Chapter Five

The Diffusion of Fundamental Rights in the Atlantic Basin through EU Trade Policy

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Although trade-based labor clauses have become a standard feature of US trade policy since 1994, and have been included in European Union (EU) accords since at least 2000, the inclusion of labor guarantees in trade has become increasingly common since 2008. Trade-related labor provisions, or labor clauses, refer to any standard introduced into a trade agreement to address labor standards, labor relations, or working conditions, then mechanisms for mechanisms for monitoring or promoting their compliance, or frameworks for cooperation on these labor matters.[1] In 2015, 76 trade accords included labor clauses, which means that given the growth of regional trade accords and spread of bilateral accords themselves in the same time frame, 80 percent of trade accords in force in the world now include some form of labor provision (ILO 2016, pp 23).

The EU remains a leader in this regard: policies since 2006 --to be addressed in this chapter—combined with unilateral provisions targeted to less-developed states, including the Generalized System of Preferences program (GSP), GSP+, and Everything but Arms arrangements currently extend labor rights obligations to 92 states through EU trade policy (ILO 2016, pp 24). The EU model is thus worth exploring just in terms of the spread of is reach through bilateral and LDC programs, and the potential then for the expansion of labor rights guarantees globally through EU trade policy.

Trade accords between the EU and Latin American countries are extensive, given that most LAS states continue to carry the bulk of their trade in North America, and in particular with the United States. The EU has full agreements with Caribbean states under the Cariforum Economic Partnership Agreement (since 2000) and Central American countries under the EU-CA Free Trade Association (2013). The EU also has bilateral agreements with four other Latin American states, Mexico, Chile, and Peru

1. This definition draws on that adopted by the International Labor Organisation (2016, pp 14).

and Colombia. Ecuador decided to join the Colombia and Peru agreement after dropping out of negotiations for an EU-Andean FTA, and negotiations for Ecuador's inclusion were completed in 2014 (EPRS, 2014). The EU accord with MERCOSUL (excluding Venezuela) now under consideration includes pillars on political cooperation and will feature a chapter on Trade and Sustainable Development. The extension of EU trade to the Latin American region in recent years, and the attachment of labor and human rights guarantees to those accords through EU policy represents the expansion of new forms of monitoring and enforcement of such guarantees into the region.

However, the EU model is interesting for additional reasons. First, while the US, Canada, Australia and Chile each created policies to include labor guarantees to trade accords, the EU conception of labor rights is the most expansive of all of the competing models (Lazo Grandi, 2009). The European Commission sets the international instruments of European and International *human rights* law as equal to international labor standards, which is an approach that contrasts to the limited focus on labor rights taken by the US in particular. As the EU continues to promote labor rights guarantees through trade, the result is more accurately the extension of human rights norms, promotion and protection. Second, as major trading states begin the process of reopening and revisiting older trade agreements in order to update them to meet the requirements of modern trade in services, e-commerce and so on, non-traditional areas of trade like social standards have been included as central areas of regulation and cooperation. Even as the EU model evolves as thinking on how to best link labor guarantees to trade changes, the European Commission has developed policies that seek to retrofit older accords with newer social standards. In the process of modernization of previously signed accords, labor rights and human rights guarantees are among the areas that must be included to the updated accords, often for the first time, to keep them consistent with EU policy on social guarantees in today's trade mandates.

This chapter considers the EU model for linking trade-based labor rights guarantees to trade policy in the context of the modernization of older EU trade accords, and the effort to retrofit older accords with new labor chapters. It describes first how social guarantees like human rights language was include in EU trade policy, how the emphasis on human rights protections gradually opened to include labor rights protections, and eventually led to dedicated chapters on Trade and Sustainable Development. It then compares the labor mechanisms and institutions of the "new generation"

labor clauses to show how specific aspects of the labor chapters serve to promote and protect labor standards among EU trade partners, and therefore contribute to the enforcement of international labor standards in the Atlantic Basin. The last section discusses how the modernisation of older accords reinforces EU commitment to social guarantees through trade policy, with reference to the EU-Mexico agreement.

The importance of trade-based measures for the promotion of labor rights guarantees

The motivation to include labor rights guarantees into trade accords comes in part from the perception that trade competition leads to the erosion of domestic labor standards, especially in less-developed states. State leaders face incentives to relax regulations in order to attract international investors, which exacts downward pressure on labor standards and wage rates globally (Harrison and Scorse 2003; Pangalangan 2002), creating comparative advantages in labor costs among less-developed states (Rodrik 1996). While the record remains mixed, some quantitative studies have indeed shown that increases in trade are associated with increased labor rights violations, especially among developing countries. Some studies explore the effect of globalization writ large on labor rights indicators, and find that the opening of markets and extension of neoliberal economic principles, of which trade is a central factor, leads to the erosion of national labor protections (Blanton and Blanton, 2016; Blanton and Peksen, 2016.) There is also some evidence for weakened labor standards as a result of increased participation in trade (Mosley and Uno, 2007; Rodrik, 1997, and Cingranelli and Tsai, 2003), but evidence as well that increased trade leads instead to labor rights improvements (Greenhill, Mosley and Prakash, 2009; Davies and Vadlamannati 2013; Neumayer and de Soysa 2006). Country case studies suggest that labor standards are sometimes subject to selective regulation in the processing zones established to facilitate exports, leading to substandard working conditions (Frundt,1999; Frundt, 1998 and Gordon, 2000). Studies that focus on child labor in these areas show that the use of child labor tends to increase in highly labor-intensive exports sectors (Maskus, 1997), though child labor decreases with trade openness in other sectors of the economy (Neumayer and de Soysa, 2005).

