (for example, in agriculture, melon, tobacco, and the sugar industry; and, in the *maquila*,[106] textile and apparel). The United States committed to fund development cooperation and capacity-building projects in these areas (Delpech, 2013; Nolan García and O'Connor, forthcoming).

In Costa Rica, changes were made to implement legislation to protect trade unionists, and Nicaragua allowed foreigners to become union leaders. The Dominican Republic adopted measures to tackle human trafficking and protect vulnerable workers (for example, wages for Haitian migrants).[107]

[103] See in this regard ILO (2003) (this study did not examine the issues in the implementation of law); USTR (2005a); ILO (2013b).

[104] As of December 2015 this strategy was still in place, and is based on enforcement and cooperation (USTR, 2005b).

[105] Political prioritization is shown by the production of the report of the Working Group of the Vice Ministers responsible for trade and labor in the countries of Central America and the Dominican Republic, and the Inter-American Development Bank (2005). This report represents a joint effort of ministries of labour in coordination with other agencies and stakeholders.

[106] *Maquila or maquiladora* are "foreign owned, controlled or subcontracted plan operations that process or assemble temporarily duty-free imported components […] for foreign consumption, under a special treatment for tariff and fiscal exemption" (Galhardi, 1998).

[107] Motivated also by social dialogue, international pressures and ILO work in the region (Luce and Turner, 2012).

Between 2002 and 2005, these measures were reflected in institutional improvements in some of the countries affected. For instance, El Salvador raised the budget of its Labour Ministry by 20 per cent and the number of labour inspectors by 55 per cent, while Guatemala and Honduras created offices or units of the Ministries of Labour dedicated to export-processing zones (EPZs). Nicaragua implemented an action plan to strengthen its Ministry of Labour, and Costa Rica increased the number of judges to reduce the backlog of labour cases (Luce and Turner, 2012).

Development and application from implementation mechanisms of the agreement

To facilitate the implementation of the labour provisions, different mechanisms were developed, including (i) development cooperation and capacity-building, (ii) monitoring and dialogue, and (iii) dispute settlement (*Inside US Trade*, 2005).

Development cooperation and capacity-building

From 2005 to 2013, the US Government provided about $170 million for development cooperation and capacity-building projects in CAFTA–DR countries, which at the time was the largest amount that the United States had ever committed towards labour capacity-building under or independent of a trade agreement.[108]

Some projects were directed to strengthening the capacities of ministries of labour (for example, Comply and Win III – Inspection) and delivered guidance on the performance and efficiency of these ministries.[109] In the Dominican Republic, training enabled labour inspectors to reconcile compliance and competitiveness in specific sectors such as EPZs,[110] and preventive inspections increased from 4,626 in 2000 to 58,473 in 2007.

Other projects have focused on enhancing awareness and strengthening social partners' expertise in labour rights (for example, *Todas y*

[108] For more information see, for example, USDOL (2009) and USGAO (2014). Between 2011 and 2014, US$13.9 million was provided for technical assistance by USDOL, USAID and the United States Department of State (USDOL, 2015).

[109] For instance, ministries of labour have accommodated workers' request for inspections increasing the amount of fines for violations, but the collection of the fines still remains a challenge. USGAO (2014).

[110] In the Dominican Republic, this is directly linked to trade requirements (GSP application previous to CAFTA–DR, but continued during the implementation of the trade agreement) (Schrank, 2013).

Todos Trabajamos 2007–13) (Delpech, 2013). Furthermore, according to the AFL–CIO, as a result of projects funded by the United States and implemented by Solidarity Centers, since 2007 workers have won over US$4 million in compensation and damages for violations to labour rights, more than 1,000 workers have been reinstated after unlawful dismissals, 34 new unions have been formed and 30 collective bargaining agreements have been negotiated or renewed, and women's participation has been enhanced in union leadership (AFL–CIO, 2014).[111]

Monitoring and dialogue

The monitoring mechanism in CAFTA–DR follows up progress in the implementation of the "White Paper" providing guidance and information to the countries involved, and publicizing the improvements or stagnation of the labour commitments adopted. In El Salvador, dialogue efforts, held at the same time of ILO work and European Commission follow-up (related to benefiting El Salvador with GSP+), led to the ratification of ILO Convention Nos 87 and 98 on freedom of association and the right to organize and collective bargaining (2006), which led to amendments in the Constitution granting the right to public employees to form unions and bargain collectively.[112] Since 2011, Costa Rica, Dominican Republic, El Salvador and Guatemala increased their labour inspectorates' budgets, while Costa Rica, Honduras and Nicaragua drafted or passed legislative reforms. For example, in Costa Rica, it increased from US$6.8 million in 2012 to US$8 million in 2013, and the legislature passed reforms in both labour and labour procedure codes to provide for protections to pregnant women illegally dismissed, including compensation and reinstatement.[113]

In direct monitoring programmes, the ILO Verification Project, which is linked to development cooperation, measured and assessed the progress of the CAFTA–DR countries in improving the application of their labour legislation, providing technical assistance to enhance labour capacity, and promoting data collection, which was not available before.[114]

[111] An illustration of these projects is *"A worker-centered approach to building a culture of labor rights compliance (2006–12)"* funded with US$4.8 million. See USTR (2011) for a list of different projects implemented.
[112] Samet (2011). It should be noted that other authors suggest that ratifications of these Conventions were mostly related to EU GSP+ preferences (Orbie and Tortell, 2009; De Schutter, 2015).
[113] See USDOL (2015).
[114] For precise illustrations see, for example, Cheng Lo (2013).

Dispute settlement

In spite of the previous elements that were implemented, CAFTA–DR is the agreement with the highest number of public submissions (complaints) filed (apart from NAFTA/NAALC) for alleged violations to the labour commitments under the agreement. Currently, out of four public submissions filed under CAFTA–DR, three cases against the Dominican Republic, Honduras and Guatemala remain open.[115] CAFTA–DR is also the first agreement with a case (Guatemala) under review before an arbitral panel.[116]

The four public submissions under CAFTA–DR have referred to a wide range of violations of domestic labour laws related to the right of freedom of association and collective bargaining, forced labour and human trafficking, child labour and gender discrimination and unacceptable working conditions with regard to minimum wages, hours of work and OSH. Specific areas, identified before the ratification of the agreement and also addressed in development cooperation projects, have been targeted mainly in EPZs (*maquilas*), manufacturing (for example, apparel, auto-parts) and agriculture (for example, melons, bananas, sugar and coffee).[117]

The potential for dispute settlement proceedings and the use of cooperative labour consultations has helped prompt renewed political commitments. This mechanism has also encouraged more monitoring and dialogue, and targeted interventions to address the issues highlighted in the public submissions. For instance, in the Dominican Republic a public submission was filed (2012) targeting labour violations in the sugar sector. The public report (2013) studying the allegation found "potential violations" of labour laws in the sugar industry with respect to forced labour, child labour and acceptable working conditions. Since the report was issued, positive effects have been observed with respect to enhanced dialogue,[118] including discussions with the sugar industry and civil society as well as three USDOL delegation trips (March and August 2014, and March 2015); and the implementation of systems to allow better monitoring of

[115] In 2011 the public submission filed against Costa Rica was withdrawn by one of the submitters (that is, Sindicato de Trabajadores (as) de JAPDEVA), and due to this withdrawal the case was closed (USDOL, 2012).

[116] See Chapter 1 on the US–Guatemala arbitration case.

[117] Public submissions and reports are available here: http://www.dol.gov/ilab/trade/agreements/fta-subs.htm.

[118] Through emails, video conferences and USDOL delegation trips.

working hours and compensation due, as well as weekly periods of rest to workers and written work contracts.

Challenges in achieving broad-based improvements

All the efforts described above reflect limited improvements, but not necessarily the desired outcomes. For instance, turning to development cooperation projects, implementing organizations have pointed out the need to define indicators to measure success and to monitor the quality of the performance.[119] Other elements limiting the effectiveness of programmes are the lack of sufficient consultation with stakeholders and more focus on outputs (for example, the number of inspectors trained) than on root problems (for example, the quality of inspections) (González Arroyo and O'Brien, 2011). Also, projects normally do not require sustainability plans.[120] When indications of sustainability are feasible, the still-limited institutional capacities and political prioritization reflected in low budgets from governments destined to labour have restricted the effectiveness and sustainability of the programmes.[121]

Studies have highlighted that although the diversity of mechanisms have the potential to achieve better and sustainable results, it is necessary to strengthen the capacity of the US Government to monitor and pursue the enforcement of labour provisions in its trade partners. To do so the USGAO has recommended increased stakeholder involvement, the development of a coordinated strategic approach between US agencies (USDOL, USDOS and USTR) to assess and monitor compliance with free trade agreement commitments, and to "reevaluate and adjust" the dispute settlement timeframes in the investigation of labour submissions (USGAO, 2014).[122]

Cambodia: Monitoring at the firm level

The Cambodia–United States Bilateral Textile Agreement (CUSBTA) (1999) is an example where monitoring of adherence to core labour

[119] See ILO (2011) and Macro International Inc. (2009).
[120] See, for example, Carbonero (2011).
[121] See, for example, ILO (2011) and Macro International Inc. (2009).
[122] See also *Recommendations on How the United States Government Can Facilitate Implementation of the White Paper* in USDOL and Executive Office of the President of the United States (2015b).

standards at the firm level played a significant role, with varying success. Cambodia was not a party of the Multi-Fibre Agreement (MFA) that was active between 1974 and 2005. Hence, in order to bring the Cambodian apparel industry under an import quota system, the United States initiated trade negotiations that led to the CUSBTA. The original agreement was active from January 1999 to December 2001, and was subsequently extended for another three years (2002–04). A large body of high-quality data and research is available, and sufficient time has elapsed since the implementation of the agreements to enable a meaningful ex-post analysis. Furthermore, the agreement applied only to the apparel sector and not the whole economy, and therefore some of the identification challenges with respect to cause and effects can be reasonably addressed.[123]

It is noteworthy that Cambodia was – and still is – a least-developed country with relative weak institutions, and that social partners had a relatively poor level of organization at the time of the initial trade agreement (1999). A country's initial condition has implications for the choice of different policy instruments and the expected effects. The choice of the types of labour rights that are being covered by the agreement and pre-ratification requirements, for example, depend on the already existing legislative and legal codes in place. Local non-state actor involvement in the aftermath of a concluded agreement can play a role in the implementation and enforcement of labour rights, but this requires already existing social partners and existing, effective social dialogue mechanisms. If such conditions are not met, stronger emphasis should be given to enabling the conditions for social partner involvement, for example, through legal changes if necessary or technical assistance on social dialogue (Polaski, 2004).

In the long run, concentrating resources on institutional changes such as ratification of ILO Conventions, changing labour laws or enhancing the capacity of the labour ministry may deliver longer-lasting results in terms of improved working conditions and labour rights. These considerations have also been made in the case of Cambodia (Polaski, 2006). However,

[123] This section summarizes the findings of the forthcoming and existing literature on Cambodia, including López Mourelo and Samaan (forthcoming) and Rellstab and Sexton (2014). Both papers relate to the Cambodia–US Bilateral Textile Agreement and analyse effects on working conditions after the agreement. In addition, this section also refers to insights from a field mission to Cambodia conducted in 2015. During this fact-finding mission interviews with constituents and stakeholders were conducted and a validation workshop was held.

when the institutional infrastructure is weak, as was the case in Cambodia in 1999, little direct impacts on working conditions in factories can be expected in the short-run (Polaski, 2006).

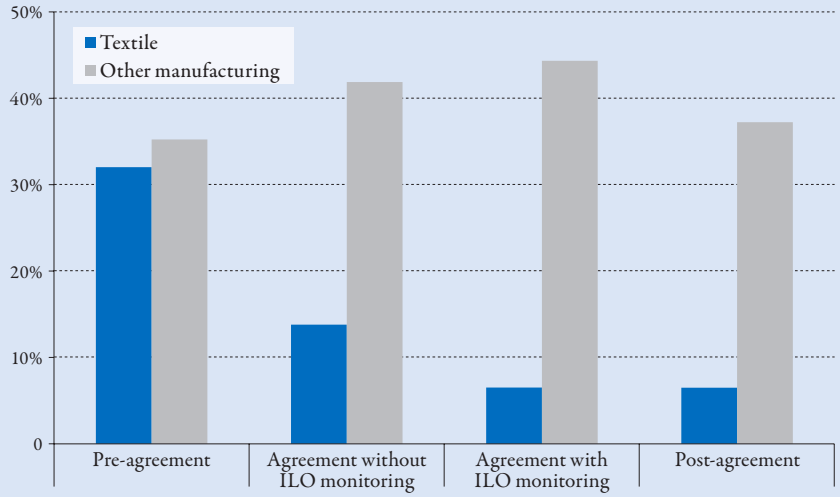
The policy instruments employed in the case of the CUSBTA, in line with Cambodia's initial conditions, include pre-ratification requirements and changes of legislation, non-state actor involvement, monitoring activities and economic incentives and disincentives (but no monetary sanctions). The agreement specified that the firm-level impact was mainly to be implemented through the ILO–International Finance Corporation Better Factories Cambodia (BFC) programme. Registered firms were independently monitored on compliance with a variety of working conditions and labour rights, and benefited from increased export quotas to the United States when overall compliance was satisfactory. While initially less emphasis was given to training and capacity-building, the inclusion of social partners, international buyers and civil society was an important element.

This combination of policy levers has been effective in improving working conditions and labour rights on a variety of issues in the garment sector (see also the Better Work discussion paper series[124]). In particular, improvements of certain working conditions related to the ILO's 1998 Declaration could be noted. For example, gender discrimination in the form of unequal pay has decreased as a direct result of this agreement with labour provisions, and through BFC as an implementation mechanism (see figure 2.5). In addition, freedom of association has been strengthened through a combination of stronger legal protection and monitoring activities by BFC concerning the actual freedom of association in the factories.

While encouraging, as certain working conditions have improved, ILO background research also highlights complexities and unanswered questions. For example, gender discrimination still exists in Cambodia's garment sector but is now often encountered in the form of hiring. Interviews conducted during an ILO field mission suggest that hiring in the garment sector is sometimes discriminatory against men because men are considered more likely to be union members and possible initiators

[124] http://betterwork.org/global/.

Figure 2.5. The gender wage gap in the Cambodian garment sector before and after the agreement



Source: López Mourelo and Samaan (forthcoming), ILO Research Department.

of strikes. Other important open questions are in how far the experience with BFC in Cambodia can be generalized to other sectors and countries and whether the CUSBTA labour provisions have led to trade diversion.

Bangladesh: Unilateral trade arrangements, benefits suspension and capacity-building

Bangladesh illustrates the case of a beneficiary country facing labour provisions under unilateral trade arrangements with the EU and the United States.[125] Bangladesh has been a beneficiary of a preferential treatment under several unilateral trade arrangements offered by the United States since 1976 and by the EU since 1971. Both EU and US unilateral arrangement programmes include labour requirements, introduced gradually since 1984, and raise negative incentives, consisting of the suspension of the trade arrangement in cases of violations of labour provisions. In 2013, the United States suspended Bangladesh's trade benefits because of non-compliance with the labour eligibility criteria.[126]

[125] Some results presented here are drawn from an ILO background paper (Rellstab, 2015).
[126] For an overview of the operationalization of EU and US unilateral trade arrangements, see Chapter 1, Section B.

While the EU–Bangladesh unilateral trade arrangement, EBA, allows duty and quota-free access for all products but arms and ammunitions, the US–Bangladesh GSP allows duty-free access for certain product categories only, of which garments are not included. In this case, only 1 per cent of Bangladesh's exports to the United States effectively fell under the GSP in 2012. But, the GSP and EBA labour provisions are not only limited to the products covered by or exported under the agreements. Therefore, the collapse in 2013 of the Rana Plaza building housing garment workshops in Dhaka acted as a trigger to suspend the country's benefits under the GSP agreement, since OSH and acceptable conditions of work, including building safety, are covered by the US GSP labour requirements.

In this case study, we will discuss the policy levers of the unilateral trade arrangements in Bangladesh, assess working conditions prior to 2013 and the initiatives taken after the Rana Plaza collapse in 2013 within the framework of GSP and EBA.

Policy levers of unilateral trade arrangements in Bangladesh

Apart from the threat of a benefits suspension, another policy instrument of the US GSP programme is non-state actor involvement,[127] namely the opportunity for private sector groups, unions or NGOs to contest the entitlement to the GSP programme, by filing a petition when they have concerns about respect for workers' rights.[128] In the initial implementation, no well-defined and systematic monitoring was included in the unilateral programmes. A Better Work Bangladesh programme was initiated in 2014, but without any formal link with the GSP or EBA arrangements.

In 2013, at the same time as the suspension of Bangladesh's GSP benefits by the United States, a capacity-building activity, the Action Plan, was formally implemented, in the framework of the unilateral trade arrangement. The fulfilment of the Action Plan is considered as a basis for the possible

[127] This can be considered as part of the dialogue shown in figure 2.1.
[128] Unlike in the US GSP, where this option always existed, in the EU–Bangladesh EBA, third parties were able to use a procedure to challenge Bangladesh's eligibility only from 1999 to 2001, after which this option was ended.

reinstatement of the GSP benefits. The Action Plan consists in improving the Government's ability to inspect buildings and monitor fire safety, and in facilitating freedom of association and collective bargaining.

Although not formally linked to the EBA, the Sustainability Compact (also launched in response to Rana Plaza) could as well be considered a capacity-building activity provided in relation with the EBA. Indeed, the close commercial relations between Bangladesh and the EU, developed to a large extent through the EBA, is invoked by the EU as one of the supporting factors for adopting the Sustainability Compact.[129] The Sustainability Compact launched jointly with Bangladesh, the ILO and the United States, with the ILO in a monitoring and facilitating role, has the objective of supporting ongoing efforts to enhancing respect for labour rights, responsible business conduct, structural integrity of buildings, and OSH (see Chapter 1).

Several achievements have been associated with the Sustainability Compact and Action Plan. For example, factories in the ready-made garment sector have undergone thousands of initial inspections regarding fire and building safety. Consequently, more than 50 hazardous factories have been closed or partially closed, the need for corrective actions in hundreds more plants has been identified, and the Bangladeshi Government has hired additional inspectors. In addition, amendments of the Bangladesh Labour Act (BLA) included improvements in provisions on safety and health as well as modest reform on freedom of association and collective bargaining.

An Accord on Fire and Building Safety in Bangladesh was also made operative one month after the Rana Plaza incident. The Accord involves buyers, international and Bangladeshi trade unions, international NGOs as witnesses and the ILO in a neutral and independent advisory role. The Accord, compelling signatories' suppliers to undergo inspections and potentially remediation on fire and building safety, is not formally linked with either of the GSP or EBA programmes. In 2016, at least 200 apparel brands were taking part in the programme, and more than 2 million workers were benefiting from the measures.

[129] http://europa.eu/rapid/press-release_IP-15-4848_en.htm.

Working conditions' evolution between 1999 and 2010

Table 2.2 gives some elements about the evolution of working conditions in Bangladesh between 1999 and 2010, the only time period for which the Bangladesh Labour Force Surveys (BLFS) are available. As the garment sector is identified separate to the rest of the manufacturing industry only in 2010, statistics presented here include all manufacturing (unless otherwise specified). Also, reports from investigative journalists, international organizations (IOs) and NGOs were also used for the analysis.

Table 2.2. Summary of working conditions' evolution between 1999 and 2010 in the Bangladeshi manufacturing sector (unless otherwise specified)

	BLFS 1999	BLFS 2005	BLFS 2010	Evolution
Minimum wage				
• Individuals below minimum wage	18%	3%	2%	positive
Working hours				
• Share of workers working more than the legal 56 average hours per week[1]	24%	31%	21%	mixed
• Share of workers working more than the international standard of 48 hours per week	48%	59%	53%	
Child labour[2]				
• Children between 5 and 11 years of age working	37%	2%	–	positive
• Children between 12 and 14 years of age working more than 14 hours per week	31%	9%	–	
• Children between 15 and 17 years of age working more than 42 hours per week	37%	68%	55%	
• Children between 5 and 17 years of age working in potentially hazardous work	13%	3%	3%	
Gender equality				
• Gender wage gap for the garment sector	–	–	4%	positive
• Gender wage gap for the manufacturing sector	40%	51%	5%	

Note: As the garment sector can be identified only for the year 2010, statistics presented here include all manufacturing (unless otherwise specified).

[1] According to the Bangladesh Labour Act (2006), the maximum weekly average working hours is 56.

[2] These estimates have to be interpreted with caution, as they are computed only with non-missing data, and can therefore exclude up to 72 per cent of the observations.

The evolution in Bangladesh regarding working conditions and labour rights has been mixed over the period 1999–2010. A major legislative change during this period, namely the entry into force in 2006 of the BLA, a single labour code merging and revising some of the various previous labour laws, brought some improvements, in the areas of health and safety, access to justice, uniformity in the definition of workers, child labour, payment of compensation, social security and overtime allowance (Al Faruque, 2009).[130] It should be noted that at the time of its adoption, the BLA did not improve on the former laws with respect to freedom of association and the right to collectively bargain.[131] Although the adoption of the BLA has no clear link with the GSP or the EBA arrangements, the capacity-building activities undertaken in relation with GSP and EBA after Rana Plaza led to amendments in the BLA (European Commission, 2015; USDOL and Executive Office of the President of the United States, 2015).

