

A MULTI-FACETED TYPOLOGY OF LABOUR PROVISIONS IN TRADE AGREEMENTS: OVERVIEW, METHODOLOGY AND TRENDS

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INTRODUCTION

Labour provisions in trade agreements have become an important tool for global labour governance and are a common feature in regional trade agreements.² With slightly more than half of trade agreements concluded over the last decade containing labour provisions, the debate on trade and labour has shifted away from a question of *whether* to include labour provisions in trade frameworks, to one of *how* to include them.

Since the introduction of enforceable labour provisions in the North American Free Trade Agreement (NAFTA) in 1994, including labour provisions has not only become more frequent globally, but also more comprehensive among key proponents of the approach. Previous ILO research examined the evolution of labour provisions in trade agreements and compared country-specific approaches (ILO 2016, 2019) based on a three-pillared conceptualization of labour provisions. It addresses commitments to labour obligations that protect, advance and enforce labour standards and workers' rights, and related compliance with those obligations. It also focuses on stakeholder engagement through cooperation and dialogue-based mechanisms to support transparency, oversight, and capacity building of institutions (ILO, 2013). The present paper introduces a typology of labour provisions built on the foundation of this multi-faceted conceptual framework.

The typology also serves as the foundation for a comprehensive textual database on labour provisions — the ILO Labour Provisions in Trade Agreements Hub (LP Hub). The LP Hub contains the full text of labour provisions, extracted from over 100 trade agreements, and is structured into 74 categories. Additionally, it includes links to relevant committee reports, public submissions, and cases triggered under dispute settlement. Thus, the LP Hub is a one-stop source of aggregate information on the content of labour provisions. To our knowledge, the LP Hub is the most comprehensive, systematic, online tool available that covers text and documents pertaining to labour provisions in trade agreements.

There are a few main distinctions between the LP Hub typology and other typologies in the literature based on the scope and depth of the labour provisions' categorization:

Firstly, the categorization is based on a broad and comprehensive definition that encompasses all aspects of labour provisions, while providing a level of granularity that has been missing in the current literature. The typology covers both 'soft' and 'hard' obligations, cooperative and dialogue-based activities, and institutional and procedural aspects of dispute settlement. In this sense, the approach is different from more recent typologies in the literature that tend to focus on a narrow definition of labour provisions, and mainly include content deemed important to their enforceability.

Secondly, the typology includes both pre- and post-ratification implementation activities that have taken place in the context of the trade agreement. As such, the typology strives to emphasize changes in the law as well as changes in practices that the trade agreement triggered.

² ILO (2019). The terms bi-lateral, pluri-lateral, and regional trade agreements are used interchangeably throughout the paper.

Thirdly, the typology considers emerging areas within trade and labour, such as forced labour, youth, and racial and ethnic equality, the latter two being overlooked often in the literature. Similarly, it considers recent innovations with respect to the location of labour provisions and different types of remedies.

Finally, the resulting dataset is textual, and includes the main text from the relevant chapter, annex, or memoranda of understanding. This feature is unique in that most available datasets of labour provisions only make available the coding scheme, which is less conducive to an in-depth comparative legal analysis, both within and across countries.

Thus, the LP Hub typology provides a conceptual framework that recognizes the distinct features that are important to the effectiveness of labour provisions, as well as the interlinkages between them that play a complementary role in promoting and advancing labour rights. Because of this framework, the LP Hub supports a wider range of analysis on labour provisions, their implementation and ultimately their efficacy.

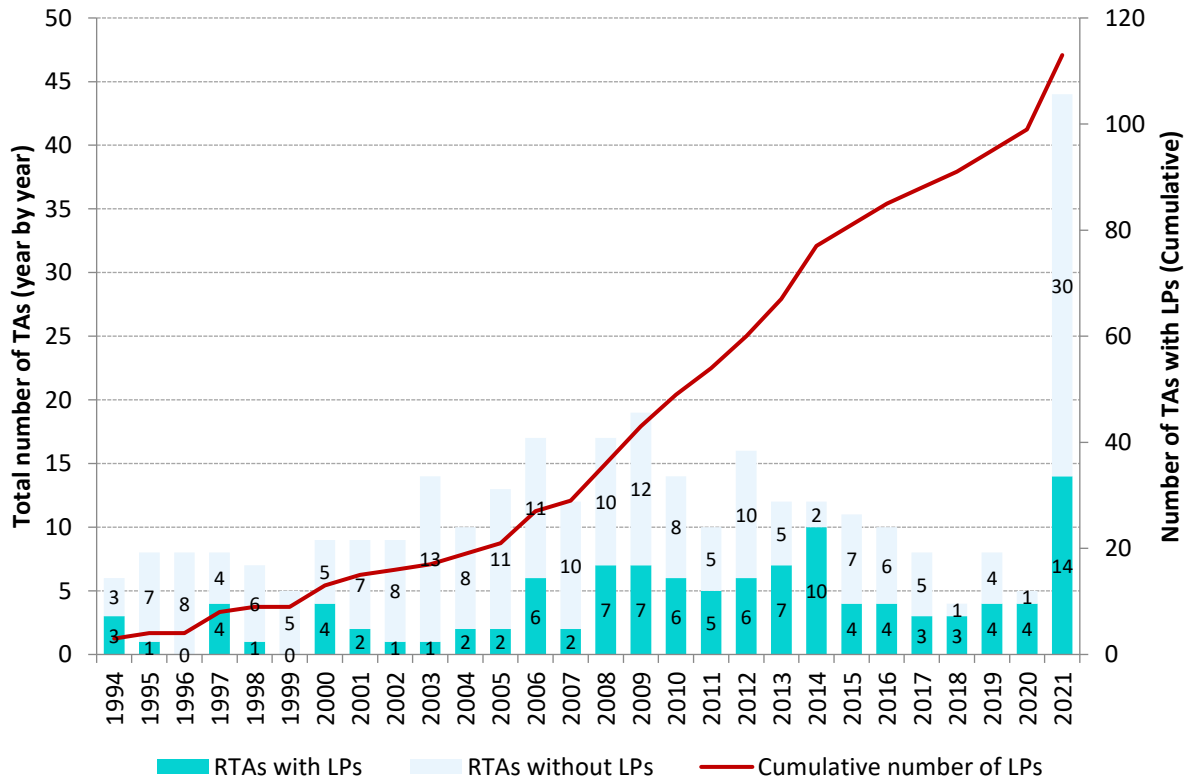
The organization of the remainder of the paper is in four sections. Section one introduces the multi-faceted conceptualization of labour provisions, including the ILO definition at the foundation of the typology. Section two situates the current study in the literature by providing a review of previous mappings and typologies of labour provisions. Section three presents the methodology behind the typology, which serves as the structural basis for the LP Hub. Section four provides concluding remarks and identifies future areas of research.

1. Conceptualizing and defining labour provisions in trade agreements

As of January 2022, 113 out of 354 trade agreements included labour provisions, half of which were ratified over the last decade (Figure 1). Moreover, the content of labour provisions, their scope of application, and the mechanisms for promoting and enforcing compliance with them, have evolved and expanded over time to cover emerging issues of global labour governance and cooperation.³ With that, labour provisions have become semantically richer, encompassing both ‘soft’ and ‘hard’ commitments to labour issues and rights, as well as to their enforceability.

³ ILO (2019).

Figure 1. Number of trade agreements with and without labour provisions, 1994-2021



Notes: RTAs = regional trade agreements; LPs = labour provisions. Data are available for 354 RTAs notified to the WTO until February 2022, including NAFTA which incorporated the first binding labour provisions but is not in force anymore.

Source: ILO Labour Provisions in Trade Agreements Hub (2022), based on WTO RTA-IS.

The ILO’s definition of labour provisions unites various components into a comprehensive concept. The definition relies on the text of trade agreements, policy documents, and relevant literature, including ILO’s pioneering research on mapping and defining labour provisions (ILO, 2009, 2013, 2016, 2017 and 2019). Labour provisions in trade agreements are:

- i. any principle or standard (including international labour standards) or rule, which addresses labour relations, minimum working conditions, terms of employment, and/or other labour issues;
- ii. any framework to promote compliance with standards through cooperative activities, dialogue and/or monitoring of labour issues; and/or
- iii. any mechanism to ensure compliance with standards, either set under national law or in the trade agreement.

Point (i) refers to the specific commitments and obligations regarding labour standards and conditions of work – such as freedom and autonomy in choosing and carrying out work, minimum wages, working hours, and occupational safety and health issues. Point (ii) concerns monitoring and cooperative activities to promote compliance. This may include development cooperation activities to support implementation as well as monitoring of the obligations through established bodies that

facilitate regular dialogue and/or assistance between the Parties. Point (iii) relates to institutional and procedural commitments for implementing obligations and ensuring compliance. These commitments include, for example, dispute settlement procedures.

As mentioned above, the definition is broad and comprehensive enough to capture the full prism of labour provisions. Specifically, this also includes employment-related aspects of labour provisions, such as those on migrant workers and social protection,⁴ in addition to specific labour rights issues related, for example, to corporate social responsibility (CSR), gender, forced labour, child labour, and ethnicity and race.⁵ However, it does not consider provisions pertaining to education policy and free movement of workers.

It is important to underscore that the specific location⁶ and language of labour provisions, determines the extent of the Parties' labour commitments, which may help determine whether a labour provision is aspirational or legally binding on the Parties. The definition also includes labour references and obligations contained in the core text of the agreement (e.g. labour or sustainability chapters, but also others such as cooperation, investment and rules of origin chapters⁶) and/or in side or parallel agreements on labour (such as memoranda of understanding (MOUs) or agreements on labour cooperation).⁷ Finally, although the preamble is generally considered non-binding, it defines the purpose(s) of the trade agreement and helps interpret the entirety of it.⁸ As such, both labour provisions located in the core text and aspirational statements located in the preamble are considered. However, the LP Hub does not include agreements that are purely aspirational labour-wise, that is, agreements that only refer to labour in aspirational statements located in the preamble.⁹

The legal language employed in the trade agreement – that is, how labour provisions are phrased – is vital to determining their strength and 'bindingness'. Modal verbs, which are verbs indicating the way or mode in which something exists or is done, play an important role in trade agreements: they express obligation.¹⁰ Modal verbs such as *shall*, *should*, *may*, and *must* help distinguish between 'soft' obligations (*may*, *should*) and 'hard' obligations (*shall*, *must*). Verbs such as *shall*, *will*, *agree*, and *ensure* are frequently used to indicate binding obligations, whereas '*should*' and '*may*' typically signal less stringent

⁴ ILO (2016).

⁵ These may be included in the labour chapter or other sections of the trade agreement. For a discussion of gender provisions in trade agreements, see Echeverria Manrique and Ngoc-Han (2017). For a discussion of CSR provisions see Peels et al. (2016).

⁶ ILO (2019). See for example Japan's agreements with Switzerland (2008), the Philippines (2006) and Mongolia (2016) for labour provisions in the investment chapter; USMCA (2020) for labour provision in the rules of origin chapter.

⁷ In some cases, these side agreements can be non-binding.

⁸ See Vienna Convention on the Law of the Treaties (1969), Section 3: Interpretation of Treaties, Article 31(2) which states that preamble can be used to interpret the treaty: "The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the Parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more Parties in connection with the conclusion of the treaty and accepted by the other Parties as an instrument related to the treaty." See also Bartels (2009).

⁹ See, for example, the agreement between the European Free Trade Association (EFTA) and Canada, which is classified as purely aspirational labour-wise.

¹⁰ Guendling (1974); Russell (1994); Rivière (1981).

obligations.¹¹ The LP Hub typology does not maintain a distinction between ‘*soft*’ and ‘*hard*’ obligations. However, these distinctions are evident when reviewing the legal text under the relevant categories, especially dispute settlement sub-categories such as panels and remedies, which indicate whether there is panel review for labour non-compliance and remedial measures available for labour violations.