Given the potential negative development consequences posed to less-developed states with trade liberalization, trade agreements are then increasingly seen as the best arena for promoting common standards to

counteract the "race to the bottom" dynamic (Ross and Chan 2002). Including language and mechanisms intended to promote labor standards and decent working conditions into trade is one way to reestablish the minimum standards of employment for all workers party to trade agreements, because they establish regulations at the supranational level that can mitigate the incentives to limit rights at the national level.

Others argue that if labor costs, a function of weaker standards, are used as a comparative advantage in trade, labor standards should then be subject to dispute resolution just like tariff assessments, intellectual property rights, and investment rules (Ehrenberg, 1996; Moorman, 2001). Many trade-based clauses of the US models introduce fines and trade sanctions as consequences for labor rights violations in the trade accord structures. When labor conditionality is attached to trade agreements, labor rights compliance then becomes enforceable through dispute resolution as for other trade issues. States that relax labor standards to promote trade face strong incentives to improve labor rights performance and conform to promote labor rights in their countries to avoid negative and potentially costly consequences to their trading relationships (Rodrik 1996). Including social clauses meant to protect and promote labor obligations to trade agreements could mediate the potential negative effects of the intensification of trade on labor outcomes.

Though trade based social clauses are increasingly being incorporated into trade accords, there are still very few empirical studies available to understand the effect of including social accords on labor rights outcomes. One reason is the lack of comparative cross-national data, and the difficulties of creating comparable measures of labor rights compliance across states limits studies to qualitative assessments and country cases (Salem and Rozental, 2012). While Aissi, Peels and Samaan (2018) suggest an analytical framework going forward to establish metrics to critically and systematically assess social clause effectiveness, what we do know about the impact of trade based clauses on labor outcomes is skewed toward explaining US enforcement models, simply because EU, Canadian and other trade models have no petitions or cases from which to draw evidence.

Even so, quantitative assessments of the effects of trade-based labor clauses on promoting labor outcomes exist, though limited. The ILO 2016 study, which incorporates cross-national labor market outcomes from 2011 to 2014, finds support only for increases in labor force participation rates, including for increasing the employment of women (ILO, 2016, pp 81). While there are no negative effects, meaning attaching labor clauses to

trade accords does not lead to the deterioration of labor standards, other tests were inconclusive, suggesting that additional work should be done on country-level effects.

Because clauses are new, impacts may take a number of years to take effect, and the impacts on workers maybe indirect: trade agreements often include regulations that require that trading partners adopt international standards like those expressed in the ILO *Fundamental Principles and Rights at Work* (1998), which in turn must become part of domestic law. It is domestic law and enforcement that then promotes international labor standards, and through this channel that changes labor market outcomes and respect for labor standards over time might be estimated. This channel of the improvement of labor rights within countries is suggested by the Postnikov and Bastiaens (2014) study, which tested EU accords and found that states were likely to adopt core labor standards into domestic labor regulations when facing the prospect of negotiating a trade deal, and that doing so created an *ex-post* improvement in labor protections (a finding also found by Kim (2012) in the case of US accords).

Hafner-Burton (2009) uses a data set that combines both EU and USA accords, and included human rights clauses and labor rights clauses in her study of the effects of binding enforcement measures for compliance as compared to non-binding mechanisms. She finds that one third of states improve their labor rights practices in preparation for signing an FTA with the within the two years of that FTA coming into force (2009, 161). In terms of effects while the FTA is in place, states that belong to EU FTAs with enforceable standards (meaning those with consultation mechanisms and access to sanctions) are more likely to improve their human rights practices over time than states that do not belong to accords with hard enforcement mechanisms (2009, 162). Further, joining trade agreements with enforceable clauses has a greater demonstrated effect on influencing state behaviour than signing the UN personal integrity rights instruments.

Qualitative studies are skewed toward explaining outcomes for US based models, where access to trade sanctions, may alter the suitability of these studies to explain outcomes across other clauses that do not have binding enforcement mechanisms, like those of the EU. Among the US programmes, the US Generalized System of Preferences programme stands out as one which generally promoted overall improvements in labor rights protections in partner countries, particularly in Central America, and largely through the unilateral threat of suspending market access (Compa and Vogt, 2001; Frundt, 1998). In specific Central American cases, like the Domini-

can Republic, pressure from civil society through the GSP process helped to spur reform of the labor inspectorate (Shrank, 2009). In other Central America states, the GSP may have helped to resolve specific problems of union representation (Frundt, 1998), without making much progress on improving working conditions overall (Rodas-Martini 2006). Yet, when the same countries were graduated out of the GSP and subjected to a new set of institutional arrangements for labor under the CAFTA-DR labor clause, the few cases that were filed led to labor rights improvements only in very limited ways and only in a few states, and labor rights protections deteriorated in Honduras and Guatemala (Nolan García and O'Connor, *forthcoming*). The experience of Central America under CAFTA-DR, compared with the GSP gives evidence for Greven's claim that the effect of U.S. labor provisions on the promotion of labor rights depends in part on the presence of strong domestic social actors and social pressure (Greven, 2005).