In the period between 1999 and 2010 there was an improvement in paying workers at or more than the minimum wage,[132] but compliance with Bangladeshi law or with international standards concerning working hours is low. While an improvement can be seen from 2005 to 2010 in both respects, there was only a slight improvement regarding compliance with Bangladeshi law and no improvement regarding international standards when considering the entire period 1999–2010. More importantly, several fatal accidents showed substantial deficiencies in building safety, and heavy psychological pressure and violence against workers were reported (Rellstab, 2015). In this regard, the provision in the GSP states that the suspension of benefits could apply to a country not having taken or not taking steps to afford its workers acceptable conditions of work with respect to minimum wages, hours of work and OSH. This provision was included in the GSP in 1984. No provision relative to these three aspects was adopted in the framework of the EU's EBA programme.

[130] For example, the BLA brought a rise in the indemnification for work-related injuries, a lengthening of maternity leave from 12 to 16 weeks, and the obligation of mandatory appointment letters (Hossain, Ahmed and Akter, 2010).

[131] See, for example, ILO (2013c).

[132] The minimum wage used for the computation is the minimum wage set in Bangladesh for the ready-made garment sector. This was chosen for convenience, as the level and/or existence of a minimum wage varies by sector.

Moreover, based on the data the proportion of child labour decreased between 1999 and 2005 for all types of child labour apart for children between 15 and 17 years of age working more than 42 hours per week, for which it decreased only from 2005 to 2010. Labour provisions on a minimum age for employed children were introduced in 1999 in the EBA programme, and in 2002 in the US GSP, and a provision aiming at the elimination of the worst forms of child labour was introduced in both EU and US unilateral arrangements in 2002. Regarding freedom of association and collective bargaining, qualitative reports show widespread violence against unionized workers, and low unionization in the garment sector (Rellstab, 2015). Labour provisions about freedom of association and the right to organize and bargain collectively were, however, adopted in 1984 in the US GSP, and in 1999 in the EBA programme.

Finally, there is a large decrease in the gender wage gap in the manufacturing sector after the introduction of a provision for equal opportunity at work in 2002 in the framework of the EBA programme (in the US GSP there is no mention of the principle of non-discrimination), and the gender wage gap is even smaller when considering the garment sector in 2010 in isolation.[133] However, issues remain such as clear segregation in tasks[134] and exposure to violence and sexual harassment (Rellstab, 2015).

All these considerations regarding various aspects of working conditions lead to a mixed result regarding the evolution of workers' rights in Bangladesh between 1999 and 2010, despite the various labour provisions present in the unilateral arrangements. However, several achievements of the measures accompanying these arrangements since 2013 are already visible (European Commission, 2015; USDOL and Executive Office of the President of the United States, 2015).

[133] The substantial gap between 2005 and 2010 is confirmed by Ahmed and McGillivray (2015), who found comparable results using the same database. They attribute a decisive role in this regard to improvement in females' educational qualifications.
[134] Although women are a majority in the ready-made garment factories, they rise only very rarely to managerial positions (Sebastio, 2014).

E CONCLUSIONS

The chapter has shown that the impact of labour provisions can be manifold and concern different dimensions, such as a country's legislation, its institutions, its economy and the actual working conditions in the firms. Policy-makers have a broad set of options at their disposal when implementing labour provisions in trade agreements (legislative reform, capacity-building activities, monitoring and progress reports, and dispute settlement). The impacts of these policy levers are often difficult to quantify, but some specific findings on the macro-level were made. First, no evidence is found to support the claim that the inclusion of labour provisions in trade agreements leads to reduced trade. Trade agreements boost trade between members of the agreement to a similar extent irrespective of the existence of labour provisions. Second, in countries that have trade agreements with labour provisions there has not been a derogation of labour standards, such as wages and share of vulnerable employment. Additionally, in these same countries labour provisions are associated with higher labour force participation rates and smaller gender gaps in labour force participation.

Additional analysis in the form of case studies provides more evidence of labour market effects.

In CAFTA–DR, capacity-building, along with the sustained involvement of non-state actors, led to a number of concrete institutional and legal improvements. These improvements include an increase in the number of labour inspectorates and improvements in training, such as in the Dominican Republic, where training allowed labour inspectors to reconcile compliance and competitiveness in specific areas, such as EPZs.

In the case of the Cambodia–US Textile Agreement, strong firm-level intervention, such as monitoring and compliance, improved wages at the firm level, including a reduction of the gender wage gap.

Bangladesh provides an example of the evolution of working conditions in a country that is party to two unilateral trade arrangements with labour

requirements. The analysis suggests that prior to 2013 there was no linkage between working conditions and labour requirements. However, the Rana Plaza collapse, which gathered worldwide attention, triggered specific actions from trade partners, particularly with respect to capacity-building measures. In addition, some of these activities were tied to the unilateral arrangement. Some improvements are visible with respect to the number of trade unions, building safety and amendments in labour law.

These findings highlight the interaction between legal reforms, capacity-building and monitoring mechanisms – with the support of social dialogue – and labour market outcomes. However, the sustainability of impacts is a key challenge with respect to how to foster long-term and broad-based changes in labour market outcomes. For this, complementary domestic policies play a crucial role. One overarching finding from all these case studies has been that stakeholder involvement has played an important role. Chapter 3 will discuss this issue in more depth. Future research could focus on identifying a theoretical mechanism on the macro-level by providing more evidence from individual country cases.

APPENDIX I
RATIFICATION OF ILO CONVENTIONS

Table 2.3. Ratification of the eight fundamental ILO Conventions aggregated by four fundamental principles in trade agreements, with and without labour provisions[135]

Ratifications by fundamental principles (in %)	**Trade agreements with labour provisions** (with South Africa and Montenegro)[136]	**Trade agreements with labour provisions** (without South Africa and Montenegro)	**Trade agreements without labour provisions**
Child labour	50	68	65
Freedom of association and collective bargaining	21	18	11
Forced labour	16	9	13
Discrimination	13	5	11

[135] The timeframe considered for the ratification of ILO Conventions starts with the initiation of the negotiations of a TA and ends three years after its entry into force.

[136] The ratification rate is highly influenced by the inclusion of South Africa and Montenegro, both of which concluded trade agreements with labour provisions. This might, however, be unrelated to the trade agreement process. The EU started negotiating its agreement with South Africa in 1995, shortly after the end of the apartheid and the country's accession to the ILO in 1994. Within three years of the accession South Africa ratified six fundamental Conventions and in 2000 the country ratified both fundamental Conventions on child labour. Thus, all eight ratifications happened during the observed period of time, but the causal link between the ratifications and the trade agreements is particularly weak because of the concomitant accession to the ILO. Along the same lines, Montenegro joined the ILO in 2006 and ratified all fundamental Conventions in that year, which is within the observed time.

APPENDIX II
THE RELATION OF LABOUR PROVISIONS WITH LABOUR MARKET INDICATORS

Description of the data

Section C of Chapter 2 presents an empirical analysis of the impact of labour provisions in trade agreements on labour market outcomes, based on an unbalanced panel dataset on 169 countries and territories between the years of 1991 and 2014, collecting information on 260 trade agreements in force as of the end of 2014. The types of trade agreements included in the datasets are: custom union (CU); custom union and economic integration agreement (CU & EIA); economic integration agreement (EIA); free trade agreement (FTA); free trade agreement and economic integration agreement (FTA & EIA); and partial scope agreements (PSA).[137] The variables used in the empirical analysis are as shown in table 2.4.

Table 2.4. Summary of the variables used in the empirical analysis

Variable	Unit	Source
Trade agreements in force (TA)	Yes = 1 / No = 0	ILO Research Department based on WTO Regional Trade Agreements Information System (RTA–IS)
Trade agreements with labour provisions in force (TALP)	Yes = 1 / No = 0	ILO Research Department based on WTO RTA–IS
Real wage	2005 international purchasing power parity	ILO Global Wage Database
Gender wage gap	Percentage, wages of female employees in nominal US dollars as a percentage of wages of male employees in nominal US dollars	ILO Global Wage Database
Minimum to average wage ratio	Index, minimum wage divided by average wage	ILO Global Wage Database
Share of vulnerable employment	Percentage, sum of own-account workers and unpaid family workers as a share of total employment	ILO, Trends Econometric Models, April 2015
Gender gap in share of vulnerable employment	Percentage points, difference obtained by subtracting male share in total vulnerable employment from female share in total vulnerable employment	ILO, Trends Econometric Models, April 2015

[137] See WTO's RTA–IS for the full list of all RTAs in force.

Table 2.4. **Summary of the variables used in the empirical analysis** (cont.)

Variable	Unit	Source
Labour force participation rate	Percentage, sum of employed and unemployed persons as a share of working age population	ILO, Trends Econometric Models, April 2015
Gender gap in labour force participation rate	Percentage points, difference obtained by subtracting female labour force participation rate from male labour force participation rate	ILO, Trends Econometric Models, April 2015
Labour force	Persons, sum of employed and unemployed persons	ILO, Trends Econometric Models, April 2015
Real GDP growth	Percentage, year-on-year growth rate of GDP at 2005 constant US dollars	World Bank World Development Indicators
Real GDP per capita (PCGDP)	2005 constant US dollars	World Bank World Development Indicators
Trade openness (TROPEN)	Percentage, sum of exports and imports of goods and services as a share of GDP	World Bank World Development Indicators
Total natural resources rents (NATURENT)	Percentage, sum of oil rents, natural gas rents, coals rents, mineral rents and forest rents as a share of GDP	World Bank World Development Indicators
FDI inflows (FDIINFLOW)	Percentage, FDI inflow as a share of GDP both in US dollars at current price and current exchange rates	UNCTAD Stat
Gender gap in share of vulnerable employment	Percentage points, difference obtained by subtracting male share in total vulnerable employment from female share in total vulnerable employment	ILO, Trends Econometric Models, April 2015
Labour force participation rate	Percentage, sum of employed and unemployed persons as a share of working age population	ILO, Trends Econometric Models, April 2015

Source: ILO Research Department.

Methodology

The regression analysis employs the fixed-effects model, which allows for time-invariant individual country heterogeneities. Time-variant control variables are included in the equation, so that the variables of interest are not strongly correlated with the error term.

The regression equation takes the form of:

$$LMI_{it} = \beta_0 + \beta_1 TA_{it} + \beta_2 TALP_{it} + \beta_3 GDPGTH_{it} + \beta_4 \ln(PCGDP)_{it} + \beta_5 FDIINFLOW_{it} + \beta_6 TROPEN_{it} + \beta_7 NATRENT_{it} + \mu_i + \lambda_t + \nu_{it}$$

where LMI_{it} denotes different labour market indicators. Regressions of labour force participation rates and gender gap in labour force participation rates as dependent variables produced significant results, and thus they are presented in figure 2.2 and 2.3.[138]

On the right hand side of the equation, two explanatory variables TA_{it} and $TALP_{it}$ are included. TA_{it}, a dummy variable that indicates whether or not the country has at least one trade agreement in force, captures the impact of having a trade agreement in force. $TALP_{it}$, a dummy variable that indicates whether or not the country has at least one trade agreement with labour provisions in force, captures the marginal effect of labour provisions.

Moreover, seven time-variant control variables are included in the regression. GDP growth rates ($GDPGTH_{it}$) control for business cycle effects as well as overall economic performance of the country. The log of GDP per capita ($\ln(PCGDP)_{it}$) account for the living standard in the country, which is likely to be positively correlated with labour standards. Possible impacts of FDI on employment are accounted for by the log of FDI inflows ($\ln(FDIINFLOW)_{it}$). A variable for trade openness ($TROPEN_{it}$) takes into account the possibility of increase in competitive pressure on developing countries to attract investment, which may give a rise to the so-called "race to the bottom" phenomenon and its negative impact on labour standards.[139] Total natural resources rents ($NATRENT_{it}$) control for the time-variant effects for natural resources trade. Lastly, μ_i is an individual country fixed effect, λ_t is a year effect, and ν_{it} denotes the error term.

[138] The regressions were run with the following labour market indicators, but did not bear any significant results, therefore they are not presented in the chapter: log transformed levels of real wages; growth rates of real wages; gender wage gap; share of vulnerable employment; gender gap in share of vulnerable employment; labour force participation rate; minimum to average wage ratio.
[139] See, for example, Davies and Vadlamannati (2013).

Table 2.5. Results of fixed-effects regression analysis: Total sample

	Real wage (level)	Real wage (growth)	Gender wage gap	Share of vulnerable employment	Female to male ratio of share of vulnerable employment	Labour force participation rate	Gender gap in labour force participation rate
Trade agreement	0.0506 (0.0490)	-0.223 (1.040)	2.754 (1.770)	1.467 (0.985)	0.0235 (0.0468)	-1.164** (0.495)	1.341** (0.594)
Labour provision	-0.0103 (0.0263)	-0.416 (0.824)	0.342 (0.811)	-1.000* (0.549)	0.00345 (0.0218)	1.602*** (0.444)	-1.089** (0.427)
GDP growth	-0.00809*** (0.00268)	0.574*** (0.109)	0.0112 (0.0541)	0.0639 (0.0406)	0.00182 (0.00218)	-0.0478* (0.0265)	0.0374* (0.0192)
GDP per capita	1.003*** (0.210)	1.862 (2.128)	-3.440 (2.585)	-5.596** (2.657)	0.107 (0.0947)	-2.634** (1.168)	5.277*** (1.480)
FDI	-0.000475 (0.000931)	0.0359* (0.0209)	0.00356 (0.0179)	0.0361 (0.0267)	0.000416 (0.00164)	0.0237* (0.0132)	-0.0181 (0.0204)
Trade openness	0.000251 (0.000643)	-0.0351** (0.0154)	-0.0170 (0.0140)	-0.00322 (0.0124)	-0.000897* (0.000503)	-0.00577 (0.00624)	-0.00647 (0.0108)
Natural resources rents	-0.00276 (0.00275)	-0.0421 (0.0921)	-0.0738 (0.0971)	-0.0495 (0.0667)	0.00892** (0.00360)	0.0504 (0.0310)	-0.0671* (0.0362)
Observations	1,364	1,249	686	1,396	1,336	2,267	2,267
R-squared	0.595	0.096	0.291	0.202	0.102	0.107	0.554
No. of countries	99	99	64	102	102	108	108

Robust standard errors in parentheses. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

Source: ILO Research Department estimates.

Table 2.6. Results of fixed-effects regression analysis: North

	Real wage (level)	Real wage (growth)	Gender wage gap	Share of vulnerable employment	Female to male ratio of share of vulnerable employment	Labour force participation rate	Gender gap in labour force participation rate
Trade agreement	0.0478 (0.0294)	-0.931 (0.942)	2.285** (0.840)	0.0543 (1.095)	-0.0160 (0.0576)	-2.480** (0.972)	2.316** (1.115)
Labour provision	-0.000961 (0.0143)	-0.206 (0.696)	-1.560** (0.584)	-0.856* (0.493)	0.0413 (0.0315)	1.555*** (0.430)	-1.237*** (0.415)
GDP growth	-0.00386** (0.00188)	0.787*** (0.156)	-0.0696 (0.0615)	0.0292 (0.0308)	-0.00234 (0.00231)	-0.161*** (0.0509)	0.136*** (0.0467)
GDP per capita	1.127*** (0.136)	3.603* (1.936)	0.561 (3.340)	-7.476** (2.987)	0.303* (0.161)	1.903 (2.981)	7.448** (3.091)
FDI	-0.000291 (0.000535)	0.0176* (0.0103)	0.00535 (0.0153)	-0.0369 (0.0221)	-0.000577 (0.00171)	0.0207* (0.0116)	-0.0283* (0.0142)
Trade openness	-0.00124** (0.000464)	-0.0232 (0.0205)	-0.0218 (0.0133)	0.0421*** (0.0140)	-0.000755 (0.000848)	-0.000205 (0.0144)	-0.0156 (0.0232)
Natural resources rents	-0.01000* (0.00530)	-0.0920 (0.150)	-0.247* (0.143)	0.00647 (0.0823)	0.0142 (0.00876)	0.186 (0.128)	0.0415 (0.116)
Observations	603	568	361	686	670	780	780
R-squared	0.851	0.337	0.478	0.306	0.339	0.232	0.714
No. of countries	37	37	33	36	36	37	37

Robust standard errors in parentheses. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

Source: ILO Research Department estimates.

Table 2.7. Results of fixed-effects regression analysis: South

	Real wage (level)	Real wage (growth)	Gender wage gap	Share of vulnerable employment	Female to male ratio of share of vulnerable employment	Labour force participation rate	Gender gap in labour force participation rate
Trade agreement	-0.0268 (0.0832)	0.0494 (1.447)	4.924 (4.078)	3.418** (1.614)	0.0526 (0.0772)	-0.781 (0.646)	0.541 (0.713)
Labour provision	-0.0222 (0.0474)	-0.462 (1.200)	2.383 (1.485)	-0.272 (0.963)	-0.00354 (0.0367)	1.576*** (0.588)	-1.405** (0.600)
GDP growth	-0.00871** (0.00363)	0.480*** (0.157)	0.00507 (0.0683)	0.0401 (0.0540)	0.00248 (0.00292)	-0.0312 (0.0266)	0.0264 (0.0206)
GDP per capita	1.072*** (0.293)	0.0905 (2.709)	-3.645 (4.837)	-1.085 (4.053)	-0.191* (0.0988)	-2.738** (1.311)	4.754*** (1.729)
FDI	0.00151 (0.00353)	0.0705 (0.108)	-0.00239 (0.0838)	0.186*** (0.0625)	0.00190 (0.00211)	0.0221 (0.0280)	0.00808 (0.0419)
Trade openness	0.000455 (0.000876)	-0.0453* (0.0246)	-0.00733 (0.0266)	-0.0342* (0.0190)	-0.000764* (0.000426)	-0.00928 (0.00661)	-0.00779 (0.0116)
Natural resources rents	-0.00155 (0.00326)	-0.00752 (0.106)	-0.0296 (0.119)	-0.0217 (0.0741)	0.00550 (0.00343)	0.0618* (0.0355)	-0.0677* (0.0375)
Observations	761	681	325	710	666	1,487	1,487
R-squared	0.515	0.060	0.309	0.257	0.097	0.111	0.497
No. of countries	62	62	31	66	66	71	71

Robust standard errors in parentheses. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.
Source: ILO Research Department estimates.

APPENDIX III
THE TRADE IMPACT OF LABOUR PROVISIONS

In section C, this chapter provides estimates of the impact of trade agreements with and without labour provisions on trade flows, based on a gravity model of trade.

Estimation methodology

The estimates rely on non-linear Poisson Pseudo Maximum Likelihood estimation techniques (Santos Silva and Tenreyro, 2006). These techniques can account for zero trade flows and are robust to heteroskedasticity in the data, in contrast to other frequently used methods.

In order to determine the impact of labour provisions in trade agreements on trade, the following non-linear equation is estimated:

$$X_{ijt} = exp\Big(\beta_0 + \beta_1 \log\big(Dist_{ij}\big) + \beta_2 \log(GDP_{it}) + \beta_3 \log\big(GDP_{jt}\big) + \sum_{b=1}^{4} \big(\delta_b C_{b,ij}\big) + \gamma_1 TA_{ijt} + \gamma_2 TALP_{ijt} + \theta_1 TAXDIV_{ijt} + \theta_2 TALPXDIV_{ijt} + \mu_1 TAMDIV_{ijt} + \mu_2 TALPMDIV_{ijt} + \varepsilon_i + \varepsilon_j + \varepsilon_t\Big)\varepsilon_{ijt}$$

where the dependent variables, X_{ijt}, are merchandise exports from country i to country j in year t. As in every standard gravity model of trade, the geographical distance measured as the distance between the most populous cities of countries i and j, $Dist_{ij}$, and the GDP of exporter and importer countries in year t, GDP_{it} and GDP_{jt}, are included as explanatory variables.

Moreover, the regression includes four dummy variables with trading partner pair specific information $C_{b,ij}$. These dummy variables indicate whether there have been post-1945 colonial ties between the two trading partners, whether the two trading partners share a common border, whether at least one country is landlocked and whether the two countries have a common official language. The regression also controls for exporter country, importer country and year fixed effects, ε_i, ε_j and ε_t.

The main variables of interest are TA_{ijt} and $TALP_{ijt}$. The first of these two dummy variables indicates whether a trade agreement (with or without labour provisions) is in force between countries i and j in year t or not. The second one is an indicator of whether a trade agreement with labour provisions is in force. The estimated coefficient γ_1 will then indicate the impact of a trade agreement without labour provisions $\gamma_1 + \gamma_2$ and will measure the impact of a trade agreement with labour provisions. γ_2 is hence the differential impact of labour provisions.

The dummy variable $TAXDIV_{ijt}$ measures export diversion effects and has a value of 1 if exporter country i is a member of at least one trade agreement in force, concluded with any country except importer country j. Similarly, the variable $TALPXDIV_{ijt}$ indicates whether exporter country i is a member of at least one trade agreement with labour provisions in force, concluded with any country except importer country j. The dummy variable $TAMDIV_{ijt}$ measures import diversion effects and has a value of 1 if importer country j is a member of at least one trade agreement in force, concluded with any country except exporter country i. Similarly, the variable $TALPMDIV_{ijt}$ indicates whether importer country j is a member of at least one trade agreement with labour provisions in force, concluded with any country except exporter country i.

