



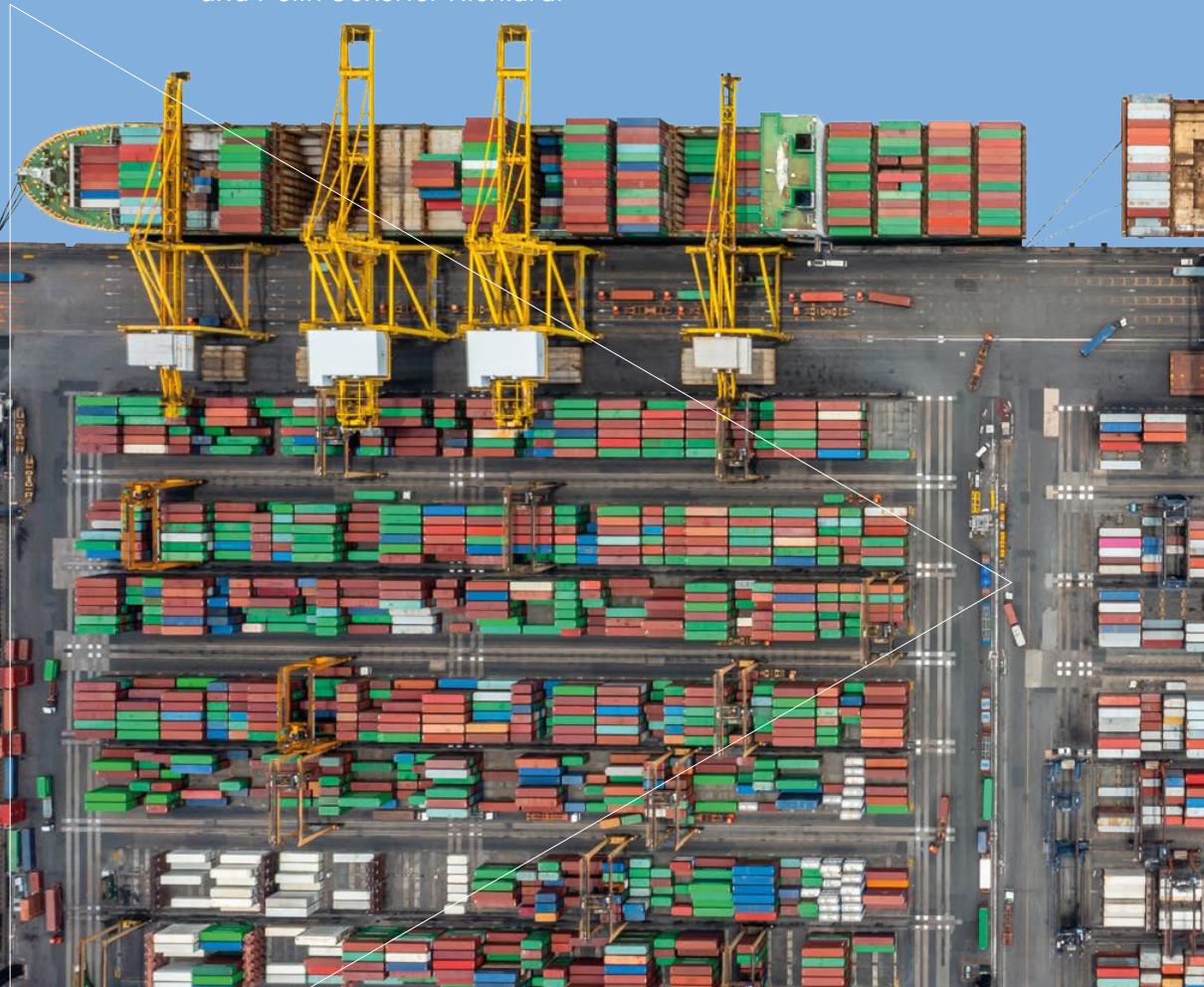
International
Labour
Organization

► Integrating trade and decent work

Volume 2

The potential of trade and investment
policies to address labour market issues
in supply chains

Edited by Marva Corley-Coulibaly, Franz Christian Ebert
and Pelin Sekerler Richiardi



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International Labour Office · Geneva



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► Abbreviations

AfCFTA	African Continental Free Trade Area
ASEAN	Association of Southeast Asian Nations
BIT	bilateral investment treaty
CAFTA–DR	Dominican Republic–Central America–United States Free Trade Agreement
CAI	Comprehensive Agreement on Investment (EU–China)
CBAM	Carbon Border Adjustment Mechanism
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CETA	Comprehensive Economic and Trade Agreement (EU and Canada)
COMESA	Common Market for Eastern and Southern Africa
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSF	civil society forum
CSM	civil society mechanism
CSO	civil society organization
CSR	corporate social responsibility
CTSD	committee on trade and sustainable development
DAG	domestic advisory group
DFI	development finance institution
EAC	East African Community
ECOWAS	Economic Community of West African States
EU	European Union
EVFTA	EU–Vietnam FTA
FDI	foreign direct investment
FTA	free trade agreement
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
ICSID	International Centre for Settlement of Investment Disputes
IIA	international investment agreement

MNE Declaration	Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
RCEP	Regional Comprehensive Economic Partnership
RTA	regional trade agreement
SADC	Southern African Development Community
SDG	Sustainable Development Goal

► Foreword

Integrating trade and decent work is at once timely and timeless.

We live in a moment of stark societal inequality, and a hardening discontent with the direction of the global economy. Work that makes the case for social justice as the basis of global peace could hardly be more timely.

This research volume makes that case in a careful, rigorous manner that draws on the need to rebalance the global economy. It offers a thoughtful overview of the contemporary landscape, with perceptive examples drawn from various parts of the globe. The editors understand their responsibility to look beyond the growing number of theories cataloguing mechanisms for trade and labour standards, explaining an increasingly dense environment of regulatory experimentation. The volume's singular contribution is to foreground the ways in which monitoring, cooperation and dispute settlement mechanisms actually engage with the interface of trade and decent work – and, in the process, help to recentre social justice.

Contributions to this edited collection centre on the purposes of global trade. The collection closely aligns with the United Nations Sustainable Development Goals, which include economic growth and decent work. The book's purposive approach stretches contemporary thinking across disciplinary boundaries – from economics to law, and from corporate social responsibility to gender studies. Contributors innovate with approaches that combine trade policy and decent work. By enabling women's access to decent work in formal employment, for example, we learn that trade policy can help to transform societies.

The kinds of initiatives foregrounded in *Integrating trade and decent work* do not arise spontaneously. They are cultivated over time, with a range of prudently honed actions by tripartite-plus actors that include, but extend beyond, governments and employers' and workers' organizations, and that are attentive to policy coherence. For example, researchers invite us to shift our conventional analytical lenses just enough to recognize that if we are concerned to address environmental sustainability, notably in agriculture, we must pay close attention to the labour, livelihood and food security issues faced by farmers and farmworkers themselves.

The measures in this volume are also cultivated across space. The contributors appreciate that to relegate distributive justice exclusively to the national level is to shackle the very initiatives that are necessary to achieve sustainable

development goals. Rather, *Integrating trade for decent work* explains that the purposes of trade must also be creatively pursued, transnationally.

It is especially important to note that this volume emerges out of century-long initiatives from the International Labour Organization (ILO), showcasing the research that the Organization has repeatedly demonstrated it can not only convene but also co-create. The volume canvasses a range of themes on which the ILO has long shown leadership, through its 1919 and 1944 constitutional self-understanding; through its influence on the 1948 Havana Charter, which would have established a relationship between the proposed International Trade Organization and the ILO; through groundbreaking research undertaken alongside the World Trade Organization; and most recently through the space it holds open to convene research and dialogue, pragmatically and constructively offering policy options on pressing global concerns including global supply chains. As ILO Director-General David Morse affirmed upon accepting the Organization's 1949 Nobel Peace Prize, "the ILO has provided the nations of the world with a meeting ground, an instrument for cooperation and for dialogue among very different interests". This volume is an example of the ILO assuming that distinct role.

I fully expect that *Integrating trade and decent work* and the ongoing work of the ILO Research Department will catalyse sustained social dialogue about how to make trade fair and foster social justice. Decent work is not simply an idealistic ambition; in our current, far too often polarized world, the ILO's noble vision is as urgent and compelling now as it was in 1919. Its research role is an excellent example of how the Organization has "patiently, undramatically, but not unsuccessfully, worked to build an infrastructure of peace". In that sense, this work is timeless.

Adelle Blackett

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► Introduction

Marva Corley-Coulibaly, Pelin Sekerler Richiardi and Franz Christian Ebert

Trade and investment policies comprise rules, regulations and formal practices that govern the conduct of international trade and investment activities. It is a stylized fact that the vast majority of trade (70 per cent) takes place in global supply chains, with traditional trade in final goods and services accounting for around 30 per cent (OECD 2020). Moreover, there is a “mutually reinforcing relationship” between foreign direct investment and global supply chain participation that is largely driven by multinational enterprises, which account for about 80 per cent of trade (Qiang, Liu and Steenbergen 2021, 34; UNCTAD 2013). As a result, trade and investment policies have far-reaching consequences for the development, structure and governance of global supply chains.

Since the 1990s countries located in the global South have increasingly integrated into regional and global production networks, particularly in the manufacturing sector. This has had the effect of enhancing productivity, while also helping to fuel rapid industrialization, increase formal employment, and reduce poverty in many developing and emerging economies. This increasing degree of integration has, at the same time, revealed the generally inadequate labour market institutions that frequently exist in developing and emerging economies to implement and enforce labour laws and regulations. This lack of institutional capacity could, in many cases, contribute to low wages and unfavourable working conditions. The practice of outsourcing production in such an environment has also been linked to the polarization of employment in developed countries, contributing to the erosion of middle-income groups (Firpo, Fortin and Lemieux 2011).

Against this backdrop, the question of how to integrate labour market considerations, notably labour standards, into trade and investment policies is of vital importance for policymaking that promotes sustainable development. Although this is a long-standing debate within the trade, investment and labour literature (for an overview, see Compa 1998; Tsogas 1999; McCrudden and Davies 2000), it has resurfaced among policymakers and stakeholders (see, for example, USTR 2021; WTO 2021; EC 2022; IOE 2022; IndustriALL 2023). This integration aims to balance economic and social objectives, ensuring that trade and investment policies do not undermine but rather support the attainment of social objectives.

However, labour issues are not generally dealt with in the multilateral trading system. The World Trade Organization (WTO) is responsible for setting the rules that govern the multilateral system of trade, but these rules do not directly address labour standards. In light of the constraints faced by the multilateral system, WTO members have agreed to hundreds of unilateral, bilateral and plurilateral trade arrangements. Many of these agreements include deeper commitments – on a range of economic and social issues such as investment, labour and the environment – than in the multilateral system. In this vein, labour provisions have been included in about one of every three bilateral and plurilateral trade agreements reported to the WTO (ILO 2022). Such provisions often commit trading partners to adhere to minimum labour standards (frequently referencing the ILO’s Fundamental Principles and Rights at Work), to enforce relevant domestic laws, or to avoid lowering domestic labour standards to encourage trade or investment. Similar requirements can also be found in some unilateral trade preference schemes with labour conditionality, while several countries have adopted customs border measures that prevent the entry of goods that are suspected of being associated with forced labour.

Additionally, in the absence of a comprehensive multilateral investment system, references to labour commitments have also flourished in international investment policies, the aim of which is to encourage and protect foreign investment. These include labour commitments in investment chapters of some trade agreements, in bilateral investment treaties, and in the investment policies of numerous development finance institutions, including the World Bank Group’s International Finance Corporation. Furthermore, a number of complementary approaches to address labour standards have emerged, including public–private initiatives that compel companies to report and remedy labour violations in their supply chains.

Many studies have analysed how labour references have been included in trade agreements (for example, Doumbia-Henry and Gravel 2006; Siroën 2013; ILO 2013, 2016, 2019; Raess and Sari 2018 ; Marceau, Walker and Oeschger 2023); in unilateral trade instruments (for example, Amato 1990; Tsogas 2000; Stolzenberg 2019; Higgins 2023); in investment policies (for example, Penfold 2004; Prislán and Zandvliet 2014; Aisbett et al. 2018; Yifeng 2018); and in public–private initiatives (for example, Phillips, LeBaron and Wallin 2018; Delautre, Echeverría Manrique and Fenwick 2021). However, there has been less research on the implementation and effectiveness of these mechanisms.

This volume aims to contribute to the existing body of research by deepening our understanding of how labour market considerations, particularly international labour standards, have been incorporated into trade and investment policy. Additionally, this volume evaluates the efficacy of these

measures and extracts insights for future policymaking. The research expands beyond a strictly legal analysis by taking into account the larger role that trade and investment policies play as a tool for achieving sustainable development. To this end, the volume falls into three parts.¹

Part 1 reviews how labour issues are currently reflected in trade and investment agreements and explores their implementation in practice. Corley-Coulibaly, Grasselli and Postolachi (Chapter 1) shed light on labour provisions in trade agreements, focusing on the approaches taken by three key proponents of such provisions: Canada, the European Union and the United States of America. The authors analyse the design of relevant provisions and then look at their implementation, focusing on notable dialogue, cooperation and dispute settlement activities. On this basis, the authors draw several lessons for policymaking, including on avenues to involve stakeholders more effectively in the implementation of agreements.

Marx and Mattioli (Chapter 2) then turn to international investment agreements. Against the backdrop of concerns that such agreements may curtail domestic policy space for labour issues, the authors dissect the labour-related content and associated implementation mechanisms of these agreements. Noting various limitations of the extant provisions, the authors highlight several options for improving their design to increase their effectiveness in terms of enhancing domestic labour standards and safeguarding relevant domestic policy space.

Ebert, Francavilla and Guarcello (Chapter 3) complete the first part by exploring the potential of a variety of trade and investment governance instruments to address forced labour in supply chains. Following an overview of the root causes of forced labour in supply chains, the chapter shows how forced labour concerns have been integrated into instruments such as trade preference programmes and investment policies of development finance institutions. The authors then use two case studies, from Malaysia and Uzbekistan, to shed light on the extent to which trade and investment governance instruments can contribute to combating forced labour on the ground and how they interact with other regulatory layers in this regard.

Part 2 zooms in on examples from three regions to provide a contextualized understanding of how the integration of labour concerns into regional trade agreements (RTAs) can play out in practice. Bensusán (Chapter 4) examines the labour dimension of the United States–Canada–Mexico Agreement and its role in the important changes that Mexico’s labour market institutions have undergone in recent years. She traces the dynamics surrounding the

¹ For more detailed summaries, see the “snapshots” for the contributions in this volume available at ilo.org/ITDW.

negotiations of the agreements and explains how they provided a stimulus for reform and supported reform efforts by political actors at the domestic level. The author then examines the agreements' complex labour provisions, including the innovative Rapid Response Labor Mechanism, and shows how this mechanism has helped to address collective labour rights issues in Mexico to date.

Adopting a similar focus, Marslev and Staritz (Chapter 5) analyse the role of the European Union–Viet Nam Free Trade Agreement in the labour law reform process undertaken by Viet Nam since 2019. They argue that, while the agreement played an important role as a reform catalyst, the process of reform must be understood in the context of the domestic political dynamics in Viet Nam, where reform-inclined actors were able to harness external pressure for policy change. The authors then turn to the post-ratification phase, pointing to challenges over the implementation of the labour-related requirements of the agreement and the ongoing reform process.

Next, MacLeod (Chapter 6) directs the reader's attention to the African Continental Free Trade Area (AfCFTA). His contribution assesses the AfCFTA's potential to promote the realization of Sustainable Development Goal 8 (SDG 8) on decent work and economic growth, focusing on youth, gender and broader labour market issues. After reviewing available economic projections of the AfCFTA's labour market impact, the author proceeds to examine how concerns related to SDG 8 are reflected in the legal and institutional design of the AfCFTA. On this basis, the chapter sets out several policy options for strengthening the AfCFTA's contribution to implementing SDG 8.

Finally, **Part 3** looks at how structural labour market issues can be addressed through trade governance instruments at different levels, including the multilateral trading system. Der Boghossian (Chapter 7) focuses on trade policy and gender issues. She unpacks how WTO agreements, national policies and specific programmes, such as Aid for Trade, could interact to promote a "blended approach" to gender-responsive trade policymaking. This approach, which places women's economic empowerment as a central focus of trade policy, would support formal employment while also advancing decent work objectives.

Ünal and Barrowclough (Chapter 8) turn to agriculture as a sector highly integrated in trade that faces challenges in terms of both its labour practices and its environmental effects. The authors discuss the potential role of existing trade policies, including some recent regional trade agreements, in addressing these issues, and conclude that – instead of relying on trade policy alone – there is a need for coherence between distinct but intersecting policy spheres. In this regard, the authors put forward the Green New Deal as a possible option, as it offers a more comprehensive framework that brings together trade, finance, investment and employment policies in the course of an environmentally sustainable transition.

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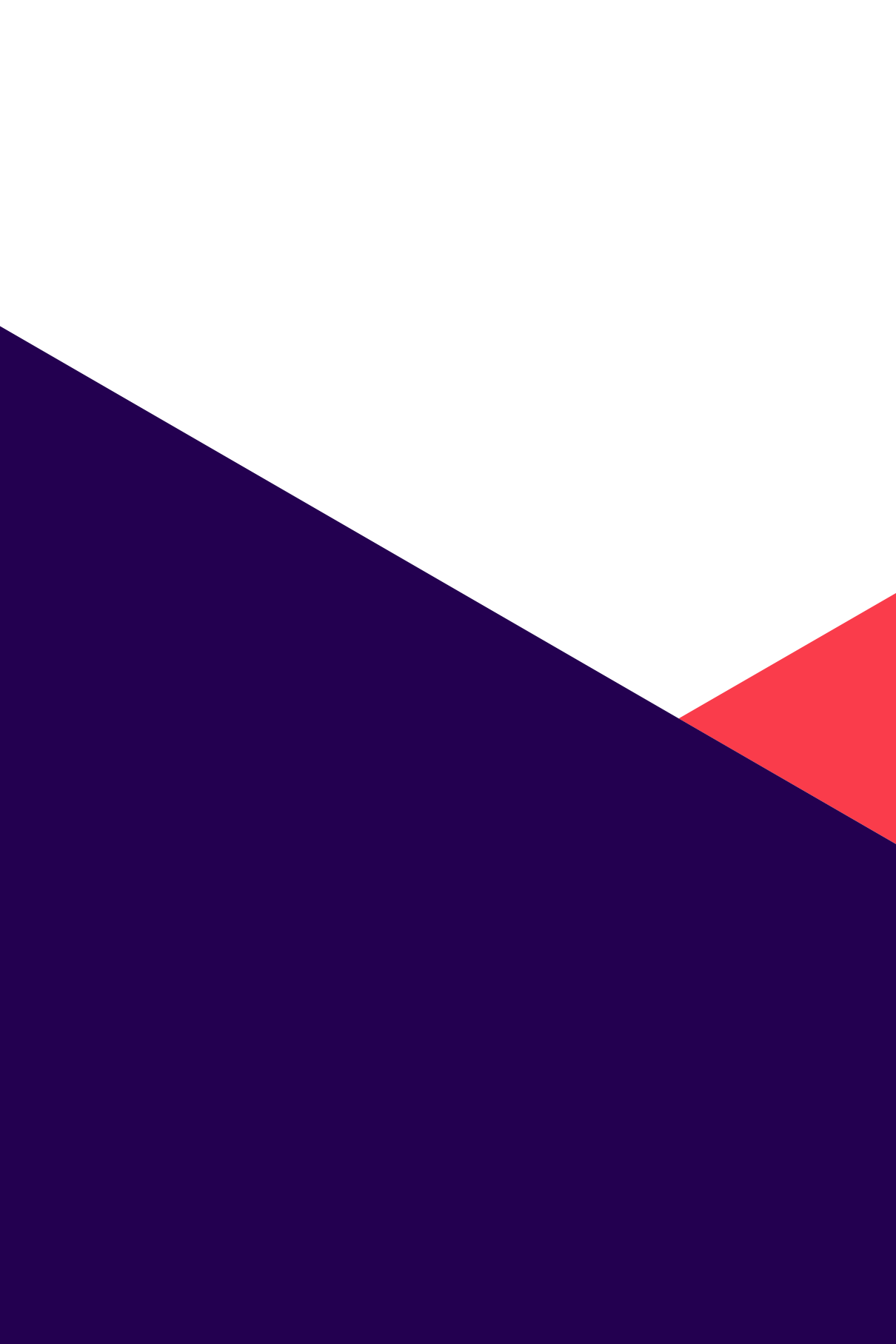
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Part 1

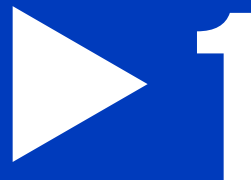
**Trade and investment
policy as a tool for
promoting labour rights**



Implementation of labour provisions under Canadian, European Union and United States trade agreements

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► Introduction

In recent decades, numerous countries and regions have made deliberate efforts to enhance the connection between trade and socio-economic goals, at both the macro and the micro level. Trade instruments including unilateral arrangements, import bans and regional trade agreements are (RTAs) being utilized to address human and labour rights concerns and promote social objectives (ILO et al. 2019; ILO 2019a). Private sector initiatives also exist with the aim of promoting responsible business practices through both voluntary and mandatory reporting (Delautre, Echeverría Manrique and Fenwick 2021). This chapter examines the promotion and enforcement of labour rights within RTAs.¹

Trade agreements that include labour provisions provide a variety of options for promoting compliance with and enforcement of labour commitments. These mechanisms entail different approaches to stakeholder engagement for the purpose of facilitating dialogue, enhancing transparency and accountability, promoting cooperation, and providing means for resolving disputes. However, the realization of labour commitments through these mechanisms is not always a straightforward process, and one critical concern is how such mechanisms work in practice. Indeed, while trade agreements outline the concept, the concrete practices are not always obvious.

This chapter seeks to explore how monitoring, cooperation and dispute settlement mechanisms are put into practice, rather than just considering how they are designed. It focuses on the practices of three main proponents of labour provisions in RTAs: Canada, the European Union (EU) and the United States. The reason for this focus is that these economies have been involved in landmark labour disputes under their trade agreements: the labour disputes between the EU and the Republic of Korea, between the United States and Guatemala, and between Canada and Colombia. These disputes are used as case studies to illustrate the emergence and evolution of practices in a resolution-oriented context.

As the chapter explains, Canada, the EU and the United States typically introduce institutional mechanisms for the engagement of social partners and broader civil society either in a specialized chapter of the trade agreement or in an accompanying side arrangement. This includes frequent public consultations and well-established public submission

¹ The term “regional trade agreement” is used interchangeably with “trade agreement” in this chapter and refers in a broader sense to bilateral, plurilateral and regional agreements.

processes in place to deal with labour violations. With regard to cooperation mechanisms, all three economies have identified areas for working together with their trading partners and/or are implementing relevant development projects, with the possibility for the social partners to be involved in the identification and implementation phases. As for dispute settlement mechanisms, the three case studies show that both officials and stakeholders (employers' and workers' representatives and, more broadly, civil society) have drawn lessons from such experiences. These lessons include realization of the need for greater space for social dialogue in both formal and informal mechanisms, and from the very outset of trade negotiations; acknowledgement of the trading partners' shared commitments, including political commitments; and awareness of the importance of development cooperation.

The chapter is divided into six sections. Section 1.1 offers an overview of labour provisions and related mechanisms that refer to the social partners based on the text of these three economies' trade agreements. Section 1.2 provides a review of the relevant literature and sets out the methodological framework for the research undertaken in preparation of this chapter. The next sections move from text to practice, examining stakeholder engagement in monitoring; cooperation areas and activities; and a specific labour dispute involving the EU (section 1.3), the United States (section 1.4) and Canada (section 1.5). Finally, section 1.6 identifies and presents lessons learned and conclusions.

► 1.1 Trends in labour provisions in trade agreements

1.1.1 The inclusion of labour provisions in trade agreements worldwide

Globally, about one third (113 out of 357) of trade agreements in force and notified to the World Trade Organization (WTO) in 2022 included labour provisions. This represents a notable rise compared with the initial inclusion of a labour provision in the side agreement of the North American Free Trade Agreement (NAFTA) in 1994.² Indeed, more than

² Based on data from the [ILO LP Hub](#), as of February 2023.

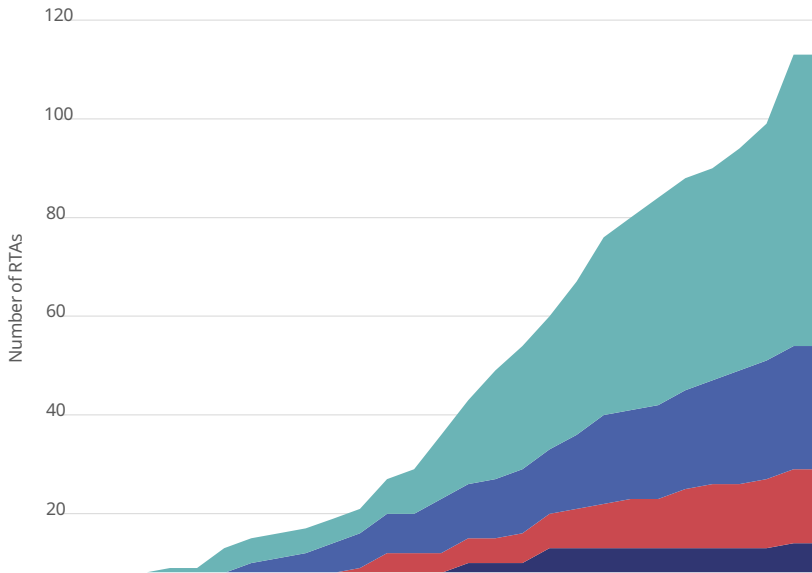
half of the trade agreements with labour provisions were concluded in the last decade, and the scope of engagement has expanded to over 140 economies. Nineteen per cent of RTAs with labour provisions involve South–South trading partners, comprising 22 agreements, while 26 per cent of these agreements are between North–North economies, comprising 29 agreements. The remaining 55 per cent of agreements are between North–South economies, amounting to 62 agreements. Nevertheless, the majority of trade agreements (68 per cent) do not include labour provisions. Approximately 55 economies, including Bangladesh, India and Saudi Arabia, do not have trade agreements that include labour provisions.

Of the RTAs with labour provisions in force and notified to the WTO, Canada, the EU and the United States have concluded almost half (51 out of 113,³ as can be seen in figure 1.1). The EU has the highest number of RTAs with labour provisions globally, with 25 out of 46 agreements. Canada follows with 15 out of 16 agreements, and the United States with 14 out of 15 agreements. While both Canada and the United States include labour provisions in the majority of their trade agreements, the EU includes such provisions in about half of its total number of RTAs. However, it is worth noting that most EU trade agreements concluded in the last ten years include labour provisions (13 out of 17).

At the same time, a growing number of other economies are also integrating labour provisions into their trade agreements: Chile (15 RTAs with labour provisions), the United Kingdom (12), the European Free Trade Association (11), New Zealand (9) and the Republic of Korea (9) are the major players in that regard.

3 Excludes double-counting of the North American Free Trade Agreement, the United States–Mexico–Canada Agreement and the EU–Canada Comprehensive Economic and Trade Agreement, so this number does not equal the sum of the totals for the individual economies.

► **Figure 1.1 Regional trade agreements with labour provisions, Canada, European Union, United States and global, 1994–2022**



RTA = regional trade agreement.

Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as of February 2023, including the first trade agreement with binding labour provisions, namely the NAFTA (1994), which is no longer in force. It is worth noting that no trade agreements with labour provisions entered into force in 2022 and that, at the time of publication, there were two trade agreements with labour provisions that entered into force in 2023.

Source: ILO, [Labour Provisions in Trade Agreements Hub](#).

1.1.2 Institutional mechanisms for monitoring in Canada, EU and US trade agreements

The majority of Canadian, EU and US trade agreements with labour provisions include formal arrangements to facilitate the participation of civil society – employers’ and workers’ representatives, non-governmental organizations (NGOs) and individuals – in the implementation of those provisions.

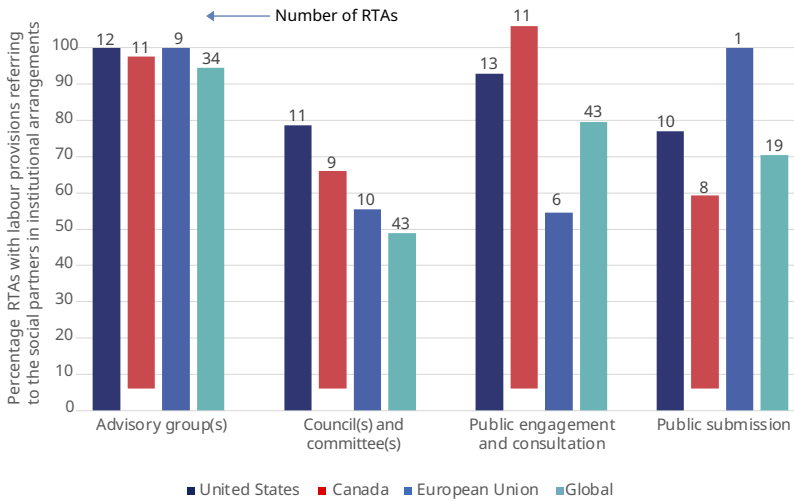
To target specific groups and stimulate cross-border engagement, four integrated institutional mechanisms are typically used in trade agreements with labour provisions. These mechanisms are: (a) a transnational ministerial-level council or committee for government officials of the respective parties; (b) a national administrative contact point or coordinator, which is normally a government entity; (c) national advisory groups that include employers’

and workers' representatives; and (d) public engagement and consultation procedures that invite views and perspectives from broader civil society (NGOs, grassroots organizations and individuals). A fifth mechanism, namely public submissions (that is, a process for receiving complaints from the public), varies depending on the trading partner.

Although there is no exclusive mechanism designated solely for the social partners, such would typically form the core of national (or domestic) advisory groups. As can be seen in figure 1.2, most of the trade agreements (94 per cent worldwide) that refer to the establishment of advisory groups, or to the use of existing consultative mechanisms, also include provisions on seeking advice from employers' and workers' representatives. All of the Canadian and US trade agreements include such a reference, as do most of the EU agreements (90 per cent).

In addition, a majority of all RTAs with labour provisions (80 per cent worldwide) lay down procedures for public engagement and consultations that also invite views and perspectives from the social partners. While this is the case for all of the Canadian trade agreements and most of the US ones (93 per cent), only half of the EU agreements (55 per cent) with provisions on public engagement include a reference to the social partners.

► **Figure 1.2 Share and number of regional trade agreements referring to the social partners in institutional frameworks, Canada, European Union, United States and global, 1994–2022**



RTA = regional trade agreement.

Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as of February 2023, including the first trade agreement with binding labour provisions, namely the NAFTA (1994), which is no longer in force. The total number of RTAs with such references is displayed at the top of the bars.

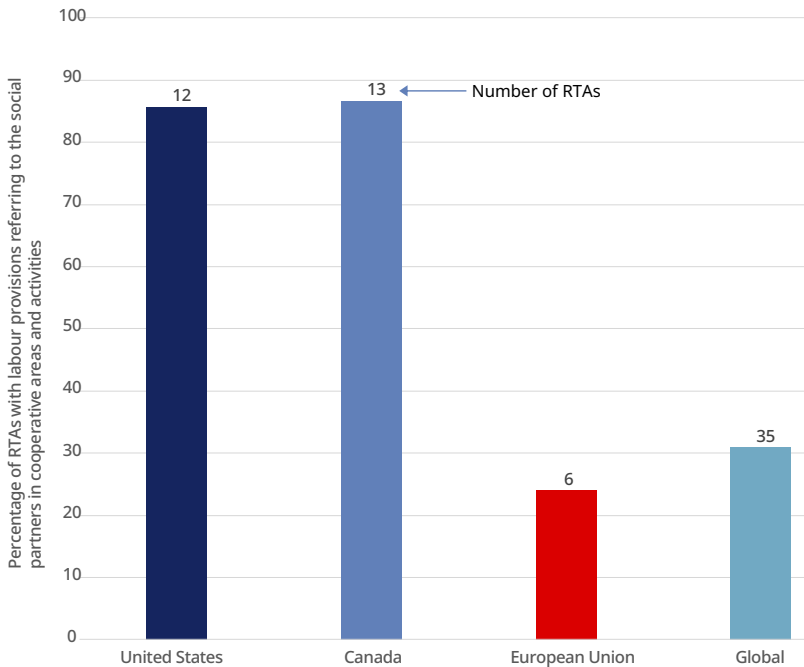
Source: ILO [Labour Provisions in Trade Agreements Hub](#).

1.1.3 Cooperation mechanisms in Canada, EU and US trade agreements

Canadian, EU and US trade agreements include labour provisions that establish mechanisms for cooperation between the parties on various labour-related issues. These mechanisms facilitate the identification of areas of cooperation and the development of specific activities, with the involvement of stakeholders, notably employers' and workers' representatives. Globally, areas of cooperation may refer to human capital development, occupational safety and health, working conditions, gender, child and forced labour, and the involvement of the social partners – in particular, to labour relations between, employers, workers and governments (48 per cent of all RTAs with labour provisions) and to social dialogue (30 per cent).

The role of stakeholders, such as employers' and workers' organizations and other independent civil society organizations, in identifying and carrying out cooperation activities is also explicitly mentioned in trade agreements (see figure 1.3). This is especially the case with US and Canadian trade agreements (86 and 87 per cent, respectively). Although EU agreements do so to a lesser extent, recent trade policy developments (EC 2022a) should make it possible for the social partners and other members of civil society to play an active role in the overall implementation of the trade agreements, including labour provisions.

► **Figure 1.3 Share and number of regional trade agreements referring to the social partners in cooperation mechanisms, Canada, European Union, United States and global, 1994–2022**



RTA = regional trade agreement.

Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as of February 2023, including the first trade agreement with binding labour provisions, namely the NAFTA (1994), which is no longer in force. The total number of RTAs with such references is displayed at the top of the bars.

Source: ILO, *Labour Provisions in Trade Agreements Hub*.

1.1.4 Dispute settlement procedures in Canada, EU and US trade agreements

The majority of Canadian, EU and US trade agreements with labour provisions define procedures for the settlement of disputes, which may rely on some of the institutional mechanisms presented above. The settlement process starts when – upon review of violations of labour commitments reported, for example, through a public submission – one party initiates formal government-to-government or ministerial consultations with the alleged violating party. The parties then intensify their dialogue with a view to identifying cooperative solutions to labour violations, typically in the form of a compliance, action or enforcement plan. If the parties fail to arrive at a satisfactory conclusion through formal consultations, or if the violating party fails to comply with an agreed plan, the complaining party may escalate the process. In most of the Canadian, EU and US trade agreements with labour provisions, escalation consists in the establishment of a panel with a mandate to make recommendations and/or determinations. Should the panel determine non-compliance with labour commitments under the trade agreement, the complaining party may have access to an array of remedies.

Globally, compliance plans and other corrective measures are the most common form of remedy, especially in the case of EU trade agreements, whereas Canadian and US agreements more frequently provide for compensation, suspension of benefits, or monetary contributions. The role of the social partners tends to be more limited at the dispute settlement stage compared with the monitoring stage, in particular when formal procedures are activated. Nevertheless, most RTAs providing for panel-based procedures for the settlement of labour disputes allow the social partners as well as other stakeholders to submit written views and opinions to the panel.

► 1.2 Literature review and methodology

1.2.1 Literature review

In general, the existing studies show that institutional mechanisms related to implementation of labour commitments have been beneficial when it comes to facilitating dialogue (Lazo Grandi 2017), strengthening the capacity of trade unions, enhancing transnational dialogue, raising workers' awareness of their rights (Oehri 2017a), and effectively supporting the capacity-building efforts of institutions (Lazo Grandi 2017; Peels and Echeverría Manrique 2017a).

Specifically focusing on EU agreements, a number of studies have found limitations to the stakeholder engagement model of the Trade and Sustainable Development chapters (TSDs). For example, Harrison et al. (2019) point to a weakness of the common TSD approach, namely failure to take a trading partner's national specificities into account during implementation of the relevant provisions. In the case of negotiations between the EU and the Republic of Korea, they noted that government committees lacked accountability when it came to addressing civil society concerns, which resulted in limited meaningful dialogue with stakeholders. Van den Putte (2015) also found that the functioning and accountability of the mechanisms for stakeholder engagement in the EU's trade agreement with the Republic of Korea needed to be enhanced. Martens, Potjomkina and Orbie (2020) found that, in general, despite the holding of meetings and the sharing of information, there is still a lack of genuine dialogue among the members of domestic advisory groups, which limits the influence of such groups and undermines their policy impact. In terms of impact, Smith et al. (2017) found that cooperative activities and transnational dialogue were not entirely effective in addressing labour issues in the Republic of Moldova.

Some studies analysing public submissions as mechanisms for engaging the social partners raise concerns about the limited awareness of petition processes (Cimino-Isaacs 2020; United States, GAO 2014). Indeed, the transnational activism of trade unions and NGOs is a crucial factor in determining whether submissions are accepted for review under US and Canadian trade agreements (Nolan García 2011; Oehri 2017b).

This chapter seeks to analyse how cooperation and monitoring mechanisms, especially in terms of stakeholder engagement, support the implementation

of labour provisions in trade agreements – a perspective yet to be explored in the literature.

1.2.2 Methodology

This chapter relies on a “mixed methods” approach, based on qualitative information gathered from databases, desk research and in-depth interviews. The primary data source was the ILO [Labour Provisions in Trade Agreements Hub](#), a comprehensive, structured compilation of the text of labour provisions in more than 100 trade agreements; it also includes links to meeting records, submissions, consultations and dispute-related documents, where publicly available (ILO 2022). This chapter adopts the definition of “labour provision” that is used in the Hub:

- ▶ any principle or standard or rule (including references to international labour standards), which addresses labour relations, minimum working conditions, terms of employment, and/or other labour issues;
- ▶ any framework to promote cooperation and/or compliance with standards, through activities, dialogue and/or monitoring of labour issues; and/or
- ▶ any mechanism to ensure compliance with national labour law and standards set out in the trade agreement, such as through the settlement of labour-related disputes.

Desk research using trade agreement texts, meeting records, consultation and submission materials, and other official and non-government sources was conducted to map stakeholder engagement in cooperation areas and activities.

Additionally, the case studies on the EU–Republic of Korea, United States–Guatemala and Canada–Colombia labour disputes are informed by a total of 22 in-depth online interviews, based on a questionnaire specifically designed for the study. Interviews were conducted with key stakeholders (government officials, representatives of the social partners and members of dispute settlement panels) from the six trading partners involved in the three case studies. The interviewees were granted anonymity and confidentiality, and they had the opportunity to comment on an earlier version of the chapter.⁴

⁴ The interviewees commented on the original report that served as the basis for this chapter; see Corley-Coulibaly, Grasselli and Postolachi (2023).

Interviews provided unique information not accessible through desk research, but were used to bolster the findings rather than serving as primary evidence. This methodological decision was made for two reasons. Although efforts were made to ensure tripartite representation, the distribution of responses among different categories of interviewees was not balanced. Out of the 30 individuals contacted for the study, 22 were interviewed. Among the interviewees, 59 per cent were government officials, 23 per cent were workers' representatives, 9 per cent were employers' representatives, and 9 per cent were members of dispute settlement panels. Furthermore, there was an uneven distribution of interviewees among the different trading partners, with a comparatively lower number of stakeholder responses from Colombia, Guatemala and the Republic of Korea. This may be due to inadequate record keeping and the loss of knowledge when staff members rotate, a lack of knowledge or interest on the part of stakeholders, or language barriers, among other reasons.

► 1.3 Implementation under EU trade agreements

The EU developed a new trade strategy in 2022 that seeks to secure “broader commitments from partner countries than those in trade agreements of other international players” (EC 2022a), in particular commitments to ratify and effectively implement ratified ILO Conventions, and to respect core ILO principles. The implementation of these commitments is to be achieved through enhanced cooperation to identify country-specific priorities and by the European Commission providing “incentives and support to trade partners for reform processes and capacity building” (EC 2022a). These cooperation efforts are accompanied by a more assertive enforcement of labour commitments, which includes the potential imposition of trade sanctions. Furthermore, through all stages of trade agreements, the role of

employers' and workers' representatives, local communities and NGOs has been enhanced.

1.3.1 Activities of committees, forums and advisory groups

The institutional mechanism for stakeholder engagement under “new generation” EU trade agreements typically comprises three bodies: (a) a ministerial-level committee on trade and sustainable development (CTSD); (b) at the national advisory level, a joint forum or dialogue of domestic advisory groups (DAGs); and (c) for engagement with the general public, a civil society forum (CSF). The EU’s stakeholder engagement approach is characterized by the mandate of the DAGs, which are made up of a balanced mix of representatives of employers’ and workers’ associations and other independent organizations, including environmental and consumer groups. In EU agreements, DAGs have a unique cross-border function, which includes monitoring and advising on the implementation of the TSD chapter.⁵ The DAG members of the different parties to an agreement engage in regular dialogue known as joint forums or “DAG-to-DAG dialogue”.

According to the TSD chapter, it is generally expected that most meetings should take place annually, starting one year after the entry into force of the agreement,⁶ although this is not always the case in practice. An analysis of web pages for meetings and related documents indicates that delays occur, owing in particular to challenges in establishing or using suitable dialogue structures in the trading partner country.

Indeed, under several EU trade agreements the first DAG-to-DAG meeting was delayed, as in the case of the EU–Viet Nam and EU–Japan agreements. In the case of EU–Viet Nam, the EU DAG issued a statement expressing concern about the late cancellation of the meetings and called on “the Vietnamese authorities to swiftly establish a counterpart for the EU DAG in order to

⁵ However, it has been proposed to expand the remit of DAGs to cover the entire trade agreement. See, for example, EESC (2018), EU DAGs (2021) and EC (2022a).

⁶ See, for example, the [Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam \(2020\)](#), which lays down in Art. 13.15(5) that “[m]embers of the domestic advisory group or groups of each Party shall meet in a joint forum to conduct a dialogue on sustainable development aspects of trade relations between the Parties”. Furthermore, Art. 13.15(6) states: “Unless the Parties agree otherwise, the joint forum shall meet once a year and in conjunction with the meetings of the Committee on Trade and Sustainable Development.”

enable the organisation of the joint meetings, and urge the European Commission to provide any technical assistance needed to achieve this”.⁷

However, even when meetings are held, critics argue that the EU’s institutional framework for trade agreements faces challenges in terms of monitoring progress, facilitating meaningful dialogue, and influencing decision-making (EESC 2021a; Martens, Potjomkina and Orbie 2020; Oehri 2017a). This criticism is discussed in section 1.3.4 in relation to the labour dispute between the EU and the Republic of Korea.

The substance of the meetings is specific to the TSD chapter in each agreement, but recurring themes are commonly discussed, including corporate social responsibility, the elimination of child and forced labour, the ratification and implementation of the ILO fundamental Conventions and, since 2020, sustainable recovery from the COVID-19 crisis.

1.3.2 Cooperation areas and activities

The EU agreements generally include a dedicated chapter on regulatory cooperation related to various aspects of the agreement and a more specific article on labour cooperation and working together on trade and sustainable development. In the 2022 communication entitled “[The power of trade partnerships: Together for green and just economic growth](#)”, the European Commission emphasized its adoption of an approach “based on engagement and cooperation” and confirmed that the EU would continue to engage with civil society and step up its role in TSD-related technical assistance projects through cooperation and the exchange of views (EC 2022a).

In the communication, the EU acknowledges the need for a country-tailored approach in view of the constraints faced by trading partners when it comes to compliance with labour commitments. As pointed out by an EU official, such constraints may be of a financial nature. For example, when a country seeks to implement commitments to tackle forced labour, it may need to appoint more labour inspectors, which entails significant costs. In such cases, support could be provided through a dedicated EU project or in the form of technical assistance from the ILO (such as under the Decent Work Country Programmes), which the EU can help a partner country to access.

There may also be technical capacity constraints. These often manifest themselves when a partner country is asked to ratify an ILO Convention or to repeal non-complying parts of its legislation. For instance, during

⁷ See the webpage [Statement from the European Union Domestic Advisory Group of the EU-Vietnam Free Trade Agreement](#); see Marslev and Staritz in this volume for more details on stakeholder engagement under the EU-Viet Nam trade agreement.

the pre-ratification phase of the EU–Viet Nam agreement (2020), an ILO supported project was implemented in Viet Nam between 2016 and 2018 to improve the existing legal framework and promote the ratification of ILO fundamental Conventions to which that country was not yet party. Consequently, Viet Nam adopted a new Labour Code in 2019, followed by the ratification of two fundamental Conventions – the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Abolition of Forced Labour Convention, 1957 (No. 105) – and the signature of a memorandum of understanding with the ILO to work towards the ratification of outstanding ones (see ILO 2019b, 2019c, 2020, 2021).

Following ratification, the EU often provides development cooperation in collaboration with the ILO under the TSD chapters of its trade agreements. Some projects are geared towards the ratification of and compliance with “fundamental, priority and other up-to-date ILO Conventions” (a phrase found in many EU trade agreements). For example, the EU and the ILO have established a partnership through the Trade for Decent Work project to improve the application of the fundamental Conventions in EU trading partner countries (see also Volume 1, Curtis and Echeverría Manrique).⁸ An earlier ILO-supported project in El Salvador and Guatemala focused on strengthening those countries’ institutional capacity to fulfil labour obligations under their respective trade agreements with the EU.⁹ Most often, though, the EU fosters cooperation through the dialogue and institutional mechanisms established in its trade agreements.

In the labour dispute under the EU–Republic of Korea trade agreement, a development cooperation project was launched under the EU Partnership Instrument on the implementation of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), with a view to better understanding good practices and deficiencies in the implementation of the Convention (see EC 2015, 2016).

1.3.3 Submissions regarding alleged labour violations

There have been four official complaints submitted within the framework of EU trade agreements. Three of these complaints were made under the EU–Colombia–Peru–Ecuador agreement, while one was made under the EU–Republic of Korea agreement.

⁸ See: ILO, [Trade for Decent Work project](#)

⁹ See the ILO Development Cooperation Dashboard for a summary of the project, “[Sustaining strengthened national capacities to improve ILS compliance and reporting in El Salvador and Guatemala](#)” (2018–20).

Since there was no standard process in place in the EU prior to 2020 to receive labour-related complaints from private citizens or civil society organizations, such complaints were submitted through various mechanisms. This included either submission through the DAGs or directly to government authorities (in the case of the EU, to the European Commission). For example, the EU–Republic of Korea labour dispute began when the European Commission requested consultations with the Republic of Korea. This request was made after conferring with the EU DAG established under the agreement. (More information about this dispute can be found in section 1.3.4.)

A complaint, filed by CNV Internationaal in May 2022 on behalf of Colombian and Peruvian trade unions, used for the first time the newly implemented common submission procedure, the Single Entry Point.¹⁰ Launched in November 2020, this online platform allows an organization or individual to submit directly to the European Commission a complaint about violations related to market access or sustainability commitments under the TSD chapter of trade agreements or the Generalised Scheme of Preferences.¹¹ At the time of writing, the case was still being reviewed by the European Commission.

1.3.4 Case study: EU–Republic of Korea labour dispute

The labour dispute between the EU and the Republic of Korea was the first under the TSD chapter of an EU trade agreement to trigger panel procedures, thereby serving as a litmus test for the EU’s non-sanction-based approach to dispute settlement. It is also important to note the role of the European trade unions and their counterparts in the Republic of Korea in seeking to address the concerns raised in the dispute by issuing various communications and opinions since 2013.¹²

¹⁰ A more detailed summary of the three complaints under the [EU–Colombia–Peru–Ecuador trade agreement](#) (none of which has so far triggered a dispute) can be found in Corley-Coulibaly, Grasselli and Postolachi (2023).

¹¹ See EC 2022b. As at December 2022, only one complaint about labour violations had been submitted through the Single Entry Point (under the EU–Colombia–Peru–Ecuador agreement).

¹² See EU DAGs (2021). For an overview of how the DAGs from the EU and the Republic of Korea engaged with each other up to 2017, see Peels and Echeverría Manrique (2017b).

In December 2018, the European Commission requested government consultations with the Republic of Korea (EU 2018), on the grounds that the country's failure to ratify four out of the then eight ILO fundamental Conventions, as it had pledged to do under Article 13.4(3) of the trade agreement.¹³ In July 2019, the European Commission requested the convening of a panel of experts (EC 2019), the final report of which was published in January 2021 (EC 2021). The panel confirmed that the labour commitments undertaken by the Republic of Korea under its trade agreement with the EU are legally binding, regardless of their effect on trade between the parties. Nevertheless, the panel also found that the Republic of Korea did not act "inconsistently with the last sentence of Article 13.4.3 by failing to 'make continued and sustained efforts' towards ratification of the core ILO Conventions".¹⁴ Following the dispute, the Republic of Korea ratified three out of the four outstanding ILO fundamental Conventions: the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention (No. 98).

Significant monitoring efforts have been undertaken both prior to and following the labour dispute as part of the agreement. A total of eight DAG-to-DAG and CSF meetings took place between 2011 and 2022, excluding 2016 and with a two-year hiatus between 2019 and 2020 due to settlement procedures for the labour dispute. The April 2021 CSF meeting, which coincided with the DAG-to-DAG and CTSD meetings, included the participation of DAG members from the EU and the Republic of Korea, as well as academics and ILO officials (EESC 2021b).¹⁵ The conclusions of the meeting mention that the DAGs were facing challenges in engaging with civil society, both in the EU and in the Republic of Korea. Consequently, the CSF decided to undertake a study of the work performed by the civil society structures under the agreement over the first ten years since its entry into force to identify the best ways forward (EESC 2021c). A provisional assessment, published in the

13 Art. 13.4 ("Multilateral labour standards and agreements"), Para. 3, of the [Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part](#) (2011) stipulates that: "[T]he Parties reaffirm the commitment to effectively implementing the ILO Conventions that [the Republic of] Korea and the Member States of the European Union have ratified respectively. The Parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions as well as the other Conventions that are classified as 'up-to-date' by the ILO."

14 The panel also found that several aspects of the Korean Trade Union and Labour Relations Adjustment Act were not consistent with the principles under the 1998 Declaration, as referred to by the EU-Korea RTA.

15 The ILO is a regular participant in the annual CTSD meetings under the EU-Republic of Korea trade agreement.

form of a non-paper, recognizes the importance of independent civil society organizations (EU DAGs 2021).

With regard to these challenges, interviewees from the Republic of Korea described the EU's approach as "Eurocentric", in the sense that the EU was perceived to be imposing structures and mechanisms informed by a view of social dialogue – including in terms of the participation of the social partners and other stakeholders in government-led processes – that was not shared by the Republic of Korea, among other countries. While social dialogue is strongly institutionalized in the EU, that is not the case in the Republic of Korea, where relations between the Government, employers' organizations and trade unions have been described as "hostile", both during the interviews and in the literature (Bae 2014; Kloepping 2010; Yoon 2009; Lee and Lee 2003; Chang 2002).

An example that illustrates the strained tripartite relations in the Republic of Korea is the initial exclusion of the country's two most representative trade union confederations from DAG membership. Before the first CSF meeting, the two confederations communicated with the European Trade Union Confederation, which maintains contact with EU officials. In 2013, the secretary of the DAG for the Republic of Korea granted the two confederations observer status at the second CSF meeting, which was held in Seoul. The following year, when DAG membership was renewed (as it is every two years), the two confederations were invited to join the DAG for the Republic of Korea as fully fledged members.

Moreover, the Government of the Republic of Korea did not engage with the social partners or broader civil society during the negotiations on the agreement. The country's trade unions organized activities outside the framework of the negotiation process: they mobilized their members and civil society organizations, participated in a European Parliament hearing during the negotiations, and communicated with European trade unions. Notably, before the agreement was concluded, trade unions in the Republic of Korea had no stable mechanism for dialogue with their EU counterparts. It is not surprising, then, that the social partners in the Republic of Korea were asked to participate only at a relatively advanced stage of the labour dispute. After the panel of experts was set up, they were given a short deadline to submit position papers and briefs directly to the panel.

In this context, EU officials claim that the EU is "conscious of the importance" of not seeking to export its own practices without "critical reflection", as evidenced by the flexibility left to its trading partners in how their national authorities consult with civil society. Although the Republic of Korea's model of social dialogue under trade agreements still differs from that of

the EU chiefly with regard to stakeholder engagement at the negotiation stage an official from the Republic of Korea observed that the dialogue with stakeholders in the context of the EU–Republic of Korea agreement had improved on the whole. The same official added that the labour dispute between the two parties had made officials and stakeholders from the Republic of Korea aware of the need to have the social partners involved from the negotiation stage onwards in advising the Government on the potential impacts of labour provisions (including disputes).

► 1.4 Implementation under US trade agreements

The Trade Promotion Authority (TPA) of the United States incorporates specific guidelines to facilitate transparency and encourage public participation in trade negotiations.¹⁶ It prioritizes trade openness, market access and economic growth, alongside the promotion of labour rights in the countries that trade with the United States, among other objectives.

The principal negotiating objective on labour matters is to ensure that parties to US trade agreements:¹⁷

- (i) adopt and maintain measures implementing internationally recognized core labour standards as defined by the ILO Declaration on Fundamental Principles and Rights at Work (1998);
- (ii) do not waiver or derogate from national laws implementing labour standards in a manner affecting trade or investment; and
- (iii) do not fail to effectively enforce their labour laws through a sustained or recurring course of action or inaction in a manner affecting trade.

16 See the [Bipartisan Congressional Trade Priorities and Accountability Act of 2015](#) (Public Law 114-26 of 29 June 2015; known for short as TPA-2015), section 104, Para. (d) (United States, Congress 2015). Although TPA-2015 expired in July 2021, at the time of writing it served as the basis for trade negotiations (Casey and Cimino-Isaacs 2022).

17 See Sections 102(6) and 111(7) of the [Bipartisan Congressional Trade Priorities and Accountability Act of 2015](#) (United States, Congress 2015). More recent trade agreements (for example, the United States–Mexico–Canada Agreement) refer to the ILO Declaration on Rights at Work, which means the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998).

The TPA also recognizes the need to strengthen the capacity of trading partner countries to promote internationally recognized core labour standards.

In 2022, the United States implemented a “worker-centered trade policy” that focuses on using trade agreements to advance workers’ rights both domestically and abroad through greater enforcement and inclusive stakeholder engagement (United States, Executive Office of the President 2022).

1.4.1 Activities of committees, councils and public sessions

The mechanisms for stakeholder engagement under US trade agreements include three main bodies, among others. At the ministerial level, there are “labor affairs councils”, which are transnational bodies responsible for the implementation of labour-related activities under specific US trade agreements. At the national advisory level, there is the Labor Advisory Committee for Trade Negotiations and Trade Policy, which consists of one committee for all agreements, composed of representatives of employers’ and workers’ organizations (United States, DOL and USTR 2020).¹⁸ Finally, public consultations take place in public sessions with civil society organizations and individuals, including employers’ and workers’ representatives, under specific US trade agreements.

There are some notable differences between the US structures and advisory groups when compared with EU trade agreements. To start with, the scope of the Labor Advisory Committee’s activities is broader than that of the EU DAGs: the former provides advice on general trade and labour policy matters for all US trade agreements. However, the Committee meets at irregular intervals (no consistent pattern of Committee meetings could be identified), compared with the EU DAGs which meet on an annual basis. Moreover, the Committee is not tasked with engaging in cross-border dialogue with a similarly organized committee in each trading partner country, as is done in the EU.

More recently, an Independent Mexico Labor Expert Board was established specifically for the implementation of the United States–Mexico–Canada Agreement (USMCA) of 2020. Comprising 12 members appointed by the US Congress and the Labor Advisory Committee for Trade Negotiations and Trade Policy, the Board monitors Mexico’s compliance with labour

¹⁸ It should be noted that another advisory body, the National Advisory Committee for Labor Provisions of United States Free Trade Agreements, composed of employers’ and workers’ representatives, NGOs and academics, has been inactive since 2019.

obligations under the USMCA and advises the Interagency Labor Committee for Monitoring and Enforcement (also established under the USMCA) on capacity-building activities.¹⁹

Ministerial-level labour affairs councils meet periodically, and their meetings are generally followed by a public session. Most US trade agreements have had council meetings occur only twice since the agreements came into effect. However, stakeholders do engage in discussions through other platforms. For example, the Labor Affairs Council established under the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) has not reconvened since its initial meeting in 2008. However, the labour ministers of the parties to the agreement maintain regular meetings in various forums. Some of these meetings occur annually during the International Labour Conference (in June) and biannually during sessions of the Governing Body of the International Labour Office (in March and November) (United States, DOL 2021).

1.4.2 Cooperation areas and activities

All US trade agreements establish labour cooperation and capacity-building mechanisms. Provisions on stakeholder participation in identifying and carrying out cooperation activities were included for the first time in the United States–Chile Free Trade Agreement (2004) – a practice that has become common in subsequent agreements. According to the US officials interviewed, cooperation takes place both through regular dialogue between the trade and labour ministries of the United States and its trading partners, and through mechanisms established in the trade agreements.

Development cooperation plays a critical role in the implementation of the labour provisions, both with regard to supporting the fulfilment of pre-ratification requirements and in post-ratification capacity-building activities. Indeed, the United States requires its trading partners to address certain labour issues within their jurisdiction before the entry into force of a trade agreement. For example, technical assistance and resources were provided to support Mexico's labour law reform under the USMCA, specifically in relation to workers' rights to unionize and ratify collective bargaining agreements (United States, DOL n.d.(a); Curtis and Echeverría Manrique in Vol. 1).

¹⁹ See Subtitle C ("Independent Mexico Labor Expert Board") in the [United States–Mexico–Canada Agreement Implementation Act](#) of 2020. See also IMLEB (2020). Further information on the labour provisions in the USMCA is provided by Villarreal and Cimino-Isaacs (2023).

After trade agreements are ratified, the United States engages in numerous development cooperation projects to assist trading partner countries in implementing labour provisions. These projects have an emphasis on improving the recognition of workers' rights and building capacity for social dialogue. Thus, the implementation of trade agreements relies heavily on funding from US Government agencies and other partners. Under CAFTA–DR, several labour capacity-building programmes have been implemented in line with a white paper from 2005 prepared with the support of the ILO and the Inter-American Development Bank.²⁰ In Guatemala, over 50 projects have been implemented, focusing on such areas as child labour (15), labour rights (8), labour administration (7), labour inspection (6), labour relations (4) and social dialogue (2).²¹

In the United States–Guatemala labour dispute under CAFTA–DR, both parties agreed to a comprehensive action plan in 2013 known as the “Enforcement Plan”. This plan involved the United States committing itself to support upon request Guatemala’s implementation of the plan by “providing technical advice and information regarding best practices, sharing expertise and assisting with outreach to international institutions” (USTR 2013, Para. 17.1). Between 2013 and 2016, the Bureau of Democracy, Human Rights and Labor in the US Department of State funded an ILO-administered project in Guatemala. The project’s objective was to enhance Guatemala’s institutional capacity to protect fundamental rights at work, notably freedom of association and collective bargaining, and strengthen social dialogue institutions and their stakeholders.²² Notwithstanding the labour dispute, the United States continues to provide technical assistance to the country. For example, between 2018 and 2022 the Department of Labor implemented, together with the ILO, a technical assistance project to improve the enforcement of regulations on minimum wages, hours of work, and occupational safety and health in the Guatemalan agricultural export sector.²³

20 The white paper includes as an annex the Santo Domingo Labour Declaration of 2002, in which government delegations and employers’ and workers’ representatives from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the Dominican Republic requested the ILO to “provide any technical assistance required to follow up on and carry out the subregional labor agenda through the corresponding tripartite national institutions and existing regional fora” (IDB 2005, 82).

21 Data obtained from United States, DOL (n.d.(b), n.d.(c)) and through the Project Finder function on the [ILO Development Cooperation Dashboard](#). See also USTR (2011).

22 A summary of the project is available on the [ILO Development Cooperation Dashboard](#).

23 See details of the project on the [ILO Development Cooperation Dashboard](#) and in United States, DOL (n.d.(d)).

1.4.3 Submissions regarding alleged labour violations

In the United States, public submissions regarding alleged labour violations under trade agreements must satisfy six specific criteria in order to be accepted for review. In particular, the submission must raise “issues relevant to any matter arising under a labor chapter or the NAALC [North American Agreement on Labor Cooperation]”, and its review must “further the objectives” of the trade agreement (United States, *Federal Register* 2006, 76695).

The Office of Trade and Labor Affairs (OTLA) has received a total of 30 submissions under seven US trade agreements, including the NAALC. About one third of these submissions (11), which all fell under the NAALC, were withdrawn by the filing parties or declined for review by OTLA. Out of the 19 submissions that were accepted for review, bilateral consultations were recommended in 63 per cent (12) of the complaints. Action plans were subsequently implemented in the majority (7) of those cases. It is important to highlight that only submissions that underwent consultations resulted in action plans. Furthermore, only one of these submissions (United States–Guatemala labour dispute under CAFTA–DR) proceeded to arbitration following the unsuccessful implementation of the corresponding action plan.

Similar to Canadian (see section 1.5) and (to a lesser extent) EU trade agreements, stakeholders from different parties form cross-border coalitions that have a significant role in the filing of submissions under US trade agreements (Nolan García 2011; Oehri 2017b). This set-up has been effective in promoting cross-border dialogue on labour matters, as most submissions under US trade agreements are joint cross-border submissions (23 of the total of 30).²⁴

Finally, as of February 2023, six proceedings had been initiated by the United States through the Facility-Specific Rapid Response Labor Mechanism established under the USMCA (2020), of which five have been concluded (see Bensusán in this volume). Two versions of the mechanism exist: one applicable between the United States and Mexico (Annex 31-A of the USMCA), and another applicable between Canada and Mexico (Annex 31-B).²⁵

24 Based on the authors’ analysis of [Submissions under the North American Agreement on Labor Cooperation \(NAALC\)](#) as at March 2022.