Results have been more modest at the labor clause associated with the North American Free Trade Agreement. Scholars generally agree that NAFTA has been limited in its impact on the labor standards and practices of its partners, and in particular on Mexico, which faced larger challenges than the U.S. or Canada in implementation and enforcement of its labor regulations. Few cases filed under the NAALC have resulted in substantial improvement of labor rights protections in Mexico, or in the US (Dombois, 2002; Finbow, 2006; Garvey, 1995; Harvey, 1994), though there are exceptions as regards changes to labor policy and practices within Mexico (Aspinwall, 2009; Graubart, 2008; Kay, 2005; Singh and Adams, 2001), and again, largely due to outside pressure from civil society on Mexico to promote labor protections (Nolan García, 2014).

In sum, both quantitative and qualitative studies suggest that the adoption of trade-based labor clauses has helped in some cases to at least mitigate the erosion of labor protections, and in some cases have promoted labor standards in individual country cases. Even though clearly there is more work to be done on evaluating the trade and labor linkage cross-nationally, evidence so far points that there are important gains to be made from including labor clauses in trade agreements.

Social guarantees in EU trade agreements

The first EU agreements with social clauses, the Lomé Conventions of 1975 and their subsequent revisions, established trade cooperation between the EU and seventy-seven African and Caribbean States under preferential

tariff regimes. These conventions included language around human rights protection in Article 5(2), and a monitoring mechanism. When Lomé was later replaced by the Cotonou Agreement in 2000, stronger language and enforcement mechanisms were introduced. The procedures for a formal review on human rights violations and the potential for trade sanctions in the event of grave violations are listed in Article 96. From 1996 through 2011, the clause was applied in 23 cases, including for reasons unrelated to human rights, as the consultation mechanism can be applied for coups, election fraud and breaches of the rule of law. Of these 23 cases, the application of human rights consultation mechanisms for human rights violations has occurred only in 2001 for Liberia and Zimbabwe, in 2004 for Togo, and in 2011 for Guinea-Bissau (Hachez 2015, p18-19). In practice, there has never been a full or partial trade embargo under Cotonou; rather, to avoid leveraging humanitarian costs on populations, sanctions come in the form of arms embargos, travel bans, revocations of visas, or freezing the assets of elites (Aaronson and Zimmerman 2008, 141).

Labor issues appear in EU accords in the early 2000s in the context of bilateral association agreements with Mediterranean states, including Tunisia, Morocco, Algeria, Egypt, Israel, Jordan and Lebanon. Though different in the design of institutions, these accords limited labor rights language to the non-discrimination of migrant workers in terms of social security, working conditions or wages.

It was the Association Agreements with South Africa (in force since 2000) and Chile (in force since 2003) that extended labor guarantees beyond migrant workers to the general working population of partner states, and beyond non-discrimination language. Both of these accords included space for cooperative activities related to international labor standards, though they did not reference the ILO instruments by name. Among areas for cooperation, the modernization of labor relations and promotion of social dialogue, better working conditions, and labor as key to development were emphasized. These areas would later become central to EU sustainable development chapters in later agreements, and to the eventual modernization of the Chile accord.

The European Commission's 2006 blueprint for bilateral trade, *Global Europe: Competing in the World* marked the emergence of a new emphasis on the protection and promotion of labor rights as a key component for sustainable development. These "new generation" agreements of the EU consider trade-related labor and environmental issues as part as a global approach to trade and sustainable development. After 2006, these goals

were expressed in dedicated Social Development chapters attached to the accords, which include human rights, labor rights and environmental standards, cooperative activities, new instruments for social dialogue and steps for remediation. They are also the first EU accords to reference international instruments specifically such as the 1998 ILO Declaration, the United Nations (UN) Declaration on Full Employment and Decent Work, rather than strictly EU treaties and law.

The 2010 EU-South Korea agreement was the first to be ratified under the new focus, and accordingly, a new social clause incorporating both labor and environmental issues appears in Article 13. Treaties with Central America, Colombia and Peru, Georgia, Moldova, and Ukraine followed under the "new generation" model, with dedicated social rights guarantees in sustainable development chapters.