A variant of the model distinguishes between income groups of the two trading partners to extract the impact of trade agreements on exports between developed economies (North–North), between developing countries (South–South), from developed to developing economies (North–South) and from developing to developed economies (South–North).

Data sources

Data for 162 countries are collected for the period from 1995 to 2014. Merchandise exports are taken from UNCTAD. GDP is taken from the World Bank's World Development Indicator Database. Information on geographical distance, colonial ties, common language and geographical characteristics of countries and country pairs are from the GeoDist dataset (Mayer and Zignago, 2011), published by the French research centre CEPII.

Information on 260 trade agreements in total has been collected from the WTO RTA–IS on WTO's web page. More specifically, data have been collected on the member countries of each trade agreement and the year in which a trade agreement came into force.

Estimation results

Estimation results shown in figure 2.4 are based on an estimation of the above equation. Although the figure only shows results for the main variables which are of interest, the estimated coefficients for the control variables had the expected signs in the regressions that were run. The further away countries are from each other, the less they trade. The higher the GDP in the exporter and importer countries, the more trade can be observed between them. Common borders, colonial ties and common language also have positive impacts on trade. If at least one of the two trading partners is a landlocked country, less trade is typically observed. For more detailed results, please refer to Viegelahn (forthcoming).

REFERENCES

Acosta, P.; Montes-Rojas G. 2013. *Informal jobs and trade liberalisation in Argentina*, working paper No. 13/10 (London, Department of Economics, City University).

Aguayo-Tellez, E. 2011. *The impact of trade liberalization policies and FDI on gender inequalities: A literature review*, background paper (World Bank).

Ahmed, S.; McGillivray, M. 2015. "Human capital, discrimination, and the gender Wage gap in Bangladesh", in *World Development*, Vol. 67, pp. 506–524.

Aissi, J.; Peels, R.; Samaan, D. Forthcoming. *Evaluating the effectiveness of labour provisions in trade agreements – a synthesis*, working paper (Geneva, ILO).

Al Faruque. A. 2009. *Current status and evolution of industrial relations system in Bangladesh* (Delhi, ILO).

Aleksynska, M.; Schindler, M. 2011. *Labor market regulations in low-, middle- and high-income countries: A new panel database*, IMF working paper WP/11/154 (Washington DC, International Monetary Fund).

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.

American Federation of Labor and Congress of Industrial Organizations (AFL–CIO). 2014. *Labor capacity-building efforts under the Dominican Republic–Central America–United States Free Trade Agreement*, comments from AFL–CIO. Available at: http://www.regulations.gov/#!documentDetail;D=DOL-2014-0005-0003.

Amiti, M.; Davis D.R. 2012. "Trade, firms, and wages: Theory and evidence", in *Review of Economic Studies*, Vol. 79, No. 1, pp. 1–36. Available at: https://ideas.repec.org/a/oup/restud/v79y2012i1p1-36.html.

Banks, K. 2011. "Trade, labour and international governance – An inquiry into the political effectiveness of the new international labor law", in *Berkeley Journal of Employment and Labor Law*, Vol. 32, pp. 45–142.

Bazillier, R.; Rana, T. A. 2015. Social clauses in free-trade agreements: An efficient tool to improve labor standards, Presentation at 4th conference on the regulating decent work network, 9 July, 2015. Available at: http://www.rdw2015.org/uploads/submission/presentation/145/bazillier_rana_slides.pdf [Accessed 17 May, 2016].

Berik, G.; Van der Meulen Rodgers, Y. 2010. "Options for enforcing labour standards: Lessons from Bangladesh and Cambodia", in *Journal of International Development*, Vol. 22, pp. 56–85.

Brown, D.K; Dehejia, R.; Robertson, R.; Domat, G.; Veeraragoo, S. 2015. *Are sweatshops profit-maximizing? Answer: No. Evidence from Better Work Vietnam*, Better Work discussion paper series, No. 17.

Brown, D.K.; Dehejia, R.; Robertson, R. 2013. *Is there an efficiency case for international labour standards?* Better Work discussion paper series, No. 12.

Carbonero, S. 2011. *Mid-Term Evaluation of the Labor Law Compliance Program in CAFTA–DR "Cumple y Gana III–Inspection"*. USDOL Cooperative Agreement. Available at: http://www.dol.gov/ilab/projects/summaries/central_america_labor_compliance_meval.pdf.

Cheng Lo, R. 2013. "El círculo virtuoso de la toma de decisiones basada en información", in *Perspectiva Laboral Avances en el Cumplimiento Laboral en Centro América y República Dominicana*, No. 1 (June, Year 3) (Costa Rica, ILO).

Clarke, C. 2007. *Assessing the impact regionalism has on labor rights and employment standards*, paper, International Studies Association, 48th Annual Convention, Chicago, United States, 28 Feb.

Clyde Hufbauer, G.; Schott, J. 2006. *NAFTA revisited: Achievements and challenges* (Washington, DC, Institute for International Economics), p. 128.

Crinò, R. 2010. "Employment effects of service offshoring: Evidence from matched firms", in *Economics Letters*, Vol. 107, No. 2.

Davies, B.R.; Vadlamannati, K.C. 2013. "A race to the bottom in labor standards? An empirical investigation", in *Journal of Development Economics*, Vol. 103, pp. 1–14.

De Schutter, O. 2015. *Trade in the Service of Sustainable Development. Linking Trade to Labour Rights and Environmental Standards* (Oxford and Portland, Oregon, Hart Publishing).

Delpech, Q. 2013. *The effects of the promotional dimension of the labour provisions in trade agreements: The case of CAFTA–DR*, background paper (Geneva, ILO Research Department).

Dewan, S.; Ronconi, L. 2014. *US free trade agreements and enforcement of labor law in Latin America*, working paper series No. IDB-WP-543 (Inter-American Development Bank).

Donner, A.; Lazer, F. 1974. "Employment expectations and labour force participation in Canada", in *Relations Industrielles [Industrial Relations]*, Vol. 29, No. 2, pp. 320–331.

Doumbia-Henry, C.; Gravel, E. 2006. "Free trade agreements and labour rights: Recent developments", in *International Labour Review*, Vol. 145, No. 3, pp. 185–222.

Dutt, P.; Mitra D.; Ranjan, P. 2009. "International trade and unemployment: Theory and cross-national evidence", in *Journal of International Economics*, Vol. 78, No. 1, pp. 32–44.

European Commission. 2015. *Bangladesh Sustainability Compact, Technical Status Report*, 24 Apr. 2015.

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.

Felbermayr, G.J.; Larch M.; Lechthaler, W. 2013. "Unemployment in an interdependent world", in *American Economic Journal: Economic Policy*, Vol. 5, No. 1, pp. 262–301. Available at: https://ideas.repec.org/a/aea/aejpol/v5y2013i1p262-301.html.

Fimbow, R.G. 2006. *The limits of regionalism: NAFTA's labour accord* (Aldershot, Ashgate Publishing).

Flanagan, R.J. 2003. "Labor standards and international competitive advantage", in R.J. Flanagan and W.B. Gould (eds): *International Labor Standards: Globalization, Trade, and Public Policy* (Stanford, Stanford University Press), pp. 15–59.

Galhardi, R. 1998. *Maquiladoras prospects of regional integration and globalization*. Employment and Training Papers No. 12 (Geneva, ILO).

Goldberg P.K; Pavcnik N. 2003. "The response of the informal sector to trade liberalization", in *Journal of Development Economics*, Vol. 72, No. 2, pp. 463–496.

González Arroyo, M. and O'Brien, D. 2011. *CAFTA–DR labour capacity building evaluation* (Washington, DC, Management Systems International).

Harrison, A.; McLaren, J. and McMillan, M. 2011. "Recent perspectives on trade and inequality", in *Annual Review of Economics*, Vol. 3, No. 1, pp. 261–289.

Helpman, E.; Itskhoki, O.; Muendler, M.; Redding, S. 2012. *Trade and inequality: From theory to estimation*, working paper No. 17991, National Bureau of Economic Research. Available at: http://www.nber.org/papers/w17991.

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.

Helpman, E.; Krugman, P. 1985. *Market structure and foreign trade: Increasing returns, imperfect competition, and the international economy* (Cambridge, MIT Press). Available at: https://mitpress.mit.edu/books/market-structure-and-foreign-trade.

Hossain, J.; Ahmed, M.; Akter, A. 2010. *Bangladesh Labour Law: Reform Directions*, in association with BILS Research and Advisory Team. http://ndc.gov.bd/lib_mgmt/webroot/earticle/2088/Bangladesh_labour_Law.pdf (consulted 12 Feb. 2016).

Human Rights Watch. 2001. *Trading away rights: The unfulfilled promise of NAFTA's labor side agreement* (New York). Available at: http://www.hrw.org/reports/2001/nafta/.

ILO. 2003. *Fundamental principles and rights at work: A labour law study* (Geneva).

—. 2005. *Facts and figures: Better Factories Cambodia* (Geneva).

—. 2011. *Strengthening the civil service systems in the labour ministries in CAFTA–DR countries, Final Evaluation*, Evaluation Summaries (San Jose). Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_mas/---eval/documents/publication/wcms_172101.pdf.

—. 2013a. *Working conditions laws report 2012: A global review.* (Geneva).

—. 2013b. *Studies on growth with equity: Social dimensions of free trade agreements* (Geneva, IILS).

—. 2013c. *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Report III, Part 1A, ILC, 102nd Session.

—. 2014. *Rules of the game: A brief introduction to international labour standards*, revised edition (Geneva).

Inside US Trade. 2005. "Portman unveils plans for CAFTA funds in effort to draw votes" (22 July).

Jaumotte, F.; Lall, S; Papageorgiou, C. 2013. "Rising income inequality: Technology, or trade and financial globalization?", in *IMF Economic Review*, No. 61, Vol. 2, pp. 271–309.

Juhn, C.; Ujhelyi, G.; Villegas-Sanchez, C. 2014. "Men, women, and machines: How trade impacts gender inequality", in *Journal of Development Economics* Vol. 106, pp. 179–193.

Katz, L.; Autor, D. 1999. "Changes in the wage structure and earnings inequality", in O. Ashenfelter and D. Card (eds): *Handbook of Labor Economics*, Vol. 3 (Elsevier), pp. 1463–1555.

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. 715–765.

Klein, M.W.; Moser, C.; Urban, D.M. 2010. *The contribution of trade to wage inequality: The role of skill, gender, and nationality*, working paper No. 15985, National Bureau of Economic Research, Inc. Available at: https://ideas.repec.org/p/nbr/nberwo/15985.html.

Korinek, J. 2005. *Trade and gender*, OECD trade policy papers (Paris, Organisation for Economic Co-operation and Development (OECD)).

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*, Vol. 39, No. 1 (Spring), pp. 103–154. Available at: https://ideas.repec.org/a/bin/bpeajo/v39y2008i2008-01p103-154.html.

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

Luce, S.; Turner, L. 2012. *Pre-ratification effects of US trade agreements on labour standards*, background paper (Geneva, ILO).

McMillan, M.; Verduzco, I. 2011. "New evidence on trade and employment: An overview," in M. Jansen, R. Peters and J.M. Salazar-Xirinachs (eds): *Trade and employment, from myths to facts* (ILO), pp. 23–60.

Macro International Inc. 2009. *Independent Midterm Evaluation of the* Todos y Todas Trabajamos *project in Central America and the Dominican Republic*.

Mayer, T.; Zignago, S. 2011. *Notes on CEPII's distance measures: The GeoDist Database*, working paper No. 2011–25 (Paris, CEPII).

Melitz, M.J. 2003. "The impact of trade on intra-industry reallocations and aggregate industry productivity", in *Econometrica*, Vol. 71, No. 6, pp. 1695–1725.

Melitz, M.J.; Redding, S.J. 2014. "Heterogeneous firms and trade", in E. Helpman, K. Rogoff and G. Gopinath (eds): *Handbook of International Economics*, Vol. 4 (Elsevier), pp. 1–54.

Munro, L. 2011. *A literature review on trade and informal labour markets in developing countries*, OECD trade policy working papers, No. 132.

Neumayer, E.; De Soysa, I. 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).

Nolan García, K.A.; O'Connor, E. Forthcoming. *The effectiveness of trade based clauses in improving labour rights protections: The case of the CAFTA–DR labour clause*, background paper (Geneva, ILO Research Department).

Oostendorp, R.H. 2009. "Globalization and the gender wage gap", in *World Bank Economic Review*, Vol. 23, No. 1, pp. 141–161.

Orbie, J; Tortell, L. 2009. "The new GSP+ beneficiaries: Ticking the box or truly consistent with ILO findings?", in *European Foreign Affairs Review*, Vol. 14, Issue 5, pp. 663–681.

Organisation for Economic Co-operation and Development (OECD). 1996. *Trade, employment and labour standards – A study of core workers' rights and international trade* (Paris).

—. 2011. *Divided we stand: Why inequality keeps rising*. Available at: http://dx.doi.org/10.1787/9789264119536-en.

—. 2013. *Interconnected economies: Benefiting from global value chains*. Available at: http://www.oecd.org/sti/ind/interconnected-economies-GVCs-synthesis.pdf.

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

Paz, L. 2014. "The impacts of trade liberalization on informal labor markets: A theoretical and empirical evaluation of the Brazilian case", in *Journal of International Economics*, Vol. 92, No. 2, pp. 330–348.

Peluffo, A. 2013. "Assessing labor market impacts of trade opening in Uruguay", in *SpringerPlus*, Vol. 2, No. 219.

Plummer, M.G.; Petri, P.A.; Zhai, F. 2014. *Assessing the impact of ASEAN economic integration on labour markets*, working paper, No. 486351 (Bangkok, ILO).

Polaski, S. 2004. "Protecting labor rights through trade agreements: An analytical guide", in *Journal of International Law and Policy*, Vol. 10, pp. 13–25.

—. 2006. "Combining global and local forces: The case of labor rights in Cambodia", in *World Development*, Vol. 34, No. 5.

—. 2009. *Harnessing global forces to create decent work in Cambodia* (Geneva, ILO).

Rellstab, S. 2015. *The effectiveness of labour provisions under the Generalised System of Preferences (GSP) – a case study for the garment sector in Bangladesh*, background paper (Geneva, ILO).

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*, background paper (Geneva, ILO).

Rosnick, D. 2013. *Gains from trade? The net effect of the Trans-Pacific Partnership Agreement on US wages* (Washington, DC, Center for Economic and Policy Research).

Salem, S; Rozental, F. 2012. "Labor standards and trade: A review of recent empirical evidence", in *Journal of international Commerce and Economics* (United States International Trade Commission), pp. 1–36.

Samet, A. 2011. *Labor provisions in US free trade agreements. Case study of Mexico, Chile, Costa Rica, El Salvador and Peru*, policy brief (Inter-American Development Bank, Integration and Trade Section).

Santos Silva, J.M.C.; Tenreyro, S. 2006. "The log of gravity", in *Review of Economics and Statistics*, Vol. 88, No. 4, pp. 641–658.

—. 2013. "From disguised protectionism to rewarding regulation: The impact of trade-related labor standards in the Dominican Republic", in *Regulation & Governance*, Vol. 7, No. 3, pp. 299–320.

Sebastio, F. 2014. "Female empowerment in the Bangladeshi garment industry", in *International Growth Centre*. Available at: http://www.theigc.org/blog/female-empowerment-in-the-bangladeshi-garment-industry/ [12 Feb. 2016].

Siroën, J. et al. 2008. *The use, scope and effectiveness of labour and social provisions and sustainable development aspects in bilateral and regional free trade agreements* (European Commission).

Teague, P. 2003. "Labor-standard setting and regional trading blocs: Lesson drawing from the NAFTA experience", in *Employee Relations*, Vol. 25, No. 5, pp. 428–452.

Tejani, S.; Milberg, M. 2010. *Global defeminization? Industrial upgrading, occupational segmentation and manufacturing employment in middle-income countries*, working paper No. 2010-1 (New York, Schwartz Center for Economic Policy Analysis).

Trefler, D. 2004. "The long and short of the Canada–US free trade agreement", in *American Economic Review*, Vol. 94, No. 4, pp. 870–895.

United States Department of Labor (USDOL). 2009. *Progress in implementing capacity-building provisions under the labor chapter of the Dominican Republic–Central America–United States Free Trade Agreement*.

—. 2012. *Progress in implementing Chapter 16 (Labor) and Capacity-Building under the labor chapter of the Dominican Republic–Central America–United States Free Trade Agreement*.

—. 2015. *Progress in implementing Chapter 16 (Labor) and Capacity-Building under the labor chapter of the Dominican Republic–Central America–United States Free Trade Agreement*.

USGAO. 2014. *Free trade agreements: U.S. partners are addressing labor commitments, but more monitoring and enforcement are needed*, report to Congressional Requesters.

USTR. 2005a. *The facts about improving labor conditions*, CAFTA policy brief, July.

—. 2005b. *CAFTA's strong protections for labor rights: A comprehensive strategy*, CAFTA policy brief, Feb.

—. 2011. *CAFTA–DR labor capacity building*. Available at: https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2011/may/cafta-dr-labor-capacity-building.

Viegelahn, C. Forthcoming. *Are labour provisions in trade agreements harmful for trade? Evidence from a gravity model* (Geneva, ILO).

Weisbrot, M.; Lefebvre, S; 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.

Wells, D. 2006. "Best practice in the regulation of international labor standards: Lessons of the US–Cambodia Textile Agreement", in *Comparative Labor Law & Policy Journal*, Vol. 27, No. 3.

Witte, J.M. 2008. *Realizing core labor standards: The potential and limits of voluntary codes and social clauses – A review of the literature*, Office for Social and Ecological Standards, and Federal Ministry for Economic Cooperation and Development (Eschborn, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH).

Working Group of the Vice Ministers responsible for trade and labor in the countries of Central America and the Dominican Republic, and the Inter-American Development Bank. 2005. *The Labor Dimension in Central America and the Dominican Republic: Building on progress – Strengthening compliance and enhancing capacity* (Washington, DC).

Yaraslau, K. 2008. "Why European Union trade sanctions do not work", in *Minesota Journal of International Law*, Vol. 17, p. 209.

CHAPTER 3
EFFECTIVE STAKEHOLDER INVOLVEMENT IN THE NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS

KEY FINDINGS

- Since the NAFTA/NAALC (1994), governments have progressively provided mechanisms for sharing information and conducting dialogue with social partners and the wider public. This reflects an overall trend during the past two decades of making trade negotiations – traditionally conducted between governments with limited public participation and insight – less opaque. Furthermore, explicit references to the involvement of stakeholders within trade agreements have become more common and expansive.

- The findings of the chapter show that, of the countries analysed, most have set up institutional mechanisms for stakeholder involvement (including the social partners). These mechanisms include both permanent consultative structures with fixed participation and more inclusive mechanisms involving broader segments of civil society and the general public. However, each actor prioritizes a particular approach.

- Stakeholders have also been involved in the implementation of labour provisions. The trade agreements of Canada, the EU and the United States include the possibility to consult or establish stakeholder advisory groups. In this regard, interesting points of difference have been found in the case of the EU, which (i) makes the consultation of advisory bodies mandatory for both parties, and (ii) establishes institutional mechanisms explicitly aimed at promoting dialogue between civil societies of trade parties.

- Nonetheless, while trade agreements increasingly include provisions to promote the participation of stakeholders, the use of these mechanisms

is still limited in practice. Governments – to a certain extent – provide information to stakeholders and seek their views through institutional mechanisms, but stakeholders have expressed only limited satisfaction about overall transparency, particularly in regard to negotiation processes. A key challenge is to enhance accountability, for instance by providing feedback and informing stakeholders on how their input has been taken into consideration in the decision-making process.

- The evidence suggests that there has been effectiveness of process: legal, political and institutional outcomes with respect to stakeholders' involvement. This occurs for instance, through the activation of different mechanisms such as filing submissions, political action, and monitoring, among others. This has represented a step forward in the final goal of improving the rights and conditions experienced at the workplace. Furthermore, cross-border civil society coalitions have played a fundamental role in the activation of these mechanisms.

INTRODUCTION

As seen in Chapter 2 the strengthening of social dialogue is a relevant factor that can increase the societal pressure towards improving working conditions. Therefore, stakeholders have a role to play in the process of promoting change.

Although economic governance arrangements are signed between States, other stakeholders,[140] such as the social partners (trade unions and employers' organizations), are increasingly recognized as having a legitimate voice during the negotiation and implementation processes of these agreements.[141] Over time, agreements have made more comprehensive ref-

[140] "Stakeholder involvement" is a diverse concept that potentially includes a large range of different types of non-State actors. Although the involvement of non-State actors, such as NGOs, labour advocates, the media or the general public is implicitly dealt with as well, our use of the term is primarily focused on the social partners. This is in line with how stakeholder involvement has traditionally been understood from an ILO perspective, where an emphasis is put on social dialogue and tripartism, with freedom of association and freedom of expression forming the basis for meaningful involvement (see, for example, 1998 ILO Declaration on Fundamental Rights and Principles at Work).