25 For more information on the Rapid Response Labor Mechanisms, see USTR (2021) and Bensusán in this volume.

1.4.4 Case study: United States–Guatemala labour dispute

The labour dispute between the United States and Guatemala took place under CAFTA–DR. In 2008, the US-based AFL-CIO and six Guatemalan unions filed a public submission with OTLA, alleging that Guatemala had violated its labour commitments under Article 16.2.1(a),²⁶ in particular commitments related to freedom of association and the right to collective bargaining (United States, DOL 2008). Formal consultations between the US and Guatemalan Governments were held in 2010, and the United States requested the establishment of an arbitration panel in 2011. Panel proceedings were suspended as the parties signed an 18-point Enforcement Plan in 2013 (see section 1.4.2). Panel proceedings resumed in 2014, as Guatemala had not fulfilled the requirements of the Enforcement Plan. In its final report, published in 2017, the panel recognized that Guatemala had failed to enforce its labour laws in certain instances, but concluded that evidence provided by the United States did not reach the threshold set by Article 16.2.1(a) of CAFTA–DR (OAS 2017).

The interviews highlighted the existence of a twofold space for the engagement of the social partners and civil society during the dispute. The first space was created as a result of the original submission that initiated the dispute: the social partners and representatives of broader civil society were asked to gather information for reviewing the submission, particularly in the form of statements and depositions by workers, workers' representatives and other actors with first-hand experience of labour issues in Guatemala. The second space was generated by the Enforcement Plan: civil society and workers' organizations in Guatemala, as well as workers' representatives in the United States and internationally, were consulted to ensure that the provisions of the plan addressed the key concerns of Guatemalan workers, and they were also involved in the monitoring and implementation of the plan.

United States trade unions maintain regular and direct communication with trade unions in Guatemala and other countries. This is achieved through organizations such as the Solidarity Center, a US-based NGO aligned with the AFL-CIO that has projects operating in 70 countries. The interviews confirmed that it is through these networks that the US labour movement

26 Art. 16.2 (“Enforcement of Labor Laws”), Para. 1(a), of the [Dominican Republic–Central America–United States Free Trade Agreement](#) (2006) reads: “A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.”

is able to obtain information relevant to disputes when requested by US Government agencies.

At the same time, the interview with a former Guatemalan official provided a different perspective on dialogue in the context of the United States–Guatemala labour dispute. The former official described social dialogue in Guatemala as marked by “deep scars”. These include the lasting impact of armed conflict, which had undermined the role of trade unions, and a pervasive lack of trust. These factors have hindered the ability of the social partners to overcome their historically antagonistic positions and progress towards a more cooperative approach. It is in that sense that the former official argued that the role of the private sector and the functioning of social dialogue in Guatemala had been “taken for granted” during the negotiations on CAFTA–DR. Given that social dialogue is key to achieving decent work outcomes, such deficits could have been addressed before the negotiations, ideally as part of a “development agenda for Guatemala”.

► 1.5 Implementation under Canadian trade agreements

At present, Canada is following a more inwardly focused “trade diversification strategy”, one of whose pillars is inclusivity (Government of Canada 2018a). The strategy aims to encourage domestic investments that facilitate access to new markets. It places importance on extending the potential benefits to historically under-represented groups in Canadian trade and investment, such as women, small and medium-sized enterprises, and Indigenous Peoples (Government of Canada 2020a). This inclusive approach promotes labour priorities and other socio-economic objectives by enhancing interaction with such groups during trade agreement negotiations and implementation, as well as through broader engagement on the content of labour chapters.

1.5.1. Activities of committees, councils and public consultations

The institutional mechanisms in Canadian trade agreements resemble those found in EU and US agreements. The “labour ministerial councils” formed under individual agreements consist of the ministers responsible for labour

affairs in the respective trading partner countries. Public consultations are crucial for promoting transparency during the negotiation process of Canadian trade agreements. They also serve as a mechanism for engaging stakeholders.

There is also an Advisory Council on Workplace and Labour Affairs, composed of civil society representatives (including employers' and workers' representatives and academics), which has served as a forum for both domestic and international discussions and provided advice to Canada's Minister of Labour on a wide range of labour issues (*Benzinga* 2012). However, that body now seems to be dormant.²⁷

According to the trade agreements, the labour ministerial councils are expected to meet periodically, followed by a public session. Although no records of meetings could be found, it is likely that they do take place. During the interviews, a Canadian official confirmed that when Canada embarked on negotiations for a trade agreement with Colombia, the Canadian social partners were involved for two years in a consultative role (see also Government of Canada 2021a).²⁸

Canada has a distinct public consultation process, whereby the Government issues a notice requesting comments from the social partners and representatives of broader civil society, which are collected through an online platform (Government of Canada 2022).

In 2017, the Indigenous Working Group (IWG) was established as a consultative mechanism. Its primary objective is to address trade policy matters of significance to Indigenous Peoples. This includes the formulation of provisions within trade agreements that protect their rights.²⁹ The Group comprises Indigenous representatives, including NGOs and employers' organizations. However, workers' representatives are not explicitly included, and there does not seem to be a labour-specific focus in the work of the IWG. Although meeting records were not found, it is evident that the IWG plays an active role (Government of Canada 2020b).

²⁷ Pertinent meeting records could not be obtained from the Employment and Social Development Canada website or through interviews.

²⁸ According to the Policy on Tabling of Treaties in Parliament, the Government must give notice of its intent to enter into a trade agreement no fewer than 90 days before initiating negotiations and must submit Canada's negotiating objectives for debate in Parliament at least 30 days before a first round of negotiations (Government of Canada 2021b).

²⁹ According to the Government of Canada 2020b "[government] officials have actively engaged with the members of the IWG through ongoing dialogue ... [which] has informed Canada's negotiating positions in recent and ongoing international trade negotiations, including CUSMA [as the USMCA is known in Canada], Mercosur and [the] Pacific Alliance".

Some Canadian trade agreements also include “trade and gender committees”, consisting of government officials from each trading partner. These committees are responsible for overseeing and providing guidance on the implementation of the gender-related chapter (Government of Canada 2023). For example, the Trade and Gender Committee established under the “Trade and Gender” chapter of the modernized Canada–Chile Free Trade Agreement held its third meeting in May 2021. During the meeting, the parties discussed various domestic issues and initiatives concerning women, including efforts to address gender-based violence in Chile and to support women returning to the workforce in Canada (Government of Canada 2021c).

1.5.2 Cooperation areas and activities

Cooperation is equally a key element of Canada’s approach when promoting and implementing the labour provisions of its trade agreements. In addition, the role of stakeholders, such as employers’ and workers’ representatives and civil society organizations, in carrying out cooperation activities is explicitly mentioned in Canadian trade agreements.³⁰

Although Canada is generally not involved in development cooperation projects in a given country before the ratification of a trade agreement, it engages with domestic stakeholders there through extensive labour consultations from the very beginning of negotiations, with the goal of capturing their expertise, advice and views on various topics, including cooperation priorities. Canada initiated development cooperation projects starting with the Canada–Costa Rica Free Trade Agreement of 2002, where the two parties agreed to work with the ILO on a programme to strengthen labour administration and modernize labour inspectorates in Costa Rica (ILO 2016). From the Canada–Peru Trade Agreement onwards, Canadian agreements have also provided for the involvement of the social partners in labour cooperation and capacity-building. Development cooperation projects have since then been conducted under all Canadian trade agreements to support the implementation of labour provisions.

In the context of the Canada–Colombia labour dispute (see section 1.5.4), the parties have engaged in continuous exchanges of information and consultations, including the ministerial consultations that eventually led to the adoption of an Action Plan in 2018 (Government of Canada 2018b).

30 For instance, Annex 13-A (“Cooperative Activities”) of the [Canada–Ukraine Free Trade Agreement \(2017\)](#) states: “In identifying areas for labour cooperation and capacity-building, and in carrying out cooperative activities, each Party may consider the views of its worker and employer representatives, as well as those of other members of the public.”

Moreover, Canada liaised with US government agencies on the parallel United States–Colombia labour dispute, with a view to presenting “a common front” – as described by a Canadian Government official – regarding the two complaints (Government of Canada 2017; United States, DOL n.d.(e)). In addition, instead of only focusing on the issue of labour inspection or on the two companies that were the subject of the original public communication, the aforementioned Action Plan puts forward general recommendations and a set of concrete actions to be taken by the Colombian Government to address labour violations under the Canada–Colombia Labour Cooperation Agreement (Velut et al. 2022).

These efforts have been boosted further by the redirection of funds towards cooperation areas and activities supported by both Canada and the United States (Government of Canada 2021d; United States, DOL 2016). Canada currently administers two development cooperation projects to support the Action Plan in Colombia, amounting to 1 million Canadian dollars. The first project is implemented by the ILO and aims to promote workplace compliance and strengthen the institutional capacity of the social partners to participate in tripartite social dialogue, bargain collectively and develop the industrial relations system.³¹ The second project consists of a study by the University of Ottawa to analyse challenges related to the effective exercise of the rights to freedom of association and collective bargaining in Colombia (Le Bouthillier, Torres and Ovalle Díaz 2022).

1.5.3 Submissions regarding alleged labour violations

In Canada, public submissions alleging labour violations under trade agreements – or “public communications” as they are referred to there – must meet specific review criteria, one of which is “relevance to a specific LCA [labour cooperation agreement] or LCFTA [labour chapter of a free trade agreement]”. As the guidelines explain, “[w]here applicable, the submission should describe the failure by the Party being complained against to effectively enforce its labour law or that its labour laws and practices thereunder do not embody and provide protection for the internationally recognized labour principles and rights set out in the relevant LCA or LCFTA” (Government of Canada 2014). Although the submission process is similar to that in the United States, it has been used less frequently in practice (ILO 2016).

³¹ See the ILO Development Cooperation Dashboard for a summary of the project, “Institutional strengthening for promoting compliance with national legislation in Colombia” (2019–23).

The Canadian National Administrative Office (NAO) has received a total of seven public communications. Six of these were filed under the NAALC, while one was filed under the Canada–Colombia Free Trade Agreement. Out of the seven submissions, three were accepted for review; two were declined for review; and the remaining two have been under review since 2011. An analysis of the information in the US Department of Labor database reveals that the majority of Canadian submissions made under the NAALC were filed by a cross-border coalition of civil society organizations.

The 2016 public communication filed against Colombia under the Canada–Colombia Free Trade Agreement was the first to lead to the drawing up of an action plan as a remedial measure (see section 1.5.4 for more details). With regard to the USMCA, at the time of writing one denial-of-rights claim had been filed under the Canada–Mexico Rapid Response Labour Mechanism and accepted for review in March 2023. To establish an agreement, the NAO supported dialogue between the parties during the review. The company pledged to uphold freedom of association and collective bargaining in a public statement, reinstated workers with retroactive pay and held a union election vote in June 2023 that was validated by a federal labour judge in July 2023. Thus, four months after the complaint was accepted for review, the NAO closed the case against the facility, with beneficial results.³²

1.5.4 Case study: Canada–Colombia labour dispute

The labour dispute between Canada and Colombia took place under the Canada–Colombia Free Trade Agreement (2011). In 2016, the Canadian Labour Congress and five Colombian unions submitted a public communication to the Canadian NAO, alleging that Colombia had breached its obligations under the parallel Labour Cooperation Agreement. The alleged violations primarily pertained to freedom of association, enforcement of labour laws and non-derogation of labour laws (Government of Canada 2017). In 2017, Canadian authorities conducted a review of communication and subsequently requested ministerial consultations with their Colombian counterparts. These consultations consisted of a series of six meetings. In 2018, Canada and Colombia signed a three-year Action Plan, in which Canada committed itself to acting as a “strategic partner” in supporting Colombia’s labour initiatives (Government of Canada 2018b).

³² See [Canada–Mexico Facility-Specific Rapid Response Labour Mechanism](#) (Government of Canada 2023).

The social partners played a crucial role in the creation of the Action Plan, both by providing information in the original public communication and through their fieldwork experience. Representatives of the Canadian social partners flew to Bogotá in February 2020 to meet with stakeholders and officials from the Colombian Ministry of Labour. A second visit scheduled for November 2020 had to be cancelled owing to the COVID-19 pandemic. In August 2021, a virtual session was organized to inform a Colombian audience about how the Canadian labour system (Ministry of Labour, labour courts, trade union registration) operates and to discuss whether some of its features could be adopted in the Colombian system. It is worth noting that the Canadian Government shares documents received from the Colombian Government with the Canadian social partners.

According to a Canadian official interviewed, the experience of the Canada–Colombia labour dispute corroborates two advantages of engagement with the social partners and broader civil society. The first is that these stakeholders are “an invaluable source of underground expertise”, which greatly helps governments in their work. The second is that when these stakeholders are invited to the table during the negotiation or implementation of a trade agreement, governments can not only profit from their knowledge and contributions, but also ensure that the former buy into the process, thereby limiting “unrealistic demands”. The Canadian official argued that in order to fully reap these benefits, governments should seek synergies with stakeholders, involving them in the practical resolution of issues, whether or not formal mechanisms are in place.

► 1.6 Conclusions

What clearly emerges from the research underlying this chapter is that stakeholders, including governments and the social partners, have been using trade agreements to promote labour objectives and address deficiencies in labour rights and working conditions. This has been accomplished by various means, such as dialogue, development cooperation, the submission of complaints about alleged labour violations and dispute settlement.

In general, Canadian, EU and US trade policy objectives point to engagement with employers’ and workers’ representatives and broader civil society in the negotiation and implementation of trade agreements. This is reflected

in a greater emphasis on the transparency and inclusiveness of trade negotiations; in the involvement of employers' and workers' representatives and other civil society actors in advisory groups, committees, consultations and submissions; and in efforts to strengthen the capacity of trading partner countries through cooperation, including with the participation of employers' and workers' representatives.

In fact, most of the Canadian, EU and US trade agreements with labour provisions include dialogue mechanisms to facilitate the engagement of employers' and workers' representatives in the implementation of those provisions. Although there is no exclusive mechanism for the social partners, they generally make up the core of national (or domestic) advisory groups. In addition, other mechanisms such as the public submission process, designed to receive complaints from the public, have regularly been used as vehicles for cross-border dialogue on labour matters.

Stakeholders, notably employers' and workers' representatives, can also be involved in the identification of areas for cooperation – such as human capital development, occupational safety and health, working conditions, gender issues, child and forced labour – and in the implementation of specific activities. Some of these activities include support for improving dialogue structures through the recognition of workers' rights and building capacity for social dialogue.

In addition, stakeholders have drawn lessons from ongoing and past labour disputes under trade agreements, which have helped to shape the design and implementation of labour provisions in new agreements, including the modalities of stakeholder engagement.

One lesson learned is that early engagement with the social partners has proved to be helpful. In the case studies analysed for this chapter, employers' and workers' representatives all appear to benefit from engaging in social dialogue at the negotiation stage. Such engagement enables the social partners and representatives of broader civil society to bring their technical expertise to the table. This, in turn, helps governments to identify potential challenges and areas for cooperation. However, as the chapter highlights, engagement in social dialogue already at the negotiation stage may not be common practice in all countries. Indeed, different social dialogue models, which are shaped by economic, cultural, social and political factors, influence engagement both within and between countries. These differences may have an impact on the effectiveness of institutional mechanisms for stakeholder engagement introduced under trade agreements.

Another lesson is that both formal and informal dialogue structures are key to the promotion of and compliance with international labour standards.

European Union trade agreements are characterized by a high level of institutionalized engagement between officials on the one hand, and the social partners and broader civil society actors on the other. In contrast, while the United States and Canada also rely on formal structures for social dialogue under trade agreements, informal dialogue takes place as well on a regular basis between government officials and the social partners on all matters related to compliance with labour commitments. This is an aspect that is hardly reflected in the written records but should be taken into consideration when reviewing the key contributions of both formal and informal structures to social dialogue.

A final lesson is that cooperation mechanisms continue to be a primary means of achieving compliance with labour commitments. Robust consultative and cooperation mechanisms for engagement and support (both technical and financial) are important as a means of de-escalating disputes and addressing labour challenges. Such mechanisms may be activated both during dispute settlement, as in the case of the Canada–Colombia Action Plan, and after the dispute has concluded, as illustrated by the ongoing US-funded cooperation programmes in Guatemala.

In this respect, development cooperation with the support of the social partners plays a key role, especially where a trading partner exhibits shortcomings in terms of labour rights and working conditions.

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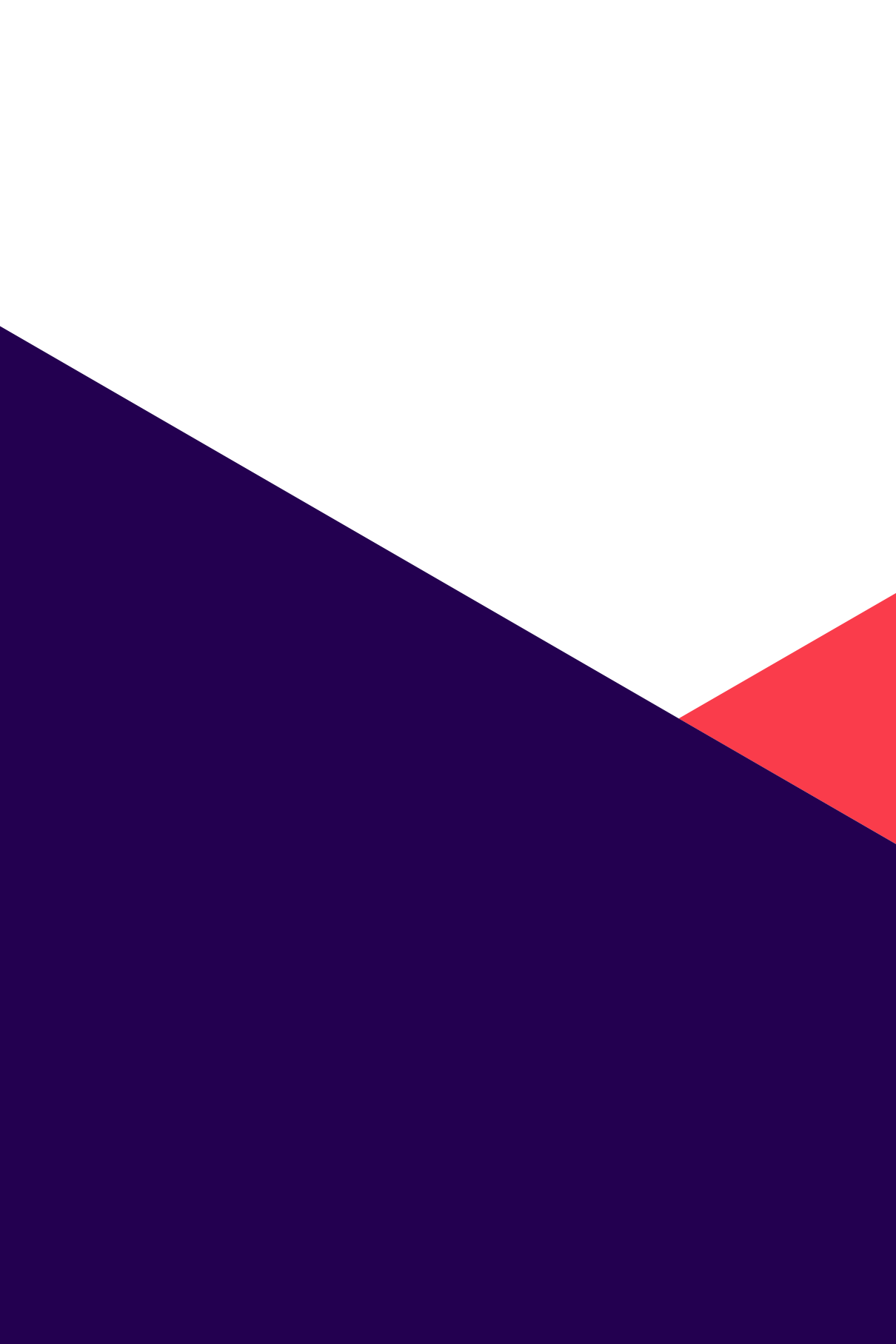
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Labour rights protection in international investment agreements

Evidence, trends and impact

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► Introduction

International investment agreements (IIAs) are agreements that States negotiate for the promotion and liberalization of investments. They provide legal protection for foreign investors' interests against the host State's interference in their investments. Broadly defined, IIAs fall into two categories. First, there are bilateral investment treaties (BITs), which are pure investment agreements ("pure" in the sense that they deal only with investment and investment protection). Second, there are broader treaties or agreements, such as trade agreements and economic partnership agreements, that include investment provisions; these are referred to in this chapter as "treaties with investment provisions" (TIPs). The current international investment regime is therefore a patchwork of a few thousand agreements comprising both BITs and TIPs.

There has been debate on the link between the current international investment regime and the protection of labour rights and the environment. In theory, the strengthening of labour rights and environmental and health protection can affect the investments made and lead to arbitration. In this context, the current system has been accused of being overprotective towards investors, sometimes at the expense of what in the literature is referred to as the "policy space" of national governments to pursue social, labour and environmental regulation (Mayer 2009; Spears 2010). The concern is that governments might be constrained in developing stronger labour, health and environmental laws that could negatively affect the value of an investment and thus prompt the investor to take the government to an arbitration tribunal to seek compensation and/or to have the regulatory initiatives undone. There are several examples of such dispute cases (see section 2.1). One way to address these concerns is to include references and commitments to labour protection in investment agreements, as has been done in a number of trade agreements.

The aim of this chapter is to explore the use of labour protection-related references (broadly defined) in investment agreements. Little research has been conducted to explore how sustainability concerns, and especially labour concerns, are included in investment agreements, in contrast to the substantial research on the inclusion of labour provisions in trade agreements (Harrison et al. 2018; ILO 2013, 2016, 2019). This chapter will identify and analyse references to labour rights protection in investment agreements, based on a search of relevant keywords.¹ This analysis was

1 The terms "keywords" and "labour-related references" are being used interchangeably.

undertaken using the United Nations Conference on Trade and Development (UNCTAD) [International Investment Agreements Navigator](#); this database contains all negotiated investment agreements, both BITs and TIPs, in all languages, and so-called model BITs (essentially, templates drafted to secure consistency in the formulation of new IIAs; see section 2.3.3). Additionally, since the keyword approach may have limitations in capturing the true intent and contextual meaning of terms, this chapter provides several examples using the actual text of the agreements to illustrate this.

The chapter is structured as follows. Section 2.1 introduces IIAs and their link to labour protection. In section 2.2, the data sources and methodological approach are described. Section 2.3 presents the results of the analysis: in section 2.3.1, the inclusion of references relevant to labour protection in IIAs is presented, including their frequency, the number of agreements and their evolution over time; in section 2.3.2, the occurrence of relevant keywords in BITs is contextualized through an analysis of selected BITs; and in section 2.3.3, the results of the analysis of model BITs are presented. Section 2.4 focuses on the implementation of labour rights commitments in IIAs. The chapter ends with a brief conclusion (section 2.5) on the main findings and takeaways.

► 2.1 Labour rights, foreign direct investment and investment agreements

The discussion of the relationship between foreign direct investment (FDI), facilitated by IIAs, and the protection of labour rights is long-standing and touches upon a range of issues. First, there is the question of whether FDI undermines the protection of labour rights. The traditional view is that countries with weak labour standards attract more investment. For example, Truman and Emmert (2004) find that poor human rights records are positively related to investment inflows. This argument is corroborated by Bodea and Ye (2020), who argue that BITs might contribute to weakening human rights protection because they lock in initial conditions that are attractive to investors. According to this view, several developing countries compete for investment on issues ranging from environmental regulations to taxes and labour protection; BITs may then lock in favourable conditions

(low standards) that are initially put in place and provide incentives not to change the regulatory environment since such changes could potentially be challenged by investors. With BITs in place, it is potentially more costly for States to reverse policies.

However, empirical studies do not fully support this argument (Egan 2012). Some studies have made the opposite case – namely, that countries, including developing ones, with stronger labour protection rights attract more investment (Brown 2000). In early studies, Kucera (2002) and Busse (2004) find that investment inflows are positively related to stronger protection of labour rights. Mosley (2011) reports mixed results. She distinguishes between labour rights protection in law and in practice, and finds that investment is positively related to labour rights protection in law, suggesting that investment does not lower labour legislation, but negatively related to labour rights protections in practice, indicating that investment might exert pressure discouraging enforcement of existing labour legislation. The findings of Mosley were recently confirmed by a study of Ye (2020), who investigates whether BITs affect collective labour rights in developing countries. He uses the Freedom of Association and Collective Bargaining indicator developed by David Kucera (Kucera 2001, 2002; Kucera and Sari 2019), which allows the protection of collective labour rights to be differentiated in law and in practice. His results show that BITs do not influence laws on freedom of association and collective bargaining, but do worsen the implementation of these laws, resulting in a widening gap between the protection of collective labour rights in law and in practice. He explains this in light of the competition between countries to attract investment, which is facilitated by BITs. To gain competitive advantage in attracting investment, developing countries lower their enforcement of labour standards, including enforcement of related collective rights. In another frequently cited study, Neumayer and de Soysa (2006) did not find any significant effect of FDI on labour rights.

Other scholars have focused on how IIAs create a regulatory “chill” (Tienhaara 2011; Moehlecke 2020; Sands 2023). They are negotiated to attract FDI. For this purpose, they contain provisions that protect foreign investors against the host State’s interference in their investments. The aim is to attract investments by ensuring that foreign investors are protected from unfairly or unjustly losing their investment. Such loss can occur through various mechanisms, including expropriation, unfair taxes and capture by governments. In addition, changes in public policy might affect the value of investments and be challenged by investors. For example, a change in environmental, health or labour regulation might potentially affect the costs of an investment project and be considered a form of indirect expropriation.

As a result, there is concern about whether IIAs affect the policy space of national governments to pursue public policies.

Broude and Haftel (2020, 14) refer to the State regulatory space under investment agreements as “the extent of the ability of governments to freely legislate and implement regulations in given public policy domains” (see also Thompson, Broude and Haftel 2019). More recent criticism has underlined investment law’s incapacity to balance investment protection and public interests (Aisbett et al. 2018). Critics argue that current IIAs act asymmetrically, granting rights to investors while imposing strong obligations on capital-importing States to protect investors’ interests. They generally incorporate an investor–state dispute settlement system, which gives investors the right to sue a country for potential breach of investment agreements and expropriation of investments. The sued government can be forced to pay a significant amount of money in damages (Gaukrodger and Gordon 2012).²

Dispute cases illustrate that the State regulatory space may be impeded by investment agreements. In this context, two relevant cases are *Vattenfall v. Germany (II) (2012)*³ and *Philip Morris v. Uruguay (2010)*.⁴ In the former case, the Swedish energy utility Vattenfall sued the German Government before both the German Federal Constitutional Court and the World Bank’s International Centre for Settlement of Investment Disputes (ICSID). The Swedish company challenged the new German law (13th Amendment of the Atomic Energy Act), which was intended to accelerate the phase-out of nuclear energy, claiming that it negatively affected their investment. The national complaint before the Constitutional Court was resolved in favour of the applicant since the Court declared that the 13th Amendment was incompatible with the German Constitution. Consequently, the German Government had to undo its policy decision and revise its policy. The ICSID dismissed the case pursuant to

2 Examples of large awards in investment disputes: the United Nations Commission on International Trade Law (UNCITRAL) awarded US\$1,111.3 million to the investor in *Oschadbank v. Russian Federation*, PCA Case No. 2016-14; UNCITRAL awarded US\$1,232.82 million to the investor in *Cairn Energy PLC and Cairn UK Holdings Ltd v. The Republic of India*, PCA Case No. 2016-7.

3 International Centre for Settlement of Investment Disputes, *Vattenfall AB and Others v. Federal Republic of Germany (II)*, ICSID Case No. ARB/12/12.

4 International Centre for Settlement of Investment Disputes, *Philip Morris Brand Sàrl (Switzerland)*, *Philip Morris Products S.A. (Switzerland)* and *Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7.

ICSID Arbitration Rule 44.⁵ In *Philip Morris v. Uruguay*, the applicant initiated arbitration against Uruguay, claiming a breach of the obligations under its BIT with Switzerland; this followed the adoption of two tobacco control measures, related to regulating logos and brands on cigarette packaging, that were enacted by Uruguay to protect public health. In this case, the policy space on health regulation was challenged by the multinational Philip Morris since the two tobacco control measures on packaging were assumed to negatively affect the investment by Philip Morris in Uruguay. The arbitration tribunal dismissed Philip Morris's claims, upholding the validity of the tobacco control measures.

In some cases, these disputes directly relate to labour protection. For instance, the friction between labour-oriented public policies and conflicting foreign investors' interests emerged in the dispute *Veolia Propreté v. Arab Republic of Egypt* (2015).⁶ In light of the France–Egypt BIT, the French utility company challenged the Egyptian labour legislation that raised the minimum wage before an arbitration tribunal, claiming either a revision of the contract or a compensation of around US\$200 million. Despite the ICSID tribunal eventually dismissing Veolia's claim, the case illustrates how investment agreements can be used when there is a change in domestic labour law. Moreover, national labour standards and laws can indirectly be undermined by competition between States in order to attract foreign investments, as States may reduce labour protection in order to encourage investments in their countries (so-called “race to the bottom” arguments in trade and investment literature). Most recently, in 2020, Donatas Aleksandravicius, a Lithuanian investor and owner of the company DS Byggeri, claimed that Denmark had failed to take action against labour union protests that took place at its company construction site located in Copenhagen.⁷ The protests caused damage to the company site and financial harm. The claimant sought compensation under the Lithuania–Denmark BIT. This was the first investment treaty claim against Denmark brought before the ICSID; however, the proceeding was eventually discontinued in 2021 according to ICSID Arbitration Rule 44.

5 Rule 44 of the ICSID Rules of Procedure for Arbitration Proceedings (2006 version) introduced the possibility of discontinuing the proceeding at request of one party. The discontinuance of the proceeding will take place if the other party agrees to the request or does not object within a fixed time limit.

6 International Centre for Settlement of Investment Disputes, *Veolia Propreté v. Arab Republic of Egypt*, ICSID Case No. ARB/12/15.

7 International Centre for Settlement of Investment Disputes, *Donatas Aleksandravicius v. Kingdom of Denmark*, ICSID Case No. ARB/20/30.

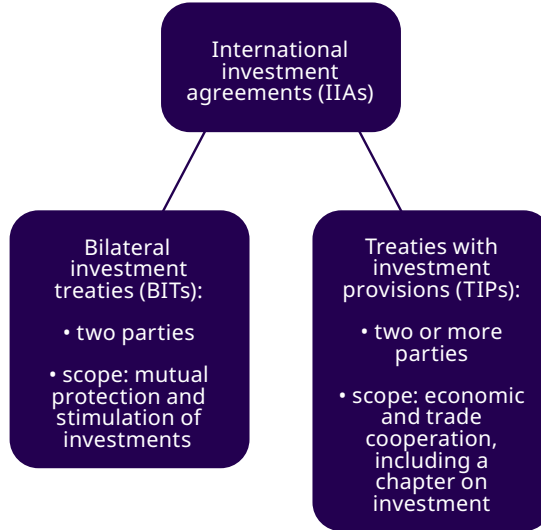
These different cases highlight concerns about how investment agreements might influence the policy space of governments and the latter. One possible solution to address such concerns is to explicitly stipulate in agreements that the policy space should be preserved or introduce references to environmental or labour provisions designed to maintain the policy space in these areas. As Pohl (2018, 55) argues, such references “may require States, for instance, to uphold defined environmental, labour, human rights, anti-corruption, competition or intellectual property protection standards, or to have specific legislation in place” (see also Aisbett et al. 2018). In this way, the negotiation of future investment agreements may present an opportunity to include stronger references to labour protection. The degree to which this strengthening of labour rights protection in agreements is necessary will partly depend on current approaches and practices. In the next section, the occurrence of labour-related references in current IIAs and model BITs is considered.

► 2.2 Screening labour-related references in investment agreements

Discussions of the relationship between IIAs and labour rights protection make clear that such agreements can influence the protection of labour rights. One way to address the possible negative effects of IIAs on the protection of labour rights is through the inclusion of labour rights protection commitments in investment agreements. This section maps and discusses the occurrence of labour-relevant references across all available IIAs through a keyword search.

As explained above, IIAs comprise both bilateral investment treaties (BITs) and treaties with investment provisions (TIPs) (figure 2.1). A BIT is an agreement between two countries stipulating that they shall reciprocally protect and stimulate investments in each other’s territory. Such BITs are so-called “pure” investment agreements as they deal only with investment and investment protection. A TIP also contains investment provisions, but they are set within the context of a broader regional and plurilateral trade and economic agreement. Such TIPs include trade agreements, but also broader economic partnership and association agreements.

► Figure 2.1 Two types of international investment agreement (IIA)



The process of mapping labour-relevant references across all available IIAs was performed using the United Nations Conference on Trade and Development (UNCTAD)'s International Investment Agreements Navigator, a database in which UNCTAD keeps track of all negotiated and publicly available IIAs. The database lists all concluded IIAs. An agreement is concluded when it has been signed by the parties, regardless of its entry into force. The information presented in the database is continuously amended based on comments by, and a process of verification with, United Nations Member States.⁸ As of November 2021, the UNCTAD database contained 2,825 BITs, of which 2,257 were in force, and 420 TIPs, of which 325 were in force. The Navigator has an advanced search function which enables cross-screening of the text of all the IIAs in the database by entering specific keywords. Besides IIAs, the database contains model BITs. These are templates developed by countries to harmonize their approach and represent the starting base for negotiations of BITs (Haftel, Link and Broude 2022). Use of model BITs differs from country to country; most countries do not currently have a model BIT, while certain countries have revised their model BIT several times (Broude and Haftel 2020).

⁸ For more information, see UNCTAD's [Methodology](#).

The screening of all 3,245 agreements was conducted using more than 50 relevant keywords.⁹ In total, 885 agreements (574 BITs and 311 TIPs) were identified that contain references to relevant keywords. The keywords were selected through an iterative process which started with a list of relevant keywords that was then further refined in dialogue with ILO researchers. Since the search was sensitive to words and letters, different spellings of the same word were used (for instance, “labor” and “labour”). These *labour-relevant keywords can be considered as proxies for the importance of labour issues in an agreement*. On the basis of the agreements that were identified, a database containing the relevant keywords and organized by agreement was created.

The approach of searching the UNCTAD database on English-language keywords has some strengths and weaknesses. The main strength is that it allows researchers to search a large body of text on the selected keywords and thereby to identify relevant IIAs. It also allows trends and developments to be identified, some of which are discussed in section 2.3 below.

Among the weaknesses of the approach are, first, that the keywords used do not constitute labour provisions as defined by the ILO Labour Provisions in Trade Agreements Hub, since labour provisions consist of whole texts or paragraphs.¹⁰ *As a consequence, the keyword search might result in the identification of keywords in sections of an agreement which are not related to labour protection. This is especially true of some more generic keywords such as “non-discrimination”. However, the assumption is that the majority of keywords have a link to formulations typically used in labour provisions or provisions on responsible business conduct. This assumption is partly confirmed by the results presented in section 2.3.*

9 Keywords included: labour standards, rights, protection, legislation, law and inspection; child labour; employment; training/education; worker; occupation; just transition; rights at work; work condition(s); skills; occupational safety and health; working hours; trade union(s); International Labour Organization; Declaration on Fundamental Principles and Rights at Work; decent work; ILO Convention(s); Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE); (non-)discrimination; human rights; social development; economic rights; woman/women; gender; social protection; social rights; corporate social responsibility; corporate governance; OECD Guidelines for Multinational Enterprises; responsible business conduct.

10 According to the [ILO Labour Provisions in Trade Agreements Hub](#), labour provisions are “(i) any principle or standard or rule (including references to international labour standards), which addresses labour relations, minimum working conditions, terms of employment, and/or other labour issues; (ii) any framework to promote cooperation and/or compliance with standards, through activities, dialogue and/or monitoring of labour issues; and/or (iii) any mechanism to ensure compliance with national labour law and standards set out in the trade agreement, such as through the settlement of labour-related disputes”.

Second, the use of English-language keywords only might have led to an underestimation of the number of labour-related references, since some IIAs are in other languages. Broude and Haftel (2020) identify two waves of BITs. The first wave started with the first BIT between Germany and Pakistan in 1959 and ended around 1990, at the time of the fall of the Berlin Wall. In total, around 400 agreements were signed in this period between Western European countries and African and Asian countries. These were mostly BITs. The second wave started in the 1990s and included investment provisions as part of larger liberalization programmes and agreements, such as the Energy Charter Treaty and the North American Free Trade Agreement (NAFTA), among others. Especially in relation to the first wave of IIAs, the search might under-represent existing references to labour protection since some of these agreements were in non-English languages, such as French, German, Spanish, Russian or Portuguese. Overall, however, the proportion of non-English IIAs to total number of IIAs is only 16 per cent.

Third, the UNCTAD database underestimates the number of existing IIAs, since it does not include so-called “missing investment treaties”. Missing investment treaties are defined as IIAs that have been concluded but whose text is not publicly available or is incomplete for various reasons (Polanco Lazo, Desilvestro and Bazrafkan 2018, 712–715); these authors estimate (p. 709) that in 2018 there were approximately 460 such missing treaties not included in the UNCTAD database. These missing treaties, together with treaties not available in English, constitute a significant additional number of IIAs that could be considered in follow-up research.

► 2.3 Labour-related references in IIAs, BITs and model BITs: Main results

In the first section (2.3.1), the main results of the screening of existing IIAs for labour-related references are presented: how keywords were distributed across IIAs, their concentration within IIAs, and the way their occurrence evolved over time and across countries. The second section (2.3.2) delves more deeply into specific articles in selected BITs to explore how labour-related references occur. In the third section (2.3.3), the occurrence of keywords in model BITs is considered.

2.3.1 Labour-related references in IIAs

Across the 3,245 IIAs included in the UNCTAD database, numerous references to the preselected keywords were found. These were divided thematically and ordered according to frequency, and five broad categories were identified: labour rights-related keywords (375 occurrences of the keywords); work-related keywords (1,461); ILO-related keywords (220); human rights-related keywords (749); and keywords related to responsible business conduct (167). In total, the 50-plus keywords, divided into these five categories, appeared 2,972 times in 885 IIAs, out of a total of 3,245 IIAs. Hence, in total only 27 per cent of all IIAs contained references to the identified keywords, which is an indication that, overall, only a minority of IIAs incorporate labour concerns in their texts.

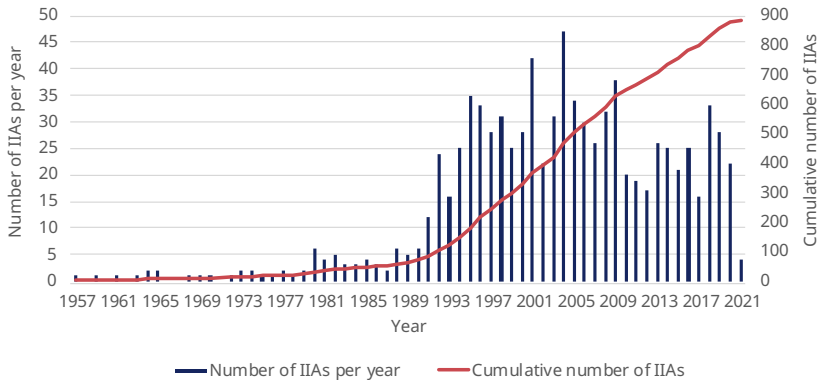
The research shows that the majority of the keywords appeared fewer than 100 times, and several appeared only rarely. Keywords such as training/education, worker, (non-)discrimination and employment appeared in more than 200 IIAs. Sometimes these frequent keywords were not related to labour protection: (non-)discrimination, for example, was also used in articles dealing with issues such as transfers and expropriation. Furthermore, the analysis shows that there was a significant number of references to labour rights, labour standards and human rights, as well as to work-related keywords such as employment, training and inspection, among others. References to keywords that relate to the broad area of responsible business conduct were also found. In relation to the ILO and decent work, agreements were identified that included a reference to keywords such as International Labour Organization, decent work, and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).

A few observations emerge. First, references to the ILO (57 IIAs) and decent work (35 IIAs) appeared in several agreements, while the MNE Declaration appeared much less frequently (in only 8 IIAs). Second, references to the ILO appeared more often in BITs, whereas references to decent work and the MNE Declaration appeared infrequently in such agreements. These keywords were more frequent in TIPs, which have more extensive trade-related labour provisions. Finally, there were few references to specific issues such as child labour and forced labour.

Considered over time, however, an increase in labour-related references can be observed. Figure 2.2 shows the number of IIAs (both BITs and TIPs) containing keywords by year, as well as the cumulative number of IIAs over time (blue line). From this, it is clear that the number of IIAs containing keywords started to increase in the 1990s, coinciding with the second wave of agreements described above (section 2.2).

- ▶ Integrating trade and decent work: The potential of trade and investment policies to address labour market issues in supply chains

▶ **Figure 2.2** Number of IIAs containing one or more keywords, by year and cumulatively over time, 1957–2021



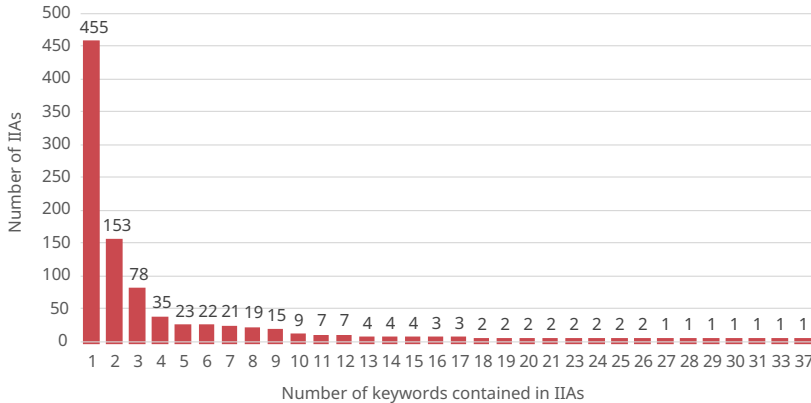
Source: Authors' calculations based on [UNCTAD International Investment Agreements Navigator](#) database.

The assumption underlying the analysis is that the number of keywords in an IIA is indicative of the importance placed on labour protection in that IIA. Figure 2.3, showing the number of IIAs containing a given number of keywords, indicates that the occurrence of keywords was concentrated in a small number of agreements: 455 IIAs – more than half – contained just a single keyword, while more than 75 per cent included three keywords or less. By contrast, a small number of IIAs included a relatively large number of keywords: one IIA contained 37 keywords,¹¹ another IIA 33 keywords,¹² and so on. Approximately half of all labour-related references were found in just 100 agreements. Thus, the analysis reveals that, in broad terms, there are very few references to labour protection in IIAs; and that, where there are labour-related references, they are contained in a limited number of IIAs.

¹¹ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 149, 30.4.2021.

¹² Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, OJ L 260, 30.8.2014.

► **Figure 2.3** Number of IIAs containing a given number of keywords



Source: Authors' calculations based on UNCTAD International Investment Agreements Navigator database.

Besides an evolution over time and variation in the number of references in IIAs, variation between countries can also be observed. To explore this variation, it is illuminating to focus on the major economies in the world (the G20¹³), since they have signed the most IIAs. Canada and the European Union (EU) score very high in terms of IIAs that contain labour-related references. More than 90 per cent of their agreements contain labour-related references. By contrast, middle-income G20 members tend to have few references to labour keywords. Countries such as Argentina,¹⁴ China, India and the Russian Federation rarely include labour-related keywords in their agreements.

To gain further insight into which kinds of agreement contain the most keyword references, a "Top 20" of IIAs containing the most keywords was made. This analysis shows that all the agreements that include multiple keywords are typically more comprehensive agreements (TIPs), which, besides investment, also cover trade and other forms of economic cooperation. For this reason, they are more elaborate agreements, which typically take the form of trade and investment agreements, association agreements, and economic and political partnership agreements. On the

¹³ As of 2023, the 20 members of the G20 were: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Republic of Korea, Russian Federation, Saudi Arabia, South Africa, Türkiye, United Kingdom of Great Britain and Northern Ireland, United States of America and the European Union.

¹⁴ In the case of Argentina, the lack of references to labour-related keywords may be explained by the high percentage of its IIAs (63 per cent) that are not in English.

other hand, BITs tend to have significantly fewer keyword references, and none of the Top 20 agreements are BITs. Most keywords appear in comprehensive agreements (TIPs) concluded by the EU, the United Kingdom and the European Free Trade Association (EFTA). These comprehensive agreements sometimes have separate chapters on labour rights or trade and sustainable development, and these include many of the keywords. A typical example is the trade and sustainable development chapters in EU trade and investment agreements (see also Corley-Coulibaly, Grasselli and Postolachi in this volume).

To further explore whether keywords also appear in the investment chapters of TIPs, two investment chapters from recent EU agreements – namely, the EU–Viet Nam agreement and¹⁵ EU–Singapore agreement¹⁶ – were screened for keywords. In the investment chapters of these TIPs, some of the relevant keywords appear (such as human rights, labour protection, work, gender and education), but mentions are rather limited, indicating that the keywords mostly appear in other chapters of the agreement. The keywords that do appear are similar in the two agreements, which can be explained by the “blueprint” approach used by the EU when drafting agreements.

2.3.2 Labour-related references in BITs

While several investment chapters are included in trade and economic partnership agreements (TIPs), and these more comprehensive agreements have separate chapters containing several of the keywords, it is also interesting to explore the occurrence of keywords in BITs. An analysis of BITs containing more than five keywords shows that, overall, BITs have a relatively low number of keywords. However, several keywords are of special relevance in the context of debates on decent work, since they refer to the ILO, including the MNE Declaration, human rights, corporate governance, corporate social responsibility (CSR), responsible business conduct, and specific labour rights such as those related to occupational safety at work.

An analysis of some of these BITs further contextualizes where the labour-related references occur in such agreements. Some BITs include references to protection of labour rights in their preamble. For example, the BIT between Hungary and Kyrgyzstan states in its preamble that the parties seek “to ensure that investment is consistent with the protection of internationally

¹⁵ Investment Protection Agreement between the European Union and Its Member States, of the One Part, and the Socialist Republic of Viet Nam, of the Other Part (2019).

¹⁶ Investment Protection Agreement between the European Union and Its Member States, of the One Part, and the Republic of Singapore, of the Other Part (2018).

and domestically recognised human rights, labour rights, and internationally recognised standards of corporate social responsibility”.¹⁷

Other BITs include articles specifically referring to labour rights protection and the promotion of CSR. For example, the BIT between the Belgium–Luxembourg Economic Union (BLEU) and Ethiopia defines the term “labour legislation” in relation to “internationally recognized labour rights”, such as “the right of association”, “a prohibition on the use of any form of forced or compulsory labour” and “a minimum age for the employment of children”.¹⁸ Furthermore, this BIT has a specific article (Art. 6, “Labour”) that is dedicated to labour rights protection; it starts by recognizing the right of each party to freely develop its own labour standards and legislation, and further stipulates, in this regard, that the parties “shall strive to ensure” that their labour legislation conforms to “the internationally recognized labour rights” (Para. 1). The next paragraph refers to the commitment of each party to “strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such legislation as an encouragement for the establishment, maintenance or expansion in its territory of an investment” (Para. 2). The Article then contains a best-efforts obligation of the parties to ensure that the “Fundamental Principles and Rights at Work” (referencing the ILO’s 1998 Declaration) and the “internationally recognised labour rights” (including “minimum wages, hours of work and occupational safety and health”, as set forth in Art. 1(6) of the agreement) are “recognised and protected by domestic legislation” (Para. 3). Finally, the Article concludes by acknowledging that cooperation between the parties “provides enhanced opportunities to improve labour standards” and introduces the obligation of the parties “to accept to hold expert consultations” on labour legislation and standards upon request of the other party (Para. 4).

The BLEU–Ethiopia BIT is not an isolated case. Article 8 of the BIT between BLEU and Colombia is also dedicated to labour protection.¹⁹ It includes many commitments and statements similar to those found in the BLEU–Ethiopia BIT. For instance, the first paragraph of Article 8 states that the parties recognize “the right of each Contracting Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour

¹⁷ Agreement between the Government of Hungary and the Government of the Kyrgyz Republic for the Promotion and Reciprocal Protection of Investments (2020), fourth preambular paragraph.

¹⁸ Agreement between the Belgian–Luxembourg Economic Union, on the One Hand, and the Federal Democratic Republic of Ethiopia, on the Other Hand, on the Reciprocal Promotion and Protection of Investments (2006), Art. 1(6).

¹⁹ Agreement between the Belgian–Luxembourg Economic Union, on the One Hand, and the Republic of Colombia, on the Other Hand, on the Reciprocal Promotion and Protection of Investments (2009).

legislation". Furthermore, it requires the parties, among other things, to translate into national legislation internationally recognized labour rights and principles, and seeks to dissuade the parties from "encourag[ing] the establishment, maintenance or expansion in its territory of an investment by relaxing domestic labour legislation" (Para. 1). Paragraph 3 of Article 8 provides significant discretion to the parties to determine the appropriate level of labour protection by stating that "[n]othing in this Agreement shall be construed as to prevent a Contracting Party from adopting, maintaining, or enforcing any measure that it considers appropriate to ensure that an investment activity in its territory is undertaken in accordance with the labour law of the Party".

Non-European countries also make labour-related references in specific articles of their BITs. For example, the BIT between the United States and Rwanda regulates the relationship between labour and investment in Article 13.²⁰ It includes a recognition that it is "inappropriate" to attract investment by lowering labour rights protection and a best-endeavour obligation of the parties to "strive to ensure" that they do not derogate from, weaken or reduce adherence to "internationally recognized labor rights", such as the rights of association and collective bargaining, a "prohibition on the use of any form of forced or compulsory labor", "labor protections for children", and "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health" (Paras 1 and 2). The BIT between Canada and Burkina Faso also contains references to labour-related keywords.²¹ Article 16 on corporate social responsibility states that "[e]ach party should encourage enterprises ... to incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies". It then goes on to specify that the principles concerned in this instance are those that address issues such as labour, the environment and human rights.

As well as in European and North American BITs, labour rights protection articles can be observed in South–South BITs. The Nigeria–Morocco BIT, for example, refers to "investment, labour and human rights protection" (Art. 15).²² After reaffirming "their respective obligations as members of

²⁰ Treaty between the Government of the United States of America and the Government of the Republic of Rwanda concerning the Encouragement and Reciprocal Protection of Investment (2008).

²¹ Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments (2015).

²² Reciprocal Investment Promotion and Protection Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria (2016).

the International Labour Organization (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up” (Para. 1), the text goes on to stipulate more detailed commitments, acknowledging the parties’ recognition that:

it is inappropriate to encourage investment by weakening or reducing the protection accorded in domestic labour laws. Accordingly, each Party shall ensure that it does not waive or otherwise derogate from or offer to waive or otherwise derogate from its labour laws where the waiver or derogation would be inconsistent with the labour rights conferred by domestic laws and international labour instruments in which both parties are signatories, or fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction. (Para. 2)

Paragraph 5 of Article 15 then adds that each party “shall ensure that its laws and regulations provide for high levels of labour and human rights protection appropriate to its economic and social situation, and shall strive to continue to improve these law and regulations”. Paragraph 6 goes even further, requiring that the parties “ensure that their laws, policies and actions are consistent with the international human rights agreements to which they are a Party”. Additional labour- and human rights-related references are included in Article 18 on post-establishment obligations: Paragraph 2 requires investors and investments to “uphold human rights in the host state”; Paragraph 3 requires that “[i]nvestors and investments shall act in accordance with core labour standards” as required by the 1998 ILO Declaration; and Paragraph 4 requires investors not to “manage or operate the investments in a manner that circumvents international environmental, labour and human rights obligations to which the host state and/or home state are Parties”.

Finally, besides references to the protection of labour rights in existing BITs, such commitments can also be observed in BITs that are currently under negotiation. An interesting example of increased attention to labour rights protection in BITs is provided by the draft EU–China Comprehensive Agreement on Investment (CAI).²³ If concluded, it will be a one of the few BITs that include rather extensive references to labour rights protection.

The CAI follows, to some degree, the more traditional approach of the EU on labour rights and standards in trade agreements, and contains several provisions on labour rights. From China’s perspective, it constitutes a significant shift from current practice, as China’s trade and investment

²³ Terms of the EU–China agreement in principle, as of January 2021, are available on the [European Commission website](#).

agreements have rarely included labour references or labour provisions (Brown 2019, 110), and they rarely include the types of sustainable development provisions that the EU, for example, has included in its agreements. In an assessment of sustainable development provisions in China's IIAs, it was found that only a handful of its 104 BITs and 15 free trade agreements (FTAs) in force in 2018 contained references relevant to sustainable development, and even fewer contained references to labour rights protection (Chi 2019, 10).

Only five of China's agreements currently in force contain labour references – namely, the FTA with Chile signed in 2005, the FTA with New Zealand signed in 2008, the investment agreement with the Association of Southeast Asian Nations (ASEAN) signed in 2009, the FTA with Switzerland signed in 2013, and the FTA with Iceland signed in 2013. The ASEAN–China investment agreement and the China–Iceland FTA contain few labour-related references – respectively, two and three such references – and they are also of a general nature. For instance, the former does not contain any clauses related to labour rights or work protection; the only keywords are “non-discrimination” and “labour”, and these are used in the context of transfers and repatriation of profits.²⁴ Each of “the remaining three FTAs contain a single clause stating that the parties will enhance their cooperation on labour, but they specify that this cooperation is to be carried out in accordance with a separate memorandum of understanding (MoU) signed by the parties” (Otteburn and Marx 2022, 610). It is within these memoranda that more robust provisions on labour protection are to be found, but these provisions remain limited.

The CAI takes a different approach. The draft text of the CAI on sustainable development contains several references to international commitments on labour rights, including progress towards ratification of the ILO fundamental Conventions, the importance of decent work, and responsible business conduct. These provisions include many references to international commitments including, besides the 1998 ILO Declaration, the Ministerial Declaration of the United Nations (UN) Economic and Social Council on Full Employment and Decent Work of 2006; the ILO Declaration on Social Justice for a Fair Globalization of 2008; the UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals; and the 2019 ILO Centenary Declaration for the Future of Work. In addition, there are references to international instruments in the commitment to promote corporate social responsibility, including to the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the ILO MNE Declaration,

²⁴ Agreement on Investment of the Framework Agreement on Comprehensive Economic Cooperation between the People's Republic of China and the Association of Southeast Asian Nations (2009), Art. 10.

and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. At the same time, the draft CAI includes a whole subsection on “Investment and Labour”, which contains five articles focusing on (among other things) the right to regulate, a commitment of the parties to strive to improve existing labour protection, a reaffirmation of the obligations of the parties to uphold the principles underlying fundamental Conventions of the ILO, and an article entitled “Investment Favouring Decent Work”. The last of these contains a commitment of the parties to promote investment that provides “a human-centred approach to the future of work, adequate minimum wages, social protection and safety and health at work”.²⁵

2.3.3 Labour-related references in model BITs

In addition to negotiated agreements, it is relevant to focus on model BITs. Model BITs are templates (“blueprints”) that some governments have drafted to secure consistency in the formulation of new investment agreements.²⁶ Some countries revise their model BITs. The UNCTAD International Investment Agreements Navigator database contains several model BITs. Using this database, 41 countries that have drafted a model BIT in the last 20 years were identified, and these countries’ model BITs were screened for labour-related references. The analysis shows that the use of labour-related keywords in model BITs has evolved over time and their number has increased. It is interesting to note that the most recent model BITs increasingly contain references to the relevant keywords, which suggests that attention to labour references in investment agreements is growing. These include model BITs concluded by Canada (2021), BLEU (2019), the Netherlands (2019), Slovakia (2019) and Colombia (2017). Increased use of keywords can be observed not only in developed countries but also in middle-income and developing countries such as Brazil, Colombia and the Southern African Development Community (SADC) countries.²⁷ This might be explained by the fact that these countries increasingly engage with trade and investment partners such as the EU and the United States, which promote

25 For a general discussion of the CAI, see Lawrence, Van Ho and Yilmaz Vastardis (2020) and Cotula (2021); and for an assessment of the sustainable development chapter with a specific focus on labour rights, see Otteburn and Marx (2022).

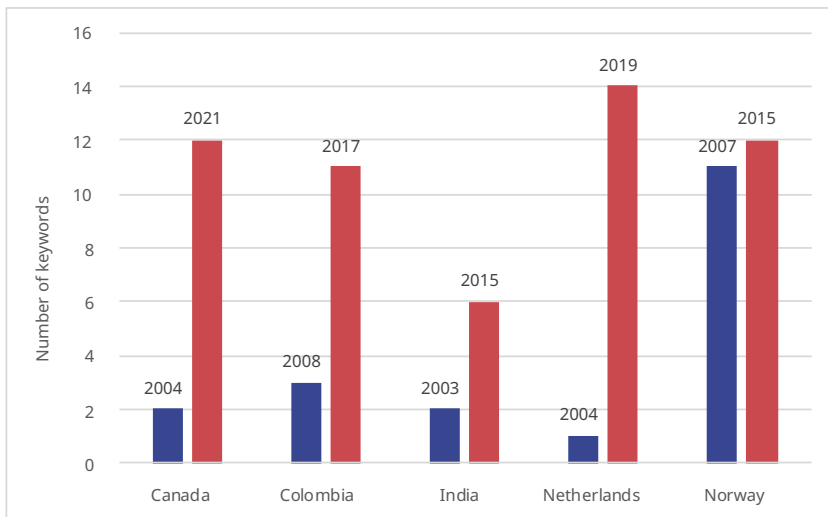
26 Beside model BITs drafted by countries, there are also model agreements provided by governmental and non-governmental international institutions; see Alschner, Elsig and Wüthrich (2022).

27 As of 2023, 16 countries belonged to the SADC: Angola, Botswana, Comoros, Democratic Republic of the Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania (United Republic of), Zambia and Zimbabwe.

commitments on sustainability, labour and environmental protection. While only a few observations can be made (since most countries do not have or share a model BIT), it is still an interesting development to observe that the number of labour-related references in model BITs is increasing.

Since some countries regularly update their model BITs, it was also possible to analyse whether the number of keywords in the model BITs of specific countries has increased over time. For this purpose, five countries were identified that have updated their model BITs recently and for which several model BITs from different years are available. Figure 2.4 shows how the number of keywords in model BITs drafted by Canada, Colombia, India, the Netherlands and Norway has changed over time. With the exception of Norway, which had already included a relatively large number of keywords in its 2007 model BIT, the other countries very substantially increased the number of keywords in their model BITs, thereby strengthening the labour-relevant language of their texts.

► **Figure 2.4** Change over time in the number of keywords in original and updated model BITs in selected countries



Source: Authors' calculations based on UNCTAD International Investment Agreements Navigator database.

This increase in the number of keywords indicates that there is growing awareness of the relevance of including references to labour protection in investment negotiations and agreements. A closer analysis of these references shows that they are included in provisions that aim to secure the regulatory policy space of countries, as well as in provisions on corporate

social responsibility and responsible business conduct. However, few model BITs make explicit reference to the ILO or to ILO Conventions.²⁸

The relevance of including labour commitments in model BITs is illustrated by the case of the model BITs of Brazil and India, and the investment cooperation and facilitation treaty subsequently negotiated between the two countries. This case also provides an interesting example of how South–South agreements are increasingly paying attention to the protection of labour rights and the promotion of responsible business conduct. The Brazil and India model BITs were both devised in 2015,²⁹ and the Brazil–India investment cooperation and facilitation treaty in 2020.³⁰ A comparative analysis of the two model BITs and the cooperation and facilitation treaty shows the extent to which model BITs can influence negotiated agreements. The Brazil–India investment agreement includes relevant keywords that were also included in one or both model BITs. Also, when the model BITs are compared, the negotiated agreement does not display a “lowest common denominator” outcome but follows the more advanced model BIT (Brazil’s) in terms of labour-related references.

First, the Brazil model BIT contains many more references to labour rights and responsible business conduct than the India model BIT. Each contains an article on corporate social responsibility (CSR), but Brazil’s text on CSR (Art. 14) is much more developed than the corresponding passage in India’s model BIT (Art. 12). For instance, Brazil’s Article 14 contains several subsections which list various voluntary principles and standards with which the investors must comply. This is not the case in the India model BIT, which refers more generally to principles that “may address issues such as labour, the environment, human rights, community relations and anti-corruption” (Art. 12). Thus, while the India model BIT uses noncommittal language such as “may”, the Brazil model BIT is more robust in its demands, urging the parties to comply with international standards on responsible business conduct: “The investors and their investment shall endeavour to comply with the following voluntary principles and standards for a responsible business conduct” (Art. 14(2)). In addition to the article on CSR, the Brazil model BIT contains an article entitled “Provisions on Investment and Environment, Labor Affairs and Health” (Art. 16), which was copied over, word for word, into the negotiated Brazil–India investment agreement. It is noteworthy, in a

28 Exceptionally, references to the ILO are found in Art. 6(6) of the [Netherlands model BIT](#) (2019), Art. 16(2) of the [BLEU model BIT](#) (2019) and Art. 15(2) of the [SADC model BIT](#) (2012).

29 [Brazil model BIT](#) (2015); [India model BIT](#) (2015).

30 [Investment Cooperation and Facilitation Treaty between the Federative Republic of Brazil and the Republic of India](#) (2020).

case of this kind, to observe that stronger provisions set out in one country's model BIT may be carried over into a negotiated agreement.³¹

In conclusion, model BITs are a possible means of strengthening labour protection in investment agreements and can help to diffuse best practices in negotiated agreements. However, only a minority of countries draft model BITs (or make them available), so the findings presented here need to be seen in that perspective.

► 2.4 Implementation of labour rights commitments in IIAs and BITs

Does the inclusion of labour rights commitments in IIAs make a difference to the protection of labour rights? This depends, in the first instance, on how these commitments are implemented and, in the second, on the impact they have. This section reviews current approaches to implementation of labour commitments in IIAs and discusses their potential impact.

