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Labour-related provisions in trade agreements: Recent trends and relevance to the ILO

Purpose of the document

The paper summarizes recent ILO research regarding the significant increase in the number of trade agreements that include labour provisions. It highlights the role of workers and employers in the negotiation and implementation phase and the relevance to the ILO. It points to the heightened importance of trade policies with accompanying measures to strengthen labour market institutions as a key means of promoting decent work and inclusive growth. The Governing Body is invited to request further work on these issues (see the draft decision in paragraph 31).

Relevant strategic objective: All, but most specifically 1 and 2.

Policy implications: Yes.

Legal implications: No.

Financial implications: No.

Follow-up action required: Yes.

Author units: Research and Multilaterals.

Related documents: GB.328/INS/5/1 and GB.328/INS/5/2.

I. Background

1. In the two decades leading up to the global financial crisis, international trade expanded rapidly, at a pace roughly double that of world GDP. World trade volume growth, however, has moderated notably in recent years, both in its level and relative to GDP growth. The unprecedented opening of markets to international trade and investment flows has, in effect, brought millions of workers into the global economy,¹ which has lowered the price of imported goods, and increased employment opportunities in both developing and advanced economies. At the same time, income inequality, informality and atypical forms of employment have widened globally.² This suggests that some groups who lose from globalization in terms of jobs and incomes are being left behind and are not adequately compensated.
2. The 2030 Agenda for Sustainable Development continues to see international trade as an engine for inclusive economic growth and poverty reduction and thus sustainable development. Alongside the goal of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, it commits member States to “continue to promote a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the World Trade Organization, as well as meaningful trade liberalization”.
3. Integrating trade and development policies to support the 2030 Agenda was a major theme of the 14th UN Conference on Trade and Development (Nairobi, 17–22 July 2016). “Trade is a means to support the implementation of the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda. With appropriate supporting policies, adequate infrastructure and an educated and trained workforce, it can also help to promote productive employment, youth and women’s empowerment, food security and reduced inequality.” (paragraph 44 of the UNCTAD work programme, “Maafikiano”). The Conference also affirmed that “regional integration can be an important catalyst to reduce trade barriers, implement policy reforms, decrease trade costs, and increase developing country participation in regional and global value chains ... These agreements should be consistent with, and should contribute toward a stronger multilateral trading system” (paragraph 31). The Conference also called on UNCTAD to “assess, in cooperation with other relevant international organizations, such as the ILO, the impact of labour and employment policies on economic growth including the interrelation between macroeconomic and labour policies” (paragraph 80(v)).³

¹ International Monetary Fund: *Globalization: A brief overview*. See: <https://www.imf.org/external/np/exr/ib/2008/053008.htm>.

² U. Rani and M. Furrer: *Decomposing income inequality into factor income components: Evidence from selected G20 countries*, ILO Research Paper No. 15 (Geneva, ILO, 2016).

³ The ILO submitted a background note to the Conference entitled *Translating the 2030 Agenda for Sustainable Development into Action: Integrating trade, investment and decent work policies*. It includes a brief summary of ILO work in this area. See: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/meetingdocument/wcms_498947.pdf.

II. Labour provisions in trade agreements: Trends and issues⁴

4. Labour provisions in trade agreements are increasingly used with the objective of establishing mechanisms for spreading the economic and social benefits of trade and reducing possible negative effects on labour markets. From the first binding labour provision in a trade agreement in 1994,⁵ there are currently a total of 77 trade agreements with labour provisions, involving 136 economies.⁶ ILO research suggests that these labour provisions have been a useful tool for: raising awareness on the employment and social dimensions of globalization; involving social partners during trade negotiation and implementation; and developing cooperative activities with the aim of strengthening the capacity of domestic institutions to better promote labour standards.⁷
5. The research also finds that trade agreements with labour provisions support labour market access by bringing a larger proportion of male and female working-age populations into the labour force and, particularly, increasing the female labour force.⁸ This gender-related aspect of labour provisions is highlighted in other findings in the report. Furthermore, the research shows that trade agreements with labour provisions increase the value of trade to an equal extent to trade agreements without labour provisions.⁹
6. The vast majority of trade agreements¹⁰ that include labour provisions promote ILO instruments, such as the Declaration on Fundamental Principles and Rights at Work and its Follow-up [adopted by the ILC in 1998], the Decent Work Agenda, and the Declaration on Social Justice for a Fair Globalization [adopted by the ILC in 2008]. Since 1994, the normative content, legal implications, and scope of labour provisions has evolved to place more emphasis on stakeholder involvement and implementation activities, including time-bound commitments and dialogue mechanisms for conflict resolution.

⁴ ILO: *Studies on Growth with Equity: Assessment of labour provisions in trade and investment arrangements*, Geneva, 2016. See: http://www.ilo.org/global/publications/books/WCMS_498944/lang-en/index.htm.

⁵ Found in the North American Agreement on Labour Cooperation (NAALC) as part of the 1994 North American Free Trade Agreement (NAFTA).

⁶ As of August 2016. The number of economies includes EU countries individually and not as a bloc.

⁷ *Studies on Growth with Equity: Assessment of labour provisions in trade and investment arrangements*, op. cit.

⁸ The findings show that trade agreements with labour provisions boost labour force participation rates by 1.6 percentage points more than trade agreements without labour provisions. The impact has been found to be even greater for women, where the gap between men and women is reduced by about 1.1 percentage points in countries with labour provisions (ILO, 2016).