The LP Hub typology is rooted in the text of the labour (or specialized) chapter. Thus, part of the methodological effort was to review closely the trade agreements in the WTO database,¹² focusing not only on the textual meaning but also on the structure of each agreement, including titles of articles and chapters, and taking note of the differences among the template structure of RTAs with labour provisions. The main text of the RTAs as well as annexes and MOUs were reviewed to ensure a comprehensive analysis of labour provisions.¹³ Desk research on labour provisions, including their implementation and effectiveness, and different typologies also informed the process.¹⁴ Finally, interviews and consultations with experts and stakeholders supported the formation and revision of the final categorization.¹⁵ The full typology is listed in Annex I.

Prior to discussing the detailed framework for the LP Hub typology, Section 2 reviews the different methodological approaches for mapping and categorizing labour provisions.

2. Literature Review: Mapping and typologies of labour provisions

The mappings and typologies of labour provisions in trade agreements range from identifying labour-related issues and grouping them around a representative template to systematic classifications of labour provisions. There are also differences in terms of their scope and granularity. For example, while some studies focus on specific countries’ approaches, others draw on the entire universe of trade agreements. Additionally, the methodologies may differentiate labour provisions based on various criteria. Earlier methodologies, for example, focus more broadly on non-trade issues whereas more recent typologies analyse the specific language and enforceability of labour provisions, as well as areas of engagement on labour issues. Annex II provides more detail of the respective typologies summarized below.

As already recognized in the literature by Raess and Sari (2018), early attempts to map labour provisions (e.g., Horn et al. (2010); Lechner (2016); Hoffman (2017); Milewicz et al. (2018)) were part of a broader exercise of identifying non-trade-related issues in trade agreements. Horn et al. (2010), in

¹¹ Bourgeois, Dawar and Evenett (2007).

¹² Although there are more comprehensive datasets (such as DESTA), the WTO’s Regional Trade Agreements Information System (RTA-IS) database has been selected for two main reasons. First, all agreements notified to the WTO starting from 1948 are included in the WTO RTA-IS, thereby making the database a transparent and reliable repository for trade agreements. Second, these agreements are recognized by the WTO, the main multilateral organization that deals with rules of international trade and compliance thereof.

¹³ ILO (2019).

¹⁴ Research on labour provisions in free trade agreements employs both qualitative and quantitative techniques. Key studies that guided our work include but are not limited to Blackett (2020); Aissi, Peels, and Samaan (2019); Harrison (2019); Araujo (2018); Raess and Sari (2018); Kamata (2016); and Polaski (2013).

¹⁵ Thirty-five experts consisting of academics, labour and trade officials, international civil servants and employers’ and workers’ representatives were consulted for the project.

their seminal paper, focusing on EU and US trade agreements, divide the content of these agreements into over 50 policy areas that fall under “WTO+” and “WTO-X”, and assess their legal enforceability and depth.¹⁶ ‘Labour market regulations’ appear as labour provisions. Building on this approach, Hoffman (2017) analyses all trade agreements notified to the WTO, providing a new database that examines in detail the content, coverage and legal enforceability of provisions. Lechner (2016) focuses only on three broad non-trade issues in trade agreements, which include labour provisions under economic and social rights. But there is an emphasis on their degree of legalization based on obligations, precision and delegation.¹⁷

As labour provisions have become more commonplace in trade agreements, later studies hone in on the heterogeneity of the language and the degree of enforceability of labour provisions. These studies highlight the distinction between ‘soft’ versus ‘hard’ law dimensions, as well as ‘promotional’ versus ‘conditional’ approaches to labour conditionality. For instance, Kamata (2014) classifies RTAs into six categories based on the content and stringency of labour provisions, differentiating provisions that refer to internationally recognized labour standards from provisions that only include general references to labour or social rights. Kamata (2016) revisits the classification and definition of labour provisions, dividing them into two groups: (i) provisions that reflect international labour standards, and (ii) provisions that stipulate procedures for consultation and dispute settlement on labour matters. Similarly, Williams and Lilly (2021) develop an index to evaluate the evolution of labour chapters in Canadian trade agreements, built on two dimensions: ambition reflected in the content of labour rules, and enforceability reflected in the mechanisms for implementation of, and compliance with, those rules. Giumelli and Roozendaal (2017) construct an even more comprehensive index to assess whether the content of labour provisions enhances labour conditions in the context of US trade agreements. The index is built on three indicators: pre-ratification conditions met by the trade partner, existence of a credible threat in the form of sanctioning mechanisms for non-compliance, and amount of financial allocations to improving adherence to labour standards.

Other studies move beyond the content and stringency of commitments to focus on the structure of labour provisions, informed by the design and structure of the text of the labour (or specialized) chapter. They do so by drawing on the multi-faceted aspects of labour provisions. The ILO has pioneered much of the work in this area by developing a three-pillared concept of labour provisions, which categorizes them into obligations, monitoring and cooperation activities, and dispute settlement (ILO, 2013). Later ILO studies (2016, 2017, 2019) offer an exhaustive mapping of labour provisions, taking into consideration the interrelationship between the different categories, as well as granular details on obligations (including references to ILO instruments, and thematic areas such as CSR, gender, etc.), monitoring and cooperation activities (including the role of stakeholders), and aspects of dispute settlement.

¹⁶ The WTO+ area corresponds to those provisions that come under the current mandate of the WTO. By contrast, the WTO-X category comprises those provisions that cover issues outside the current WTO mandate.

¹⁷ The concept of legalization developed by Abbott (2003) characterizes the institutional forms by three dimensions: obligation, precision and delegation. Obligation indicates “the intent of being legally bound by rules or commitments.” Precision measures the degree to which the rules are definite. Delegation assesses the guarantee of authority to third Parties for “the implementation of rules, including their interpretation and application, dispute settlement, and (possibly) further rule making.”

The literature increasingly recognizes the multi-faceted aspects of labour provisions. For example, Engen (2017) suggests a three-component typology of labour provisions based on standards and commitments, monitoring, and compliance mechanism, to capture the heterogeneity in design and content of labour provisions; he further applies this typology to a mapping of trade agreements in the Asia and Pacific region. Araujo (2018) provides a comparative analysis of labour provisions in EU and US trade agreements based on key elements such as substantive obligations, procedural frameworks, including institutional and cooperative mechanisms, and enforcement mechanisms. Raess and Sari (2018) develop the Labour Provisions in Preferential Trade Agreements database (LABPTA) and a comprehensive coding template that captures the broad components of labour provisions as well as their stringency in certain areas. The stringency assessment is based on enforceability and institutional framework. They focus on a ‘narrow definition’ of labour provisions, that excludes e.g., labour-related commitments in investment chapters and treatment of migrant workers and use six specific categories for the typology: (1) aspirational statements; (2) substantive commitments; (3) obligations; (4) enforceability; (5) cooperation commitments; and (6) institutions.

Finally, Mattoo et al. (2020) introduce a new dataset on trade agreements (DTA) that maps the content of 18 policy areas in preferential trade agreements, one of which includes labour market regulations based on Raess and Sari (2020). In the DTA, labour has five main categories, and a cross-cutting measure of enforceability based on dispute settlement mechanisms in the agreement and the labour related chapter. So far, the DTA is the most comprehensive mapping of non-trade related provisions in trade agreements. However, what it gains in extensiveness in the mapping of commitments across policy areas (including labour), it loses in terms of intensiveness of the specific commitments in those areas.

Thus, what is needed is a more ‘integrated’ approach to labour provisions that takes into consideration their comprehensiveness, while also considering the nuances across different country templates and generations of trade agreements. Moreover, there is also a need for flexibility to consider innovations and emerging themes across trade agreements, as well increasing information on implementation activities that can help to inform on effectiveness.

3. Labour Provisions Typology

3.1 Overview of the Main Categories

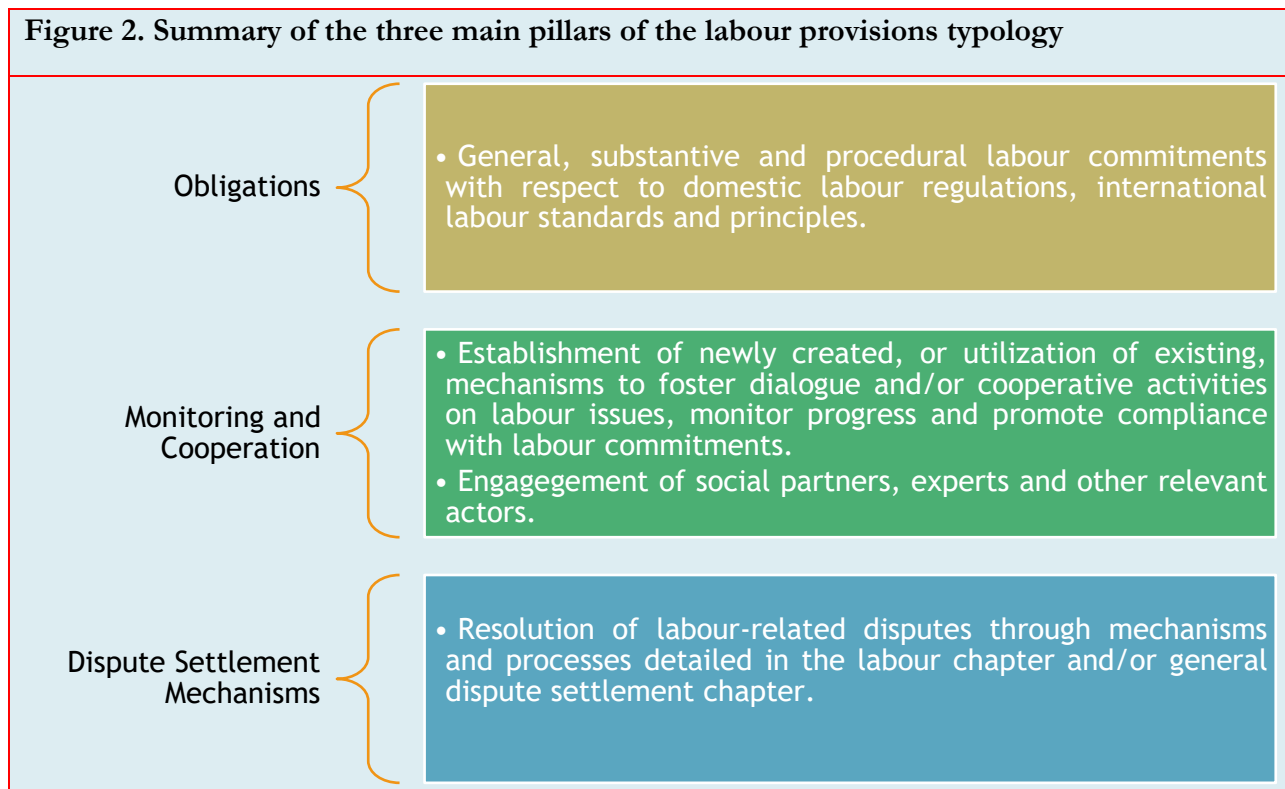
The goal of the LP Hub typology is to distil complex information by identifying and categorizing the key components of labour provisions.¹⁸ The mapping process also aims to provide a conceptual framework to analyse labour provisions within and across countries, which contributes to a deeper understanding of labour provisions.

The first step in the mapping process was to create three very broad, distinct categories based on: 1) obligations; 2) monitoring and cooperation; and 3) dispute settlement mechanisms (see Figure 2), by building on the three inter-related pillars of the ILO's definition as presented in Section I. These three

¹⁸ Typologies are often used in social sciences to classify entities with similarities into groups/types and sub-groups/sub-types. The following sources were helpful to the authors in understanding and developing the present typology: Collier, LaPorte and Seawright (2012); McKinney (1969); Bailey (1994); and Abbas (2010).

main pillars were then sub-divided into categories that have ‘within-group similarities’.¹⁹ In some instances, sub-categories are further disaggregated into sub-sub-categories for information specificity and granularity.