The implementation of commitments in IIAs is the responsibility of the parties involved. Concerning the monitoring and enforcement of the implementation of labour-related commitments, significant variation exists between TIPs and BITs. In TIPs, labour-related references mostly occur in dedicated chapters on labour and/or environmental standards. These chapters include, in addition to the general consultation mechanisms between the parties, specific procedures and institutions to monitor the implementation of labour and environment-related commitments (see Corley-Coulibaly, Grasselli and Postolachi in this volume; see also ILO 2013 and Velluti 2020). These institutions and procedures involve setting up advisory groups and stakeholder consultation and dialogues, and reporting on the implementation of the commitments. These labour, environment and/or sustainability chapters also contain specific provisions on how non-compliance should be addressed. In some cases, such as the TIPs involving the EU, the trade and sustainable development chapters are exempted from the general dispute settlement and enforcement mechanisms of

31 This finding challenges the findings of Alschner, Elsig and Wüthrich (2022), who did not find that model BITs had any impact on negotiated agreements. The main difference is that they looked at model BITs from international institutions (six in total), while the analysis presented here focuses on model BITs of specific countries and how these work through into negotiated agreements in which those countries are involved.

the agreement. However, they establish a specific procedure, operating through a panel of experts, to address non-compliance with the labour and environment commitments (Bartels 2013; Harrison et al. 2018).

Bilateral investment treaties have less elaborate monitoring and enforcement provisions. They generally establish joint committees with the function of discussing and reviewing the implementation and operation of the entire agreement, rather than focusing on specific commitments relating to labour and the environment; there are no specific monitoring institutions to monitor the implementation of the commitments or specific dispute settlement mechanisms. There are some exceptions in which consultation mechanisms are created if concerns are raised. Those BITs involving BLEU generally include an article on labour and investment which provides that “upon request by either Contracting Party, the other Contracting Party shall accept to hold expert consultations on any matter falling under the purpose of this Article”.³² In addition, they note that disputes (related to the entire BIT) should be settled through diplomatic channels or alternatively “submitted to a joint commission consisting of representatives of the two Parties”³³. In this context, some BITs foresee bilateral consultations to address concerns. For example, Article 13 of the United States–Uruguay BIT, entitled “Investment and Labor”, provides for a consultation mechanism at the request of one party in the event that investments are attracted through the weakening of labour laws.³⁴ Whether these consultations are used in practice remains to be researched.

If diplomacy and consultation do not work, the parties can, in principle, have recourse to an arbitration tribunal to settle a dispute. However, some BITs exclude commitments on labour, CSR or the environment from dispute settlement through an arbitration court. For example, the dispute settlement text of the Brazil–United Arab Emirates BIT states that: “The following may not be subject to arbitration: ... Paragraph 2 of Article 17 – Provisions on Investment and Environment, Labor Affairs and Health.”³⁵ This exclusion is akin to the exclusion provision in some TIPs (in that it excludes non-compliance with labour/environmental commitments from the dispute settlement mechanism), but no alternative mechanism to address concerns on non-compliance is offered. It was not possible to estimate how many BITs exclude labour and environmental commitments from arbitration. Some

32 See, for example, Art. 4(6) of the [BLEU–Montenegro BIT](#) (2010) and Art. 4(6) of the [BLEU–Serbia BIT](#) (2004).

33 See, for example, Art. 12(2) of the [BLEU–Ethiopia BIT](#) (2006).

34 [United States–Uruguay BIT](#) (2005).

35 [Brazil–United Arab Emirates BIT](#) (2019), Art. 25(3).

BITs do not exclude these provisions from arbitration.³⁶ In sum, in terms of their institutional arrangements, BITs do not generally include extensive implementation and enforcement provisions.

Finally, when considering the impact of these provisions in promoting decent work and protecting labour rights, here, too, research points to a difference between TIPs and BITs. In contrast to the extensive research on the impact of labour provisions through TIPs (see Corley-Coulibaly, Grasselli and Postolachi in this volume), little or no research exists on the impact of labour commitments in BITs. On the impact of labour provisions in TIPs, research on EU trade agreements is providing mixed results on the protection of labour rights. Looking at the first generation of TIPs that include significant labour rights provisions, some scholars suggest that the direct impact is rather limited.³⁷ This view is supported in a recent paper by Francois et al. (2022), which used an extensive dataset covering more than 180 countries and spanning several decades to assess whether provisions on labour standards, environmental protection and human rights protection in trade agreements have any positive impact on indicators related to these issues. Their paper finds no evidence that labour and human rights provisions have any positive effect on associated outcome indicators. In contrast, Postnikov and Bastiaens (2014) do find a strong positive effect on core labour standards in partner States of the EU after an agreement enters into force. They attribute this to learning mechanisms, triggered by the implementation provisions in trade agreements, which focus on dialogue, communication and education. More recent papers also present a more nuanced picture showing evidence of the impact of labour provisions in TIPs. Corley-Coulibaly, Grasselli and Postolachi (2023) report on tangible and concrete activities and effects related to improving labour rights protection in the context of the EU–Republic of Korea FTA. Moreover, several scholars point to the importance of ex ante effects of labour provisions on the protection of labour rights through pre-ratification influence (ILO 2013; Kim 2012). Such influence is confirmed by means of in-depth case studies of (for example) the EU–Viet Nam trade and investment protection agreement (Marslev and Staritz 2022) and the negotiations of the Trans-Pacific Partnership Agreement (Ebert 2019). In addition, recent studies focusing on the [US–Mexico–Canada \(USMCA\) agreement](#) (USTR 2020), which includes new features in terms of enforcement of labour rights commitments, suggest that this novel approach might generate a more direct impact on the protection of labour rights. Comparisons between the USMCA and its

³⁶ For example, the [Morocco–Nigeria BIT](#) (2016).

³⁷ Scholars taking this view include Harrison et al. (2018), Marx, Lein and Brando (2016), Orbie, Van den Putte and Martens (2017), and Smith et al. (2020).

predecessor NAFTA show how the USMCA introduces various innovations, including strengthening of the possibilities of accessing the dispute settlement mechanism in case of violations of the labour commitments, and the introduction of a rapid response mechanism in relation to non-compliance with freedom of association and the right to collective bargaining (Corvaglia 2021; see also Bates 2022). These innovations also constitute mechanisms for better enforcement of labour rights commitments.

Notwithstanding the mixed empirical results on what kind of impact labour provisions in TIPs have in protecting labour rights, most authors tend to agree that a key component in generating an impact is related to the implementation and enforcement provisions included in an agreement (Harrison et al. 2018; Ebert 2019; Velut et al. 2022). The more elaborate and concrete these provisions are, the higher the likelihood that an impact, either ex ante or ex post, will occur. Labour provisions with limited or no implementation and enforcement mechanisms will most likely not generate any impact. Hence, if one expects labour provisions to have an impact on the protection of labour rights, then provisions on enforcement and implementation should be taken into account. Recent debates on the reform of sustainable development commitments in trade agreements point in the same direction (European Commission 2022).

The earlier discussion (in sections 2.3.1 and 2.3.2) highlighted that, in comparison to TIPs, BITs have rather limited provisions on the protection of labour rights and limited provisions on monitoring and enforcement. In light of this, it is hardly to be expected that BITs will have much direct impact on the protection of labour rights. The foregoing analysis shows that there is significant room to increase and strengthen provisions on labour rights protection in BITs. First, future BITs could include more elaborate articles and provisions on safeguarding the policy space of governments to develop and strengthen domestic labour laws, which is also in accordance with international commitments. In section 2.3.2, some examples from BITs were given that could be emulated, or taken as a starting point, in future agreements. Second, future BITs should include sufficiently strong provisions on the enforcement of these labour provisions in order to effectively safeguard the policy space of governments. In this context, ensuring that commitments on the protection of labour rights are not excluded from dispute settlement and arbitration would be an option to be considered. In addition, considering possible sanction mechanisms might also be explored. This approach has gained ground in debates on reforming sustainable development provisions in TIPs (Velut et al. 2022).

The negotiation, renegotiation and conclusion of investment treaties is an ongoing process, and several new BITs emerge yearly. This creates opportunities to include more labour-relevant references and, potentially, labour provisions, as well as provisions on the implementation of these commitments. The latter is illustrated, to a degree, by the CAI, which includes more elaborate provisions on labour rights protection and implementation. Concerning stronger commitments to labour rights protection, it is noteworthy that Article 4 of the draft CAI contained a commitment of the parties to work towards ratification of ILO fundamental Conventions and, in particular, to make continued and sustained efforts to ratify two ILO Conventions on forced labour,³⁸ which had not been ratified by China at the time of the negotiations of the draft agreement (Otteburn and Marx 2022, 615). In August 2022, the Government of China deposited the instruments of ratification of these two conventions. Whether there is any clear link between the negotiations of the CAI and the ratification of the two ILO Conventions by China is unclear. Ankersmit (2021) notes that the lack of ratification of the ILO Conventions on forced labour by China was not a significant element in the decision to put the contemporary negotiations on hold. Several other factors played a role. Concerning implementation, the CAI also includes more elaborate provisions, including, in case of disputes, the creation of a panel of experts to investigate and issue a public report on a matter of disagreement.

► 2.5 Conclusions

The field of investment agreements remains dynamic as more agreements continue to be negotiated. There is growing concern on the possible sustainability and, more specifically, labour impacts of investment treaties. As a result, increased attention to labour protection commitments in IIAs is being proposed. This chapter has provided an exploratory analysis and scoping of labour rights protection-related references in IIAs. Using UNCTAD's International Investment Agreements Navigator database, the analysis focused on all IIAs (both BITs and TIPs) included in the database and on model BITs. In total, 3,245 IIAs and 41 model BITs were screened for more than 50 keywords. This resulted in the creation of a database containing 885

³⁸ Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105).

IAs that included one or more keywords. In the case of model BITs, all 41 screened agreements were analysed.

The analysis showed that there is significant variation in the occurrence of labour-relevant keywords across IAs. Of the 885 IAs containing one or more keywords, 164 had five or more keywords, while only 64 had ten or more keywords. More than 50 per cent of IAs analysed contained only one keyword, and more than 75 per cent contain one to three keywords. Nevertheless, it emerged that references to labour-related keywords in IAs had increased over time, signalling growing attention to labour-related issues, responsible business conduct and similar sensitivities. Some of the keywords at the core of issues related to labour and responsible business conduct (such as labour rights, labour standards, corporate social responsibility/responsible business conduct, decent work, International Labour Organization and various declarations) did not appear frequently. There were only nine keywords that appeared more than 100 times in all IAs screened. It should be noted that keywords that appeared more often, such as discrimination, are to a certain degree more generic and used in contexts apart from labour protection. Further contextualization was provided by an analysis of specific BITs, including BITs between BLEU and selected countries, the United States and Rwanda, and Nigeria and Morocco. Here the focus turned to specific articles that contain several keywords and are concerned with upholding domestic labour law and international labour rights. This analysis was followed by a closer look at the draft CAI between the EU and China. A discussion of the CAI showed the increasing importance of labour rights commitments in IAs and how labour rights protection commitments have been taken on board by a party which had generally been more reluctant to do so in previous agreements.

The chapter proceeded with an analysis of model BITs and their inclusion of relevant keywords. These are essentially BIT templates that governments of many countries have drafted to secure consistency in the formulation of new IAs. Model BITs are generally subjected to reviews and improvements by governments and constitute a relevant entry point to strengthen labour rights commitments in IAs. The analysis showed that this is occurring, but only for a limited number of countries. Further analysis of the Brazil–India cooperation and facilitation treaty showed how the two countries' model BITs had influenced the negotiated agreement. In this case, the “stronger” provisions of the Brazil model BIT were included in the negotiated agreement. This indicates that model BITs can play a role in formulating more stringent

commitments, which are then taken on board in negotiated agreements. The degree to which these dynamics will unfold in future remains to be seen.

The final section focused on the implementation of labour rights-related commitments. Concerning the implementation and impact of labour-related references and provisions on the protection of labour rights, it was observed that there is a significant difference between BITs and TIPs in terms of monitoring and enforcement of commitments, as the latter include more elaborate monitoring and enforcement mechanisms. Since they only have limited enforcement provisions, the impact of labour-related references on labour rights protection in BITs is hypothesized to be low.

In sum, the analysis shows that increasing attention is being paid to labour issues in investment agreements, as measured by the occurrence of labour-relevant keywords, but that such attention can still be significantly strengthened. Currently, the approach in several BITs does not provide sufficient guarantees to safeguard the policy space of governments to address labour and environmental issues. Such BITs can be significantly strengthened by including articles explicitly safeguarding the policy space of government to develop domestic labour law and by including provisions that guarantee the enforcement of these commitments.

The call for more, and more effective, provisions on labour, environment and responsible business conduct in investment agreements is gaining ground. The background note on potential avenues for future policies, prepared by the OECD for the sixth annual Investment Treaty Conference in 2021, devotes a chapter to how future investment treaties could contribute to sustainable development and business conduct by including commitments to strengthen domestic regulation in accordance with international commitments and address possible adverse impacts of business (OECD 2021). The document recommends more extensive inclusion in IIAs of references to key international commitments such as the ILO Conventions. This call to strengthen the sustainability dimension of investment treaties follows other initiatives on rethinking approaches to investment treaties (Aisbett et al. 2018). The analysis presented in this chapter offers some avenues to further strengthen the labour rights protection component of IIAs. First, in the case of BITs, as well as including strong commitments on labour rights protection, specific mechanisms could be included to monitor the implementation of these commitments. Second, the use of model BITs with stronger commitments on labour rights protection could further diffuse such commitments in investment agreements. If BITs and model BITs are strengthened in these ways, they might contribute, over time, to the decent work agenda and the protection of labour rights.

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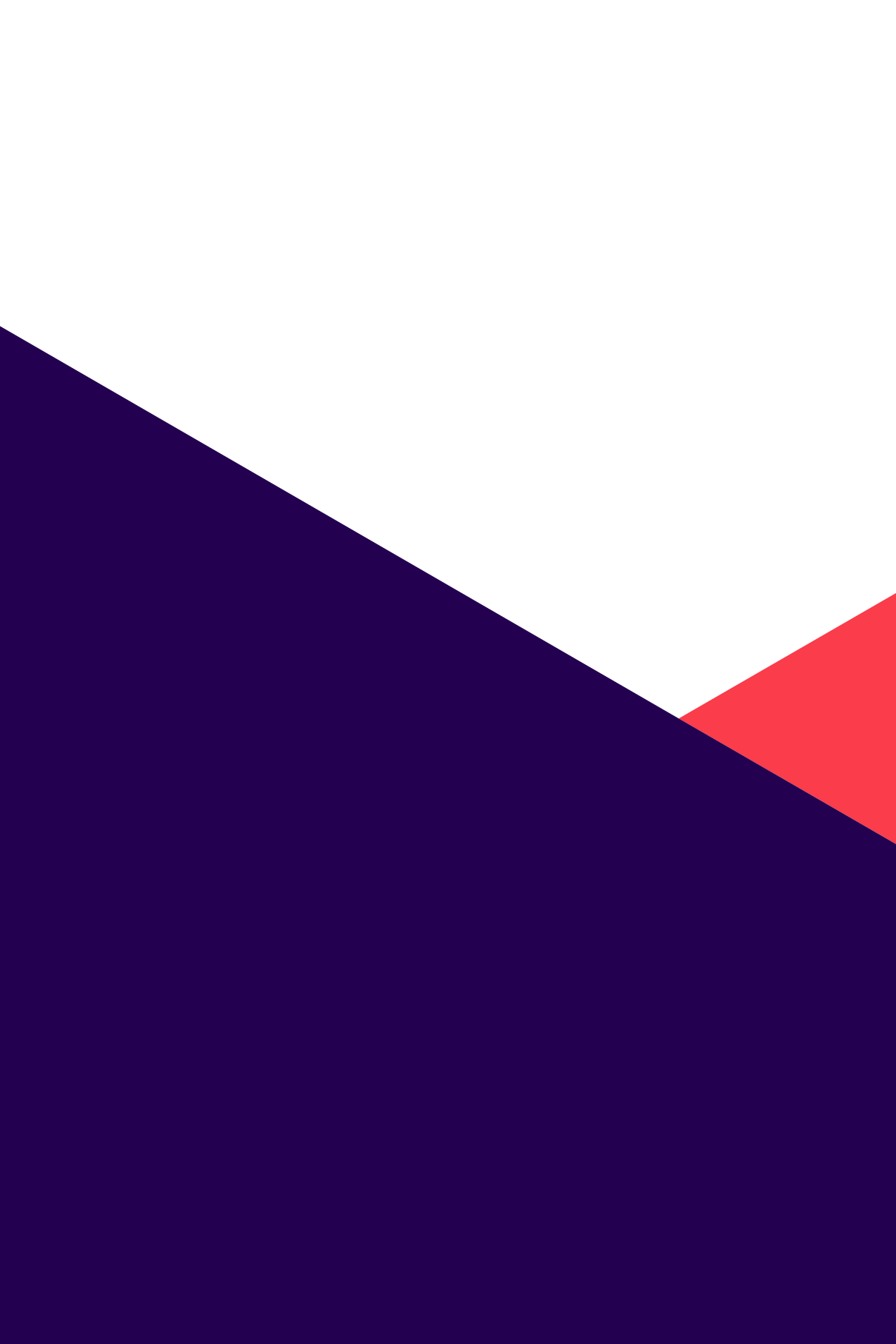
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Tackling forced labour in supply chains

The potential of trade and investment governance

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► Introduction

Although provided for by numerous international treaties¹ and embodied in the United Nations Sustainable Development Goals,² the eradication of forced labour remains a major challenge.³ According to the 2021 *Global Estimates of Modern Slavery*,⁴ there were approximately 28 million people in forced labour in 2021, a higher number than the estimation of about 25 million people given for 2016 (ILO and Walk Free 2017; ILO, Walk Free and IOM 2022). More than three quarters of the cases of forced labour were imposed by private individuals, groups or companies, many of them operating in export-related sectors participating in supply chains (ILO et al. 2019; ILO, Walk Free and IOM 2022).

It is therefore unsurprising that the question of how to tackle forced labour in supply chains has gained increasing attention among scholars and policymakers in recent years (Feasley 2016; McGrath and Mieres 2017; Nolan and Bott 2018; Hok et al. 2020). This chapter aims to contribute to the debate by focusing on the potential of trade and investment governance, which is understood to include a variety of instruments at the State and international level, to address forced labour issues in supply chains. Trade governance instruments, such as import ban laws, trade preference schemes and trade agreements, have been in the spotlight of policy debates regarding forced labour in a number of countries. Similarly, forced labour-related provisions have increasingly been incorporated into investment governance instruments, which include international investment agreements as well as investment policies of the World Bank and other development finance institutions at the global, regional and national level. While these instruments

1 See, notably, ILO Forced Labour Convention, 1930 (No. 29); ILO Abolition of Forced Labour Convention, 1957 (No. 105); Art. 8 of the International Covenant on Civil and Political Rights; and Art. 6 of the International Covenant on Economic, Social and Cultural Rights.

2 UN General Assembly, Resolution 70/1, Transforming our World: The 2030 Agenda for Sustainable Development, A/RES/70/1 (2015), Para. 8.7.

3 Forced labour is defined in the ILO Forced Labour Convention, 1930 (No. 29) as encompassing “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Art. 2(1)). Some exceptions are set out in Art. 2(2) of the instrument.

4 The concept of “modern slavery” has been used to refer to “a set of specific legal concepts including forced labour, concepts linked to forced labour (i.e. debt bondage, slavery and slavery-like practices and human trafficking) and forced marriage”; at its core, “it refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power” (ILO, Walk Free and IOM 2022, 13).

can involve important economic leverage, little is known about the extent to which, and the conditions under which, they can contribute to effectively tackling the challenge of forced labour in supply chains (Pietropaoli, Johnstone and Balch 2021).

To help address this question, this chapter proceeds in four steps. Section 3.1 provides an overview of what is known about the incidence and root causes of forced labour in supply chains. Against this backdrop, section 3.2 examines how forced labour-related provisions have been integrated into trade and investment governance instruments. Section 3.3 then turns to analysing the circumstances under which trade and investment governance instruments can contribute to addressing forced labour in an effective manner – that is, in a way that tackles the underlying causes of forced labour and has a long-lasting impact. It does so by drawing on two case studies – the rubber glove sector in Malaysia and the cotton sector in Uzbekistan. Section 3.4 concludes by offering some broader reflections on the conditions under which trade and investment governance instruments can contribute to lasting change regarding forced labour in supply chains.

► 3.1 Trends regarding forced labour in supply chains

3.1.1 Identifying and measuring forced labour in supply chains

The 2021 *Global Estimates of Modern Slavery* indicate that, in 2021, 27.6 million people were "in situations of forced labour on any given day" (ILO, Walk Free and IOM 2022, 2). This absolute number translates, at the global level, to "3.5 people in forced labour for every thousand people" (ILO, Walk Free and IOM 2022, 2). Some 3.3 million children were victims of forced labour cases, making up 12 per cent of the total number of forced labour. Most forced labour situations occurred in the private economy: about 86 per cent of forced labour cases were inflicted by private actors (23 per cent of which were in forced commercial sexual exploitation (FCSE), and 63 per cent in the private economy in areas other than FCSE) (ILO, Walk Free and IOM 2022).

Detecting and measuring forced labour along the supply chain, especially when international trade is involved, pose significant challenges due to

the complexity of the structure of the supply chain, typically characterized by different tiers that operate across borders (ILO et al. 2019). That being said, the ILO estimated that nearly half (48.7 per cent) of the total forced labour cases in the private economy in areas other than FCSE were found in export-related sectors: manufacturing (18.7 per cent), construction (16.3 per cent), agriculture and fishing (12.3 per cent), and mining and quarrying (1.4 per cent). The remaining cases were found in domestic work (16.6 per cent) and other services such as hospitality, transport, trade and social services (ILO, Walk Free and IOM 2022).

The global estimates also show that debt bondage occurred across sectors but was most prominent in export-oriented sectors; bonded labour was found in 43 per cent of the cases of forced labour exploitation in mining, 31 per cent in agriculture and 27 per cent in construction (ILO, Walk Free and IOM 2022). Another study mentions several specific industries where bonded labour can be found, including brickmaking, timber extraction, tobacco and garment manufacturing (UN Human Rights Council 2016). However, systematic and comprehensive data on the incidence and characteristics of forced labour in specific branches of economic activities and products are still lacking.

3.1.2 The root causes of forced labour in supply chains

Demand- and supply-side labour factors contribute to explaining forced labour in supply chains (LeBaron et al. 2019). Regarding labour demand, some common features of global supply chains, and supply chains in general, such as pressure on the price, cost and speed of production, can play a role in the use of forced labour in firms' global supply chains, even if they do not inevitably lead to it (LeBaron 2021). Strong pressures regarding costs and prices can induce supplier companies to reduce labour costs in a way that augments the risk of forced labour through the abuse of workers' vulnerability, for example with the imposition of illegal wage deductions, penalties or fines, as well as the withdrawal or non-payment of wages. Pressures on delivery time (for example, when suppliers need to complete orders in short production windows, or there are fluctuations in short-term demand) incentivize recourse to overtime, outsourcing of production, and use of informal labour contracting. All these practices increase the risk of forced labour in the supply chain (ILO 2012). Outsourcing of production and labour subcontracting can create greater complexity and a lack of traceability, and they may make oversight and accountability for labour standards difficult (LeBaron et al. 2019). Furthermore, transnational labour

recruitment can increase the risk of forced labour, especially debt bondage, particularly when labour market intermediaries charge workers fees for their services (ILO et al. 2019; see also Gordon 2015).

Furthermore, poverty, low levels of education and illiteracy, and migration are important supply side-related risk factors that determine people's vulnerability to forced labour (ILO 2014). Inequality and discrimination are also factors associated with forced labour (ILO Global Business Network on Forced Labour 2022). Poor populations have limited livelihood options, leaving them more likely to fall into debt bondage and to depend on their employers for housing, food or the employment of their relatives – situations considered by the ILO to be indicators of forced labour (ILO 2012, 2019 et al.). Several studies establish a significant correlation between illiteracy and a low level of schooling, and the risk of being subjected to forced labour (ILO 2014; LeBaron et al. 2019). Educated people are less likely to work in low-skilled manual labour and tend to have a better knowledge of their rights. Literate persons are able to read and understand their contracts and are more likely to recognize situations that involve risks of coercion or exploitation (ILO 2014). By contrast, migrants, who are less likely to know the local language and legal frameworks, are at greater risk than the general population of becoming victims of abuse due to their vulnerability and are more frequently found in forced labour situations (ILO 2012). Forced labour among migrant workers has been found to be more than three times higher than among non-migrant workers (ILO, Walk Free and IOM 2022).

In addition to these demand-side and supply-side factors, institutional factors also help to explain the prevalence and persistence of forced labour. These include policy and governance issues, such as deficient and insufficiently enforced domestic labour laws and policy frameworks. Other factors include lack of capacity among State institutions in terms of addressing forced labour and lack of coordination among relevant institutions. Addressing these issues thus plays an important role in combating forced labour in an effective manner (ILO et al. 2019).

► 3.2 The proliferation of forced labour-related provisions in trade and investment governance instruments

Over recent decades forced labour-related provisions have made inroads into numerous trade and (increasingly) investment governance instruments. For example, bilateral and regional trade agreements dealing with forced labour issues have proliferated (ILO 2019a; Marceau, Walker and Oeschger 2023; Corley-Coulibaly, Grasselli and Postolachi in this volume). As of February 2023, more than 80 of the 356 trade agreements that were in force and had been notified to the World Trade Organization (WTO) contained references to forced labour.⁵ Furthermore, an increasing – albeit smaller – number of bilateral investment treaties encompass forced labour-related provisions.⁶ Addressing States or companies, these instruments can involve a variety of policy levers, which range from monitoring and technical cooperation to dispute settlement and economic incentives (on these categories, see Aissi, Peels and Samaan 2018). This section maps the different regulatory approaches of trade and investment governance instruments and analyses the policy levers through which they can contribute to addressing forced labour in supply chain contexts. It thereby focuses on unilateral trade governance instruments and investment policies of development finance institutions, which will be of particular relevance to the case studies discussed in section 3.3.

3.2.1 Unilateral trade governance instruments

3.2.1.1 Import ban legislation

The idea of addressing forced labour through trade governance instruments is far from recent. Indeed, forced labour concerns were among the first labour issues addressed by trade governance instruments,⁷ starting with the

⁵ See data available at the ILO's [Labour Provisions in Trade Agreements Hub](#).

⁶ See Marx and Mattioli in this volume, who emphasise that forced labour-related provisions in bilateral investment treaties usually come with less vigorous implementation mechanisms than their counterparts in trade agreements.

⁷ Only provisions dealing with prison labour seem to predate forced labour-related provisions; see Charnovitz (1987).

US Tariff Act of 1930.⁸ Section 307 of this Act prohibits the importation of “[a]ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions”.⁹ The provision covers the entire supply chain and exercises economic leverage directly at the firm level. To the present day, this provision has continued to be implemented by the US customs authorities, since 2003 embodied by the Customs and Border Protection (CBP) agency. Acting on its own initiative or in response to petitions from third parties, CBP can issue a “Withhold Release Order” to bar imported goods from entry into the United States if relevant information “reasonably but not conclusively indicates” that the good in question was made with forced labour.¹⁰ If the suspicion is confirmed through a so-called “Finding”, CBP can seize and initiate forfeiture proceedings for the goods in question (Syam and Roggensack 2020). Until 2016, Section 307 of the US Tariff Act was rarely used. From the entry into force of the provision in 1930 until the mid-1980s, only ten cases are reported where the import ban provision was actually enforced (Casey and Cimino-Isaacs 2022).¹¹

In recent years, import bans have gained increasing traction as instruments for combating forced labour. In particular, the forced labour clause in the US Tariff Act has evolved from a law that remained mainly in the books into an instrument of significant practical relevance. A key factor in this regard was the lifting of the so-called “consumptive demand” clause by the US Congress in 2015,¹² which facilitated the adoption of import bans (Bell 2016). In addition to this, CBP has increased its institutional capacity for the enforcement of import bans, including by creating a dedicated forced labour division (Higgins 2023). Between 2016 and 2021, 38 enforcement actions were taken, as compared with 37 such actions in the 25 years before that (figure 3.1). While most import bans imposed have been company-specific, CBP has occasionally directed them at all products from a given domestic

8 Soon afterwards, other countries followed suit with similar measures. Notably, in 1931 Argentina allowed increased customs duties on products made with forced labour. Three years later, Spain amended its trade legislation, extending the concept of dumping to cover “prison or forced labour” (Charnovitz 1987, 570).

9 19 US Code § 1307. In this regard, the statute’s definition of forced labour follows closely that of ILO Convention No. 29.

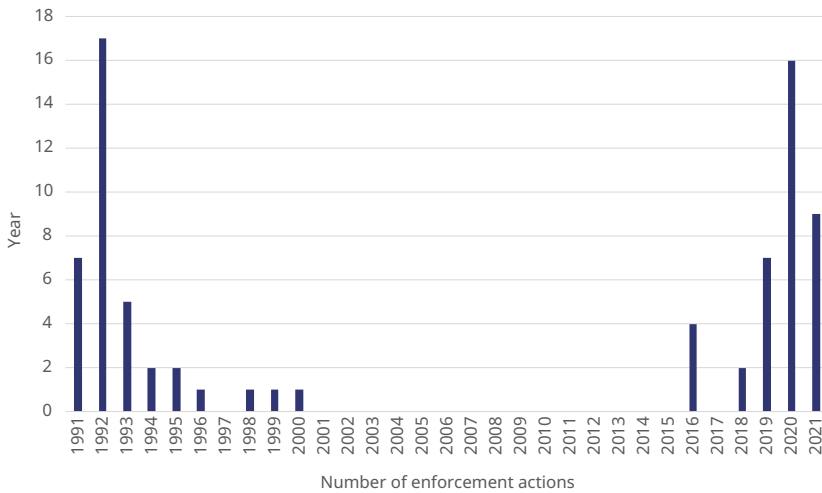
10 19 Code of Federal Regulations § 12.42(e).

11 While the early 1990s saw an increase of enforcement actions over previous years, between 2000 and 2015 only one enforcement action was adopted (see figure 3.1).

12 The clause had precluded enforcement of the forced labour clause in cases in which the goods in question were not produced in the United States “in such quantities [...] as to meet the consumptive demands of the United States” (original version of Section 307 of the US Tariff Act).

sector or region.¹³ Furthermore, in 2021, new US legislation established a special import ban regime for the Xinjiang Uyghur Autonomous Region of China by subjecting all goods exported from that region to an import prohibition unless the company could show that its goods had *not* been made with forced labour (Alon 2022).

► **Figure 3.1 Number of enforcement actions under the US Tariff Act, 1991–2021**



Source: CBP "Withhold Release Orders and Findings List".

Furthermore, several other actors have adopted, or are considering the adoption of, import bans on goods made with forced labour. Further to a specific legal requirement in the [United States–Mexico–Canada Agreement \(USMCA\)](#),¹⁴ Canada amended its domestic customs legislation in 2020 to ban the importation of “goods mined, manufactured or produced wholly or in part by forced labour” (Pellerin, Scheitterlein and Farrell 2021).¹⁵ A similar legal instrument was adopted by Mexico in 2023 (Morales 2023). In 2022 the European Commission proposed legislation to prohibit products made with forced labour in the European Union (EU) market, which would cover

¹³ This occurred, for example, in the case of cotton products from Turkmenistan in 2018 (Natta 2021).

¹⁴ The USMCA obliges State parties to “prohibit the importation of goods into its territory from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor” (Art. 23.6(1)).

¹⁵ The legal provision quoted is contained in Customs Tariff, S.C. 1997, c. 36, Ch. 98, Item No. 9897.00.00.

imported goods, as well as goods produced in the EU for exports or domestic consumption (EC 2022). Import ban legislation has also been introduced in the Australian Parliament (Hurst 2022).

3.2.1.2 Trade preference programmes

Since the 1980s, forced labour-related provisions have also been included in unilateral trade preference programmes. The United States started this trend by integrating a labour provision into its Generalized System of Preferences (GSP) (Alston 1993),¹⁶ as well as into several regional preference schemes, such as the Caribbean Basin Initiative and the African Growth and Opportunity Act (AGOA). These programmes allow the withdrawal of tariff preferences of a beneficiary country if the latter is found to have not taken appropriate action to protect certain labour rights, including forced labour (Perez-Lopez 1988; Siroën 2013).¹⁷ Cases in which trade preferences were withdrawn for forced labour-related reasons include Mauritania in 2018, under AGOA, and Thailand in 2019, under the US GSP (USTR 2018, 2019).

Since 1994, the EU has also included forced labour-related provisions in the withdrawal clauses of its trade preference programmes (Waer and Driessen 1995). Furthermore, such provisions have featured, since 2001, in the EU GSP “Special Incentive Arrangement” (GSP+) (Dispersyn 2003). This arrangement provides additional tariff preferences to countries that have ratified a list of international conventions, including ILO Conventions Nos 29 and 105 dealing with forced labour, and are taking steps towards their implementation.¹⁸ Unlike its US counterpart, the EU GSP refers specifically to ILO Conventions when defining the relevant State obligations (Stolzenberg 2019). The clause was activated in relation to forced labour for the first – and so far only – time in a case concerning Myanmar (Kryvoi 2008).

16 The legal basis for the US GSP expired at the end of 2020 and has not been renewed by the US Congress; for this reason, it has not been in effect since 1 January 2021 (Wong 2022).

17 In addition, an innovative approach that involved compliance incentives at the company level and regular factory-level monitoring, including forced labour concerns, was adopted for the US trade preference programme for Haiti (Hornbeck 2011; Blackett 2019).

18 The current withdrawal clause and special incentive clause are contained in Art. 19(1) (a) in conjunction with Annex VIII, Part A, and Arts 9–16, Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences and repealing Council Regulation (EC) No. 732/2008.

3.2.2 Investment policies of development finance institutions¹⁹

Forced labour concerns have also been addressed in the investment policies of numerous development finance institutions (DFIs).²⁰ This includes institutions operating at the global level, such as the World Bank, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) (IFC 2012; MIGA 2013; World Bank 2017); and regional DFIs, such as the African Development Bank (AfDB), the Inter-American Development Bank (IDB) and the European Bank for Reconstruction and Development (EBRD) (AfDB 2023; IDB 2020; EBRD 2019). In addition, some subregional DFIs (such as the Black Sea Trade and Development Bank and the Nordic Development Fund) and cross-regional DFIs (such as the Asian Infrastructure Investment Bank) have included forced labour concerns in their investment policies, albeit usually in a less detailed manner (Yifeng 2018). Furthermore, forced labour requirements have also been adopted by a number of national DFIs (Penfold 2004). In addition to the US International Development Finance Corporation (DFC 2020), these include 15 European DFIs that have committed to applying the IFC's Performance Standards on Environmental and Social Sustainability, among other standards.²¹

Such labour safeguards require borrowers, public or private, from DFIs to abide by certain labour-related obligations in the course of the investment project concerned. Forced labour has been a key concern, and most DFIs with a labour safeguard address it, often drawing on the ILO's definition of the concept (Yifeng 2018; Ebert 2020). Many DFI labour safeguards also require borrowers to take certain steps to ensure that their contractors abide by the relevant labour requirements (see, for example, IFC 2012; EBRD 2019;

¹⁹ This section is partly based on Ebert (2018 and 2020).

²⁰ For the purposes of this chapter, the term "development finance institution" is defined as covering public institutions that invest in private or public sector projects in low- or middle-income countries, usually with the aim of fostering development or other public objectives. For a similar definition (though limited to the private sector), see the [Association of European Development Finance Institutions](#) (EDFI).

²¹ This group comprises 15 DFIs that have joined the EDFI, namely the United Kingdom's British International Investment; the Belgian Investment Company for Developing Countries (BIO); the Italian CDP Development Finance and the Italian Society for Enterprises Abroad (SIMEST); the Spanish Development Finance Corporation (COFIDES); the German Investment Corporation (DEG); the Finnish Finnfund; the Dutch Entrepreneurial Development Bank (FMO); the Danish Investment Fund for Developing Countries (IFU); the Norwegian Norfund; the Development Bank of Austria (OeEB); the French Proparco; the Swiss Investment Fund for Emerging Markets (SIFEM); the Portuguese Corporation for Finance and Development (SOFID); and the Swedish Swedfund (see EDFI 2019).

AfDB 2023).²² In addition, under some IFI labour safeguards, borrowers must screen their supply chain for problems regarding forced labour and, where apparent, take action to remedy them – or, if this is to no avail, switch to other suppliers.²³

A key element for the implementation of DFI safeguards is due diligence requirements (Bradlow and Naude Fourie 2020). Closely related to the concepts of risk analysis and management (Spedding 2008), the due diligence component often includes an assessment of the project to be carried out by the borrower through which compliance issues can be detected and addressed. In addition, the DFI's staff are typically obliged to undertake their own risk assessments.²⁴ On this basis, the borrower prepares an action plan which the DFI and the borrower are required to monitor throughout the project (Ebert 2020).

In addition, a number of DFIs at the global and regional level have created accountability mechanisms that usually enjoy a degree of autonomy from the institution's operative management (Bradlow 2005). The mechanisms allow persons who claim to be adversely affected by a specific investment project funded by a DFI to file a complaint alleging a breach of the DFI's investment policies.²⁵ The oldest of these accountability mechanisms is the World Bank's Inspection Panel. Created in 1993, the Inspection Panel examines complaints by groups or individuals. Upon receipt of a complaint, the Panel conducts an eligibility screening and issues a recommendation to the World Bank's Board of Executive Directors as to whether or not to proceed with a fully fledged investigation (World Bank Inspection Panel 2022). If the Board grants its approval, the Panel examines the merits of the complaint. On this basis, the Panel prepares a final report whose follow-up is overseen by the Board and can involve an action plan prepared by the World Bank's management (Wong and Mayer 2015). In addition to such investigation mechanisms, DFI accountability mechanisms often encompass a mechanism for the amicable resolution of the dispute between the complainant and the

22 The World Bank additionally requires borrowers to “incorporate the requirements of this ESS [Environmental and Social Standard] into contractual agreements with such third parties, together with appropriate noncompliance remedies” (World Bank 2017, 35).

23 Often these obligations are mostly limited to issues of forced labour, child labour and occupational health and safety (see, for example, IFC 2012; MIGA 2013; World Bank 2017; AfDB 2023).

24 For the case of the World Bank, see Desierto (2020).

25 Such DFIs include the World Bank, IFC and MIGA, as well as AfDB, EBRD and IDB (Gunaydin and Park 2023).

borrower concerned (Bradlow 2005).²⁶ A case in point is the Compliance Advisor Ombudsman (CAO) relating to the IFC and MIGA (CAO 2021), which has, among other things, facilitated the settlement of a dispute involving allegations of forced labour in the Uzbek cotton sector (CAO 2022).²⁷

► 3.3 Trade and investment governance instruments as part of broader supply chain governance efforts regarding forced labour: Insights from two case studies

Section 3.2 has shown that forced labour clauses in trade and investment governance may involve various policy levers that can be used to address forced labour issues in supply chain contexts. However, even where these clauses are activated, it is not clear that they will necessarily lead to positive effects regarding forced labour.²⁸ This raises the question as to the conditions under which trade and investment governance instruments can contribute to addressing forced labour in an effective manner. Scholars have emphasized that the effectiveness of transnational governance mechanisms in bringing about change on the ground depends not only on their institutional design but also on how they engage with the local regulatory context in which they are applied (Bartley 2011). Against this backdrop, an argument can be made that labour provisions in transnational governance mechanisms are likely to be most effective in the long term when they both harness and strengthen the regulatory capacity of other relevant actors – especially the State (see along these lines Kolben 2015). This underscores the importance of understanding the interactions between trade and investment governance instruments and other regulatory layers at the domestic and international

26 In 2020 the World Bank Dispute Resolution Service was created, which was combined with the Inspection Panel to form the World Bank's Accountability Mechanism (IBRD and IDA 2020).

27 For further details, see section 3.3.2.

28 Indeed, such economic sanctions may, in some cases, lead to negative, not positive, effects for the workers concerned, for instance by driving workers out of employment and into even more precarious conditions (see, for example, Maupain 2005).

level.

The remainder of this section explores how these dynamics have played out in two specific cases, namely the rubber glove sector in Malaysia and the cotton sector in Uzbekistan. It analyses how trade and/or investment governance instruments were activated to address forced labour and traces the pathways through which these instruments contributed to change on the ground. In doing so, the case studies aim to assess the interactions of these instruments with other mechanisms of supply chain governance and inquire into the complementarities of different instruments that may have facilitated tackling instances of forced labour.

3.3.1 The case of the Malaysian rubber glove sector

3.3.1.1 The issue at hand

Driven by (among other things) technological innovations introduced by local firms and targeted industrial policies, Malaysia has transformed itself from a raw rubber producer into the global leader in rubber glove production (Kawano 2019; Lebdioui 2022). With a 53 per cent share of the world's supplies in 2021,²⁹ the rubber glove industry now constitutes one of Malaysia's most successful resource-based manufacturing sectors, generating employment for about 72,000 workers in 2019 (Hutchinson and Bhattacharya 2020). As a result of the COVID-19 pandemic, exports of Malaysian rubber gloves increased dramatically in 2020 and 2021 (by 100.4 per cent and 57.5 per cent, respectively), but also contracted sharply at the end of the pandemic (by 66.9 per cent in 2022) (ILO 2023).

Malaysia has ratified several international treaties outlawing forced labour,³⁰ which is also prohibited by several domestic laws, including Article 6 of the Federal Constitution and Section 90B of the Employment Act.³¹ Notwithstanding, forced labour has been an issue of concern for some time in the Malaysian rubber glove industry (Coffey 2015), as it has been

29 This applies to non-surgical rubber gloves; see the relevant page at the [Observatory of Economic Complexity](#) (OEC).

30 These include the ILO Forced Labour Convention, 1930 (No. 29) and the Protocol of 2014 to the Forced Labour Convention, 1930, among others (ILO 2023). While Malaysia has also ratified the Abolition of Forced Labour Convention, 1957 (No. 105), it denounced this convention in 1990; see the ILO's [Information System on International Labour Standards](#).

31 On the limitations of the legal framework prior to 2022, see ILO (2019b).

in certain other Malaysian key industries, such as palm oil and electronics (Wahab 2019; Raj-Reichert 2020). A shared characteristic of these industries is their strong reliance on migrant workers (Buckley et al. 2022), with estimates suggesting that migrants accounted for about 60 per cent of the workforce in Malaysia's rubber glove production in 2019 (Hutchinson and Bhattacharya 2020). Various factors, including a highly exploitative transnational recruitment industry, legislative gaps in migrant workers' protection and lax enforcement of labour laws, combined with entrenched corruption, have led to a situation where migrant workers are structurally vulnerable to forced labour (Ness 2021; Hwok Aun and Pereira 2023; for context see also Hoffstaedter and Missbach 2021). Documented cases in the rubber glove sector have involved phenomena such as debt bondage (often related to high recruitment fees), restricted freedom of movement (notably due to the retention of passports and other identity documents), substandard living conditions (in particular, with respect to accommodation), and intimidation and threats (Bengtsen 2019; Hughes et al. 2022). In part, these issues were exacerbated by the COVID-19 pandemic, which, among other factors, led to increased pressure on workers due to heightened global demand for rubber gloves (Bhutta et al. 2021).

3.3.1.2 Import bans under the US Tariff Act and remedial actions at the company level

Following reports of forced labour issues in the Malaysian rubber glove industry, the US CBP agency adopted six Withhold Release Orders (WROs) and one Finding against Malaysian producers between 2019 and 2022 (ILO 2023).³² The first WRO concerning this industry, adopted in 2019 (Lim 2019), triggered only limited concern at the domestic level. Initially, many industry leaders and analysts did not anticipate significant adverse effects caused by the WRO for the Malaysian rubber glove industry, expecting instead that other Malaysian companies would fill any market gap that might result from the WRO (Aziz 2019).

The situation changed, however, when additional WROs were issued that affected a broader range of companies (see, for example, CBP 2021b, d, e). Furthermore, in one case, after a nine-month investigation into a key industry leader, CBP adopted a Finding that directed the seizure of relevant goods and commenced forfeiture proceedings (CBP 2021a). This – together with the fact that the enforcement measure occurred in the midst of the COVID-19 pandemic – sent a strong message to the business community

32 For further details, see CBP's "[Withhold Release Orders and Findings List](#)".

that enforcement action against forced labour in the sector was a priority for CBP (see also Murphy, Sitkowski and Kinsman 2021). The Malaysian Rubber Gloves Manufacturers Association estimated the cumulative loss to the industry in revenue from rubber glove exports resulting from the import bans at 3.6 billion Malaysian ringgit³³ (*Malay Mail* 2022).

These actions came on top of certain similarly aligned responses to the forced labour concerns by other actors. For example, the Government of Canada ended its public procurement contracts with one of the Malaysian companies concerned, and the Norwegian Government Pension Fund Global put the same company under a two-year observation (McGregor 2022; Salim 2022). Some of the companies also faced domestic proceedings due to the forced labour allegations (see, for example, Kamel 2020). These aligned responses, together with the prospective loss in US market share due to the import bans (Brudney 2020), arguably created a strong incentive for the companies concerned to implement changes.

Indeed, the Malaysian rubber glove companies concerned have taken substantial remedial action to achieve revocation of the relevant import bans. Notably, a number of companies affected by a CBP enforcement action have taken steps to reimburse the recruitment fees that workers had been required to pay (Thomas 2020; Ong 2022; Remedy Project 2023). In order to have the Finding against it revoked, one company disbursed remediation payments of more than US\$30 million to the workers concerned (CBP 2021c) and created a fund with a volume of about US\$5 million to settle any pending forced labour allegations. The company in question also changed its recruitment agencies, put in place new due diligence measures to prevent abuses during the recruitment process, and improved the housing situation of migrant workers (Remedy Project 2023). Other measures, taken by several companies, involved revising or adopting new human resources policies. In one case, this included a new grievance mechanism, an equal pay policy for migrant and Malaysian workers, and forced labour-related capacity-building for the company's human resources staff (Ong 2022).

At the time of writing, the improvements achieved had led CBP to modify or revoke its enforcement actions in five cases (CBP 2020, 2021c, 2023a, b, c). Furthermore, research suggests that some Malaysian rubber glove companies that were not subject to import bans also reimbursed recruitment fees, arguably in order to prevent the imposition of a WRO (Trueba and Staniland 2023). So far, in most cases no evidence of systematic adverse effects caused by the import bans on the workers of the companies subject to the bans has been reported (see also the case study in Remedy Project 2023). This may

33 This corresponded to about US\$770 million at the time of writing.

partly be due to the exceptional profit margins of the rubber glove sector during the pandemic (Hutchinson and Bhattacharya 2021). That being said, the US Government Accountability Office, citing other US Government sources, reported that “as an unintended consequence of the September 2019 WRO for disposable rubber gloves produced in Malaysia, many workers’ employment was terminated, which had a negative effect on workers facing exploitation” (United States, GAO 2021, 31).

3.3.1.3 Implications for broader policy efforts to tackle forced labour at the national level

Taking a broader perspective, CBP’s enforcement action appears to have contributed to opening up space to tackle forced labour through targeted policy action. Key in this regard was reportedly the growing perception, among others by the Malaysian Government that the forced labour problems in the Malaysian economy could decrease the trust of foreign business partners (Chu and Latiff 2021).

Importantly, the aforementioned enforcement actions concerning the Malaysian rubber glove sector coincided with similar developments in other industries in the country. Notably, CBP imposed two WROs and one Finding on Malaysian palm oil companies.³⁴ Before that, Malaysian rubber gloves had already been placed on the US *List of Goods Produced by Child Labor or Forced Labor* (United States, Department of Labor 2020). Similarly, Malaysia had been included on the Tier 3 list of the *US Trafficking in Person Report for States* “whose governments do not fully meet the TVPA [Trafficking Victims Protection Act]’s minimum standards and are not making significant efforts to do so” (United States, Department of State 2021).

In light of this situation, the Malaysian Ministry of Human Resources actively sought to establish a dialogue with the companies that faced forced labour import bans (*Reuters* 2022). Early on, in 2020, the Ministry had already created a taskforce on labour law and compliance for the rubber-related industry (*Malay Mail* 2020). Other national initiatives to combat forced labour appear to have evolved more or less independently of the import bans, but they may have benefited indirectly from the political momentum created by the bans and related developments. This is notably the case with the National Action Plan on Forced Labour (2021–2025), adopted by the Malaysian Government

³⁴ See CBP’s “[Withhold Release Orders and Findings List](#)”. In addition, in November 2021 a major US home appliance company cut ties with a Malaysian supplier as a result of labour rights concerns, while the latter was at the time examined by CBP in relation to forced labour allegations (Ananthalakshmi 2021).

in 2021,³⁵ the ratification of the Protocol of 2014 to the ILO Forced Labour Convention in 2022 (Buang 2022), and several development cooperation projects implemented by the ILO.³⁶

Furthermore, the import bans adopted under the US Tariff Act appear to have spurred on private initiatives to tackle forced labour in the rubber glove industry (Remedy Project 2023, 63). These include the creation of the Responsible Glove Alliance in 2022, an initiative by Malaysian rubber glove producers, which commits its members to specific due diligence and transparency requirements, among other things (Bengtson 2022).³⁷

3.3.1.4 Implications for forced labour governance

As illustrated by the above analysis, the import bans imposed by CBP can be considered a driver of change in the Malaysian rubber glove sector. This is in line with the findings of similar research in the area. Notably, a report by the Remedy Project, based on eight in-depth case studies in seven countries involving interviews with local stakeholders and workers, finds that forced labour import bans “have often been a catalyst to prompt rapid changes in industries that have been resistant to reform”, including in Thailand and Taiwan, China (Remedy Project 2023, 14).

In addition to the economic leverage resulting from the import bans, a key factor in bringing about change in the individual cases in question may have been that CBP had been working actively with the companies concerned to improve the situation (Brudney 2020). Furthermore, several contextual factors may, in part, have accounted for the remedial actions undertaken, including the importance of the United States as an importer of Malaysian rubber gloves (Rahman, Shan and Morhalim 2021).

Importantly, the import bans imposed by CBP engaged with – and relied on – several other transnational governance mechanisms. In particular, CBP referred to the [ILO Indicators of Forced Labour](#) expressly in several of its public communications (see, for example, CBP 2021b and d). Furthermore,

35 This plan lays out a strategy to address forced labour in a systemic manner and to eliminate it by 2030 (Hwok Aun and Pereira 2023).

36 See, notably, the “[Supply Chains for a Sustainable Future of Work](#)” project (GLO/22/29/EUR), which addresses, among others, the Malaysian rubber glove sector. Other projects aim to strengthen the rights of migrant workers in Malaysia (see the “[Protecting the Rights of Migrant Workers through Empowerment and Advocacy](#)” project (MYS/15/01/USA/MYS/22/50/USA)) or the broader legal and institutional framework (see the “[Support for Labour Law and Industrial Relations Reform in Malaysia](#)” project (MYS/16/01/USA)).

37 For further information, see the [Responsible Glove Alliance](#) website.

CBP's enforcement action strongly relied on private auditors, which are contracted by a company subject to an import ban in order to ascertain whether it has sufficiently addressed the forced labour issues detected and should therefore have its import ban revoked (see, for example, Khalid 2022). This strong reliance on private auditors has been subject to criticism, however, because – among other factors – auditing companies had in several cases failed to detect the forced labour issues that had led to the import bans in the first place.

To strengthen the effectiveness of import bans in tackling forced labour, there appear to be some avenues that could be explored to link these bans more effectively with other relevant governance mechanisms and actors. In this regard, it has been suggested that CBP could more systematically request the views of local workers or civil society organizations on the situation (Remedy Project 2023). CBP could also require the companies concerned to allow other actors, including those from civil society, to independently verify progress made towards addressing the forced labour issues in question (Remedy Project 2023).

Furthermore, it is worth asking whether the momentum contributed to by the import bans could be more comprehensively harnessed to address some of the root causes underlying the forced labour issues at a company level. Especially where a series of companies in a given country are affected by import bans, a targeted government-to-government dialogue might help to tackle such structural issues. This might also reduce the risk of other companies becoming subject to such bans in the future. In the case of Malaysia, studies have pointed to a number of such root causes that could be addressed in this context. These include restrictions on migrant workers changing employers and unionizing, limitations in the regulation of private recruitment agencies, and capacity issues in labour inspectorates (Hwok Aun and Pereira 2023; ILO 2023; Wahab, Abd Murad and Shamsudin 2023). Linking import bans with targeted measures to strengthen the capacity of labour inspectorates to ensure compliance and of companies to address labour rights issues within their operations while reinforcing the role of trade unions in these processes might also help to address such root causes and facilitate a revocation of the import bans concerned. Finally, the reported unintentional adverse effects of an import ban on workers in a pre-pandemic case highlight the need to carefully consider the use of such measures in their specific context and to contemplate protective arrangements for vulnerable workers that may be affected (see also United States, GAO 2021).

3.3.2 The case of the Uzbek cotton sector

3.3.2.1 The issue at hand

Historically, Uzbekistan has been one of the world's largest cotton exporters. In the 1970s and 1980s Uzbekistan was the largest cotton exporter at the global level, accounting for a quarter of the world cotton trade (MacDonald 2012). In 2019 Uzbekistan was the sixth-largest cotton producer worldwide, employing more than 1.75 million people in cotton-picking (around 13 per cent of the total population aged 18–50 in the country) (ILO 2020).

After becoming an independent ILO Member in 1992, Uzbekistan ratified several ILO Fundamental Conventions, among them the ILO Forced Labour Convention, 1930 (No. 29) in 1992 and the Abolition of Forced Labour Convention, 1957 (No. 105) in 1997.³⁸ Forced labour is prohibited under Article 44 of the Constitution of the Republic of Uzbekistan and several provisions of the Uzbek Labour Code.³⁹ Despite these provisions, there were numerous reports concerning the use of forced labour – as well as child labour – in the Uzbek cotton sector (see, for example, Atayeva and Belomestnov 2010; Jurewicz 2015; McGuire and Laaser 2021). Similarly to other former Soviet republics, Uzbekistan's economy was for a long time centrally planned, involving so-called “centralized crops”, which included the production of cotton and wheat (MacDonald 2012, 4). These two crops, in particular, were subject to State procurement quotas on the acceptance of which the right to utilize the land for agricultural purposes was conditional (MacDonald 2012). The local and provincial officials responsible for achieving the quotas faced strong incentives to meet the objectives (Cockayne 2021), leading to an environment conducive to forced labour and child labour (Republic of Uzbekistan 2020; see also Human Rights Watch 2017).

Especially in the 2000s and the 2010s, concerns were raised from various quarters about the use of forced labour in the Uzbek cotton sector (Cockayne 2021). Prominent in this regard was the call for an international boycott of Uzbek cotton by Uzbek civil society activists, supported by the Cotton Campaign (UGF and Cotton Campaign 2013). Launched in 2010, the Uzbek Cotton Pledge was subscribed to by 331 companies.⁴⁰ Other relevant action included a number of complaints filed with OECD National Contact Points against wholesalers who bought Uzbek cotton, either directly or indirectly

38 For details, see the ILO's [Information System on International Labour Standards](#).

39 The Labour Code of the Republic of Uzbekistan entered into force on 31 April 2023 in accordance with the Law of the Republic of Uzbekistan No. 798 dated 28 October 2022.

40 See the [Uzbek Cotton Pledge for Companies](#) on the Cotton Campaign website.

(ECCHR 2013) and the inclusion of Uzbek cotton on the US Government's list relating to the "Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor" (United States, Department of Labor 2010).

The issue of forced labour in the cotton sector was also raised under several trade governance instruments. Notably, in 2011 the European Parliament rejected a proposal to extend a trade agreement with Uzbekistan to the textile sector because of concerns about forced labour in the country's cotton industry (EP 2011).⁴¹ Already, in 2008, the United States Trade Representative had opened a workers' rights eligibility review under the labour provisions of the US GSP (USTR 2020), which could have resulted in the suspension of unilaterally granted trade preferences (see section 3.2.1.2 above). In addition, action was taken under two investment governance instruments, namely the investment policies of the World Bank and the IFC.

3.3.2.2 The complaint with the Compliance Advisor Ombudsman and implications for remedial action at the company level

In 2016 a complaint was filed with the CAO by a group of non-governmental organizations (NGOs) regarding different investment projects financed by the IFC in Uzbekistan. These projects related to an Uzbek cotton yarn company, where the aim was to support the expansion of a textile factory, and an Uzbek bank, with the objective of extending the bank's lending scope to micro, small and medium-sized enterprises, especially in remote parts of the country (CAO 2018). The complainants alleged, among other things, that forced labour was present in the yarn company's supply chains and that the bank had failed to undertake sufficient due diligence to prevent its financial services being used to fund forced labour-related business activities (CAO 2022).

Having found the complaint eligible, the CAO facilitated a "voluntary dialogue process" (CAO 2018, 11), which involved multiple meetings between the complainants and the two companies concerned. The dialogue between a group of complainants ("Group in Mediation") and the respondent bank led to the conclusion of a framework agreement and an interim agreement, in July and October 2019, respectively (CAO 2022). The agreed measures included the joint development of a grievance mechanism regarding possible forced labour in the bank's activities and forced labour monitoring undertaken by the complainants, following which the complainants considered the claims

41 The European Parliament consented to the proposed Protocol in 2016 (EP 2016).

against the respondent bank resolved (Hamkorbank and Group in Mediation Human Rights Defenders 2020).

The dialogue between the Group in Mediation and the respondent cotton yarn company also resulted in a confidential interim agreement, concluded in November 2020 (CAO 2022).⁴² This involved reviewing the recruitment processes related to the cotton-picking conducted by a key supplier of the company, telephone interviews with cotton-pickers, and monitoring of the supplier's feedback mechanism; these monitoring activities "did not reveal any cases of direct coercion of people to pick cotton in the 2020 cotton harvest" (IKT and Group in Mediation Human Rights Defenders 2021, 1). The parties agreed that, in 2021, another monitoring of the cotton harvest of the aforementioned supplier would be undertaken by the Group in Mediation and additional human rights organizations, which revealed "no systemic forced and child labor" (IKT and Group in Mediation Human Rights Defenders 2022). Subsequently, the parties closed the dispute resolution process and signed a cooperation agreement that provides for preventive measures to avoid forced labour and ensure "suitable labor conditions" regarding the supplier's activities, including through an improved feedback mechanism (IKT and Group in Mediation Human Rights Defenders 2022).⁴³

3.3.2.3 The complaint with the World Bank Inspection Panel and implications for broader policy efforts to tackle forced labour

While the complaint to the CAO gave rise to rather specific remedial action at the company level, the complaint to the World Bank Inspection Panel had tangible implications for broader change at the national level. Already in 2013, three human rights organizations had filed a complaint with the World Bank Inspection Panel regarding the use of child and forced labour. The request concerned rural companies receiving financing under the World Bank-funded Rural Enterprise Support Project Phase II (Cotton Campaign 2013). According to the World Bank, this project aimed "to increase the productivity and financial and environmental sustainability of agriculture and the profitability of agribusiness ... in seven regions" (World Bank 2016a, 1). The requesters argued that the project had detrimental effects on communities by contributing to "government orchestrated forced labour"

42 One complainant declined to participate in the dispute resolution process and three other complainants left the process at a later stage (CAO 2018 and 2022).

43 The parties also agreed to have the CAO monitor the implementation of the cooperation agreement (IKT and Group in Mediation Human Rights Defenders 2022).

within the Uzbek cotton industry and that the World Bank had failed to carry out an appropriate social assessment (Association for Human Rights in Central Asia, Human Rights Society of Uzbekistan “Ezgulik”, and Uzbek-German Forum for Human Rights 2013, 1).

In a report of December 2013, the Inspection Panel held that “the Project is plausibly linked to the harms alleged in the Request, and that the Request raises important issues of harm and policy non-compliance” (World Bank Inspection Panel 2013, para. 101). While finding the complaint eligible, the Panel proposed that the decision on whether to conduct a full investigation should be deferred. This was supposed to allow sufficient time for the World Bank’s staff to take the remedial action it had proposed in its response to the complaint (World Bank Inspection Panel 2013).

Subsequently, the World Bank reportedly adopted a variety of measures to address the issue at hand. These ranged from adjusting the project documents to specifically require compliance with legal rules on forced labour and increased on-site supervision activities during the cotton harvest, to a comprehensive policy dialogue with the Uzbek Government, which resulted in several legal amendments to better tackle forced labour (World Bank Inspection Panel 2014). Importantly, the steps taken also included the creation of a mechanism for “third-party monitoring” of forced labour and a “feedback mechanism” for forced labour-related complaints (World Bank 2016b, 2). In light of the action taken by the World Bank, the Inspection Panel decided not to recommend a formal investigation (World Bank Inspection Panel 2014).

For the third-party monitoring, the World Bank turned to the ILO, which had previously gained experience with on-site monitoring in Uzbekistan during an earlier project on child labour (Tapiola 2022). Based on a memorandum of understanding with the World Bank, the project “Third-Party Monitoring of Child and Forced Labour in Cotton Picking in Uzbekistan” began in 2015 and ended in 2021 (ILO 2015; ILO n.d.). Going beyond the areas where the World Bank projects took place, the monitoring exercise covered 10 of the Uzbek provinces and hence played an important role in assessing progress on forced labour at the national level (Tapiola 2022).

Simultaneously, in the context of a broader modernization agenda (Republic of Uzbekistan 2020) and arguably in response, in part, to the concerns raised in various international forums (Cockayne 2021), the Uzbek Government took several steps to improve labour conditions in the cotton industry. In recent years, Uzbekistan has implemented several reforms that reinforced the State’s actions against child labour and forced labour, often in close dialogue with the ILO, the World Bank and other international organizations. Apart

from legislative changes, these reforms included a significant increase in the number of labour inspectors (Tapiola 2022).