Later EU policy statements reinforced the use of trade instruments to promote and protect human rights. The ratification of the Lisbon Treaty in 2009 established human rights considerations as one of the principles guiding the Union's external activities. Then in 2012, the EU *Strategic Framework on Human Rights and Democracy*, established the priorities of the EU in promoting consistency around human rights and democracy in policies, and improving their effectiveness in EU external relations (Council of the EU, 2012). The *Framework*, together with the 2015 Action Plan for implementation, effectively mainstreams human rights and labor rights guarantees in EU foreign policy, including trade policy. Finally, *Trade for All* (2015) serves as the core policy pronouncement for the EU's new and comprehensive approach to streamlining human rights, labor rights and sustainability into trade policy specifically. For the first time, the EU shift in perspective is described as an opportunity to promote the diffusion of EU values around the world through trade structures and institutions (2015, p. 20).

New guidelines were developed by the EC and the Directorate General for Trade on how to operationalize EU commitment to European instruments of human rights protections and international law, and international fundamental labor rights conventions, into practical measures to then include in the trade negotiation process and design of new trade agreements. Among these measures was a new process that requires the Commission to include human rights criteria in all impact assessments for trade accords. The European Commission and DG TRADE devised specific guidelines that provide a methodology for executing human rights impact assessments (AIs), including the *Better Regulation Guidelines, the Better Regulation*

Toolbox. Guidelines on the Analysis of Human Rights Impacts in Impact Assessments for Trade-Related Policy Initiatives represents DG TRADE's in-house methodology for assessing the human rights impact of trade policy (European Commission, 2015). Together, these guidelines provide a concrete and systematized approach to assessing the potential human rights impacts of trade, and the estimation the magnitude of those effects.

The post-2012 guidelines are at the core of the current modernisation of EU accords to include sustainable development principles to older accords that do not include them, like the Association Agreement with Chile, and the Global Agreement with Mexico, and to new accords coming on line, like the EU-MERCOSUL Association Agreement and potential agreement with Indonesia. Beyond including the same human rights and labor rights guarantees in sustainable development chapters as the "new generation" agreements, they are also the first to undergo extensive pre- and post- negotiation impact assessments, including wide stakeholder consultations. Finally, as the 2012 Framework cites both international labor rights and human rights instruments, it also represents a return to the original emphasis on human rights guarantees from the early 1990 EU efforts, although with an extension of the types of international instruments and international law that is now included as part of EU policy.[2]

Institutions of EU chapters on trade and sustainable development

The "new generation" agreements are all similar in a number of aspects. Each agreement references the ILO 1998 *Declaration* in asserting that domestic law should remain consistent with the ILO core labor rights, meaning Freedom of Association, the effective recognition of the right to

2. The 2012 Framework cites a number of European and international human rights instruments as the sources and definitions for what the EU considers *fundamental rights*. These include Charter of Fundamental Rights of the European Union, The European Convention on Human Rights, The Universal Declaration of Human Rights, the conventions of the ILO 1988 Declaration of the Fundamental Principles and Rights at Work, and the core UN human rights treaties: *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD); *International Covenant on Economic, Social, and Cultural Rights* (ICESCR); *International Covenant on Civil and Political Rights* (ICCPR); *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT); *Convention on the Rights of the Child* (CRC); The *International Convention on the Rights of Persons with Disabilities* (ICRPD); and *International Convention for the Protection of All Persons from Enforced Disappearance* (ICPED).

Collective Bargaining; elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and elimination of discrimination in respect to employment and gender. They recognize the right of each Party to set its own levels of labor protection and establish priorities for its enforcement, while at the same time introducing no derogation principles which reaffirm that it is inappropriate to encourage trade or investment through lowering the levels of labor protection in domestic labor law and regulations. No EU agreement extends new burdens to Parties beyond implementing and enforcing existing domestic labor laws and international labor obligations.

From this common recognition of which labor rights are to be promoted in EU accords, the post 2006 agreements differ across the level of institutionalization in implementing the cooperative mechanisms by which partner states will meet their obligations.

Cooperative Activities

Cooperative activities play an important role in the diffusion of labor rights protection, including through information exchange and technical assistance, and therefore contribute to the spread of best practices through state to state dialogue. As such, fomenting cooperation is important to the trade and sustainable development emphasis of labor chapters. Even for agreements where the areas of cooperation are more limited in scope in comparison to other agreements, these still offer an extensive range of areas on which to cooperate and exchange information. These areas include the implementation of both international labor standards and domestic efforts at promoting decent work, and capacity building for administration of social security, human resources and job training. The EU-Singapore agreement presents the model of the most comprehensive set of cooperative activities. These entail information exchange, research activities, and the exchange of views around labor aspects of trade and sustainable development, including the linkages between international trade and domestic employment, laws and practices of industrial relations regimes, the collection of labor statistics, and other aspects of social protection.

However, state to state cooperation on labor issues is only possible to the extent that such cooperation is facilitated through bilateral institutions charged with managing cooperative activities. This points to a larger issue on how and when states determine where to begin to cooperate on labor issues, and it is where cases received for resolution and dialogue can have an agenda setting effect. The long list of the cooperative activities promoted in

the early years of the labor side agreement of NAFTA through the National Administrative Offices established by the agreement for this purpose, which responded to recurrent labor rights issues across North America as expressed in the case files, gives credence to this claim. However, as will be noted below, the generation of even cooperative activities can only happen when states understand which areas of labor rights enforcement are problematic in partner states, that is, when cases draw attention to those issues. Without cases, as in the UE model, it is difficult to imagine a process by which partners would identify where to focus cooperative activities.