The first main pillar, obligations, lays out the domestic and international legal commitments of the signatories to the trade agreement, and defines their rights and responsibilities. Whereas obligations define and impose duties on the Parties, the second main pillar, monitoring and cooperation, covers mechanisms that promote compliance with labour obligations both by facilitating dialogue and cooperative activities (including bilateral and multi-stakeholder activities) and by addressing institutional weaknesses. Monitoring and cooperation initiatives also set out institutional arrangements for the participation of social partners and civil society. The third and last main pillar, dispute settlement, details the various procedures and mechanisms for resolving issues of non-compliance with respect to labour commitments in the trade agreement.



Source: Authors’ compilation.

3.2 Obligations

Labour obligations in trade agreements can promote and ensure compliance with existing national labour laws; ratification and implementation of international labour standards; and reforms of national labour laws to ensure harmonization with international labour standards and/or domestic improvement of labour rights. As discussed above, three important factors determine the scope and

¹⁹ Bailey (1994).

effect of labour obligations: 1) which obligations are specified; 2) where provisions expressing these obligations are located; and 3) how these obligations are referenced in the trade agreement (i.e. modal verbs).²⁰ Identifying “the extent of labour chapter obligations requires understanding their purposes, because the purposes and extent of obligations inform each other.”²¹ The purposes provide information about the Parties’ objectives with respect to labour obligations, while the extent is critical to analysing the breadth, scope, and effect of labour provisions.

States have obligations to respect, promote, and fulfil the labour rights enumerated in the Conventions and Declarations they ratify. International labour standards are legal instruments that set out the basic principles and rights at work. They are either Conventions (or Protocols), which are legally binding international treaties that Member States can ratify, or Declarations, which serve as non-binding guidelines.²² The ILO Declaration on Fundamental Principles and Rights at Work identifies an obligation of Member States to respect, promote, and realize core labour standards in four categories (freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour, and the elimination of discrimination in respect of employment and occupation), regardless of whether States have ratified the underlying conventions, because this obligation arises “from the very fact of membership in the Organization”.²³ The fundamental rights at work and core labour standards are universally recognized rights and ‘social rules’ of the global economy.²⁴ As such, the Declaration often serves as a baseline reference for labour standards in trade agreements.²⁵

Labour obligations in trade agreements generally consist of substantive and procedural obligations, which often reaffirm labour commitments, and include additional areas of focus. Substantive obligations specify labour standards and the legal rights and duties that must inform and guide States’ conduct. Procedural obligations prescribe the means of enforcing rights or providing redress; they include the rights and duties to enforcement, legal representation, access to courts, access to remedies, access to information, public participation, and other matters that are crucial in achieving fair proceedings and equal access to justice at the domestic level.²⁶ There are labour provisions in a number of trade agreements that encourage Parties to observe procedural rights and commitments, examples of which are dialogue, cooperation, and information transparency.²⁷

Substantive labour rights and duties in trade agreements include the legal rights and duties set forth in domestic and international instruments. These references consist of specific obligations to adopt, maintain, and enforce labour statutes and regulations; to ratify and implement the ILO Fundamental

²⁰ Banks (2021).

²¹ Shortened citation of the last work cited; Polaski (2013).

²² In many cases, a Convention lays down the basic principles to be implemented by ratifying countries, while a related Recommendation supplements the Convention by providing more detailed guidance on how it could be applied. Recommendations can also be autonomous (i.e. not linked to a Convention). For further information see: ILO, “International Labor Standards.” Available at <https://libguides.ilo.org/international-labour-standards-en>

²³ Shortened citation of the last work cited; See also International Labour Organisation, “ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998),” <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm>

²⁴ Tapiola (2020).

²⁵ ILO (2016, 2017, 2019).

²⁶ Harrison, et al (2018); Thomann (2011); Barbu et al. (2018).

²⁷ Barbu et al. (2018); Smith, et al. (2017).

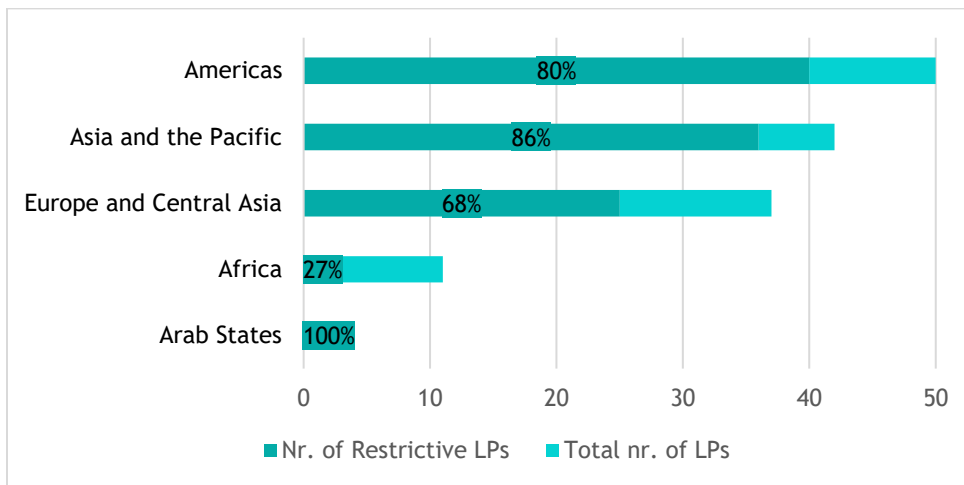
Conventions; and to promote the ILO Declaration of Fundamental Principles and Rights at Work. Obligations can also include restrictive clauses, which prohibit or restrict the Parties' actions and activities. Three types of restrictive clauses are encountered in labour obligations: 1) the obligation to *not derogate from or waive labour laws to encourage trade or investment*;²⁸ 2) the duty to not fail to enforce labour laws *in a manner affecting trade*; and 3) that labour provisions *not be used for protectionist purposes*.²⁹ Figure 3 illustrates the importance of restrictive clauses, which are included in at least 68 per cent of trade agreements across all regions, with the exception of Africa.

An example of restrictive clause is evident under article 9.6 (3) of the Comprehensive Economic and Partnership Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Chile, where the Parties commit to not using labour laws for protectionist purposes:

Article 9.6: Cooperation on Labour Issues

3. Each Party shall respect the sovereign right of the other Party to set, administer and enforce their own labour laws and regulations, policies and national priorities and ensure that its labour laws, regulations, and policies shall not be used for trade protectionist purposes.

Figure 3. Occurrence of labour related restrictive clauses in trade agreements, by region, 1994-2021



Notes: LPs = labour provisions. Data are available for 113 RTAs with LPs notified to the WTO until February 2022, including NAFTA which incorporated the first binding labour provisions but is not in force anymore.

Source: ILO Labour Provisions in Trade Agreements Hub (2022).

Domestic and international obligations are interrelated and interdependent, as their aim is to ensure that States' domestic laws and labour legislation are consistent with, and effectively implement, States' obligations under international instruments, including ratified conventions and declarations.³⁰ The obligations category separates domestic labour laws from international instruments. This separation

²⁸ Gött (2019); Bungenberg et al. (2019).

²⁹ Banks (2021); (2019).

³⁰ Leary (1982); Brudney (2018).

helps to distinguish between: 1) labour provisions that focus on adopting, maintaining, and/or amending domestic labour laws, including reforms to strengthen legislation and comply with international labour standards; and 2) labour provisions that reference specific international conventions and declarations as recognition of commitment. Still, there is some overlap between the two categories in instances where domestic labour laws also contain text that encourages or urges Parties to modify and/or enforce domestic labour laws in compliance with specific international conventions or declarations. In this respect, the typology errs on the side of prudence by including the relevant text under both domestic and international categories.

The categories under conventions and declarations arose from an exhaustive search of all such references in the text of trade agreements. Earlier ILO research (2017, 2019) focused mainly on ILO Conventions and major Principles and Declarations, because these are common and important references in trade agreements. As Figure 4 shows, 75 out of 113 trade agreements with labour provisions refer to the ILO Fundamental Principles and Rights at Work Declaration. Trade agreements also link labour obligations to broader development objectives, including in the areas of environment (e.g. the UN Agenda 21 on Environment and Development), sustainability (e.g. the UN Johannesburg Plan of Implementation on Sustainable Development) and human rights (e.g. the UN Charter and the Universal Declaration of Human Rights). Therefore, the current typology includes these additional areas.

Figure 4. Number of main ILO and development-related references in trade agreements with labour provisions, 1994-2021

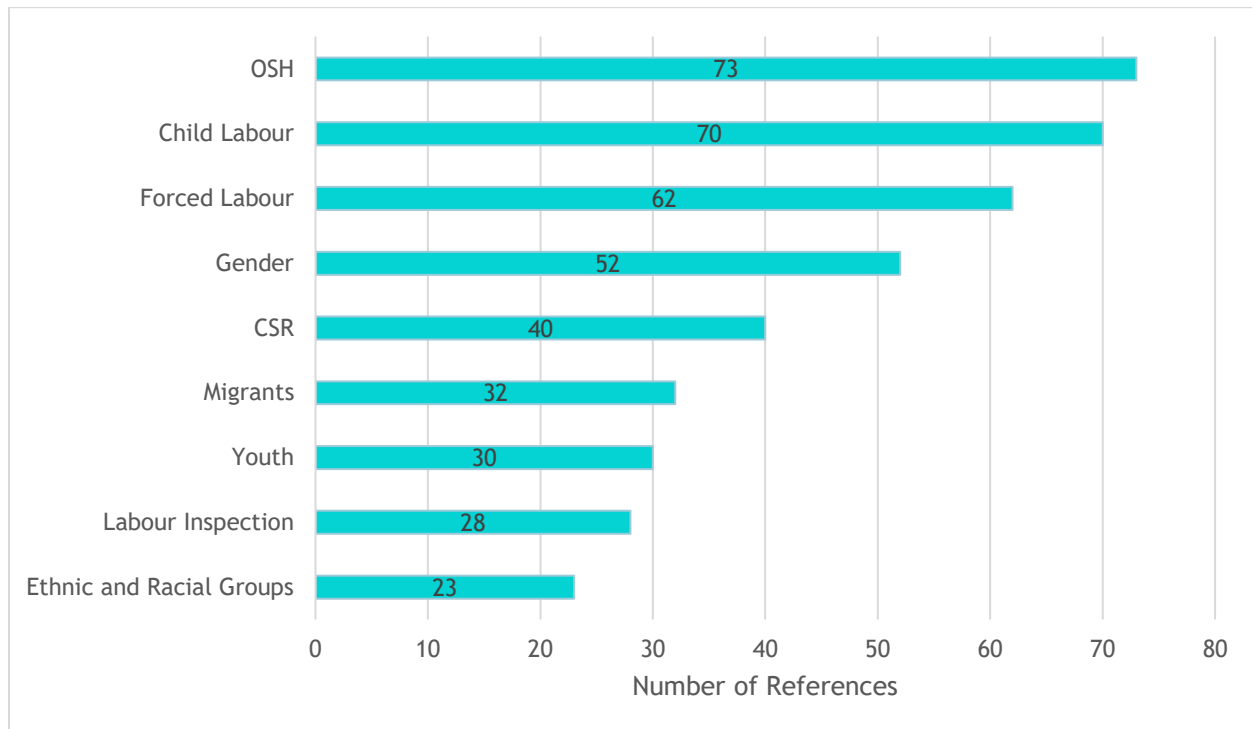


Notes: Data are available for 113 RTAs with LPs notified to the WTO until February 2022, including NAFTA which incorporated the first binding labour provisions but is not in force anymore.

Source: ILO Labour Provisions in Trade Agreements Hub (2022).

Labour provisions also refer to thematic areas of importance. Figure 5 shows that most of trade agreements with labour provisions refer to occupational safety and health (OSH) and child labour: 73 and 70 out of 113 trade agreements respectively, while fewer than 30 trade agreements refer to labour inspection and ethnic and racial groups.

Figure 5. Number of thematic references in trade agreements with labour provisions, 1994-2021



Notes: Data are available for 113 RTAs with LPs notified to the WTO until February 2022, including NAFTA which incorporated the first binding labour provisions but is not in force anymore.

Source: ILO Labour Provisions in Trade Agreements Hub (2022).