Despite a number of challenges, the ILO Third-Party Monitoring has observed a progressive decline in forced labour. In 2020 the ILO concluded that “no systemic or systematic forced labour was exacted through instructions and policies of the Government of Uzbekistan during the 2019 cotton harvest” (ILO 2020, 19). The same year, the US Government lifted its ban on Uzbek cotton (United States, Department of Labor 2019). In 2021 the independent monitors did not find “systemic, government-imposed forced labour organized by the central government in any of the areas monitored” (Uzbek Forum for Human Rights 2022a, 3). In March 2022 the Cotton Campaign called for the end of the global boycott of Uzbek cotton (Cotton Campaign 2022a).

3.3.2.4 Implications for forced labour governance

In the case of the Uzbek cotton industry, several investment and (to a lesser extent) trade governance instruments made various contributions to addressing forced labour. Notably, in the case pertaining to IFC projects, the intervention of the CAO led to a resolution of the project-specific forced labour issues alleged by the complainants. Meanwhile, the impacts of the complaint before the World Bank Inspection Panel moved beyond the project from which it had emerged and gave rise to broader policy action at the national level. In particular, the complaint led to third-party on-site monitoring of the Uzbek cotton harvest by the ILO (see also Cockayne 2021). This was important for the progress eventually made, as it facilitated data collection and provided an incentive to change the practices concerned. In this regard, the connection of the investment governance instruments with other governance mechanisms, notably at the ILO, turned out to be instrumental in translating the momentum created by the complaint into concrete change. In addition, some of the trade governance instruments invoked in this case – in particular, the threat of suspension of Uzbekistan’s trade benefits under the US GSP – provided a broader incentive for the country to address the systemic forced labour issues in its cotton sector. This contributed to broader international pressure, including by multinational companies (Schaefer and Hauge 2023), which led to reduced “access to capital [and] export markets” for Uzbekistan, among other things (Cockayne 2021, 142). An additional incentive was created by the prospect of benefiting from the special preferences granted under the EU’s GSP+ scheme, to which Uzbekistan was eventually admitted in 2021 (EC 2021).

Going forward, observers have pointed to the challenge of stabilizing the progress made and highlighted a risk of backsliding over time into forced

labour at the local level (Uzbek Forum for Human Rights 2022b). The end of the ILO's monitoring project shifts more of the burden to buttress the reporting and addressing of relevant violations onto trade unions, and civil society actors more broadly (see also Cotton Campaign 2022b). In this regard, one of the key challenges is the effective realization of freedom of association despite some improvements at the country level, such as the revision of the Law on Trade Unions which was adopted in December 2019 (ILO 2021). In this context, continued use of available trade and investment governance instruments to monitor progress could contribute to the durability of the positive change attained thus far.

► 3.4 Conclusion

This chapter has aimed to shed light on the potential of trade and investment governance to effectively address forced labour issues in supply chains. Trade and investment governance instruments with forced labour-related provisions have proliferated in recent decades, ranging from import ban laws to investment policies of development finance institutions. As evinced by the two case studies, some of these instruments come with policy levers that can contribute to specific improvements at the company level and help to generate momentum for broader policy change. In doing so, the trade and investment governance instruments at hand did not operate in an institutional vacuum but interacted with a variety of other governance mechanisms.

Notwithstanding, the case studies also illustrate that trade and investment governance instruments are, on their own, unlikely to be able to address the root causes of forced labour in a given case. Rather, they highlight the importance of utilizing these instruments to enhance relevant legal and institutional frameworks, create the conditions for meaningful social dialogue and empower local actors for change. The scenarios analysed also show how important it is to address forced labour in conjunction with other labour rights issues that may render workers more prone to abuse, such as deficits in migrant worker protection and freedom of association.

The spread of forced labour clauses in trade and investment governance instruments gives rise to some broader issues. One relates to the coordination between instruments that may be applicable to a given situation. In light of the difficulty of obtaining reliable information about incidences of forced

labour, institutionalized information-sharing across different instruments and actors could help to increase the effectiveness of trade and investment governance instruments (see, in a similar vein, EU–US Trade and Technology Council 2023). Furthermore, providing sufficient guidance for companies will be important to enable them to properly comply with relevant requirements (see also Schwarz et al. 2022), which could also help to mitigate potential negative business impacts. Another challenge is to determine how best to avoid unintended adverse effects of forced labour clauses in trade and investment governance instruments, especially in the case of instruments with significant economic leverage, such as import bans. One aspect of this relates to making sure that these instruments do not accidentally affect workers in a harmful manner, which may require close consultations with petitioners and other relevant workers’ organizations (Pietropaoli, Johnstone and Balch 2021). Forced labour clauses in trade and investment governance instruments still constitute a field of regulatory experimentation, and further research will be necessary to understand more fully the effects of these instruments on workers and companies on the ground.

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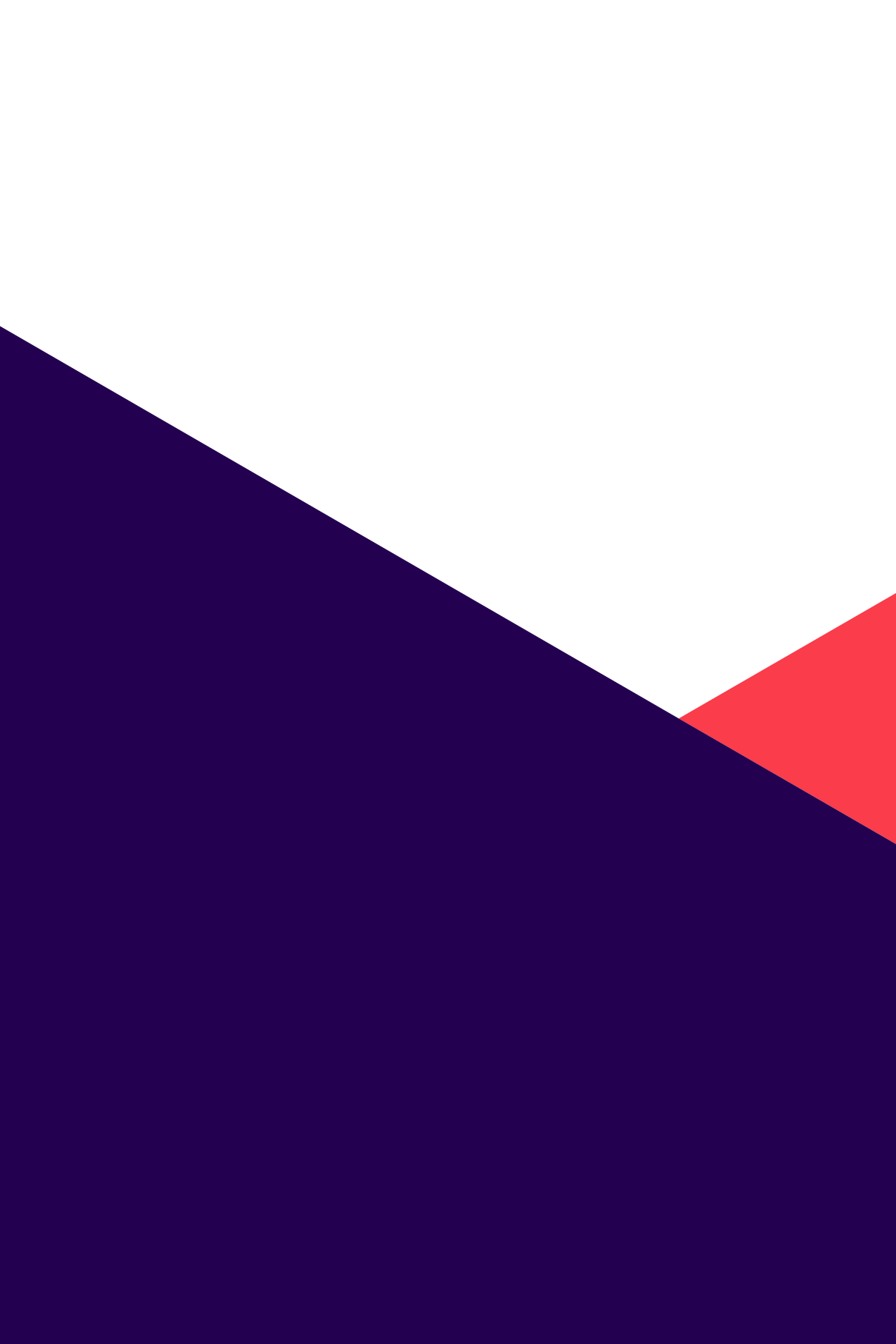
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Part 2

**The link between trade
and labour: Experiences
from three regions**

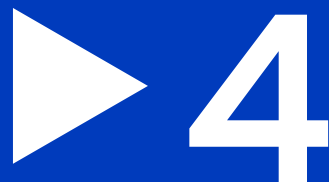


Labour reforms in Mexico and international trade negotiations

From the North American Free Trade Agreement to the United States–Mexico–Canada Agreement

Graciela Bensusán*

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► Introduction

This chapter analyses the role of the United States-Mexico-Canada Agreement (USMCA) and the related trade negotiations regarding the transformation undergone by Mexico's labour market institutions. The emphasis is on the domestic labour market reforms that occurred during the transition from the North American Free Trade Agreement (NAFTA) of 1994 to the Agreement between the United States of America, the United Mexican States, and Canada (United States–Mexico–Canada Agreement, or USMCA), which took effect on 1 July 2020.

Three interconnected arguments are presented. First, it is posited that the labour-related requirements placed on Mexico by the United States and Canada during the initial phase of the USMCA trade negotiations have served as a trigger for institutional change. These were essential to overcome internal resistance and reduce the political cost of undertaking a far-reaching reform of Mexico's labour model.

Second, during the final stage of the negotiations on the USMCA, the chapter argues, the three Governments converged on the idea of promoting a new labour model in Mexico. Although the momentum originated externally, the overall thrust and key features of the reforms were not foisted on Mexico from outside. They are, rather, a reflection of internal demands from trade unions and of numerous formal and informal exchanges among trade unionists, experts, legislators and trade negotiators from the North American region throughout the period in which NAFTA was in force.

Third, the unilateral labour agenda contained in the USMCA and the various monitoring and complaint mechanisms designed to supervise that agenda's implementation were developed in response to a specific context. These mechanisms aim at supporting the strengthening of labour market institutions, especially the new independent labour justice system, and to ensure that the principles of freedom of association and collective bargaining are upheld in Mexico.

To develop these arguments, this chapter draws on documentary research, archival work, newspapers, official registers and written evaluations by internal and external entities responsible for monitoring implementation of the reform. Section 4.1 describes the transition process from NAFTA and its labour side agreement (the North American Agreement on Labor Cooperation, NAALC) to the USMCA. It thereby focuses on the part played by Mexico's trade partners and highlights the automotive industry's special role in the USMCA negotiations. The chapter then turns its attention to two

key dimensions of the newly negotiated Agreement. Section 4.2 presents the main characteristics of the USMCA's labour provisions, sketches the main features of the new Mexican labour model and points to key developments in the implementation of that model. Next, section 4.3 explores the Rapid Response Labor Mechanism (RRLM), describing its legal functioning and how the first complaints submitted under the Mechanism were handled. The final section offers some concluding observations.

► 4.1 The role of labour issues in the transition from the NAALC to the USMCA

4.1.1 A chronology of the transition

The NAALC, which was adopted in parallel to NAFTA, had only a limited ability to prevent political and economic strategies aimed at attracting investment to Mexico based on low wages.¹ After more than two decades of implementation of NAFTA, exports to the United States had grown by an annual average rate of 7 per cent, meaning that, by 2015, their share in Mexico's total volume of exports was seven times higher than in 1993 (Mexico, Ministry of Economic Affairs n.d.). However, success in trade was not accompanied by improvements in labour conditions in Mexico.

For over three decades, trade unionists and experts from the United States and Canada had been repeatedly questioning Mexico's labour model and their criticisms contributed to the amendment of Article 123 of the Mexican Constitution on 24 February 2017 (Mexico, *Official Gazette* 2017).² The reform was approved in only ten months, whereas similar amendments proposed over the past 20 years had failed to get off the ground, owing to resistance from stakeholders that benefited from the old labour model (Bensusán and Middlebrook 2020).

1 For more information on the design of the NAALC and the reasons for its limited ability to prevent unfair competition with Mexico through salary controls, see Bensusán (1994), Compa and Brooks (2014), and section 4.1.2 of this chapter.

2 These claims for the violation of freedom of association and collective bargaining, among other regulations, resulted in a number of complaints filed under the NAALC throughout the term of NAFTA. See in this regard, Compa and Brooks (2019) and Nolan García (2011).

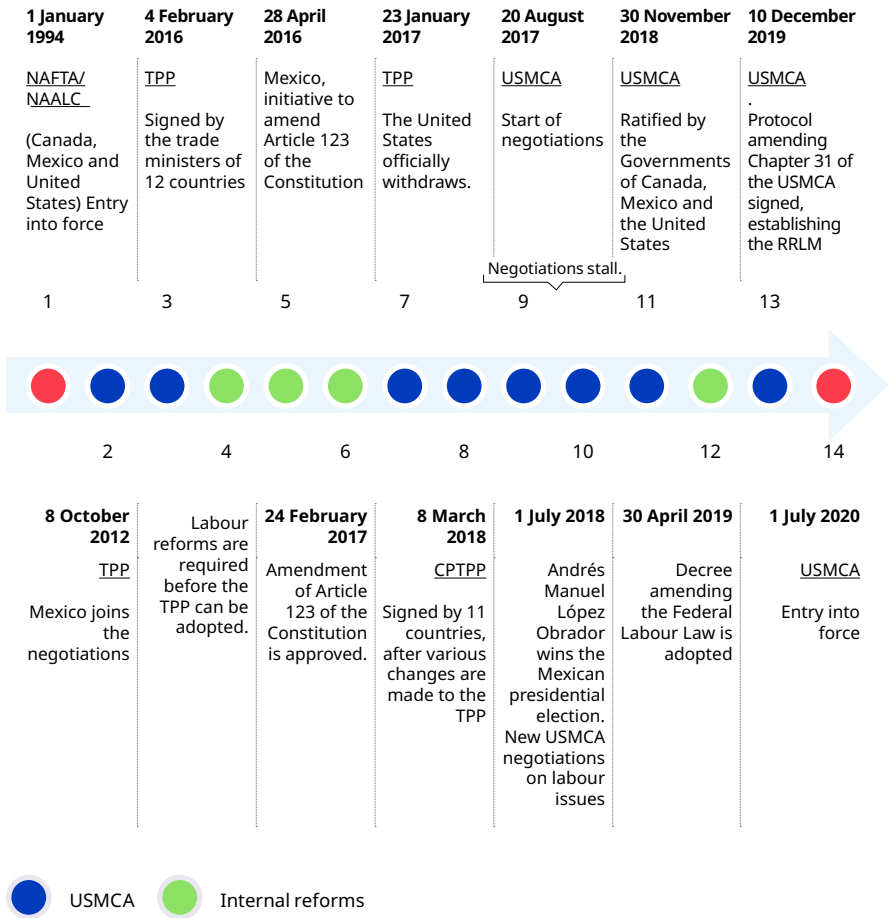
Between February 2017 and July 2018, when the Mexican presidential election took place, the USMCA negotiations ran into difficulties on various fronts, notably regarding the labour agenda and issues related to the automotive industry.³ At the same time, the process of amending the Federal Labour Act stalled in Mexico as a result of domestic resistance to the proposed new constitutional principles; the situation changed, however, with the victory of presidential candidate Andrés Manuel López Obrador in July 2018, who had run for office on a manifesto of trade union democratization and increasing the wages of Mexican workers (Bensusán and Middlebrook 2020).

The USMCA was signed on 30 November 2018, just one day before the end of President Enrique Peña Nieto's term, but its ratification depended on the adoption of two key instruments: a decree amending the Federal Labour Act, which was adopted on 30 April 2019, and a Protocol amending Chapter 31 ("Dispute Settlement") of the USMCA, signed on 10 December 2019, which established the RRLM (see section 4.3 below). The USMCA finally entered into force on 1 July 2020 (Mexico, Ministry of Economic Affairs 2020), becoming one of the most heavily regulated trade agreements as far as labour issues are concerned (Polaski, Nolan García and Rioux 2022).

Figure 4.1 below provides a timeline of the most important events and instruments in the run-up to entry into force of the USMCA.

3 In addition to the pending regulation of the constitutional reform, another important issue that hindered progress in the USMCA negotiations was rules of origin for the automotive industry. Moreover, the negotiations, which had already gone through seven rounds, were suspended between March and August 2018 in connection with the Mexican general election (July 2018). For more information on negotiation rounds and dates, see OAS (n.d.).

► **Figure 4.1 The evolution from NAFTA/NAALC to the USMCA and internal labour reforms in Mexico, 1994–2020**



CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership;
 TPP = Trans-Pacific Partnership.

Source: Bensusán and Middlebrook (2020).

4.1.2 The role of Mexico's trade partners in the transition

A change of strategy adopted by the Obama Administration required Mexico to first undertake labour law reforms before the Trans-Pacific Partnership could be adopted (see step 4 in figure 4.1 above).⁴ This was driven by, among other considerations, the conclusion reached by the Governments of the United States and Canada, as well as by trade unions and experts in both countries, that traditional labour provisions in trade agreements were ineffective at preventing “social dumping” as a means of attracting jobs to Mexico (Compa and Brooks 2019; Nolan García 2014). Although more than 40 complaints had been filed within the framework of the NAALC, many of them relating to violations of freedom of association, none had resulted in action beyond ministerial consultations (ILO 2015). This lack of effective enforcement mechanisms and of actors willing to use them meant that the NAALC achieved very little (Dombois 2006; Compa and Brooks 2019).

Nevertheless, the NAALC did have some positive effects, such as the prohibition in Mexican labour law of pregnancy testing requirements (frequently encountered in the maquila⁵ industry) and greater transparency of information on trade union registers and collective agreements (Bensusán and Middlebrook 2013). In addition, it helped to increase the interactions between trade union organizations and labour experts within North America, notably in the context of jointly filed public submissions.⁶ This dialogue led to greater visibility and a better understanding of Mexican labour dynamics, of their impact on trade and labour relations in the region, and of the possibilities as well as the necessity for change (Graubart 2008; Nolan García 2014).

One result of this enhanced interaction was the publication of a joint statement in 2015 by the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO) and the Mexican National Union of Workers (UNT). This statement concerned the labour reforms that Mexico was expected to adopt before acceding to the Trans-Pacific Partnership.

4 The need to reform Mexican labour legislation and safeguard human rights as prerequisites for joining the Trans-Pacific Partnership was raised by Nancy Pelosi, Minority Leader of the House of Representatives of the US Congress, during her visit to Mexico in May 2016. See Gómez Quintero (2016).

5 An offshore processing or assembly plant on the Mexican side of the US–Mexican border.

6 The filing of complaints within the framework of the NAALC involved transnational collaboration between key labour organizations and actors (Nolan García 2011; Oehri 2017).

The relevant reforms included the proposal to create a decentralized organization for registering collective agreements and trade unions (Bensusán and Middlebrook 2020).⁷ During a visit to Mexico the following year, US representatives raised concerns over these reforms to the Mexican Government, which were reiterated by Nancy Pelosi, Minority Leader of the House of Representatives of the US Congress, at a meeting with the then President, Enrique Peña Nieto (*Excelsior* 2016).⁸ The US Government – echoing demands by trade unions in Canada, Mexico and the United States – also required that Mexico ratify the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which did not occur until September 2018, after the new legislature was sworn in.

In January 2018, more than 180 members of the US Congress sent a letter to the then United States Trade Representative (USTR), Robert Lighthizer, arguing that the successor agreement to NAFTA required “strong, clear, and binding provisions that address Mexico’s labour conditions”; they further emphasized that “[l]ow wages, a lack of independent unions and an inability for workers to collectively bargain in Mexico have hurt American workers and led to the outsourcing of jobs to Mexico” (Pascrell, Levin and DeLauro 2018). In addition, two important members of the Subcommittee on Trade of the Ways and Means Committee of the US House of Representatives, Bill Pascrell and Sander Levin, issued a joint statement the following month emphasizing the significance of labour rights for the successor of NAFTA (Pascrell, 2018).⁹

In March 2018, representatives of Mexican independent trade union organizations, together with activists and members of opposition parties, met with US Democrat legislators in Mexico City.¹⁰ The seventh round of negotiations on the new trade agreement was then taking place and the AFL-CIO submitted a letter, supported by 107 trade union representatives, to the US negotiators. The letter called for respect for constitutional principles.

7 For more information on the labour reform initiatives presented to the Mexican Congress, see Bensusán and Middlebrook (2013).

8 Cf. an interview by the author with a high-level US Department of Labor official in Mexico City (4 September 2017); and an interview by Kevin Middlebrook, a professor at the Institute of the Americas, University College London, with a former high-level official from the Office of the USTR (30 April 2018), both cited in Bensusán and Middlebrook (2020). See also Gómez Quintero (2016).

9 The letter can be understood as a response to the Minister of Labour and Social Security of Mexico, Roberto Campa, who had questioned the importance of labour issues during the renegotiation of NAFTA. For the context of this statement see Levin and Shaiken (2019); Covarrubias Valdenebro (2019); Muñoz Ríos (2018) and Tijerina (2017).

10 Interactions between trade unionists and experts from these two countries and Canada eventually led to a shared understanding of the reforms required in Mexico (see also Valencia 2017).

It was disseminated widely across Mexico at the same time as the proposed amendments to the Federal Labour Act were being discussed in the Senate.¹¹ In addition, US negotiators and legislators sought dialogue with Mexican labour experts to identify the best institutional channels for reforming the old labour model.¹²

Finally, when representatives of the new Mexican presidential administration joined the negotiations, they cleared the way for the adoption of a trade agreement with some of the most far-reaching requirements related to workers' rights (Levin and Shaiken 2019). Indeed, labour reform was one of the key issues on which President elect López Obrador had run for office.¹³

4.1.3 The role of the Mexican automotive industry in the USMCA negotiations

During the USMCA negotiations, the three Governments and other stakeholders directed their attention, in particular, to the Mexican automotive industry and its export success, which was based on control of trade unions and low wages combined with increasing productivity. Indeed, even in the most successful sector under NAFTA, Mexican workers were not seeing an improvement in working conditions (see also Moreno Brid et al. in Volume 1; Moreno Brid et al. 2021; Isidore 2017).

Job growth in the Mexican automotive industry was steady during the NAFTA years, with employment reaching similar levels to those in the United States. Nevertheless, fewer than 10 per cent of these jobs were in the assembly sector where salaries are higher (compared with 22 per cent in the United States). According to the Mexican Economic Census of 2019, around one quarter of jobs in the Mexican automotive industry were subcontracted. Moreover, these jobs were concentrated in the automotive parts sector, which is characterized by low salaries, high job instability and great obstacles to unionization (Bensusán and Florez 2022). The difference between wages in the assembly sector and those in the automotive parts sector in Mexico

11 Interview by Kevin Middlebrook with a US trade union representative in Washington, DC, on 25 June 2018; cited in Bensusán and Middlebrook (2020, 1021).

12 The author participated in several such meetings before, during, and after the adoption of the USMCA, at which participants explored various options for reforming corporatism in Mexico. See also Bensusán and Middlebrook (2020, footnote 63).

13 Possibly as a way of justifying the labour demands of the USMCA, it is explicitly noted in Para. 1 of Annex 23-A that "Mexico shall adopt and maintain the measures ... necessary for the effective recognition of the right to collective bargaining". See further Morales (2020).

was already as high as 60 per cent in 2019 (US\$4 per hour versus US\$2.5 per hour).¹⁴

The average hourly wage in the assembly sector in the United States (including labourers and employees) was more than five times that in Mexico in 1994. By 2019 the ratio had increased to more than 7:1. If Canada and Mexico are compared, the gap between labourers is even greater. Over the same period, the ratio of the average hourly wage in the automotive parts sector in the United States to that in Mexico increased from 6:1 to almost 8:1. Moreover, average wages in the three countries dropped between 1994 and 2019.¹⁵

Overall, differences in productivity alone cannot account for the wage gap among these countries during the years of NAFTA (Covarrubias Valdenebro 2020). In relation to this, US and Canadian trade unions, as well as legislators and negotiators from those countries, consistently called for the institutional factors that were artificially keeping down salaries in the Mexican automotive industry to be addressed.

In addition to changes to the rules of origin for the automotive industry in the USMCA, which raised the threshold of the regional value component from 62.5 to 75 per cent, another commitment with an impact on labour markets is the adoption of a fledgling regional-level wage policy related to manufacturing costs.¹⁶ In particular, passenger vehicles imported from one party to another are only eligible for preferential tariff treatment if 40 per cent (45 per cent for trucks) of the total manufacturing cost of the vehicle is produced by workers earning at least US\$16 per hour.¹⁷

Given the complexity of wage rules, the impact of this policy over wages may be difficult to gauge. In addition, in the automotive industry, the policy applies to average rather than minimum wages. The requirement can thus be met if some workers, such as managers or those employed in research and development, receive high salaries (Scherrer 2020, 299).

14 Data from official sources, cited in Bensusán and Florez (2022); see specifically figure 2 and table 7.

15 For details on the wages of labourers on production lines, see Covarrubias Valdenebro (2020, 7).

16 For a discussion of rules of origin and labour provisions in the USMCA in the context of the Mexican automotive industry, see Moreno Brid et al. in Volume 1.

17 See Art. 7 of the Appendix to Annex 4-B ("Product-Specific Rules of Origin") to the USMCA.

► 4.2 Overview of the new Mexican labour model and its links to Annex 23-A to the USMCA

4.2.1 Main features of the labour provisions in the USMCA

The USMCA presents several novel features in comparison to the NAALC. First of all, labour issues are addressed in a dedicated chapter (Chapter 23, headed “Labor”) following the model that was originally developed for the Trans-Pacific Partnership Agreement. In addition, the labour provisions contained in Chapter 23 are enforceable through the general mechanisms provided in Chapter 31 (“Dispute Settlement”), with violations being subject to trade sanctions. Furthermore, Chapter 31 was expanded after ratification of the Agreement to incorporate the RRLM, a dispute settlement mechanism applicable exclusively to violations of freedom of association and the right to collective bargaining (see section 4.3 below).

In terms of normative content, Article 23.2 refers to the ILO Declaration on Fundamental Principles and Rights at Work (1998) and the ILO Declaration on Social Justice for a Fair Globalization (2008). Article 23.3 requires each party to incorporate into its statutes and regulations, and into the practices governed by these, the rights laid down in the 1998 ILO Declaration, and to provide for acceptable conditions of work with regard to minimum wages, working hours and occupational safety and health. Article 23.5 prohibits Parties from failing to effectively enforce their labour laws “through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties”. It also sets out government action that parties should take to promote compliance with their labour laws. Chapter 23 further includes commitments to promote public awareness of labour laws and procedures and to ensure access to such procedures (Art. 23.10), along with provisions on cooperation and cooperative labour dialogue (Arts 23.12 and 23.13).

Applicable only to Mexico, Annex 23-A (“Worker Representation in Collective Bargaining in Mexico”) contains provisions designed to strengthen the principles related to freedom of association and the right to collective bargaining that were introduced as part of the 2017 constitutional reform. Its goal is to ensure that these rights, and the entities and procedures required

to uphold them, are regulated in the law. Notably, Annex 23-A required the Federal Labour Act to be amended to include an obligation to revise all existing collective agreements at least once during the four years after entry into force of the new legislation. This ultimately led to the adoption of a new process, referred to as “legitimization” of collective agreements, which is further discussed below.

By tying labour commitments in the USMCA to the reform of the Federal Labour Act, the negotiators paved the way for new principles and rules, monitoring mechanisms, time limits and resources. This increased the visibility of labour violations and the likelihood of effective implementation of the new safeguards (Bensusán and Middlebrook 2020; Bensusán 2020).

4.2.2 Overview of the new labour model

The amendment of Article 123 of the Mexican Constitution, adopted on 24 February 2017, and its incorporation into the Federal Labour Act, approved on 30 April 2019, led to an important transformation of the old labour model. The new model focuses on genuine representation of workers and workers’ organizations in collective bargaining, and on free, direct and secret voting in trade union democratic processes, thereby fostering union freedom, autonomy and democracy (Mexico, Ministry of Labour and Social Security 2019).

This process of institutional transformation, grounded in the constitutional reforms adopted since 2017, should be viewed within the wider context of policy interventions on labour issues undertaken by the López Obrador Administration. For example, as a result of the aforementioned labour reforms in 2017 and 2019, workers were able to enjoy more genuine representation. Workers also benefited from the new minimum wage policy introduced in December 2018, which enabled a recovery of purchasing power for the minimum wage of more than 60 per cent between 2018 and 2021 without affecting employment. The value of the minimum wage was even doubled in the cities on the US–Mexico border, where the *maquila* industry has a strong presence (Campos-Vazquez and Esquivel 2021).

Furthermore, the 2021 reform on outsourcing rules (Mexico, *Official Gazette* 2021), which received support both within Mexico and from US trade unions and experts,¹⁸ in principle precluded companies from making available

18 In its preliminary report published on 15 December 2020, the US Independent Mexico Labour Expert Board, drawing on views expressed by US trade unions, questioned the abuse of outsourcing arrangements in Mexico, which were preventing workers from exercising their rights. See Pérez de Acha (2021).

their employees for the benefit of third parties. According to data from the Mexican Economic Census (INEGI 2019), more than 4 million individuals in Mexico were working under outsourcing arrangements, which are associated with precarious employment and greater obstacles to the organization of workers.¹⁹

The 2019 amendment of the Federal Labour Law reflects the constitutional principles incorporated into Article 123 of the Mexican Constitution in 2017 and/or ties in with the commitments set out in Annex 23A to the USMCA. Several features in the 2017 and 2019 reforms are meant to correct practices under the old labour model that were keeping wages artificially low (Bensusán and Middlebrook 2013; Bensusán 2020). A key aspect pertains to establishing the Federal Centre for Labour Conciliation and Registration²⁰ and creating independent labour courts.²¹

Other aspects of the reforms related to the strengthening of the principles of freedom of association and collective bargaining. This included guaranteeing trade unions' full autonomy from the Government and employers (as required by the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)) and guaranteeing unlimited scope of activity for trade unions.²² In addition, trade unions' statutory regulations were to be brought into line with new constitutional principles and the provisions of the Federal Labour Act with respect to free, direct and secret voting.²³ Further aspects concerned the protection of democratic political rights of trade union members²⁴ and guaranteeing trade union representativeness as a condition for collective bargaining.²⁵ Moreover, the new rules require initial collective agreements and all successive revisions to

19 Since the 2021 reform, officially registered subcontractors may provide specialized services or carry out specialized works for an outsourcing company only in areas not connected to the latter's corporate purpose or main area of activity (see Art. 13 of the Federal Labour Law).

20 See Paras 2(a), 2(b)(i) and 2(g)(ii) of Annex 23-A to the USMCA (referring to the establishment of a centralized website such as that provided by the Centre); Federal Labour Law (provisional Art. 3 of the Decree of 30 April 2019 amending the Federal Labour Law).

21 Paras 2(a), 2(b)(ii) and 2(d) of Annex 23-A to the USMCA; Federal Labour Law (provisional Art. 5 y 6, of the Decree of 30 April 2019 amending the Federal Labour Law).

22 See in particular, Arts. 357 and 360 of the Federal Labour Law.

23 Provisional Art. 23 of the Decree of 30 April 2019 amending the Federal Labour Law.

24 See Art. 358 of the Federal Labour Law and Para. 2(c) of Annex 23-A to the USMCA.

25 See Art. 390 *bis* of the Federal Labour Law, Para. 2(e) of Annex 23-A to the USMCA and provisional Art. 22 of the Decree of 30 April 2019 amending the Federal Labour Law.

be approved every two years by a majority of the workers covered²⁶ and, as mentioned above, the legitimization of the collective agreements that were already in existence as of 1 May 2019.²⁷ Finally, also measures to promote the accountability and transparency in the management of trade union assets were introduced.²⁸

4.2.3 The implementation of the new labour model

The expected effects of the implementation of the labour reforms adopted between 2017 and 2019 are related to two main areas. The first one concerns the construction of a new labour justice system, which dispensed with the old conciliation and arbitration Boards and created new conciliation centres and labour courts, with a view to ensuring impartiality of judicial decision-making and facilitating swift conflict resolution.²⁹ The second area is related to the promotion of trade union democracy based on a secret, free, and direct vote. This is intended to give workers a voice in the exercise of their collective rights, which was previously controlled by the union leadership.

When amendments to the Federal Labour Law were approved in 2019, trade unions affiliated with the Confederation of Mexican Workers (CTM), which together with other organizations had historically opposed reforms to the old labour model, pushed back. They filed more than 500 *amparo* proceedings (legal petitions for relief under the Constitution), seeking to have the new rules declared unconstitutional. By March 2021, the Mexican Supreme Court of Justice had rejected all lawsuits, declaring the reforms were constitutional and legitimate.³⁰ Members of state conciliation and arbitration boards also

26 Paras 2(e) and (f) of Annex 23-A to the USMCA, Arts 390 *ter* and 400 *bis* of the Federal Labour Law and provisional Art. 22 of the Decree of 30 April 2019.

27 Para. 2(f) of Annex 23-A to the USMCA; provisional Art. 11 of the Decree of 30 April 2019 amending the Federal Labour Law.

28 Art. 373 of the Federal Labour Law.

29 With the reform, 105 local conciliation centres were created; 43 assistance and representation offices for the Federal Center for Conciliation and Labor Registration; 102 local labour courts, and 41 federal labour courts. The conciliation rate for labour disputes reached 75 per cent, with an average duration per conciliation of 30 days. The average resolution time for cases that went into trial was 6.5 months, about 95 per cent less than under the old system (Mexico, Ministry of Labour and Social Security 2023).

30 The Mexican Supreme Court quashed these challenges in 12 rulings expressing support for the principles of trade union democracy, collective bargaining, transparency and accountability. See Factor Capital Humano (2021). The rulings from the Second Chamber of the Mexican Supreme Court were 8/2021, 1547; 9/2021, 1653; 10/2021, 1651; 11/2021; 12/2021, 1554; 13/2021, 1536; 14/2021, 1545; 15/2021, 1541; 16/2021, 1539; 17/2021, 1543; 18/2021, 1550; 19/2021, 1552.

expressed doubt, as they lost the authority to register trade unions and collective agreements and to settle labour disputes (Maquila Solidarity Network 2019). Nevertheless, these doubts faded away when the labour reform began to be implemented, which occurred between May of 2019 and May of 2023, involving relatively few delays despite the ongoing COVID-19 pandemic.

With regard to the process of legitimization of the collective agreement – which can be seen as a bridge between the old corporate labour model and the new democratic, participatory model – an extension was required. While the presentation of applications by the trade unions finished on 1 May 2023, the consultations with workers through secret ballot have been extended to 31 July 2023 given the overwhelming number of requests submitted towards the end of the four-year term.³¹

To avoid financial obstacles for the implementation of the labour reform as in other cases (Pérez 2019), the United States required the Mexican Government to advance the necessary funding (Corona 2019). About US\$70 million were allocated to that end in the 2020 budget authorized by the Mexican Congress, which was doubled the following year. In 2022, the amount allocated was 10 billion pesos (about US\$550 million at the time of writing).³² Subsidies of about US\$25 million, paid from the Federal budget, were also allocated to States to fund the second stage of implementation, which involved setting up 132 offices for the new institutions created in 13 States (about US\$550 million at the time of writing).³³ Large sums were also provided by Canada and the United States, in accordance with their respective implementation laws related to the USMCA.³⁴ These were intended to support various technical assistance projects conducted by civil society organizations and consultancy firms, which illustrates the importance attached by Mexico's trade partners to the labour reform.³⁵

31 According to officials of the Federal Centre for Labour Conciliation and Registration, only 244 collective contracts have been concluded, and it is estimated that between 40 and 45 per cent of the procedures in progress will be discarded (Martínez 2023a, 2023b).

32 For more information on the budgetary resources earmarked for the labour reform, see Hernández (2021).

33 For more information on the resources allocated to the federal authorities to implement the labour reform, see Mexico, *Official Gazette* (2020) and Gascón (2021b).

34 See, for example, the [USMCA Implementation Act](#), introduced and enacted during the 116th US Congress (2019–20).

35 See United States, Bureau of International Labor Affairs (n.d.) and Gascón (2021a). A list of the projects undertaken and funding earmarked by the US Department of Labor to support the labour reform and strengthen labour laws in Mexico is available at <https://www.dol.gov/agencies/ilab/ilab-project-page-search>.

Canada and the United States have closely monitored the labour reform. This involves the labour attachés posted to the US Embassy and the Canadian Embassy in Mexico City, and the creation by the US Department of Labor of an online tool for the reception of anonymous complaints on labour rights violations.³⁶ In addition, a high-level body was established in the United States in order to monitor its trade partners' compliance with labour commitments. The Interagency Labor Committee for Monitoring and Enforcement is co-chaired by the USTR and the Secretary of Labor. Representatives of other departments also sit on the Committee, which is advised by the Independent Mexico Labour Expert Board (IMLEB).³⁷ Some of their recommendations have already been acted upon, such as the improvement of the Protocol to Legitimize Existing Collective Bargaining Agreements, including by setting clearer rules on how to handle irregularities.³⁸

In its reports, the IMLEB frequently questioned the legitimization process for collective agreements signed before the reform. To remain valid, these agreements had to be validated before 1 May 2023 by a majority vote of the workers covered. Requested by the United States, this step was included in both Annex 23-A (USMCA) and in provisional Article 11 (Decree of 30 April 2019) amending the Federal Labour Act. The goal of such legitimization was to eliminate the notorious practice of "employer protection contracts".³⁹

Finally, questions regarding transparency have arisen in light of the limited public access to trade union documents and collective agreements. Such access should be provided by the new Federal Centre for Labour Conciliation and Registration in accordance with the amended Federal Labour Act.

36 This online tool (available in English, French and Spanish) can be accessed at <https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca/hotline>.

37 Sections 711 and 731 of the USMCA Implementation Act (see footnote 34 above) provided for the establishment of the Committee and the Board, respectively. For the Board's reports from December 2020 and July 2021, see United States, IMLEB (2020, 2021). The last report was issued on 20 March 2023; see [IMLEB Report-2023 03 20 FINAL](#).

38 See Maquila Solidarity Network (2021, 5).

39 Concerns about this process can be found in IMLEB (2023, 47–48). For a definition and discussion of *contratos colectivos de protección patronal*, see de Buen Unna (2011).

▶ 4.3 The Rapid Response Labor Mechanism (RRLM)

4.3.1 Functioning of the mechanism

On 11 December 2019, Annex 23-A to the USMCA was further strengthened by the signing of a new Protocol amending Chapter 31 (“Dispute Settlement”). The Protocol added two identical annexes,⁴⁰ which establish a “Facility-Specific, Rapid Response Labor Mechanism”. This mechanism provides for the expedited enforcement of workers’ freedom of association and right to collective bargaining at the facility level. Its goal is to ensure that the parties’ commitments on freedom of association and the right to collective bargaining are upheld in all the facilities covered.⁴¹ When a dispute involves a “covered facility” located in Mexico, the good faith belief of a party that a “Denial of Rights”⁴² has taken or is taking place at the facility is sufficient to trigger the Mechanism. By contrast, when a dispute involves a covered facility located in Canada or the United States, the facility in question must already be subject to an order from the labour relations board of the respective party (Arts 31-A.2 and 31-B.2 of the USMCA). The three parties to the Agreement are hence not subject to the same arrangements.⁴³

Once the complaining party issues a request of review to the Mexican Government, the latter has 10 days to agree to conduct a review, and if it agrees, it will have 45 days to remediate the denial of rights. At this stage, the complainant party “may delay final settlement of customs accounts related to entries of goods from the Covered Facility”, thereby barring the goods from entering its markets (Arts 31-A.4 and 31-B.4 of the USMCA).

40 Annex 31-A (applicable between Mexico and the United States) and Annex 31-B (applicable between Mexico and Canada).

41 A “covered facility” is a place in the territory of a party that “produces a good or supplies a service traded between the Parties; or produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party; and is a facility in a Priority Sector”. “Priority Sector” refers to “a sector that produces manufactured goods, supplies services, or involves mining” (Art. 31-A.15, Annex 31-A to the USMCA).

42 A “Denial of rights” means that “a Covered Facility is being denied the right of free association and collective bargaining under laws necessary to fulfil the obligations of the other Party (the “respondent Party”) under this Agreement” (Art. 31-A. 2, Annex 31-A).

43 The first footnote in Annex 31-A to the USMCA explains when a claim can be brought in the case of the United States and Mexico. Corresponding criteria are established for Canada in the first footnote in Annex 31-B to the USMCA.

If the respondent party fails to agree with the complainant party on the existence of a Denial of Rights or a course of remediation, or if the facility in question fails to comply with the agreed course of remediation, a panel of independent experts may be established. The so-called “Rapid Response Labor Panel” is authorized, among others, to conduct inspections in situ. Should the panel determine that a Denial of Rights has occurred, the complainant party can impose remedies. This includes the “suspension of preferential tariff treatment for goods manufactured at the Covered Facility or the imposition of penalties on goods manufactured at or services provided by the Covered Facility” (Arts 31-A.10(2) and 31-B.10(2) of the USMCA). If the same facility “has received a prior Denial of Rights determination on at least two occasions”, the complainant party may also deny entry to goods manufactured at the facility (Arts 31-A.4 to 31-A.10 and 31-B.4 to 31-B.10 of the USMCA).

Under the RRLM, the burden of proof is reversed: it is incumbent on the respondent party to disprove a Denial of Rights, as well as to demonstrate that the reported violations do not affect trade or investment between the parties (Mexico, Ministry of Labour and Social Security and Ministry of Economic Affairs 2021). Arguably, this approach stems from the desire of the United States to avoid outcomes like that of the labour dispute with Guatemala under the CAFTA–DR. While this case involved serious allegations on violations of workers’ freedom of association, the panel did not find a breach of the relevant provisions due to what its members perceived as an insufficient link with international trade.⁴⁴ The same appears to apply to the short time frames provided for in the RRLM –for a party to respond to a complaint and agree on a course of remediation (45 days), or for the panel of independent experts to make a determination (4 months). These time frames are significantly shorter than those laid down in the CAFTA–DR and in other trade agreements: indeed, the US–Guatemala labour dispute lasted a total of nine years (2008–17) (Corley-Coulibaly et al. 2023).

4.3.2 Early experiences under the RRLM

By 31 May 2023, nine complaints had arisen under the RRLM, eight in the automotive industry and one in the rubber industry (Goodyear, San Luis Potosí (2023)). The first complaint accepted by Mexico in the automotive industry, General Motors/ Silao, Guanajuato (2021), concerned an assembly plant while the other seven arose in the automotive parts sector: Tridonex/

⁴⁴ See Arbitral Panel Established Pursuant to Chapter Twenty, “In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR”, adopted 14 June 2017, Para 594.

Matamoros, Tamaulipas (2021); Panasonic/ Reynosa, Tamaulipas (2022); Teksid Hierro/ Frontera, Coahuila (2022); Manufacturas VU,/Piedras Negras, Coahuila (2022) (two complaints); Unique Fabricating Santiago de Querétaro, Querétaro (2023); and Draxton/Irapuato, Guanajuato (2023).

In the following, three already concluded cases, General Motors, Tridonex and Panasonic, are discussed in detail. This allows the further examination of the types of complaints and reparation courses agreed between the Mexican and US authorities.

4.3.2.1 General Motors

As part of the legitimization process, the vote on the collective agreement covering workers at the General Motors factory (Silao, Guanajuato), was scheduled to take place on 20 and 21 April 2021. When a partial vote tally was incorrectly carried out on the morning of 21 April (votes should have been tallied only at the end of the electoral process), the CTM-affiliated union party to the collective agreement, known as the Miguel Trujillo López Union, became aware that most workers were voting against the agreement.⁴⁵ As voting resumed, the labour authorities discovered that voting equipment had been damaged, which the union then used as a pretext for suspending the voting process. On the basis of the irregularities identified, the Ministry of Labour and Social Security declared the partially completed election invalid and set a period of 30 days for the legitimization process to resume, with new guarantees. However, this deadline was not met. On 12 May 2021, the day after the process was declared invalid, the Office of the USTR filed the first complaint against Mexico under the RRLM, on the grounds that labour rights had been denied during the vote on the General Motors collective agreement. The Government of Mexico immediately accepted the request for review of the allegations and, after a period of negotiations between the two countries, a highly detailed settlement agreement was swiftly reached and signed on 13 July 2021. The agreement set a new deadline of 20 August 2021 for conducting the vote and laid down commitments for all parties: in addition to obliging General Motors to disseminate the text of the collective agreement among its workers in good time, the agreement specified that the Ministry of Labour and Social Security would monitor the process, and that

⁴⁵ At the time when the tally was carried out, the result was 51.94 per cent opposed to maintaining the agreement versus 47.39 per cent in favour. An account of the dispute is provided in Maquila Solidarity Network (2021) and Giménez Cacho (2021).

observers from the ILO and the Mexican National Electoral Institute would be present (Mexico, Ministry of Labour and Social Security 2021b).

The new vote took place on 17 and 18 August 2021 over a 30-hour period. It was the most closely monitored trade union election process in the history of Mexico. The result was a vote to reject the collective agreement,⁴⁶ which was terminated by the labour authorities with effect from 3 November 2021 (Mexico, Ministry of Labour and Social Security 2021a). Shortly after this decision, the Office of the USTR withdrew its complaint (*Reuters* and de la Rosa 2021).

Defeating the powerful CTM-affiliated union would not have been possible if the workers opposed to the agreement had not organized themselves before the vote. Workers at the facility began to organize following a dispute over the dismissal of some of their colleagues two years before the start of the legitimization process. This led to the creation of Generating Movement, a group that opposed the CTM-affiliated dominant trade union, on the grounds that it was not democratic and that its leadership was completely out of touch with the general membership.⁴⁷

Domestic and international solidarity with the group also played an important role. The leaders of Generating Movement repeatedly held informal meetings with Unifor, a Canadian trade union, and with trade unions from the United States (Gomez Zuppa 2022). They also received support from the Mexican Federation of Independent Trade Unions in the Automotive, Automotive Parts, Aerospace and Tyre Industries. The solidarity expressed in the form of both material support and advice became evident when the time came to vote on the collective agreement in April 2021. Thanks to this, opponents of the agreement were able to distribute relevant information in advance of the vote, including information about irregularities committed by the Miguel Trujillo López Union.

46 About 55 per cent of votes were against the agreement while 45 per cent were in favour, reflecting a larger difference than in the first vote. More workers also participated in the second vote, with the participation rate reaching almost 92 per cent. As mandated, the vote took place in the presence of various officials from national and international organizations in addition to representatives of the trade union that was party to the agreement (Giménez Cacho 2021).

47 Furthermore, during the COVID-19 pandemic, ill workers were left without support, which highlighted further the weaknesses of the collective agreement. Workers, then, agreed to the legitimization process, which allowed them to disapprove the union that had signed the agreement (interview by the author with a consultant from the Federation of Independent Trade Unions in the Automotive, Automotive Parts, Aerospace and Tyre Industries, who was also a member of Generating Movement and served as an observer during the first union vote, and interview with a representative of the Friedrich-Ebert-Stiftung, both conducted on 21 April 2021).

Once the agreement had been terminated, the workers who had set up Generating Movement in opposition to the Miguel Trujillo López Union registered a new union, the National Union of Automotive Industry Workers. This new union swiftly achieved recognition from the registering authority (the Federal Centre for Labour Conciliation and Registration) – a process that would have been very difficult under the old labour model (Gomez Zuppa 2022). In addition to the new union, three other unions (two affiliated with the CTM) submitted their candidature to become the representative authorized to negotiate the new collective agreement with General Motors. The National Union of Automotive Industry Workers ultimately won the election, securing the right to negotiate the new agreement. Negotiators from the new trade union reached an agreement with the company,⁴⁸ which included improvements to wages and working conditions. This was approved by the majority of workers (84 per cent) during the vote held on 25 and 26 May 2022 (Mexico, Federal Centre for Labour Conciliation and Registration 2022).

In summary, the unprecedented outcome achieved at the General Motors facility – in which workers' voices were freely expressed and respected – was made possible by the new institutional framework overseen by impartial authorities, internal and external supervision of the voting process, the organization of workers opposed to the existing arrangements, and acts of solidarity across the labour movement from both within and outside the country. While most concerns during the USMCA negotiations had been raised in relation to the automotive industry, it is precisely in this sector that the new trade union democratic processes have achieved the greatest visibility, the effect of which could well radiate out to other sectors in the years to come.

4.3.2.2 Tridonex

At the request of the AFL-CIO and other organizations,⁴⁹ the United States filed a complaint against Mexico on the grounds that different aspects of freedom of association and the right to collective bargaining had been violated by Tridonex, an automotive parts company with headquarters in the State of Tamaulipas. The dominant trade union was affiliated with the CTM

⁴⁸ The election was held on 1 and 2 February 2022. For details, see Martínez (2022). Negotiations with the company on a new collective agreement began on 10 May 2022 (Grupo Reforma 2022).

⁴⁹ These included Public Citizen's Global Trade Watch, the Service Employees International Union and the Mexican National Independent Union of Industry and Service Workers (also known as Movement 20/32).

and was the union party to the collective agreement covering workers at the company. Workers who opposed the dominant union had been dismissed after downing their tools in a work stoppage to demand compliance with the collective agreement and the release of their lawyer, who had been imprisoned by the state authorities.⁵⁰

Mexico did not accept the complaint as the events in question had taken place before 1 July 2020, the date of the USMCA's entry into force. Nonetheless, the Office of the US Trade Representative managed to conclude a seven-point agreement directly with the company in less than three months. Among other measures, Tridonex agreed to pay lost wages to the 154 workers who had been dismissed, amounting to US\$600,000. The company also committed to respecting its workers' right to choose their own union representative, free from any form of coercion or interference, and in the presence of electoral observers before and during the vote. Furthermore, Tridonex agreed to introduce health and security measures and support for workers who contracted COVID-19, in addition to providing training for managers to ensure that all readjustment procedures were fair. Finally, a company hotline was set up for receiving and responding to complaints concerning violations of workers' rights (IMCO 2021; Forbes 2021; Flores 2021).

The union Movement 20/32, which was established by the company's dissenting workers, subsequently demanded to take over the Tridonex collective agreement. A vote was held, and Movement 20/32 won ownership of the collective agreement, receiving 1,126 of the 1,313 votes cast (out of a total of 1,632 workers at the company). The CTM-affiliated union received only 176 votes, confirming that it was no longer the workers' legitimate representative (IMCO 2021; Forbes 2021; Flores 2021). As in the case of General Motors in Silao, the Tridonex case demonstrates the importance of worker organization, domestic and international solidarity, and an institutional environment that supports the exercise of trade union democracy as part of the new labour model.

4.3.2.3 Panasonic

The Panasonic Automotive Systems de México (Panasonic, Reynosa, Tamaulipas) case was one of the most complex, because the enterprise (albeit

⁵⁰ The lawyer in question was detained following a complaint by the Special Conciliation and Arbitration Board of Matamoros, in Tamaulipas, on which the Confederation of Mexican Workers is represented. In the arrest warrant, the Board alleged that the lawyer had committed crimes against public servants, including making threats, coercing individuals and inciting rebellion. She remained in prison for some three weeks. See *La Verdad I* (2020). For more about her release, see de la Fuente (2020).

unsuccessfully) cast doubt on the competence of the new Federal Centre for Labour Conciliation and Registration to register collective agreements at the national level, and because it involved the successful calling of a strike. Previously, during the legitimization process for the collective agreement for this company, a majority of workers (888 to 643) had voted against the agreement, as a result of which it was deemed to have been terminated. The union that had controlled the agreement was the Trade Union of Workers at Panasonic Automotive Systems, Inc., which is affiliated to the CTM. The enterprise then signed a new collective agreement with another CTM-affiliated union, without the required workers' vote under the Federal Labour Act, and deposited it with the local conciliation and arbitration board. This board lacked the competence to act as depositary for the agreement because the Federal Centre for Labour Conciliation and Registration had taken over responsibility for registration at the national level as from November 2021. This violation was denounced in a complaint by the United States on 18 April 2022 under the RRLM on behalf of the Mexican National Independent Union of Industry and Service Workers (SNITIS) and the Rethink Trade – American Economic Liberties Project, a US non-profit civil society organization. In parallel, the Federal Centre for Labour Conciliation and Registration organized a vote among workers to determine which union would be authorized to negotiate the collective agreement, with SNITIS winning by 1,200 votes to the 390 cast for the CTM-affiliated union. The complaint was accepted by Mexico on 22 May, and on 10 June workers began a strike to call for signature of the collective agreement, which was achieved in only four hours. This secured a pay rise of 9.5 per cent, an increase of 3.5 per cent in benefits and the reinstatement of dismissed workers, who then became SNITIS delegates at Panasonic (*Reuters* 2022; Mexico, Ministry of Economic Affairs 2022).

► 4.4 Conclusions

This chapter has analysed the driving forces behind, and the scope and anticipated effects of, the transformation undergone by Mexico's labour market institutions, focusing on their ability to prevent and, as appropriate, redress violations of workers' collective rights. It has argued that the conditions put forward by Mexico's trade partners during the USMCA negotiations, which led to wide-scale institutional reforms in Mexico before the agreement was adopted, should be seen within the specific context of the Mexican automotive industry. By 2018, Mexico had become the fourth largest exporter of automotive products worldwide, but wages in that sector continued to fall. It is no coincidence that eight of nine complaints filed by May 2023 under the RRLM involve or are related to the automotive sector.

The chapter also showed how the interests of the three Governments converged during the final stage of the negotiations. Following the 2018 presidential election, the Government of Mexico agreed, by signing the USMCA, to unequal labour obligations (contained in Annex 23-A) and to permanent external monitoring (Annexes 31-A and 31-B). Mexico accepted this arrangement not only because of the importance of exports for its economy, but also because of the historical aspirations of the country's independent trade unions. In this regard, the decision was also driven by the exchanges that had taken place between trade unions, organizations and experts from Canada, Mexico and the United States throughout the NAFTA period and during the USMCA negotiations, with additional momentum generated by the campaign promises of the newly elected President López Obrador.

The examination of the main features of the institutional transformation, the progress in implementing the labour reform, and the first nine complaints concerning violations of freedom of association and the right to collective bargaining by companies in the automotive sector suggests that the changes encouraged by the USMCA have the potential to support in identifying and correcting violations of Mexican workers' collective rights. That being said, maximizing this potential will require further action by the national government and capacity-building for employers and workers and their respective organizations.

In view of the scale of the institutional transformation, it is necessary to temper expectations and give all actors involved time to overcome obstacles such as those related to the inertia and practices linked to the old labour model or those related to insufficient resources to monitor full respect

for individual and collective rights.⁵¹ Crucially, the success of Mexico's constitutional and legal reforms will depend on whether workers are able to exercise their right to vote freely and without any form of coercion. However, this will require a cultural change that must involve all the actors in the world of work.

In summary, institutional transformation remains a complex process, during which all the actors involved – public authorities, trade unions, employers and workers – must learn new ways of interacting with a firm basis on social dialogue that requires strengthening in the country. This can help to bring about a fairer distribution of the benefits of trade integration within each of the three parties to the USMCA and in North America as a whole.

51 A key aspect of the institutional transformation, namely the period for submitting applications for the legitimization of collective agreements, ended on 1 May 2023. Processing these was almost fully concluded in October of that year. Of a total of about 139,000 registered collective contracts, a total of 30,511 contracts were approved by the majority vote of the workers (Flores Hernández 2023). Furthermore, the third and final phase of implementation of the new labour justice system began on 3 October 2022.

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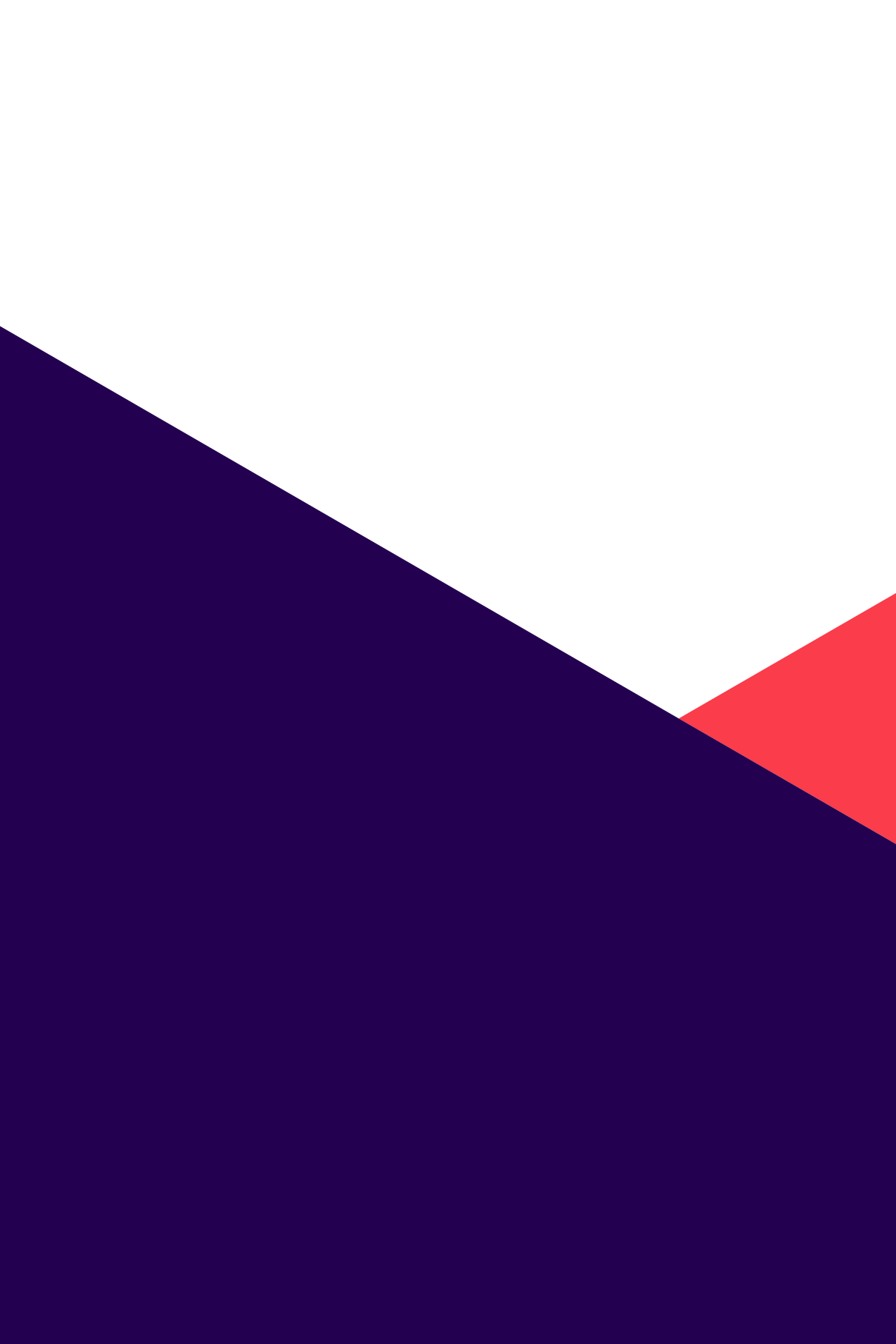
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The EU–Viet Nam Free Trade Agreement

A catalyst of labour reform in Viet Nam?

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► Introduction

Many countries of the global South, including Viet Nam, have centred their development strategies on export orientation and integration into global production networks. While this has generated many jobs, it has also contributed to poor working conditions and labour rights violations (specifically on Viet Nam, see Chan 2011; Do 2017a; Marslev, Staritz and Raj-Reichert 2022). In addition to private labour governance mechanisms, which have been criticized for being largely unsuccessful, public governance, including the integration of international labour standards into free trade agreements (FTAs), has gained importance since the 1990s. Spearheaded by the United States and Canada, the European Union (EU) has also introduced such labour clauses in its trade policy. With earlier antecedents, labour provisions became a common feature of EU FTAs in the 2000s and have, since then, expanded in scope and content (Bartels 2013; Van den Putte, De Ville and Orbie 2015; Velluti 2015). Since the EU–Republic of Korea FTA, signed in 2009 and in effect since 2011, labour provisions (and environmental standards) have been bundled into dedicated trade and sustainable development (TSD) chapters; and this approach was streamlined and made obligatory for all new EU FTAs with the “Trade for All” strategy in 2015 (Smith et al. 2020). The TSD chapters commit trading partners to respect Fundamental Principles and Rights at Work, as defined by the ILO Declaration (ILO 1998). To monitor implementation, they enact a set of institutional mechanisms, including intergovernmental committees (the Trade Committee and the Committee on Trade and Sustainable Development); and a civil society mechanism (CSM) comprising domestic advisory groups (DAGs) and a joint civil society forum for transnational dialogue. As of May 2023, TSD chapters were in force in 11 EU FTAs with 18 countries and included in another 4 agreements awaiting ratification (see Corley-Coulibaly, Grasselli and Postolachi in this volume, for a detailed treatment of labour provisions in EU FTAs).¹

The EU’s TSD approach, however, has been criticized by academics and activists alike for its limited impact (Harrison et al. 2019; Smith et al. 2020). Criticism centres on the promotional approach of the EU, which relies on dialogue and cooperation, with a separate dispute settlement mechanism that involves no possibility of sanctions; on the inadequacies of the CSMs,

1 TSD chapters in force: Andean Community (Colombia, Ecuador, Peru), Canada, Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama), Georgia, Japan, Republic of Korea, Republic of Moldova, Singapore, Ukraine, United Kingdom and Viet Nam. Awaiting ratification: Chile, China, Mercosur (Argentina, Brazil, Paraguay, Uruguay) and Mexico. Source: EC n.d.

which suffer from lack of independence and representation, limited resources and operational support; and on the “accountability deficit” and lack of political will in CSMs’ relations with governments (Marx, Lein and Brando 2016; Orbie, Van den Putte and Martens 2017; Barbu et al. 2018; Harrison et al. 2019; Martens, Potjomkina and Orbie 2020; Drieghe et al. 2022). Considering this criticism, the EU–Viet Nam FTA (EVFTA), which entered into force in August 2020, appears as a puzzling deviation, as external pressure from the EU played a role in labour reform.