Monitoring mechanisms

In terms of dispute settlement procedures and case resolutions, EU agreements include some mechanism for the resolution of issues about the enforcement of labor standards that may arise during the course of the agreement. For all accords, dispute measures are unrelated to the dispute channels set for commercial issues in the general agreements. Also, dialogue and consultations, rather than sanction mechanisms, are central to EU agreements, though this has been the subject of controversy inside the Commission as well as across stakeholders. For example, Postnikov details how the European Trade Union Confederation (ETUC) lobbied to include enforceable trade sanctions in the EU Korea and EU Chile agreements, and the resistance by EU officials to do so (2013).

In the EU model, when issues arise, they are first discussed through offices established for this purpose ("points of contact") by each Party. If dialogue here does not solve the labor issue, all agreements allow for a series of additional stages of increasingly higher-level dialogue --across varying timelines-- to reach a solution, including meetings of the Sub-Committee (or Board) on Trade and Sustainable Development, in which Labor Ministries participate. If consultations fail, the next stage is recourse to a panel of experts, which creates non-binding preliminary and final reports, the end of which results in the creation of an Action Plan, the implementation of which is overseen by the Commission or Board. To date, no labor disputes have been brought to the board.

Each of the EU agreements provide a common basic outline of how a roster should be assembled from a list of potential experts on labor law, international trade, or trade disputes, and how such panels are to be formed. The EU-Singapore agreement stands out as including a particularly developed set of guidelines for both establishing a Roster of potential experts and for invoking the Panel of Experts, in Article 13.17.

Roles for stakeholders and civil society

The EU agreements reserve important for stakeholders, social partners and civil society in the implementation and monitoring of the labor chapters and any disputes resulting from them. The European Transparency Initiative (ETI) of 2008 established a framework for Civil Society Dialogues, including for trade, which aims to increase transparency on how trade policy is made, but also address concerns about the impact of trade on civil society. Following this framework, all new generation accords feature a formal venue for the participation of representatives from labor, business and environmental groups of all participating states.

The Domestic Advisory Groups (DAG) represents civil society interests in the Trade and Sustainable Chapter of agreements and serves to advise the Commissions and other bodies on its implementation. The members of the group are to meet annually, and the DAG is to also meet with Sub-Committee on Trade and Sustainable Development to discuss the implementation of the sustainable development chapter.

However, across agreements, the additional roles for stakeholders vary. While for all EU agreements, stakeholders are to be included through the DAG to discussions on the implementation of the agreement, often in parallel with government to government meetings, in almost all other areas, stakeholders play a very limited role. Stakeholders hold the most expansive role in the Singapore agreement. There is no DAG in this accord, instead stakeholders serve in multiple Advisory Groups to the Board in dialogues with the Parties, are invited to make comments on the initial drafts of reports by the panel of experts, and Parties must inform stakeholders of results of Action Plans resulting from expert panels.

While these formal channels serve the purpose of fulfilling the ETI mandate, there has been plenty of criticism of them, along the lines of how well they channel civil society representation versus merely fill an administrative function. Orbie et. al. (2014) raise the question of the selection of representatives to the Councils. Because these are not transparent, they ask whether there is a deliberate exclusion of representatives critical of trade itself (pp 528). Further it is not clear as to whether members from partner states are truly representative of their respective interest groups, or whether they are independent from their governments (pp 528). The major concern however is whether and how the work of these consultative channels is fed back in to EU policymaking in any concrete way, or whether there is follow up (pp 529). Some work suggests that the councils are lacking on all

dimensions and therefore are ineffective in promoting the opinions of the public at large on trade policy. For example, Postnikov (2013) writes that the Commissions almost never meet.

In response, the EU has recently released a set of actions to address the shortcomings of the role of stakeholders in enforcing EU accords, in part as response to this ongoing criticism, and in part as a result of the feedback the Commission received during stakeholder consultations that were implemented for the first time as part of the impact assessments for the modernized EU-Chile and EU-Mexico accords and for the new EU-MERCOSUL accord (Commission Services, 2018). Core to this programme is strengthening the role of the DAGs and the joint civil society forums to facilitate their role in monitoring implementation of the Trade and Sustainable Development chapters, including new money to facilitate communication across the DAGs of each accord.

It is important to note that none of the EU agreements have received cases for discussion to date, in part because in contrast to the other models, there is no formal channel for stakeholders to bring cases to dialogue with the parties. While the new EU directive does project a more streamlined response system in terms of establishing timelines to respond to requests, it does not mention any new rules in place to support complaints from stakeholders in labor rights issues in EU trading partners (Commission Services, 2018). In order to promote labor clauses as a tool not just for the implementation of labor standards, but also to promote cooperation between states to improve labor related domestic practices, it is case filings that identify issues and priorities around to which to focus resources and effort. In the absence of cases, stakeholder inputs can reveal major labor rights enforcement issues that could be addressed through state to state dialogue, or provide the material for cooperative activities, which is the linchpin for spreading best practices.