[141] This development is, for instance, reflected in the European Commission's trade strategy of 2015, where an emphasis is put on the role of transparency and stakeholder involvement in trade policy (European Commission, 2015b).

erences to the role of stakeholders, and experiences have highlighted the importance of their role in promoting labour rights, particularly by activating implementation mechanisms, such as dispute settlement through filing of submissions (for example, in the CAFTA–DR or US–Peru trade agreements).[142] Trade unions and other labour advocates have been key actors in this regard. Increasingly, the specific role of private businesses to promote labour rights is addressed as well, for instance as members of advisory bodies, and when incorporating CSR policies in the area of labour into their business practices.

In part, these developments have been driven by the expanding range of issues covered by economic governance agreements – which can extend to labour standards, environmental protection, health and safety, and public procurement, as well as other regulations that can impact the way in which people lead their lives. However, stakeholders have raised concerns with regard to democratic legitimacy and limited transparency in overall negotiation processes, and have expressed disappointment about their involvement in both negotiation and implementation phases (*Inside US Trade*, 2015d; interviews, 2014a; 2014b; 2015b). Furthermore, while trade agreements provide for mechanisms to promote the increased participation of stakeholders, the use of these mechanisms is still limited in practice. With negotiation or ratification processes being currently under way for the TTIP, the TPP and the EU–Canada Comprehensive Economic and Trade Agreement (CETA) – three of most sweeping trade deals in history – the question of stakeholder involvement is a timely issue.

Against this background, the purpose of this chapter is to examine the mechanisms that are provided for stakeholders to be involved in the making and implementation of trade policy, and whether these have been effective in improving labour rights and working conditions.[143]

Existing literature pays only limited attention to the role of stakeholders in promoting labour rights through trade agreements. However, several

[142] Historically, employers' and business organizations have played a larger role than trade unions in the negotiation phase of trade agreements, that is, with respect to technical advice on barriers to trade in specific industries.
[143] A discussion on how to understand "effectiveness" is part of Chapter 2.

studies indicate that the existence of strong civil society actors is a precondition for labour provisions to have the desired impact (for example, by advocating for higher labour standards or activating implementation mechanisms) (Alger, 1997; Hafner-Burton, 2009; Cameron and Tomlin, 2000; and Murillo and Schrank, 2005). It has also been argued that the absence of strong civil society organizations in many emerging and developing economies is what makes external pressure to improve labour standards through trade agreements necessary in the first place (ILO, 2013; Greven, 2005; and Nolan García and O'Connor, forthcoming). For instance, a number of studies highlight how public submissions procedures became an important tool through which activists raised public awareness and mobilized support for labour issues (Athreya, 2011; Buchanan and Chaparro, 2008; Compa, 2001; Kay, 2005; and Graubart, 2008). In the case of NAFTA/NAALC, one of the results of its public submissions procedure was the development of transnational advocacy networks between Canadian, Mexican and US labour advocates. This was also found in the public submissions under CAFTA–DR and the US–Peru trade agreement.[144] Focusing on the case of Cambodia, other studies have also pointed towards the role of reputation-conscious buyers and the importance of public disclosure as a means to improve working conditions at the firm level (Ang et al., 2012; Oka, 2010).

Furthermore, transnational civil society cooperation during negotiation and implementation processes allows advocacy groups to acquire knowledge and skills that may impact positively on labour conditions in the long run.[145] Various articles address how combinations of different implementation mechanisms offer additional means to affect policies. Douglas et al. (2004), for instance, when examining the US GSP, stress the importance of an effective "confluence of forces" involving legal, political and development cooperation dimensions. Similarly, Graubart (2008) suggests that the transnational legal resources included in NAFTA/NAALC are more likely to be successful when combined with political action.

[144] The public submissions under the US–Peru trade agreement are not included in this assessment.
[145] For example, Rettberg et al. (2014); Postnikov and Bastiaens (2014).

These authors have highlighted the importance of the combination of different mechanisms or have provided a historical review. However, a systematic assessment of these mechanisms, which analyses together different approaches (such as those of the US, the EU, and Canada) has not been conducted until now. In this respect, the chapter contributes to the literature and the debate on stakeholder involvement in different ways. Section A assesses existing institutional mechanisms for involving stakeholders in the different phases of trade agreements, such as advisory bodies. Section B further examines the effectiveness of stakeholder involvement strategies and use of other mechanisms to encourage policy change and impact in the area of trade and labour. Section C concludes the chapter.

A ASSESSING THE INSTITUTIONAL MECHANISMS FOR STAKEHOLDER INVOLVEMENT

This section mainly compares the various approaches of key proponents of labour provisions (the EU, United States and Canada) during various phases of the agreement (box 3.1). Furthermore, practices of other actors, such as Chile, EFTA[146] and New Zealand, are also examined.[147] For these purposes, an analytical framework is developed that distinguishes two main dimensions of stakeholder involvement – the various institutional mechanisms (that is, the mechanisms put in place to involve stakeholders in the negotiation and implementation stages of trade agreements) and the mandate provided to stakeholders within these mechanisms. In general, the research finds that all examined economies provide a comparable set of mechanisms for involving stakeholders, but they differ primarily in terms of inclusiveness, scope and specificity.

The mechanisms can range from permanent stakeholder committees with a limited number of selected advisers to more inclusive mechanisms where a broader section of civil society can participate. Each actor, however, clearly prioritizes the use of one particular approach; for example, in the United States stakeholders are mainly engaged through a system of institutionalized advisory committees, while in the EU a wider segment of civil society is targeted for consultation through more inclusive mechanisms, including online consultations and multi-stakeholder meetings. Furthermore, the written mandate of stakeholders is not always translated into practice.

The first part of this section lays out the various institutional mechanisms that exist to involve stakeholders in the negotiation and implementation phases of trade agreements. The second part assesses the mandate of this

[146] For the purposes of this section, the EFTA is referred to as one actor, to the extent to which it concludes trade agreements as a single actor.

[147] Regarding country coverage, Canada, the EU and the United States were included in the analysis since they have traditionally been the most active in promoting a trade–labour linkage. Among other promoters of labour provisions (Australia, Chile, EFTA, Japan, New Zealand and Peru), for reasons of feasibility, this chapter only focuses on a selection of countries. It can be noted, however, that other countries that fall outside the scope of this report may have established mechanisms for stakeholder involvement as well.

Box 3.1 The evolution of stakeholder involvement in trade agreements

The evolution of stakeholder involvement during the trade negotiation process, while moving in the same direction, has differed between the examined parties. Since 1957, the EU and its predecessors have enabled the participation of stakeholders in policy-making through the European Economic and Social Committee (EESC). In the early 2000s, however, the EU began issuing a number of policy documents highlighting the importance of civil society involvement through dialogue and debate.[1] Around the same time, the EU's Civil Society Dialogue on Trade (1998) was set up to provide a platform for discussions primarily in the form of multi-stakeholder meetings during trade negotiations. More recently, a Stakeholder Advisory Group where members have access to parts of negotiating drafts was established for the TTIP negotiations (2014).[2]

The United States has, since the adoption of the 1974 Trade Act, been subject to a less dramatic evolution. The 1974 Trade Act and subsequent legislation (for example, the 2002 Trade Act) provided a general framework for stakeholder consultations through a permanent advisory system, which remains largely intact to this day. The 2015 Trade Promotion Authority, however, goes beyond past trade promotion acts by establishing a legal obligation for the USTR to create guidelines on public access to information related to negotiations.[3] These guidelines also mandate the access of advisory groups to US position texts.[4]

In Canada, since 1986, legislation exists that requires the Government to consult the public on regulatory issues, including trade negotiations. Since 2002, the policy has been put to practice primarily in the form of online consultations, but stakeholders have preferred unofficial channels to express their views (OECD, 2002; Government of Canada, Foreign Affairs and Development, 2015b; Trew, 2012).

Turning to implementation, references to the involvement of stakeholders in agreement texts have become more expansive during the past two decades. For instance, the EU–South Africa agreement (2000) promotes dialogue without specifying any mechanism for how this will take place. In contrast, recent agreements – such as the EU–Ukraine agreement (signed in 2014 but not yet notified to the WTO as of December 2015) – establish multiple stakeholder advisory bodies and devote an entire chapter to what is termed "civil society cooperation".

With regard to the US and Canadian trade agreements, 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 most later US 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.
- More recent agreements, such as those for Canada–Costa Rica (2002) and US–Chile (2004), and succeeding US and Canadian agreements, also include provisions for involvement in dispute settlement.

Box 3.1 The evolution of stakeholder involvement in trade agreements (cont.)

- In the case of the United States, provisions regarding stakeholder participation in development cooperation were also added (for example, CAFTA–DR (2004)) while providing channels for dialogue (public sessions) that were not present in previous agreements.[5] While not yet ratified, the TPP requires each party to maintain or establish and consult national advisory groups.[6]
- Starting with the Canada–Peru trade agreement (2009), Canadian agreements also include provisions for involvement in development cooperation.[7] The Canada–Honduras (2014) labour cooperation agreement requires the parties to establish or consult existing national advisory groups.[8]

[1] See Lisbon Treaty, Art. 11(1) and (2), Title II: Provisions on democratic principles; CEC (2002).
[2] European Commission (2014). EU Directives TTIP negotiation.
[3] See *Guidelines for Consultation and Engagement* (Office of the USTR, 27 Oct. 2015).
[4] Consolidated texts would only be available at an appropriate time to advisory bodies.
[5] With the exception of NAFTA. See, for instance, the US–Jordan agreement (2001).
[6] TPP Art. 19.14.
[7] Compare the Canada–Chile (1997) or Canada–Costa Rica (2002) agreements with that of Canada–Peru (2009).
[8] Canada–Honduras Agreement on Labour Cooperation, 2014, Art. 8(1).

involvement in terms of transparency, dialogue and accountability. The results are summarized in table 3.1.

Institutional mechanisms

Institutional mechanisms for stakeholder involvement differ primarily in terms of scope, specificity and inclusiveness. In this context, scope refers to whether mechanisms apply to a single agreement or to several ones. In general, mechanisms that apply to several agreements are permanent, whereas single-agreement mechanisms are of a more ad hoc or temporary nature. Furthermore, in some agreements the establishment of advisory bodies may be mandatory, while in others it is voluntary. Differences are also observed with regard to the degree of specification. For example, some agreements use general references, while others specify the composition and regularity of their advisory bodies. Inclusiveness, finally, refers to whether a wide range of stakeholders can take part in the mechanism or if they include a more limited number of fixed participants.

Stakeholder involvement has taken place through other channels as well, such as the filing of public submissions, development cooperation or

Table 3.1. Institutional mechanisms for stakeholder involvement in trade agreements

Country	Negotiation phase	Implementation phase	Overall characterization
United States	• Trade advisory system (including the Advisory Committee for Trade Policy and Negotiations and LAC). • Advisers have access to negotiating texts, the government seeks information from stakeholder but there are no mechanisms for formal feedback.	• Permanent National Advisory Committee (NAC). • Information provided to, and views sought from, stakeholders; feedback function for submissions.	• Highly institutionalized approach. • Provides and seeks information from a selection of stakeholders. • Elements of accountability (limited in practice).
EU	• Multi-stakeholder meetings and events to inform, and seek information from, stakeholders. • Agreement-specific advisory groups (whose members have access to parts of negotiating texts) and inclusive online consultations.	• Permanent body on the EU side (the EESC) involved in the establishment of agreement-specific Domestic Advisory Groups (DAGs). • Mandatory establishment of advisory bodies and promotion of dialogue between the civil societies of both parties. • Information sought and provided through DAGs, feedback mechanism in the case of the EU–Korea agreement.	• Makes use of inclusive mechanisms during negotiations (civil society dialogue on trade, online consultations), and institutionalized ones (EESC/DAGs) during implementation. • Elements of accountability (limited in practice).
Canada	• Permanent mechanism in place but not active (Advisory Council on Workplace and Labour Affairs (ACWLA)). • Online consultations to seek information from stakeholders.	• Permanent mechanism in place but not active (ACWLA). • Feedback mechanism for submissions.	• While a mechanism exists, its use is limited in practice.
Other	• EFTA: Permanent advisory consultative committee (CC). • Chile: Permanent committee (Consejo de la Sociedad Civil de Direcon–ProChile). • New Zealand: Online consultations.[1]	• EFTA: Permanent advisory CC. • Chile: Permanent committee (Consejo de la Sociedad Civil de Direcon–ProChile). • New Zealand: ad hoc advisory groups (possible).	• EFTA: Limited actual involvement of the permanent advisory CC. • Chile: Uses the same committee during both implementation and negotiation. • New Zealand: Low level of institutionalization.

[1] Since 2009 there has not been a formal participatory mechanism in New Zealand (Interview, 2015f).

advocacy towards the legislative bodies; nevertheless this section focuses primarily on assessing institutional advisory bodies.

Permanent stakeholder committees dominate the US approach

Permanent stakeholder committees with an advisory role in trade policy have been established in all the examined economies, but their means

and scope varies. The United States, the most developed in this regard, maintains a system of trade advisory committees. The system was first established through the 1974 Trade Act, and is composed of 28 advisory committees operating under the USTR, including the Advisory Committee for Trade Policy and Negotiations and the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC).[148] In terms of composition, the advisory system is skewed towards the representation of the private sector; more than 80 per cent of the committee members (480 of 566) are from the private sector, while 31 are labour representatives (*Washington Post*, 2014). The principal advisory body discussing the implementation of labour provisions is the National Advisory Committee for Labor Provisions of US Free Trade Agreements (NAC), which operates under USDOL and has been convening once or twice a year since 2011.[149]

In the case of the EU, the EESC convenes regularly and has a balanced composition of employers' and workers' representatives (and "third interests"). However, its direct use as a platform for stakeholder involvement during trade negotiations is limited.[150] Similarly, EFTA has set up a permanent body in the form of the EFTA CC, which includes both labour and business representatives. However, in practice the EFTA CC has functioned even less well than the EESC as a platform for stakeholder involvement during trade negotiations.[151] Finally, in Canada there is a permanent body in the form of the Advisory Council on Workplace and Labour Affairs (ACWLA) where international labour issues in relation to trade can be discussed (Government of Canada, 2010; Van den Putte, forthcoming). However, it has not convened since 2012 (Interviews, 2015b; 2014d).

The EU makes use of agreement-specific advisory committees

A more recent development in the EU is the establishment of temporary advisory committees in specific negotiations, which has been done for

[148] US Code, §2155 and USTR website.
[149] USDOL (2005, 2006); USDOL, NAC, meeting minutes.
[150] The EESC organizes events and issues opinions but the attention paid to these is limited (Interview, 2014a).
[151] One explanation for this is stakeholders' participation through the respective domestic institutions of the EFTA member States.

the TTIP negotiations.[152] However, the fact that such groups have not been established for other ongoing negotiations (for example, with Japan) indicates that the relatively strong public interest surrounding the TTIP negotiations is a key factor in this development. Furthermore, during the implementation stage, the EU applies agreement-specific DAGs that fall under the umbrella of the EESC (Interviews, 2014a; 2014b). So far, however, the only DAGs that have been meeting regularly for some time are those established under the EU–Republic of Korea (2011) agreement, while those groups or committees established through other EU agreements have only recently started to convene.[153]

Involving broader segments of civil society

Most of the economies noted above have also set up mechanisms for broad civil society participation. In the EU, civil society organizations can register for its Civil Society Dialogue on Trade, providing them with a key platform in the negotiation process and through which future and ongoing negotiations are discussed in the form of multi-stakeholder meetings and events (European Commission, 2011).

Canada, Chile and the United States provide similar, although less elaborate, mechanisms where stakeholders can interact directly with the negotiating team.[154] Canada, the EU and New Zealand also use online consultations that are open to the public during their trade negotiations (Government of Canada, Foreign Affairs Trade and Development, 2015a, Annex A).

EU trade agreements obligate parties to involve stakeholders and establish transnational mechanisms

In most of the trade agreements analysed for this report, the establishment and use of existing advisory groups is on a voluntary basis.[155] However, the EU obligates parties to either establish new, or consult existing, advisory

[152] The TTIP advisory group is the first of its kind in the EU. It meets once a month or once every two months (Interviews, 2014a; 2014b; 2015c).

[153] In the case of EU–Colombia and Peru (2012) agreements, the DAG on the EU side has been established, while Colombia and Peru will use existing groups.

[154] For example, the "side-rooms" (*Inside US Trade*, 2015c), or the Public Interest Trade Advisory Committee (PITAC), which was announced in 2014 by the USTR and should consist of NGOs, academics and other public interest groups. However, to date it has not been implemented.

[155] The Canada–Honduras (2014) agreement is a recent exception to this. Furthermore, while not yet ratified, the TPP also contains a provision that requires each party to establish or maintain a labour advisory body (Art. 19.14).

groups.[156] In this respect, 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. This has not been without challenges. In implementing the EU–Chile (2003) and EU–CARIFORUM (2008) agreements, the establishment of joint consultative committees has proven difficult due to a lack of counterpart institutions to the EESC in partner countries.[157]

Mandate

Mandate refers to the role or rights extended to stakeholders in institutional mechanisms, and can range from the provision of information to stakeholders and the expression of their views to the taking of these into consideration. More specifically, the mandate of stakeholders consists of (i) transparency, meaning that the administration provides information concerning the negotiation or implementation processes to these actors (for example, on the labour impacts of an agreement), (ii) dialogue, where an administration seeks information and advice from stakeholders, and (iii) accountability, where input provided by stakeholders is taken into consideration in the decision-making process. This latter point implies looking not only at commitments made by administrations to take input into consideration, but also examining mechanisms for feedback that clarifies how input has been taken into account in the decision-making process.[158]

Towards increased transparency

In terms of transparency, all the trade partners in the analysis provide some information to stakeholders through various channels at the negotiation and implementation stages, although to differing degrees. While none of the trade partners provides full access to information during negotiation, an important difference is that the EU and the United States make

[156] For instance, in the EU–Republic of Korea agreement (2011), Art. 13(12)(4) states that "each Party shall establish a Domestic Advisory Group(s) on sustainable development (environment and labour) […]".

[157] The United States and Canada conduct public sessions at the meetings of the executive bodies, but mostly civil society representatives from the party where the meeting takes place participate (Van den Putte, forthcoming).

[158] While limited, this procedural notion of accountability is in the chapter used as an indication of accountability in its more substantive sense.

negotiating texts available to a limited set of stakeholders. The United States has, late in the negotiation stage, traditionally made these texts available to the members of its trade advisory committees, but some stakeholders have expressed only limited satisfaction with the overall transparency with respect to certain topics.[159] Until the setup of the TTIP advisory group (2014), the EU did not provide any stakeholders with access to such information.[160] Furthermore, as a part of an increased transparency initiative regarding the EU's TTIP negotiations, the EU has made a range of initial negotiating positions and corresponding fact sheets publicly available on its website.[161] The substantial public interest surrounding the TTIP negotiations is again a key factor driving this. However, criticism has been expressed characterizing these steps towards transparency as insufficient. In response to this, and for application in future negotiations, the new EU Trade Policy (October 2015) provides for the publication of EU texts online for all trade and investment negotiations (European Commission, 2015b).

Conducting dialogue with stakeholders

Corresponding with the institutional approaches described above, in all the examined countries stakeholders are provided with a platform during the negotiation and implementation processes. In some cases, the text of trade agreements makes explicit references towards stakeholder involvement, which has become more common and expansive for some of the participants in trade agreements. However, while the governments do conduct dialogue with stakeholders to a certain degree, this has not been true for all the examined mechanisms. In the EU, for instance, although the views of stakeholders are sought through other mechanisms (such as the TTIP advisory group or online consultations), participants and observers have noted that meetings under the Civil Society Dialogue on Trade function mostly as information briefings, with limited opportunities for two-way discussions (European Commission, 2015a; Interviews, 2014a; 2014b; 2015c).

[159] In the case of the TPP this was done on 9 July 2015 (*Inside US Trade*, 2015b). TTIP negotiations have been criticized in this respect too (see, for example, Flynn, 2012; Bertelsmann Stiftung, 2014).
[160] Interview (2014b). The first round of TTIP negotiations was held in July 2013 (European Commission, 2014).
[161] See http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230.

In the United States, opportunities for stakeholders to express their views are provided throughout its trade advisory committees, for instance by requiring each committee to provide an opinion on proposed trade negotiations.[162] Although the Canadian Government has sought stakeholder input through online consultations, and other methods, not all the social partners participate and instead highlight their use of informal channels to exchange views with the administration (Interviews, 2014d; 2015b).

Commitments to consider stakeholders' input exist; accountability remains limited in practice

Apart from being informed and having a voice in the trade negotiation and implementation processes, the Canadian, EU and US Governments have made commitments to provide feedback on stakeholders' input. The EU's overall policy with respect to non-state actors' involvement is set out in *European governance – A white paper*, and states that receipt of submissions and "adequate feedback" is to be provided. This is reiterated in the EU's guidelines for stakeholder consultations, where the practice of informing stakeholders on how their contributions have affected policy is listed as a general principle (European Commission, 2015b). In practice, participating social partners had received some feedback in the form of summaries of online consultations and written statements, although these were seldom very specific and did not make clear the impact their contributions had made in decision-making (Interviews, 2014a; 2014b; 2015c). In agreement texts, similar commitments can be found and appear to be most developed in some of the EU's recent agreements,[163] although accountability clauses in US agreements are similar, albeit generally more softly formulated.[164] In the trade agreements of Chile, EFTA and New Zealand, accountability clauses are missing.