Figure 6 summarises the obligations category, which comprises four specific sub-categories. Starting with the first sub-category on domestic labour laws, it focuses on substantive obligations to respect, maintain, and/or amend domestic labour laws, and on procedural obligations relating to court access, enforcement, and transparency.

As noted above, the second and third sub-categories, on international conventions and international declarations respectively, enumerate the specific international instruments that enshrine labour rights and duties, and cover text in the trade agreement that refers to these instruments. The international conventions sub-category has four sub-sub-categories and provides information on the ILO Conventions (Fundamental Conventions, Priority Conventions, and other up-to-date ILO Conventions) and the core international human rights conventions that the Parties seek to promote, ratify, and/or implement. The international declarations sub-category has 19 sub-sub-categories, each referring to a specific declaration.

The fourth sub-category covers nine areas of thematic importance in labour provisions. These areas encompass: i) gender; ii) youth; iii) protection of migrant workers' rights, including the prohibition of discrimination based on nationality;³¹ iv) elimination of child labour; v) eradication and combating of forced labour; vi) corporate social responsibility (CSR); vii) occupational safety and health (OSH); viii) labour inspection; and ix) provisions on racial and ethnic equality, including indigenous groups. While the thematic areas are within the obligations pillar, many agreements also refer to cooperative activities. However, it was decided not to separate the texts so as to show the full scope of commitments in each specific area.

In general, however, cooperation activities aimed at respecting, promoting, and realizing labour standards as defined in domestic labour laws and/or international instruments are not considered labour obligations.³² For example, Article 18.7 in the Peru-Australia Free Trade Agreement, which focuses on the importance of labour cooperation in enhancing and advancing labour standards and commitments through ILO instruments, is located in the monitoring and cooperation category:

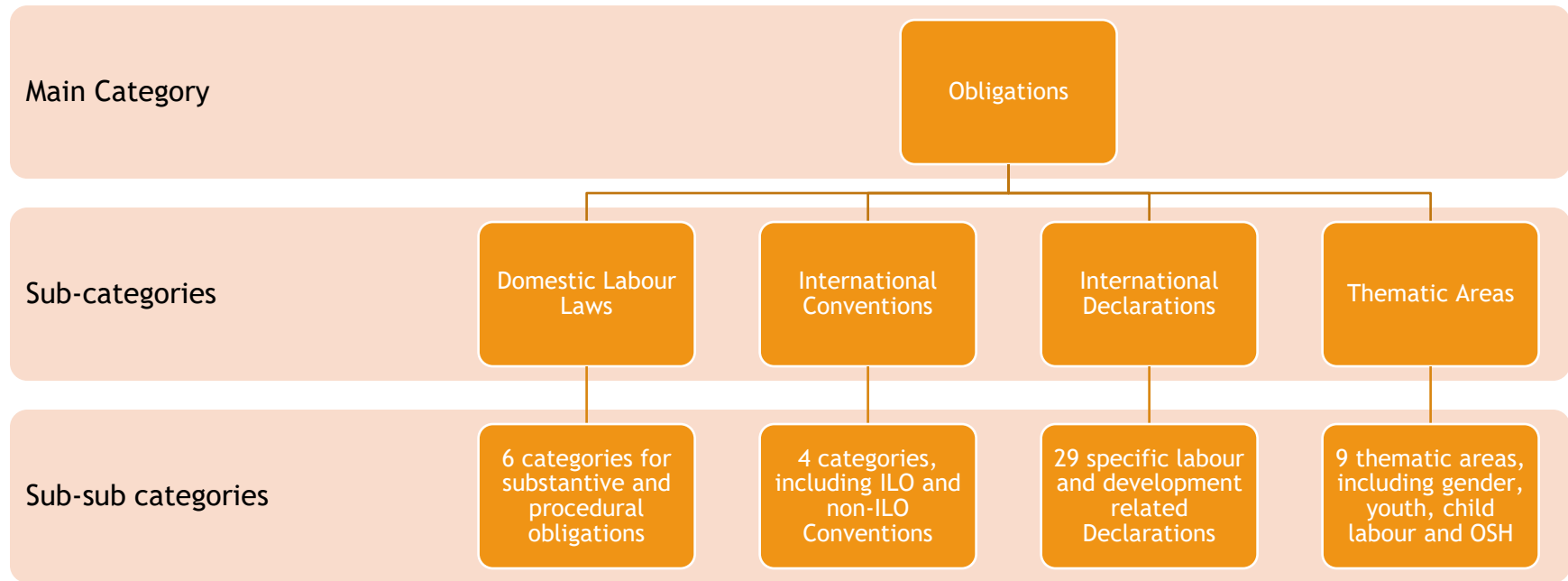
Article 18.7: Labour Cooperation

1. The Parties recognise that cooperation on labour issues plays an important role in advancing development in the territories of the Parties, enhancing opportunities to improve labour standards and further advancing common commitments regarding labour matters, including the principles embodied in the ILO Declaration and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June, 1999.

³¹ ILO (2016). The EU's trade agreements with Algeria, Morocco and Tunisia require that Parties not discriminate against workers based on nationality with regard to working conditions, remuneration and dismissal, and social security.

³² Barbu et al. (2018).

Figure 6. Summary structure of the Obligations pillar



Source: Authors' compilation.

3.3 Monitoring and Cooperation

Labour-related monitoring and cooperation activities aim to promote transparency, accountability, and compliance with national labour laws and international labour standards. There are specific clauses that lay out the various procedures and mechanisms for monitoring and cooperative activities on labour issues in trade agreements. These activities tend to be dialogue-based, sometimes with specific spaces for stakeholder engagement.

Indeed, many trade agreements cover a range of cooperation activities: technical assistance on specific labour issues, exchange of information and best practices, research, and trainings to strengthen capacity in specific areas.³³ These activities may take place at multiple levels. At the state level, there may be technical cooperation aimed at strengthening institutional capacity for dialogue (including cross-border), labour ministry capacity (particularly with respect to key labour rights), labour inspection, and labour statistics, as well as training labour inspectors and judges.³⁴ At the civil society level, cooperation initiatives may aim at improving structures for civil society dialogue, through such means as platforms and forums,³⁵ as well as civil society training and education on labour rights.³⁶

Monitoring activities review progress and increase transparency about the actual situation regarding labour-related issues. Monitoring can take the form of state-to-state dialogue, progress reports, and filing of submissions involving different stakeholders (including workers' and employers' representatives) through existing or newly created domestic and transnational structures.³⁷ One example is the filing of submissions or "complaints" to the relevant government institutions and/or designated contact points, alleging non-compliance with labour obligations.³⁸ This mechanism can trigger an investigation of the issue and potentially activate dispute settlement mechanisms.

Monitoring and cooperation fall within one category in the typology because they are interlinked and mutually reinforcing. In fact, what constitutes a monitoring activity may also promote and support cooperation objectives. For example, while bilateral committees and councils oversee and monitor trade agreements, they also provide a cooperative forum for Parties to discuss issues and find solutions.³⁹ Advisory groups, which comprise workers' and employers' representatives and civil society at large, represent both avenues for monitoring and forums for cooperation, with members providing feedback on labour-related issues, among others. In fact, in close to a half of trade agreements with labour provisions (53 out of 113), there are mechanisms for public engagement and consultation (Figure 7). In some trade agreements, there is also reference to consultations with experts and organisations: there, the phrase "other relevant regional and international organisations" (or other

³³ ILO (2013, 2016).

³⁴ ILO (2013, 2019).

³⁵ For an overview and critique of civil society dialogue structures in EU trade agreements, see Smith et al. (2017); and Harrison et al. (2019).

³⁶ For details of civil society activities in trade agreements see ILO (2016, 2017) and Aissi et al. (2017).

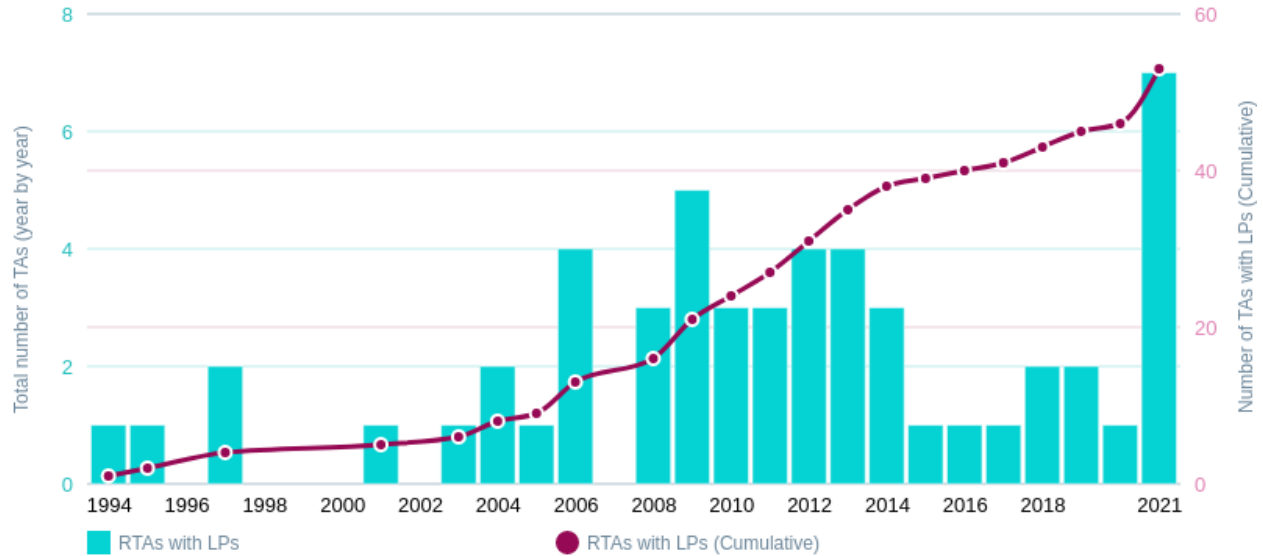
³⁷ Van den Putte (2017).

³⁸ For an overview of submission and consultation processes see ILO (2016); for G7 countries ILO (2019); for EU and US, Polaski (2021). Specific examples include USMCA Article 23.11 on public submissions; CPTPP Article 19.9; Canada-Korea Article 18.10; and CETA.

³⁹ For an overview of institutional monitoring and cooperative mechanisms, including stakeholder engagement, see Van den Putte (2017) and ILO (2019).

similar iteration) is used to suggest that a number of agencies should, or may, provide information and technical assistance, and support implementation activities.⁴⁰

Figure 7. Labour provisions related to public engagement and consultation, 1994-2021



Notes: Data are available for 113 RTAs with LPs notified to the WTO until February 2022, including NAFTA which incorporated the first binding labour provisions but is not in force anymore.

Source: ILO Labour Provisions in Trade Agreements Hub (2022).

The monitoring and cooperation pillar also includes the occurrence and content of monitoring and cooperation activities linked to the trade agreement that have taken place pre- and post-ratification. Some studies describe the logistical and financial challenges in arranging meetings, and the difficulties of monitoring progress, creating meaningful dialogue, and influencing decision-making.⁴¹ The typology represents an initial endeavour in framing this information in a coherent and meaningful manner. Indeed, research conducted for the completion of this category underscores a divide. Although some countries have internal processes and infrastructures (such as dedicated web pages) that provide regularly updated public information on monitoring and cooperation activities, most countries do not. The result is a lack of public access to documents on relevant activities. This has the potential to limit transparency and create information asymmetry among the Parties to the trade agreement.

Figure 8 offers an overview of all monitoring and cooperation areas, activities, and institutions regarding labour issues, as well as pre- and post-ratification activities. There are three sub-categories under monitoring and cooperation, the first of which is cooperation activities and areas. Most if not

⁴⁰ For example, Article 19.10 of Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) uses a similar phrase to describe the stakeholders that the Parties should consult. “...Subject to the agreement of the Parties involved, cooperative activities may occur through bilateral or plurilateral engagement and may involve relevant regional or international organisations, such as the ILO, and non-Parties.” Available at <https://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=640>. See also ILO (2016).