Strengthening the EU model in the modernization process

The Commission has proposed the modernisation of the EU-Mexico and EU-Chile accords, which are earlier agreements, concluded respectively in 2000 and 2002. As the first accords of the Latin American agreements, they are less advanced than the more recently negotiated EU agreements with other LAS states, and very recent EU agreements like the EU agreement with Canada (CETA). While the EU- Mexico accord, for example, was already less advanced than NAFTA, the negotiations of the TTP, to which

both Mexico and Chile are party, threatened to make EU agreements obsolete in relation to competing agreements with those countries' other trade partners like the US, in terms of comprehensive coverage. For example, The EU-Mexico and EU-Chile accords have limited WTO+ provisions on intellectual property rights, services, investment and regulatory provisions compared to later EU agreements. For example, more recent agreements include TRIPS + provisions while the Chile and Mexico accords do not, and while the EU-Mexico and EU-Chile agreement incorporate some GATS+ features, more recently negotiated agreements have further developed regulatory issues, including data protection.

Equally important is that neither the EU-Chile or EU-Mexico accords included sustainable development provisions, though some of the labor, human rights, and in the case of Mexico, quality of democracy issues were partly covered by political dialogues, both should be aligned with the *Trade for All* agenda.

The modernization of these accords, and the signing of additional ones based on the 2012 framework, provides an opportunity to improve upon the weaknesses of the "new generation" model presented in the preceding section. Important issues remain in the design of the sustainable development chapters, which in turn affects how well the clauses can be enforced, and ultimately their usefulness as tools to promote labor rights through EU trade.

Clearly the first step in modernising the older accords in this direction is in introducing sustainable development chapters that mirror the formal institutions of the post-2006 agreements, and that are in line with the 2012 Guidelines and *Trade for All* directives. The established pattern of EU "new generation" clauses each include a) the same emphasis on the right to establish national labor regulation and law, and determine national priorities for the application of labor law, b) a no derogation clause, c) reaffirm national commitments to the ILO fundamental labor standards of the 1998 Declaration by ensuring national labor regulations are consistent with the Declaration and d) refer to the ILO fundamental labor standards in establishing labor standards for the trade agreement itself. They also include e) major emphasis on state to state cooperation on labor issues f) some combination of institutional structures to manage cooperation, g) dispute resolution mechanisms between states which rely on dialogue, panels of experts and action plans to improve labor rights protections within states and h) formal if limited, roles for stakeholders. New Chile and Mexico accords, and forthcoming MERCOSUL and other agreements, should incorporate

then all of these elements as the minimum acceptable framework for trade and build from there.

Modernization of the EU-Mexico Global Agreement

In April of 2018, the European Commission announced that it had reached a provisional framework agreement with Mexico on the modernization of the EU-Mexico Global Agreement, first signed in 1997, and in force since 2000. In addition to creating new rules for trade in services, adding deep reductions on tariffs of many goods, especially agriculture, and widening procurement and investment opportunities for both actors, the agreement will feature for the first time a dedicated chapter on Trade and Sustainable Development.

The Trade and Sustainable Development chapter has an enhanced role for the ILO in comparison to earlier accords. For example, while the ILO 1998 *Declaration* remains the base instrument for identifying which core or fundamental labor rights are included in the agreement, the chapter makes emphasized reference to the need for both parties to make progress on signing and ratifying the core Conventions of the Declaration (EU Commission 2018, p3). This is important because it offers a new tool for dialogue on securing Mexico's compliance with Convention 98 on the Right to Organize and Bargain Collectively, which Mexico signed but has tabled for ratification. Freedom of association and collective bargaining rights are at the core of Mexico's "protection contract" system, which limits union registration and the right to affiliation to unions of a worker's choice, the result of which has been the denial of worker's voices in workplace issues. The refusal to ratify Convention 98 and its consequences for workers has been the source of multiple filings in the ILO Committee of experts (CEACR) and the Freedom of Association panels. Creating an expanded role for the ILO here both places this agreement beyond earlier accords in terms of reach, and provides for additional channels for Mexico's compliance with the fundamental Conventions.

This agreement also creates new channels for engagement with civil society not found in other accords, and novel for EU-Mexico relations. The EU established new channels for engagement with Mexican civil society as part of the stakeholder engagement for impact assessments, and from there has built in as part of the agreement funding to continue that dialogue. As part of this initiative, NGOs and other social actors would be able to apply for EU funding to sustain programs to promote labor rights and social

dialogue in Mexico, which is a virtually undeveloped area of EU-Mexico cooperation.

Finally, part of the enforcement process of the chapter includes sustained and periodic high level dialogue between Mexico and the EU on Mexico's human rights record. The accord then establishes for the first time a channel of Mexican accountability to the EU for these important issues, which could serve to pressure Mexico to improve its performance here.