However, there have long been domestic struggles in Viet Nam related to labour reform, fluctuating with the vagaries of internal factionalism and geopolitical and geoeconomic shifts. With the launch of the *Doi Moi* (“renovation”) reforms in 1986, Viet Nam not only embraced a “socialist market economy” but also embarked upon reforms of its labour and industrial relations laws. Nevertheless, several rounds of revisions left a fundamental feature intact: the monopoly of the Viet Nam General Confederation of Labour (VGCL), subordinated to the Communist party of Viet Nam (CPV), as the only permitted worker representative (Schweisshelm and Do 2018). In the context of ongoing domestic labour struggles, in the run-up to the ratification of the EVFTA, the Vietnamese State took unprecedented steps: in June 2019 and July 2020, respectively, two of the three outstanding ILO core Conventions – No. 98 on the Right to Organise and Collective Bargaining and No. 105 on the Abolition of Forced Labour – were ratified, while the last one – No. 87 on Freedom of Association and Protection of the Right to Organise – was scheduled for 2023; and in November 2019 a revised Labour Code was passed, for the first time granting workers the right to establish independent workers’ representative organizations at the enterprise level. These reforms represent a remarkable break with the existing trade union structure. Furthermore, the commitment by the Vietnamese Government to set up a DAG and to allow the participation of independent civil society organizations (CSOs) is equally unseen in a one-party State with restricted civic space.

Beyond its unusual impact in the pre-ratification phase, scrutinizing the EVFTA is interesting for two further reasons. First, while Viet Nam has committed to reforms on paper, the ultimate on-the-ground effects of these crucially depend on their implementation. Second, in the context of broader changes in EU trade policy triggered by geopolitical shifts – and informed by the experiences from Viet Nam, as laid out in this chapter – the European Commission has taken recent steps towards a more conditional approach (EC 2018, 2022). After the appointment of a Chief Trade Enforcement Officer (EC 2020a), the launch of a more open complaints system (EC 2020b) and the announcement of “an open, sustainable and assertive trade policy”

(EC 2021b), in June 2022 the European Commission presented its proposal for a new TSD model, promising, among other things, to step up engagement with trading partners and to more strongly enforce TSD chapters, including through trade sanctions (EC 2022).² A tougher stance is also evident in the European Commission requesting the first-ever panel of experts, which confirmed in January 2021 – after eight years of civil society pressure – that the Republic of Korea had breached its TSD obligations (EC 2021a). This strategic reorientation, which came about under continuous pressure from the European Parliament, some Member States and civil society, may alter the post-ratification dynamics compared with previous FTAs and lead to stronger EU pressure on the implementation of the TSD chapter in Viet Nam.

Against this backdrop, this chapter examines the role of the EVFTA and the EU in the Vietnamese labour reforms. The first question is whether and, if so, how the EU and the pre-ratification requirements linked to the TSD chapter became an external catalyst of labour reform in Viet Nam. The next question is how the labour provisions are being implemented, and what role the EU is playing in the post-ratification phase. These questions are analysed drawing on a conceptual framework that highlights the key role of power dynamics and State–society relations within the EU and within partner countries, as well as between States. While literature on the trade–labour nexus focuses on the politics and institutions of the EU, power dynamics and social struggles in partner countries are often sidelined. This is brought to the fore by linking FTAs and labour reforms to a strategic-relational theorization of the State and civil society, viewing them as existing in a complex, dialectical relationship. The chapter's analysis of labour reform and implementation is restricted to the reform process at the institutional level. To assess the ultimate effects of the TSD chapter for Vietnamese workers, one would have to foreground the complex power relations in global production networks and how they interrelate with labour regimes, where labour issues materialize and are contested. Doing so would also require considering the impact of the commercial chapters of FTAs, which may deepen engagement in sectors, where hypercompetitive conditions place downward pressure on wages, working conditions and compliance with labour standards (Barbu et al. 2018; Smith et al. 2018; Anner 2020).

In terms of methodology, the chapter uses process tracing to clarify the causal processes underpinning the labour reforms in Viet Nam, and the role played by the EU and the EVFTA as well as domestic dynamics. It draws on legal and policy documents, parliamentary debates, voting records and commentaries to track the decision-making process in the EU and

² The Communication by the Commission is available in the Commission's [Communication and Information Resource Centre](#).

the law-making process in Viet Nam. In addition, the chapter is based on 54 interviews, conducted between 2019 and 2023, with actors involved in the negotiation and implementation of the TSD chapter, the EVFTA and/or the Vietnamese labour reforms. In the EU, interviews were conducted with 27 informants from the European Commission (DG Trade),³ the European Parliament and the EU DAG; these interviews were conducted during fieldwork in November 2019 or online thereafter. In Viet Nam, 25 interviews were conducted with domestic and international labour CSOs, the VGCL, the ILO Country Office in Hanoi, and members of the Vietnamese DAG; these were conducted in person in May 2022 or online.

The chapter proceeds as follows. Section 5.1 briefly introduces the conceptual approach. Section 5.2 sets the stage by introducing the broader context of Viet Nam and the new generation of FTAs. The next three sections contain the chapter's empirical analysis. Section 5.3 focuses on the developments in the pre-ratification phase (that is, after the conclusion of negotiations), both within the EU and in Viet Nam. Section 5.4 examines the contested process of implementing the EVFTA's CSM and the pre-ratification commitments undertaken by Viet Nam, as well as the role played by the EU in this process. Section 5.5 discusses the role of the ILO and other actors with translocal characteristics across the two phases. Section 5.6 concludes.

► 5.1 Conceptual framework: A strategic-relational approach and FTAs

Our conceptual point of departure is a critique of the literature on the trade-labour nexus for focusing too narrowly on the legal-institutional details of labour provisions and on dynamics on the EU side, while overlooking how they articulate with political contexts and social struggles in partner countries (Orbie and Khorana 2015; Harrison et al. 2019). Furthermore, although FTAs are inter-State agreements, there is little effort to conceptualize the State, and still less civil society, despite its pivotal monitoring role (Drieghe et al. 2022). To address these lacunae, this chapter draws on a strategic-relational approach (Poulantzas 1978; Jessop 1990), viewing the State both

3 DG (Directorate-General) signifies a department within the European Commission responsible for a particular policy area.

as an *institutional ensemble* imbued with distinctive logics, resources and procedures, and as an *arena of contestation* between competing socio-political forces. In such a perspective, the State is understood in a dialectical relationship with society. This means, on the one hand, that state action is necessarily relational and conditional, shaped by the “action, reaction and interaction of specific social forces located both within and beyond” state institutions (Jessop 1990, 366). On the other hand, the State is perceived as inherently biased, privileging certain actors and interests; and its institutions do not necessarily act in unison, but may promote competing “state projects” (Jessop 1990).

A strategic-relational approach also has implications for how the chapter conceptualizes civil society. While liberal conceptions view civil society as an autonomous sphere for voluntary association, deliberation and action, stretching the space between individuals and the State, a strategic-relational perspective sees it as a contested terrain upon which social classes compete for hegemony (Jessop 1990). Civil society, therefore, exists not in opposition to the State, but in a dialectical unity with it (Gramsci 1971; Arnold and Hess 2017). Furthermore, civil society is far from homogenous, involving different social groups, such as employer representatives (industry associations), trade unions, various types of non-governmental organizations (NGOs) and religious movements, that have different interests, capacities and relations to the State.

The capacity of social groups to influence state power, however, is formed not merely at the national level but also at the transnational level. Two points are particularly important for the analyses conducted. First, States remain important, but they act within a multiscale and increasingly complex spatio-institutional configuration. There has been a focus on how an emergent transnational business class is able to exercise power through transnational state apparatuses, but pro-labour forces can also – despite challenges – use the transnational scale for their projects (Keck and Sikkink 1998; Merk 2009). This is facilitated by “translocal” coalitions that can connect actors and struggles across transnational space (Brand, Görg and Wissen 2011). Second, there are considerable power asymmetries between States, linked to their positions in the global economy and within inter-State hierarchies. This is manifest in different constraints in national policymaking and unequal capacities to influence transnational state apparatuses such as international institutions and agreements (Brand, Görg and Wissen 2011).

Based on the above, FTAs are conceptualized as agreements between States, whose interests, priorities and strategies are formed through socio-political struggles at national and transnational levels, and within specific geopolitical and geoeconomic conjunctures. Determined chiefly by States and social

forces in the global North, FTAs mainly serve to integrate economic spaces for the expansion of capital and global production networks by setting rules, regulations and enforcement mechanisms at the transnational scale (Smith 2015). In so doing, however, they institute a set of economic and, more recently, labour governance structures that influence domestic struggles and reform processes and can be used by social forces to influence state actions (Barbu et al. 2018).

Within this broader conceptualization of States, civil society and FTAs, the chapter’s conceptual framework highlights four factors that shape the impact of labour provisions – in this case, the EU’s TSD chapters – in partner countries: (i) evolving State–society relations in the EU, especially the relative influence of social forces on the key institutions involved in trade policymaking, which guides the priorities and strategies of the EU in negotiating, monitoring and enforcing labour commitments; (ii) corresponding State–society relations in partner countries, which shape their commitments and strategies, set the parameters for civil society action, and decide whether external pressure has potential to tilt internal power relations towards pro-labour actors; (iii) the wider domestic, geopolitical and geoeconomic interests linked to the FTA, which may open a space for compromise by actors who would otherwise oppose labour reform in partner countries; and (iv) the nature of transnational social relations that can facilitate cooperation between actors pushing for labour reform on both sides of the FTA.⁴

► 5.2 Context: Viet Nam and the new-generation FTAs

Since the launch of the Doi Moi (“renovation”) reforms in 1986, marking the transition from central planning to a “socialist market economy”, Viet Nam has increasingly embraced a development strategy based on export orientation and global integration (Anh, Duc and Chieu 2016).⁵ Following the signing of bilateral trade agreements with the European Communities (now EU) in 1992 and the United States in 2001, and World Trade Organization accession in

4 For a more detailed discussion of this framework, see Marslev and Staritz (2022).

5 See also Volume 1, Chapter 6, Sekerler Richiardi, Ghani and Ngoc Toan for an overview of the economic context in Viet Nam, and the relationship between trade and labour in small and medium-sized enterprises in the country.

2007, Viet Nam emerged as a major production hub for consumer goods such as garments, footwear and, more recently, electronics (Hollweg, Smith and Taglioni 2017). While initially dominated by State-owned enterprises, private and foreign direct investment has come to dominate many industries. More recently, Viet Nam has been the primary winner of the China Plus One Strategy, driven by rising labour costs in China and growing trade tensions between China and other countries (Hollweg, Smith and Taglioni 2017). For the Vietnamese leadership, therefore, the signing of bilateral and regional FTAs has become a cornerstone of its ambitions to attain upper-middle-income status by 2030 (Tran, Bair and Werner 2017). The country has entered numerous FTAs and is, in July 2023, a signatory to 18 active and planned bilateral and plurilateral FTAs.⁶

Viet Nam has traditionally had a restricted space for civil society activity and autonomous worker organization. Following Marxist-Leninist doctrines, the CPV officially considers its affiliated “mass organizations” (such as the VGCL, the farmer’s union and the women’s association), united in the Fatherland Front, as the only legitimate representatives of the non-State sector.⁷ Nevertheless, like other one-party States, the Vietnamese State is no monolith, but has long been an arena of negotiation and intermediation between competing interests and factions (Kerkvliet 2001; Vuving 2017). State–society relations in Viet Nam have been described as “dialogical” (Kerkvliet 2001) and “accommodating” (Koh 2006); and the State has proved to be responsive to grassroots pressure, especially if emanating from industrial or agricultural workers, the two primary constituencies of the CPV and the sources of its political legitimacy. The CPV, however, is determined to prevent the emergence of counter-hegemonic movements (Kerkvliet 2019). Despite “the emergence of new forms of social organization akin to what some people might call ‘civil society’” (London 2014, 12), civil society is regulated by a myriad of government decrees and party directives. All CSOs must be licensed by, and can be dissolved by, the Government; and once in operation, all projects and foreign funding must be approved, and activities are closely monitored by the security apparatus (London 2014). CSOs working on labour and human rights issues are under particular scrutiny. As a result, there are only a few registered labour CSOs (Do 2017b), and past attempts to establish independent trade unions have been suppressed (Kerkvliet 2019).

Nevertheless, alongside economic liberalization, reforming Viet Nam’s labour laws and industrial relations has been an ongoing project. Early attempts by

6 A full list of these FTAs is available on the [Vietnam Briefing](#) website.

7 As stipulated by the current Constitution (2013), the Fatherland Front “constitutes the political base of the people’s government” and “represents and protects legal and legitimate rights and interests of the people”.

a minority reformist faction to carve out a space of autonomy for the VGCL were halted by the events of 1989–90: the Tiananmen protests in China and the fall of communism in Central and Eastern Europe, not least in Poland, where the first independent union was instrumental in bringing down the regime (Schweisshelm and Do 2018). Although the trade union law (1990), the constitution (1992) and the first Labour Code (1994) did open up some room for manoeuvre for the VGCL, and the latter granted workers the right to strike (albeit only after highly burdensome procedures), conservatives gained the upper hand (Vuving 2017), and further reform was halted (Nørlund and Chan 1998; Schweisshelm and Do 2018). In the second half of the 2000s, however, an outburst of wildcat strikes in export sectors revived the reform process. Bypassing the formal union, these strikes challenged the legitimacy of both the VGCL and the CPV – and although the strike wave was driven by material conditions, it also became a catalyst for union reform (Do 2017b). In a landmark 2008 directive, the Politburo, the highest authority in the political system, called on enterprise unions to “become actual representatives to protect workers’ legitimate rights and interests” (Viet Nam, Politburo 2008). The following year, a comprehensive revision of the Labour Code – after smaller amendments in 2002 and 2006 – was initiated. The new law, however, adopted in 2012, was a compromise between reformers in the government – especially in the Ministry of Labour, Invalids and Social Affairs (MOLISA) but also in the CPV, the National Assembly and the strike-ridden provinces of the south of the country – and conservatives in the CPV and the VGCL. Because the law introduced quarterly labour-management meetings, and for this purpose (only) permitted workers to elect representatives, it is “frequently interpreted as the introduction of ‘social dialogue’ into the Vietnamese context” (Tran, Bair and Werner 2017, 407); however, the fact is that the law retained the representational monopoly of the VGCL and gave it the right to represent non-unionized enterprises in collective bargaining and dispute settlement (Schweisshelm and Do 2018).

The latest push for labour reform in Viet Nam has come under external pressure from the labour provisions contained in a new generation of FTAs (Tran, Bair and Werner 2017; Evans 2020b; Marslev and Staritz 2022). In 2010, Viet Nam joined negotiations of the Trans-Pacific Partnership (TPP), an FTA between 12 countries along the Pacific Rim, including the United States. The agreement, concluded in 2015, contained a dedicated labour chapter, requiring each party to “adopt and maintain in its statutes and regulations” the labour rights enshrined in the 1998 ILO Declaration (TPP Art. 19.3.1). In parallel with the main text, the United States negotiated a

bilateral consistency plan with Viet Nam,⁸ signed in February 2016, detailing the legal-institutional reforms that Viet Nam needed to make prior to the entry into force of the TPP, although compliance with the most controversial issue – granting Vietnamese workers the right to freely form and join unions of their own choosing – was given a grace period of five years (Tran, Bair and Werner 2017). Soon after assuming office, President Trump withdrew the United States from the deal, thus invalidating the consistency plan, but – as will be shown later – the groundwork laid by the United States was crucial for the subsequent impact of the EVFTA. After the withdrawal of the United States, negotiations continued among the remaining countries, and in March 2018 they signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which retained the labour chapter but – without the consistency plan – did not involve any specific requirements regarding labour reform in Viet Nam.

Negotiations of the EVFTA, in turn, started in June 2012 and were concluded in December 2015, after 14 rounds of talks. After being split into separate trade and investment agreements following a Court of Justice of the European Union ruling, which stated that the EU does not have a mandate to conclude agreements on certain investment-related issues on its own, the EVFTA was adopted by the European Commission in October 2018, approved by the Council of the European Union in June 2019, and signed a week later in Hanoi. After getting a green light from the European Parliament in early 2020, the EVFTA was concluded by the Council in March, ratified by the National Assembly of Viet Nam in June, and entered into force on 1 August 2020. The EVFTA has been described by the European Commission as “the most ambitious and comprehensive FTA that the EU has ever concluded with a developing country” (EC 2016, 7); it entails an almost full liberalization of merchandise trade, as well as provisions on non-trade barriers, competition policy and public procurement, among others (Grumiller et al. 2018). In the TSD chapter, the parties reaffirm their commitment to “promote and effectively implement the principles concerning the fundamental rights at work” (Art. 13.4.2); and each is required to “make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO conventions” (Art. 13.4.3a). In terms of monitoring and enforcement, the set-up follows the EU’s usual template for TSD chapters and includes a set of intergovernmental committees and a CSM.

Unlike the United States, which employed pre-ratification conditionality in the negotiations of the TPP, the European Commission was reluctant to include labour standards in the negotiations of the EVFTA, being more

8 United States–Viet Nam Plan for the Enhancement of Trade and Labour Relations. Similar consistency plans were also negotiated with Brunei and Malaysia.

preoccupied with the commercial provisions than with the TSD chapter (Sicurelli 2015). The strategy of the European Commission seemed to be to leave the labour question to US negotiators, who were bargaining hard with, and gaining substantial concessions from, the Vietnamese Government.⁹ But, as noted above, the withdrawal of the United States from the TPP alleviated this external pressure on Viet Nam. Nevertheless, in the run-up to the ratification of the EVFTA, the Vietnamese Government initiated a reform programme. The next section traces the processes in both the EU and Viet Nam that prompted the EU to adopt a strategy of de facto pre-ratification conditionality and led to progress of labour reforms in Viet Nam.

► 5.3 Pre-ratification: Explaining the unusual “success” of the EVFTA

5.3.1 The European Union: Politicization of free trade and the turn towards conditionality

While the European Commission was hesitant to emphasize labour standards in the EVFTA negotiations, this changed in the pre-ratification phase. The shift was driven both by a broader contestation and politicization of EU trade policy at the time, and by strategic action related to the EVFTA on the part of specific Members of the European Parliament (MEPs), and a few Member States, within the EU apparatus and vis-à-vis the Vietnamese Government. Importantly, moreover, the EU stepped into a vacuum left by the US withdrawal from the TPP and was also drawn into a more assertive position by pro-labour reformists in Viet Nam, who sought new external support in their long-standing struggles for labour reform, which will be discussed in the next section.

Over the past decade, EU trade policy has become increasingly contested. This trend reached a climax soon after the conclusion of the EVFTA in December 2015, during negotiations of the Transatlantic Trade and

9 Testifying to the Commission’s priorities, it never conducted a human rights impact assessment of the EVFTA but referred to the impact assessment of a previously negotiated (but never concluded) Association of Southeast Asian Nations (ASEAN) FTA, which only superficially touched upon human and labour rights (European Ombudsman 2015). Interviews in Brussels and online, November and December 2019.

Investment Partnership, a far-reaching but deferred FTA between the EU and the United States, and the Comprehensive Economic and Trade Agreement (CETA), a similar agreement with Canada. The contestation of trade policy was channelled through the two democratic pillars of the EU, the European Parliament and the Council. The European Parliament's veto threat gained credibility with a weakening of the political majority behind free trade.¹⁰ Although the widening of exclusive EU competence in trade policy reduced the influence of Member States, ambiguities in the definition of competences enabled some Member States to carve out a more assertive role, as was seen in the case of CETA being (temporarily) blocked by one Member State (Belgium). In this context of growing public dissatisfaction and social mobilization, crystallized through the European Parliament and the Council, the European Commission took steps to improve the legitimacy of FTAs (Orbie, Martens and Van den Putte 2016). The decision to make TSD chapters mandatory in October 2015 and to initiate a public debate on the approach in July 2017, which led to the 15-point action plan towards a more "assertive" TSD chapter, should be seen in this light (EC 2018; Harrison et al. 2019).¹¹

Nevertheless, the EU's turn to a more conditional approach after the EVFTA had been concluded can only be understood as the outcome of strategic action by specific MEPs, supported by a few Member States, in the vacuum left by the US withdrawal from the TPP (alongside the role of reformists in Viet Nam as discussed in the next section). The momentum of the TPP was halted when the Trump Administration pulled out in January 2017 (Tran, Bair and Werner 2017). As then director of the ILO in Viet Nam, Chang-Hee Lee, recalled, "when the United States withdrew from the TPP, most people in Hanoi thought the reform agenda had died, together with the incentive of US market access".¹² In this situation, the European Parliament stepped in – or, rather, was invited in by pro-labour reformists in Viet Nam, as argued below – pushing the boundaries of its institutional mandate by leveraging the threat of non-consent to engage in direct negotiations with Vietnamese decision-makers and pull the European Commission into a stronger bargaining position. What enabled the European Parliament to play this expanded role was the uncertainty of majorities behind the EVFTA. This was not related just to the politicization of EU trade policy, but also to the fact that a deal with communist Viet Nam raised questions from an unusually

10 Interviews with NGOs and political advisers in the European Parliament, Brussels, November 2019.

11 Interviews with trade union representative and MEP, Brussels, November 2019.

12 [Public hearing in the European Parliament Committee on International Trade \(INTA\)](#), 2 December 2019.

broad mix of MEPs, including conservatives.¹³ Although the Subcommittee on Human Rights (DROI) was also engaged, it was the involvement of the Chairperson of the Committee on International Trade (INTA), Bernd Lange of the Progressive Alliance of Socialists and Democrats, presiding over the first bottleneck in the European Parliament’s two-step consent procedure, who most decisively drew the EU towards pre-ratification conditionality. In many letters and meetings in 2017 and 2018, Lange stressed the relevance of the ongoing Labour Code revision for the EVFTA. For instance, in September 2017, speaking to the press in Hanoi, he told reporters that human and labour rights were “really at the heart of the discussion” and “unless satisfactory solutions are found, the agreement will be in troubled water” (BBC 2017). Important actions in 2018 included a letter to the Vietnamese Prime Minister in June, in which Lange requested a roadmap for the ratification of the outstanding ILO Conventions;¹⁴ a working trip to Hanoi in July, where he reiterated that concrete movement on the labour reform was needed for him “to sell the deal” (*VietnamPlus* 2018); and a public hearing in INTA in October, attended by the EU trade commissioner Cecilia Malmström and the Vietnamese chief negotiator, where several MEPs from the Socialists and Democrats (and even from the centre-right European People’s Party) joined the call for pre-ratification conditions on labour standards.¹⁵ A few weeks later, the European Parliament passed a resolution that urged Viet Nam to join all relevant UN human rights treaties and ILO Conventions (EP 2018).

Furthermore, in the EU’s Council, the influence of Member States was particularly strong given the “window of leverage” that emerged when the Court of Justice of the European Union clarified, in May 2017, the status of the EVFTA as a “mixed agreement” that needed ratification by all Member States (Russell 2018).¹⁶ This window closed in June 2018, when the European Commission convinced Viet Nam to split the EVFTA so that ratification by each Member State would not be required. Some Member States – most strongly, Spain and Belgium – used this leverage to push for concessions on labour reform. While the opposition of Spain most likely reflected the influence of interest groups who were opposed to competition from Vietnamese imports in the textile and apparel industry (Sicurelli 2015), the Belgian position was

¹³ Interview, former MEP, February 2022.

¹⁴ Interview with a political adviser, European Parliament, Brussels, November 2019.

¹⁵ [Public hearing in INTA, 20 October 2018.](#)

¹⁶ Interviews with diplomats, Brussels, November 2019, and online, December 2019.

aimed at preventing having to block another agreement, this time on the grounds that the labour terms were not acceptable.¹⁷

With the European Parliament “holding a gun to Malmström’s head over Vietnam”, as one journalist put it, and tensions in the Council, the European Commission responded (Vela 2018). Rather than resisting the pressure from the European Parliament, the Commission “hopped on board”, as described by an adviser in the European Parliament.¹⁸ In January 2018, Malmström sent a letter to Hanoi, requesting “concrete progress” on “freedom of association and the right to collective bargaining” and warning that the European Commission would “pay close attention to the reform of the Labour Code” (Vela 2018). The European Commission needed to show results, generally in the area of FTAs but more particularly with respect to its increasingly criticized TSD approach. Therefore, the EVFTA became a critical case in proving that a “revamped” TSD approach, as proposed in the 15-point plan (EC 2018), could deliver results, thereby pre-empting demands for a more sanction-based model.

Once Viet Nam agreed to the split, turning the EVFTA into an “EU-only” deal that could be voted through the Council by a qualified majority, the European Commission in October 2018 submitted the text to the Council. In June 2019 the Council endorsed the EVFTA, and five days later Malmström and the Vietnamese Minister for Industry and Trade signed the deal (Vu and Nguyen 2019). With the agreement through the first legislative stage, civil society and MEPs made a last attempt to gain further concessions. Only after Viet Nam had passed a new Labour Code (November 2019) and submitted a written roadmap (January 2020), as a reaction to the final push by the European Parliament, which included letters to the Vietnamese Government, did INTA, in January 2020, pass the EVFTA, paving the way for consent in the plenary vote the following month.¹⁹ Testifying to the lead role of the European Parliament in the EU’s turn to de facto pre-ratification conditionality, it was the INTA Chairperson Bernd Lange and the Socialists and Democrats shadow rapporteur on the EVFTA, Judith Kirton-Darling, who negotiated the content of the implementation roadmap with the Vietnamese Government.²⁰

17 Interviews with diplomats, Brussels, November 2019, and online, December 2019.

18 Interview with a political adviser, European Parliament, Brussels, November 2019, and online February 2021.

19 The 2019 Labour Code is available via the ILO’s NatLex database.

20 Interview with former MEP, online, February 2022.

5.3.2 Viet Nam: External pressure as an amplifier of internal momentum

While the EU's turn to a more conditional strategy was critical, the impact of the EVFTA can only be understood through its interaction with struggles over labour reform within Viet Nam, and strategic action by pro-labour reformists in the Vietnamese State apparatus. Reforms of the country's industrial relations framework, and the struggles that accompanied them, have been ongoing since the late 1980s. In the latest round of reforms, the labour provisions of FTAs were instrumental in reducing internal resistance to union reform (Tran, Bair and Werner 2017; Evans 2020b). In particular, the pre-ratification requirements under the consistency plan with the United States adopted in the context of the TPP negotiations provided leverage for reformists in Viet Nam, as it legitimized open debate on old "taboos" such as independent unions, shifted domestic discourses, and incentivized policy experimentation (Evans 2020a). In this context, the VGCL hesitantly accepted the calls for reform, shifting from a position of outright opposition to independent unions to one of more proactive engagement in the process; and in November 2014 the VGCL declared that it no longer opposed the labour reforms required by the TPP. This announcement enabled the Vietnamese negotiating team to move forward in the reform talks with the United States and accelerated the law-making process (Evans 2020a). In December 2015, two months after the conclusion of the TPP, the Prime Minister approved MOLISA's plan for ratification of ILO Conventions in the period 2016–20, instructing ministries to bring laws in line with ratified conventions (Viet Nam, Prime Minister 2015). The strongest signal, however, came in November 2016 with Resolution No. 06 by the Politburo, which set out the priorities for implementation of the new FTAs, including a reform of the VGCL and a revision of the legal framework to allow for independent grassroots unions (Do 2017b; Viet Nam, Politburo 2016). A new direction was also evident in the first draft Labour Code released by MOLISA in December 2016 (Tran, Bair and Werner 2017). The US pull-out from the TPP in January 2017, however, stalled the process: in March 2017 a much weaker second draft law was issued, and in May the Labour Code revision was removed from the law-making agenda of the National Assembly (Nhân Dân 2017). As a Vietnamese labour expert recalled, "everyone here was so depressed – there was nothing going on, after two years where we had been working like crazy, pushing and hoping and everything".²¹

In this situation, different actors in the VGCL and MOLISA were actively seeking new external support to boost their reform efforts, and from early

²¹ Interview, CSO representative, online, December 2020.

2017 onwards they turned their attention to the EU. A political adviser to INTA recalled how, during a trip in January 2017, a Vietnamese official proposed the idea that the EU could take up the role of “outside catalyst of change”.²² An official from DG Trade described how, later that year, the EU was asked by some government officials to help garner domestic support,²³ while a high-ranking EU diplomat remembered how “we were now left alone with a lot of requests from all sides and felt we had a bigger responsibility than before”.²⁴ The converging interests of stakeholders in the EU and responsible officials on the Vietnamese side led to new momentum and progress. The chronology of events and the interviews conducted suggest that the EU’s newfound assertiveness was crucial in reinvigorating the labour reforms. The turning point was the September 2017 visit by Bernd Lange. Two weeks previously, MOLISA had delivered an official report to the National Assembly, outlining its plan for the Labour Code revision and a new roadmap for ratification of the three outstanding ILO Conventions; a document that, according to an independent evaluation for the ILO, “restart[ed] the process with renewed and stronger commitment” (ILO 2019, 10). In December 2017 MOLISA formally reopened the rewriting of the Labour Code with the observation that the existing law was incompatible with ILO Conventions (Viet Nam, MOLISA 2017), and the following summer, the law revision was put back on the law-making agenda of the National Assembly (Nhân Dân 2018). As the then ILO director in Viet Nam, Chang-Hee Lee, later explained at a hearing in the European Parliament, pressure from the EU “boosted the voice of champions of reform in the system, who have always recognized the freedom of association and collective bargaining for effective labour market functioning in Viet Nam. The EVFTA enabled them to gain influence inside the system and make the progress we witnessed this year, in 2019”.²⁵ This conclusion is supported by informants in Viet Nam, who explained that the labour reforms resumed once the EU – led by the INTA Chairperson and encouraged by reformist actors in Viet Nam – took the stage, using the risk of non-consent to negotiate with the Vietnamese Government.²⁶

While the prior groundwork carried out by the United States was critical to the impact of the EVFTA on the labour reform process, as were the strategic efforts made by reformists in Viet Nam to “invite” the EU to take up the torch

22 Interview, political adviser, European Parliament, Brussels, November 2019, and online, February 2022.

23 Interview, DG Trade, Brussels, November 2019.

24 Interview, former diplomat, phone, December 2019.

25 [Public hearing in INTA](#), 2 December 2019.

26 Interview with ILO staff, online, December 2020 and May 2023; interviews with Vietnamese labour expert and NGO representative, online, December 2020.

after the United States had turned its back on the TPP, three additional factors were important, as they helped to bring more conservative actors into the reform coalition. First, at the time, a top priority of the Vietnamese political leadership was to revive the economy, which had been in an economic slump since 2008. This objective gained particular importance because of the waning loyalty to socialist ideas and the shift to “performance legitimacy”, based on continuous improvements in living standards, as the key source of legitimacy for the CPV (Hiep 2012). In this context, a growing consensus emerged around a state project built on deepening export orientation and integration into global production networks – a development strategy in which FTAs are critical elements. Second, the growing assertiveness of China, including aggressions in the South China Sea, which culminated in mid-2014 in a six-week naval standoff and anti-Chinese protests across Viet Nam (Thayer 2017), exposed the need to diversify foreign relations. The new FTAs, in this respect, are critical to the CPV’s plans to reduce trade dependence on China, to achieve a more balanced position between strategic partners, and to avoid being drawn into geopolitical and geoeconomic rivalries in the context of growing multipolarity (Hoang and García 2022). Third, employers, who were frustrated with the 2012 Labour Code, increasingly threw their weight behind union reform.²⁷ The worker representation provisions of the previous law referred non-unionized enterprises to negotiate with upper-level branches of the VGCL – which was perceived as a heavy administrative burden – and had proved incapable of containing strikes. According to the interviews conducted, employers were among the most enthusiastic supporters of reform; and the idea of independent unions was warmly welcomed by the Viet Nam Chamber of Commerce and Industry as a way of circumventing the state-backed union.

These factors paved the way for “a new reform consensus”, convincing many conservatives that the rewards of joining the new FTAs – in commercial, geopolitical, geoeconomic and regime-stability terms – outweighed the costs (Evans 2020a). The momentum for a new Labour Code also sprang from other sources, including long-standing financial problems of the pension system.²⁸ In addition to the new workers’ representative organizations, the 2019 Labour Code extended legal protections to workers in the informal economy, provided better protection against forced labour, and raised retirement ages, among other things.²⁹ Without depreciating these domestic drivers, however, the chapter argues that union reform would not have happened when it did, and the way it did, without external pressure from the EU. Without

27 Interview, legal consultant, Hanoi, May 2022.

28 Interview with ILO staff, online, December 2020.

29 [ILO in Viet Nam: New Industrial Relations Framework](#).

fundamentally changing the internal dynamics, the EU's stepping up of pre-ratification conditions tilted the balance in favour of the reformist faction – and the EVFTA should, therefore, be seen more as a catalyst of change than as a root cause, as has also been argued of the TPP (Do 2017b; Chan 2020).

► 5.4 Post-ratification: Implementation challenges under sustained EU pressure

5.4.1 Viet Nam: Contested implementation

In Viet Nam the implementation of both the DAG and the pre-ratification commitments has been a delayed and contested process. According to the Government, the delays relate to the COVID-19 pandemic.³⁰ But the entry into force of the EVFTA also coincided with preparations for the 13th Congress of the Communist Party of Viet Nam in January 2021 – the highest political event in the country, which takes place every five years – and was followed by elections for the National Assembly in May 2021, both of which stalled controversial initiatives in the Government.³¹ In this context, the analysis shows that the labour reforms have, in the post-ratification phase, been contested by conservative forces in the Party State, who are cautious of potential political spillovers.

That the CPV considers civil society as an ideological battlefield was evident in the establishment of the DAG, which was assigned to the Ministry of Industry and Trade (MoIT).³² In October 2020 MoIT issued a call for expression of interest, and a few days later the International Cooperation Department of MOLISA, the EVFTA focal point for labour, held an information-sharing meeting with local and international CSOs. But few CSOs proved to be interested. By June 2021 only seven organizations had applied for the DAG, three of which were international CSOs and thus ineligible for membership. When the DAG was finally set up in August 2021, it counted just three

30 Interview, former MEP, online, February 2022.

31 Interview, Vietnamese labour expert, Hanoi, May 2022.

32 Prime Minister Decision No. 2091/QĐ-BCT.

members: the Vietnam Chamber of Commerce and Industry and the Institute for Workers and Trade Unions (a think-tank under the VGCL), both subordinated to the CPV, and the Centre for Sustainable Rural Development, the only independent Vietnamese CSO. In January 2022 MoIT announced that three additional members had joined the DAG, including two CSOs in the fisheries sector and an environmental CSO (VietnamPlus 2022); and two months later, a seventh member – the Vietnam Elevator Association – was added. Despite this subsequent enlargement, however, the Vietnamese DAG remains far from an independent monitoring body: two of the organizations, including the one chairing the DAG, are closely linked to the CPV, and labour is strongly under-represented with just a single member (the VGCL). Furthermore, the DAG Secretariat, tasked with preparing meetings, has been assigned to MoIT; this is unusual, as it is generally assigned to CSOs, and in effect makes it a “government-run DAG”, as one informant described it.³³

According to the interviews conducted, several CSOs were hesitant to apply for DAG membership, worrying that it could jeopardize their work by subjecting them to bureaucratic obstacles. These concerns initially kept a leading labour CSO from seeking DAG membership; and although it did ultimately apply, it was not selected, without further explanation. In other cases, authorities intervened more explicitly. In July 2021, on charges of tax evasion, security police in Hanoi arrested two prominent activists and board members of the Network of Vietnamese NGOs on EVFTA (VNNGO-EVFTA), a group of seven environmental and development CSOs that had, reportedly, all applied for DAG membership but received no reply (FIDH 2021).³⁴ The interviews conducted suggest that the composition of the DAG was subject to intense debates at inter-ministerial meetings, and that the Ministry of Public Security, in particular – and to a lesser extent, the VGCL – played a leading role in weeding out more critical CSOs, while MOLISA, MoIT and the Ministry of Natural Resources and Energy pulled in the other direction. Ultimately – under pressure from the EU, as discussed below – the various state agencies compromised with the inclusion of some independent but mainly apolitical CSOs in the DAG.³⁵

Concerning the independent workers' representative organizations in the new Labour Code, implementation has been similarly contested. In late 2020 MOLISA promulgated implementing decrees for most elements of the new law; but the decree laying out the administrative procedures for the

33 Interview, former MEP, February 2022, online.

34 In January 2022 the two activists were sentenced to four and five years in prison (HRW 2022).

35 Interviews with former MEP, online, February 2022, and Vietnamese labour expert and NGO representatives, Hanoi, May 2023.

creation, registration, authorization and financial management of workers' representative organizations was delayed and remains unpublished as of May 2023. While MOLISA presented a draft decree that was already ready in September 2019 (Ha 2022), objections from the Ministry of Public Security delayed its publication, on the grounds that workers' representative organizations would be used for political objectives by "hostile" forces seeking to destabilize the social order.³⁶ As at mid-2023, a draft decree has been submitted by MOLISA but is awaiting approval.³⁷ Another contentious issue is the drafting of a new trade union law, for which the VGCL is the responsible agency. In the first two drafts, the VGCL proposed that the revised law should continue to cover only unions under its umbrella, while the new workers' representative organizations would be regulated by the Labour Code.³⁸ If this approach is maintained, they would be restricted from federating beyond enterprises, engaging in collective bargaining at higher levels, and participating in national policy debates. Moreover, the workers' representative organizations will have to rely on voluntary membership fees, with the 2 per cent union tax on employers being pocketed by the VGCL.³⁹ Although the 2019 Labour Code states that both types of unions "have equal rights and obligations" (Art. 170.3), it seems unlikely that the independent workers' representative organizations, if implemented, will compete on an equal footing with the VGCL, at least for the foreseeable future.

These challenges show that the way labour clauses are implemented and play out in practice – just as in their negotiation and ratification – rests on evolving State–society relations. In seeking to understand the potentials and limitations of DAGs and workers' representative organizations in the Vietnamese context, therefore, it is important to appreciate that they are being implemented in a climate characterized by the shrinking of an already tightly regulated civic space. With the conservative leadership emerging from the 12th Congress of the CPV in 2016 (and no major reshuffling taking place at the 13th Congress in January 2021), the Party State has moved to more decisively "manage, discipline, and punish forms of association and public expression deemed threatening to or diverging from the Party" (London 2019, 145; Thayer 2022). Efforts to control the composition of the DAG, impede the implementation of the workers' representative organizations, and keep their room for manoeuvre within strict boundaries demonstrate that containing the emergence of political counter-movements is a top

36 Interview, Vietnamese labour expert, Hanoi, May 2022.

37 Interview, ILO staff, online, June 2023.

38 Interview, Vietnamese labour expert, Hanoi, May 2022.

39 Interview, Vietnamese labour expert, Hanoi, May 2022.

priority for conservatives in the Party State. This context underlines how important external pressure was for reformist forces in Viet Nam in pushing ahead the reform process. But it also suggests that in the post-ratification phase, where the EU no longer holds a veto on the EVFTA, the Vietnamese leadership is re-evaluating the situation, seeking formal compliance at the cost of minimal conditions. This does not mean that the freedom of association reforms will not be implemented, but it suggests that progress will be slow and incremental, and that implementation of the TSD provisions will critically depend on the EU, and whether local reformists can activate EU pressure in the post-ratification phase.

5.4.2 EU: Sustained pressure, reduced leverage

In the post-ratification phase, the EU has continued along the path towards a more conditional approach, but its teeth are blunted now that the ratification leverage is gone. Although implementation of the EVFTA draws less attention from the European Parliament than in the pre-ratification phase, discussions have taken place in a monitoring group established under INTA, and a group of particularly left-leaning MEPs remains highly active, frequently sending letters to both the European Commission and Vietnamese authorities, calling for a suspension of the EVFTA.⁴⁰ The office of INTA Chairperson Bernd Lange has also remained involved and has on several occasions posed questions to the Vietnamese Government.⁴¹ Another unprecedented avenue through which the European Parliament monitors implementation is a joint parliamentary monitoring group established in cooperation with the National Assembly of Viet Nam, in which Viet Nam is engaged “at very high levels”.⁴² Since the ratification of the EVFTA, the European Parliament has adopted resolutions calling on Viet Nam to “recognise independent labour unions” and “refrain from any undue interference in the composition and functioning” of the DAG (EP 2020, 2021).

Likewise, the EU DAG has made several interventions with respect to both the European Commission and the Vietnamese Government. The EU DAG was launched in January 2021, with 21 member organizations, and had, as of May 2023, met six times.⁴³ Chaired by former MEP Judith Kirton-Darling,

40 For instance, in September 2020, a group of 64 MEPs wrote a [letter to EU High Representative for Foreign Affairs Josep Borell and Trade Commissioner Valdis Dombrovskis](#) on the deteriorating human rights situation in Viet Nam. In July 2021 the monitoring group sent a letter to the speaker of the National Assembly of Viet Nam.

41 Interview, political adviser, European Parliament, February 2022.

42 Interview, representative of DG Trade, online, February 2022.

43 [EU-Vietnam DAG: related events](#).

who was deeply involved in negotiating the roadmap ahead of ratification, the EU DAG has set four key priorities, including implementation of the Labour Code, civil society space, due diligence in global supply chains and sustainable food systems.⁴⁴ The EU DAG issued statements urging the “Vietnamese authorities to swiftly establish a counterpart for the EU DAG”⁴⁵ and challenging the limited number of participants in the Vietnamese DAG and its lack of independence.⁴⁶ These messages were reiterated in “quite diplomatic but quite direct” terms at the first DAG-to-DAG meeting, held in November 2021 in Hanoi in the context of the meeting of the Committee on Trade and Sustainable Development, and at the second meeting in October 2022.⁴⁷

The European Commission engages the Vietnamese Government through multiple channels, described by an informant as a “complex and very intense system of exchanges”.⁴⁸ In addition to regular technical-level meetings with MoIT, the European Commission exerts pressure via the intergovernmental dialogue mechanisms (Trade Committee and Committee on Trade and Sustainable Development). Moreover, the EU Delegation in Hanoi is in frequent and more informal contact with MOLISA and other ministries, as well as with the ILO office in Viet Nam.⁴⁹ At the first Trade Committee meeting in July 2021, EU Commissioner for Trade Valdis Dombrovskis “regretted” the failure of Viet Nam to establish the DAG and urged that the process “be sped up and be concluded before the end of July”, warning that “otherwise it would need to be addressed at a higher level”.⁵⁰ Similarly, at both the first and second meetings of the Committee on Trade and Sustainable Development, the European Commission asked for enactment of the missing decree on workers’ representative organizations.⁵¹ This level of involvement by the European Commission in the implementation of a TSD chapter is unprecedented. “What has changed from other agreements”, a political adviser in the European Parliament observed, “is that TSD is now a part of every discussion they [European Commission representatives] have with the

44 Interview, former MEP, online, February 2022.

45 [Statement from the EU DAG](#), 1 June 2021.

46 [Letter from the EU DAG](#), 15 September 2021.

47 Interview, former MEP, online, February 2022.

48 Interview, representative of DG Trade, online, February 2022.

49 In addition, there are parallel political exchanges at diplomatic level.

50 [Minutes of the first Trade Committee meeting](#), 19 July 2021.

51 [Minutes of the first and second meetings of the Committee on Trade and Sustainable Development](#), November 2021 and October 2022.

Vietnamese.”⁵² Another novelty is the degree of internal coordination in the EU. One informant in the EU described how the different institutions “work in concert, which enables all of them to have a greater impact than otherwise”.⁵³

In the context of the ascendance of conservative forces in the Vietnamese Party State and the shrinking civic space, the prospects of stronger enforcement by the EU can be critical leverage points in internal debates for reformists in MOLISA and the VGCL. According to one informant, reformists actively use the EU’s dispute with the Republic of Korea as a warning to push ahead with implementation.⁵⁴ In terms of concrete impacts, the interviews conducted suggest that external pressure from the EU had an impact on setting up and enlarging the Vietnamese DAG. On the missing decree on workers’ representative organizations, however, EU pressure has been less effective, as it has on the remaining ILO core Convention, No. 87 on Freedom of Association and Protection of the Right to Organise. The loss of pre-ratification leverage puts the European Parliament and Member States in a less advantageous bargaining position vis-à-vis both the European Commission and the Vietnamese State. One informant in the European Parliament argued that “in the implementation phase, we have no power anymore – it is vanished altogether”, while another noted that “we no longer have a big stick that we can wave around”.⁵⁵

There are also limits to how far the European Commission is willing to go. First, the strategic importance of Viet Nam in the current geopolitical conjuncture and in EU firms’ China Plus One strategies may engender fears of pushing Viet Nam towards China. That the commercial provisions of the EVFTA have priority for the European Commission is also indicated by the financial support provided by the EU under the EVFTA. While the European Commission granted €588,000 to enhance the capacity of labour-related CSOs in the period 2017–21,⁵⁶ businesses have received long-term support through a large umbrella project managed by the EU Delegation in Viet Nam and MoIT, called EU-MUTRAP (EU Multilateral Trade Assistance Project), which has run in four phases since 1998, including Phase III 2008–12 (€10 million) and Phase IV 2013–17 (€16 million). Second, the European Commission is preoccupied with other burning issues in the region, including the military coup in Myanmar and the partial withdrawal of Cambodia’s trade

52 Interview, political adviser, European Parliament, February 2022.

53 Interview, former MEP, online, February 2022.

54 Interview, Vietnamese labour expert, Hanoi, May 2022.

55 Interviews with political advisers, European Parliament, online, February and March 2022.

56 Under the title “Empowering Civil Society and Workers” (ECOW).

preferences under the Everything but Arms (EBA) scheme as a result of the deteriorating human rights situation. Third, and perhaps most critically, the European Commission is facing pressure pulling in different directions: while important segments of the European Parliament, Member States and civil society call for a tougher stance on the trade–labour nexus, the European business community tends to oppose the use of trade policy for non-trade objectives. This was evident in the public consultation on the review of the TSD approach, between July and November 2021, where most contributors from the business community favoured a cooperation-based approach, “warn[ing] against the use of trade policy as a means of enforcing sustainability objectives in partner countries” (LSE Consulting 2021, 5).

► 5.5 The role of the ILO and translocal actors

In the pre-ratification phase of the EVFTA, interaction between the EU and the Vietnamese Government was facilitated by actors with translocal characteristics, having on-the-ground operations in Viet Nam and enjoying trusted relations on both sides. Watching the reform process stall following the US withdrawal from the TPP, these actors were instrumental in encouraging the EU to fill the vacuum, activating their contacts in Brussels and expediting access to key decision-makers in Viet Nam. These actors coordinated their efforts and were in contact on a weekly – and, in the most intensive phases, daily – basis. Having “a foot in both camps”, they were described in the interviews as “brokers”, making the parties “echo and resonate” and “translating expectations and interpreting realities”.⁵⁷

Two such actors were the Friedrich Ebert Stiftung (FES) and the EU Delegation in Hanoi. As one of the first international NGOs to enter Viet Nam in 1990, the FES has a long-standing relationship with the VGCL. As part of its work with a range of partners in Viet Nam, the FES has run various programmes with the VGCL, including training courses in labour law and legal services, and has been involved in setting up labour service centres across Viet Nam (Chan 2020). The FES has also organized study trips to the Republic of Korea and the EU for MOLISA, the VGCL and Vietnamese CSOs

⁵⁷ Interviews with CSO representative, online, June 2021; diplomat, online, December 2019; ILO staff, online, December 2019 and June 2023.

(Thu and Schweisshelm 2020). According to the interviews conducted, the FES played a leading role by putting staff from INTA Chairperson Bernd Lange's office in touch with officials from the VGCL and MOLISA at a conference in Hanoi in January 2017.⁵⁸ In the EU Delegation, similarly, some diplomats early on anticipated the risk that the EVFTA could be vetoed by the European Parliament or the Council. They also worried that ratification would put an end to the EU's leverage and that the European Commission would lose sight of implementation. For these reasons, some EU diplomats advocated a more assertive strategy and organized parliamentary visits to Viet Nam, seeking to "turn the [European] Parliament into some sort of Congress" by actively using the veto risk as a bargaining instrument.⁵⁹

Another critical actor was the ILO. With an office in Viet Nam since 2003, the ILO had been deeply involved in labour reforms and provided technical assistance to the Vietnamese authorities and social partners on building a legal-institutional framework in line with international labour standards, recently with a focus on the Fundamental Principles and Rights at Work, which include Conventions 87 and 98.⁶⁰ The ILO had also been collaborating with the VGCL, supporting collective bargaining training sessions, establishing contacts with global union federations, and organizing conferences and seminars (Chan 2020). When the United States pulled out of the TPP, the interviews suggest that the ILO office in Hanoi was, behind the scenes, looking for a substitute external driver and shifted attention to the EU and the EVFTA, which was perceived as a "golden opportunity" in this context.⁶¹ To support these efforts, the ILO office opened regular communication channels with the EU Delegation, especially the Ambassador, whom they met regularly to understand the EU's requirements and discuss how important issues could be resolved. Facilitating access to top decision-makers, the ILO co-organized the high-level meeting in September 2017 where Bernd Lange met leaders from the National Assembly, MOLISA, the Viet Nam Chamber of Commerce and Industry, and the VGCL (ILO 2019). Similarly, the ILO helped the Vietnamese Government, policymakers and social partners to understand the requirements of the TSD chapter.⁶² Meanwhile, ILO legal specialists worked closely with MOLISA in devising a plan for the reform process and aligning it with the ratification process of the EVFTA, and they provided substantial assistance to MOLISA's legal department in drafting

58 Interview with political adviser, European Parliament, online, December 2020.

59 Interviews with diplomat, Brussels, November 2019.

60 [ILO in Viet Nam: New Industrial Relations Framework](#).

61 Interviews with NGO representative, Brussels, November 2019; ILO staff, online, December 2020; and ILO staff online, May 2023.

62 Interview with ILO staff, online, May 2023.

and revising legal documents, including the dossiers for the new Labour Code and the ratification of Conventions 98 and 105 (ILO 2019). In addition, the ILO worked with the social partners, organizing tripartite consultations and an open dialogue forum for all engaged parties to discuss the labour provisions of the EVFTA.⁶³

These critical functions of the ILO were supported by strong financial and human resources at the time. Under a large umbrella programme called “Developing a New Industrial Relations Framework in respect of the ILO Declaration on Fundamental Principles and Rights at Work” (NIRF), four different donors funded ILO-administered projects providing technical assistance on labour reform, including the United States (US\$5.1 million, 2016–20), Japan (\$2.2 million, 2016–20), the EU (\$424,000, 2016–18) and Canada (US\$297,000, 2016–20).⁶⁴ Combined with a large office network, availability of technical resources, and proximity to the ILO’s Decent Work Team and the Regional Office in Bangkok, these resources enabled the ILO in Hanoi to “go in with full force”, becoming a crucial facilitator. More broadly, the involvement of the ILO had an important legitimating function. As Evans (2020b) argues, Vietnamese leaders would have been more hesitant to accept demands coming too directly from the EU (or the United States); and reference to the ILO fundamental Conventions as preconditions for deeper global integration through FTAs was critical to “selling” the reforms internally.

In the post-ratification phase, all three actors have remained active, albeit to different degrees. Like many other CSOs in Viet Nam, the FES has seen its room for manoeuvre shrink and is, in the present situation, cautious not to take positions that may be perceived as too political.⁶⁵ The EU Delegation, being a key element in the European Commission’s communication with the Vietnamese Government, is still engaged and in frequent contact with MOLISA and other ministries. And the ILO remains heavily involved with technical assistance to MOLISA and the social partners through several donor-funded projects. In 2019 the EU launched a large ILO project, “Trade for Decent Work”, which covers 11 countries, including US\$1.8 million (2019–23) to support the effective implementation of the TSD chapter in Viet Nam;⁶⁶ and the United States extended its part of the NIRF programme with an additional \$6.5 million for 2021–26.⁶⁷ In 2021, furthermore, the ILO signed a memorandum of understanding with MOLISA to support ratification and

63 Interview with ILO staff, online, May 2023.

64 Data obtained from the [ILO Development Cooperation Dashboard](#), 15 June 2023.

65 Interview with NGO representative, online, June 2023.

66 [ILO Viet Nam 2022 Second-Half Update on EU-Funded Projects](#), 17 May 2023.

67 [ILO Development Cooperation Dashboard](#).

implementation of international labour standards in the period 2021–30, including Convention 87.⁶⁸

► 5.6 Conclusions

This chapter has assessed the impact of the TSD chapter of the EVFTA on labour reform in Viet Nam, examining both how the EU came to play the role of external catalyst for labour reform in the pre-ratification phase and how implementation has proceeded in Viet Nam. The analysis of the pre-ratification phase shows that the EVFTA did indeed play a crucial role as an external reform catalyst. In the vacuum left by the US exit from the TPP, specific MEPs, and some Member States, used their veto powers to negotiate with Vietnamese decision-makers and to pull the European Commission into an exceptionally assertive position. The unusual pre-ratification impact, however, can only be understood by considering the ways in which the EVFTA interacted with long-standing struggles over labour reform within Viet Nam, where external pressure from the EU was leveraged by pro-labour reformists who used it strategically to move forward a reform process that had been under way for years. In this process, a key role was played by the ILO and other actors with translocal characteristics, such as the EU’s diplomatic delegation and the FES, which connected reformists on the two sides, brokered access to decision-makers and helped to build mutual trust. In this chapter’s assessment, therefore, the “success” of the EVFTA pre-ratification was facilitated by several enabling factors: (i) the prior groundwork of US negotiators, who reduced internal resistance to labour reform; (ii) politicization of free trade in the EU, which weakened majorities behind FTAs, making a veto of the EVFTA a credible risk and thus boosting the bargaining power and strategic role of the European Parliament and individual Member States; (iii) the existence of allies in Viet Nam that not only promoted reforms internally but encouraged the EU to take up the role of external catalyst; (iv) the perceived importance of the EVFTA by conservatives in the Vietnamese leadership, in terms of the domestic economy and geopolitical balancing, which convinced conservative forces to accept labour reforms as a necessary cost for unleashing greater economic benefits; and (v) the existence of translocal actors, embedded in Viet Nam and with links to EU institutions,

68 ILO press release, 20 May 2021.

that allowed and facilitated interaction between pro-labour reformers in Viet Nam and the EU.

In the post-ratification phase, however, the implementation of the TSD commitments has been challenging. The most controversial aspects – the DAG and the independent workers' representative organizations – have been delayed and contested by conservative forces in the Party State, despite continued pressure from the EU, not least from the European Commission, which has been more engaged than in previous FTAs concluded by the EU. Given the ascendance of conservative forces and a shrinking civic space in Viet Nam, more assertive enforcement by the EU could be a critical leverage point for pro-labour reformists in internal debates in the country. But the EU's teeth have been blunted, as their pre-ratification leverage has dissipated with respect to both the EU vis-à-vis the Vietnamese State, and to the European Parliament internally in the EU apparatus. Nevertheless, the TSD chapter has still had some (potentially) positive impacts post-ratification: EU pressure was instrumental in the formation and successive enlargements of the DAG, which is significant in the context of Viet Nam's State-society relations, while the most important indirect impact may be the pressure on the VGCL to reform, which has led to initiatives to increase membership and become more representative of workers.

Thus, in the post-ratification phase, implementation of the TSD chapter has been seen to be lagging, as a consequence both of the loss of pre-ratification leverage by the EU and of the more restrictive political climate following the 13th Congress of the CPV. Nevertheless, although the CPV's commitment to freedom of association is reluctant and ambivalent, these developments do not mean that the reforms will be abandoned; the decree on the workers' representative organizations is under preparation, and the dossier for the ratification of ILO Convention No. 87 is expected to be presented to the National Assembly, probably in 2024.⁶⁹ What is beyond doubt, however, is that the CPV is determined to control the process, and that any progress will be incremental and cautious. For the Vietnamese leadership, preventing the emergence of counter-hegemonic movements continues to be an overriding priority; and in this context, it is an open question how much room for manoeuvre independent unions and CSOs will be allowed to have, even if the Vietnamese Government ensures formal compliance with the TSD chapter of the EVFTA.

The above analysis shows that the impact of the EVFTA was conditional upon specific conjunctures, in both Viet Nam and the EU. As such, it does not easily lend itself to replication. Nevertheless, this case study does offer

69 Interview, ILO staff, online, June 2023.

more general lessons on the effectiveness of labour provisions, highlighting the need to make strategic use of pre-ratification leverage, the importance of coordination among the EU institutions, the need to ally with internal pro-labour reformists in partner countries, and the importance of translocal actors to broker interaction, which shows the potential of complementing labour provisions with long-term support for capacity-building of trade unions and CSOs and technical assistance via the ILO. But equally important, the case of the EVFTA reveals that stronger instruments may be needed for the EU to ensure that partner countries stay on the reform path in the post-ratification phase. The experiences from Viet Nam have, according to the interviews conducted, informed the ongoing revision of the TSD approach. The new TSD model proposed by the European Commission in June 2022 centres on six priorities, including stepping up engagement with trade partners, identifying tailored implementation priorities, developing a comprehensive approach that pulls together various EU agencies, reinforcing civil society inclusion, and – crucially – having more assertive monitoring and enforcement, including through trade sanctions as a last resort.⁷⁰ These revisions, now under negotiation in the European Parliament, are a step in the direction of a more assertive approach. But it remains to be seen how far the European Commission is willing to go on labour provisions in future FTAs. Another critical question is whether the European Parliament is ready to consolidate its expanded role by placing demands on partner countries as a condition of its consent to FTAs. Even in that case, however, this analysis shows that conditions in Viet Nam were particularly conducive to EU intervention. The complementarities found in this case between TSD provisions, the priorities and strategies of EU actors, and domestic labour struggles may be a rare occurrence.

⁷⁰ The Communication by the Commission is available in the Commission's [CIRCABC resource centre](#).

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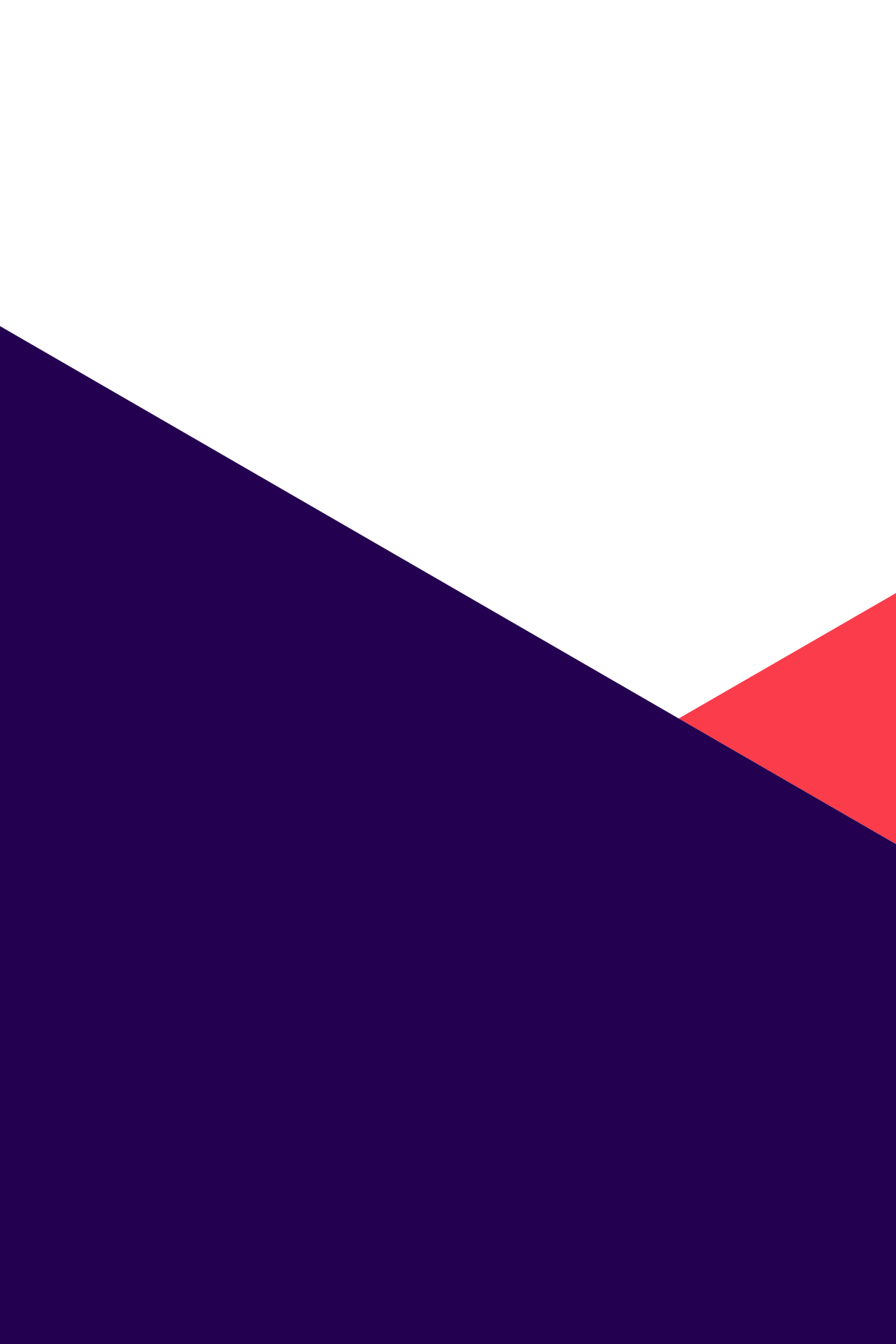
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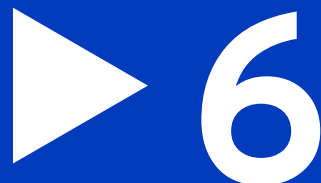


Can the African Continental Free Trade Area promote the implementation of Sustainable Development Goal 8?