⁴¹ See for example, Martens, Potjomkina and Orbie (2020); Peels and Echeverria Manrique (2017); and Oehri (2017).

all trade agreements that reference cooperation areas and activities contain a non-exhaustive and illustrative list of areas for consideration and actions to take. As a result, there is no further sub-division of the first sub-category, since this would fragment the text and produce confusion rather than clarity. Cooperation clauses similar to Annex 16-A in Republic of Korea-Colombia Free Trade Agreement,⁴² which encourage Parties to cooperate and exchange information on labour issues, are classified under the first sub-category:

Annex 16-A – Cooperation

2. Cooperative activities may include, but shall not be limited to:

LABOR

(a) exchange of information, particularly on labor law and policy, labor market statistics and best working practices of the other Party;

(b) exchange of missions composed of officials, professionals, technicians and/or experts, through public institutions, universities, private companies and organizations devoted to labor issues;

(c) organization and participation in conferences, seminars, workshops, meetings, and outreach programs, as well as training sessions;

(d) joint research and publications;

(e) activities related to promoting fundamental principles and rights at work as stated in the ILO Declaration;

(f) studies related to levels and standards of labor protection and mechanisms to monitor those levels; and

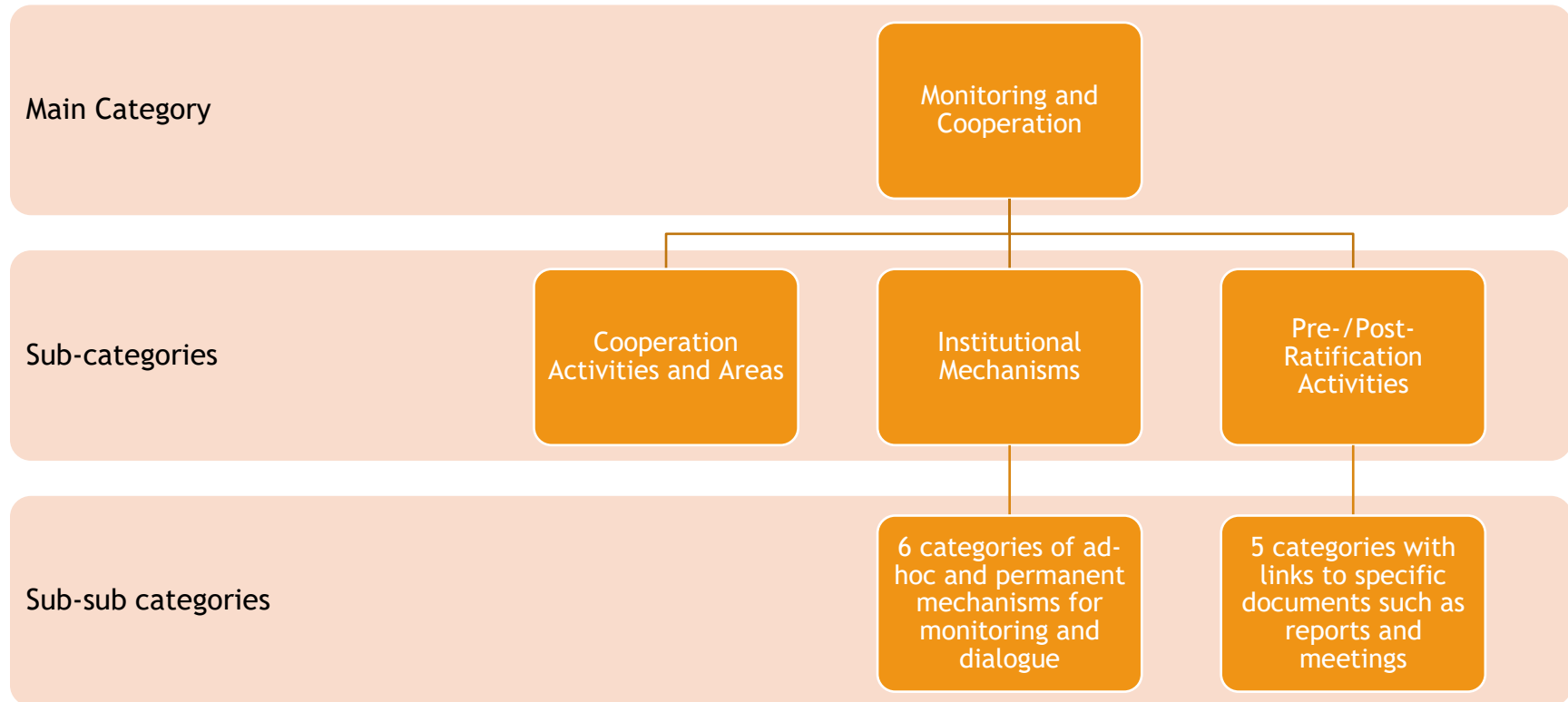
(g) all other activities that contribute to the proper implementation of this Chapter.

The second sub-category is for institutional mechanisms. These are ad-hoc or permanent structures referred to in the trade agreement, tasked with promoting dialogue (including transnational), transparency, and accountability on labour issues.⁴³ Monitoring often takes place through these mechanisms, which may be in the form of advisory groups and labour councils/committees (which involve government, social partners, and broader civil society). Institutional mechanisms also include the filing of submissions, which some Parties regard as a monitoring mechanism. The activation of dispute settlement through a submission falls under the third main pillar.

⁴² Colombia-Korea Free Trade Agreement. Available at: <https://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=695>

⁴³ ILO (2016).

Figure 8. Summary structure of the Monitoring and Cooperation pillar



Source: Authors' compilation.

Six sub-sub-categories exist within the institutional mechanisms sub-category: i) contact points and coordinators; ii) advisory groups; iii) councils and committees; iv) public submissions; v) public engagement and consultation; and vi) coordination and engagement with the ILO, other relevant organisations, and independent experts. These categories identify the key actors, the various institutional mechanisms, and the mandate given to stakeholders within these mechanisms.⁴⁴ While these categories are broad enough to cover considerable variation across trade agreements, a challenge remains in that they cannot encompass all possible situations.

The final sub-category is pre- and post-ratification monitoring and cooperation activities, within which five further sub-sub-categories are defined: i) cooperative activities and programs; ii) advisory groups' reports and meetings; iii) councils' and committees' reports and meetings; iv) public consultations' reports and meetings; and v) public submissions. Based on original (governmental) sources, these categories provide information about the specific activities and programs carried out under the procedures and mechanisms laid out in the trade agreement. For example, they cover documented outcomes of domestic and transnational activities created under the trade agreement to mainstream stakeholder engagement in monitoring and cooperation. Finally, specific information on the filing of submissions or "complaints" to the relevant government institutions and/or designated contact points, alleging non-compliance with labour obligations, are included.

3.3 Dispute Settlement Mechanisms

While variations exist in approaches and procedures, the goal of dispute settlement is to resolve issues of interpretation or non-compliance with labour obligations.⁴⁵ The process, which relies on some of the same institutional structures that support monitoring and cooperation, starts once a reported violation has been 'activated' or accepted for review by the respective governmental authority.⁴⁶ The activation or review sets in motion specific procedures, which are normally laid out in the labour (or specialized) chapter, that aim to identify solutions to the dispute. Most if not all instances of dispute resolution begin with either 'amicable' or formal government-to-government consultations between the Parties. If no agreement is reached, then a panel of experts or arbitrators with a mandate to make recommendations and/or binding determinations may be established; this is always conditional on the trade agreement providing for such establishment in case of disputes on labour-related issues.⁴⁷ The consequences for labour non-compliance, where present, are laid out as remedies. By taking into consideration the entirety (and extent of variation) of the dispute settlement process, the current typology gives adequate attention to both the consultative processes as well as the remedial measures.

There are, however, major differences among trade agreements with respect to actors and institutions involved in dispute settlement. Thus, the design of this main category enables evolution and flexibility

⁴⁴ Shortened citation of the last work cited.

⁴⁵ For an overview of the dispute settlement process in trade agreements, see ILO (2016, 2019). See also Harrison (2019); Allee and Manfred, Forthcoming; Lenox and Andrew (2018); and Drake (2018).

⁴⁶ Depending on the trade agreement, a claim might be submitted by an external entity, but activation can only be triggered by the respective Government authority (see ILO, 2019).

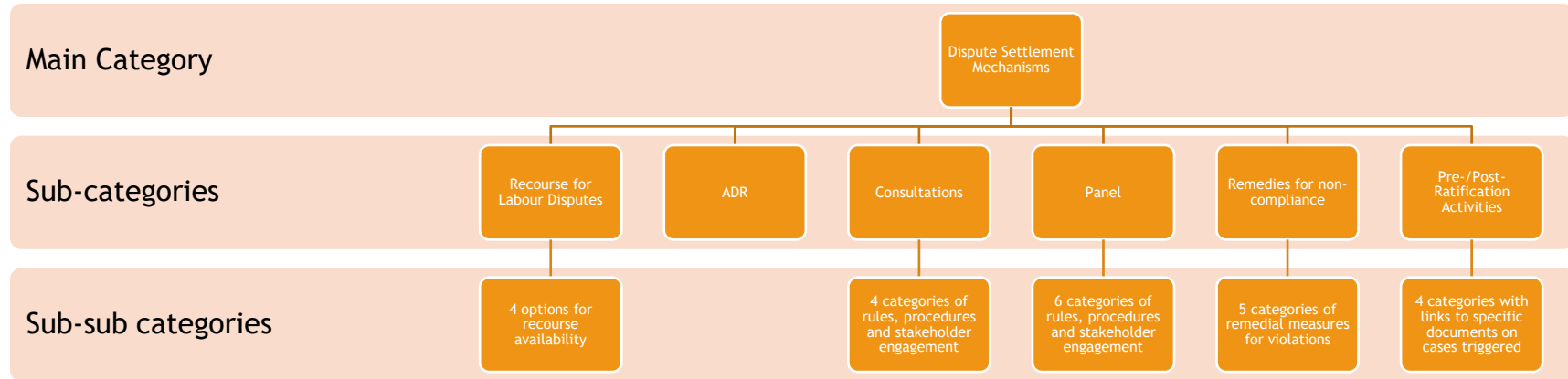
⁴⁷ Claussen (2020). See also ILO (2013).

for its application across different trade agreements. The creation of sub-categories and sub-sub-categories is informed by a careful review and analysis of dispute settlement procedures within and across countries over time. As a result, the categorization manages to capture diversities in scope, structure, and stakeholder engagement.

Figure 9 summarises the dispute settlement category. There are six sub-categories under dispute settlement: i) recourse for labour disputes; ii) alternative dispute resolution (ADR); iii) consultations; iv) panel; v) remedies; and vi) cases triggered under dispute settlement. They encapsulate the various structures and procedures employed to resolve labour disputes and provide information on the resolution of actual cases. While sub-categories and sub-sub-categories are laid out in a linear fashion, it is important to note that dispute settlement may not follow such linear order strictly.⁴⁸

⁴⁸ For example, at any stage in the process, a solution or suspension could be reached through dialogue and cooperative activities, such as an action plan (ILO, 2019).

Figure 9. Summary structure of the Dispute Settlement Mechanisms pillar



Source: Authors' compilation.