While commitments to provide feedback were found in Canada, the EU and the US, social partners have maintained that there is a lack of formal feedback mechanisms (Interviews, 2014d; 2015b). For example, with respect to accountability towards US stakeholders, the 1974 Trade Act

[162] US Code, Title 19, §3804(e).
[163] See, for example, EU–CARIFORUM agreement, 2008, Art. 232(3); EU–Colombia and Peru agreement, 2012, Art. 280.
[164] US–Oman agreement, 2009, Art. 19.2.

states that the President is required to seek information and advice from stakeholders regarding negotiating objectives and bargaining positions and that such advice shall be considered to the maximum extent possible.[165] However, the USTR has not consistently issued feedback on the opinions submitted by the LAC.[166]

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.[167] In the EU, there is no such submission process.

[165] US Code, Title 19 §2155.

[166] See, for example, *Inside US Trade* (2015a).

[167] Such a mechanism can be traced back to NAFTA/NAALC (1994) and is also consistently inserted in all the examined US agreements from Chile, 2004, Art. 18.4(7) onwards.

B EFFECTIVENESS OF STAKEHOLDERS' INVOLVEMENT

The previous section assessed existing institutional mechanisms for stakeholder involvement with a focus on advisory bodies in the negotiation and implementation phases of trade agreements. By means of various case studies – of CAFTA–DR, the EU–Republic of Korea agreement, and the Canadian, EU and US trade agreements with Colombia and Peru – this section aims to examine the effectiveness of stakeholder involvement through a wider variety of mechanisms and strategies. The evidence points towards indications of progress in furthering labour rights, promoted by labour advocates that integrated different mechanisms (table 3.2).

In particular, trade unions and other labour advocates have combined participation in advisory bodies with political action, such as participation in congressional or parliamentary hearings, and the development of public campaigns focusing on the potential negative labour market impacts of these agreements. Legal mechanisms, for example, filing submissions, have also proven to be an important resource for these actors.[168] The social partners have been involved in technical cooperation programmes, such as capacity-building and monitoring, for instance through indicator-based and time-bound tools, such as the US–Colombia Labor Action Plan (LAP).

To a more limited extent, employers' organizations have also been involved in the follow-up of labour commitments of trade agreements.[169] Employers' organizations have participated in dispute settlement, filing submissions and providing written views related to the dispute. To date, two submissions, both under the NAALC, have been filed by employers, neither of which reached the review phase.[170] Additionally, employers' organizations have been engaged in development cooperation projects

[168] Trade unions and other labour advocates have filed four submissions under CAFTA–DR, two under the US–Peru agreement, one under the US–Bahrain agreement (ILO, 2013), and one under the US–Colombia agreement (filed in May 2016 not yet accepted for review).
[169] Overall, businesses have to a lesser extent prioritized the follow-up of labour provisions compared to more commercial issues (Interview, 2015c; Bourgeois et al., 2007).
[170] Filed by the Florida Tomato Exchange (1998) by the Labor Policy Association (1999) (Compa and Brooks, 2014). For an in-depth assessment on NAALC see ILO (2013).

Table 3.2. Examples of legal, political and institutional outcomes

Trade agreements	Outcomes
CAFTA–DR	• Legal: introduction of decrees and labour laws reforms, that is, on discrimination (for example, Costa Rica, 2014) • Institutional: strengthening of labour ministries and inspectorates (see also Chapter 2); evolution towards more comprehensive monitoring mechanisms (that is, from Guatemala Enforcement Plan to Honduras monitoring and action plan) • Political: intergovernmental discussions towards the development of monitoring plans; ongoing debates (see Chapter 2) for legal reforms to strengthen labour inspections (Honduras) and to address human trafficking (Nicaragua)
EU–Republic of Korea trade agreements	• Legal: ongoing legal changes to facilitate the ratification of Conventions and to implement ILO Recommendations (for example, the Trade Union and Labour Relations Adjustment Act) • Institutional: re-engagement with ILO (for example, ILO participation in the Committee on Trade and Sustainable Development and the DAGs); development of joint initiatives and technical cooperation (for example, new programmes on non-discrimination, equality and CSR) • Political: increased awareness of labour rights in the Republic of Korea; engagement of the EU and Republic of Korea's Governments through the Trade and Sustainable Development Committee (TSDC) to discuss labour rights
Canada, EU, US trade agreements with Colombia/Peru	Colombia: • Legal: adopted new legislation to fight unlawful intermediation • Institutional: strengthening of the Labour Ministry and the inspection system (for example, hiring more inspectors and restructuring the Ministry); increasing the budget towards the protection of trade unionists; enhancing social dialogue (for example, creation of Commissions to promote dialogue on labour policies) • Political: increased intergovernmental engagement (for example, through the attaché in US–Colombia agreement; in EU–Colombia/Peru through the Sub-committee on Trade and Sustainable Development (SCTSD)) Peru: • Legal: introduced labour regulations (that is, to promote equal opportunities for people with disabilities, encourage the respect of fundamental labour rights in specific industries) • Institutional: strengthening the labour inspection system (for example, increasing the amount of fines for labour violations); developed action plans to eradicate child and forced labour; promotion of CSR policies

directed at awareness-raising or capacity-building (for example, in CAFTA–DR). Furthermore, trade agreements increasingly refer to the role of the private sector in the promotion of CSR (for example, the EU–Republic of Korea and EU–Colombia/Peru trade agreements).

Labour advocates have not only collaborated across borders through coalitions, which have proven useful in dispute settlement mechanisms, but also highlighted the importance of linking monitoring mechanisms to specific objectives and timeframes, such as in the case of CAFTA–DR and the US–Colombia agreement.

Methodological considerations

Effectiveness in this context is understood as any contribution to the promotion of labour rights and improved working conditions. As argued in Chapter 2, legal, institutional and political changes are considered as instances of effectiveness, representing a step forward towards the final goal of improving the rights and conditions experienced at the workplace (Aissi et al., forthcoming).

This section applies a case study method, where the cases selected represent illustrations of how stakeholders have played a role in the negotiation and implementation of labour provisions in trade agreements. The cases are understood as "best case examples", that is, cases have been selected based on indications of successful involvement. This is important to take into consideration when making generalizations based on the findings. The selection of cases is based on the following criteria: (i) having a trade agreement in place that contains a labour provision with an activated mechanism for stakeholder involvement; (ii) being a more recent generation agreement; (iii) feasibility (for example, data availability, language, and so forth);[171] (iv) potential for comparison; and (v) indication of impact.

In this regard, table 3.2 summarizes the outcomes of stakeholders' involvement in the cases that were analysed. In each of the cases, it has been the combination of five specific mechanisms of involvement: legal, political, economic, development cooperation and monitoring that have contributed to the outcomes.

CAFTA–DR

In order to examine the effectiveness of non-state actors' involvement in US trade relations with Central America and the Dominican Republic, it is important to discuss the antecedent of CAFTA–DR, that is, the GSP scheme with these countries (1984–2003). The GSP has put in place various processes, which have set the framework for the CAFTA–DR negotiations. Stakeholders have been involved through almost all of the available mechanisms, where the main outcomes (some also referred in Chapter 2)

[171] Multiple data sources and methods have been used, such as assessment of policy documents and the conduct of semi-structured interviews.

have been increased prioritization, improved capacity of labour ministries and inspectorates, and the establishment of monitoring mechanisms.

Pre-CAFTA–DR: Sustained pressure and economic leverage

Under the US GSP, coalitions of North and Central American labour organizations played a key role in activating the different mechanisms provided for in the arrangement by filing petitions. These petitions contributed to the introduction of democratic governance and human rights criteria in the GSP.[172]

In Guatemala, sustained pressure on the US administration and Congress by US-based labour advocates and Guatemalan trade unions resulted in – for the first time – a petition being accepted, in 1992.[173] Facing the threat of losing GSP benefits, the Guatemalan Government initiated its first labour reform in 40 years (Belanger, 1996). Following the petition, the USTR placed Guatemala on a "continuing review" status (1992–97) with permanent monitoring of labour commitments' compliance.[174] In parallel, the United States Agency for International Development (USAID) increased the budget for development cooperation for Guatemala, mainly directed at capacity-building in the Labour Ministry.

The negotiation of CAFTA–DR: heightened political pressure

During the negotiation phase of CAFTA–DR, beginning in 2002, civil society organizations took advantage of the political context and combined a range of strategies to promote labour standards. In 2002, working conditions in Central American factories had already received a great deal of attention from the media; consequently, labour issues were prioritized on the political agenda. Trade unions in the United States participated in labour advisory bodies and collaborated with their Central American counterparts to increase pressure on the US Congress, raise awareness and mobilize with the purpose of pushing for the inclusion of strong labour provisions in the agreement.

[172] Athreya (2011); Compa and Vogt (2001); Frundt (1998). For an explanation of the US GSP see Chapter 1.
[173] In 1992 the International Labor Rights Forum (ILRF), the Guatemala Labor Education Project (GLEP), allied unions and human rights groups filed a joint petition. Their strategy encompassed the submission of letters to members of the US Congress. In response, more than 100 members of Congress urged the USTR to accept the petition and to commence a review on Guatemala (Compa and Vogt, 2001).
[174] This monitoring, involving both Guatemalan and US organizations, has been found to be successful, as it led to the USTR's first own-initiated review of Guatemala (Compa and Vogt, 2001; USLEAP, 2007).

Arguments such as the economic dependency of the negotiating partners towards the United States and the importance of bilateral trade for US goods would ultimately facilitate the acceptance by all parties of adopting labour commitments in the framework of the agreement (Nolan García and O'Connor, forthcoming).

USDOL engaged actively with stakeholders in CAFTA–DR countries. It funded research projects conducted by civil society organizations to examine compliance with labour legislation in Central America.[175] The US Congress organized public hearings and linked the ratification of the agreement to the enforcement of labour laws (see Chapter 2) (US Congress, 2005; Delpech, 2013; *Inside US Trade*, 2005).

Implementation of CAFTA–DR: Enhanced dispute settlement and monitoring

In the implementation phase, some improvements were made in the region, generated, to a certain extent, by development cooperation and capacity-building programmes (see Chapters 1 and 2). However, in Guatemala, continued violations of labour rights eventually led to the activation of the agreement's dispute settlement mechanism (2008) by a transnational coalition of trade unions.[176] This resulted in the establishment of an arbitration panel in 2011, which was suspended until 2014, and the signing of an "Enforcement Plan" in April 2013.[177]

Nevertheless, in response to limited results, the arbitration panel has been reactivated and economic sanctions have been put back on the table. In the procedure, stakeholders have played important and divergent roles by providing their written views (box 3.3).

In 2012, a similar procedure was triggered in Honduras with the filing of a public submission by a transnational coalition of trade unions and civil society organizations.[178] In the public report of review to the submission

[175] For example, the ILRF. See Rodas-Martini (2006).
[176] The AFL–CIO and six other unions from Guatemala filed a public submission under the trade agreement to request action for Guatemala's failure to effectively enforce its labour laws. See Chapters 1 and 2.
[177] See ILO (2013); Governments of Guatemala and the United States (2013).
[178] Filed on 26 Mar. 2012 by the AFL–CIO and 26 other Honduran unions and civil society organizations.

Box 3.3 Participation of employers' organizations in CAFTA–DR

The Guatemalan case illustrates divergent approaches with respect to the role of trade unions and business organizations in dispute settlement. Employers' organizations (that is, the Guatemalan Association of Exporters (AGEXPORT), the Chamber of Agriculture and the Association of the Apparel and Textile Industry (VESTEX)) have filed written views under the dispute settlement procedure highlighting the negative economic impacts of the arbitration. They also supported the Government of Guatemala's position on its compliance with its labour commitments under CAFTA–DR. This is in opposition to the trade unions' position underlining the non-compliance of Guatemala with its labour obligations.

However, after the activation of the dispute settlement mechanism, employers' organizations in Guatemala – in particular from export sectors targeted in the submission, such as apparel and agriculture – have been more active in developing actions with positive implications for labour rights. For instance, the Chamber of Agriculture produced its "Labour Policy for the Agricultural Sector". This is an institutional guideline that has been produced with support of the Ministry of Labour with the objective of achieving formal employment with social coverage and to promote a culture of compliance with labour laws in the agricultural-livestock, agro-industrial and agro-exporter sectors. This is also one of the key areas of the White Paper.

(February 2015), USDOL recommended the development of a Monitoring and Action Plan. For its development, intergovernmental and tripartite meetings (including the governments and the social partners) were held. The Plan, released in mid-December 2015, includes intended outcomes (for example, improvements in the labour inspectorates to promote better law enforcement, to remedy labour law violations and to enhance institutional cooperation), 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 (USDOL, 2015b; Governments of Honduras and the United States, 2015).[179]

[179] It should be noted that some stakeholders have expressed concerns with respect to the delays in finding a solution to the different labour issues included in the submissions for Guatemala and Honduras (USGAO, 2014). However, as it has been assessed in this chapter, steps to resolve the issues have been taken (see also box 1.5 in chapter 1).

EU–Republic of Korea trade agreement

The EU–Republic of Korea trade agreement (2011) was the first of the new generation of agreements since the adoption of a new EU Trade Policy (which is now superseded by that of October 2015).[180] It includes an integrated approach towards sustainable development and civil society participation, reflected in the negotiations on and implementation of the agreement (Van den Putte, forthcoming).

In the negotiation phase, trade unions and other civil society groups requested strong labour provisions and sought a Korean commitment to respect ILO core labour standards.[181] European trade unions, collaborating with their Korean counterparts, brought diverse labour and human rights violations to the attention of the European Commission and Parliament through letters and public statements.[182] The European Parliament pushed for provisions that stressed the importance of civil society involvement to ensure that market liberalization would also raise social standards.[183]

As a result the agreement included a trade and sustainable development chapter, mandating the establishment of DAGs and a civil society forum (CSF). Both are monitoring mechanisms in the implementation of the chapter and promote domestic and transnational civil society dialogue.

Implementing these mechanisms has provided interesting preliminary results. Pressure from the EU DAG contributed to the reappointment of members within the Korean DAG to improve its inclusiveness.[184] Also, the EU DAG has raised awareness of violations, and produced a critical opinion identifying areas for action to further labour rights in the Republic of Korea.[185]

[180] See, for example, European Council (2006).
[181] For example, the European Trade Union Confederation (ETUC), International Trade Union Confederation (ITUC), and others supported the Korean Alliance to oppose the trade agreements with the EU and United States.
[182] See, for example, European Federation of Public Service Unions (2009) about violations against the Korean Confederation of Trade Unions and others.
[183] Motion for a Parliament Resolution 2007/2186 (INI).
[184] By June 2014 it expanded to include the main trade unions (Van den Putte, forthcoming).
[185] Some areas for action are the ratification and effective implementation of ILO Conventions. EU DAG (2013). See also Van den Putte (2015).

In January 2014, the EU DAG asked the European Commission to activate the dispute settlement mechanism and to proceed with consultations due to the Republic of Korea violating its commitments under the agreement.[186] 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. To achieve those objectives, both the Republic of Korea and the EU have engaged in regular technical dialogue with the ILO at the TSDC.[187] In this regard, the parties have interchanged information to follow up the ratification of ILO Conventions and also agreed to launch a project with particular emphasis on implementation of the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111).[188]

The CSF has intended to enhance dialogue between the civil societies of both parties. However, some participants while acknowledging the importance of these mechanisms recognize limitations to effectively address labour issues (Van den Putte, 2015). Discussions at the CSF have included: the promotion of CSR, considering that the agreement encourages parties to facilitate and promote trade in goods that contribute to sustainable development, including those involving CSR (the emergence of CSR in trade agreements is discussed in box 3.4).[189] In this regard, the third CSF meeting (December 2014) emphasized the need to implement surveillance of multinational enterprises (MNEs) operating in the EU and the Republic of Korea on their compliance with the principles of the Organisation for Economic Co-operation and Development (OECD) Guidelines, the UN Guiding Principles, the UN Global Compact and ISO 26000. More recently, the parties have discussed launching a project to further cooperation on CSR.[190]

Canada, EU and US trade agreements with Colombia and Peru

There are different approaches of Canada, the EU and the United States in their trade agreements with Peru and Colombia with respect to stakeholder

[186] The claims focused on the right to freedom of association. See EU DAG (2014).
[187] CTSD EU–Korea (2013).
[188] CTSD EU–Korea (2015); CSF EU–Korea (2015).
[189] See Art. 13.6(2) of the EU–Republic of Korea trade agreement.
[190] CTSD EU–Korea (2015).

Box 3.4 Emergence of CSR clauses in trade agreements

Although references to CSR in trade and investment agreements extend back to 2003–04, the European Parliament called for the systematic integration of CSR clauses in future trade and investment agreements in 2010 and 2011. Since 2009, Canada includes labour-related CSR clauses in its trade agreements as part of a more comprehensive approach towards promoting responsible business practices. The United States has also incorporated this type of provision and, since 2010, some EFTA agreements make reference to CSR. Illustrations of trade agreements including CSR are the EU–CARIFORUM EPA (2008), and the US–Peru (2009), Canada–Peru (2009) and US–Colombia (2012) trade agreements.

The references to CSR commitments in trade agreements include the following: (i) the encouragement of enterprises to voluntarily incorporate/observe CSR mechanisms (for example, the introduction to the EFTA–Montenegro agreement (2012)); (ii) the promotion of sustainable development through CSR, including promotion of trade in goods that are subject of CSR schemes (for example, the EU–Republic of Korea agreement, Article 13.6(2) (2011); and (iii) cooperative activities, which may be included among other CSR activities (for example, the US–Peru trade agreement, Annex 17.6, Article 2 (2009).

Most trade agreements with CSR references provide for various implementation mechanisms, including development cooperation (for example, sharing of best practices, capacity-building, among others things) and monitoring, through inter-governmental dialogue or through the involvement of trade unions, private sector and other civil society organizations.

involvement (table 3.3). However, opportunities for enhanced cooperation and coordination in monitoring the implementation of commitments (for example, action plans and roadmaps) should be further explored.

Public attention during negotiations

The negotiation and the ratification of the Canadian, EU and US trade agreements with Colombia and Peru received much public attention in the relevant countries. In particular, the situation in Colombia has been strongly politicized and led to strong labour commitments and improvements.

An important strategy for labour advocates has been the transnational collaboration between Canadian, European and US trade unions and their

Table 3.3. Approaches for stakeholders' participation with Colombia and Peru

Trade agreements with Colombia and Peru	Political	Legal / dispute settlement	Monitoring
Canada	Advocacy towards Parliament (more present in the case of Colombia)	Mechanism not activated	Annual Reports on Human Rights and Free Trade (Colombia)
EU–Colombia/Peru	In both cases (advocacy towards Parliament, official missions to interview stakeholders)	No mechanism for public submissions available	• Roadmap • DAGs and civil society dialogue
United States	In both cases (pre-ratification requirements)	For Peru two public submissions filed (2010, 2015), and one for Colombia (2016)	• US–Colombia LAP • Permanent National Advisory Committee for Labour Provisions

counterparts in Colombia and Peru. Canadian and European civil society groups, for instance, campaigned together with their Colombian counterparts to get wider public involvement, and to advocate for constructive debate on the issue.[191]

In parallel, stakeholders combined various strategies, including advocacy towards parliaments. In Canada, civil society organizations lobbied Parliament to conduct an ex-ante human rights impact assessment, recommended by the Standing Committee on International Trade but never conducted.[192] Additionally, in both Canada and the EU, advocacy triggered official missions to hear testimonies from stakeholders on the potential impacts of the trade agreements.

The US Congress pushed for the delay of the entry into force of the agreement with Peru (signed in December 2006 and entered into force in 2009) and blocked the US–Colombia trade agreement for years (signed in February 2006 and entered into force in 2012). This resulted in negotiations with more attention to labour rights and enforceable provisions in line with the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (Vogt, 2014; Cooper, 2014). For Peru, changes were demanded prior to the ratification in domestic labour legislation related to the right to strike, temporary employment and protections for trade unionists (ILO, 2013). In the case of Colombia, the US Congress conditioned the ratification of the agreement to compliance with the US–Colombia LAP (Governments of Colombia and the United States, 2011).

[191] For example, the Canadian Labour Congress (CLC) and the Canadian Council for International Co-operation (CCIC).
[192] However, it had effects in the ex-post-human-rights assessments. See CPSCIT (2010).

Monitoring during implementation

Public concerns and the close follow-up by labour advocates in Canada, the EU and the United States motivated the establishment of a type of monitoring mechanism. However, the three actors took different approaches, with different implications for effectiveness.