Decent work and economic growth

Jamie MacLeod*

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► Introduction

The African Continental Free Trade Area (AfCFTA) is one of the most ambitious trade initiatives in the world today. Envisaged by the African Union as a flagship project of its Agenda 2063: The Africa We Want, the AfCFTA covers 1.4 billion people (UNDESA 2022) across a market worth almost US\$3 trillion annually (IMF 2022), and comprises 54 of the 55 Member States of the African Union (Tralac 2023).

The Agreement Establishing the African Continental Free Trade Area (hereafter referred to as the “AfCFTA Agreement”) is a broad trade agreement, covering trade in goods and services alongside substantial “behind-the-border” regulatory and policy issues, including competition policy, intellectual property rights and investment. This ambition in scope allows it to contribute to several of the United Nations Sustainable Development Goals (SDGs). The focus of this chapter is Goal 8, which is to “[p]romote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”.

It is no surprise that the AfCFTA, as an economic initiative, is an important vehicle for contributing to many aspects of achieving SDG 8. Its objectives, laid down in Article 3 of the AfCFTA Agreement, include structural transformation, enhanced competitiveness, industrial development and diversification, each of which contributes directly to the implementation of SDG 8. However, the agreement goes further by including gender equality as a general objective and by recognizing the importance of human rights in its preamble.

Accordingly, the legal and institutional content of the AfCFTA, along with many of its accompanying measures, ties in with and addresses many of the targets under SDG 8 either directly or indirectly. However, there are aspects of SDG 8 with regard to which the AfCFTA could be improved. This includes several areas specifically related to labour rights and the environment.

The structure of this chapter is as follows. Section 6.1 summarizes the expected impact of the AfCFTA on labour markets in African countries, including its specific impact on women and young people. Section 6.2 evaluates the legal and institutional framework of the AfCFTA, highlighting its linkages to SDG 8. Section 6.3 flags potential areas where the contribution of the AfCFTA to the implementation of SDG 8 could be strengthened. The analysis seeks to be pragmatic and practical; an effort is made to identify mechanisms for improving the AfCFTA, including through future negotiations on, revisions of and addenda to the AfCFTA Agreement, and through accompanying measures that can enable it to better contribute to achieving SDG 8. Section 6.4 concludes.

► 6.1 Impact of the AfCFTA on labour markets

The AfCFTA is fundamentally a trade-liberalizing tool. One might therefore expect to get a sense of how the AfCFTA could affect labour markets in African countries by looking at the large existing body of literature on the effect of trade liberalization on labour markets in general. Unfortunately, the evidence in that respect is rather inconclusive.

There is mixed evidence, for instance, as to whether trade liberalization leads to net job creation, causes structural transformation, increases inequality, raises real wages, erodes the provision of social security, undermines freedom of association and collective bargaining, and/or reduces the prevalence of informality (ILO 2021). One conclusion for which the evidence is possibly a little more concrete is that trade liberalization tends to improve labour productivity (Melitz and Trefler 2012; ILO 2015), in particular in lower-income countries (ILO 2017a).

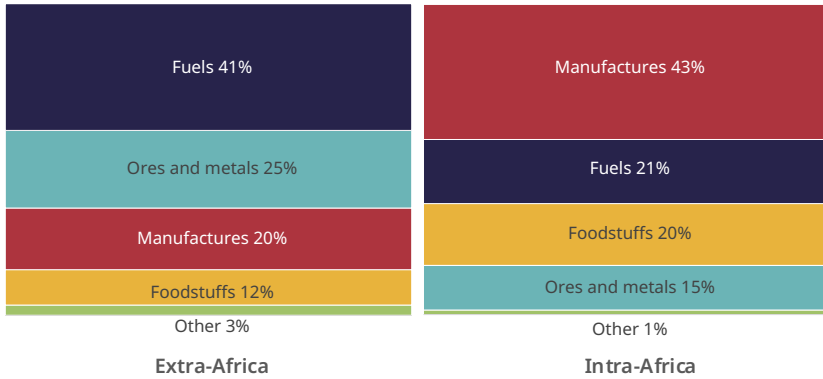
In many respects, the answer to the question of how trade liberalization affects labour market outcomes is therefore, somewhat unsatisfyingly, “it depends”. In particular, this effect depends on the shape, intensity and pace of liberalization, the institutions that were already in place before liberalization, the complementary measures implemented alongside liberalization, the structure of the economy undergoing trade opening, and the type of trade being liberalized.

The type of trade liberalized by the AfCFTA differs from Africa’s trade with the rest of the world. As shown in figure 6.1, the latter is highly concentrated in fuels, ores and metals. These tend to be relatively more capital- than labour-intensive and create fewer jobs (Fox et al. 2013; Madhani 2019). By comparison, intra-African trade includes more manufactures and foodstuffs. This trade would tend to be relatively more labour-intensive and comprise more sophisticated goods: an estimated 31 per cent of African exports within the continent are considered to be “technologically advanced” by the ITC and UNCTAD (2021), compared with just 15 per cent of African exports leaving the continent.

These characteristics of intra-African trade have implications for labour markets. One can reasonably expect the AfCFTA to benefit labour-intensive sectors more than capital-intensive ones, and in particular skilled labour more than unskilled workers. One may also expect more of the gains from trade openness to accrue to the manufacturing sector and to the workers

engaged in that sector, and relatively fewer gains to accrue to sectors related to ores and metals.

► **Figure 6.1 Extra-African (panel A) and intra-African (panel B) trade composition, 2017–21**



Note: “Foodstuffs” comprise the commodities in sections 0, 1 and 4 and division 22 of the Standard International Trade Classification (SITC), Rev. 4; “Ores and metals” the commodities in SITC, Rev. 4, divisions 27, 28 and 68 and groups 667 and 971; “Manufactures” the commodities in SITC, Rev. 4, sections 5–8 less group 667 and division 68; and “Fuels” the commodities in SITC, Rev. 4, section 3.

Source: Author’s calculations based on UNCTAD (n.d.).

A growing number of studies have sought to understand the expected impacts of the AfCFTA through economic modelling. Appendix I offers a summary of the assumptions, scenarios and overall macroeconomic and specific labour market outcomes presented in the most prominent studies in recent years.

The results are quite heterogeneous. The impact of the AfCFTA is forecast to increase Africa’s gross domestic product (GDP) by anywhere between 0.1 and 9 per cent and intraAfrican exports by between 14.6 and 132.7 per cent (see Appendix I). These substantial differences reflect the wide range of the scenarios and assumptions deployed by the authors. To briefly summarize the key differences, tariff reductions alone are forecast to have only a limited impact in most models, and so much of the range in the projections depends on the boldness of the modellers’ assumptions about how much the AfCFTA

will reduce non-tariff barriers (NTBs), reduce trade costs, improve trade facilitation, or result in “deep” integration.

Some commonalities emerge from these studies. For example, the AfCFTA is expected to particularly benefit the manufacturing sector. This is one of the most consistent results across all models and is in line with what one would expect given the large share of manufactures in intra-African trade (see again figure 6.1 above). It also has important implications for the reskilling of workers and worker mobility. In the most recent World Bank estimates, the growth of the manufacturing sector is the main cause of between 2.25 and 2.45 per cent of labour shifting between sectors (Echandi, Maliszewska and Steenbergen 2022).

A second common result is that tariff revenues, which are needed to fund the provision of social security including unemployment benefits and social safety nets, would be lost as a result of tariff cuts, although that loss can be theoretically offset with economic growth if non-tariff barriers and trade costs are adequately addressed (Echandi, Maliszewska and Steenbergen 2022; AfDB 2019). However, some of the studies acknowledge that these assumptions about improvements to non-tariff barriers are “long-run objectives that are not costless” (Chauvin, Ramos and Porto 2016) and represent “probably an upper bound” of what is feasible (AfDB 2019).

6.1.1 Distributional effects of the AfCFTA on women and youth

While usually not intentionally discriminatory in itself, trade liberalization can entail different costs and opportunities for subgroups within a labour market, including women and young people. There are three main channels through which this may happen: the consumption, income, and capital channels. First, by reducing import tariffs, trade liberalization can change the relative price of goods and services, affecting different subgroups differently depending on their consumption baskets. Second, by changing export opportunities, together with the structure of import competition within an economy, trade liberalization may change production outcomes across sectors that have relatively higher or lower intensities of employment for different subgroups, thereby affecting their labour incomes accordingly. Third, economic changes caused by trade liberalization can interact with pervasive inequalities and undermine the capacity of subgroups to respond to new challenges and opportunities – for instance, as in the case of young

people or women, because they tend to have fewer assets and less access to capital resources, and face different economic burdens.

The empirical evidence is inconclusive on the impact of trade liberalization on the female and youth subgroups of the labour market in general. In some historical examples, gender and youth inequalities have been reduced by trade liberalization, while in others they were perpetuated or exacerbated. For instance, women tend to predominate in the smallholder agricultural sector in many African countries and that sector has higher rates of tariff protection (UNCTAD 2020a). This means that there is a risk of trade liberalization disproportionately increasing import competition for women relative to men (Bussolo and De Hoyos 2009; UNCTAD 2017a).

Trade liberalization also tends to benefit higher-skilled workers (Goldberg and Pavcnick 2007; Parro 2013). This is likely to be the case with the AfCFTA, given that it is expected to liberalize trade in the more technologically advanced products that dominate African intraregional trade (ITC and UNCTAD 2021). Pervasive educational inequalities, dating back to colonial times, have caused women to achieve relatively lower levels of educational attainment in African countries (Baten et al. 2021). However, younger people in Africa could benefit, as they tend to have higher levels of educational attainment than older generations (Kamer 2022).

The ultimate effect of trade liberalization on labour market subgroups is likely to depend on the relative distribution of sectors and skills among different workers and the form of liberalization implied by the AfCFTA in different countries.

A small subset of the models used to forecast the impact of the AfCFTA provide sex-disaggregated results (Appendix II). These either build sex disaggregation into the labour factor of the model (Echandi, Maliszewska and Steenbergen 2022; ILO forthcoming), or use a two-step methodology to connect the results of the modelling with gender-based income and expenditure differences from household survey data (Chauvin, Ramos and Porto 2016). No model of the AfCFTA that was available at the time of writing currently reports age-disaggregated results.

The first study with sex-disaggregated results, namely that by Chauvin, Ramos and Porto (2016), projected that female-headed households would do better than male-headed ones in Burkina Faso and Ethiopia, would do worse in Cameroon and Nigeria, and would be affected similarly to male-headed households in Madagascar.

Two studies by the World Bank, closely related in their design, are more optimistic about the impact of the AfCFTA on women. The earlier one found that, due to the increased output in female labour-intensive industries,

female workers' wages were expected to grow faster than male workers' wages in all regions of the continent except Southern Africa (World Bank 2020).

The later World Bank study (Echandi, Maliszewska and Steenbergen 2022) expanded that analysis to incorporate two additional scenarios assuming, respectively, increased foreign direct investment (FDI) and "deep" integration ("AfCFTA FDI broad" and "AfCFTA FDI deep"). It found that the wages of female workers grew faster than those of their male counterparts under all scenarios.

The ILO's recent modelling finds that the AfCFTA in general causes wages to rise faster for men than for women in 24 of the 28 countries assessed, the exceptions being Burkina Faso, Egypt, Ghana and the United Republic of Tanzania (ILO forthcoming). Nevertheless, it still anticipates wages to rise rapidly for women (albeit less so than for men) in Botswana, Côte d'Ivoire, Namibia and Zimbabwe.

Other assessments of the potential impact of the AfCFTA flag the risks that it could pose for vulnerable groups, including smallholder farmers, pastoralists and fisherfolk, who could be vulnerable to import competition, and women and young people, who may have fewer resources to address or take advantage of changing trade dynamics (UNECA and FES 2017). For instance, a recent review of the AfCFTA in relation to human rights noted persisting issues due to the lack of a free movement protocol to complement the AfCFTA Agreement, the absence of a simplified trade regime to assist smaller-scale traders, the limited experience of all but a few African countries in introducing trade remedies to protect themselves against damaging import competition, and the lack of labour provisions in the agreement (MacLeod 2022).

▶ 6.2 Legal and institutional framework of the AfCFTA

This section outlines the ways in which the AfCFTA relates to SDG 8 at four levels, namely the AfCFTA's stated objectives; its legal framework; its formal institutions; and the wider AfCFTA ecosystem of related projects, initiatives and programmes. It considers the extent to which these components contribute to targets under SDG 8. Some SDG 8 targets are inherent to or

directly tackled by the AfCFTA, while others are partially addressed or remain overlooked by the AfCFTA. These conclusions are summarized in table 6.1, namely, that the AfCFTA directly or indirectly contributes towards achieving 10 out of the 11 SDG targets.

► **Table 6.1 Summary of linkages between the African Continental Free Trade Area and Sustainable Development Goal 8**

SDG 8 target (overview)	AfCFTA linkage
Target 8.1: Promote sustainable economic growth	Inherent
Target 8.2: Increase economic productivity through diversification, technological upgrading and innovation for economic productivity	Inherent
Target 8.3: Promote policies to support job creation and the growth of enterprises	Indirect
Target 8.4: Improve resource efficiency in consumption and production	Absent
Target 8.5: Achieve full and productive employment and decent work for all, with equal pay for work of equal value	Direct
Target 8.6: Promote the participation of young people in employment, education and training	Direct
Target 8.7: End modern slavery, human trafficking and child labour	Direct ¹
Target 8.8: Protect labour rights and promote safe and secure working environments	Direct ¹
Target 8.9: Promote beneficial and sustainable tourism	Direct
Target 8.10: Improve access to banking, insurance and financial services	Direct
Target 8.a: Increase Aid for Trade support	Indirect
Target 8.b: Put in place a global youth employment strategy and implement ILO Global Jobs Pact	Unrelated

AfCFTA = African Continental Free Trade Area; SDG = Sustainable Development Goal

Note: ¹ While these issues are absent from the Agreement Establishing the African Continental Free Trade Area, they are addressed by the current version of the Protocol on Investment.

6.2.1 Purpose and objectives of the AfCFTA

The purpose of the AfCFTA is articulated in the preamble to the AfCFTA Agreement and in its articles on general and specific objectives (Arts 3

and 4, respectively). These provisions yield a number of insights into the goals of the parties that led to the crafting of the agreement and guide its interpretation.¹ The AfCFTA Agreement is flexible, with scope for additions (Art. 8), amendments (Art. 29) and review (Art. 28), and so its stated purpose and objectives are also useful for shaping the possible growth and evolution of the AfCFTA over time.

The AfCFTA Agreement explicitly aspires to the promotion of “industrialisation and structural economic transformation”.² It also explicitly recognizes the “importance of ... gender equality” in its seventh preambular paragraph, and includes the promotion of “gender equality” in its general objectives (Art. 3(e)).

The explicit mentioning of gender equality or women’s participation in economic activities in the preambles to or objectives of trade agreements is still rare, with just 8 of the 353 trade agreements notified to the World Trade Organization (WTO) doing so as of September 2022 (although several more actually include provisions on gender issues) (WTO n.d.). What is notable, though, is the presence of African countries in that regard. Of those eight trade agreements that mention gender equality or women’s economic empowerment in their preambles or objectives, five are African: the 1992 Treaty of the Southern African Development Community (SADC) (Arts 5 and 6); the 1999 Treaty Establishing the East African Community (EAC) (Arts 5 and 6); the 1993 Revised Treaty of the Economic Community of West African States (ECOWAS) (Art. 3); the 2009 Convention Governing the Economic Union of Central Africa (Arts 2 and 4); and the AfCFTA Agreement (Art. 3). African countries have long been at the forefront of recognizing gender equality, with the original 1983 Treaty Establishing the Economic Community of Central African States (ECCAS) being only the second trade agreement in the world to include a gender-related provision, namely in Article 60 (WTO 2022).

These references to gender equality would suggest at the very least an intention to align the goals of the AfCFTA and SDG target 8.5 on achieving full and productive employment and decent work for all, with equal pay for work of equal value. The AfCFTA Agreement only indirectly sets objectives related to other SDG 8 targets concerning opportunities for young people (target 8.6), labour rights (targets 8.7 and 8.8), and sustainable tourism (target 8.9). It does not lay down any direct, or implicit, objectives with regard to the remaining SDG 8 targets on promoting policies to support job creation and the growth of enterprises (target 8.3), environmentally sustainable

1 In accordance with Art. 31 of the [Vienna Convention on the Law of Treaties](#) (1969).

2 Preambular paragraphs of the Agreement Establishing the African Continental Free Trade Area.

economic growth (target 8.4), universal access to banking, insurance and financial services (target 8.10), increased Aid for Trade support (target 8.a) and implementation of the ILO Global Jobs Pact (target 8.b). In practice, as discussed in the following sections, some aspects of the content of the agreement do however speak to these targets.

Objectives and bold statements of purpose mean little if they are not followed up with impactful obligations, rights or cooperative efforts. Accordingly, the next section assesses the content of the AfCFTA Agreement and its protocols and the extent to which the agreement contributes to the above-mentioned objectives.

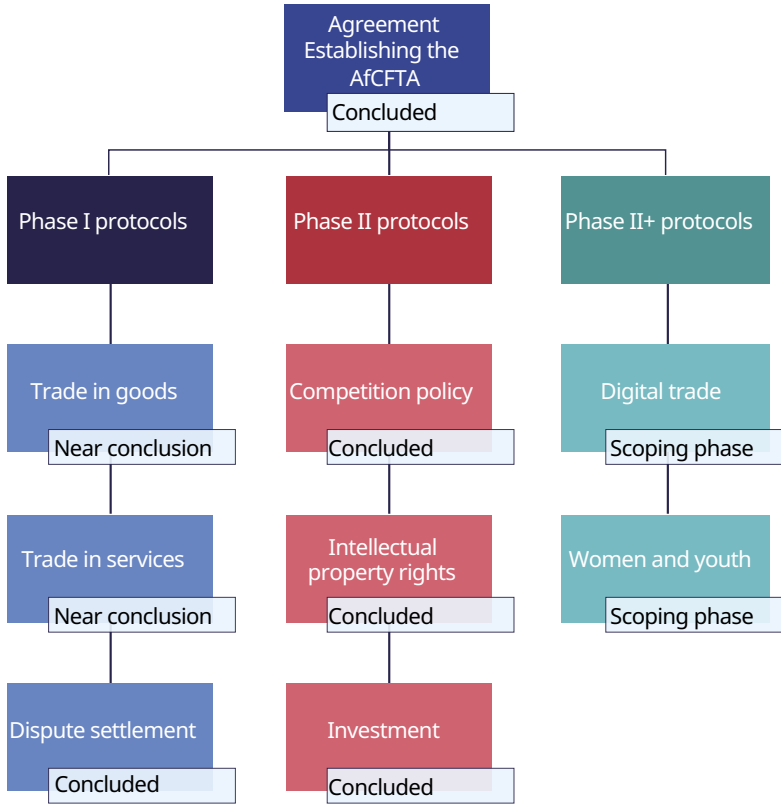
6.2.2 AfCFTA Agreement, protocols and institutions

This section assesses the legal framework of the AfCFTA, comprising the agreement, its protocols and their annexes, and its institutional structures and the extent to which these contribute to SDG 8.

The AfCFTA Agreement is the framework agreement at the apex of the legal structure of the AfCFTA. It sets forth the objectives and primary definitions of the AfCFTA, outlines its scope and creates the institutions charged with its implementation. Underneath the framework agreement are its protocols, which contain the relevant substantive provisions, such as those liberalizing trade in goods and services. Further down in the hierarchy come the annexes to the protocols, together with the guidelines, lists and schedules of the AfCFTA. These cover operational details, including the creation of subcommittees for the administration or implementation of specific aspects of the AfCFTA, such as non-tariff barriers or customs coordination (UNECA et al. 2019).

The African Union planned to negotiate protocols to the AfCFTA in two phases (figure 6.2). An initial “Phase I” set of protocols covered the more traditional topics of trade in goods and services and the settlement of disputes. A subsequent second phase was scheduled to follow to negotiate protocols on competition policy, intellectual property rights and investment.

► **Figure 6.2 Legal framework of the African Continental Free Trade Area**



Source: Author's elaboration, 2023.

Since then, the Assembly of Heads of State and Government of the African Union has expanded the scope of the AfCFTA, in line with Article 8 of the agreement, which allows for “any additional instruments ... [to be] concluded in furtherance of the objectives of the AfCFTA”. A Protocol on e-commerce was added in February 2020, and subsequently expanded to cover “digital trade” in February 2022, while an additional Protocol on Women and

Youth in Trade was added in February 2022.³ Both these sets of “Phase II+” negotiations were, as at 2023, still in the scoping phase, with negotiators and policymakers engaged in defining their visions and objectives. Most of the Phase I negotiations had been concluded, except for those on several critical technical annexes to the protocols on trade in goods and services, while protocols on the phase II topics of investment, competition policy and intellectual property rights were adopted in February 2023.

The legal framework of the AfCFTA provides for several formal institutions. Most of these are set out in Articles 9 and 13 of the AfCFTA Agreement and include governance institutions, the AfCFTA Secretariat, and technical institutions. There are also national-level structures for coordinating and overseeing the implementation of the AfCFTA (which are not provided by the framework agreement), such as national AfCFTA coordinating committees. These were specifically called for by the Assembly of the African Union in July 2018.⁴

The legal and institutional framework of the AfCFTA directly contributes to several targets under SDG 8, and indirectly touches on others. This is as expected, since the AfCFTA is ultimately not a programme to achieve SDG 8 specifically, but an economic project that aligns with SDG 8 in many ways.

Let us first consider those targets under SDG 8 directly addressed by the AfCFTA.

As a flagship initiative of the African Union’s Agenda 2063: The Africa We Want, the AfCFTA is one of the tools conceived and designed by Africans for “accelerating Africa’s economic growth and development” (AU n.d.(a)). By boosting intra-African trade, the AfCFTA is meant to “promote and attain sustainable and inclusive socio-economic development” (Art. 3(e) of the AfCFTA Agreement), which in turn directly contributes to realizing SDG target 8.1 on sustainable economic growth.

3 Through [Decision Assembly/AU/Dec.751\(XXXIII\)](#) of 10 February 2020 the Heads of State and Government of the African Union granted a mandate for negotiations on a Protocol on e-commerce as part of what was at the time scheduled to be a “Phase III” of negotiations. In December 2020, a decision was made to expedite those negotiations so that they would take place concurrently with the negotiations on “Phase II” issues (see Declaration Ext/Assembly/AU/Decl.1(XII) of 5 December 2020). One may therefore conceive of these negotiations as effectively a “Phase II+”, rather than a distinct third phase. [Decision Assembly/AU/Dec.831\(XXXV\)](#) of 6 February 2022 expanded the scope of the E-Commerce Protocol to cover “digital trade” and added a mandate for a “Protocol on Women and Youth in Trade”.

4 See [Decision Assembly/AU/Dec.692\(XXXI\)](#) of 2 July 2018 of the Assembly of the Heads of State and Government of the African Union.

The AfCFTA is also specifically intended to “promote industrial development through diversification” (Art. 3(g) of the AfCFTA Agreement), which is in line with SDG target 8.2 on diversification, technological upgrading and innovation for economic productivity. To quote the AfCFTA Secretary-General, His Excellency Mr Wamkele Mene:

The AfCFTA presents an opportunity to turn a new page on Africa’s economic growth and development trajectory; to achieve its long-standing goal of economic diversification, through industrialisation, to further raise the standard of living of its people and to reduce poverty.

AfCFTA Secretariat, 2022a; emphasis added

There is even a dedicated Trade and Industrial Development Advisory Council, established by the AfCFTA Council of Ministers in February 2022 to report to and advise the Secretariat on using the AfCFTA as a vehicle for economic diversification and development.

Specific components of the AfCFTA directly contribute to other targets under SDG 8, too. The Protocol on Trade in Services entails the removal of barriers to the provision of services between African countries.⁵ In practical terms, that involves reducing limitations – such as limitations on foreign capital ownership or on the proportion of foreign employees – that countries may impose on service suppliers from other African countries. As a result, the AfCFTA would be expected to increase the competitive provision of tourism and financial services in African countries (among other service sectors). This could contribute to SDG target 8.10 on universal access to banking, insurance and financial services, and to target 8.9 on promoting beneficial and sustainable tourism. However, greater competition does not necessarily mean that those service sectors would become more inclusive or sustainable. For the AfCFTA to achieve that, care would need to be taken to channel any resulting increase in competition in those service sectors into sustainable outcomes.

The Protocol on Women and Youth in Trade is intended to contribute to SDG target 8.5 on full and productive employment and decent work for all, with equal pay for work of equal value, and to target 8.6 on promoting the participation of young people in employment, education and training. In May 2021, the AfCFTA Council of Ministers established the Committee on Women and Youth in Trade, under whose auspices the negotiations on the Protocol will be undertaken. This institutional structure already means that the AfCFTA

⁵ The Protocol on Trade in Services initially covers a list of priority sectors before being expanded to other sectors (Art. 22(4)). The initial priority sectors are business services, financial services, communication, transport and tourism.

has a platform for cooperation and dialogue on gender equality and youth opportunities. Likewise, owing to the disproportionate representation of young Africans among those using the internet on the continent (ITU 2022), it might be expected that the Protocol on Digital Trade could be helpful for contributing to target 8.6 as well.

The AfCFTA is relevant for, but does not directly contribute to, several other targets under SDG 8.

Here one may consider target 8.3 on promoting policies to support job creation and the growth of enterprises. No specific objective, protocol or annex of the AfCFTA Agreement specifically relates to this target. However, as an economic project, the AfCFTA necessarily touches on job creation and enterprise growth obliquely.

There is no wording in the AfCFTA Agreement that speaks directly to SDG target 8.a on increased Aid for Trade support. However, the agreement is clearly indirectly relevant to this target in that it has created a demand-led channel for the application of Aid for Trade to address African development priorities. Article 7 of the Protocol on Trade in Services, for instance, specifically calls for “special consideration to the provision of technical assistance and capacity-building through continental support programmes” in relation to supporting African countries with less capacity to engage in trade in services. Such technical assistance would be a natural destination for support under the Aid for Trade initiative. Indeed, as shown in section 6.2.3, much development assistance has already been mobilized in support of the AfCFTA.

The AfCFTA Agreement and its annexes do not address target 8.7, which pertains to the eradication of modern slavery, human trafficking and child labour, nor do they address target 8.8 on protecting labour rights and promoting safe and secure working environments.⁶ However, these issues

6 The only reference to labour issues in the AfCFTA Agreement is to “prison labour” in Part VIII entitled “General Exceptions” (Art. 26).

are addressed in the current version of the Protocol on Investment related to the AfCFTA Agreement.⁷

Finally, the legal and institutional framework of the AfCFTA does not address target 8.4 on improving resource efficiency in consumption and production.

6.2.3 Wider AfCFTA ecosystem of projects, programmes and activities

The AfCFTA is more than its legal and institutional framework. It constitutes a central node in a constellation of initiatives aimed at transforming African trade. That, in fact, reflects the original thinking of the African Heads of State and Government when they launched the negotiations for the AfCFTA at their summit in January 2012 alongside a sister initiative called the Action Plan for Boosting Intra-African Trade (BIAT Action Plan) (UNECA, AU and AfDB 2017).⁸ The BIAT Action Plan explicitly laid down a range of policies – from trade finance measures to trade-related infrastructure and trade information – as necessary complements to the AfCFTA to achieve the transformation of trade in Africa (UNECA, AU and AfDB 2017).

Moreover, the AfCFTA exists alongside a broader range of related African Union instruments. These include complementary trade liberalization initiatives such as the Single African Air Transport Market. They can also be considered to include the African Union's other economic programmes, such as the Comprehensive African Agricultural Development Programme, the Programme for Infrastructure Development in Africa, and the Digital Transformation Strategy for Africa. These seek to develop the productive capacities and infrastructures that would be needed alongside the AfCFTA, although the extent to which they are currently being effectively implemented varies (MacLeod 2022).

Beyond these formal initiatives, the AfCFTA is at the centre of an expanding range of other complementary initiatives and Aid for Trade programmes launched by international organizations, development partners and United Nations agencies.

Women- and youth-related issues are reasonably well reflected in the spectrum of AfCFTA complementary initiatives. The AfCFTA Secretariat

7 See Draft Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment of January 2023, especially Arts 25 and 33. For more detailed analysis, see section 6.3.1.

8 See [Decision Assembly/AU/Dec.394\(XVIII\)](#) of 30 January 2012 of the Assembly of the Heads of State and Government of the African Union.

held its first Conference on Women and Youth in Trade in September 2022 and chose the topic of “Making the AfCFTA work for women and youth” for the 2021 inaugural edition of its *Futures Report* series that is produced in collaboration with the United Nations Development Programme (UNDP and AfCFTA Secretariat 2021; AfCFTA Secretariat 2022b). There is an African Union Champion for Gender and Development Issues in Africa at the Heads of State level and an African Union Strategy for Gender Equality and Women’s Empowerment (AU n.d.(b)). Gender issues are a core focus of the African Trade Policy Centre, a specialized unit within the UN Economic Commission for Africa (UNECA) that has provided direct support to the AfCFTA negotiations since 2015.⁹ The guidelines for developing national AfCFTA strategies and a related white paper (UNECA 2021a; UNECA 2021b), which were prepared by the African Trade Policy Centre, accord significant attention to gender issues, but not to labour issues specifically.

There is also an Independent Continental Youth Advisory Council on AfCFTA, which aims to foster the participation of young people in the decision-making and implementation processes of the AfCFTA. The Council has contributed to AfCFTA consultations, including regional consultations on the Protocol on Women and Youth in Trade, and published survey-based research on youth challenges in trade in Africa.¹⁰

There is a relative paucity of specific complementary initiatives addressing labour issues in the wider AfCFTA ecosystem of activities. The most notable is the African Union’s Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (also referred to as the Free Movement Protocol for short). This was launched alongside the AfCFTA at the African Union summit in March 2018. The Free Movement Protocol would strengthen movement, residency and migrant labour rights across the continent, but it has so far been ratified by only four countries (with 15 being the minimum number required for its entry into force, as laid down in its Article 33) (AU 2022). There is also an African Union Migration Policy Framework for Africa, submitted to the Executive Council of the African Council in June 2006¹¹ This framework aims to guide policymaking in several areas of migration governance.

9 [Decision Assembly/AU/Dec.569\(XXV\)](#) of 15 June 2015 of the Assembly of the Heads of State and Government of the African Union called upon the UNECA and the UNCTAD as technical partners to provide the Member States, the African Union Commission and the regional economic communities with support for the AfCFTA negotiations.

10 See the Council’s website, <https://www.icoyaca.org/>.

11 [Decision EX.CL/Dec.304 \(IX\)](#) of 29 June 2006 of the Executive Council of the African Union.

While gender and youth issues are now quite well reflected in the wide range of AfCFTA-related projects, programmes and activities, labour issues remain neglected. The importance of labour rights risks being overlooked in the initiatives that are meant to support the implementation of the AfCFTA.

► 6.3 Optimizing the AfCFTA for workers, including women and young people

The AfCFTA in particular, can be expected to have vastly different effects on labour market outcomes across and within different countries. This heterogeneity depends on the pace and shape of liberalization, the structure of the economies affected and the strength of institutions in those countries. Fortunately, policymakers can influence many of these factors. Section 6.2 outlined the legal and institutional framework of the AfCFTA and its ecosystem of existing complementary initiatives. This served to bring to light both strengths, such as dedicated provisions on women and youth in trade, and weaknesses, such as the absence of provisions dealing with other social and development-related issues. It also served to make clear that the AfCFTA is an evolving initiative that is flexible and susceptible of change. This section looks at three avenues for policy measures that can be taken to shape the above-mentioned factors so as to achieve better labour market outcomes.

6.3.1 Ongoing and future AfCFTA negotiations

The Phase II and Phase II+ negotiations offer opportunities for improving the way in which the AfCFTA delivers for workers, including for women and young people. There are two areas in the ongoing Phase II negotiations that could be well suited to the inclusion of labour provisions, namely investment and competition policy, while the Protocol on Women and Youth in Trade is a natural entry point for addressing gender and youth issues.

6.3.1.1 Protocol on Investment

Negotiators will likely model the AfCFTA Protocol on Investment on, and build upon the precedent set by, the 2016 Draft Pan-African Investment Code

(UNECA et al. 2019). The Pan-African Investment Code includes labour-related commitments to discourage countries from loosening labour regulations as a means of attracting investment and commitments.¹² It also requires investors to “comply with international conventions and existing labor policies and, in particular, not use child labor and shall support efforts for the elimination of all sort of child labor, including forced or compulsory labor within Member States”.¹³ Such provisions can help to encourage and raise awareness of good practices among investors. They may also contribute to strengthening labour market institutions (ILO 2017b).

In early 2023 a draft of the Protocol on Investment to the AfCFTA became public,¹⁴ which indeed contains a number of labour-related commitments. This includes language requiring States to “ensure ... labour ... protection, taking into account domestic policies, international best standards and relevant international agreements to which they are parties”.¹⁵ State parties are also precluded from “encourag[ing] investment by relaxing or waiving domestic standards, or compliance with environment, labour and consumer protection laws and international minimum standards”.¹⁶ Furthermore, the Draft Protocol contains several provisions containing obligations incumbent on investors: In particular, investors are obliged to abide by “the International Labour Organisation (ILO) standards, including the ILO Declaration on Fundamental Principles and Rights at Work, and domestic labour legislations”. In addition, investors specifically must refrain from “us[ing] child labour or forced and compulsory labour”, “eliminate discrimination in respect of employment and occupation” and abstain from retaliatory actions against whistle blowers, in addition to certain human rights-related obligations.¹⁷ While the Draft Protocol does not provide for a complaint mechanism for third parties or a specific mechanism for labour cooperation or dialogue, the Committee on Investment or its to-be-established subcommittees¹⁸ might

12 See Art. 34(1) of the [Draft Pan-African Investment Code](#).

13 Art. 34(3) of the Draft Pan-African Investment Code.

14 The draft appears to have been published first on the website www.bilaterals.org, which has been referred to by several online publications, including a blog post published on the AfCFTA Secretariat’s website. See: [The AfCFTA Investment Protocol – A Potential Game Changer for the African Continent?](#)

15 Draft Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment of January 2023, Art. 25(1).

16 Draft Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment of January 2023, Art. 25(2).

17 Draft Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment of January 2023, Art. 33.

18 See Draft Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment of January 2023, Art. 41.

assume the overseeing of implementation. In addition, the Draft Protocol provides for a state-to-state dispute settlement procedure under the draft investment procedure, but it is still too soon to determine to which extent this will be used for the enforcement of labour provisions. The Draft Protocol also includes specific language to protect the regulatory space of the State parties by stipulating that “[n]on-discriminatory regulatory actions by a State Party designed to protect legitimate public policy objectives, such as ... labour rights or to comply with other international obligations, shall not constitute indirect expropriation”.¹⁹

Negotiators could go further by including a similar exception clause also into the provisions regarding national treatment and most-favoured nations requirements where such provisions are currently not contained.²⁰ Furthermore, negotiators could consider incorporating more robust implementation mechanisms for labour rights into the Protocol on Investment, such as complaint mechanisms through which civil society actors can file submissions on alleged violations by investors and States.

6.3.1.2 Protocol on Competition Policy

The second potential area for incorporating labour provisions as part of ongoing negotiations is the AfCFTA Protocol on Competition Policy. It is likely to be inspired by the approach used in most competition treaties at the regional level in Africa, such as those of the COMESA (Common Market for Eastern and Southern Africa) Competition Commission, the EAC Competition Authority and the ECOWAS Regional Competition Authority. These explicitly permit collective bargaining as a valid exception. For instance, the ECOWAS rules explicitly exclude “labour-related issues, notably activities of employees for the legal protection of their interests” and “collective bargaining agreements between employers and employees for the purpose of fixing terms and conditions of employment”.²¹

The draft text of the AfCFTA Protocol on Competition Policy, which was under negotiation as at October 2022, notably did include similar such exceptions for labour-related issues.²² These exceptions, which are not uncommon,

19 See Draft Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment of January 2023, Art. 20(2).

20 See Draft Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment of January 2023, Arts 13 and 15.

21 [ECOWAS Supplementary Competition Act](#) (2008), Arts 4(2) and 4(2)(a).

22 According to feedback from negotiators involved in those negotiations at the time of writing.

explicitly clarify the permissibility of collective bargaining, which can help to improve wages and working conditions and ensure that workers are able to capture some of the gains from the new economic opportunities generated by the AfCFTA.

6.3.1.3 Protocol on Women and Youth in Trade

To the extent that the AfCFTA Protocol on Women and Youth in Trade mirrors recent trends in trade treaty-making, it is likely that the “women” part of this Protocol will have similarities with recently negotiated trade and gender chapters. These have involved the creation of trade and gender advisory committees, pledges to collect sex-disaggregated data for impact monitoring, the prohibition of gender-based labour discrimination and the reaffirmation of equal pay for work of equal value (UNCTAD 2020b; Reinsch, Lim and Brodsky 2021). The topic of young people and trade is one with fewer antecedents, but it can be developed following the format used by trade negotiators in drawing up trade and gender provisions.

At least 75 trade agreements are in force that include some sort of gender or gender-related provisions (Monteiro 2018). These vary considerably in terms of language, scope and strength of commitment. Some agreements invoke gender equality in the preamble, others carve out a “right to regulate” in favour of gender equality (for instance, to allow restrictions to public procurement requirements so as to promote gender inclusion), while yet others create cooperation platforms and set forth commitments to domestic policies and programmes on gender.

The most common gender-related provisions in trade agreements concern cooperation (Monteiro 2018²³ For instance, the EAC Treaty (1999) focuses on cooperation platforms and on encouraging domestic gender-related policies.

Beyond cooperation provisions, most gender provisions in existing trade agreements “tend to be worded in best-endeavour terms” (Monteiro 2018, 26), that is to say, they contain commitments that require an effort rather than specific results from the parties. A number of these provisions are exempted from dispute settlement mechanisms (and therefore unenforceable) or entail behind-the-border commitments that are extremely unlikely to be contested or enforced in a trade dispute (see for example UNCTAD 2017b). Furthermore, the trade and gender frameworks established by Africa’s regional economic communities have been criticized for limited follow-up on their implementation, challenges in coordination, implementation,

²³ See, for example, the modernized Canada–Chile Free Trade Agreement, which entered into force in 2019 and features a “Trade and Gender” chapter.

monitoring and capacity building, and weak monitoring and accountability mechanisms (Pettinotti, Naliaka and Hasham 2022).

The Protocol on Women and Youth in Trade could prioritize addressing the obstacles that Africa's women are likely to face in seizing the opportunities created by the AfCFTA, as well as additional challenges that they could encounter because of import competition (see section 6.1). Such efforts could be based on coordination among State parties to develop cooperative skills and entrepreneurship programmes that would specifically support women and young people in the manufacturing, innovative or higher-skilled sectors. They could also include specific monitoring and evaluation commitments to encourage the reporting of sex- and age-disaggregated trade data with a view to better identifying the sectors and countries in which women and young people (and other vulnerable groups) may face AfCFTA-related challenges, all the more so given that the projections are mixed.

6.3.2 Revisions or addenda to the AfCFTA Agreement

6.3.2.1 Labour revisions to the AfCFTA Agreement

The AfCFTA could be revised to include labour provisions in the AfCFTA Agreement. This might include references to labour standards; mechanisms for monitoring or promoting the application of such standards, including consultative groups and technical cooperation; and frameworks for cooperation, such as best practice seminars and forums. These provisions, which are increasingly common in trade agreements, can improve labour outcomes by enhancing the capacity and awareness of public authorities, firms and stakeholders as regards labour issues, which in turn can lead to institutional change, such as in the form of new and better enforced labour laws (ILO 2017b).

That would enable the AfCFTA State parties to better address the labour challenges and opportunities created by the agreement. As noted in section 6.1, the AfCFTA is likely to see a sectoral shift in employment to manufacturing in many countries. Labour monitoring mechanisms could help to flag problems in this transition; frameworks for cooperation could assist in the development of support programmes; and the promotion of labour standards could discourage States from resorting to regulatory laxity to attract related investments.

New labour-related additions to the AfCFTA Agreement could also reaffirm commitments to ending modern slavery, human trafficking and child labour,

and to protecting labour rights and promoting safe and secure working environments (which relate to SDG targets 8.7 and 8.8, respectively). Although most African countries were signatories to all fundamental Conventions of the ILO when the AfCFTA Agreement was negotiated²⁴ the reaffirmation of these commitments would help to highlight their importance, improve awareness of them among trade policymakers and practitioners, and ensure more effectively that governments and private sector institutions take them into account as they seek to develop policies and strategies to harness the opportunities created by the AfCFTA.

6.3.2.2 Mechanisms for cooperation and dialogue

Labour commitments in the AfCFTA Agreement could create institutional structures for cooperation and dialogue. For instance, recent EU trade agreements (such as the one with the Republic of Korea) commit to establishing domestic advisory groups to act as vectors for sourcing information and providing feedback on further action with respect to labour (and other) rights and cooperation projects (ILO 2016). Doing so would build on best practices at the regional level, such as the COMESA Committee on Labour, Human Resources and Social and Cultural Affairs, which is responsible for implementation of the COMESA Social Charter covering cooperation on labour and other issues. Depending on their design, such mechanisms could also strengthen social dialogue between employers' and workers' organizations.

6.3.2.3 Mechanisms for revising the AfCFTA Agreement

Negotiators could expand the scope of the Protocol on Women and Youth in Trade to cover other sustainable development issues more broadly, such as labour and the environment. By doing so – rather than addressing sustainable development issues in different protocols and chapters of, or committees under, the AfCFTA Agreement – it would be possible to reduce overlap and duplication. Moreover, there is established precedent for expanding the scope of AfCFTA Protocols: what was originally set to be a Protocol on “e-commerce” was subsequently expanded to cover “digital trade” through a decision at the level of the Assembly of the African Union.

²⁴ See the comparative data provided by the [Information System on International Labour Standards](#).

Alternatively, an additional protocol or side agreement could be added to the AfCFTA Agreement to address labour (and other) topics individually. The North American Free Trade Agreement (NAFTA) was the first agreement in which this was done with a side agreement on labour that was later added, known as the North American Agreement on Labor Cooperation, covering issues such as freedom of association, the right to bargain collectively, employment discrimination, equal pay for men and women, and minimum wages (Art. 49).

The AfCFTA Agreement establishes a five-year review mechanism (Art. 28) to “ensure effectiveness, achieve deeper integration, and adapt to evolving regional and international developments”. Once triggered, which should happen on 30 May 2024, negotiators could revisit the agreement to integrate labour rights.

6.3.3 Accompanying measures

One of the key takeaways from the empirical literature on the impact of trade on labour market outcomes is that institutions and accompanying measures implemented alongside trade reforms play an important role. As shown above, a remarkably wide range of accompanying measures have been, and continue to be, implemented alongside the AfCFTA. Yet relatively few of these specifically address labour issues, while those targeted at women and young people could go even further.

6.3.3.1 Labour-related accompanying measures

The African Union’s Free Movement Protocol is perhaps the most significant labour-related accompanying measure. Launched alongside the AfCFTA at the African Union summit in March 2018, it has unfortunately not managed to garner more than 4 of the 15 ratifications required for its entry into force and so is not operational. If it is eventually implemented, the Free Movement Protocol will establish rights of entry, establishment, residence and social security for African workers across the entire continent. That would enhance mobility in labour markets and the protection of migrant workers’ rights, which would in turn help workers to move to take advantage of new and emerging opportunities created by the AfCFTA.

Measures to address labour market challenges and opportunities at the country level can be included in national AfCFTA strategies. At the July 2018 summit held in Nouakchott, the Assembly of the African Union called for countries to design national AfCFTA strategies as part of the AfCFTA

implementation phase.²⁵ The guidelines for these strategies explicitly highlight the importance of gender equality and women's economic empowerment (UNECA 2021a), but unfortunately overlook labour issues. Policymakers can rectify such omissions by explicitly calling for social partners, such as employers' and workers' representatives to be represented in the national institutional structures charged with leading implementation of the AfCFTA.

6.3.3.2 Women- and youth-related accompanying measures

According to the UNECA (2021b, 1), “[p]romoting gender-equitable outcomes may be best achieved by operationalizing an approach to gender mainstreaming in AfCFTA National Strategies or other AfCFTA action plans”. National AfCFTA strategies provide a natural conduit for ensuring that the implementation of the AfCFTA at the country level adequately addresses specific challenges and opportunities for women and young people in trade. This would account for the differentiated impact of the AfCFTA on women and young people. Accompanying measures can address the pervading inequalities that make it more difficult for women or young people to benefit from the AfCFTA. According to the UNECA (2021b, 6), barriers that disproportionately affect businesses led by women in Africa include “legal discrimination, finance and assets, education and skills gaps, social norms, risk of gender-based violence, confidence and risk preferences, access to networks and information, household allocation of productive resources and time constraints and care”. COMESA, for example, has a Women Economic Empowerment Fund to provide female cross-border traders with access to finance so that they can benefit from the COMESA trade regime (COMESA n.d.).

Other accompanying measures are needed for specific trade challenges across countries. The AfCFTA does not yet have a simplified trade regime (MacLeod 2022). Such regimes, which are in place in some of the regional economic communities, such as the EAC and COMESA, help smaller-scale traders to benefit from preferential market access schemes. They involve measures to streamline customs clearance for the consignments of small cross-border traders, helping them to enjoy preferential tariffs. Experiences at the level of the regional economic communities suggest that such regimes have the potential to increase the profit margins of small-scale traders, who

²⁵ See [Decision Assembly/AU/Dec.692/\(XXXI\)](#) of 2 July 2018 of the Assembly of the Heads of State and Government of the African Union.

disproportionately tend to be women (UNCTAD 2021). Following through on the commitment by the Assembly of the African Union to “integrating informal cross[-]border traders into [the] formal economy by implementing the simplified trade regime”,²⁶ would ensure that the benefits of the AfCFTA are extended to marginalized, smaller-scale trade workers.

▶ 6.4 Conclusions

As a fundamentally economic initiative, the AfCFTA directly and indirectly contributes to achieving many aspects of SDG 8 on decent work and economic growth. However, in its current form it misses out others.

Gender equality and, to a slightly lesser extent, youth opportunities are already central to the AfCFTA. Gender equality is foregrounded among the stated objectives and preambular paragraphs of the AfCFTA Agreement – something that still remains relatively rare in other trade agreements across the world. A dedicated protocol on the topic of women and young people in trade is being negotiated under the auspices of an already established Committee on Women and Youth in Trade. Women- and youth-related issues are also reasonably well reflected in the array of AfCFTA-accompanying initiatives led by the AfCFTA Secretariat, international organizations and their development partners. There has already been, for instance, an AfCFTA Conference on Women and Youth in Trade in 2022; “Making the AfCFTA work for women and youth” was the topic of the 2021 inaugural edition of the *Futures Report* series produced by the AfCFTA Secretariat in collaboration with the UNDP; and gender issues are a core focus of the guidelines for developing national AfCFTA strategies (UNECA 2021a).

Policymakers and their partners should translate these admirable achievements into impactful outcomes. They can do this both by negotiating an ambitious Protocol on Women and Youth in Trade and by buttressing that with effective implementation and accompanying measures, in particular through national AfCFTA strategies. Informed by recent policymaking in this field, the options for the Protocol on Women and Youth in Trade include commitments to domestic policies and programmes on gender and youth

²⁶ [Johannesburg Declaration on the Start of Trading under the Agreement Establishing the African Continental Free Trade Area](#), adopted at the 13th Extraordinary Session (on the AfCFTA) of the Assembly of the Heads of State and Government of the African Union on 5 December 2020.

issues, establishing mechanisms for cooperation and dialogue, launching collective work programmes, and carving out a “right to regulate” in favour of gender or youth equality.

However, there are aspects of SDG 8 in relation to which the AfCFTA could do better. Labour issues, such as ending modern slavery, human trafficking and child labour, and protecting labour rights and promoting safe and secure working environments (the related SDG targets 8.7 and 8.8), are only addressed in the current version of the Protocol on Investment. Meanwhile, SDG target 8.4, dealing with improving resource efficiency in consumption and production, is absent from the objectives and scope of the AfCFTA altogether. There is a relative dearth of accompanying projects, programmes and activities on these issues, too.

This is despite the fact that an increasing number of trade agreements now feature labour and environmental provisions, including many South–South trade agreements (ILO 2016). As far as labour is concerned, such provisions take various forms, including the invocation of ILO instruments, the laying down of obligations to enforce domestic labour laws or abide by minimum standards, the creation of platforms for policy dialogue and cooperation, and the monitoring and evaluation of impacts on labour indicators (ILO 2017b). And these provisions can be impactful. Trade agreements with labour provisions have had positive effects in terms of raising awareness of workers’ rights issues, improving labour legislation, increasing the participation of stakeholders both before and after the adoption of relevant trade agreements, and strengthening domestic institutions with regard to the monitoring and enforcement of labour standards (ILO 2016; ILO 2017b).

To address these gaps, negotiators have several options. One would be to expand the scope of the future Protocol on Women and Youth in Trade to make it more like a “trade and sustainable development chapter”, similar to that of COMESA on labour, human resources and social and cultural affairs (COMESA Treaty, Chapter 4 Art. 15.2(g) and Chapter 21). Alternatively, negotiators could consider adding individual dedicated protocols on various sustainable development issues, such as labour or the environment, although that could risk a duplication of efforts and institutions.

Negotiators could also seek to make revisions to the existing text of the AfCFTA Agreement. The inbuilt five-year review mechanism (Art. 28), which should be triggered on 30 May 2024, could be used to address omissions and gaps in the agreement. That could include making amendments to its preambular paragraphs and objectives to include important reaffirmations

of ILO instruments, such as the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

Finally, policymakers can also seek to better support efforts on labour and other sustainable development issues through accompanying measures implemented alongside the AfCFTA. National AfCFTA strategies, which were called for by the Assembly of the African Union in 2018,²⁷ provide a natural entry point for labour-supporting accompanying policies at the national level. Efforts are needed, too, to drive continental initiatives, such as the African Union's Free Movement Protocol and a continental simplified trading regime, neither of which is currently being implemented.

As the Chairperson of the African Union Commission, His Excellency Mr Moussa Faki Mahamat, said at the launch of the operational phase of the AfCFTA during the African Union summit in July 2019, the AfCFTA is "[m]ore than a free trade area" (Mahamat 2019). It covers a significant range of behind-the-border policy matters. Accordingly, its proponents see in it an "instrument for Africa's development" (Mene 2021), rather than merely a treaty to liberalize trade. This would suggest that the AfCFTA is an appropriate vehicle for addressing broader sustainable development issues. That ambition should be harnessed to ensure that the AfCFTA is able to adequately contribute to progress on labour rights and, more generally, sustainable development in Africa.

27 See [Decision Assembly/AU/Dec.692/\(XXXI\)](#) of 2 July 2018 of the Assembly of the Heads of State and Government of the African Union.

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▶ Appendix I. Modelled estimates of the impact of the African Continental Free Trade Area on African countries, with a focus on labour market outcomes

Study	Assumptions/ scenarios	Macroeconomic outcomes (gains)	Labour market outcomes
ILO (forthcoming)	<ul style="list-style-type: none"> ▶ 100% tariff cut ▶ 50% NTB cut ▶ 10% reduction in trade costs through trade facilitation 	<ul style="list-style-type: none"> ▶ 3.2% increase in GDP ▶ 14% increase in exports 	<ul style="list-style-type: none"> ▶ Increase in average wages for all countries, except Botswana (-1.2%) and Nigeria (-2%) ▶ Capital factor gains relative to labour in 20 out of 28 countries, and land gains relative to labour in 8 out of 28 countries ▶ Wages rise faster for skilled than for semi-skilled workers in 27 out of 28 countries
Echandi, Maliszewska and Steenbergen (2022)	<p><u>Various scenarios up to:</u></p> <ul style="list-style-type: none"> ▶ 100% tariff cut ▶ 50% NTB cut ▶ 10% reduction in trade costs through trade facilitation ▶ Increased FDI inflows ▶ FDI boost from Phase II protocols 	<ul style="list-style-type: none"> ▶ 7.1% to 9.0% increase in GDP ▶ 29% to 31.5% increase in exports 	<ul style="list-style-type: none"> ▶ Wages grow faster for skilled workers relative to unskilled workers ▶ 2.25% to 2.45% of labour shifts between sectors, mostly from agriculture to the manufacturing sector
UNECA and CEPII (2021)	<p><u>Various scenarios up to:</u></p> <ul style="list-style-type: none"> ▶ 100% tariff cut ▶ 100% services barriers cut ▶ 100% NTM cut 	<ul style="list-style-type: none"> ▶ 33.8% to 97.0% increase in intra-African exports ▶ 8.5% decrease in tariff revenues 	<ul style="list-style-type: none"> ▶ Biggest boost is to industry and agrifood sectors, with a shift away from energy and mining. Up to 66% of gains from the AfCFTA are to the industry sector in intraAfrican trade, and just 3% are in the services sector
UNCTAD (2021)	<ul style="list-style-type: none"> ▶ Export potential model 	<ul style="list-style-type: none"> ▶ 18% increase in export potential by 2025 	<ul style="list-style-type: none"> ▶ Biggest gains for trade in vehicles, sugar, soap, fish, plastics, electrical machinery and fruit sectors

Study	Assumptions/ scenarios	Macroeconomic outcomes (gains)	Labour market outcomes
Abrego et al. (2019)	<ul style="list-style-type: none"> ▶ 100% tariff cut ▶ 35% NTB cut ▶ Either perfect or imperfect competition scenarios 	<ul style="list-style-type: none"> ▶ 2.11% increase in welfare ▶ 8.4% increase in exports to rest of the world ▶ 82% increase in intra-African exports 	<ul style="list-style-type: none"> ▶ Small loss in government revenue (0.03% as a share of GDP) due to tariff cuts (potentially affecting social security spending) but overall revenue increases once assumptions about reducing NTBs are factored in ▶ Over 60% of overall income gains are in the manufacturing sector ▶ Relatively more gains are concentrated in large economies (South Africa and Nigeria) under the assumption of imperfect competition
AfDB (2019)	<p><u>Various scenarios up to:</u></p> <ul style="list-style-type: none"> ▶ 100% tariff cut ▶ Removal of NTBs ▶ Trade facilitation 	<ul style="list-style-type: none"> ▶ 0.1% to 3.5% increase in real income ▶ 14.6% to 132.7% increase in intra-African exports 	<ul style="list-style-type: none"> ▶ Small decline in government revenue following tariff cuts (potentially affecting social security spending) rising to a US\$15 billion increase in revenue under all assumptions related to removal of NTBs and trade facilitation
Chauvin, Ramos and Porto (2016)	<p><u>Various scenarios up to:</u></p> <ul style="list-style-type: none"> ▶ 100% tariff cut ▶ 50% NTM cut 30% cut in transaction costs 	<ul style="list-style-type: none"> ▶ 0.1% to 2.64% increase in welfare 	<ul style="list-style-type: none"> ▶ Heterogenous sectoral impacts across countries ▶ Unskilled wages increase more than skilled wages in 19 out of 20 countries with only tariff cuts, with more skilled workers gaining with improvements related to NTBs and transaction costs ▶ AfCFTA is pro-poor in some countries and pro-rich in others
Jensen and Sandrey (2015a)	<p><u>Various scenarios up to:</u></p> <ul style="list-style-type: none"> ▶ 100% tariff cut ▶ 50% NTM cut 	<ul style="list-style-type: none"> ▶ Total Africa welfare gain of US\$39 billion ▶ Welfare changes of between -US\$1.4 billion to +US\$9.9 billion by country ▶ Exports change by -0.7% to +43% by country 	<ul style="list-style-type: none"> ▶ Skilled labour gains in employment relative to unskilled labour in 5 out of 9 countries and both gain similarly in 1 out of 9 countries ▶ Unskilled labour gains in employment relative to skilled labour in 3 out of 9 countries ▶ Unemployment rises in 1 out of 9 countries (Zimbabwe) ▶ Capital gains relative to labour in 9 out of 10 countries
Jensen and Sandrey (2015b)	<p><u>Various scenarios up to:</u></p> <ul style="list-style-type: none"> ▶ 100% tariff cut ▶ 50% NTM cut ▶ 30% cut in transaction costs 	<ul style="list-style-type: none"> ▶ 0.1% to 2.64% increase in welfare 	<ul style="list-style-type: none"> ▶ Demand for both skilled and unskilled labour increases ▶ General decline in government revenue due to tariff liberalization

FDI = foreign direct investment; GDP = gross domestic product; NTB = non-tariff barrier; NTM = non-tariff measure

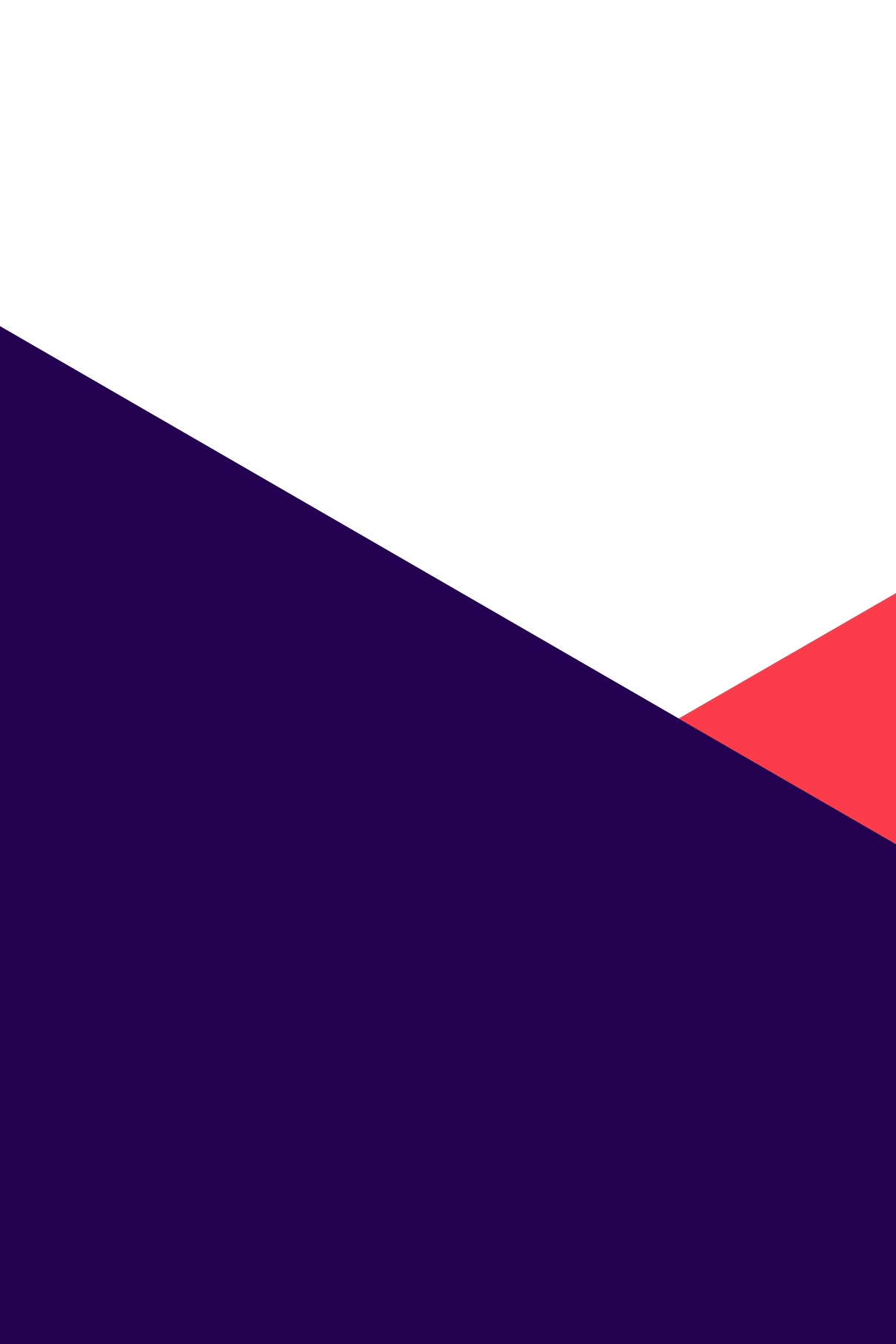
Note: Efforts have been made to present comparable results, rather than necessarily headline results, to facilitate comparability between the studies.

► Appendix II. Modelled estimates of the impact of the African Continental Free Trade Area, with a focus on gender-disaggregated outcomes

Study	Gender-related outcomes
ILO (forthcoming)	Wages rise faster for men in 24 out of 28 countries
Echandi, Maliszewska and Steenbergen (2022)	Female- and skill-intensive sectors expand the most, but with regional heterogeneity Female workers' wages grow fastest
Chauvin, Ramos and Porto (2016)	Female-headed households benefit more than male-headed ones in Burkina Faso and Ethiopia, are similarly affected in Madagascar, but benefit less than male-headed households in Cameroon and Nigeria.

Part 3

**Integrating decent work
in multilateral trade
frameworks**



Trade and gender

Addressing barriers to women's decent work through trade policy

Anoush der Boghossian*

* This chapter represents the opinions of an individual staff member of the World Trade Organization (WTO) and is the product of professional research. It is not meant to represent the position or opinions of the WTO or its Members, or the official position of any staff members of the WTO. It focuses on outlining current policy trends adopted by WTO Members with regard to trade, gender and decent work. This analysis is based on information provided by the WTO through Members' Trade Policy Reviews, the WTO Aid for Trade Monitoring and Evaluation Exercises, and Members' notification of their free trade agreements and regional trade agreements to the WTO. This chapter also looks at some provisions of WTO agreements and development-related decisions through a gender lens. In no way does it provide an interpretation of these rules and decisions; it simply provides a gender perspective on how trade rules and policies could support women, and how WTO Members have actually been using them and translating them into their national trade policies, as reported in their Trade Policy Reviews.