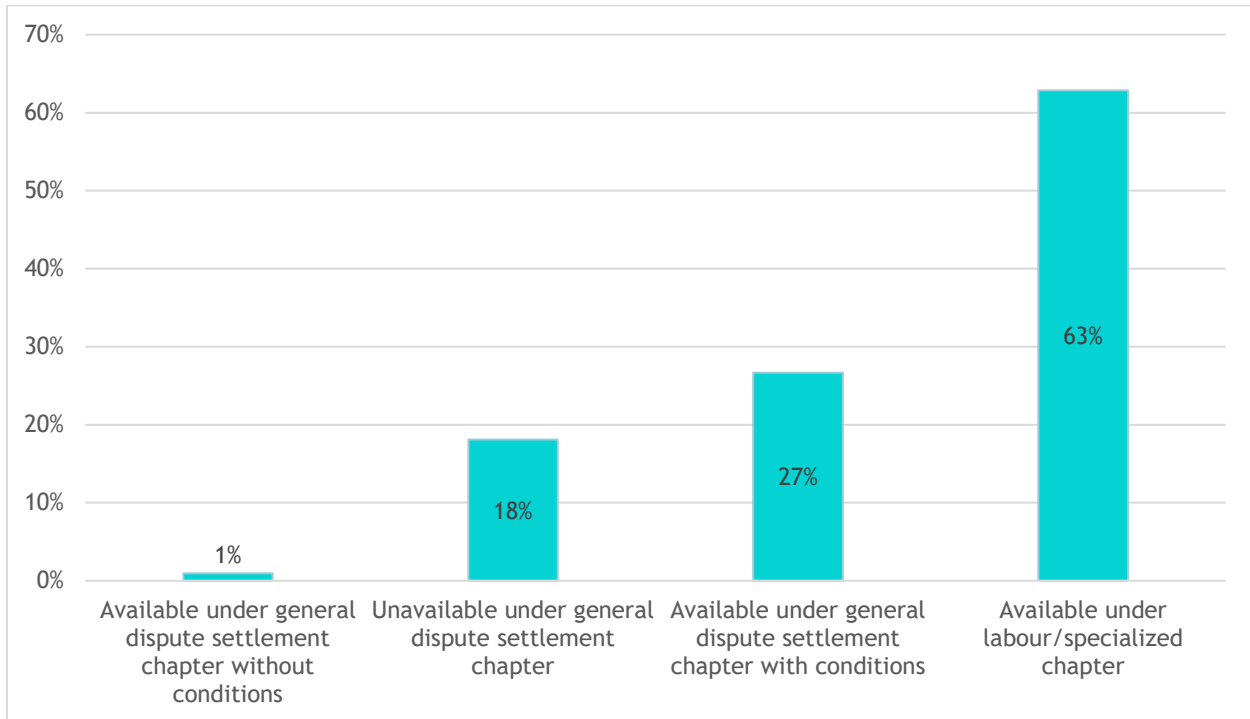
The first sub-category is recourse for labour disputes, which provides information on recourse availability under the specialized chapter and/or the general dispute settlement chapter for labour disputes. It comprises four sub-sub-categories: 1) available under the labour/specialized chapter; 2) available under the general dispute settlement chapter with conditions; 3) available under the general dispute settlement chapter without conditions; and 4) unavailable under the general dispute settlement chapter.

In most instances, recourse is available under the specialized chapter (sub-sub-category 1): 63 per cent of trade agreements with labour provisions provide for recourse to dispute settlement under the specialized chapter, as an initial or singular option (Figure 10). For labour disputes, this availability can be *exclusive*, meaning that Parties can only access procedures and remedies under the specialized chapter, and not those under the general dispute settlement chapter; or *inclusive*, meaning that Parties can access procedures and remedies under the general dispute settlement chapter upon exhaustion of those under the specialized chapter. Consequently, certain trade agreements report entries under both sub-sub-categories 1 and 2, indicating that recourse under the general dispute settlement chapter is available but only under specific conditions, typically after the Parties exhaust mechanisms under the specialized chapter. As of now, 27 per cent of trade agreements with labour provisions allow for access to the general dispute settlement chapter with conditions. Rarely, recourse under the general dispute settlement chapter may also be available without specific conditions having to be fulfilled (sub-sub-category 3). Finally, in certain instances, Parties are explicitly prevented from accessing procedures and remedies under the general dispute settlement chapter (sub-sub-category 4): 18 per cent of trade agreements with labour provisions do not allow for access to the general dispute settlement chapter at all. Therefore, certain trade agreements report entries under both sub-sub-categories 1 and 4, indicating that recourse is unavailable under the general dispute settlement chapter but available under the specialized chapter. Trade agreements with few labour provisions may lack clauses on recourse to dispute settlement for labour disputes; in that case, they are treated as silent, and no entry is reported under any sub-sub-category.

As an example, Article 17.7 in the US-Peru Free Trade Agreement indicates that recourse is available under both the labour (specialized) chapter and the general dispute settlement chapter, but to access the latter, Parties must first exhaust the procedures contained in the labour chapter:

Article 17.7: Cooperative Labor Consultations

7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

Figure 10. Recourse availability for labour disputes across trade agreements, 1994-2021

Notes: Data are available for 113 RTAs with LPs notified to the WTO until February 2022, including NAFTA which incorporated the first binding labour provisions but is not in force anymore.

Source: ILO Labour Provisions in Trade Agreements Hub (2022).

The second sub-category, ADR, covers any procedure striving to achieve peaceful resolution of the dispute between the Parties. In trade agreements, this typically refers to conciliation, good offices, and mediation.⁴⁹ Such references are usually sparse and not very detailed; nevertheless, ADR remains an important category that provides information on whether the Parties have access to one or more non-adversarial processes that may help achieve mutually acceptable solutions. Good offices refer to a third Party or State (on its own initiative or upon request) seeking to bring the Parties to the dispute to an agreement through amicable means.⁵⁰ Mediation, the most common form of ADR, refers to the resolution of conflicts with the support of a third Party acting as a facilitator; the final agreement in a mediation process is the result of the Parties' consensus and negotiated agreement.⁵¹ Conciliation plays a similar role in that a third Party, a conciliator, is appointed to serve as a neutral and unbiased actor helping the Parties reach a settlement.⁵²

For instance, in the US-Panama Trade Promotion Agreement, Parties can access ADR under Article 16.7 (5):

⁴⁹ Menkel-Meadow (2015); Schomann, n.d.

⁵⁰ Ruth Lapidot (2006).

⁵¹ "What is mediation?" Available at <http://firstadrkit.org/what-is-mediation/>; See also Johnson (1993) and Orrego Vicuña (2010).

⁵² Menkel-Meadow (2015).

Article 16.7: Cooperative Labor Consultations

5. The Council shall promptly convene and shall endeavour to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

The third sub-category is consultations, which provide the Parties with an opportunity to resolve the matter between themselves without third-party involvement. The specific clauses pertaining to labour consultations offer insight into the rules and procedures for initiating consultations, the relevant actors, and the time-bound commitments throughout the various stages of dispute settlement.⁵³ There are also references to the engagement of external actors, ministers, or committees responsible for trade and labour, to obtain technical expertise and facilitate dialogue.

The consultations sub-category comprises four sub-sub-categories: i) rules and procedures, which focuses on the actual consultation process, including specific steps and timelines that must be followed by the Parties; ii) publicly available information, which indicates the extent to which documents and details regarding the consultation process are available to the public; iii) engagement with the ILO, other relevant organisations, and independent experts, which delineates how, when, and which external actors can provide technical advice and expertise on labour issues; and iv) engagement of advisory groups and committees during the consultation process, which refers to the involvement of social partners, civil society, and the broader public. Parties seeking resolution of labour disputes under the Colombia-Chile Free Trade Agreement, for example, can access consultations under Article 17.4 (3):

Article 17.4: Institutional Provisions

3. If any matter arises regarding the application of this Chapter, a Party may request consultations with the other Party, by delivering a written request to the contact point that the other Party has designated in accordance with paragraph 1 of this Article.

4. The Parties shall make every effort to reach satisfactory arrangements through dialogue and cooperation, which may include consultancies.

5. If the Parties are unable to resolve the matter through the Contact Points, it may be discussed at the meetings of senior officials mentioned in paragraph 2 of this Article.

If Parties are unable to arrive at a mutually agreeable solution through consultations, a number of trade agreements contain provisions enabling the referral of labour disputes to a third party, which frequently takes the form of a panel established specifically to resolve the dispute.⁵⁴ The fourth sub-category, panel, encompasses panels of experts (usually comprising 3-5 experts), arbitration panels, and other emerging types of panels such as the Facility-Specific Rapid Response Labour Mechanism, a novelty of the United States–Mexico–Canada Agreement (USMCA), which allows any member of the public to submit a petition alleging denial of freedom of association and collective bargaining at a covered facility, for review by a dedicated committee within 30 days.⁵⁵

⁵³ ILO (2013).

⁵⁴ Barbu, et al. (2018).

⁵⁵ Under USMCA, the Interagency Labour Committee reviews the petition and determine whether there is credible evidence of a denial of rights at the Covered Facility within 30 days.

The panel sub-category is purposefully broad to ensure that its internal classification captures references to labour panels from a wide range of trade agreements. The classification also refrains from adopting a distinction between panel of experts and panel of arbitrators, given that many trade agreements simply refer to “panels.” Therefore, a careful review of the text on the part of the user is necessary in order to determine whether it is a panel where experts provide recommendations, or a panel where arbitrators take a decision that is final and binding for the Parties.⁵⁶

The fourth sub-category comprises six sub-sub-categories, four of which closely mirror those found in the third sub-category: 1) rules and procedures; 2) publicly available information; 3) engagement with the ILO, other relevant organisations, and independent experts; and 4) engagement of advisory groups and committees. The additional two are: 5) selection criteria for panellists; and 6) findings and reports, detailing the timeline and modalities for the panel to finalize and share its determinations.

Article 90 of the Economic Partnership Agreement between the Southern Customs Union Member States and Mozambique, and the United Kingdom of Great Britain and Northern Ireland (UK-SACU and Mozambique) lays out the procedure for the arbitration panel to obtain information:

Article 90: Information and technical advice

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, it deems appropriate for the arbitration proceeding. The arbitration panel shall also have the right to seek the opinion of relevant experts as it deems appropriate. Interested entities are authorised to submit amicus curiae briefs to the arbitration panel in accordance with the Rules of Procedure. Any information obtained in this manner must be disclosed to the Parties and submitted for their comments.

If a Party is found to have failed to comply with its labour obligations, the panel may impose remedial measures. The fifth sub-category, remedies for non-compliance, details five specific consequences of non-compliance, translated into five sub-sub-categories and based on an exhaustive search of trade agreements: i) compensation, that is, money paid to compensate the non-breaching Party for the losses incurred due to the other Party’s violation; ii) suspension of benefits under the trade agreement; iii) monetary contributions for non-compliance; iv) compliance/action plans and similar measures; and v) border access restrictions.⁵⁷

Compliance/action plans and other corrective measures are included under dispute settlement rather than monitoring and cooperation, because cooperation under threat of sanctions is regarded as a proceeding of dispute settlement. Figure 11 shows that compliance/action plans and other corrective measures represent 36 per cent of dispute settlement remedies in trade agreements with labour provisions, while more stringent measures such as compensation, suspension of benefits and border access restrictions together represent close to 50 per cent of instances. It is important to note that these measures are not mutually exclusive, and that more than one remedy can be present under a trade agreement.

⁵⁶ For further discussions of dispute settlement mechanisms, see ILO (2013, 2019), and Polaski (2021).