Moving forward on cooperation on labor

Any new agreement from the EU will include channels for state-to-state cooperation around labor issues as part of the new emphasis on labor and human rights guarantees in trade as representing EU core values. Cooperative activities can play an important role in the diffusion of labor rights protection, including through information exchange and technical assistance, and therefore contribute to the spread of best practices through state to state dialogue. As such, fomenting cooperation is important to the trade and sustainable development emphasis of the labor chapters. Even the agreements where the areas of cooperation are more limited in scope, as compared to other agreements, the still of offer an extensive range of areas on which to cooperate and exchange information, across implementation of both international labor standards and domestic efforts at promoting decent work, capacity building for administration of social security, human resources and job training.

However, this analysis has argued that the mechanisms for cooperative mechanisms are best used when there are cases that draw attention to which types of labor issues should be addressed by consultations. The major failing of the EU model is that even given the expansive role for stakeholder consultations and participation in advisory groups, there is no channel for any civil society actor to bring cases or complaints against trade partners. One solution is to open the institutional and monitoring mechanisms to stakeholders, by giving Domestic Advisory Groups standing to request Government Consultations. In doing so, parties to the agreements and any commissions formed to implement the labor chapters could not just incentivize the role of civil society in the agreements, but harness the agenda setting aspect of receiving cases to determine where to prioritize cooperative activities, and thus give momentum to the cooperative aspects of the labor chapters. The "next generation" of EU trade and labor agreements could continue to emphasize the "cooperation through dialogue" that is at

core of the European approach to labor standards and trade, but notably improve upon the effectiveness of both by opening the dispute mechanisms to stakeholder requests. Doing so may create the incentives for stakeholders to become more invested in the process, thus generating cases to discuss, and with this, reinforcing the cooperative aspects of the accord.

References

Aissi, Jonas, Rafael Peels, R. and Daniel Samaan. (2018), Evaluating the Effectiveness of Labor Provisions in Trade Agreements—An Analytical Framework. *International Labor Review*. First view, September 8, 2017. https://doi.org/10.1111/ilr.12066

Aspinwall, Mark. 2009. *Side Effects: Mexican Governance Under NAFTA's Labor and Environmental Agreements*. Stanford: Stanford University Press.

Blanton, Robert G., and Shannon Lindsey Blanton. 2016. "Globalization and Collective Labor Rights." *Sociological Forum* 31 (1): 181–202.

Blanton, Robert G., and Dursun Peksen. 2016. "Economic Liberalization, Market Institutions, and Labor Rights," *European Journal of Political Research* 55 (2):474-91.

Cingranelli, David L, and Chang-yen Tsai. 2003. "Democracy, Globalization and Worker's Rights: A Comparative Analysis." Unpublished MS, Binghamton, NY: Departmemt of Political Science.

EU Commission Services. 2018. *Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements*. Non paper of the Commission services (February 26). EC:Brussels. http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf, accessed May 10, 2018.

Council of the European Union. (2012). *EU Strategic Framework and Action Plan on Human Rights and Democracy*. https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf, accessed 12 December 2017.

Davies, Ron, and Krishna Chaitanya Vadlamannati. 2013. "A Race to the Bottom in Labor Standards? An Empirical Investigation". *Journal of Development Economics* 103, pp 1-14.

Dombois, Ranier. 2002. "Labor Regulation by the North American Agreement on Labor Cooperation: A Problem of Deficient Design?" *Paper Prepared for the 54th Annual Meeting of the International Industrial Relations Society*.

Ehrenberg, Daniel S. 1996. "From Intention to Action: An ILO/ WTO Enforcement Regime for International Labor Rights." In *Human Rights, Labor Rights*

and International Trade, edited by Lance Compa and Stephen F Diamond, 163–80. Philadelphia: University of Pennsylvania Press.

European Commission. 2018. *EU-Mexico Free Trade Agreement, EU Textual Proposal, Chapter on Trade and Sustainable Development*. April.

European Commission. 2015a. *Trade for All: Towards a more Responsible Trade and Investment Policy*. http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf, accessed January 29, 2018.

European Commission. 2015b. *Guidelines on the Analysis of Human Rights Impacts in Impact Assessments for Trade-related Policy Initiatives*. http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf, accessed January 26, 2018.

European Parliamentary Research Service (EPRS). 2016. *EU–Latin America Trade Relations: Overview and Figures*. EPRS document PE 579.086. Brussels: EPRS.

Finbow, Robert. 2006. *The Limits of Regionalism: NAFTA's Labor Accord*. Burlington, VT: Ashgate.

Frundt, Henry J. 1998. *Trade Conditions and Labor Rights: US Initiatives, Dominican and Central American Responses*. Miami: University Press of Florida.

———. 1999. "Cross-Border Organizing in the Apparel Industry: Lessons from Central America and the Caribbean." *Labor Studies Journal*, vol 24 (1):89-106.

Garvey, Jack I. 1995. "Trade Law and Quality of Life: Dispute Resolution under the NAFTA Side Accords on Labor and the Environment." *The American Journal of International Law* 89 (2 (April)): 439–53.

Gordon, Michael. 2000. "Export Processing Zones." In *Transnational Cooperation among Labor Unions*, edited by Lowell Turner, 60–78. Ithaca: Cornell University Press.