► Introduction

Women are key economic agents. They greatly contribute to countries' labour workforce – even if, overall, their participation is often lower than that of men – as is shown by decades of evidence gathered nationally, regionally and internationally. Worldwide, a gender gap in employment exists and persists; less than 47 per cent of women globally hold a formal job, compared with 72 per cent of men (ILO 2022a). This is, however, an oversimplification of the picture. In many countries and export-oriented sectors, employed women outnumber male workers, and sometimes more than half of the job holders are female.¹

In fact, the evidence shows that firms that engage in trade employ more women than those companies that remain focused on the domestic market. The average representation of female permanent employees in export firms is 33 per cent, compared with 24 per cent in non-exporting firms and 28 per cent in non-importing firms. Moreover, women make up 36 per cent of employees in firms engaged in global value chains (GVCs) and 38 per cent in foreign-owned firms (WTO and World Bank 2020). Indeed, in some countries, the female share of employees in exporting firms is even higher; for example, “in Morocco, Romania, and Vietnam, women represent 50 per cent or more of the employees of exporting firms, which have created jobs for more than 5 million women, roughly 15 per cent of the female population working in these countries” (WTO and World Bank 2020, 36).

Nevertheless, overall, women still face numerous barriers that hinder their integration into the formal employment market, including jobs in export firms, because they lack access to safe transport, or carry most, if not all, of the burden of unpaid care work, among many other reasons. Also, when they are employed, they may find themselves working in difficult environments (this is explored further in section 7.3.4 below). This situation is mostly due to negative gender social norms,² which often adversely affect women's economic empowerment.³ For example, because of these norms, women

1 For examples, see Appendix, Policy table, Part 1.

2 Negative gender social norms are defined here as cultural mindsets and stereotypes that determine societal values and define roles between men and women; these norms hinder and limit women's economic life by preventing them from accessing economic opportunities, developing their entrepreneurial activities, and reaping the benefits of trade (der Boghossian forthcoming).

3 World Bank (2022a) estimates that “a woman has just three-quarters of the rights of men”, impeding women's economic empowerment and therefore creating economic barriers.

tend to experience greater financial dependence and earn lower salaries in comparison to men (WTO 2022a); and they frequently have limited access to certain jobs and opportunities and face obstacles to retention (WTO 2022b, 99).

Some governments are addressing these negative gender social norms through their regional trade agreements (RTAs) (WTO 2022c). They establish a link between trade, social norms and gender equality. Two, in particular, include provisions that focus on “eliminating customs that are discriminatory against women through legislation with the objective to abolish prejudices against women and promote gender equality”.⁴ Others, more broadly, recognize the importance of cooperating on trade-related aspects of social policies in order to achieve the objectives of the RTA,⁵ or refer to the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁶ as a means to increase “the equal participation and opportunities for men and women in all sectors of political, economic, social and cultural life”.⁷

It is crucial to focus on these norms when trade is concerned because obstacles based on gender bias or negative social norms could constitute a new type of trade barrier, limiting women’s access to economic and job opportunities created by trade and in turn limiting development and poverty reduction (der Boghossian, forthcoming). An example of a chain of effects that may lead to such trade barriers is illustrated in figure 7.1.

Figure 7.1 Chain of effects in property rights, access to finance and trade due to negative gender norms



Source: der Boghossian (forthcoming)

- 4 [Treaty for the Establishment of the East African Community \(EAC\)](#), Ch. 22: “Enhancing the role of women in socio-economic development”, Art. 121: “The role of women in socio-economic development”; [Treaty Establishing the Common Market for Eastern and Southern Africa \(COMESA\)](#), Ch. 24: “Women in Development and Business”, Art. 154: “Role of Women in Development”.
- 5 [Framework Agreement Establishing a Free Trade Area between the Republic of Korea and the Republic of Turkey](#), Ch. 5: “Trade and Sustainable Development”, Art. 5.10: “Cooperation”; in force since 2013.
- 6 [CEDAW](#) was adopted by the United Nations General Assembly on 18 December 1979.
- 7 [Agreement Establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other](#), Part III: “Cooperation”, Title III: “Social Development and Social Cohesion”, Art. 47: “Gender”; in force since 2013.

For this reason, it is not just about how many women participate in the workforce; it is mostly about the quality of those jobs, and if they are skilled, high-level and high-paying. In fact, when working in export-oriented sectors, women are largely confined to low-paid, low-level and unskilled jobs, putting them in vulnerable economic situations; about 80 per cent of female workers in firms that export hold medium- and low-skilled jobs (WTO and World Bank 2020). Examples are provided in section 7.2.2 below. It is also about supporting women to enter formal employment and leave the informal sector, where they face many risks because they lack access to social benefits and protection, among other reasons (OECD and ILO 2019).

Within this context, governments are using various trade policies, ranging from national development strategies and sectoral national trade policies to RTAs and Aid for Trade programmes, to foster women's access to formal employment in export-oriented sectors (der Boghossian 2023a). However, governments tend to work in "policy silos", for two reasons: first, because there is a lack of inter ministerial collaboration, which is especially important for gender issues as they are cross-cutting by nature; and second, because they adopt various types of trade policy without making a connection between them and using them in a combined and integrated manner.

In the literature, trade policy is defined as the use by governments of import/export tariffs, as well as non-tariff measures such as quotas and antidumping duties, to regulate the trade of goods and services (WTO 2020; WTO and UNCTAD 2012). This, however, is not the focus of the current chapter. Instead, it explores four types of trade policy instruments: (i) national trade policies or strategies (including domestic sectoral trade policies, such as tourism or textile and garment); (ii) gender provisions in free trade agreements (FTAs) and RTAs; (iii) Aid for Trade programmes; and (iv) provisions in World Trade Organization (WTO) agreements, including development-related decisions adopted by the WTO.

In fact, the types of trade policy enumerated above, could, if combined, be used to form a supportive and transformational web of measures that not only supported women's access to formal employment but also promoted decent work for female workers and created sound working conditions for them. This is a new concept developed by the current author, who calls it the "blended approach" to gender-responsive trade policymaking (der Boghossian 2023b). Figure 7.2 shows how this mix of trade policies could be used to design gender-responsive national trade policies, which lie at the centre of the blended approach, allowing the measures adopted and implemented to produce policy efficiency and concrete impacts.

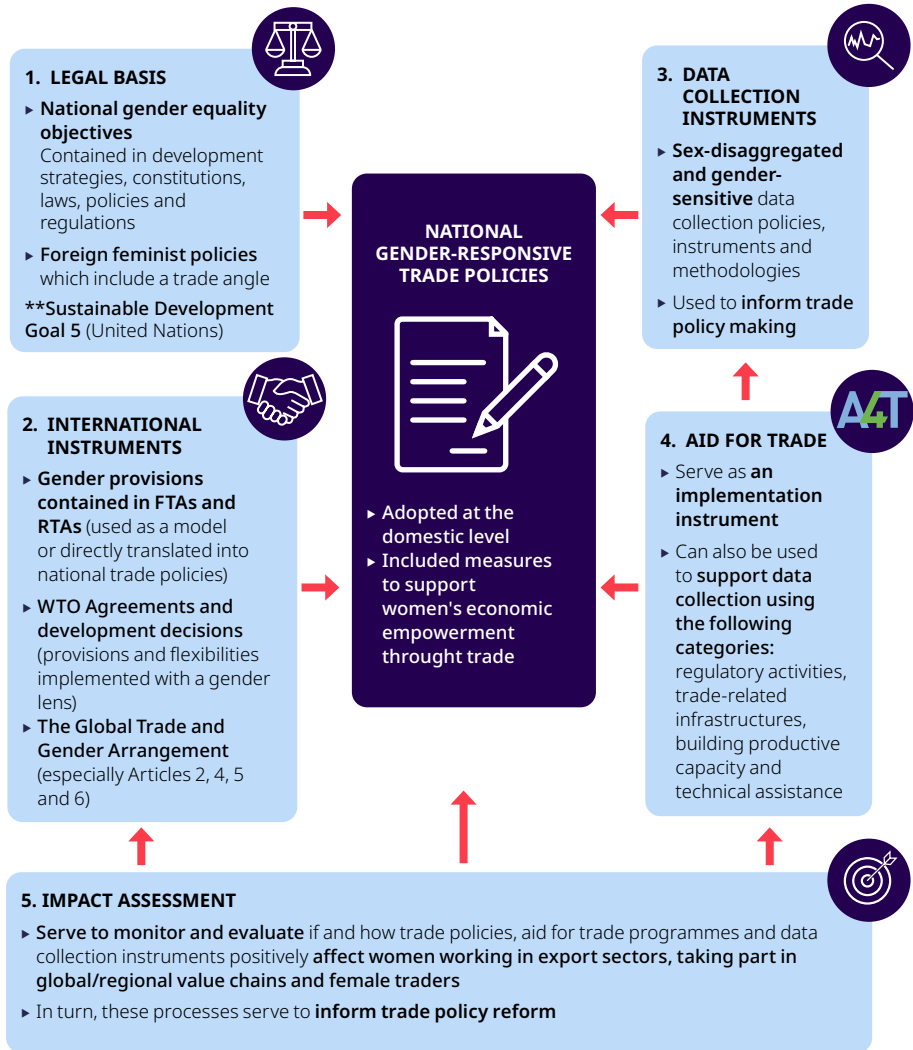
In recent years, governments have taken steps to develop gender-responsive trade policies. The measures include addressing employment barriers for women in trade-related sectors, improving women's working conditions, reducing or eliminating pay discrimination, and enhancing women's skills to access better-paid, high-level jobs and decision-making positions. Sometimes, they may also address issues related to gender-based violence in and outside the workplace, and give additional support to female workers by providing them with better access to healthcare (targeting mothers and childcare, in particular). By doing so, some governments have implicitly established a clear link between trade policies and more socially oriented complementary measures to specifically reinforce and sustain women's economic empowerment through trade.

The purpose of this chapter is to outline these various types of trade policy and to explore how they have been combined with socially oriented measures to support formal employment for women. Given the cross-cutting nature of gender issues, more and more governments have come to realize that, unless this policy combination is translated into their gender-responsive trade measures, it will be difficult to satisfactorily achieve the United Nations Sustainable Development Goals (SDGs) and their poverty reduction objectives.⁸

The chapter is structured as follows. Section 7.1 outlines how women's economic empowerment implicitly sits at the centre of the WTO objectives and explores the link between women's extensive roles in the economy and trade. Section 7.2 looks at how trade policy implemented by WTO members can foster employment opportunities for women. It shows that women, while taking advantage of these policies, remain in low-level, low-paid jobs. This leads on to section 7.3, which explores how existing trade policy solutions tackle these gender gaps in export-led employment, by improving women's skills and addressing difficult labour conditions, pay discrimination and gender-based violence. Section 7.3 then goes on to consider how trade policy fosters women's participation in male-dominated sectors, thereby improving their economic strength. Finally, sections 7.4 and 7.5 examine how some WTO members have implemented WTO agreements and development decisions with a gender focus, favouring women's decent work, and how the WTO has institutionalized the gender issue in recent years. Section 7.6 concludes.

8 United Nations, "The Sustainable Development Agenda".

► **Figure 7.2** The blended approach to gender-responsive trade policymaking



Source: der Boghossian 2023b

► 7.1 Social improvement through economic development and trade: The links between the WTO objectives, decent work and women's economic empowerment

The WTO was established in 1995 after the Uruguay Round of multilateral trade negotiations (1986–94) and following the adoption of the Marrakesh Agreement (the WTO Agreement);⁹ it incorporates the rules of the General Agreement on Tariffs and Trade (GATT 1947), as well as its objectives.¹⁰ The Preamble of the GATT stipulates that trade should be “conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income”.¹¹ The WTO Agreement inherited these objectives and added that trade should be “conducted allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development”.¹²

According to the United Nations (UN), sustainable development includes notions of inclusivity and resilience (UN 2022). To be achieved, inclusive and equitable economic growth, social inclusion, and environmental protection would need to be combined.¹³ The concept of sustainable development was similarly described in the 1987 Brundtland Commission Report.¹⁴

9 Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994, 1867 UNTS 154, 33 ILM 1144 (1994) [Marrakesh Agreement or WTO Agreement].

10 The original [General Agreement on Tariffs and Trade](#) (GATT 1947), signed in October 1947, was updated in 1993 (GATT 1994), incorporating the creation of the WTO. While the GATT focused on trade in goods, the WTO also covers trade in services and intellectual property.

11 First recital, Preamble, General Agreement on Tariffs and Trade 1994, 15 April 1994, 1867 UNTS 187, 33 ILM 1153 (1994) (GATT 1994).

12 First recital, Preamble, Marrakesh Agreement.

13 United Nations, “The Sustainable Development Agenda”.

14 United Nations, *World Commission on the Environment and Development, “Our Common Future”, 1987 (Brundtland Report)*, Section 3: “Sustainable Development”, Art. 27.

The ILO defines decent work as:

opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for all, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.¹⁵

Decent work is also part of the UN Sustainable Development Agenda. In particular, SDG 8 promotes sustained, inclusive and sustainable economic growth, full and productive employment, and decent work. SDG target 8.a provides for an increase in Aid for Trade, portraying the initiative as an instrument to implement this goal. The Aid for Trade Initiative was launched in 2005¹⁶ and operationalized in 2006¹⁷ by a set of recommendations developed by the Task Force on Aid for Trade. Interestingly, these recommendations include “gender equality” as a cross-cutting issue throughout the Initiative. All these definitions and concepts are in line with the WTO’s objectives, so trade could contribute, as an economic agent, to populations’ social well-being and therefore indirectly to decent work. In fact, when it comes to supporting women’s economic empowerment, many trade policies include provisions and measures, or are accompanied by socially oriented policies, that support female workers in export-oriented sectors.

Women are at the centre of multilateral issues and play a key role in the achievement of the SDGs, as highlighted by the UN and SDG 5.^{18,19} Women are sustainable economic growth drivers. Globally, there are over 500 million female entrepreneurs who are actively engaged in various forms of entrepreneurship, including established business ownership, startup ventures, and informal private sector activities. These women play a

¹⁵ ILO, “Decent Work”, accessed 12 July 2023.

¹⁶ The WTO [Hong Kong Ministerial Declaration](#) stipulates that “Aid for Trade should aim to help developing countries, particularly LDCs (least developed countries), to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade” (Para. 57).

¹⁷ The Task Force on Aid for Trade, composed of WTO members, presented its report and recommendations ([Recommendations of the Task Force on Aid for Trade](#)) on the operationalization of the Initiative at the General Council meeting on 27 and 28 July 2006.

¹⁸ United Nations, “The Sustainable Development Agenda”: “At the core of the 2020–2030 decade is the need for action to tackle growing poverty, empower women and girls, and address the climate emergency.”

¹⁹ United Nations, SDG 5: “Gender Equality”.

significant role in enhancing the productive capacity of their respective countries (GEM 2022). They act as job creators, especially for other women, thereby contributing to poverty reduction.²⁰ They are also innovators, and about 30 per cent of female entrepreneurs globally offer innovative products. There is also evidence that firms led by female chief technology officers (CTOs) demonstrate greater levels of innovation than those led by male CTOs (Wu et al. 2021).

In addition, as highlighted in statements made at the World Trade Congress on Gender in December 2022:

“Women are also climate change mitigators, and in developing countries they are managers of natural resources. Through this role, women have actually become experts in maintaining biodiversity on land and at sea by developing eco-friendly techniques. Women are, indeed, circular economists, and they are agents of food security. Female farmers mostly work in subsistence agriculture. As cross-border traders, they play a key role in food security, nutrition and health, as they mostly deal in essential food products for poor consumers, thereby supporting balanced diets in populations. Through their trade, they also deliver food to places where supply is lacking. In West Africa, for example, female informal traders in essential food represent about 30 per cent of total trade in the region. Women also are peacebuilders. Gender-equal participation in peacebuilding processes results in longer and lasting peace post-conflict. All women’s roles bring them back to trade that can strengthen them economically and in turn reinforce their social roles”.²¹

Therefore, by adopting sustainable development as one of its key objectives, the WTO has implicitly put women’s empowerment at the centre of trade. And the key element in making trade work for women is understanding how these objectives translate into trade policies and development strategies; how governments explicitly include measures supporting women’s decent economic empowerment in their trade policies; and how they use WTO agreements, implementing provisions using a gender lens for the economic

²⁰ Fifty-seven per cent of workers employed in micro companies owned and led by women are female, according to an unpublished WTO survey of more than 800 women entrepreneurs in Latin America, South Asia and East Africa, conducted in 2019 and 2020 (“Assessing Women Entrepreneurs’ Knowledge Gap on Trade in East Africa, South Asia, and Latin America”). Also, according to the survey, 50 per cent of women entrepreneurs were motivated to create their business in order to create jobs for others, and 41 per cent in order to be their own bosses.

²¹ [Closing speech given by the current author](#), in her capacity as Head of the WTO Trade and Gender Office, World Trade Congress on Gender, 7 December 2022.

and social benefit of women.

► 7.2 How trade policy creates opportunities for women to enter the economy and the workforce

7.2.1 Using trade policy to promote women's access to formal employment in export sectors

Today, most governments have largely acknowledged that trade can support women's economic empowerment and that it can be a catalyst for women's formal employment. They also recognize that, if they invest in women, women will, in return, support their growth and poverty reduction objectives (Fernández et al. 2021). About 92 per cent of developing countries include women's economic empowerment as a priority in their national or regional development plans and objectives (WTO and OECD 2022). Most governments now include gender equality objectives in their trade policies, Aid for Trade programmes (der Boghossian 2019b) and RTAs (Bahri 2021). Some have explicitly acknowledged that closing the gender gap is crucial for per capita income, growth, development and poverty reduction.²²

Interestingly, in some countries that are geographically isolated and highly dependent on international trade for their economic survival, women are at the centre of their trade strategies. In fact, trade and women are seen as moving hand in hand, as two major parts of economic and trade development. For instance, most small island developing States acknowledge that women's economic empowerment fosters their export expansion and their integration in global markets, and that gender issues should be an integral part of their trade policies (der Boghossian 2023a). While this may be a new trend starting to emerge among some WTO Members, it is not the first time that governments have invested in women to boost their trade. Some have already done so to remedy an economic crisis or a decline in trade in the country.²³

22 For examples, see Appendix, Policy table, Part 1.

23 For examples, see Appendix, Policy table, Part 1.

In their national trade and investment initiatives, the vast majority of governments prioritize women's economic empowerment and labour force participation.

Some governments have designed national trade policies that are intended to support economic growth and development, and address employment gaps in export-oriented sectors or key sectors that lack foreign investment. These policies are designed to be gender-responsive and encourage women's employment. Other governments provide financial incentives to the private sector to employ women. Such incentives are typically very specific; they may, for instance, target unemployed women or women who have been on career breaks, or they may provide tax credits to support small enterprises to provide jobs to "career-disconnected women" (der Boghossian 2019a). Sometimes, employment of women can also constitute one criterion for grant eligibility for cooperative enterprises.²⁴

In addition to national trade policies, in most of their RTAs, governments have adopted provisions to enhance the participation of women in employment, essentially through equal access to job opportunities. In these cases, access to employment is linked to decent work conditions, in contrast to national trade policies, which are more often concerned with encouraging women to access employment (with some exceptions, highlighted in sections 7.3.2 and 7.3.3 below). In fact, many RTAs contain labour chapters that include such provisions.²⁴

Similarly, some Aid for Trade programmes follow this trend and include objectives to eliminate gender discrimination in employment that go beyond adopting supportive measures to integrate women in the economy.²⁴

7.2.2 Why fostering access to poverty-reducing jobs is not enough

As outlined above, women are better paid in trade-related sectors as they move from informal to formal employment, but they are often employed in the lowest level of positions (WTO and World Bank 2020). This is the case in many export-oriented and trade-related sectors, such as tourism, healthcare and the air transport industry (to name but a few). Statistics reveal that in these three sectors, taken as examples, women are often relegated to low-level, low-skilled and therefore low-paid jobs.

In the tourism sector, about 54 per cent of workers are women, and they are under-represented in senior management. While employment in tourism is

²⁴ For examples, see Appendix, Policy table, Part 2.

low-paid for both genders, women earn 10–15 per cent less than men for equivalent work (UNWTO 2019).

Similarly in the healthcare sector, 70 per cent of formal health and social workers worldwide are women, but they are concentrated in low-level and low-paid jobs. Globally, 90 per cent of nurses and midwives are women (WHO 2020). Women working in this sector earn 11 per cent less than men (in similar jobs and working similar hours). In the global healthcare sector and industry, women hold 25 per cent of senior leadership roles (senior management, board membership, executive positions) (Women in Global Health 2023).

Lastly, in the air transport industry, women rarely hold senior or high-skilled positions. Only 6 per cent of the world's commercial airline pilots are female (Ahn and Jakub 2020). According to the International Air Transport Association, the proportion of women holding C-level (high-level) roles in the industry is just 3 per cent (IATA 2022; Egnatia Aviation 2023). Most air traffic controllers are male: in the United States, about 17 per cent are female (RGN 2021). Thus, women remain concentrated in low-level jobs, such as flight attendants, airport cleaners and duty-free shop assistants.

Overall, while there is a strong economic demand for female workers in many trade-related sectors, especially in the post-COVID-19 world, women's economic contributions to these industries are often not valued to the same extent as men's, in the wages they earn or the positions they hold. Women also frequently engage in unsafe and discriminatory working environments. Responding to this situation, some trade policies address these gaps and other barriers that women face in accessing decent employment and working conditions.

► 7.3 Using trade policies to address gender gaps in employment

7.3.1 Tackling female workers' participation gaps through skills enhancement and trade policy

While designing their domestic trade policies, many governments integrate capacity-building programmes or include training elements in their trade promotion measures targeting women (der Boghossian 2019a). While many, if not most, target women entrepreneurs and traders, they also focus on female workers in export-oriented sectors. Some governments have established training programmes targeting female workers in export sectors or supporting their access to employment in trade.²⁵

Some RTAs also integrate gender-focused education provisions. About 15 per cent of RTAs notified to the WTO integrate education, training and capacity-building provisions targeting women, either directly or indirectly. In fact, RTAs essentially approach the gender education gap in a broader sense, rather than focusing solely on trade aspects.

RTAs include provisions that generally target women's lack of education and focus mainly on giving them equal access to education and encouraging their capacity-building and skills enhancement. Sometimes these provisions target women at work and in business. A few trade agreements include more targeted trade-related provisions that focus on women's capacity-building in specific sectors and areas, such as fisheries or agriculture.²⁶ Also, some RTAs include provisions on training women in financial literacy;²⁷ on improving women's technical and industrial employment through vocational and on-the-job training programmes;²⁸ on women's and girls' access to education

25 For examples, see Appendix, Policy table, Part 3.

26 For examples, see Appendix, Policy table, Part 3.

27 [Argentina–Chile FTA](#), Ch. 15: “Género y comercio”, Art. 15.3: “Actividades de cooperación”. [Brazil–Chile FTA](#), Ch. 18: “Comercio y género”, Art. 18.3: “Cooperation Activities”.

28 [Treaty Establishing the Common Market for Eastern and Southern Africa \(COMESA\)](#), Ch. 24: “Women in Development and Business”, Art. 155: “Role of Women in Business”; [Treaty for the Establishment of the East African Community \(EAC\)](#), Ch. 22: “Enhancing the Role of Women in Socio-Economic Development”, Art. 122: “The Role of Women in Business”.

in science, technology, engineering and mathematics (STEM) that could yield high-paying jobs for women's;²⁹ and on strengthening women's digital skills.³⁰ Also, interestingly, the Comprehensive Economic Partnership Agreement between the European Free Trade Association (EFTA) States and Indonesia aims to protect the welfare of women through education and training on sustainability.³¹ Some RTAs also mention CEDAW, which includes provisions on equal access to education (Art. 10).³² Lastly, a few RTA provisions target education for women on health issues, a key imperative for women's decent work.³³

Looking at Aid for Trade programmes, very few focus on women's skills enhancement.³⁴ In fact, while most national trade policies and Aid for Trade programmes do include training and skills enhancement schemes for women, they mostly target female entrepreneurs and farmers, their knowledge gap of trade rules or their digital skills. They seldom address issues related to female workers in export-oriented sectors.

Of course, by supporting women entrepreneurs, these policies also indirectly support female workers, as they constitute much of the workforce of companies owned and led by women, including in the informal economy (as highlighted in section 7.1 above).

7.3.2 Addressing gender issues related to labour conditions in trade

As described above, integrating women in formal employment and in export-related sectors reinforces countries' trade growth, development and

29 [United Kingdom–Australia FTA](#), Ch. 24: "Trade and Gender Equality", Art. 24.2: "Trade and Gender Equality Cooperation Activities"; [Brazil–Chile FTA](#), Ch. 18: "Comercio y género", Art. 18.3: "Cooperation Activities"; [United Kingdom–New Zealand FTA](#), Ch. 25: "Trade and Gender Equality", Art. 25.5: "Cooperation".

30 [United Kingdom–Australia FTA](#), Ch. 24: "Trade and Gender Equality", Art. 24.2: "Trade and Gender Equality Cooperation Activities"; [United Kingdom–New Zealand FTA](#), Ch. 24: "Small and Medium Enterprises", Art. 24.3: "Cooperation to Increase Trade and Investment Opportunities for SMEs".

31 [Comprehensive Economic Partnership Agreement \(CEPA\)](#), Ch. 8: "Trade and Sustainable Development", Art. 8.5: "Social Development".

32 [EU–Central America Association Agreement](#), Part III: "Cooperation", Title III: "Social Development and Social Cohesion", Art. 47: "Gender"; [Canada–Israel FTA](#), Art. 13.2: "International Agreements"; [Canada–Chile FTA](#), Art. N bis 02: "International Agreements". [United Kingdom–New Zealand FTA](#), Art. 25.4: "International Instruments".

33 [EU–Central America Association Agreement](#), Part III: "Cooperation", Title III: "Social Development and Social Cohesion", Art. 44: "Public Health".

34 For examples, see Appendix, Policy table, Part 3.

poverty reduction, and boosts GDP expansion. However, while employed, female workers face complex labour conditions which may prevent them from remaining in their formal jobs. This is why some governments use their national trade policies to improve working conditions for women in export sectors, with the objective of removing the discrimination they face in employment or in pay.³⁵

About 15 per cent of RTAs notified to the WTO include provisions focusing on improving women's labour conditions, overall and in export-led sectors, as described in section 7.2 above. The provisions mostly establish a principle of non-discrimination regarding access to employment, linking it to equal treatment in the workplace and decent work for both men and women.

In their RTAs, most State parties have reaffirmed their commitment to international instruments focusing on decent work, and it is becoming common practice for parties to integrate ILO Conventions that protect women at work in their trade agreements. Moreover, many RTAs reference the ILO Decent Work Agenda, which has a strong gender focus,³⁶ and provide for cooperation activities on trade-related aspects of the ILO agenda. Similarly, 70 per cent of RTAs integrate labour provisions and refer to the ILO Declaration on Fundamental Principles and Rights at Work, which includes commitments to the "elimination of discrimination in respect of employment and occupation" and to provide "a safe and healthy working environment".³⁷

Also, interestingly, some provisions contained in RTAs and addressing working conditions of women can be very specific. For example, such provisions may focus on the adoption of employment policies creating better jobs and working conditions in the informal sector,³⁸ consider protective measures in employment of pregnant women or recent mothers,³⁹ establish

35 For examples, see Appendix, Policy table, Part 4.

36 In the context of the [Decent Work Agenda](#), the former ILO Director-General Juan Somavia declared that "the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity".

37 [ILO Declaration on Fundamental Principles and Rights at Work](#).

38 [Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part](#), Title V: "Other Cooperation Policies", Ch. 15: "Employment, Social Policy and Equal Opportunities", Art. 85(b).

39 [Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), Annex 31: "Transport of goods by road", Section 2: "Posting of drivers", Art. 4: "Terms and conditions of employment".

“job-protected leave for birth or child adoption”,⁴⁰ or recognize and value women’s unpaid care work through policies supporting flexible working arrangements or access to affordable childcare.⁴¹

Access to healthcare is also a key aspect in fostering women’s decent work, especially when it comes to maternity and childcare issues. As detailed in the Appendix, some national trade policies are accompanied by social programmes supporting lactating mothers at work or introducing nutrition programmes in export-led firms.

According to the *World Medical Journal*, “gender is a social determinant of health and health problems” (WMJ 2019), while a “lack of gender representation and diversity within the medical profession may lead to female patients and their children not having equitable access to health care” (WMA 2021). Many women and girls fail to access healthcare because of gender-based bias. Similarly, in many countries, social norms make it difficult for female doctors and nurses to practise their profession. A vast majority of women work in the informal sector without the protection of health insurance, maternity benefits or paid sick leave. Even some women working in formal sectors, mostly in part-time jobs or as foreign immigrants, may have no or restricted access to health cover and maternity benefits. Some RTAs include various provisions on healthcare, ranging from maternity benefits to childcare and compulsory access to medical insurance (Bahri 2020).

Lastly, and interestingly, in one agreement State parties commit to “sharing data insights, lessons, and best practices for analysing gender segregation in the labour market, and on the working conditions of women in export-oriented industries and sectors impacted by trade”.⁴²

7.3.3 Reducing pay discrimination through trade policy

In employment, globally, pay discrimination between men and women exists and persists (ILO 2022a). In fact, it is one of the two most persistent gender

40 United States–Mexico–Canada Agreement, Ch. 23: “Labour”, Art. 23.9: “Discrimination in the Workplace”; Iceland–Liechtenstein–Norway–United Kingdom FTA, Ch. 13: “Trade and Sustainable Development”, Section 13.2: “Trade and Labour”, Art. 13.14: “Non-Discrimination and Equality in the Workplace”; United Kingdom–New Zealand FTA, Ch. 23: “Trade and Labour”, Art. 23.8: “Non-Discrimination and Gender Equality in the Workplace”.

41 United Kingdom–New Zealand FTA, Ch. 23: “Trade and Labour”, Art. 23.8: “Non-Discrimination and Gender Equality in the Workplace”.

42 United Kingdom–New Zealand FTA, Ch. 25: “Trade and Gender Equality”, Art. 25.5: “Cooperation”.

gaps in employment (World Bank 2022a), so removing gender barriers to equal wages, including in export sectors, is one of the key objectives in trade policy action for governments when supporting women.

First, some national trade policies foster women's participation in male-dominated sectors, often to address workforce shortages in trade-related and export-led industries that are driving countries' economies and attracting foreign investment. Such jobs provide women with higher pay (they can earn 2–3 times more than in the traditional sectors in which they are concentrated), where they require specialized skills and therefore occupy higher-level positions. Second, some of these policies focus on reducing pay discrimination.⁴³

A few RTAs also include provisions specifically affirming equal pay between men and women⁴⁴ and protecting women against pay discrimination.⁴⁵ Some provisions are highly specific and outline ways to implement equal pay, such as “developing analytical and enforcement tools related to equal pay for equal work or work of equal value”,⁴⁶ or give an extended definition of the gender pay gap.⁴⁶

Aid for Trade programmes do not generally focus on pay discrimination, although there are some exceptions.⁴⁷

7.3.4 How trade policy is starting to address gender-based violence in trade

By addressing the poor working conditions of female workers, trade policies build a first foundation to tackle violence against women; they can make

43 For examples, see Appendix, Policy table, Part 5.

44 United States–Mexico–Canada Agreement, Ch. 23: “Labour”, Art. 23.12: “Cooperation”. [Agreement on the European Economic Area](#), Part V: “Horizontal Provisions Relevant to the Four Freedoms”, Ch. 1: “Social Policy”, Art. 69; Consolidated version of the Treaty on the Functioning of the European Union, Part III: “Union Policies and Internal Actions”, Title X: “Social Policy”, Art. 157 (ex Art. 141 TEC); United Kingdom–Australia FTA, Ch. 21: “Labour”, Art. 21.8: “Non-Discrimination and Gender Equality in the Workplace”; [Taiwan, China–Nicaragua Agreement](#), Part 7: “Labor and Environment”, Ch. 18: “Labor”, Annex 18.01, Art. 18.02: “Enforcement of Labor Laws”; United Kingdom–New Zealand FTA, Ch. 23: “Trade and Labour”, Art. 23.8: “Non-Discrimination and Gender Equality in the Workplace”.

45 United States–Mexico–Canada Agreement, Ch. 23: “Labour”.

46 Agreement on the European Economic Area, Part V: “Horizontal Provisions Relevant to the Four Freedoms”, Ch. 1: “Social Policy”, Art. 69; Consolidated version of the Treaty on the Functioning of the European Union, Part III: “Union Policies and Internal Actions”, Title X: “Social Policy”, Art. 157 (ex Art. 141 TEC).

47 For examples, see Appendix, Policy table, Part 5.

women's work environment more secure and put them in less vulnerable employment conditions. Such policies can indeed constitute preventive measures against gender-based violence in the workplace.

Gender-based violence exists in trade-related sectors. In some Latin American countries, female workers in the banana or pineapple industry, which are heavily export-oriented, face sexual harassment in the workplace, which is often justified by local and industry culture. Also, women as internet users are increasingly targeted in cybercrime incidents, including cyber harassment. For example, in India, according to National Crime Records, the number of cybercrime incidents in 2021 had gone up by 18.4 per cent since 2019, and the number of such cases against women had increased by 28 per cent (Sawhney 2022). Women are increasingly threatened over the internet, especially in financial data loss and violations of security and privacy, which can affect their income and employment. In fact, cyber insecurity can prevent women from using new technology and thereby cause them to miss opportunities to gain skills that could support them in accessing higher-paid jobs.

Trade policies are starting to address these issues, but they remain few. A limited number of RTAs focus on gender-based violence. Some provisions are very broad and aim to shape programmes addressing violence against women, often focusing on prevention. Others link efforts to build good working conditions with the elimination of sexual harassment and gender-based violence. Also, some RTAs explicitly refer to CEDAW, an international instrument that can support the elimination of gender-based violence, and State parties have reaffirmed or recalled their commitments under CEDAW. In June 2019 the ILO adopted the Violence and Harassment Convention (Convention 190), which came into effect two years later, in June 2021. It is the first Convention to establish international commitments preventing and responding to violence and harassment in employment. Some RTAs have actually made references to Convention 190.⁴⁸

No specific national trade policy addresses violence against women. The issue is included mostly in countries' development strategies or action plans, which also apply to trade-related sectors.⁴⁹

Aid for Trade strategies have started to focus on violence against women (WTO and OECD 2022). Some countries have included objectives to eliminate gender-based violence, including child marriage, in their Aid for Trade initiatives, as it constitutes an obstacle to their development goals. While

48 ILO [Labour Provisions in Trade Agreements Hub](#).

49 For examples, see Appendix, Policy table, Part 6.

programmes often focus on addressing violence faced by female cross-border traders, some include activities to promote “women’s rights in trade” and at the same time reduce their “vulnerability to violence and exploitation” (Netherlands). Other Aid for Trade initiatives require that projects include activities to address gender-based violence, with the particular aim of making jobs free from sexual harassment (Australia).

Private companies heavily integrated in global value chains are also addressing this issue, sometimes in direct collaboration with workers. One transnational company in the garment sector has been working with trade unions at the local level, and with suppliers in the value chain, to raise awareness of gender-based violence in the industry. It has also provided workers and management with specific training tools to enable employees to resolve issues. The company is currently working on designing joint global guidelines for its supply chain, clearly outlining how suppliers should act when it comes to creating a safe workplace environment and ending gender-based violence and harassment (H&M Group 2016).

In the Latin American banana industry, COLSIBA, the Regional Coordinating Body of Latin American Banana and Agro-industrial Product Unions, has organized campaigns promoting the elimination of gender-based violence in the sector and was successful, for example, in getting a big multinational corporation to introduce the first sexual harassment policy in the Latin American banana sector.

These private sector initiatives, combined with government trade policies, could play an essential part in limiting, if not eradicating, gender-based violence, as both public and private sectors can reinforce each other’s initiatives.

7.3.5 Using trade policies to foster women’s participation in sectors where they are less represented

With a few exceptions, most trade policies include measures that support women in export-oriented sectors where they are already relatively well represented. Very few look to foster women’s participation in industries where they are less represented and could earn more, thus reducing pay discrimination. For instance, as described in section 7.3.3 above, a few policies include programmes to integrate women into male-dominated sectors. Some policies also look to increase the number of female workers in sectors that drive their economy and are non-traditional industries for

women, such as the business process outsourcing (BPO) or information and communications technology (ICT) sectors (der Boghossian 2023c).

Also, a few RTAs include provisions that support women and girls' education in STEM subjects, with the objective of improving their access, participation, leadership and education in these fields,⁵⁰ as well as in innovation, e-commerce and other high-income economic areas.⁵¹ Such provisions could open up opportunities for better employment and better pay for women in new areas of work, such as artificial intelligence (AI) and cybersecurity, where there is globally a workforce shortage of more than 3 million professionals (Xie 2023). The evidence shows that STEM workers earn more than double the pay of non-STEM workers (Özdemir 2023). However, women currently account for only two out of every ten cybersecurity professionals (World Bank 2022b).

► 7.4 Using flexibilities and policy space in WTO agreements and development decisions to support women's decent work

7.4.1 Examples of flexibilities in the WTO Agreement on Agriculture: The “green” and “development” boxes

The WTO Agreement on Agriculture, which came into force at the time of the establishment of the WTO in 1995, “allow[s] governments to support their rural economies, but preferably through policies that cause less distortion to trade. It also allows some flexibility in the way commitments are implemented” (WTO n.d.).

50 United Kingdom–New Zealand FTA, signed in 2022.

51 Chile–Paraguay FTA, signed in 2021.

This flexibility is regulated by the Agreement on Agriculture, which includes three types of subsidy or (in WTO jargon) “boxes”.⁵² Annex 2 of the agreement⁵³ includes a provision that stipulates that domestic subsidies qualify as “green box” subsidies if they do not “distort trade, or at most cause minimal distortion”.⁵⁴

Some governments have used their “green box” flexibility to design training programmes for small producers in agriculture which include gender bias issues, or for female farmers with the objective of increasing productivity and production (der Boghossian 2019a). Others have established various types of agricultural support programme, using their “green box” for training and educating women in rural areas to assist them in land development (der Boghossian 2019a).

Also, the Agreement on Agriculture includes other flexibilities that could be used for the benefit of female farmers if implemented using a gender lens, depending on a country’s needs at the national level. Article 6.2 of the agreement, also named the “Development Box”, allows developing countries to provide input subsidies (following certain criteria) to their “low-income or resource-poor producers”. Evidence shows that female farmers lack access to productive resources often because they lack capital to buy them (Van De Velde, Stanley and Stickler 2020). According to the Food and Agriculture Organization, if women had access to productive resources at the same level as men do, they would increase their production by 20–30 per cent (FAO 2011; Van De Velde, Stanley and Stickler 2020). Therefore, Article 6.2 could work for female farm-workers, who precisely lack support in accessing such resources. In 2016, The Gambia donated bags of fertilizer to women, on a very limited scale and in response to an emergency situation (WTO 2018, 53). This example shows that WTO rules could be translated into national policies for the benefit of women, depending on the country’s needs at the national level.

52 The WTO refers to agricultural subsidies as “boxes”, which are colour-coded (amber, blue or green) depending on how much they distort trade. WTO legal texts – [Marrakesh Agreement](#).

53 WTO, [Agreement on Agriculture](#), Annex 2: “Domestic Support – the Basis for Exemption from the Reduction Commitments”.

54 “They have to be government-funded (not by charging consumers higher prices) and must not involve price support. They tend to be programmes that are not targeted at particular products, and include direct income supports for farmers that are not related to (are ‘decoupled’ from) current production levels or prices. They also include environmental protection and regional development programmes. ‘Green box’ subsidies are therefore allowed without limits, provided they comply with the policy-specific criteria set out in Annex 2.” WTO, [Domestic Support in Agriculture: The Boxes](#).

7.4.2 Multilateral development decisions in support of women’s economic empowerment: The LDC services waiver and “special and differential treatment” provisions

In recent decades, the WTO has adopted decisions to support developing countries and least developed countries (LDCs) in integrating in the global market, with the aim of using trade as a development and poverty reduction agent. One such initiative is the LDC Services Waiver. Adopted at the 2011 WTO Ministerial Conference,⁵⁵ it allows governments to “grant preferential treatment to services and service suppliers from LDC members”.⁵⁶ The waiver’s objective is to improve LDCs participation in the global services market. So far, 51 WTO Members have granted such preferences to LDCs.

Such flexibility and preference could be to the advantage of female workers because they tend to be more involved in the services sector. In low- and lower-middle-income countries, women make up about 40 per cent of workers in the services sector workforce (WTO and World Bank 2020), while in low-income countries only, the share of female employment in services is 30 per cent (World Bank data, modelled on ILO estimates 2019). Therefore, preferences granted to LDCs in this sector could benefit women and boost their employment, bringing them better-quality jobs in the services sector. It could also help women to enter formal employment as, in LDCs, they are heavily represented in informal employment, holding vulnerable jobs (ILO 2022b).

The WTO agreements contain provisions that grant special rights to LDCs and developing countries. These “special and differential treatment” provisions can offer these Members longer time periods to implement their WTO commitments, allow them to adopt measures to increase their trading opportunities, or give them support to help build capacity to carry out WTO work, address potential disputes and implement technical standards. For example, the GATT 1994 includes 25 special and differential provisions, contained in Articles XVIII, XXXVI, XXXVII and XXXVIII.⁵⁷ In particular, the provisions aimed at increasing the trade opportunities of developing countries,⁵⁸ especially those that “promote the establishment of a particular

55 WTO, [Preferential Treatment to Services and Service Suppliers of Least-Developed Countries](#), WT/L/847.

56 WTO, [Services Negotiations: Trade in Services and LDCs](#).

57 WTO, [Special and Differential Treatment Provisions in WTO Agreements and Decisions](#), WT/COMTD/W/271.

58 Arts XXXVI.2, XXXVI.3, XXXVI.4, XXXVI.5, XXXVII.1(a), XXXVII.4, XXXVIII.2(c) and (e).

industry with a view to raising the general standard of living”, could potentially be implemented with a gender approach, targeting women in certain economic sectors or fostering women’s participation in new industry areas, where wages could be higher. Also, technical assistance provisions could support governments’ efforts to integrate gender issues in their trade policies. Furthermore, the WTO Secretariat, based on Members’ requests,⁵⁹ has set up a dedicated training programme with this objective (see section 7.5 below). Lastly, supporting developing countries in implementing technical standards, the work of the Standards and Trade Development Facility (STDF) on sanitary and phytosanitary standards includes a gender component that supports female farmers in complying with these standards and gaining access to export markets.

► 7.5 Gender equality, trade policymaking and the WTO

Gender equality is part of the WTO’s work programme, and a group of WTO Members (constituting 85 per cent of the membership) institutionalized the issue in the Organization by establishing the Informal Working Group in Trade and Gender (IWG) in September 2020 (der Boghossian 2023c).⁶⁰ As part of its four work pillars, IWG members work on sharing their trade policy experience, practices and methodologies on women’s economic empowerment. They build each other’s trade policymaking capacity, exploring issues such as female entrepreneurship, e-commerce, the impact of FTAs on women, COVID-19 mitigation measures focusing on women, and policies of micro, small and medium-sized enterprises (MSMEs), with a focus on female small entrepreneurs.⁶¹ The IWG also focuses on understanding how to collect sex-disaggregated data in trade, which is key to informing trade policymaking; and on how to better integrate gender issues in Aid for Trade programmes and to mainstream gender issues in the daily work of the WTO and in the work of regular WTO committees, with the emphasis mainly on policymaking.

⁵⁹ Since 2018 the Biennial Technical Assistance and Training Plans have included requests from WTO Members to establish and conduct such trainings on the topic.

⁶⁰ WTO, *Interim Report Following the Buenos Aires Joint Declaration on Trade and Women’s Economic Empowerment*, WT/L/1095/Rev.1.

⁶¹ *Progress Report on WTO Members and Observers Technical Work on Women’s Economic Empowerment*, 9 November 2021, INF/TGE/R/1.

At the multilateral level, WTO Members have adopted the *12th Ministerial Conference (MC12) Outcome Document*, in which they recognize the importance of women's economic empowerment and the work of the WTO in this field.⁶²

Operating in parallel, the WTO Trade and Gender Office supports Members in this work, seeking to build Members' policymaking capacity and to integrate gender issues in their trade policies.⁶³ To this end, it has established dedicated training programmes for government representatives and is creating gender-responsive trade policy tools. These initiatives aim to assist WTO Members in data collection, monitoring, reporting, and the promotion of inclusive trade policies. The WTO Secretariat also supports Members' work on Aid for Trade, gathering evidence on how gender is integrated in Aid for Trade programmes and developing specific indicators to support Members in including gender issues in them. The Trade and Gender Office has also mapped out the gender provisions in RTAs to support Members' negotiations, providing existing models of provisions they could use in the design of their RTAs. Similarly, the Office is working on categorizing all the national trade policies adopted by WTO Members to support their policymaking work.

► 7.6 Conclusion

Overall, in recent decades, governments have increasingly integrated gender issues in their trade policies, recognizing the link between trade and women's economic empowerment and acknowledging female workers' contribution to the economy, development growth and poverty reduction. For this purpose, they have used a wide variety of policy instruments, ranging from adopting trade policies domestically, negotiating gender provisions in their RTAs, and designing Aid for Trade programmes that include a targeted gender focus, to transferring some of the flexibilities in WTO agreements into their national trade policies and adopting measures that support women.

⁶² WTO, *12th Ministerial Conference (MC12) Outcome Document*, 22 June 2022, WT/MIN(22)/24, WT/L/1135, Para. 13.

⁶³ The Trade and Gender Office was established in the WTO Secretariat in May 2022, but the Secretariat's work on trade and gender started in 2016, when the former Director-General Roberto Azevêdo became an International Gender Champion. He commissioned an internal study to understand the links between trade, gender and development, and in 2017 appointed a trade and gender focal point in the WTO Secretariat to lead the work in the Organization. In 2017 the Secretariat adopted its first Action Plan on Trade and Gender 2017–19 and is now working on the basis of its second Action Plan for 2021–26.

Often developed and adopted in "policy silos", these policies, if combined, could be more effective and impactful in supporting women's entry into the formal workforce and addressing issues related to decent work and working conditions for them. For policy efficiency, governments could apply this "blended approach" to gender-responsive trade policymaking.

Additionally, governments could potentially explore how to focus their national trade policies and Aid for Trade programmes more directly on female workers and their access to skills. This is especially important in the current context of future automation in trade-related sectors where women work the most (such as the garment industry), threatening their jobs and livelihood. For this purpose, they could use the gender provisions contained in their RTAs, which do focus on these issues, referencing ILO Conventions and its Decent Work Programme, as well as CEDAW; these could be translated into national trade policies using the "blended approach" described above.

While these policies focus mainly on female entrepreneurs and farmers, they also include measures and provisions that support women's employment in export-oriented sectors. These policy trends are very clearly established. Another policy trend shows that governments, at the same time as devising support measures to foster female employment in exporting firms, integrate socially oriented issues in order to secure these positions for women and ensure that they remain in their jobs. They may, for instance, integrate social issues in their trade policy or adopt other policies that complement trade policies promoting female workers. These social measures range from providing female employees in export-led sectors with adequate working conditions and supporting their equal access to training and education, to reducing pay discrimination and addressing gender-based violence in the workplace.

These various trends show that governments intend to safeguard women's working conditions in exporting firms and implicitly recognize, in some sense, that women's contribution to the economy and poverty reduction could be impaired without such social support. In this way, trade policies are aligned with SDG 8, especially targets 8.3 and 8.5, promoting sustained, inclusive and sustainable economic growth, with full and productive employment and decent work for all.⁶⁴ Given the cross-cutting nature of gender issues, this

⁶⁴ Target 8.3: "Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro, small- and medium-sized enterprises, including through access to financial services."

Target 8.5: "By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value."

is the best recipe to successfully realize the impact of these policies and to achieve SDG 5 (“Achieve gender equality and empower all women and girls”), which is, in reality, at the centre of all development goals.

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▶ Appendix. Policy table: examples of gender-responsive trade policies

Type of trade policy	Policy area/focus	Country, region or customs territory	Description
PART 1. WOMEN'S EMPLOYMENT RATE, WOMEN'S INTEGRATION IN THE WORKFORCE, TRADE AND ECONOMIC GROWTH			
Data collection	Women's participation in the economy	Barbados	In 2021 the labour force participation rate was 65.3 per cent for men and 57.5 per cent for women, of which more than 48 per cent were employed workers. But in some sectors, such as health, finance, insurance and food services, employed women outnumbered male workers, and sometimes more than half of the job holders were female. ¹
National policy	Gender mainstreaming/link between gender, social and economic development	Argentina	Argentina's "policy philosophy" shows how economic, social and gender issues are intertwined. The Government outlined that: a productive system that fails to use women's talents loses opportunities for growth, innovation and improved productivity. Hence, the Government understands that productive policies must necessarily include incentives to increase equal opportunities in the labour market and to reduce stereotypes (through awareness-raising campaigns) that currently obstruct women's access to strategic branches for development. Greater diversity within these branches will help to create a wider range of ideas and approaches in enterprises, increasing the likelihood of innovation and business growth. In this regard, Argentina aims to create guidelines for the introduction of cultural changes in the operation of enterprises, by encouraging greater opportunities for women, eliminating gaps in equality and creating environments that prevent and penalize any kind of gender-based discrimination or violence. ²
National policy	Gender mainstreaming/link between gender, social and economic development	Dominican Republic	The Dominican Republic highlights that the rationale underpinning its National Multi-Year Public Sector Plan is to ensure that policies take into account their impact on people's quality of life to improve gender equity (among others). ³ The Government stipulated that "ultimately, quality of life has become one of the Dominican Republic's core development objectives".

1 2021 Employment by Industry and Sex. Data produced by the Barbados Statistical Service; WTO, *Trade Policy Review: Barbados*, WT/TPR/M/431/Add.1, 3, 21 February 2023.

2 WTO, *Trade Policy Review: Argentina*, WT/TPR/G/412, 20, 11 August 2021.

3 WTO, *Trade Policy Review: Dominican Republic*, WT/TPR/G/435, 10, 24–26 January 2023.

►Appendix (cont'd)

Type of trade policy	Policy area/focus	Country, region or customs territory	Description
Economic strategy	Women's participation in the economy	Peru	Peru's per capita income has increased while gender inequality has decreased, as measured by the gender inequality index. The massive entry of women into the Peruvian workforce, largely caused by a shift in the role of women in society, has driven economic growth and human development in the country. ⁴
National trade policy (foreign trade strategy)	Link between trade growth and women's economic empowerment	Dominican Republic	The Government highlights that its integration into international markets is dependent on women's empowerment and leadership in trade. ⁵ In its foreign trade strategy, it outlines its goals to develop women's trade culture in order to lift the country's overall exports and "turn women into drivers of growth and poverty reduction". ⁶
National trade policy	Link between trade growth and women's economic empowerment	Solomon Islands	Investing in women's productive potential is a crucial step towards enhancing its trade performance. ⁷
National Trade Policy and National Export Promotion Strategy (2019–2023)	Link between trade growth and women's economic empowerment	Zimbabwe	Between 2011 and 2017 the importance of trade in the Zimbabwean economy fell from 89.5 per cent to 50 per cent. To remedy this trend, the Government included gender mainstreaming in its National Trade Policy and National Export Promotion Strategy (2019–2023) by extending preferential access to finance, providing trade support in general for women and delivering trade information for women and young people. ⁸
PART 2. WOMEN'S ACCESS TO EMPLOYMENT THROUGH TRADE; FILLING WORKFORCE SHORTAGES IN EXPORT SECTORS			
National policy	Industry policy (Industrial Transformation Agenda)	Ghana	Promotes gender inclusion as a key objective. ⁹
National policy	Foreign investment strategy	Nigeria	Through the creation of vocational and technical training centres, the Government fostered women's participation in the construction sector, a male-dominated sector, to develop their skills and fill a workforce shortage in the sector. ¹⁰

4 Statement made by the WTO Ambassador of Peru at the 26 February 2021 meeting of the WTO Informal Working Group on Trade and Gender.

5 WTO, *Trade Policy Review: Dominican Republic*, WT/TPR/S/435, 8, 24–26 January 2023.

6 WTO, *Trade Policy Review: Dominican Republic*, WT/TPR/S/435, 39, 24–26 January 2023.

7 WTO, *Trade Policy Review: Solomon Islands*, WT/TPR/G/349, 5, 13–15 December 2016.

8 WTO, *Trade Policy Review: Zimbabwe*, WT/TPR/M/398/Add.1, 47, 1 December 2020.

9 WTO, *Trade Policy Review: Ghana*, WT/TPR/427, 12, 17 May 2022.

10 WTO, *Trade Policy Review: Nigeria*, WT/TPR/G/356, 11, 7 May 2017.

▶ Appendix (cont'd)

Type of trade policy	Policy area/focus	Country, region or customs territory	Description
National policy	Tourism policy	Djibouti	Between 2001 and 2010 the policy aimed to boost women's participation in economic development, which employs mostly women. ¹¹ Developing the tourism industry in Djibouti remains a key objective of the Government, with the aim to train skilled and unskilled workers, among them women, to become integrated in the sector, to gain jobs and to boost the country's economy. ¹²
FTA	Access to employment	Canada–United States–Mexico Agreement (CUSMA)	Chapter 23 of the USMCA promotes the elimination of discrimination in employment, and equality for women in the workplace. The agreement also provides that policies should be implemented to “protect workers against employment discrimination on the basis of sex, pregnancy, and caregiving responsibilities” among others.
FTA	Access to employment	UK–Australia	In this FTA, the State parties commit to “non-discrimination in employment, occupations, and places of work, and to take measures to advance anti-discrimination practices and address discriminatory practices, including those related to workplace sexual harassment, gender-based violence, gender pay gaps, and flexible working arrangements, as well as improve women's access to decent work”. ¹³
Aid for Trade	Eliminating employment discrimination	Australia	Supports initiatives that eliminate discrimination against women and girls, overall and more specifically in employment. Australia also supports developing countries in the Indo-Pacific region in designing policies and practices and in developing a work culture that is more favourable to women and their safety, incomes and career progress. ¹⁴ One of Australia's Aid for Trade programmes in Fiji targets obstacles that women face related to “time poverty” which are often ignored in trade policy. Through its Aid for Trade plans, Australia also invests in the ILO Better Work programme, which helps improve labour standards and reduce gender discrimination in garment factories in developing countries ¹⁵ with respect to sexual harassment and pay discrimination, and to encourage women's leadership and participation in decision-making. ¹⁶

11 WTO, *Trade Policy Review: Djibouti*, WT/TPR/S/305, 51, 52, 17 September 2014.

12 WTO, *Trade Policy Review: Djibouti*, WT/TPR/G/430, 11, 7 September 2022.

13 UK–Australia FTA, Ch. 21: “Labour”, Art. 21.8: “Non-discrimination and gender equality in the workplace”.

14 WTO, “Australia's Investing in Women”, WT/COMTD/AFT/W/92, 2 May 2022.

15 Cambodia, Indonesia, Pakistan and Viet Nam, WT/COMTD/AFT/W/92, 2 May 2022.

16 Joint OECD–WTO Aid for Trade Monitoring and Evaluation Exercise for the Global Review 2022, WT/COMTD/AFT/W/92, 2 May 2022.

► Appendix (cont'd)

Type of trade policy	Policy area/focus	Country, region or customs territory	Description
Aid for Trade	Eliminating employment discrimination	EU	EU Aid for Trade Strategy includes the four pillars of the Decent Work Agenda ¹⁷ and advocates for the EU's Aid for Trade to build its new FTAs to support labour rights and the Decent Work Agenda, through binding social and environmental provisions contained in the trade and sustainable development chapters. ¹⁸
Aid for Trade	Eliminating employment discrimination	Sweden	Sweden focuses its Aid for Trade programmes on female employment and occupation. Through its International Development Cooperation Agency (Sida), it supports its partners in promoting non-discrimination in the workplace, both in the formal and informal sectors. Sida's global aid also contributes to the ILO's Women at Work initiative. ¹⁹
PART 3. ENHANCING WOMEN'S SKILLS TO PARTICIPATE IN THE EXPORT SECTOR AS WORKERS			
National policy	Promoting female formal employment in trade/capacity-building	Mauritius	With its "Back to Work" programme adopted in 2014, Mauritius provided training opportunities for women who wished to rejoin the labour force in 15 occupations, including export sectors. ²⁰
National and sectoral policy	Textile and apparel/ Promoting female formal employment in trade/capacity-building	Pakistan	Pakistan's economic and trade strategy aims to increase women's labour force participation, through skills development, targeting women coming from all social backgrounds in the country. ²¹ In its Textile and Apparel Policy 2020–25, Pakistan launched a "mass level training in industrial stitching for women". ²² Pakistan also created Women Empowerment Centres, where free training sessions are delivered to widows, orphans and poor girls in various skills, such as drafting, cutting, sewing, knitting, and hand and machine embroidery. ²³ These plans correlate with the Ministry of Commerce export projections and goals in the textile and apparel sectors for 2021–25. ²⁴

17 Standards and rights at work, employment creation and enterprise development, and social protection and social dialogue.

18 Joint OECD–WTO Aid for Trade Monitoring and Evaluation Exercise for the Global Review 2022, WT/COMTD/AFT/W/92, 2 May 2022.

19 Joint OECD–WTO Aid for Trade Monitoring and Evaluation Exercise for the Global Review 2022, WT/COMTD/AFT/W/92, 2 May 2022.

20 WTO, *Trade Policy Review: Mauritius*, WT/TPR/M/304/Add.1, 10. 11 February 2015.

21 WTO, *Trade Policy Review: Pakistan*, WT/TPR/M/424/Add.1, 31. 7 June 2022.

22 Pakistan, Ministry of Commerce, Textile Wing, *Textiles and Apparel Policy, 2020–25*, 7: "Export projections", 23, section 4: "Human resource development".

23 Government of Pakistan, "Women Empowerment Centres".

24 The Government intends to grow from US\$20 billion of exports of textiles products in 2021–22 to US\$40 billion in 2024–25. For this purpose, the Government needs skilled workers and is investing in women.

▶ Appendix (cont'd)

Type of trade policy	Policy area/focus	Country, region or customs territory	Description
FTA	Promoting female formal employment in trade/capacity-building	China-Peru	The China-Peru FTA includes a training provision for professionals in agriculture, including women, focusing on the use of new technologies for enhanced productivity and improved value-added product competitiveness. ²⁵
Aid for Trade	Promoting female formal employment in trade/capacity-building	Australia	Australia's Aid for Trade initiatives aim to increase women's access to training opportunities in order to create new employment opportunities in non-traditional and high-paid sectors for women, such as the green energy industry and digital trade. ²⁶
Aid for Trade	Promoting female formal employment in trade/capacity-building	Germany	Germany's Aid for Trade supports the Government's "Employment and Skills for Development in Africa" (E4D) initiative to improve employment situations in seven African countries. Six projects under E4D focus on women and one key priority is the promotion of green jobs. ²⁷
PART 4. ADDRESSING WOMEN'S LABOUR CONDITIONS IN EXPORT SECTORS			
National policy	Textiles and apparel sector/ Labour conditions/ Promoting women's formal employment in export sector	Pakistan	Pakistan's Textiles and Apparel Policy 2020-25 contains measures to foster women's employment in the sector. Therefore, as part of its policy, the Ministry of Commerce is reviewing/reforming its labour laws to allow women to work in three shifts, to support women's employment and human resources development in this export-led sector. ²⁸

²⁵ China-Peru FTA, Art. 164: "Agricultural cooperation".

²⁶ Joint OECD-WTO Aid for Trade Monitoring and Evaluation Exercise for the Global Review 2022, WT/COMTD/AFT/W/92, 2 May 2022.

²⁷ Joint OECD-WTO Aid for Trade Monitoring and Evaluation Exercise for the Global Review 2022, WT/COMTD/AFT/W/92, 2 May 2022.

²⁸ Pakistan, Ministry of Commerce, Textile Wing, [Textiles and Apparel Policy, 2020-25](#), 7: "Export projections"; section 4, 23: "Human resource development".

► Appendix (cont'd)

Type of trade policy	Policy area/focus	Country, region or customs territory	Description
National policy	Business process outsourcing (BPO) sector/ Labour conditions/ Promoting women's formal employment in export sector	Philippines	In the Philippines, the ICT and BPO sectors employ many women. The Government's trade policy has granted the ICT sector various incentives (ICT buildings qualify as vertical economic zones) to support its development and secure jobs for women. This has led to employment gains. The Philippines labour law that prevented women from working night shifts was abolished to foster female employment (BPO employees have to deal with customers located in different time zones). In addition to these measures, the Philippines required that companies provide their female workers with sleeping/resting space, and requested that they organize mandatory transport services for those working at night, that they cater for working mothers and provide them with breastfeeding spaces, and that they include breastfeeding programmes as part of the companies' development plans. ²⁹
National policy	Promoting female formal employment in trade/Fostering paid work over unpaid labour	Japan	To foster women's participation in its economy, with the objective of fulfilling its general workforce shortages, Japan opened its social services sectors to foreign housekeepers, to meet their needs for housework assistance, and to promote medium- to long-term economic growth through their involvement in employment. As a result, Japan has transformed unpaid care and domestic work into paid work. ³⁰
PART 5. REDUCING PAY DISCRIMINATION			
National policy	Transport/ Integrating female workers in male-dominated sectors	France	In the transport sector, women account for only 5 per cent of truck drivers. To bring more women into the profession and alleviate a labour shortage, the national recruitment agency, in partnership with training organizations, launched "Acting for Women" in 2020, a training programme for women only to help them obtain heavy-goods driving licences. ³¹

²⁹ WTO, *Trade Policy Review: The Philippines*, WT/TPR/M/368/Add.1, 114, 28 May 2018.

³⁰ WTO, *Trade Policy Review: Japan*, WT/TPR/M/310/Add.1, question and answer session, 122.

³¹ "Transports routiers: des femmes pour sauver le manque de chauffeurs", news report from *TV5 Monde Info*, 23 April 2022.