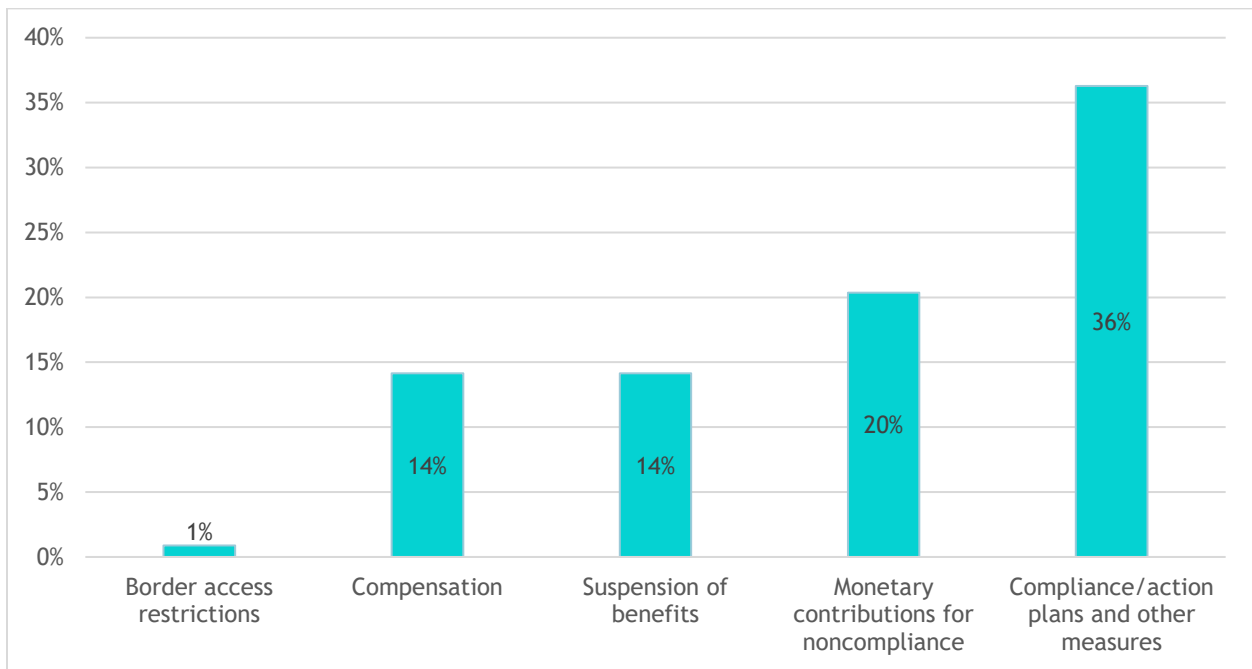
⁵⁷ For further discussion see ILO (2016, 2019); Marx, Ebert and Hachez (2017); Lenox and Arsht (2018).

As an example, Article 35 (5) and (6) in the Canada-Chile Free Trade Agreement allows for monetary compensation if the violating Party fails to implement the action plan:

Article 35: Review of Implementation

5. Where a panel has been reconvened under paragraph 1(b), it shall determine either that:
 a. the Party complained against is fully implementing the action plan, in which case the panel may not impose a monetary enforcement assessment, or
 b. the Party complained against is not fully implementing the action plan, in which case the panel shall impose a monetary enforcement assessment in accordance with Annex 35, within 60 days after it has been reconvened or such other period as the Parties may agree.
 6. A panel reconvened under this Article shall provide that the Party complained against shall fully implement any action plan referred to in paragraph 4(a)(ii) or 5(b), and pay any monetary enforcement assessment imposed under paragraph 4(b) or 5(b), and any such provision shall be final.

Figure 11. Types of remedies for labour disputes available under trade agreements, 1994-2021



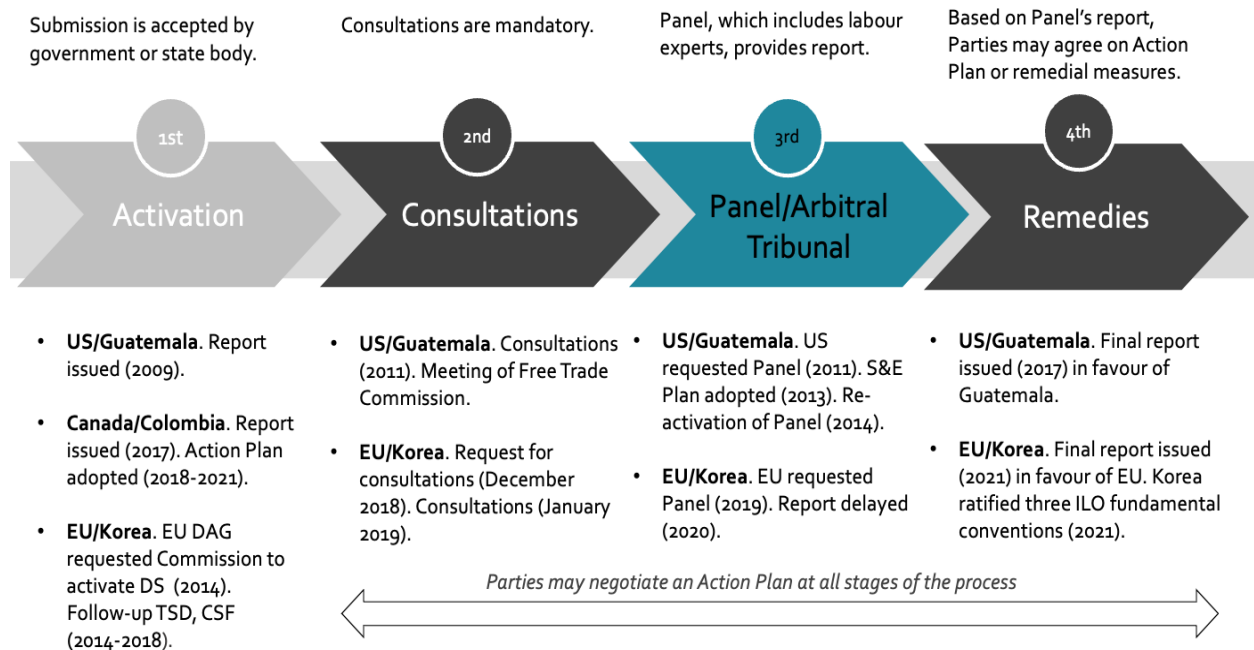
Notes: Data are available for 113 RTAs with LPs notified to the WTO until February 2022, including NAFTA which incorporated the first binding labour provisions but is not in force anymore.

Source: ILO Labour Provisions in Trade Agreements Hub (2022).

Finally, in addition to the text of the trade agreement, the dispute settlement category offers information on labour cases that triggered dispute settlement under the trade agreement. The sixth sub-category, cases triggered under dispute settlement, comprises four sub-sub-categories: i) activation; ii) compliance/action plans; iii) consultations; and iv) panel/arbitration findings and reports. Based on original (governmental) sources, these categories provide information about the successive phases that future labour disputes may follow. Activation may happen through submissions to the relevant government institutions and/or designated contact points, or originate from

discussions within domestic advisory groups. The next step may consist of consultations and compliance/action plans, which both leverage dialogue to identify mutually agreed solutions and avoid escalation. If these actions are not effective, an arbitration panel or panel of experts may be convened. If such escalation happens, findings, reports and recommendations produced by the panel are included under the last sub-sub-category. Figure 12 illustrates the dispute settlement process with information from three specific labour disputes: Canada-Colombia, US-Guatemala, EU-Republic of Korea. At the time of writing, only the latter two cases had a panel convened.

Figure 12. Three examples of cases triggered under dispute settlement



4. Concluding remarks and future research areas

For nearly three decades, trade agreements have incorporated obligations to protect, advance and enforce labour standards and workers' rights. They have evolved considerably in terms of the depth and scope of labour references and activities both within and across countries. This evolution combines with key distinctions across countries, regarding which and how labour obligations are referenced in the labour chapter (or specialized chapter) of the trade agreement, whether compliance mechanisms exist to monitor and implement labour-related issues, and which ad-hoc and institutional mechanisms are put in place to support stakeholder engagement (including workers' and employers' representatives).

The typology of labour provisions introduced in this paper is based on a multi-faceted approach. This approach, which enables the compilation of a fully textualized database of labour references in trade agreements, is the foundation of the LP Hub. The focus on broad pillars, coupled with the depth of the text included within appropriate and relevant categories, provides a level of granularity unique among datasets. Thus, the expectation is that the LP Hub and the typology underlying it will contribute to the advancement of research and policymaking on trade and labour issues in the following ways by providing:

First, a coherent perspective through a comprehensive and integrated conceptual framework that allows users to map out the numerous complexities and dimensions of different templates of labour provisions. As such, the LP Hub highlights important aspects of labour provisions, while preserving the detail and nuance of language in different areas. As one expert noted during an interview about the LP Hub, “there is a coherence in labour provisions with soft and hard elements—some areas have hard language, some soft language”. These elements work together, and different countries rely on different approaches, based on their own trade policy, to define such interplay. Nevertheless, irrespective of the approach adopted, the final goal of advancing labour rights remains common to all countries (ILO, 2019).

Second, a research tool to distil the different aspects of labour provisions in a clear and concise structure, which enables comparative and cross-sectional analysis of labour provisions both within and across countries. This structure supports in-depth comparative legal analysis and is useful for developing qualitative and quantitative measures on specific aspects of labour provisions. It also aids the development of capacity building and training activities for stakeholders interested in deepening their knowledge of labour provisions.

Third, a one-stop shop for information on practices and activities linked to each trade agreement, such as committee reports, public submissions, and labour disputes triggered. Indeed, the literature has been critical of the implementation of labour provisions and the extent of meaningful stakeholder engagement. The LP Hub will help to shed light on actual practices.

To conclude, the LP Hub must not become a static, one-off exercise. As labour provisions evolve and new areas are added or modified, the expectation is that the typology will evolve as well. Additional areas could include research and activities linked to emerging areas of labour provisions, such as forced labour, racial and ethnic equality, and gender in the context of trade, as well as labour-related provisions connected to the broad field of the future of trade, covering environment and technology. The vision for the LP Hub is that it will expand to provide more quantitative information on trade and decent work based on existing data and methodologies.⁵⁸

The hope is that the LP Hub will promote an understanding of the most current state of the intersection of trade and labour, by discovering entry points for addressing specific issues, as well as informing and assisting future research on labour provisions.

⁵⁸ See ILO (2021a, 2021b).

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Annex I: LP Hub Structure and Categorization

I. OBLIGATIONS

- a. Domestic labour laws
 - i. Adopt, establish, maintain and/or modify labour laws
 - ii. Enforce labour laws
 - iii. Commitment to not derogate, waive, lower labour laws, or act in protectionist manner
 - iv. Access to courts and tribunals
 - v. Access to remedies
 - vi. Transparency and public awareness of labour laws

- b. International Conventions
 - i. ILO Fundamental Conventions
 - ii. ILO Governance (Priority) Conventions
 - iii. Other up-to-date ILO Conventions
 - iv. Other International Conventions

- c. International Declarations
 - i. ILO Centenary Declaration for the Future of Work
 - ii. ILO Declaration on Fundamental Principles and Rights at Work (FPRW)
 - iii. ILO Declaration on Social Justice for a Fair Globalization (SJD)
 - iv. ILO Decent Work Agenda (DWA)
 - v. ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)
 - vi. ILO Guidelines for a just transition towards environmentally sustainable economies and societies for all
 - vii. OECD Guidelines for Multinational Enterprises
 - viii. OECD Principles of Corporate Governance
 - ix. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
 - x. UN ECOSOC Ministerial Declaration on Full Employment and Decent Work
 - xi. UN Charter and Universal Declaration of Human Rights
 - xii. UN Global Compact
 - xiii. UN Guiding Principles on Business and Human Rights
 - xiv. UN Stockholm Declaration on the Human Environment and Development
 - xv. UN Rio Declaration on Environment and Development
 - xvi. UN Agenda 21 on Environment and Development
 - xvii. UN Johannesburg Plan of Implementation on Sustainable Development
 - xviii. UN Rio+20 Outcome Document “The future we want”
 - xix. UN “Transforming our world: the 2030 Agenda for Sustainable Development” (SDGs)

- d. Thematic areas
 - i. Gender
 - ii. Youth
 - iii. Migrants
 - iv. Child labour

- v. Forced labour
- vi. Corporate Social Responsibility (CSR)
- vii. Occupational Safety and Health (OSH)
- viii. Labour inspection
- ix. Ethnic and racial groups and indigenous peoples

II. MONITORING AND COOPERATION

- a. Cooperation activities and areas
- b. Institutional mechanisms
 - i. Contact point(s)/coordinator(s)
 - ii. Advisory group(s)
 - iii. Council(s)/committee(s)
 - iv. Public submissions
 - v. Public engagement and consultation
 - vi. Coordination and engagement with the ILO and “other relevant regional and international organizations”
- c. Pre-/post-ratification documents: Monitoring and cooperation activities
 - i. Cooperative activities and programs
 - ii. Advisory group(s) reports and meetings
 - iii. Council(s)/committee(s) reports and meetings
 - iv. Public consultation reports and meetings
 - v. Public submissions