In the case of the EU, the European Parliament adopted a resolution calling for the development of a roadmap to tackle various issues including labour law enforcement, particularly related to freedom of association and the right to collective bargaining, labour regulation, inspections and social dialogue.[193] In the implementation phase, both the Colombian and the Peruvian Governments have taken steps towards addressing the concerns of the European Parliament (Government of Colombia (2012); EU–Colombia/Peru SCTSD, 2014). Furthermore, the Parliament also sent delegations to Colombia and Peru to consult with stakeholders (Peru in May 2013, and Colombia in October 2013 and April 2014).[194] Also, in the follow-up of commitments the governments engage in dialogue through the SCTSD, where areas of cooperation have been outlined, including CSR, prevention and eradication of child labour and forced labour and prevention and resolution of labour conflicts.[195]

In Canada's case, an additional monitoring commitment has been agreed upon (2010) which entered into force in 2011, establishing for the first time in a Canadian trade agreement an obligation for the parties to conduct yearly self-assessments on trade agreements' human rights implications.[196] Canada has issued the ex-post periodic assessments, but their scope and effectiveness have been criticized.[197] To produce the assessment, the Canadian Government relies on an online consultation mechanism, allowing submissions from stakeholders. For the 2014 analysis, the Canadian Government engaged in meetings with companies, trade unions, the Colombian Government and civil society organizations, focusing on the coffee and petroleum sectors. Stakeholders acknowledged

[193] See European Parliament (2012).
[194] See European Parliament (2014).
[195] Sub-Committee on Trade and Sustainable Development (2015).
[196] See Agreement concerning annual reports on human rights and free trade between Canada and the Republic of Colombia (Government of Canada, 2015).
[197] Labour groups and human rights advocates, supported by politicians, question "the Canadian government's commitment to carry out a meaningful assessment" (Trew, 2014; Rochlin, 2014).

improvements in living and working conditions, especially in the petroleum sector (2011–12) but also recognized that important challenges remain for the coffee industry, mostly in gender equality and child labour. However, the assessment finds no consensus with regard to the magnitude of the improvements. Until now the assessments for the years 2012, 2013 and 2014 have stressed the impossibility of demonstrating that any of the impacts in human rights – positive or not – was due to the agreement.

The US–Colombian LAP includes specific steps and timelines to improve workers' rights and, in particular, freedom of association and collective bargaining – key areas for improvement, which are also present in the European Parliament resolution towards a development of a roadmap under the EU–Colombia and Peru agreement. It also combines US-funded development cooperation programmes directed at capacity-building, some implemented by non-state actors, and cooperation with the ILO (see Chapters 1 and 4).[198] Some trade unions consider the plan to be valuable but insufficiently implemented considering, among other reasons, that many violations against trade unionists still occur and public institutions require further strengthening to apply labour measures (ENS, 2015). Nevertheless, it established a framework for close monitoring and progress reporting. In particular, the plan includes periodic inter-ministerial dialogue and congressional visits to Colombia for the purpose of consulting with stakeholders, as well as the issuance of various reports assessing the plan's implementation (USGAO, 2014).

The Colombian Government executes the main monitoring of the LAP's developments through an annual compliance report, but it has also become a mechanism for civil society to provide parallel monitoring.[199] So far, reported impacts include institutional and legal changes, as well as efforts to reduce violence.[200] The Action Plan is still being implemented.[201] Furthermore, to improve the implementation and monitoring of the

[198] USDOL (2013).
[199] For example, Escuela Nacional Sindical assessed compliance with the LAP (ENS, 2015).
[200] USDOL (2015a); Government of Colombia (2014). For example, Colombia established a system of full-time personal protections for trade unionists and advocates, conducted inspections and applied fines targeting specific sectors (for example, palm oil, mines and ports).
[201] The United States will continue engagement with stakeholders and the Colombian Government (USDOL, 2015a).

LAP and the US–Colombia trade agreement, additional measures have been undertaken, such as the appointment of an OTLA labour attaché based in Bogota, Colombia.[202]

[202] Similar measures have been applied in Bangladesh, and will be applied with other US partners, such as Honduras and Viet Nam (Reuters, 2015; USTR, 2015; Interview, 2016).

C CONCLUSIONS

The majority of countries and parties to the trade agreements analysed in this chapter incorporate, in one way or another, a mechanism for stakeholder participation. In this respect, an increasing trend to enhance transparency by providing access to policy documents, such as negotiation positions and – in some areas – negotiation texts, can be observed. However, challenges to fully activate the mechanisms and, as such, enable a meaningful involvement based on transparency, dialogue and accountability still exist.

Meaningful involvement requires both the necessary prioritization of this in public administrations, and active engagement and technical capacity on the side of stakeholders to optimize their impact on policy-making. There are a number of ways to address this challenge, such as through better quality of and access to information. For instance, improved access to negotiation positions and texts, or sustainability impact assessments (SIAs), is likely to enhance the capacity of stakeholders to be involved, as well as input quality. Furthermore, meaningful participation involves not only being informed, but also being heard. An important area of improvement therefore concerns feedback to stakeholders on whether and how expertise and views are reflected in final policy decisions. In this regard, the provision of feedback mechanisms, where actors see the actual benefits of involvement and gain insights on which topics are more likely to be integrated in the final policy decisions, may elevate the perceived usefulness of these mechanisms and increase commitment to participate.

Second, transnational collaboration between labour advocates has been found to be effective in pooling resources, raising awareness among the broader public, and in increasing pressure on policy-makers and the private sector to comply with labour standards. This is therefore a strong argument to invest in mechanisms that promote alliances across borders. In this regard, closer cooperation between governments is an interesting area with room for further development. For example, Canada, the EU

and the United States have all concluded trade agreements with Colombia and Peru, creating an opportunity for closer collaboration and coherence between governments.

Thirdly, this chapter shows that labour advocates, including workers' and other civil society organizations, have combined different strategies of involvement that often triggered the activation of other mechanisms, ranging from political, legal and economic mechanisms to development cooperation and monitoring. This suggests the importance of an integrated, all-encompassing mechanism for stakeholder involvement that is closely tied to all dimensions of labour provisions and the agreement as a whole. SIAs, for instance, not only take the views of stakeholders into consideration, but can also deliver input to stakeholders during the monitoring of the agreement. Stakeholder involvement can therefore be understood as a transversal dimension that is key to negotiating, activating and monitoring trade agreements efficiently.

Private sector involvement is also important. Trade agreements increasingly refer to the role of the private sector in the promotion of labour standards through CSR initiatives. Notwithstanding the voluntary character of CSR provisions, these hold the potential to be activated and further explored under the existing implementation mechanisms of agreements.[203] This is an area that remains under-explored not only in research, but also by practitioners.

Moreover, the ILO, given its tripartite nature, has a role to play in supporting social partners in monitoring trade agreements. The overall role of the ILO on the issue of labour provisions in trade agreements is discussed in depth in Chapter 4.

Finally, there is still a need to assess other important dialogue mechanisms. Legislative bodies at the national level, such as congress and parliaments, have played important roles in furthering the labour dimension of trade agreements, during both negotiation and implementation. During ratification, for instance, stakeholders have often directed their efforts to congress

[203] See Kolben (2007) and Peels and Schneider (2014) for further discussion on the issue.

or parliaments in order to weigh indirectly on decision-making. Most of the agreements also provide for periodic reporting obligations on labour commitments towards their respective legislative bodies. Furthermore, the dialogue mechanisms that exist at the level of the respective executives – that is, during negotiation, through the SCTSD – in the implementation of development cooperation or during dispute settlement offer important means to enhance labour rights and working conditions. Both areas deserve more research to complement the current assessment of stakeholder involvement, develop a fuller understanding of dialogue mechanisms and better grasp the respective roles of the various actors involved.

REFERENCES

Aissi, J.; Peels, R.; Samaan, D. Forthcoming. *Evaluating the effectiveness of labour provisions in trade agreements – A synthesis* (Geneva, International Labour Office).

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.

Ang, D.; Brown, D.; Dehejia, R.; Robertson, R. 2012. "Public disclosure, reputation sensitivity, and labor law compliance: Evidence from Better Factories Cambodia", in *Review of Development Economics*, Vol. 16, No. 4, pp. 594–607.

Athreya, B. 2011. *Comparative case analysis of the impacts of trade-related labor provisions on select US trade preference recipient countries* (USDOL).

Belanger, A.E. 1996. "Internationally recognized worker rights and the efficacy of the generalized system of preferences: A Guatemalan case study", in *American University International Law Review*, Vol. 11, No. 1, pp. 101–136.

Bertelsmann Stiftung. 2014. *Experts call for transparency in TTIP negotiations*. Available at: https://www.bertelsmann-stiftung.de/en/our-projects/strengthening-and-connecting-europe/news/experts-call-for-transparency-in-ttip-negotiations/.

Bourgeois, J; Dawar, K; Evenett, S. 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.

Buchanan, R; Chaparro, R.M. 2008. *International institutions and transnational advocacy: the case of the North America Agreement on Labour Cooperation*, CLPE Research Paper 22/2008.

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

Canadian Parliamentary Standing Committee on International Trade (CPSCIT). 2010. *Minutes* No. 18, Third Session, 40th Parliament. Available at: http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4549789&Language=E&Mode=1.

Civil Society Forum (CSF EU–Korea). 2015. *Conclusions issued by the co-chairs, Mr Hoi-Seong Jeong, Dr Kiu Sik Bae and Mr Thomas Jenkins*, Fourth meeting, Seoul, 10 Sep.

Commission of the European Communities (CEC). 2002. *Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission*, Communication from the Commission, COM(2002) 704 final.

Committee on Trade and Sustainable Development under the EU–Korea trade agreement (CTSD EU–Korea). 2013. *Joint statement of the second meeting*, 11 Sep.

—. 2015. *Joint statement of the fourth meeting*, 9 Sep.

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

—; Brooks, T. 2014. "Chapter 9. Labor provisions of post-NAFTA free trade agreements in North America", in Blanpain, R. (ed.), *IEL Labour Law* (Kluwer Law International BV, the Netherlands).

—; Vogt, J. 2001. "Labor rights in the generalized system of preferences: A 20-year review", in *Comparative Labor Law & Policy Journal*, Vol. 22, pp. 199–238.

Cooper, W.H. 2014. *Free trade agreements: Impact on US trade and implications for US trade policy*, CRS report RL31356 (Washington, DC, Congressional Research Service).

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, ILO).

Douglas, W.A.; Ferguson, J.; Klett, E. 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. 273–299.

Escuela Nacional Sindical (ENS). 2015. *Informes sobre los cuatro primeros años de implementación del plan de acción laboral (2011–2015)*. Available at: http://ens.org.co/apc-aa-files/4e7bc24bf4203c2a12902f078ba45224/Informe_final_completo_Plan_de_Acci_n_Laboral_2011_2015_Versi_n_4_Abril.pdf.

European Commission. 2011. *Directorate-General for Trade: Civil society dialogue on trade*. Available at: http://trade.ec.europa.eu/doclib/docs/2010/june/tradoc_146254.pdf.

—. 2014. *Transatlantic Trade and Investment Partnership (TTIP) Advisory Group: Terms of Reference*. Available at: http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc_152103.pdf.

—. 2015a. *TTIP and regulation: An overview*. Available at: http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153121.pdf.

—. 2015b. *Trade for all: Towards a more responsible trade and investment policy*. Available at: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf.

European Council. 2006. *Renewed EU Sustainable Development Strategy*, 10917/06 (Brussels), Annex.

European Parliament. 2012. *Resolution of 13 June on EU trade agreement with Colombia and Peru*, 2012/2628(RSP).

—. 2014. *Delegation for relations with the countries of the Andean Community: An Introduction to the Delegation and summary of activities during the seventh parliamentary term (2009–2014),* DV\1032007EN.doc.

European Union Domestic Advisory Group (EU DAG) of the EU–Republic of Korea Trade Agreement. 2013. *Opinion on the Fundamental rights at work in the Republic of Korea, identification of areas for actions, Rapporteur: Mr Altintzis* (Brussels).

Available at: http://portal.eesc.europa.eu/eu-korea-dag/About-DAG/Pages/Adopted-Documents.aspx.

—. 2014. *Letter to Mr Karel De Gucht, Commissioner DG Trade*, 13 Jan. (Brussels). Available at: http://portal.eesc.europa.eu/eu-korea-dag/About-DAG/Pages/Adopted-Documents.aspx.

European Union (EU)–Colombia/Peru Sub-Committee on Trade and Sustainable Development (SCTSD). 2014. *Joint statement*, 6 Feb.

European Federation of Public Service Unions. 2009. Letter to Mr José Manuel Barrosso (15 September). Available at: http://www.epsu.org/IMG/pdf/letter_to_Mr_President_Barroso_re_south_korean_FTA.pdf.

Flynn, S. 2012. *Law professors call for Trans-Pacific Partnership (TPP) transparency*, letter to former USTR Ron Kirk. Available at: http://infojustice.org/archives/21137.

Frundt, H.J. 1998. *Trade conditions and labor rights: US initiatives, Dominican and Central American responses* (Miami, University Press of Florida).

Government of Canada. 2010. *Minister Raitt establishes the Advisory Council on Workplace and Labour Affairs*, news release, 24 Nov., http://news.gc.ca/web/article-en.do?nid=575689.

—. 2015. *Annual report pursuant to the agreement concerning annual reports on human rights and free trade between Canada and the republic of Colombia*.

Government of Canada, Foreign Affairs Trade and Development. 2015a. *International trade agreements and local government: A guide for Canadian municipalities*.

—. 2015b. *Free trade agreements (FTA) consultations*, http://www.international.gc.ca/trade-agreements-accords-commerciaux/consultations/fta-ale.aspx?lang=eng.

Government of Colombia. 2012. *Plan de Acción Colombia y Carta al Presidente del Parlamento Europeo*, 26 Oct. Available at: http://www.fdcl.org/wp-content/uploads/2014/01/Plan-de-accion-Colombia-y-carta-al-presidente-PE_ES.pdf.

—. 2014. *Informe de Cumplimiento Plan de acción de Colombia y Estados Unidos para Derechos Laborales*. Available at: http://www.mintrabajo.gov.co/publicaciones-mintrabajo/3792-informe-final-plan-de-accion-de-colombia-y-estados-unidos-para-derechos-laborales.html.

Governments of Colombia and the United States. 2011. *Colombian Action Plan related to labor rights*, 11 Apr. Available at: https://ustr.gov/sites/default/files/uploads/agreements/morocco/pdfs/Colombian%20Action%20Plan%20Related%20to%20Labor%20Rights.pdf.

Governments of Guatemala and the United States. 2013. *Guatemala–US Mutually Agreed Enforcement Plan*. Available at: https://ustr.gov/sites/default/files/04292013%20Guatemala%20Enforcement%20Plan.pdf.

Governments of Honduras and the United States. 2015. *Labor Rights Monitoring and Action Plan as Mutually Determined by the Government of the United States and the Government of Honduras*. Available at: http://www.dol.gov/ilab/media/pdf/Honduras_MAP.pdf.

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

Greven, T. 2005. *Social standards in bilateral and regional trade and investment agreements: Instruments, enforcement, and policy options for trade unions* (Geneva, Friedrich-Ebert-Stiftung). Available at: http://library.fes.de/pdf-files/iez/global/50087.pdf.

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

ILO. 2013. *Studies on growth with equity: Social dimensions of free trade agreements* (Geneva, IILS).

Inside US Trade. 2005. "Portman unveils plans for CAFTA funds in effort to draw votes", 22 July.

—. 2015a. “AFL–CIO poised to release labor analysis of TPP ahead of House TPA vote”, 2 June.

—. 2015b. “USTR allows cleared advisers to view TPP texts as of July 9”, 10 July.

—. 2015c. “AFL–CIO pushes Froman for strong TPP ROO for autos, parts; Blasts lack of transparency, supporting data”, 25 Aug.

—. 2015d. “Doggett, union allies carry fight over transparency into TTIP debate”, 29 Oct.

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.

Kolben, K. 2007. “Integrative linkage: Combining public and private regulatory approaches in the design of trade and labor regimes”, in *Harvard International Law Journal*, Vol. 48, pp. 203–256.

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.

—; O’Connor E. Forthcoming. *The effectiveness of trade-based clauses in improving labour rights protections: The case of the CAFTA–DR labour clause*, ILO Research Department background paper (Geneva, ILO).

Oka, C. 2010. “Accounting for the gaps in labour standard compliance: The role of reputation-conscious buyers in the Cambodian garment industry”, in *European Journal of Development Research*, Vol. 22, No. 1, pp. 59–78.

Organization for Economic Cooperation and Development (OECD). 2002. *OECD reviews of regulatory reform: Canada 2002 – Maintaining leadership through innovation* (Paris, OECD Publishing).

Peels, P.; Schneider, A. 2014. "The potential role of the ILO to enhance institutional coherence on CSR in international trade and investment agreements", in *Bulletin of Comparative Labour Relations*, Vol. 89.

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.

Rettberg, A.; De Lombaerde, P.; Lizarazo Rodriguez, L.; Ortiz-Riomalo, J. 2014. *The politics of free trade agreements (FTAs) and the strategic use of a rights discourse: The cases of the Colombian FTAs with the United States and the European Union*.

Reuters. 2015. "Back from Bangladesh, NRF Executives Say Garment Factory Safety is Improving", Sep 8. Available at: http://www.reuters.com/article/nrf-bangladesh-workers-idUSnBw086591a+100+BSW20150908.

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*, Vol. 18, Nos. 4–5, pp. 545–566.

Rodas-Martini, P. 2006. "Labor commitment in the Central America Free Trade Agreement (CAFTA): A non-negotiated negotiation", in *Integration and Trade*, Vol. 10, No. 25, pp. 281–296.

Sub-Committee on Trade and Sustainable Development, under the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part. 2015. *Joint statement of the second meeting*, 16–17 June.

Trew S. 2012. *The CETA deception: How the Harper government's public relations campaign misrepresents the Canada–European Union Comprehensive Economic and Trade Agreement*, 17 July (Council of Canadians). Available at: http://canadians.org/sites/default/files/publications/CETADeceptionreport-finalJuly2012.pdf.

—. 2014. *Groups decry "meaningless" consultation in Canada-Colombia FTA human rights impact assessment process* (Council of Canadians). Available at: http://canadians.org/blog/groups-decry-%E2%80%9Cmeaningless%E2%80%9D-consultation-canada-colombia-fta-human-rights-impact-assessment.

United States Congress (US Congress). 2005. *Hearing before the Committee of Ways and Means US House of Representatives*, 109th Congress, First Session, 21 Apr.

USDOL. 2005. "National Advisory Committee for Labor Provisions of US Free Trade Agreements: Notice of Charter Reestablishment", in *Federal Register*, Vol. 70, No. 56.

—. 2006. "National Advisory Committee for Labor Provisions of US Free Trade Agreements: Notice of Open Meeting", in *Federal Register*, Notice 71 FR 45075.

—. 2013. *Strengthening Protections of Internationally Recognized Labor Rights in Colombia*. ILAB Technical Cooperation Project Summary.

—. 2015a. *Standing up for workers: Promoting labor rights though trade*, special report.

—. 2015b. *Public report of review of US submission 2012-01 (Honduras)*. Available at: http://www.dol.gov/ilab/reports/pdf/Final_Report_of_Review-Honduras_Submission_022715_redacted.pdf.

—. *National Advisory Committee for Labor Provisions of US Free Trade Agreements, Meeting minutes*. Available at: http://www.dol.gov/ilab/trade/agreements/nac.htm.

United States Labor Education in the Americas Project (USLEAP). 2007. *Trade pressure used to support workers*, 1 June. Available at: http://laborrights.org/blog/200706/trade-pressure-used-support-workers.

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

USGAO. 2014. *Free trade agreements: US partners are addressing labor commitments, but more monitoring and enforcement are needed*, Report to Congressional Requesters, GAO-15-160. Available at: http://www.gao.gov/assets/670/666787.pdf.

Van den Putte, L. 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*, background paper (Geneva, ILO Research Department).

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

Vogt, J. 2014. "Trade and investment arrangements and labor rights", in L. Blecher, N.K. Stafford and G. Bellamy (eds): *Corporate responsibility for human rights impact: New expectations and paradigms* (Washington, DC, American Bar Association).

Washington Post. 2014. "Industry voices dominate the trade advisory system", 27 Feb. Available at: http://www.washingtonpost.com/wp-srv/special/business/trade-advisory-committees/.

Interviews conducted:

2014a. European Trade Union Confederation Representative, 5 Dec.

2014b. European Trade Union Confederation Representative, 5 Dec.

2014c. European Parliament Representative, 10 Dec.

2014d. Canadian Labour Congress Representative, 12 Dec.

2015a. Chilean Negotiator, 28 Jan.

2015b. Canadian Employers Council Representative, 30 Jan.

2015c. Business Europe Representatives, 18 Feb.

2015d. Canadian Government Representative, 10 Mar.

2015f. New Zealand Council of Trade Unions Representative, 25 Sep.

2016. US Government Official, 12 Jan.

CHAPTER 4
TOWARDS ENHANCED COHERENCE?

KEY FINDINGS

- This chapter assesses the various contributions of the ILO work on trade arrangements. The chapter finds that, upon request, the ILO provides advice and technical expertise on the design, implementation and enforcement of labour provisions. Trade partners have requested the ILO's advice through technical assistance on various standards-related questions.

- Trade partners have also relied on the ILO's publicly available information. In identifying and designing the applicable labour provisions, trade partners frequently use the ILO supervisory bodies' comments as a source of information concerning the prospective trade partners' labour practices. Additionally, the debates that take place between governments and workers' and employers' representatives in different forums, but particularly during the CAS, have been important platforms at the ILO for discussion of trade-related labour issues and accordingly the enhancement of institutional coherence.