Graubart, Jonathan. 2008. *Legalizing Transnational Activism: The Struggle to Gain Social Change from NAFTA's Citizen Petitions*. University Park: University of Pennsylvania Press.

Greenhill, Brian, Layna Mosley, and Aseem Prakash. 2009. "Trade-based Diffusion of Labor Rights: A Panel Study, 1986–2002". *American Political Science Review* 103 (4, November) 669-690.

Greven, Thomas. 2005. *Social standards in bilateral and regional trade and investment agreements instruments,* Friedrich-Ebert-Stiftung Occasional Paper 16. Geneva: FES.

Hafner-Burton, Emilie M. 2009. *Forced to Be Good: Why Trade Agreements Boost Human Rights*. Ithaca: Cornell University Press.

Harrison, Ann E., and Jason Scorse. 2003. "Globalization's Impact on Compliance with Labor Standards." *Brookings Trade Forum* 2003 (1): 45–96.

Harvey, Pharis J. 1994. "Failure of the Labor Side Agreement." In *NAFTA's First Year: Lessons for the Hemisphere*, edited by Sarah Anderson and John Cavanaugh, 12–19. Washington, D.C.: Alliance for Responsible Trade.

International Labor Organisation. 2016. *Assessment of Labor Provisions in Trade and Investment Arrangements,* International Labor Organization: Geneva, 202 pp. http://www.ilo.org/global/publications/books/WCMS_498944/lang--en/index.htm, accessed 20 January, 2018.

Kay, Tamara. 2005. "Labor Transnationalism and Global Governance: The Impact of NAFTA on Transnational Labor Relationships in North America." *American Journal of Sociology* 111 (3): 715–56.

Kim, Moonhawk. 2012. "Ex Ante Due Diligence: Formation of PTAs and Protection of Labor Rights." *International Studies Quarterly* 56 (4), 1–16.

Lazo Grandi, Pablo. 2009. "Trade Agreements and Their Relation to Labor Standards: The Current Situation." *ICTSD Issue Paper*. Geneva.

Maskus, Keith E. 1997. "Should Core Labor Standards Be Imposed through International Trade Policy?" Policy Research Working Papers. Washington, D.C.: The World Bank.

Moorman, Yasmin. 2001. "Integration of ILO Core Rights Labor Standards into the WTO." *Columbia Journal of Transitional Law* 39.

Mosley, L., and S. Uno. 2007. Racing to the Bottom or Climbing to the Top? Economic Globalization and Collective Labor Rights. *Comparative Pol. Studies* 40 (8): 923–48.

Neumayer, Eric, and Indra De Soysa. 2006."Globalization and the Right to Free Association and Collective Bargaining: An Empirical Analysis." *World Development* 34(1): 31-49.

———. 2005. "Trade Openness, Foreign Direct Investment and Child Labor." *World Development* 33(1):43-63.

Nolan García, Kimberly A. 2014. "Internalización de las normas laborales internacionales bajo el marco del TLCAN: El caso mexicano," *Norteamérica* 9:1, pp 111-141.

Nolan García, Kimberly A. and Elizabeth O'Connor (*forthcoming*). *The Effectiveness of Trade Based Clauses in Improving Labor Rights Protections: The Case of the CAFTA-DR Labor Clause*. Geneva: International Labor Organization.

Orbie, Jan, Deborah Martens, Myriam Oehri and Lore Van den Putte. 2016. ""Promoting Sustainable Development or Legitimizing Free Trade?: Civil Society Mechanisms in EU Trade Agreements, *Third World Thematics* 1 (4): 526-546.

Pangalangan, Raul C. 2002. "Sweatshops and International Labor Standards: Globalizing Markets, Localizing Norms." In *Globalization and Human Rights*, edited by Raul C Pangalangan and Alison Brysk, 98–114. Berkeley: University of California Press.

Postnikov, Evgeny, and Ida Bastiaens. 2014. "Does Dialogue Work? The Effectiveness of Labor Standards in EU Preferential Trade Agreements." *Journal of European Public Policy* 21 (6): 923–40.

Rodas-Martini, Pablo. 2006. Labor Commitment in the Central America Free Trade Agreement (CAFTA): A Non-Negotiated Negotiation. *Integration and Trade,* 10 (25), 281-296.

Rodrik, Dani. 1996. "Labor Standards in International Trade: Do They Matter and What Do We Do About Them?" In *Emerging Agendas for Global Trade: High Stakes for Developing Countries*, 35–79.

———. 1997. *Has Globalization Gone Too Far?* Washington: Institute for International Economics.

Ross, Robert, and Anita Chan. 2002. "From North-South to South-South: The True Face of Global Competition." *Foreign Affairs,* September.

Salem, Samira, and Faina Rozental. 2012. Labor Standards and Trade: A Review of Recent Empirical Evidence. *J. of International Commerce and Economics*, August: 1–36.

Singh, P. and Roy J Adams. 2001. "Neither a Gem Nor a Scam: The Progress of the North American Agreement on Labor Cooperation." *Labor Studies Journal* 26 (1)