III. DISPUTE SETTLEMENT

- a. Recourse for labour disputes
 - i. Available under labour/specialized chapter
 - ii. Available under general dispute chapter with conditions
 - iii. Available under general dispute chapter without conditions
 - iv. Unavailable under general dispute settlement chapter
- b. Alternative dispute resolution
- c. Consultation
 - i. Rules and procedure
 - ii. Publicly available information
 - iii. Engagement with the ILO, “other relevant organizations” and independent experts
 - iv. Engagement of advisory groups and committees
- d. Panel
 - i. Rules and procedure
 - ii. Publicly available information
 - iii. Engagement with the ILO, “other relevant organizations” and independent experts
 - iv. Engagement of advisory groups and committees

- v. Reports and findings
- vi. Selection criteria for panellists

- e. Remedies for non-compliance
 - i. Compensation
 - ii. Suspension of benefits
 - iii. Monetary contributions for noncompliance
 - iv. Compliance/action plan and other measures
 - v. Border access restrictions

- f. Cases triggered under dispute settlement
 - i. Activation (Submission/Advisory group)
 - ii. Compliance/action plans
 - iii. Consultations
 - iv. Panel/arbitration findings and reports

Annex II. Literature Review of Labour Provisions' Mapping and Typologies

Study	Focus	Typology of LPs
I. Studies analysing non-trade issues		
Horn et al. (2010)	The study is an effort to analyse the content of the 14 EC and US PTAs notified to the WTO as of October 2008.	The content of the agreements has been classified into 52 policy areas, and further divided into: 'WTO plus' (WTO+), containing 14 areas, and 'WTO extra' (WTO-X), containing 38 areas. The WTO-X category comprises those PTA provisions that deal with issues lying outside the current WTO mandate (such as labour standards). Further, <i>legal enforceability</i> of the obligation was taken into consideration to determine whether they were likely to matter in practice.
Hoffman et al. (2017)	The paper presents a new database that offers a detailed assessment of 279 agreements signed by 189 countries between 1958 and 2015, which reflects the entire set of PTAs in force and notified to the WTO as of 2015.	Building on the methodology developed by Horn, et al (2010), the database contains information on the inclusion of 52 policy areas and their legal enforceability. The collected information has been aggregated to construct synthetic indices of "horizontal" depth. The indices measure the coverage of policy areas (or breadth) in PTAs, by simple count of (legally enforceable) provisions included in a PTA.
Lechner (2016)	The study analyses the variation in non-trade issues (NTI) in 474 PTAs (included in DESTA) signed between 1990 and January 2016. There is a specific focus on the role of domestic interest groups.	Focuses on three NTIs in PTAs: economic and social rights; civil and political rights; as well as environmental protection. Design variance is based on Abbott et al. (2000) concept of legalization defined along three dimensions: obligation, precision, and delegation. <i>Obligation</i> means that signatory parties make legal commitments that indicate the 'intent to be legally bound'. <i>Precision</i> stands for the degree to which rules that 'unambiguously define the conduct they require, authorize, or proscribe'. Finally, <i>delegation</i> implies that 'third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules'. The issues are coded against this categorization and in a final step aggregated into an index by assigning various scores for each variable.
II. Studies analysing heterogeneity of language and enforceability		

<p>Kamata (2014)</p>	<p>To analyse the impact of labour clauses on working conditions, the author uses 223 RTAs that entered in force and were notified to the WTO by the end of the first half of the year 2013.</p>	<p>RTAs are classified into six groups based on the content and stringency of labour provisions' references and language:</p> <ol style="list-style-type: none"> 1) Requires member countries to make their domestic labour laws consistent with the ILO's guidelines; also discusses how domestic labour laws should be promoted and enforced in member countries. 2) Member countries should strive to have their domestic laws consistent with the ILO guidelines, but do not have to commit to do so ultimately; also discusses how domestic labour laws should be promoted and enforced in those member countries. 3) Acknowledges the members' commitment to the internationally recognized labour standards but are not ultimately required to follow the ILO's guidelines. 4) Acknowledges labour rights or working conditions but does not refer to the internationally recognized standards. 5) Acknowledges social values including human rights but does not exclusively mention labour rights or working conditions exclusively. 6) Does not mention labour or social matters.
<p>Kamata (2016)</p>	<p>Based on the same dataset as Kamata (2014), the paper (re-) classifies "RTAs with labour clauses" into 'conservative' and 'liberal' classifications.</p>	<p>'Conservative' and 'liberal' classifications of LPs are based on two criteria (language and dispute settlement):</p> <ol style="list-style-type: none"> 1) The agreement urges or expects the signatory countries to harmonize their domestic labour standards with internationally recognized standards, and 2) The agreement stipulates the procedures for consultations and/or dispute settlement on labour issues between the signatory countries. <p>A 'conservative' classification of LPs considers that both criteria need to be satisfied for an RTA to be considered to have an LP; while a 'liberal' criterion considers that at least the second (2) criteria must be satisfied.</p>
<p>Williams and Lily (2021)</p>	<p>This study examines the evolution of labour chapters in 14 Canadian trade agreements as of 2021 to compare and evaluate their ambition and enforceability.</p>	<p>A novel index is developed based on two dimensions: ambition reflected in the content of labour rules, and enforceability reflected in the mechanisms for implementation and compliance with those rules.</p> <p>Ambition is measured by the substance of provisions, giving more weight to those that include language reflected in the ILO's 1998 and 2008 Declaration than those that self-define the standards. Enforceability is evaluated according to the presence of the dispute settlement mechanisms subject to either binding or non-binding enforcement. Both, ambition and enforcement, determine the strength and quality of labour provisions, by assigning a score to each agreement.</p>

<p>Giumelli and van Roozendaal (2017)</p>	<p>The study considers whether the content of the labour clause in different generations of US trade agreements makes a difference in improving labour standards, by looking at 13 FTAs signed by the United States with 19 countries.</p>	<p>Four variables have been selected as having an Important effect on labour improvements, two of which directly focus on labour clauses:</p> <p>1) The <i>Agreement conditions</i> has been built on three different indicators: pre-ratification requirements, sanctioning mechanisms and financial support (capacity building).</p> <p>2) <i>Saliency (commitment) of agreement</i>, which is defined by two proxy indicators: number of complaints filed and the possible proceeding of a case. The authors assume that the response to a complaint is more important than the number of complaints filed.</p> <p>The last two variables selected are the level of democracy and economic development. In contrast to the previous variables, they are not (directly) related to the agreement itself, but to the characteristics that are exogenous to the agreements.</p>
<p>III. Studies analysing multi-faceted aspects of labour provisions</p>		
<p>ILO (2013)</p>	<p>Comparative legal analysis of labour provisions, resulting in a mapping and a typology of all trade agreements in force and notified to the WTO.</p>	<p>The ILO (2013) puts forward the three-pillar definition of labour provisions, which categorizes them into obligations, monitoring and cooperation activities, and dispute settlement. Moreover, it distinguishes between conditional and promotional labour provisions, as well as pre- and post-ratification conditionalities.</p>
<p>ILO (2016)</p>	<p>Update of the previous mapping and a typology of all trade agreements in force and notified to the WTO.</p>	<p>Building on the previous framework (ILO, 2013), later ILO studies (2016) removed the distinction between conditional and promotional approaches and updated the mapping of labour provisions, by (i) increasing the scope of arrangements, and (ii) deepening the analysis of implementation to focus on cooperative activities and the role of stakeholders and the ILO in trade agreements.</p>
<p>ILO (2017, 2019)</p>	<p>ILO (2017) elaborates on the specific issues related to labour provisions, their approaches and effectiveness. ILO (2019) conducts a comparative analysis of the G7 country approaches.</p>	<p>ILO (2017, 2019) strengthened the analysis of labour obligations in trade agreements, with a specific focus on ILO related obligations. It also included specificities on interrelated areas such as CSR, gender, and migrant workers; and brought in labour obligations in other chapters of the trade agreement.</p>
<p>Engen (2017)</p>	<p>Provides a mapping of labour provisions in the Asia-Pacific region. More than 400 FTAs</p>	<p>Three aspects of labour provisions are considered: 1) standards, 2) compliance mechanisms and 3) monitoring. In this respect labour provisions 1) describe a certain set of standards or commitments; 2)</p>

	<p>notified to the WTO (173 bilateral and regional agreements in force in the Asia-Pacific region). This list expands beyond agreements notified to the WTO.</p>	<p>outline a mechanism to ensure compliance and adherence to these standards and 3) include evaluation and breaches of the commitments outlined in the provision, and assess the role of third party actors:</p> <ol style="list-style-type: none"> 1) Standards and commitments: includes commitments to international labour standards, mutually agreed labour standards, and domestic labour laws. 2) Compliance mechanisms: includes enforcement-- conditional approach (consultations; arbitration) and cooperation (promotional approach). 3) Monitoring: includes national, centralized, and civil society monitoring.
<p>Araujo (2018)</p>	<p>The paper provides a comparative legal analysis of labour provisions in US and EU agreements, including now defunct TPP and TTIP.</p>	<p>Analyses the key elements of labour provisions according to the following distinctions, which take into consideration specificities of pre and post ratification commitments and activities:</p> <ol style="list-style-type: none"> 1) Labour related obligations: includes ILO obligations, domestic procedural guarantees, non-derogation and enforcement clauses; 2) Required reforms to domestic regulatory systems: includes pre-ratification, time-bound commitments; 3) Institutional mechanisms: includes cooperative framework for implementation (establishment of council bodies, contact points, and mechanisms for bilateral dialogue) and technical assistance and development cooperation; 4) Dispute settlement: includes dialogue (soft approach); sanctions (hard approach).
<p>Raess and Sari (2018)</p>	<p>The study introduces a new dataset on the design of Labor Provisions in Trade Agreements (LABPTA). The underlying dataset covers 487 PTAs among 165 countries, included in DESTA, from 1990 to 2015.</p>	<p>To analyse the evolution of the content and stringency of LPs, a three-step process is used:</p> <ol style="list-style-type: none"> 1) PTAs are grouped into three categories based on: i) PTAs with no LPs; ii) PTAs with preambular LPs (or shallow LPs) and; iii) PTAs with comprehensive LPs. 2) A coding template based on 6 main categories (140 distinct items) has been developed: i) aspirational statements relating to LPs in preamble and objectives of the agreement; ii) substantive commitments in relation to LPs; iii) obligations in relation to substantive LPs; iv) enforceability of the substantive LPs; v) cooperation commitments over LPs; vi) Institutions overseeing the labour-related commitments. 3) Results are cross checked with 13 overlapping items from coding of Lechner (2016).
<p>Mattoo et al. (2020)</p>	<p>The analysis maps the content of 18 policy areas covered PTAs that are in force and notified to the WTO as of end-2017. It introduces as new database on deep trade agreements.</p>	<p>It builds on previous research by the World Bank and others, including Horn et al. (2010) and Hoffman (2017). It presents detailed data on the content of 18 policy areas (out of 52) most frequently covered in PTAs, including labour market regulations. It mainly focuses on the stated objectives, substantive commitments, and other aspects such as transparency, procedures, and enforcement. The focus is therefore not on the extensive margin of integration (number of policy areas that are covered by the agreement), but on its intensive margin (the specific commitments within a policy area).</p>

<p>Raess and Sari (2020)</p>	<p>The analysis –which is included in Mattoo, et. al (2020) DTA database—covers labour market regulations (or protections) of PTAs that are in force and notified to the WTO as of end-2017.</p>	<p>The typology consists of five overarching categories of LPs: 1) Aspirational labour goals/objectives; 2) Substance-related LPs; 3) Substance-related LPs in relation to investment; 4) Cooperation over LPs; and 5) Institutions overseeing labour commitments. Enforceability categories are added for each of the overarching categories, based on the model of dispute settlement covering labour-related commitments.</p>
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Annex III: List of Experts Interviewed for the LP Hub

Expert	Affiliation
Kevin Banks	Associate Professor of Law, Director of the Queen's Centre for Law in the Contemporary Workplace, Queen's University, Canada.
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