- The ILO's priorities are also reflected in development cooperation projects between trade partners, both with and without the direct support of the ILO. In general, the chapter shows that areas of ILO involvement are closely interlinked, as development cooperation with the ILO tends to be aligned with its overall priorities.

- The chapter suggests the need to raise awareness of the role that the ILO has been playing with respect to labour provisions, to better understand the coherence between ILO instruments and trade-related labour provisions as labour rights and principles and their consistent implementation at national levels, and to strengthen and promote the relevance and complementarities of development cooperation among various trade partners.

INTRODUCTION

The previous chapters outlined various aspects with respect to the content, implementation and effectiveness of labour provisions in trade agreements. This analysis highlights that, increasingly, trade agreements contain labour provisions that frequently incorporate references to ILO instruments, principles and standards. However, the complexity caused by the proliferation of cross-cutting trade agreements and the different rules they impose may, as Bhagwati (1995) puts it, result in a "spaghetti bowl effect", with regulation of labour standards being enforced through different channels and levels. This raises the issue of coherence in at least three aspects.

First, there are different approaches to including labour provisions in trade agreements. These approaches differ with respect to normative contents as discussed in Chapter 1 – for example, reference to 1998 ILO Declaration or the Decent Work Agenda – but also implementation mechanisms such as development cooperation and the involvement of stakeholders (as discussed in Chapter 3), as well as monitoring and dispute settlement. Consequently, as parties to numerous trade agreements, countries can find themselves bound to different types of labour provisions. This wide diversity with regard to the design and implementation of labour provisions suggests the need to examine and better understand the different approaches to ensure the overall objective of promoting labour standards through trade agreements.

Second, there is a strong argument that other chapters of the trade agreement (for example, on investment arbitration or intellectual property rights) may impact on policy coherence, as other related policy areas may have direct or indirect implications for labour.[204] This inconsistency might limit the capacity of governments to implement efficient and coherent national policies, from a financial or social perspective.[205] As a response,

[204] For example, while trade-related aspects of intellectual property rights (TRIPS-plus) measures cover additional intellectual property issues and make it harder for countries to adapt them to changing circumstances, provisions on competition may lead developing countries to dismantling their State-owned monopolies, the only ones capable of providing certain services in these countries (UNCTAD, 2014); see Krajewski (2014).

[205] The issue has also been debated within the Human Rights Council (HRC) in 2009 and 2015. The former UN Special Representative of the Secretary-General on the Issue of Human Rights commented: "Recent experience suggests that some treaty guarantees and contract provisions may unduly constrain the host Government's ability to achieve its legitimate policy objectives, including its international human rights obligations" (Ruggie, 2009). See also United Nations General Assembly Human Rights Council (2015).

a "right to regulate" or "policy space" clause is often included in agreements to balance legitimate expectations of investors on the one hand and States' ability to achieve legitimate policy objectives on the other. This is discussed in Chapter 1.

Third, references to specific ILO instruments in trade agreements (Chapter 1), and the WTO's decision to leave questions concerning labour standards to the ILO[206] raises the issue of coherence between ILO instruments and standards, and their consistent implementation at national levels and across agreements.[207] Indeed, the ILO's constitutional mandate includes (i) the promotion of compliance with international labour standards, (ii) the provision of technical assistance, and (iii) the fostering of legal certainty on the meaning and implications of international labour standards. This provides a broad basis for the ILO to assist States, voluntarily and when requested, on matters related to labour standards in trade agreements. The 2008 ILO Declaration on Social Justice for a Fair Globalization goes further, by explicitly mentioning that the ILO, upon request, can provide assistance to its members within the framework of bilateral and multilateral agreements to ensure compatibility with ILO obligations.[208]

This chapter will discuss the main areas where the ILO through its work (including advice, technical assistance and the comments of the supervisory system) has been contributing to enhanced alignment and coherence in the implementation of labour standards across trade agreements. Section A provides a general perspective of the direct and indirect assistance provided by the ILO in the form of advice and technical expertise. This assistance can concern the design, implementation and enforcement stages of labour provisions. Section B focuses more specifically on the implementation of ILO priorities in trade agreements through development cooperation activities. The conclusions summarize the key findings of the report, assessing them from the angle of coherence and the impact of the ILO's work on trade arrangements.

[206] See Agustí-Panareda, et al. (2014).
[207] Maupain (2013) suggests that the ILO, acting through its members, can promote greater coherence in their internal policies, which would contribute to wider coherence in the implementation of social, economic and trade objectives.
[208] 2008 ILO Social Justice Declaration, Art. II(a)(iv).

A COHERENCE WITH ILO'S STANDARDS AND SUPERVISORY SYSTEM

Trade partners have requested the ILO's advice and technical assistance on various standards-related questions. They have also relied on the use of the ILO's publicly available information (that is, the comments of its supervisory system via the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the CAS, and the Committee on Freedom of Association (CFA), among other things). The information obtained from the ILO standards and supervisory system is useful to trade partners because it discusses the implementation of international labour standards and ILO instruments that are often referenced in the trade agreements' labour provisions (box 4.1). Additionally, the debate that takes place between governments (some of whom are parties to trade agreements) and workers' and employers' representatives during the CAS is an important platform to discuss trade-related labour issues and to examine the coherence between ILO instruments and standards (mainly referred to in labour provisions as labour rights and principles) and their consistent implementation at national levels.

Direct requests by member States for advice

The ILO has, in response to requests from members, delivered advice concerning potential trade partners' labour practices within the framework of their trade agreements. This advice has been used at all stages of trade agreements, at both country and regional levels.[209] Such advice is recognized as a means for effectively assisting the ILO's members in their efforts to pursue ILO's own objectives, as provided in the ILO Declaration on Social Justice for a Fair Globalization, 2008.[210]

[209] While referring to dispute settlement, this also includes procedures for suspension or withdrawal of benefits in unilateral trade arrangements.

[210] See the Social Justice Declaration, Part II, A, (iv). The Social Justice Declaration is the third major statement of principles and policies adopted by the ILC and builds on the Philadelphia Declaration of 1944 and the Declaration on Fundamental Principles and Rights at Work of 1998. The Social Justice Declaration expresses the contemporary vision of the ILO's mandate in the era of globalization. The evaluation of the impact of the Social Justice Declaration was on the agenda of the 105th Session of the ILC (June 2016).

Box 4.1 References to the ILO and its instruments

Labour provisions in trade agreements increasingly make reference to the ILO, its instruments (mainly Conventions and Declarations), and the principles and standards comprised in such instruments (see Chapter 1).[1] These references raise questions with respect to the legal content and the significance of their inclusion in trade agreements. Agustí-Panareda, et al. (2014, 2015) shed some light on this issue and highlight two main trends in the incorporation of references to ILO instruments in labour provisions.

The first trend is related to the *reaffirmation* of the parties of their obligations as ILO members or their "political commitment" to ILO principles and standards. This reaffirmation does not necessarily create new obligations for the parties to the agreement and is present in most of trade agreements.[2]

The second trend is the explicit *reference to* ILO instruments, mainly the 1998 ILO Declaration, to outline the scope of the labour obligations and/or to comply with specific ILO obligations. For instance, the US–Colombia trade agreement establishes that the parties shall "effectively enforce" their labour laws, including those adopted and maintained in accordance with the 1998 ILO Declaration;[3] while the EU–CARIFORUM agreement refers to the obligation of the parties to ensure that they "provide for and encourage high levels of social and labour standards consistent with the internationally recognized core labour standards, as defined by the relevant ILO Conventions".[4]

These references may or may not be enforceable through the dispute settlement mechanisms provided in the agreements and be subject to sanctions, when applicable, according to the model provided. For example, some Canadian ALCs in dispute settlement limit the jurisdiction of the review panels to the extent of obligations referred to in the 1998 ILO Declaration (see Chapter 1).

With regard to the implications of the references to ILO instruments, mainly Conventions or the principles and rights contained in the 1998 ILO Declaration, the authors point out that a reference to the 1998 ILO Declaration and not to a specific convention reaffirms the members' commitments towards the principles concerning the rights, but not the specific rights contained in the corresponding conventions. This reference creates a degree of vagueness and uncertainty with respect to its content, particularly when it has to be applied in a context outside of the ILO (for example, arbitral panels constituted under trade agreements). This could conceivably have implications for the application and possible interpretation different from those provided by the ILO and its supervisory system (see also Peels and Fino, 2015).[5]

[1] The ILC sets international labour standards through Conventions, Recommendations, and Protocols, which set out principles and rights at work (ILO, 2014a). However, Declarations, according to ILO (2011) are "*used by the ILO ILC or Governing Body in order to make a formal statement and reaffirm the importance which the constituents attach to certain principles and values. […] they are intended to have a wide application and contain symbolic and political undertakings by the member States. In some cases declarations could be regarded as an expression of customary law.*" This is the case of the 1998 ILO Declaration.

[2] However, the implementation mechanisms provided in the trade agreements might be applied to the "reaffirmation" of commitments of the parties, and therefore provide for "new ways" to comply with the underlying obligation reaffirmed.

[3] Article 17.2.2 and 17.3.1(a).

[4] Articles 191 and 192.

[5] See Maupain (2005) with respect to the significance and purpose of the 1998 ILO Declaration.

Design of labour provisions

While negotiating trade agreements, States have requested the ILO to provide information concerning policy coherence between national labour market policies and trade, to assess the impact that trade may have on national employment, and to provide advice on how to formulate effective labour provisions and policy responses. While this assistance is most commonly provided at the country level, it has also been sought on a regional level, to assess the potential effects of entering into a particular pluri-lateral or regional trade arrangement. Depending on the context, the ILO has responded by discussing the formulation of country- or region-specific policies with respect to labour standards, to help align legislation and practices with the objectives of the trade agreement. For example, during the negotiations of CAFTA–DR, the Central American governments requested the Office to develop a study to assess the conformity of each country's labour law in relation to the 1998 ILO Declaration (ILO, 2003). In other cases the Office has been requested by member States to provide advice on potential labour market impacts of trade agreements, and to provide advice on references to ILO instruments that could be included in the labour provisions.

Implementation stage

Trade parties also request ILO advice on implementing labour standards' commitments once a trade agreement has entered into force. This role has been expressly recognized in the labour provisions of many trade agreements, including those of Canada, the EU and the United States, which may refer to the ILO for recourse concerning labour issues.

The option to seek ILO advice is also mentioned in the framework of development cooperation. For example, in the case of the EU–CARIFORUM agreement, reference is made to the possibility of seeking advice from the ILO on best practice, the use of effective policy tools or the implementation of labour standards. In the Canada–Peru ALC (2009) the parties included the option to establish cooperative arrangements with the ILO (Article 25).[211] Further, the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC)

[211] This is a parallel agreement to the Canada–Peru trade agreement.

have both signed MoUs with the ILO that envision ILO input in the implementation of specific projects and labour programmes.[212]

Additionally, various trade agreements establish parallel cooperation agreements or plans that make the consultation with or involvement of the ILO even more explicit, such as the US–Colombia LAP or the CAFTA–DR "White Paper" (Chapter 2). Under the EU–Korea free trade agreement, the parties invited the ILO to participate in meetings of the TSDC (December 2014 and September 2015) and adopted a joint statement that includes concrete initiatives for the Republic of Korea to ratify and further implement ILO Conventions (see Chapter 3). The ILO also participated in the DAGs in parallel to these meetings.[213] In particular, the parties agreed to launch a project to revise the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in order to identify obstacles, lessons learned and best practice to promote compliance of the Convention.[214]

Other forms of ILO assistance have been requested with respect to monitoring of, and compliance with, the labour provisions of trade agreements. One example of this assistance took place within the framework of the Cambodia–US Textile Agreement in 2000 (see Chapter 2 and ILO (2013b)), in which the ILO's advice was requested concerning Cambodia's compliance with the labour standards under that Agreement.

Dispute settlement and application of sanctions

The possibility of seeking advice from the ILO to resolve questions of non-compliance with labour provisions has also been included in trade agreements. For instance, recent EU trade agreements explicitly mention the possibility of seeking advice from IOs, including the ILO, during governmental consultations and, since 2004, US trade agreements mention the option for respective national contact points to seek support from the

[212] See the *Memorandum of Understanding between the Economic Community of West African States and the International Labour Organization*, Art. III; and the *Memorandum of Understanding between the Southern African Development Community and the International Labour Organization*, Art. III.

[213] See European Commission (2015b).

[214] Based on the EU Partnership Instrument, which is contained in Regulation (EU) No. 234/2014 of the European Parliament and of the Council (11 Mar. 2017) establishing a Partnership Instrument for cooperation with third countries.

ILO.[215] In addition, in unilateral trade arrangements, among the determining criteria for revoking trade preferences based on labour requirements under the EU GSP+ are the conclusions of the relevant ILO monitoring bodies (see Chapter 1).[216] If those bodies identify a serious failure to effectively implement any of the respective Conventions, trade preferences may be revoked.[217]

Trade partners rely on the comments of the ILO's supervisory system

In addition to the direct assistance noted above, the publicly available comments of the ILO's supervisory system enable trade partners to make use of the information concerning States' implementation of labour standards in general. This information is publicly available and has been used by States in assessing trade partners' labour practices. More concretely, trade parties have used the conclusions of the supervisory mechanisms to identify and implement pre-ratification labour requirements or measures with certain countries,[218] to monitor the continuing implementation of international labour standards, as well as to identify gaps to direct development cooperation (box 4.2).

Design of labour provisions

In identifying and designing the applicable labour provisions, trade partners frequently use the ILO supervisory bodies' comments as a source of information concerning the prospective trade partners' labour practices.

[215] The contact points are offices that each party to a trade agreement designates within its labour ministry (or its equivalent entity) that serves as liaison with other parties to the agreement and the public.

[216] See European Commission (2013b).

[217] Within the context of the ILO there is not an authoritative definition of "serious failure" or "serious violation". A range of violations or failures can be identified in the work of the regular system of supervision and the special procedures: for example, serious failure to comply with reporting and other standards-related obligations, the inclusion of footnotes related to some cases in the comments of the CEACR, the inclusion of a special paragraph in the CAS report, cases identified by the CFA as "serious and urgent" or those subject to a Commission of Inquiry. For the purposes of GSP+, according to a European Commission Staff Working Document, a "serious failure" in the effective implementation of ILO Conventions takes place when the CAS introduces a "special paragraph" in its report, noting the existence of such failure (European Commission, 2013a). This definition, however, is not undisputed (Vogt, 2015), as to some extent it disregards the work of the other ILO supervisory bodies.

[218] In the case of Colombia, in 2008 and 2009 the CEACR issued several public comments to the Colombian Government, drawing its attention to the possibility to request ILO assistance to strengthen the implementation of ratified Conventions concerning freedom of association, the right to organize and labour inspection. Also, during hearings before the ratification of the agreement at the Subcommittee on Trade (Committee on Ways and Means, US House of Representatives), the work of ILO was mentioned to evaluate whether or not Colombia was acting in accordance to the standards mandated in the agreement (Mar. 2011), and the need for the development of a plan to address labour issues was stressed. Following this discussion the United States and Colombia entered into a Labour Action Plan (see Chapter 3).

Box 4.2 The ILO's system of supervision

Regular system of supervision

The ILO monitors the implementation of international labour standards through its supervisory mechanisms. Although ILO member States retain their sovereign right to decide whether or not to ratify an ILO Convention, once they do so, they are required to submit regular reports to the ILO on the measures they have taken, both in law and in practice, to give effect to the provisions of that Convention.[1] The ILO Constitution also requires members to submit reports on national laws and practice concerning Conventions that have not been ratified.[2]

- The Committee of Experts on the Application of Conventions and Recommendations (CEACR) is made up of 20 eminent jurists and appointed by the Governing Body. Based on its examination of member States' reports, the CEACR provides comments on the application of a particular Convention which are published in the Committee's annual reports.
- The CAS is a permanent tripartite body of the ILC that examines a selected number of CEACR's comments during its annual tripartite meeting. The CAS adopts conclusions, which are made publicly available in its report. In those conclusions, the CAS may draw heightened attention to particularly serious cases relating to non-compliance by including those cases in a "special paragraph" of its report.

Special procedures

In addition to its regular procedures, the ILO also provides a public platform to discuss issues relating to the effective implementation of labour standards under its special procedures:

- Under the procedure for representations (Article 24 of the ILO Constitution), workers' and employers' organizations may present a representation against any member State that has failed to comply with a ratified Convention.
- Under the procedure for complaints (Article 26 of the ILO Constitution), a member State that has ratified the Convention concerned, a delegate to the ILC or the Governing Body may present a complaint against another member. Complaints may be examined by a Commission of Inquiry, which is the ILO's highest investigative body.
- Uniquely, the procedure for complaints regarding freedom of association permits the examination of complaints alleging violations of freedom of association, even when the relevant Conventions have not been ratified. The Committee of Freedom of Association (CFA), a tripartite body composed of 18 members and an independent chairperson, examines the complaint.

[1] The Government is also required to provide copies of those reports to the most representative organizations of employers and workers in the country. These organizations can make comments on the reports and provide additional information on the application of an instrument.
[2] Article 19(5)(e) of the ILO Constitution.

In the United States, for example, the 2002 United States Trade Act[219] required that the various trade advisory committees, such as the LAC, report their opinion on proposed trade negotiations to the President, the USTR and Congress. In so doing, some of the reports, particularly those of the LAC, make regular reference to the comments of the ILO's supervisory bodies.[220] Similarly, the EU also uses the ILO's input in formulating recommendations in its SIAs. In its most recent SIA for Japan, for example, the overview of the EU and Japan's compliance with labour standards refers to ILO input and its supervisory machinery's findings to define the baseline.[221]

Implementation stage

To monitor trade partners' progress in the implementation of labour standards, parties to trade agreements frequently use the ILO's comments as a source of information. In the 2002 and 2015 Trade Promotion Acts, an additional labour rights report from the USTR and the USDOL was required during the implementation stage. This report provides an update concerning the implementation of labour standards and commonly refers to the comments of the ILO's supervisory bodies.[222]

Dispute settlement and application of sanctions

Trade parties' use of ILO input to inform trade disputes on labour issues has been the source of controversy within and outside of the ILO.[223] Gravel and Delpech (2013) show that ILO comments and information have been used both by the US administration and labour advocates in the process of conflict resolution. ILO input, however, does not necessarily determine the

[219] See the Trade Act, 2002, section 2104(e).

[220] For instance, the LAC's report regarding the US–Colombia trade agreement makes reference to comments of the CEACR concerning Colombia's implementation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as well as to an ILO high-level CFA mission and a recent CFA case. Another example is the LAC's report regarding the US–Morocco trade agreement where reference is made to comments of the CEACR concerning Morocco's implementation of freedom of association, as well as recent cases before the CFA, the findings in the ILO General Survey on freedom of association and the right to organize and bargain collectively (LAC, 2004, 2006).

[221] See European Commission (2015a).

[222] Examples of these reports are found in the US–Peru and US–Panama trade agreements. In the labour rights report of US–Peru, Comments of the CEACR and the CFA concern the right to strike, public services, the right to organize, trade unionist dismissals, forced labour, child labour, non-discrimination and indigenous peoples. The report on US–Panama trade agreement refers to Comments of the CEACR and the CFA concerning the number of workers required to form a union, right to strike, minimum services, public servants, child labour, discrimination, indigenous workers, maritime workers, overtime hours and labour inspection (USDOL, 2007b, 2011b).

[223] See van Roozendaal (2015) regarding the arbitration against Guatemala in CAFTA–DR.

outcome of disputes. For example, in the case of Guatemala (Chapter 1) in its rebuttal submission (16 March 2015), the United States acknowledged that "while not binding, the findings of other international tribunals […] may provide helpful guidance to the Panel in this dispute."[224] Also, in the case of the complaint filed under the US–Bahrain trade agreement, the US administration incorporated the outcomes of the ILO supervisory system, including of the CFA, into its findings.

Furthermore, as noted in Chapter 1, the decision-making process to revoke benefits under the EU GSP+ includes consideration of the findings of the ILO supervisory system (both regular and the complaint based procedures).[225]

Public dialogue at the CAS

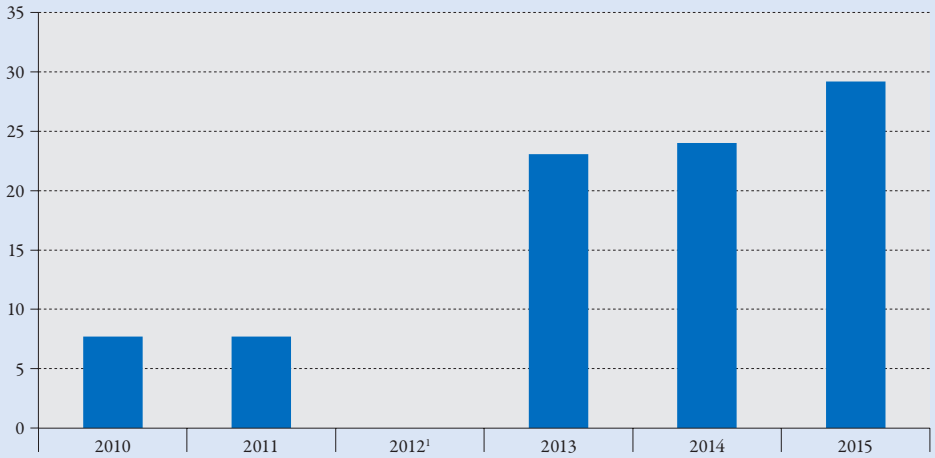
A third dimension of ILO involvement in fostering coherence in the implementation of international labour standards is through public dialogue, which takes place during the ILC, between governments, workers' and employers' representatives. The discussion in the CAS provides a platform for parties to raise and address issues concerning the implementation of labour standards that are also in their trade agreements.