▶ Appendix (cont'd)

Type of trade policy	Policy area/focus	Country, region or customs territory	Description
National policy	Mining/ Integrating female workers in male-dominated sectors	Zambia	Women are making their way in the mining industry, occupying more and more high-level positions and skilled and highly technical jobs. Women now work as lawyers, engineers, department heads, managers, laboratory technicians, truck drivers, control-room operatives and blast supervisors. A combination of new technologies, university education and policies is the reason for this shift. ³² Of course, women's participation in the sector remains low, ³³ but a shift in the industry has begun. One of the objectives of Zambia's National Mineral Resources Development Policy (2022–2027) is to mainstream gender in the mining sector and include more women in the value chain (among other vulnerable groups). ³⁴
National policy	Pay discrimination	Switzerland	In 2020, aiming to eliminate gender-based salary discrimination, the reformed 1995 Swiss law on gender equality ³⁵ required that all firms with more than 100 workers conduct independent gender equality audits focusing on pay gaps. ³⁶ Also, in its procurement policy, the Government added requirements that only companies that guarantee equal pay for women and men could be awarded public contracts. To ensure that equal pay is adequately implemented, implementation investigations are conducted, obliging companies that are at fault to review their practices. In some firms, this has resulted in salary increases for female workers. ³⁷
National policy	Pay discrimination	United Arab Emirates	In the United Arab Emirates, the law has established a principle of equal pay between men and women in all economic sectors (public and private), including trade-related areas. The Government has developed implementation processes and carried out controls to ensure that the law is enforced and work is carried out without gender discrimination. ³⁸

32 "First Lady of Zambia Calls for More Women in Mining", *Times of Zambia*, 22 July 2015.

33 ILO, "Zambia: Preliminary Analysis of ILO Mining Employment Data by Sex", 15 March 2022.

34 Maimbolwa Mulikelela, "A Glance into the 2022 National Mineral Resources Development Policy by Sydney Mwamba", *Zambia Monitor*, 13 December 2022.

35 Switzerland, *Federal Act of 24 March 1995 on Gender Equality*, RS 151.1.

36 WTO, *Trade Policy Review: Switzerland and Liechtenstein*, WT/TPR/S/425, 26, 23 March 2022.

37 Anoush der Boghossian, "Trade Policies Supporting Women's Economic Empowerment: Trends in WTO Members' Staff", WTO Working Paper ERSO-2019-07, 2019.

38 WTO, *Trade Policy Review: United Arab Emirates*, WT/TPR/S/423, 14, 15 February 2022.

► Appendix (cont'd)

Type of trade policy	Policy area/focus	Country, region or customs territory	Description
National policy and data collection	Pay discrimination	New Zealand	In 2022 New Zealand conducted national research which demonstrated that larger gender wage gaps existed in exporting firms than in non-exporting companies. This led the Government to adopt its new equal pay law (Equal Pay Amendment Act 2020), which allowed employees and unions to issue a complaint against an employer in the event of systemic gender discrimination. ³⁹
Aid for Trade	Pay discrimination	Netherlands	The Netherlands' Aid for Trade programmes support projects on sustainable trade chains, including issues related to a living wage. ⁴⁰
Aid for Trade	Pay discrimination	Australia	As part of its Aid for Trade contribution to the ILO Better Work programme, Australia's investments help to reduce gender discrimination in garment factories in Cambodia, Indonesia, Pakistan and Viet Nam, with a special focus on the gender wage gap. ⁴¹
PART 6. ADDRESSING GENDER-BASED VIOLENCE IN TRADE			
National policy	Gender-based violence	Democratic Republic of the Congo	In the Democratic Republic of the Congo, the elimination of violence against women is a development policymaking objective. ⁴²
National policy	Gender-based violence	Madagascar	Within its National Gender and Development Action Plan and its Emergence Plan, Madagascar's objective is to enhance women's empowerment and protect them against violence. ⁴³
National policy	Gender-based violence	Pakistan	Pakistan has created by law a national women's ombudsperson and adopted its Workplace Harassment Act and Protection of Women against Violence Act, to specifically ensure that there is no gender discrimination in employment. ⁴⁴

39 WTO, *Trade Policy Review: New Zealand*, WT/TPR/G/426 19, 6 April 2022.

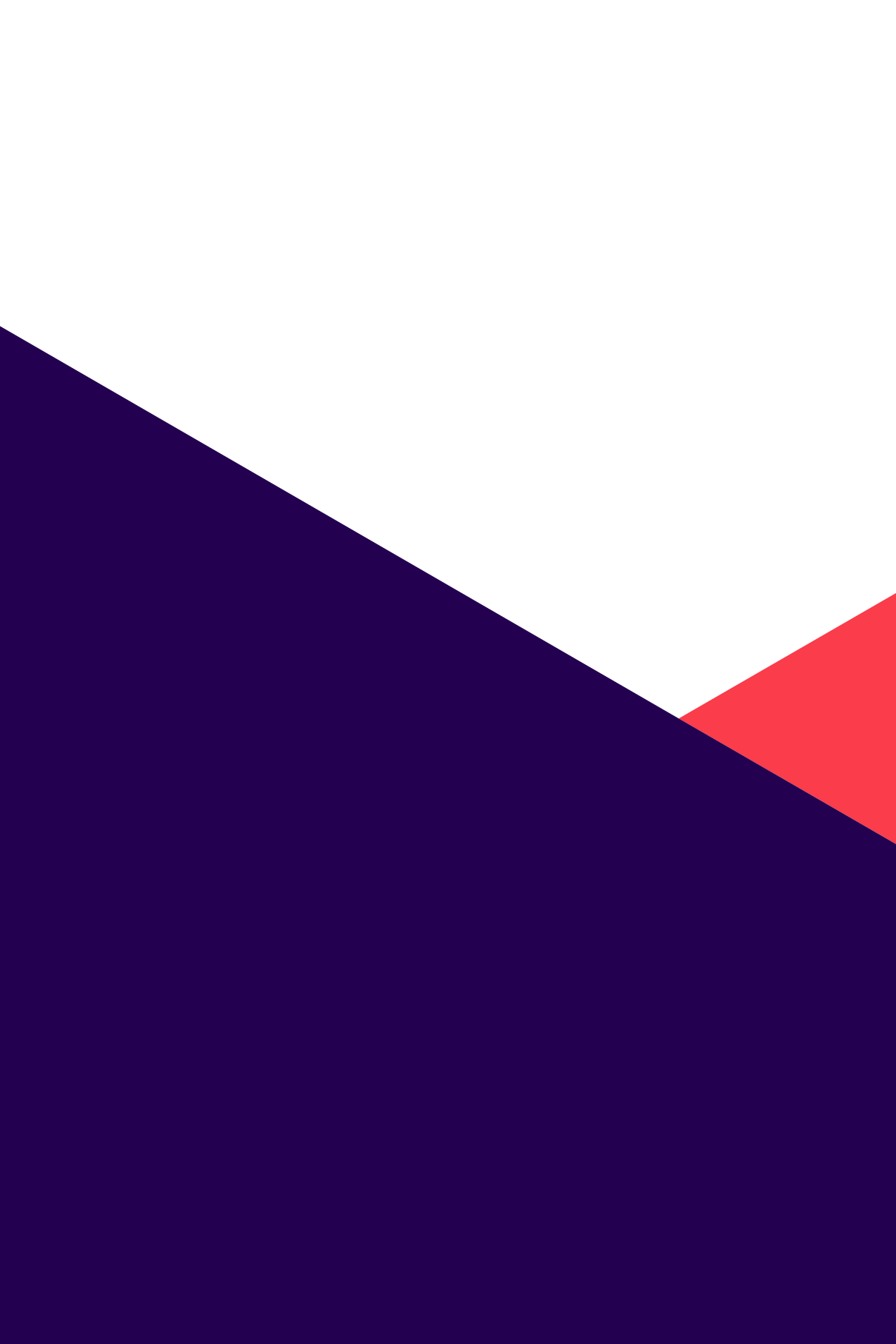
40 Joint OECD–WTO Aid for Trade Monitoring and Evaluation Exercise for the Global Review 2022, WT/COMTD/AFT/W/92, 2 May 2022.

41 Joint OECD–WTO Aid for Trade Monitoring and Evaluation Exercise for the Global Review 2022, WT/COMTD/AFT/W/92, 2 May 2022.

42 Joint OECD–WTO Aid for Trade Monitoring and Evaluation Exercise for the Global Review 2022, WT/COMTD/AFT/W/92, 2 May 2022.

43 Joint OECD–WTO Aid for Trade Monitoring and Evaluation Exercise for the Global Review 2022, WT/COMTD/AFT/W/92, 2 May 2022.

44 Joint OECD–WTO Aid for Trade Monitoring and Evaluation Exercise for the Global Review 2022, WT/COMTD/AFT/W/92, 2 May 2022.



Agriculture, trade and employment

A Global Green New Deal to address structural challenges

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► Introduction

No other sector is more entangled in the debate on development, employment and climate change than agriculture. Those who are feeling the dire consequences of such entanglement, exacerbated by the triple crisis of climate change, conflict and pandemics, mostly live in the developing world, accounting for 83 per cent of the world population (UNCTAD 2022a). According to the 2023 *State of Food Security and Nutrition* report, more than 3.1 billion people, or 40 per cent of the global population, cannot afford a healthy diet, 23 per cent of all children under 5 years old have stunted growth, and 828 million children went to bed hungry in 2021 (FAO et al. 2023). At the same time, 1.6 billion tonnes of food was wasted, and 675 million people – 13 per cent of the adult population – suffered from overeating in 2021.¹

Inseparable from the issue of food waste is the environmental dimension: “food wastage’s carbon footprint is estimated at 3.3 billion tonnes of CO₂ equivalent of GHG [greenhouse gas] released into the atmosphere per year... 1.4 billion hectares of land – 28 per cent of the world’s agricultural area – is used annually to produce food that is lost or wasted” (FAO 2013). The environmental impact of agriculture is not limited to wasted resources. The sector uses (and pollutes) a substantial part of the air, land and water: it is responsible for 20–37 per cent of anthropogenic greenhouse gases and uses 40 per cent of global land and 70 per cent of global fresh water (FAO 2019). The sector is also responsible for significant reductions in biodiversity through deforestation, land degradation, soil exhaustion and depletion of underground water resources (Clapp, Newell and Brent 2018; Dasgupta 2021; Duku et al. 2022; Springmann et al. 2018; Willett et al. 2019).

The agriculture sector is also beset by various labour market challenges and adverse working conditions. To start with, 45 per cent of the world’s poor live in rural areas of the developing world (IFAD 2023). Other challenges include exclusion of agricultural workers from national labour protections, meagre wages, hazardous working environments and wide prevalence of child and forced labour.² According to the ILO, of all the child workers in the 5–17 age group, 60 per cent work in agriculture, the majority of them as unpaid family labourers.³ Moreover, the sector is one of the most dangerous to work in, with a high incidence of work-related accidents and fatalities,

1 Unless otherwise stated, all figures refer to the year 2020 and were acquired from the FAOSTAT database (accessed 26 September 2021).

2 ILO, “Agriculture; Plantations; Other Rural Sectors” (n.d.).

3 ILO, “Child Labour in Agriculture” (n.d.).

and occupational health hazards. This symbiotic prevalence of widespread hunger, food waste and obesity, alongside environmental destruction and unsustainable labour practices, is the manifestation of an inefficient, unequal and unsustainable global order with significant structural problems.

These structural challenges in the sector must be addressed to ensure a sustainable future for the planet and its inhabitants, as it is crucial for food security, employment and environmental well-being, as well as economic development. Therefore, in recent years, researchers and policymakers have shown a growing interest in the sector. The existing research and policy dialogue on the issue can be divided into two main branches: one comprising the production side – how to increase food supply; the other considering the framework – how to organize the multilateral system, particularly international trade in agriculture, given the increasing importance of agricultural goods in international trade and the importance of international trade in food security through global value chains.

This chapter aims to contribute to the current dialogue on both fronts, with a focus on developing countries. It poses the following question: “Are existing finance and trade policies and agreements apt to solve the myriad challenges linked to food insecurity, food waste, labour and environmental issues?” It argues that existing policies, including trade and finance policies to address these developmental issues, are inadequate at best, and harmful at worst, for two main reasons: first, they fail to take into consideration the unique organizational features of agrarian production in developing countries; and second, existing narratives and policies fail to address long-standing and deep-seated structural issues.

The organization of the chapter is as follows. Section 8.1 provides a critical overview of the supply-side solutions put forward by current conventional thinking on how to address food security issues in agricultural production. Section 8.2 then zooms in on the particularities of agrarian production with a focus on labour. In section 8.3, there is a critical overview of trade policies, including some recent regional trade agreements, with respect to their effects on agriculture. Section 8.4 broadens the developmental perspective, by showing the implications of fractures and vulnerabilities in the economy that are created because of the interdependencies that exist between agriculture, finance, trade and the physical environment. It puts forward a more comprehensive framework, the so-called Global Green New Deal, that includes finance and trade policies that can be directed to the needs of ecological and economic sustainability for this essential sector. Section 8.5 concludes the chapter.

▶ 8.1 A critical look at existing narratives and policies in the agriculture sector

Much of what has been researched in the agriculture sector and carried forward into policy design and implementation has been limited in its approach, focusing mostly on increasing output without much regard to structural, distributional and labour issues. Indeed, the most understudied and overlooked aspect of agrarian production has been how labour engages within the larger framework of local, national, regional and global economic structures, and its role in food security. This is puzzling given that most of the world's food is produced by farmers in developing countries using labour-intensive production technologies.

Mostly, the literature focuses on well-known environmental, social and economic impacts of past production methods, such as the Green Revolution,⁴ without much concern for sustainable resource use, including labour (Joshi 1997).⁵ The proposed solutions to “fix” the sector rely mostly on risk management combined with upgrading production technologies through innovation, particularly biotechnology. This includes mass production of foods produced from microbes,⁶ or providing supply-side boosts, such as improving farming skills and water management systems, and supporting the environment in which micro- and medium-sized farms could adapt green technologies (IFAD 2021). The management of output risks, such as shocks to supply, are left to market mechanisms, such as farmers' insurance, or income diversification, and the consolidation of arable lands to achieve economies of scale. However, as will be shown in section 8.4, risk-based market mechanisms are simply transferring risk from one party to another, without addressing the underlying causes of the problem. Similarly, economic responses such as building scale without addressing the root causes of the problems will only breed new challenges for the future.

There are similar problems with the dominant narrative suggesting that increasing yields through technological innovations and “boosting nature-positive production” systems, combined with short-term strategies to deal

4 The Green Revolution was the adoption of high-yielding varieties, which required high investments in fertilizers and irrigation.

5 For a critique of the Green Revolution, see Boyce (1993).

6 For a detailed discussion of microbial foods, see Graham and Ledesma-Amaro (2023).

with risk such as storing food, can solve the issue of food security.⁷ While the rationale for such a response is understandable, especially to achieve the goal of tripling food production by 2050 to avoid a Malthusian demise, the single-minded focus on technology and short-term risk management brings multiple and significant problems.

One such problem is that these policies can harm small and medium-sized farmers through subsequent increases in supply, and decreases in output prices, thereby affecting their incomes. Even though lower food prices help to increase the profit rate of non-agricultural sectors through lower cost of wage goods, these sectors also suffer because of a reduction in effective demand due to a decrease in income in the agricultural sector (Storm and Rao 2002). Additionally, it is unclear what will happen to the estimated 4.5 billion people whose livelihoods are tied to food systems, especially in developing countries, when microbial biomass foods flood global markets.⁸ Section 8.4 below traces these impacts resulting from a physical shock to subsequent shocks in the economic and financial systems, showing that even policies implemented to address the problems can, if not coherent or synchronized, cause further unanticipated negative impacts.

A second problem is that none of these proposed solutions address the existing food puzzles: first, the mutually reinforcing existence of obesity, food waste and hunger, as mentioned above; and second, the extreme concentration of food content on the consumption side, because 85 per cent of our food comes from only four major grains (wheat, rice, maize and barley), while the global grain trade is dominated by four major companies. Together, they control a significant portion, ranging from 70 to 90 per cent, of the world's grain trade (UNCTAD 2023b). Despite countless studies and

7 Relevant in this context are Action Track No. 3 of the UN Food Systems Summit 2021 (UNFSS-21); the EU's [European Green Deal](#); the UK Labour Party's [Green New Deal](#); the OECD's [Agro-Food Productivity-Sustainability-Resilience Policy Framework](#).

UNFSS-21's five Action Tracks will investigate practical approaches to: (1) guaranteeing access to food that is both safe and nourishing; (2) transitioning towards sustainable patterns of consumption; (3) promoting production methods that benefit nature; (4) progressing towards fair livelihoods; and (5) enhancing the ability to withstand shocks and pressures.

8 Microbial biomass foods are produced by a technique called precision fermentation, a method that involves producing food from microbes and yields microbial biomass abundant in proteins and essential nutrients. This emerging technique offers several significant advantages. It allows the transition of food production from fields to factories, reducing the reliance on farmland and intensive agriculture. This, in turn, helps mitigate the environmental impact of food production and allows the repurposing of land for other beneficial uses. It is argued that precision fermentation proves to be more efficient than traditional agriculture. It boasts impressive caloric and protein yields per land area, surpassing staple crops by over ten times in protein yield and at least twice in caloric yield, as demonstrated in a study by Leger et al. (2021).

models on risk management, such an approach falls short of explaining why we should – through such concentrated global food chains – put all our eggs in the same food basket. Third, this approach ignores the distributional issues and fundamental national and international asymmetries. But it also falls short of identifying structural and long-standing issues in the global division of labour and international trade, and ignores accumulation and distribution dynamics within and between countries.

Finally, and more disturbing, the risk–technology approach distracts the development policy debates away from more prominent policy issues such as (biased) trade rules, (unfair and phenomenally costly) subsidy practices, (insufficient) investment in sustainable practices, (unfair) labour practices, (lack of) effective demand and – most prominently – (the absence of) the developmental state in agricultural production and its role in building a sustainable future. A developmental state is essential because only the State or public institutions have the perspective and mandate that open up a longer-term time horizon, involving patient capital and the ability to follow social, economic and ecological imperatives, as opposed to the market’s short-term profit-seeking ones.

Hence, one can conclude that the current, dominant thinking on agriculture – trade policy in agriculture, how to increase food supply in agriculture, and other policies designed to mitigate the impact of climate change and food security issues – fails to recognize the existing and most pressing conundrums of hunger, unemployment and environmental destruction for what they really are: development problems that can only be solved when approached from a multidimensional perspective with labour at the centre.

► 8.2 Agrarian households, labour and its global discontents

It could be argued that the backbone of economic development is the evolution of labour productivity, moving from low- to higher-productivity activities without “immiserizing growth” (Lewis 1954; Ranis and Fei 1961; Johnston and Mellor 1961). Economic history shows us that failures of previous development practice emerge precisely from failing to achieve this, and unfortunately most, if not all, developing countries, trapped in debt with low labour productivity, are examples of this failure. For this reason, it is crucial to look at labour and its utilization in the context of agricultural

production, as this has significant implications for sustainable development (and particularly food security) and employment within the context of the global economic order, as transmitted through trade policy.

Trade policy plays a crucial role in agriculture and also in economic development through its effect on market access, division of labour, technology transfer, and employment and income opportunities, as well as by providing backward and forward linkages to other sectors, and thereby contributing to industrialization. Finance policy is also part of this, because whether (or not) farmers or countries have the productive capacity to benefit from trade policies and to access the markets they open depends in large part on whether they have access to sufficient finance to make the necessary investment in productive capacity. Finance needs to be provided at the required scale, on reasonable terms and on appropriate long-term maturities.

Hence, it is rather important for developing countries to design and implement trade and finance policies that strike a balance between promoting domestic agricultural interests, building capacity and integrating into global markets. Policy coherence, support for smallholder farmers, capacity-building and – maybe more crucially – addressing structural issues of inequality are critical elements in creating an enabling environment that benefits agriculture. Such policies are also crucial for creating employment and income opportunities in developing nations through economic diversification.

One of the most crucial aspects of designing the right policy depends on a realistic and accurate understanding of the micro and macro factors that affect agricultural production. Thus, this section will provide a brief elaboration of labour by agrarian households and the myth that “small is beautiful” in developing countries and policies in agriculture.

8.2.1 Labour in agricultural production

It is common knowledge among agricultural economists that agrarian households operate on a different mode when compared with non-agrarian households. Their decision to supply their labour is determined by rural factor markets and by how those markets function in distributing economic opportunities to households within which trade is a central element.

Labour, more often than not, is the only productive asset the rural poor possess. More importantly, it is often the most important factor of production in agriculture, as agrarian output responds very well to labour-intensive technologies, especially in countries where land and capital are scarce. Particularly in the case of developing countries, where the most abundant

factor of production is labour, understanding labour and its organization in factor markets is crucial for a sound economic policy in agriculture (Barrett, Sherlund and Adesina 2008; Mduma and Wobst 2005; Sadoulet, Key and de Janvry 2000; Skoufias 1994).

A distinctive feature of agrarian production in developing countries is that agrarian households have a dual character: they are both producers and consumers of the goods they produce and of the factors of production they use (such as land and labour). This dual character requires a different modelling of policy, including trade policy. Agricultural household models were developed to consider the simultaneous nature of decisions regarding production and consumption. This was in response to an unexpected discovery in Japan, where it was noticed that farmers did not notably raise their surplus for sale in response to higher prices (Taylor and Adelman 2003).⁹

A price change in output (farm gate prices for grains, for example) or input (wages) does not necessarily translate into changes in supply of output in an agrarian household. This is because consumption and production decisions are inseparable, as the farmer allocates their labour and non-labour inputs (land, capital and other inputs such as fertilizers) in production on their own farm while at the same time allocating income from farm profits and labour sales to the market. For example, if a food staple price is too high, the farmer may decide to consume it rather than sell it to the market. Similarly, the impact of higher input prices, such as a higher market wage, differs for agrarian households compared with non-agrarian households that provide labour to the market but do not demand it. The farmer may choose to work on their own farm, rather than hiring out their labour or hiring in labour for their farm. All these decisions will depend on transactions costs. If, for example, transport is too costly, the farmer would choose to work on their own farm as opposed to supplying their labour to the market. Only when markets have zero transaction costs and when perfect competition assumptions hold can agrarian households separate their consumption and production decisions. Yet most of the policies that are geared to increase food supply through price policies or by increasing market access, as in trade policies in

⁹ Taylor and Adelman (2003) present an excellent discussion of the development and extension of agricultural household models.

agriculture, ignore the inseparability of production and consumption and assume prevalence of perfect competition in developing-country markets.¹⁰

However, the assumption of perfect markets never holds because no developing-country market is truly complete with zero transaction costs (see Kankwamba in Volume 1).¹¹ On the contrary, missing or imperfect markets are often the norm. This failure to recognize the heterogeneity of agrarian households and the inseparability of production and consumption – combined with poor structural specification of rural markets in developing countries – has been reflected in trade policy globally. Another reason for poor policy design is related to the issue of small farmers, and how small farming is perceived.

8.2.2 Is small really beautiful?

In the development literature, it is a stylized fact that small farms have higher productivity per acre than large ones (Ünal 2008). Perhaps based on this observation, many interventions in the policy realm to increase yields in agriculture focus on increasing small-farmer productivity through innovation, education and other entrepreneurial interventions to ensure farmers are better connected to global markets.

10 In the realm of traditional agriculture, the division between consumption (relating to labour supply) and production (relating to labour demand) decisions within a farm household can only be realized within fully competitive markets. This stems from the fact that, given a fixed labour price, the choice between a peasant engaging in the labour market or tending to their own land yields identical outcomes. In this scenario, the total income remains unchanged, thereby aligning labour-supply determinations for agrarian households with those of their non-agrarian counterparts. Essentially, the separability hypothesis necessitates that the output a farmer generates on their personal land should equate to what they could earn by selling their labour – essentially, the farm's marginal labour product should match the prevailing wage rate in the market.

11 For example, the job search cost is very high in rural areas because of the long distances between jobseekers and markets, and/or because of the high unemployment rate in developing countries. Even if one assumed perfect and complete markets, the nature of agrarian production would still break the separability hypothesis because of supervision costs and the climate- and nature-related uncertainties that affect one's labour effort. Even if an agrarian worker makes their best effort, the crop could still fail; hence – because the productivity of labour is hard to measure – hired hands do not have the same incentive to work as hard as family hands. Additionally, the nature of agrarian production determines that family labour is more efficient than hired labour because of the supervision costs in agriculture, which are much higher in an open field than in a closed factory. In sum, separability is rendered an unrealistic proposition for agrarian markets by the particularities of agrarian production, which include labour supervision (Eswaran and Kotwal 1986), preference to work on one's own farm (Lopez 1986), prevalence of unemployment (Mazumdar 1959), impact of monopoly land on labour opportunities (Griffin, Khan and Ickowitz 2002; Rao 2005), and gender customs with respect to off-farm employment (Fafchamps 1985; Deere 1982; Masterson 2005).

In the literature, higher per acre productivity of small farms has been elaborated through many different theories.¹² Of these, the one that best fits the realities of the developing world can be summarized under the market imperfection hypothesis – namely, small and large farms use different proportions of inputs as a result of different factor prices (Mazumdar 1965; Berry and Cline 1979; Sen 1981a, 1981b; Cornia 1985; Eswaran and Kotwal 1986; Griffin, Khan and Ickowitz 2002; Benjamin and Brandt 2002).¹³ As discussed by Cornia (1985), small-scale farmers generally face higher land and capital prices, whereas larger farmers face higher labour costs. This discrepancy in input prices results in farms employing different input ratios based on their resource position, including factors such as availability and expenses associated with production resources.¹⁴

Highlighted by Bardhan (1973), a potentially more intriguing inquiry revolves around the reasons behind the higher input utilization per acre, specifically in terms of labour, by smaller farms, consequently yielding greater per-acre yields. To probe this matter, it is necessary to grasp the structural and institutional context of traditional agriculture within developing nations.

According to Sen (1981a, 1981b), small farmers use labour intensively because they cannot access other inputs such as land and credit through factor markets as a result of structural issues (that is, imperfections) in those markets. Even though small farmers' land utilization is higher, and even though neoclassical economics suggest that free markets allocate resources to the most efficient – hence land to those who get the higher yield per acre, in the case of farming – agricultural land is rarely reallocated to those who produce more per acre in developing countries. This is because all factor markets, as well as output markets, are connected – in other words, small farmers need land or assets as collateral to get credit, which they often lack.

Both credit and land markets are very much connected to each other through collateral, hence a small farmer would not have sufficient credit to purchase additional land. In other words, the ownership of productive assets is connected to the distribution of productive assets. "It is because of this relationship that those who are poor in land but rich in labour, and thus can reap higher yields from their land, fail to lease in more land to utilize

12 For a more detailed discussion, see Ünal (2012).

13 The different factor prices result from imperfections of markets, which give different incentives to farmers operating on different scales.

14 The higher cost of labour for large farms is due to factors such as supervision and the expenses involved in finding workers, as observed by Eswaran and Kotwal (1986). Conversely, substantial farmers benefit from relatively cheaper and more easily accessible credit, mainly because of the collateral requirements that smaller farmers lack.

their labour” (Ünal 2008, 14). Hence the correction of this failure, to achieve a sustainable future, has to be through reallocation of resources to those who use productive factors in agriculture more efficiently. Any policy, including trade policy, which does not address these structural issues will not succeed in offering sustainable solutions to the food security issues.

The next section looks at the policy realm in agriculture, with a particular focus on trade policy.

8.2.3 Policies in agriculture

Since the 1980s most agricultural policy interventions have been made within the framework of a neoliberal paradigm where structural issues of markets were not the focus. As argued by Swinnen, Olper and Vandavelde (2021), discussions of agricultural and food policies predominantly revolved around interventions related to prices and trade. These interventions consisted of import tariffs, quotas and measures to support prices. Price support measures, along with import tariffs and export subsidies, played crucial roles in the agricultural and food policies of many nations (Anderson 2009).

However, in the late 20th century there were efforts to reform and reduce trade and price policy interventions in markets (Anderson, Rausser and Swinnen 2013). Subsequently, discussions shifted towards different types of government intervention. One notable development was the growth of food standards and regulations, which were suggested as replacements for import tariffs and categorized as “non-tariff measures” (Beghin 2017). These standards and regulations, encompassing aspects such as food safety and geographical indications, served a dual purpose. On the one hand, they enhanced efficiency by addressing issues such as asymmetric information and negative externalities. On the other hand, they facilitated the redistribution of rents among interest groups, thereby stimulating growth while safeguarding vested interests (Beghin, Maertens and Swinnen 2015; Swinnen 2016, 2017).¹⁵ It is beyond the scope of this chapter to analyse all the different interventions and policies in detail, but suffice it to say that none of them focused on addressing structural issues in either local or global markets.

Unfortunately, following the precepts of free trade policies that involved limited or no government intervention left developing-country farmers to the vagaries of so-called free markets. Smaller rural producers were not able to compete with agricultural goods coming from large-scale producers in emerging economies, such as China, and/or with highly subsidized

¹⁵ Discussion and citation in Swinnen, Olper and Vandavelde (2021).

agricultural goods coming from the developed world. Maybe the most dramatic consequence of these policies has been the breaking of the endogenous growth link between agriculture and the rest of the economy as a result of lower-priced food imports flooding the markets.

One of the most dramatic manifestations of the failure of this approach in agricultural trade policy is evidenced in the collapse of the Doha Round of WTO negotiations in 2001. Despite clear evidence that subsidized agricultural commodities created an unlevel playing field in international agricultural markets and were against the tenets of free trade, developed countries declined to eliminate agricultural subsidies, yet wanted unfettered access to developing-country markets. An example of the disastrous impact of this policy is that of Haiti after lower-priced food imports flooded Haitian markets from the United States. The results led, in 2011, to a rare apology from the former US President Bill Clinton for supporting policies that destroyed Haiti's rice production by reducing tariffs on imported US rice.¹⁶

Unfortunately, despite evidence showing the disastrous results of so-called free trade in agriculture for developing countries, discussions to offer solutions to the world's food challenges, and the ensuing policy design, are not much different today. Indeed, today's policy package could be considered even more problematic, as the technology fix is seen as the new silver bullet to solve food security issues, moving the policy debate away from structural imbalances. Once implemented, solutions such as microbial foods, which aim only to increase food supply, will adversely affect farmers' incomes and employment in developing countries, as traditional farmers will be unable to compete with highly funded research-based microbial foods and will end up losing their livelihoods. Additionally, as a result of the austerity that was typical of neoliberal policies in recent decades (UNCTAD 2017), agricultural extension services in the form of infrastructure and research and development have declined significantly, which has crucial implications for sustainability and food security. This would, in turn, ignite rural–urban migration at a pace these countries are not equipped to deal with. Such social movements, in the absence of social and physical infrastructure, bring dramatic results for development, such as increased crime, high unemployment leading to increased informal employment, lower participation of females in the labour force, poor housing and sanitary conditions, and myriad health issues that come with such outcomes (Datta 2012; Yildirim 2004; Todaro 1997; İlkkaracan and İlkkaracan 1998).

Moreover, the issue of intellectual property (IP) rights means that producing an abundant supply of food through such technological solutions falls short

¹⁶ Mark Engler, "Free Trade Makes Earthquakes Worse", *Dissent*, 7 April 2010.

of addressing the food security issue. When a new, innovative technology to increase yields, such as microbial foods, is introduced, it often comes from a developed country. Thus, the question of who will hold the IP rights for the new technology, and what IP mechanism for access and distribution will be used, has significant implications for the developing world.

Hence policies, including trade policies, must address imbalances in market access, particularly land and credit markets, both at national and global levels.

An interesting question to consider at this point is the extent to which existing trade agreements on agriculture address structural issues such as market access. The following section looks at some recent trade agreements and assesses if there has been any major policy shift in agricultural trade.

► 8.3 Recent trade agreements and agriculture

8.3.1 The Regional Comprehensive Economic Partnership

Signed on 15 November 2020, the Regional Comprehensive Economic Partnership (RCEP) is a free trade agreement (FTA) between 15 countries in the Asia-Pacific region, including China, Japan, the Republic of Korea and members of the Association of Southeast Asian Nations (ASEAN). It covers one third of the global population and about 30 per cent of its global gross domestic product (GDP). Similar to other such agreements, it builds on the foundations of several previous bilateral and multilateral agreements in place between the participating countries.¹⁷

First of all, it is important to note that, of the 20 chapters in the agreement, none is exclusively dedicated to agriculture; rather, agriculture is included in the “goods” chapter. Second, the RCEP is focused mainly on lowering tariffs and allowing easier movement of goods in the region. The agreement leaves little scope for government interventions, which could significantly and negatively impact national and economic sovereignty in many developing countries. In particular, the “national treatment” provision allows foreign

¹⁷ ASEAN, “The Regional Comprehensive Economic Partnership (RCEP)”.

investors to have the same privileges as local investors. This opens the Pandora's box of resource (land) allocation to multinational corporations unless governments offer an explicit exemption in the agreement, which is highly unlikely. This has already been experienced by participating countries in the region: "According to reports, almost 9.6 million hectares of agricultural land in Australia, Cambodia, Indonesia and Laos, which are all RCEP members, are now under the full control of foreign corporations and individuals coming from the FTA partners of RCEP" (bilaterals.org 2023). Additionally, the text of the trade agreement implies increased output without regard to environmental concerns (bilaterals.org 2023).

8.3.2 The Comprehensive and Progressive Agreement for Trans-Pacific Partnership

Another trade agreement that fails to effectively address agrarian issues is the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The CPTPP is an FTA between 11 Pacific Rim countries, including Australia, Canada, Japan and New Zealand.¹⁸ It covers a wide range of sectors, including agriculture. It is a revised version of the Trans-Pacific Partnership, signed in March 2018 after the United States withdrew from the agreement. The CPTPP aims to reduce trade barriers and includes provisions related to tariff reductions, sanitary and phytosanitary (SPS) measures and rules on IP rights. There are some important clauses in the agreement regarding, in particular, agricultural subsidies. Some key aspects of the CPTPP's clauses on agricultural subsidies include:

- Subsidy disciplines: The CPTPP establishes rules and disciplines to ensure that agricultural subsidies provided by member countries do not distort trade or create unfair advantages for domestic producers.
- Domestic support: The CPTPP sets limits on the amount of trade-distorting domestic subsidies that member countries can provide to their agricultural sectors.
- Export subsidies: The agreement restricts the use of export subsidies by member countries, aiming to prevent unfair competition in international markets. The CPTPP encourages the reduction and eventual elimination of export subsidies for agricultural goods.

¹⁸ Australian Government, "Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)".

- ▶ **Transparency and reporting:** The CPTPP includes transparency provisions related to agricultural subsidies. Member countries are required to notify and provide information about their domestic support programmes and any changes to their subsidy regimes. This promotes transparency and allows other member countries to monitor the subsidy practices of their trading partners.

Yet it is important to note that the specifics of the agricultural subsidy clauses may vary among member countries, and the CPTPP's provisions build upon existing rules and disciplines established by the World Trade Organization (WTO), which ultimately render these provisions ineffective to a large degree.

8.3.3 The European Union–Mercosur Trade Agreement

The European Union (EU) and the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay) negotiated a comprehensive FTA known as the EU–Mercosur Trade Agreement.¹⁹ While the agreement has not yet been ratified or implemented, it is important to note that negotiations were concluded in 2019. The agricultural provisions in the agreement cover various aspects of trade in agricultural goods between the two regions. Like other similar FTAs, the European–Mercosur Trade Agreement focuses on increasing market access through tariff reduction and harmonizing regulatory and sanitary practices.

It should be noted that the EU–Mercosur Agreement has faced significant scrutiny and opposition due to concerns related to environmental sustainability, deforestation, human rights and the impact on local agricultural sectors. Some stakeholders argue that the agreement may negatively affect certain industries and increase competition for European farmers. Many experts and think-tanks in the Mercosur region also note that the agreement is only a continuation of an unsustainable trade model, as “[t]he EU will import more meat and other agricultural products. With them, we will import emissions, deforestation, soil contamination and human rights abuses – while endangering local farmers’ livelihoods in the Mercosur region and in the European Union” (Buczinski et al. 2023).

¹⁹ European Commission, “EU–Mercosur Trade Agreement”.

It is important to note that none of these agreements addresses the agricultural sector adequately, let alone suggests policies to address structural imbalances. To start with, none of the agreements has a separate section on agriculture. Another key concern is that, even though the major issue in agricultural subsidies is farm subsidies at the production level, the RTAs only address elimination of export subsidies. Moreover, in these RTAs most of the capacity-building is through technical solutions and innovations, when they should be addressing structural issues regarding market access and unfair farm subsidy practices pursued by developed countries.

Maybe one of the biggest issues in trade agreements is that they can be seen as ends in themselves, rather than as policy tools for development and international cooperation in global issues such as climate change, food security and (most importantly) structural imbalances in the world, not only within countries but also on global trading platforms. Agreements that are harmful to local communities and the planet, such as those that worsen deforestation of rainforests as they increase demand for palm oil, are a case in point (Buczinski et al. 2023). It does not matter how well intended or well designed a trade agreement is; unless structural issues are addressed on all fronts, trade policies will continue to harm, rather than help, developing countries on their path to development. The world urgently needs to invest heavily to improve and transform how food is produced and traded. Agriculture, and in particular the industrialization and globalization of agriculture that have marked recent decades, has the potential to confront a range of challenges. These challenges not only include dealing with hunger and malnutrition, but also extend to addressing poverty, managing water and energy resources, improving working conditions, countering unfavourable trade terms, reducing carbon emissions and pollution, mitigating climate change, and fostering more sustainable patterns of producing and consuming food and food-related items. What could be the path forward then?

► 8.4 Finding a trade, finance and climate-sensitive policy path to reforming agriculture: A Global Green New Deal

The Sustainable Development Goals (SDGs) and other collective goals, such as the Paris Climate Agreement, suggest a more hopeful future; however, much will have to change if the more equitable and sustainable future envisaged is to become a working reality. The transition phase will have to be orderly and just to ensure that the social, employment and economic impact of change is broadly positive, not negative. There will be powerful shocks and high costs to what might be called “sunset” agricultural processes and products – that is, those whose future starts to dim because of climate regulations or changing consumer tastes, such as long-standing agricultural activities based on palm oil or industrially farmed animals. This transition will include millions of people employed directly in these activities and indirectly in the global value chains that stem from them. Some will transition effectively to new sectors and new activities, in agriculture or beyond, but not all. Their pain will need to be considered alongside the opportunities and benefits opening up in sectors that create new products or serve the emerging “sunrise” markets for new alternatives – vegetable replacements for meat or cellulose-based replacements for fossil-fuel-based products such as plastics (UNCTAD 2023a; Barrowclough and Deere Birkbeck 2022). Moreover, this shift will include internationally traded products as well as national ones, so the scale of the impact will be immense. Indeed, some part of this future is already here: some of the newly emerging alternative markets in agricultural products (such as plant-based alternatives to plastic packaging) already earn hundreds of billions of dollars in international trade and employ large numbers of workers.

Recognizing these historical and long-standing patterns of structural imbalance, any major policy changes will involve extended processes of negotiation and contested politics. These imbalances persist at both the international and the national level because of the impact of globalized food and commodity trading, marketing corporates and financial systems that incentivize short-term investments and predatory speculation in global agricultural markets. Such imbalances are exacerbated by reliance on internationally traded fossil-fuel inputs, such as fuel and fertilizers, for industrial-based farming, which incur significant financial and environmental

costs. Furthermore, labour practices are far from decent. Neither the SDGs nor climate agreements and pledges are succeeding in tracing a path to redressing these unsustainable practices in agriculture.

To ease this transition, the broad set of approaches and policies grouped under the name “Global Green New Deal” can help, as they set out a framework of interrelated and complementary policies aimed at fundamentally changing the existing patterns of investment, production and distribution. Why this is needed and how it can be brought about is explored below.

8.4.1 Negative feedback cycles involving agriculture, climate change and economic and financial risk

This chapter has so far argued that reform in agriculture is needed to ensure sustainable and decent jobs both for the hundreds of millions of people working in the sector and for the ecological health of the planet. It has also shown why, for this to happen, part of the solution has to be access to input and output markets – and in particular, access to finance, credit and land. Equally important, trade policy must provide space and tools to address market access and other structural imbalances, supported by complementary policies to ensure employment and food security. Accordingly, this section will expand on these issues by highlighting sources of vulnerability in the agriculture sector as seen through the lens of the potential for financial shocks (figure 8.1) or policy shocks (figure 8.2).²⁰ Both of these types of shock have an impact on, and can be mediated through, trade and trade policy. Returning to the limitations of the “de-risking” or “risk-passing” approach discussed in section 8.1 above, climate change is already causing new vulnerabilities and fractures at all levels of the economy, even though most attention is given to the financial ones (figure 8.1). Finding ways to address these will not lie in more financial risk mechanisms, but in fundamental reform to address the root causes of agricultural sector vulnerability and instability, as described above. At the same time, if the policies used to resolve these issues are implemented in an uncoordinated manner that disregards the integrated and complex nature of agriculture (as described in section 8.2 above), they may provoke further new shocks

²⁰ This treatment was sparked by an analysis introduced by the then Governor of the Bank of England, Mark Carney, to alert people to the potential financial fallout from climate change (Carney 2015), and expanded by Campiglio et al. (2018) and UNCTAD (2019, 144–145), among others.

► **Figure 8.2 How transition policies can cause various trade, financial and economic stability risks**

	←—————→		
TRANSITION POLICIES	ECONOMY	TRANSMISSION MECHANISM	FINANCIAL SYSTEM
<ul style="list-style-type: none"> ► New government policies relating to agriculture, e.g. changing land use, banning excessive use of chemicals and industrialized or unsustainable farming, removing fossil-fuel subsidies ► Banks requiring climate disclosure; new greener lending policies ► New trade policies to promote sustainable farming; to reduce fossil-fuel usage and encourage shift to substitute energy, substitute plastics, etc.; to promote low-carbon agriculture and food security 	<ul style="list-style-type: none"> ► Some winners and some losers ► Higher prices for high-carbon activities ► Greater returns for low-carbon exporters ► Former assets stranded or unusable (fossil-fuel-based agricultural and agro-industrial systems; farmlands no longer viable – too hot, too dry) ► Agricultural workers dispossessed, unemployed or increasingly precarious ► New opportunities created – reinvest and replace ► New kinds of farming; new products ► New jobs created in sunrise sector 	<ul style="list-style-type: none"> ► Fall in value of old assets/rise in value of new ones ► Loss of jobs in old economy/rise of new jobs in green economy ► “Sunk assets” including “sunk” employees, falling wages, more precarious employment ► Migration and movement ► Loss of old export markets/opening of new ones ► New terms of trade; some old sectors lose and emerging sectors gain 	<ul style="list-style-type: none"> ► Borrowing costs rise in old agricultural sectors and high-carbon sectors ► Rising inputs prices (e.g. diesel; fossil-fuel-based fertilizers); rising costs to importers ► Financial market losses in some agriculture and agro-industry sectors (equities, bonds, commodities); debt write-offs; firms fail ► New sectors boom, financial market gains ► Credit market losses (old firms go bust; bankers suffer non-performing loans; new firms emerge; new loans are profitable)

Note: Trade effects, policies and instruments are highlighted in green.

Source: The authors, expanded from UNCTAD (2019, 145).

Some hints of the interdependencies and vulnerabilities in today's globalized agricultural sector were evident for many countries during the shock of COVID-19 lockdowns, when they discovered the full extent of their reliance on imported food and agricultural labour. In some countries, fruit or crop farmers left harvests in the fields because they could not call upon their usual sources of foreign farm labour, often employed on very short-term, poorly paid and precarious contracts. In other countries, farmers' inability to reach

long-standing export markets for their produce meant that harvested food lay rotting in container ships stuck in ports; exporters did not receive their expected revenues, while farmworkers could not work and did not get paid. A trade shock very quickly exacerbated and spread the economic shocks that stemmed from the health and related policy shocks surrounding COVID-19. In countries all over the globe, terms of trade took a violent tumble in 2020 (UNCTAD 2021b).

This shock was very sudden, and while for most countries trade had recovered and gained new highs by mid-2021, the impact was nonetheless severe. In the case of longer, slow-burn shocks of the kind likely to be experienced with climate change, the trade effects may be slower to emerge, and it will be unpredictable how these effects will be distributed between exporters and importers, and between sectors, and then how they will be transmitted to employment and food security issues. Vulnerability exists at all levels of the economy, and there needs to be a coherent approach involving all the different policy efforts to transform agriculture, to reduce carbon emissions and to ensure a more sustainable and equitable path to achieving the SDGs.

Figures 8.1 and 8.2 focus on the role of financial risk, trade risk and policy shock in agriculture, and the impact these have on other parts of the economy. This vision of a vulnerable economy where financial contagion can rapidly spread and lead to a cascade of collapses through the real economy has done much to raise awareness of some of the issues linking climate change, economic activity and the financial markets. However, this focus on risk is only part of the story. In order to change things at a more profound level, what is needed is transformative investment, not just risk management, and in climate adaptation activities for agriculture, as well as climate mitigation. First, this means bringing in a great deal more finance than is currently being allocated to achieve this end. Adaptation to climate change in the agricultural sector, including devising new crops and foods, received only US\$1.75 billion in 2021, according to the multilateral banks' own estimates (EIB 2021) – compared with US\$5 billion for energy adaptation. For mitigation activities, agriculture received only US\$2.5 billion, compared with US\$24 billion for energy and US\$3 billion for buildings and houses. This is far too small a sum for what the sector needs. Second, it means introducing a series of complementary and supportive policies relating to trade, incomes, employment, technology and other elements that can together bring about a profound difference in the underlying productive capacities and correct the imbalances in the structures of the economy. It is here that the vision of a Green New Deal comes into play with a focus on agriculture and trade policies in agriculture.

8.4.2 A positive trade agenda for sustainable agriculture within the context of climate change

Trade, environment and decent work priorities need to be aligned in order to make the most of the shrinking time available to stabilize the climate and advance the SDGs, including the developmental and employment aspects. Most of the current debate has been about the environmental aspects of the Green New Deal, but the original New Deal, enacted by US President Franklin D. Roosevelt in the 1930s, included efforts to address the impact of environmental degradation, as well as its better known priority of job creation and distributing income more equitably. This multipurpose element is even more important today, because of the multiple and intersecting impacts and because the world economy is globalized and interconnected through trade in a way that was not imaginable in the 1930s.

In this regard, in 2020 members of the WTO began a series of structured discussions to analyse and advocate for various trade policy proposals that could potentially help the shift to a more sustainable environment. The trade policies under discussion will have a significant impact on trade in all sectors of the economy, including agriculture, and are likely to have knock-on impacts on employment, including the number of jobs in sectors old and new, their financial remuneration and working conditions. These policies include liberalizing trade in environmental goods and services; reforming environmentally harmful subsidies (especially to fossil fuels); a Carbon Border Adjustment Mechanism (CBAM) to reduce carbon trade and use; a global policy to reduce plastic pollution and other measures to create a “circular economy”; and trade policies to promote biodiversity. The 2021 G7 Trade Ministers’ Communiqué included a commitment to “make trade part of the solution” to climate change (UNCTAD 2021b, 135).²¹ It specifically brought attention to environmentally harmful agricultural practices and the problem of carbon leakage. This refers to instances where industries with high emissions transfer their operations from regions with stringent regulations to areas with lower standards, thus compromising the objective of reducing global greenhouse gas emissions. Additionally, this situation may also give rise to concerning implications for health and workplace safety. Preventing carbon leakage has been high on the agenda of advanced economies; concerned that their higher environmental standards give an unfair trade advantage to countries with lower standards, they have been

²¹ The G7 (Group of Seven) is an informal arrangement of seven leading economies comprising Canada, France, Germany, Italy, Japan, the United Kingdom and the United States, as well as the EU countries.

demanding a “level playing field”. The CBAM, which is already part of the EU’s flagship policy, aims to align trade and climate and achieve neutrality by 2050 (UNCTAD 2021a).

In this context, the remainder of this section sets out some positive developments in the international trading system, including RTAs that take a more comprehensive approach and the positive trade agenda adopted by the United Nations Conference on Trade and Development (UNCTAD).

8.4.2.1 Regional trade agreements: All is not lost

Some regional trade agreements have been more development-oriented, with a focus on the agricultural sector, and include clauses to address structural issues in terms of market access and fair competition. Often these are South–South agreements between countries with more or less similar levels of economic development. It would be useful to discuss here what differentiates such agreements with those discussed in section 8.3.

The Economic Community of West African States

The Economic Community of West African States (ECOWAS) is a regional intergovernmental organization that promotes economic integration and cooperation among countries in West Africa. Encompassing a diverse range of countries from the western region of Africa, it comprises 15 Member States: Benin, Burkina Faso, Cabo Verde, Côte d’Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. It was established on 28 May 1975, with the signing of the Treaty of Lagos in Lagos, Nigeria.

The objectives of ECOWAS include promoting economic cooperation, regional integration and sustainable development among member countries. It aims to create a common market, establish a customs union and coordinate economic policies to enhance the overall economic performance of the region.

Unlike most recent RTAs, ECOWAS has significant clauses in support of sustainable development, with an emphasis on agricultural production, food security and regional cooperation. To start with, there is a whole chapter (IV) entitled “Co-operation in Food and Agriculture” and Article 25, entitled “Agricultural Development and Food Security”, has very detailed policy clauses addressing production structures at the aggregate level.²² Article 25.1(c), in particular, focuses on local production, while 25.1(d), more

²² ECOWAS, “Revised Treaty”.

importantly, focuses on protection of producers in global markets through a common export subsidy. Article 25.2 addresses production structures through its focus on infrastructure.

The Common Market for Eastern and Southern Africa

The Common Market for Eastern and Southern Africa (COMESA) is a regional economic community established to promote economic integration and cooperation among countries in Eastern and Southern Africa. Formed in December 1994, it consists of 21 Member States: Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, South Sudan, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

Like ECOWAS, COMESA has clauses promoting regional infrastructure development, including transport, energy, and information and communication technology (ICT) networks.²³ Improving infrastructure connectivity is crucial for rural markets, which are otherwise disconnected as a result of physical distance.

Given the significance of agriculture in the region, COMESA places emphasis on initiatives related to agricultural development and food security. It aims to enhance agricultural productivity, improve market access for agricultural products and promote food security through regional cooperation. Like ECOWAS, COMESA also has a chapter devoted to cooperation in agriculture and rural development (Chapter 18, Articles 129–137).

The African Continental Free Trade Area

The African Continental Free Trade Area (AfCFTA) agreement is a landmark trade agreement that aims to create the largest single market in the world. It encompasses 1.3 billion people from 55 countries of the African Union and eight Regional Economic Communities, with a combined GDP of US\$3.4 trillion. The AfCFTA agreement entered into force on 30 May 2019, and trading under the agreement began on 1 January 2021.²⁴ The provisions on trade in agricultural products focus on:

- **Tariff reduction and elimination:** The AfCFTA aims to progressively eliminate tariffs on 90 per cent of goods traded between African countries. This includes agricultural products, with the goal of boosting intra-African trade in agricultural goods.

²³ COMESA, “Treaty Establishing the Common Market for Eastern and Southern Africa”.

²⁴ AfCFTA, “About the AfCFTA”.

- ▶ **Rules of origin:** The agreement establishes rules of origin to determine the eligibility of products for preferential treatment under the AfCFTA. These rules specify the criteria that products must meet to be considered to originate from an AfCFTA member country, preventing third-party countries from accessing preferential trade benefits and thereby giving priority to local producers in agriculture to benefit from market access.
- ▶ **Trade facilitation:** The AfCFTA includes provisions to facilitate trade, including simplifying customs procedures, enhancing border efficiency and promoting cooperation among Member States. These measures aim to reduce trade costs and increase the efficiency of agricultural trade across Africa.
- ▶ **Sanitary and phytosanitary (SPS) measures:** The AfCFTA addresses SPS measures, focusing on food safety, animal health and plant health regulations. The agreement promotes the adoption of harmonized SPS standards based on international best practices, facilitating agricultural trade while ensuring the protection of human, animal and plant health.
- ▶ **Technical barriers to trade:** The AfCFTA addresses technical barriers to trade by promoting the harmonization of technical regulations, standards and conformity.

In its design, the AfCFTA is in support of agriculture and regional cooperation, which is a positive development. However, it is important to note that, despite its good intentions, the AfCFTA has a very challenging road ahead to create the promised wealth and well-being in the region, given structural challenges in Africa ranging from inadequate physical infrastructure, limited capital markets, limited human and institutional capacities, to lengthy and non-transparent customs transactions and administrative hurdles that increase trade costs (Barka 2012; Allard et al. 2016; UNECA 2018).

8.4.2.2 The United Nations Conference on Trade and Development: The essential, positive agenda for sustainable development

In these (and indeed all) trade and other economic policies on agriculture, it will be imperative to take account of the fact that, while all countries may wish to change to “greener” systems, not all have the same capacity to act. Hence, while trade policies may be very welcome and long overdue from the perspective of health, pollution and climate change, there should also be a

plan to ensure that developing countries are not excessively exposed to the kinds of shock sketched out in figures 8.1 and 8.2 above. The most recent conference of Brazil, the Russian Federation, India, China and South Africa (the BRICS countries), in August 2023, reiterated the message that climate change must not be allowed to trump development needs.

Recognizing the potential complementarities between both, and the concern that development needs are not left behind, the United Nations Conference on Trade and Development (UNCTAD) is arguing for a positive agenda where the goals for trade, the environment and development (including, crucially, employment) are intrinsically linked and supported by integrated policies and strategies. Such a framework addresses the much needed focus on correcting for structural imbalances in agriculture. For example, to ensure that the reforms that all countries have signed up for have the positive effects envisaged in the long run, it is important to implement measures that facilitate open-source and patent-free green technology transfers, and help to build up technical capacities in climate-smart infrastructure, waste management and other aspects of the low-carbon economy. But more importantly, it is necessary to eliminate unfair practices linked to free trade when most of the agriculture in developed countries is heavily subsidized.

Particularly when addressing market access for small farmers, providing adequate public finance will play a major part. This will allow small farmers to access credit to purchase land, technology and other inputs, thereby utilizing their labour more efficiently and producing more agricultural output, and hence addressing employment, environment and food security issues simultaneously. For this, it will be important to ensure that national and regional development banks have specialisms in agriculture and that they have access to sufficient capital, so they can lend, at favourable rates and with long-term maturities, to a broad base of borrowers, thereby allowing productive capacities to expand in line with market access. This will require a significant reappraisal of public banks; they will need both political and financial support if they are to play such a role in supporting the sector (UNCTAD 2019, 2022b, 2023b). At times of crisis, these banks have demonstrated what can be done (Barrowclough and Marois 2022); and today, when problems are slow-burning rather than intense shocks, their role is especially important, given that neither the global multilateral lenders nor the global Green Climate Fund have been successful in raising finance for agriculture (EIB 2021; UNCTAD 2022b, 2023b). This matters because, maybe more than in any other sector, environmentally sustainable transitions are very much needed in agriculture. As discussed above, these are crucial because of the sector's importance not only for developing-country populations in terms of income and employment, but also for food security

and their contribution to reducing greenhouse gas emissions. To achieve this, finance is crucial.

It is only after these structural issues have been addressed that the international trade regime can play its major role in encouraging trade in environmentally sustainable substitutes – agricultural products that can, with the application of new technologies, be targeted at the new and rapidly growing low-carbon markets. For some of these, developing countries may already have comparative advantages in relevant agricultural products that can – with appropriate retooling – become highly profitable, at the same time as creating jobs. In some fossil-fuel replacement markets, such products are already key exports for developing countries, generating important employment and livelihood opportunities, especially for women. A shift towards such products can become an important element of green industrial policies. Trade policy has a part to play here, because many countries currently have an inconsistent policy where tariffs on these increasingly desirable and sustainable products are higher than those on unsustainable ones.

8.4.2.3 Waivers – peace clauses – and differential responsibility

In setting up a positive agenda to achieve the SDGs – especially the goals on food security, employment and environment, including the envisaged reform of agriculture and shift to a low-carbon economy – a key starting point must be the synergies between the trade policy concept of special and differential treatment (SDT) and the UN Framework Convention on Climate Change (UNFCCC) principle of common but differentiated responsibilities (CBDR). SDT is structured to provide developing countries with a broader range of policy options to address the specific challenges they encounter when entering the global trade sphere. Meanwhile, CBDR recognizes that developed economies bear the primary responsibility for historical emissions that have contributed to climate change. As a result, they should bear the greater burden in responding to the impacts of climate change and addressing its fundamental causes. These two concepts are complementary and have the potential to create a beneficial framework for aligning trade and climate objectives. This agenda underscores the importance of broadening the scope for the formulation of green agricultural policies, as well as the need for flexibilities in protecting IP rights and incentives to foster technology transfer for climate- and environment-related agricultural goods. It also involves strengthening support for developing countries in adopting renewable energy and other reforms necessary for the green transition of agriculture. This will necessarily

require a significant expansion of financial support to meet and surpass the US\$100 billion climate finance target agreed in the UNFCCC process. At present, developing countries have been offered only a fraction of the funds pledged to help them meet their climate goals.

In order to effectively provide SDT to developing countries, UNCTAD has recommended that the introduction of a limited climate waiver, combined with a “peace clause” for disputes on trade-related environmental measures, could help to expand the policy space available to developing countries with respect to their agrarian production and trade, climate and development initiatives. Such action would offer countries the reassurance that they will not face disputes regarding initiatives that promote both climate and development objectives. These initiatives encompass priorities such as transitioning to renewable energy, adopting environmentally friendly procurement practices and implementing programmes for creating green jobs. These are all also valued by advanced economies and hold substantial potential for employment benefits in developing countries, but they could be challenged under the WTO dispute mechanism.

The overarching principle underscores the inherent connection between climate objectives, the SDGs and development goals. In this context, international trade assumes a significant role in facilitating the advancement of developing countries on all these fronts. At the same time, however, international trading rules should not undermine the trade competitiveness of developing countries by limiting their market access and their capacity to make progress on their climate and development goals. Instead of punitive actions and further trade liberalization, a positive trade and environment agenda is needed that focuses on correcting the structural imbalances and providing a level playing field for agricultural products in world markets. This would help by creating new green employment and income-generating opportunities, by facilitating green technology transfers, by expanding trade–climate finance and by providing incentives to developing countries – along with adequate policy and fiscal space – to help them design their own integrated trade/environment/development strategies.

Trade policies can also be a way to help finance all that has been discussed above. For example, one way to increase the financing available to developing countries would be to reform the existing proposals for the CBAM and tariff elimination on environmental goods and services. These are going to have a disproportionate impact on resource mobilization in developing countries whose current total output is more carbon-intensive than that of developing countries and for whom tariffs make up a greater part of government revenue. A new “Trade and Environment Fund” would be one way forward, as proposed some years ago by WTO members (WTO 2011). Such a fund

could help to finance the incremental costs of sourcing critical technologies, provide grants and concessional loans for new technologies, finance joint research and help set up technology transfer centres. Arguably, such a fund could also be used, during the green transition in agrarian sectors, to finance the social and incomes policies needed to buffer some of the labour shocks to employment numbers, wages and precariousness in “sunk” sectors.

► 8.5 Conclusion

This chapter has shown how and why finance and trade policies need to be aligned with each other and with the special and structural needs of agriculture, in order to solve the myriad challenges linked to food insecurity, food waste, precarious labour and environmental issues in a climate-constrained future. It began with a critical overview that showed the limitations of supply-side solutions put forward by current conventional thinking. Subsequent sections introduced the role of trade policies, including some recent regional trade agreements in agriculture, and the virtuous links that need to be in place between finance policies, trade policies and agriculture. The analysis showed the important distinction that needs to be made between financial policies that focus on risk-shedding or risk-sharing and those that focus instead on productive investment – the latter being what is needed for development and transformation of agriculture.

The analysis also showed the need for coherence between the distinct but intersecting aspects of trade, finance and agricultural policy. When such coherence is absent, even crucial development goals are unlikely to be achieved. Food security, for example, cannot be addressed as long as the experimental “solutions” fail to address structural imbalances that govern national and global markets for agriculture, and also for finance. It was also argued that this failure is the result of looking at development issues within the framework of a neoliberal paradigm which lacks understanding of both the macro and the micro factors that affect agrarian production in developing countries. One of the starkest instances of this is the misguided celebration of small farmers as the solution to food security issues. As discussed, small-farmer productivity – that is, per acre productivity – in the developing world is a sign of market failure. Focusing on improving small-farmer productivity through innovation and technology, or education of farmers – rather than on designing policies to correct structural imbalances that lead to market and policy failures – is doomed to fail on all fronts of sustainability. This is

not to say that such interventions are not important – they play a crucial complementary role – but unless structural imbalances are addressed, they are not sustainable.

On a more positive note, a framework or “road map” already exists, in the form of the Global Green New Deal, which does indeed comprehensively address the micro and macro policy levers that need to be utilized together. An important consequence of this approach that is discussed in the chapter concerns the potential to move away from an excessive reliance or focus on risk-based “solutions”, including short-term technological fixes or “de-risking” instruments such as insurance, as these do not address the cause of the problems. It must be acknowledged that addressing risk is not the same as promoting or supporting transformation. It should also be acknowledged that a massive scaling-up is needed to provide adequate supplies of long-term capital, on long and patient terms, and at favourable interest rates. The ideal way to provide this is through development banks or funds, guided by a supportive and development-focused State. The framework of a Green New Deal has all these elements: it brings together trade policy, finance and investment, alongside employment and social incomes policies to support both the transition and the transformation phases of the move to a climate-aligned and decent system of agriculture.

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International trade is widely viewed as an engine of growth and carries implications for the hundreds of millions of workers whose livelihoods rely on trade-oriented industries. Undoubtedly, it has generated job opportunities, including for young people and women, helping to lift millions out of poverty. At the same time, the benefits of trade have not been distributed evenly, across countries, sectors, firms or workers.

These two edited volumes address these challenges by advancing knowledge on how to better align trade and labour market policies to achieve decent work outcomes. The first volume provides concrete examples of the trade impacts on labour in specific countries and explores labour market policy options, including the role of ILO interventions, to ensure that trade contributes to – rather than hampers – decent work. This second volume focuses on how labour issues are currently reflected in trade and investment agreements and explores their implementation in practice. It also looks at the manner in which structural labour market issues can be addressed through trade governance instruments at different levels, including the multilateral trading system.

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