Between 2010 and 2015, trade parties increasingly referred to trade arrangements during the CAS discussions. In 2010, 7 per cent of cases discussed in the ILC included references to trade arrangements, increasing to 29 per cent by 2015 (figure 4.1). Furthermore, while in 2010 discussions mainly referred to labour obligations under trade agreements on a general basis, by 2015 those discussions increasingly referred to specific trade agreements, preferential trade arrangements and obligations, such as the US–Colombia agreement, CAFTA–DR (Honduras and Guatemala), NAFTA, CETA and AGOA.

[224] The rebuttal then proceeded to cite the following: (a) the comments of the CEACR and the CFA to support its contention that Guatemalan workers who had given the United States sworn testimonials had cause to feel concern for their personal safety; (b) ILO reports that supported the contention that Guatemalan companies in the agricultural sector had consistently violated Guatemala's labour laws; (c) the 2011 CEACR observation concerning the adequacy of labour inspections in Guatemala; and (d) the 2011 CEACR observations with respect to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

[225] At the time of writing, no investigation had been launched under the most recent EU arrangements of 2014.

Figure 4.1. Percentage of cases that reference trade arrangements in the ILC (2010–15)



[1] There were no discussions on the list of cases in the ILC in 2012.

Generally, references to trade agreements are made by workers and governments, but also employers. For instance, in the case of NAFTA,[226] a single reference was made by the worker member of the United States, questioning the economic benefits of the agreement in contrast to the "denied" labour rights to workers. In the case of Colombia, in the discussion on the application of Labour Inspection Convention, 1947 (No. 81), the Employer member of this country made reference to the LAP (among other initiatives), emphasizing its role on the strengthening of the Ministry of Labour and the labour inspectorate, while the Worker member of the United States pointed out that the standards set in this Plan have not entirely been met in spite of US support. In this regard the Government member of the United States appreciated the efforts of Colombia to make progress in the implementation of the Plan, and expressed that challenges still remained (for example, collection of fines). However, it also emphasized the need for ILO assistance and further dialogue with social partners in order to fulfil the obligations established in the Plan and under Convention No. 81 (ILO, 2014b).

[226] During the discussion regarding the application of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). See ILO (2015b).

B COHERENCE THROUGH THE ILO'S DEVELOPMENT COOPERATION

The ILO is also involved in the ratification and implementation of labour standards through development cooperation projects. The areas of ILO involvement are closely interlinked, with potential areas for technical assistance and development cooperation, which can often be based on the comments of the supervisory mechanisms. Development cooperation is frequently aligned with the overall priorities of the ILO and critical issues that are addressed in the outcomes of the supervisory machinery. Indeed, the link between the ILO supervisory system, on the one hand, and its provision of technical assistance, on the other, has been hailed as one of the ILO's most relevant, and perhaps most effective, features.[227]

The identification of critical areas for technical assistance under the ILO's supervisory system has guided the ILO and trade partners in directing development cooperation programmes, and financial resources and efforts. To that effect, parties to trade arrangements may opt to establish a relationship as funding partners and/or collaborators in joint initiatives. This can be done bilaterally, through coordination between Members or through partnership with the ILO. Either way, this cooperation holds the opportunity to strengthen and promote the relevance and complementarities of development cooperation among various trade partners, which may provide for a way to ensure that labour provisions are better implemented in practice.

Coherence of development cooperation programmes: Bilateral support of ILO priorities

Trade partners can cooperate with each other bilaterally through arrangements that focus on addressing gaps with respect to specific labour standards. In the cases of Costa Rica, Dominican Republic, Morocco and Peru, standards-related capacity-building programmes have been implemented bilaterally with trade partners, without the assistance of the ILO.

[227] See Tapiola (2006), which discusses "the strength of combining supervisory action with development cooperation".

In these cases, even though the assistance of the ILO is not requested in the implementation of the programmes, the trade partners refer to ILO instruments and commit to supporting ILO priorities. In each of these four countries, programmes were financed by more than one country (such as Canada, the EU and the United States). This is mentioned since each of these four countries has at least two overlapping trade agreements with Canada, the EU and/or the United States. Further examination of these programmes provides an opportunity to better understand how members coordinate activities with each other.[228]

The vast majority of projects address child labour. In many cases, capacity-building activities carried out by one country engage national ministries and local institutions, or directly target SMEs. A stakeholder not addressed by one country is often found to cooperate with another. For example, in Costa Rica, Canada and the EU both targeted funds towards building educational and vocational training capacities in cooperation with the Ministry of Education and with SMEs, whereas the United States supported the strengthening of the country's labour law enforcement capacities in cooperation with the Ministry of Labour.[229]

Similar conclusions can be drawn from engagement in the Dominican Republic, where the United States focuses on the elimination of child labour and forced labour while the EU aims at strengthening and enforcing domestic labour legislation.[230] In Morocco, all projects address child labour, but focus on different areas and apply different means of implementation.[231] In Peru, however, the projects carried out by Canada, the EU and the United States have a broad coverage[232] (table 4.1.).

There does not seem to be explicit coordination of the technical assistance projects implemented by Canada, the EU and the United States in these

[228] It should be noted that, although the link between an actual trade agreement and cooperative activities is evident in some cases, in others the correlation can only be inferred. In the Dominican Republic and Morocco, activities by the EU and United States have been analysed; in Costa Rica and Peru, only activities by Canada and the United States have been assessed, since the EU has earmarked funds but activities have not yet been implemented. The cooperative activities considered for analysis started after the entry into force of the respective trade agreement.

[229] European External Action Service (2014); USDOL (2008); USTR (2007).

[230] See USDOL (2013b); ILO (2015a).

[231] In the case of Morocco see USDOL (2007a); USDOL (2013a); EU (2011); European Commission (2006).

[232] See USDOL (2011a); European External Action Service (2014).

Table 4.1. Trade agreements framing labour cooperation and samples of implementation strategies

Country	Agreements framing labour cooperation	Areas covered with respect to labour standards	Domestic partner for the implementation of capacity-building activities[2]
Morocco	• EU–Morocco association agreement (2000) • EU–Morocco Action Plan (2013–17)	• Initialization of dialogue on core labour standards • Child labour with a focus on migration	• Ministry of Education – improve children's access to education
	• US–Morocco labour cooperation mechanism (2006)	• Child labour • Collective labour management and training • Enforcement and compliance efforts	• Regional governments – increase school attendance • Ministry of Labour – improve labour inspections.
Dominican Republic	• EU–CARIFORUM (2008)	• Strengthening domestic labour legislation • Enforcement of labour law • Facilitating dialogue and foster tripartism	• Workers' organizations – enable engagement in tripartite bodies
	• US–CAFTA–DR labour cooperation and capacity-building mechanism (LCCBM) (2007)	• Worst forms of child labour • Forced labour	• Federal government – enforce labour law to provide educational services
Peru	• Canada–Peru (2009) • Canada-Peru ALC (2009)	• Labour relations • Fundamental labour rights with a focus on young workers	• Ministry of Education – improve the quality and delivery of technical education
	• EU–Peru (agreement also with Colombia) (2013) • Multiannual Indicative Regional Programme for Peru (2014–20)	• Informal work and labour conditions in Peruvian SMEs	• Government institutions – embed more SMEs in the formal economy; train labour inspectors
	• US–Peru (2009) labour cooperation and capacity-building mechanism	• Child labour	• Local schools – improve the provision of educational services
Costa Rica	• Canada–Costa Rica ALC (2002)	• Worst forms of child labour	• Ministry of Education – achieve universal primary education
	• EU Multiannual Indicative Regional Programme for Latin America (2014–20)	• Informal work in SMEs • Employment	• SMEs – reduce labour informality; increase the quality of technical education
	• US–CAFTA–DR LCCBM (2009)	• Compliance with labour law	• Ministry of Labour – improve inspectorates

four countries. Interviews with officials suggest the same lack of coordination prior to the implementation of any specific activity in a country in which other trade partners were carrying out additional activities addressing labour issues.

Coherence of development cooperation programmes: With support of the ILO

Many development cooperation programmes are carried out in cooperation between the ILO's technical departments and field offices and the country's tripartite constituents and, sometimes, trade partners (for example, in the form of partnerships). In some cases, donors provide funds for ILO programmes that focus on strengthening the capacity of trade partners to implement labour standards. Using the ILO supervisory system as a reference to direct technical assistance has the potential to enhance the complementarities of development cooperation among various trade partners (box 4.3). For instance, as noted above, partners such as Canada, the EU and the United States provide funds to strengthen the capacity of labour standards in trading parties. Between 2010 and 2015, at least two of these three donors also simultaneously funded ILO standards-related projects in Bangladesh, Colombia, Myanmar and Viet Nam.

While the details of trade relationships differ, donor countries could better align development cooperation so as to ensure that recipient countries have the capacity and assistance necessary to implement labour standards. This would constitute a move towards making more efficient use of resources and avoiding overlap and too much duplication of activities, and it holds the potential of increasing the relevance and leverage of complementarities of the activities conducted (such as capacity-building).

In practice, development cooperation in some countries has sought to address particular labour standards that have been the subject of areas of work of the ILO supervisory bodies. In some cases, these labour standards were part of complaints, serious public comments or efforts to promote the ratification of fundamental Conventions, as identified in the CEACR observations and CAS discussions (or had otherwise been the subject of a Commission of Inquiry). For example, in the case of the US–Colombia trade agreement under its LAP, the United States funded a US$7.8 million project that is implemented by the ILO to build the capacity of the Colombian Government to protect fundamental rights at work, in particular freedom of association and collective bargaining, and to strengthen

Box 4.3 The coherence of development cooperation

Bangladesh provides an interesting illustration of trade partners actively promoting increased coherence between development cooperation programmes. In the aftermath of the Rana Plaza disaster, different measures were undertaken by the EU, the ILO, the United States, other trade partners and different stakeholders (including the social partners) (see Chapters 1 and 2). The launch of the Sustainability Compact, where the parties (Canada, the EU, the ILO and the United States) agreed to further respect for labour rights, to enhance the structural integrity of buildings, to improve OSH and to promote a responsible business conduct, is a good example of promoting coherence among various development cooperation projects. Furthermore, other complementary projects that are jointly funded by other ILO members such as Canada, Denmark, the Netherlands, Sweden and the United Kingdom, have been implemented by the ILO. In addition, other stakeholders have undertaken important initiatives through the *Accord on Fire and Building Safety* or the Alliance for Bangladesh Worker Safety, providing a role for the ILO for implementation.

Similarly, in the case of Myanmar, a joint labour rights initiative was launched in 2014 by Demark, Japan, the United States and the ILO (followed by the incorporation of the EU in 2015) to promote compliance with international labour standards through labour reform and enhanced stakeholders' involvement (see Chapter 1). This partnership involves the coordination of different development cooperation projects, funded and promoted by the different partners of the initiative.[1]

[1] Some of the projects are the Promotion of Fundamental Principles and Rights at Work as Tools for Peace in Myanmar (funded by the Delegation of the EU to Myanmar) and the Programme on Responsible Business in Myanmar (funded by Denmark). More information could be found in the ILO's development cooperation dashboard, available at: https://dashboard.ilo.org.

the capacity of the Colombian labour and national stakeholders to comply with international labour standards and assist them in the follow-up and application of ILO supervisory bodies' comments.[233]

In this respect, development cooperation programmes implemented with ILO assistance have resulted in preliminary indications of coherence between the work of the ILO and its consistent implementation at national levels and across agreements – this by seeking to strengthen labour standards that are also contained in the labour provisions of trade arrangements. However, more work should be done to better understand and strengthen the needs of members in order to provide more effective assistance. While

[233] USDOL (2013c). The ILO–US technical assistance project was, in fact, expressly recognized in the observation of the CEACR in 2013, in which it noted "with interest the launching […] of the project to promote compliance with international labour standards in Colombia, financed by the Government of the United States" (ILO, 2013a).

the overall effectiveness of this technical assistance and development cooperation is not being assessed, the analysis does suggest the need for better alignment of priorities among the multiple trading partners. This alignment could help strengthen coordination mechanisms across countries and more effectively reduce the gaps in the implementation of international labour standards, principles and commitments as set out in the relevant ILO instruments referred to in labour provisions.

C CONCLUDING REMARKS

This chapter has focused on the coherence of implementation of labour provisions by analysing the direct and indirect role that the ILO plays in the design and implementation of labour standards included in trade agreements. It highlights the importance of the ILO's supervisory system in identifying decent work deficits, monitoring application of international labour standards and aligning cooperative activities with capacity-building goals. Indeed, the alignment of the objectives of ILO standards with the aims of labour provisions in increasingly more bilateral, pluri-lateral and mega-trade agreements offers an opportunity for the ILO's objectives, articulated through international labour standards, to be achieved as coherence between the different regimes grows.

The chapter finds that the ILO's standards work have been used by States to identify gaps in labour practices prior to implementation of trade agreements. The ILO's system for review of the application of standards has been used by States concerned to monitor progress of labour provisions in trade arrangements and to provide background information on trade disputes with respect to labour issues. Moreover, the ILO has been requested by its members to provide advice on the design and implementation of labour provisions, including with respect to cooperative activities, which it has done where the activities concerned have been compatible with, and furthered the promotion of, the ILO's own objectives.

The findings of this chapter suggest first, that there is scope for stronger synergies between donor countries who are parties to trade agreements with labour provisions that apply in similar ways to the same countries. This would not only provide stronger financial and technical support to capacity-building activities, but also increased accountability on the part of the recipient country. There are some examples of this in the context of unilateral arrangements, such as Sustainability Compact in Bangladesh and the labour rights initiative in Myanmar (both with a role for the ILO). But more could be done to scale up those initiatives and extend them to

bilateral and pluri-lateral agreements with shared objectives of implementing labour standards to improve the social benefits of trade for workers, while promoting sustainable enterprises. In this respect, more research of how the ILO's regular supervisory system and special procedures inform activities at the country-level would be useful.

Second, the reliance by parties to trade agreements on ILO's expertise to benchmark and inform on progress with respect to labour practices illustrates the relevance of international labour standards in the trade context. This presents an opportunity to build convergence and efficiency between the States' obligations as members of the ILO and their relationships to each other in trading arrangements. More research on effectiveness of mechanisms used to align these shared objectives would be useful. This would support the goals and objectives of the 2008 ILO Declaration on Social Justice for a Fair Globalization. The changing global environment including the challenges posed by globalization offers an opportunity to report on approaches taken to trade and labour among other international forums and organizations.

REFERENCES

Agustí-Panareda, J.; Ebert, F.C.; LeClercq, D. 2014. *Labour provisions in free trade agreements: Fostering their consistency with the ILO standards system*, background paper (ILO).

—. 2015. "ILO labour standards and trade agreements: A case for consistency", in *Comparative Labor Law & Policy Journal*, Vol. 36, No. 3, pp. 347–380.

Bhagwati, J. 1995. "US trade policy: The infatuation with FTAs", in C. Barfield (ed.): *The dangerous obsession with free trade area* (Washington, DC, AEI Press).

European Commission. 2006. *EU–Morocco Action Plan* (Directorate General for the Trade of the European Commission).

—. 2013a. *Report on assessment of the application for the special incentive arrangement for sustainable development and good governance*, Commission Staff Working Document, 28 Aug.

—. 2013b. *Report on assessment of the application for GSP+ by El Salvador, Guatemala and Panama*, Commission Staff Working Document, 17 Dec., para. 7, fn. 1.

—. 2015a. *Trade sustainability impact assessment of the comprehensive trade and investment agreement between the European Union and Japan: Interim technical report* (LSE), p. 61. Available at: http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153631.pdf.

—. 2015b. *Joint statement of the 4th meeting of the Committee on Trade and Sustainable Development under the Korea–EU FTA*, 9 Sep. Available at: http://ec.europa.eu/social/BlobServlet?docId=14482&langId=en.

European External Action Service. 2014. *Multiannual Indicative Programme (MIP) 2014–2017: Peru*.

EU. 2011. *Enfants en voyage: Pour une approche responsable des migrations des mineurs* [Project sheet: Children traveling – For a responsible approach to juvenile migration]. Available at: http://eeas.europa.eu/delegations/morocco/projects/list_of_projects/229586_fr.htm.

Gravel, E.; Delpech, Q. 2013. *The comments of the ILO's Supervisory bodies: Usefulness in the context of the sanction-based dimension of labour provisions in US free trade agreements*, ILO Research Paper No. 4.

ILO. 2003. *Fundamental principles and rights at work: A labour law study* (Geneva).

—. 2011. *Manual for drafting ILO instruments*. Office of the Legal Adviser.

—. 2013a. *Report of the Committee of Experts on the Application of Conventions and Recommendations*.

—. 2013b. *Social dimensions of free trade agreements, studies on growth with equity* (Geneva, IILS).

—. 2014a. *Rules of the game: A brief introduction to international labour standards*, revised edition (Geneva).

—. 2014b. *Discussion*, 103rd Session, ILC, June 2014.

—. 2015a. *ILO's Technical Cooperation Strategy 2015–17*, Governing Body, 325th Session, Geneva, Oct. 2015, GB.325/POL/6, para. 29.

—. 2015b. *Provisional Record*, No. 14, ILC, 104th Session, June 2015, Part II/74.

Krajewski, M. 2014. *Modalities for investment protection and Investor-State Dispute Settlement (ISDS) in TTIP from a trade union perspective* (Friedrich-Ebert-Stiftung (FES)).

Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC). 2004. *Report to the President, the Congress and the United States Trade Representative on the US-Morocco Free Trade Agreement*.

—. 2006. *Report to the President, the Congress and the United States Trade Representative on the US-Colombia Free Trade Agreement*.

Maupain, F. 2005. "Revitalization not retreat: The real potential of the 1998 ILO Declaration for the Universal Protection of Workers' Rights", in *The European Journal of International Law*, Vol. 16, pp. 439–465.

—. 2013. *The future of the International Labour Organization in the global economy* (Hart).

Peels, R.; 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*, Vol. 6, No. 2, pp. 189–202.

Ruggie, J.G. 2009. *Report of the Special Representative of the Secretary-General on the Issue of Human Rights, Transnational Corporations and Other Business Enterprises, Business and Human Rights: Towards operationalizing the "Protect, Respect and Remedy" Framework*, A/HRC/11/13.

Tapiola, K. 2006. "The ILO system of regular supervision of the application of Conventions and Recommendations: A lasting paradigm", in G. Politakis (ed.): *Protecting labour rights as human rights: Present and future of international supervision* (Geneva, ILO), pp. 29–36.

UNCTAD. 2014. *Trade and Development Report 2014: Global governance and policy space for development*. Available at: http://unctad.org/en/PublicationsLibrary/tdr2014_en.pdf.

United Nations General Assembly Human Rights Council. 2015. *Report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas,* A/HRC/30/44.

USDOL. 2007a. *Combating child labor through education in Morocco*, ILAB Technical Cooperation Project Summary.

—. 2007b. *Labor Rights Report: Peru*. Available at: http://www.dol.gov/ilab/reports/pdf/PLRReport.pdf

—. 2008. *Cumple Y Gana for inspection* [Comply and win], ILAB Technical Cooperation Project Summary. Available at: http://www.dol.gov/ilab/projects/summaries/Central_America_Labor_Compliance.pdf.

—. 2011a. *Proyecto Semilla* [Seed Project – Combating exploitative rural child labour in Peru]. Available at: http://www.dol.gov/ilab/projects/summaries/Peru_CECL.pdf.

—. 2011b. *Labor Rights Report: Republic of Panama*. Available at: http://www.dol.gov/ilab/reports/pdf/panama_LRR.pdf.

—. 2013a. *Promise pathways: Reducing child labor through viable paths in education and decent work*, ILAB Technical Cooperation Project Summary.

—. 2013b. *Project to reduce child labor and improve labor rights and working conditions in the Dominican Republic*, ILAB Technical Cooperation Project Summary.

—. 2013c. *Promoting compliance with international labor standards in Colombia*, ILAB Technical Cooperation Project Summary.

United States Trade Representative (USTR). 2007. *CAFTA–DR labour capacity building*. Available at: https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2011/may/cafta-dr-labor-capacity-building.

van Roozendaal, G. 2015. "The diffusion of labour standards: The case of the US and Guatemala", in *Politics and governance*, Vol. 3, No. 2, pp. 18–33.

Vogt, J. 2015. "A little less conversation: The EU and the (non) application of the labour conditionality principle in the Generalised System of Preferences (GSP)", in *The International Journal of Comparative Labour Law and Industrial Relations*, Vol. 31, No. 3, pp. 285–304.

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