⁹ Trade agreements with labour provisions increases trade by 28 per cent on average, while a trade agreement without labour provisions increases trade by 26 per cent (ILO, 2016).

¹⁰ Trade agreements comprise plurilateral trade agreements – concluded between three or more States, and bilateral trade agreements – concluded between two entities in which each could be a State, customs union or trading bloc.

7. Over the past two decades the number of bilateral and plurilateral trade agreements has significantly increased, growing from 41 in 1995 to 267 in 2016.¹¹ This expansion has meant that the majority of goods exported are currently within the framework of bilateral and plurilateral trade agreements: almost 55 per cent in 2014, up from 42 per cent in 1995. Increasingly, these agreements include labour provisions, and as of today a quarter of the value of trade within the trade agreements framework falls under the scope of such provisions – which were practically non-existent before the mid-1990s.
8. Labour provisions are defined as:¹² “(i) any standard which addresses labour relations (for example, with reference to international labour standards) or minimum working conditions and terms of employment (for example, occupational safety and health (OSH), minimum wages and hours of work); (ii) any mechanism to ensure compliance with the standards set under national law or in the trade agreement; and (iii) any framework for cooperative activities, dialogue and/or monitoring of labour issues (for example, development cooperation, established bodies for facilitating consultation between the parties or regular dialogue)”.¹³
9. The majority (or 63.6 per cent) of trade agreements with labour provisions came into existence after 2008, indicating an acceleration in the past decade. Almost half (or 46.8 per cent) of trade agreements with labour provisions have been concluded with the European Union (EU), the United States and Canada, and their trade counterparts. It is increasingly common for other actors, such as South–South partners,¹⁴ New Zealand and the European Free Trade Association (EFTA) to include labour provisions in their agreements. In this regard, over a quarter of agreements with labour provisions are concluded only between South–South partners.
10. Some unilateral arrangements also include labour provisions as part of the eligibility criteria for special trade incentives. In particular, as part of the US Generalized Scheme of Preferences (GSP) and the EU (GSP+) programmes, there are currently over 90 countries benefiting from special trade incentives with labour conditionality.
11. There is also increasing reference to labour standards in international investment Arrangements (IIAs). Twelve out of 31 IIAs concluded in 2014 referred to the protection of labour rights. As for bilateral investment agreements, 80 per cent of those entering into force in 2014 contained labour provisions.
12. Increasingly, labour provisions in trade agreements include reference to labour rights and principles, as well as to additional sources of labour standards. In the great majority of

¹¹ Based on WTO, RTA database accessed August 2016. See: https://www.wto.org/english/tratop_e/region_e/region_e.htm. Part of this expansion can be linked to the stalemate in the multilateral trade agenda, and the desire by some governments for wider and deeper integration of markets and regulatory settings.

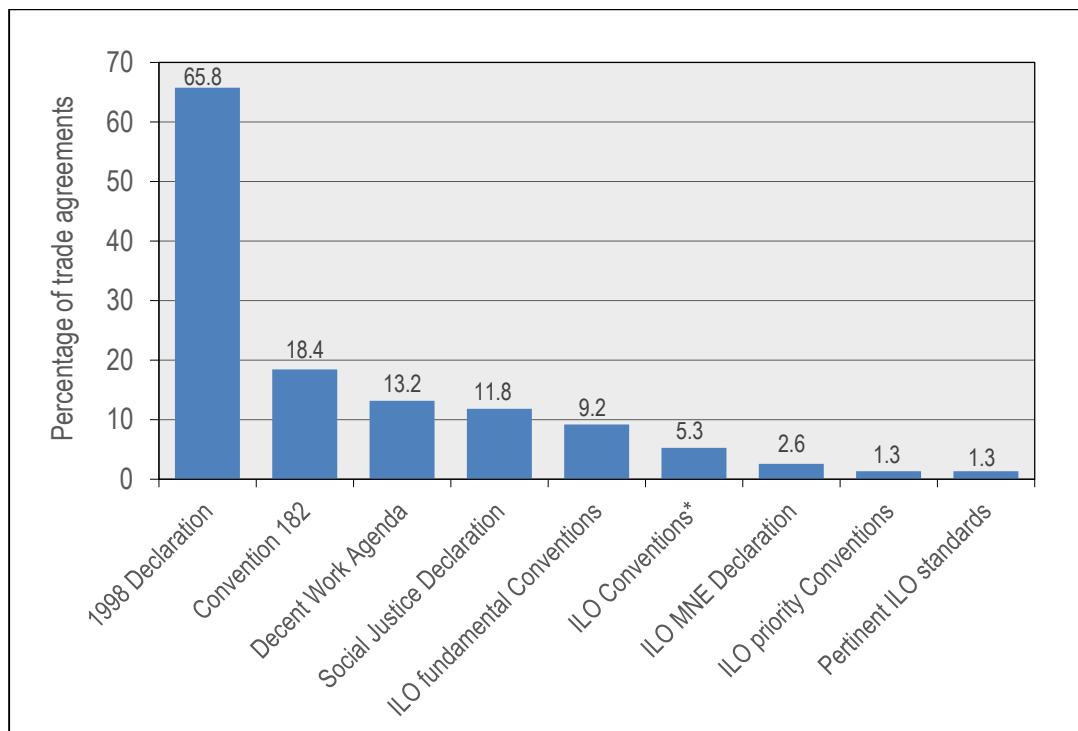
¹² The definition of “labour provisions” used for this analysis is a broad definition of labour provisions in trade agreements, which takes into account different elements and mechanisms found in the literature, policy documents and previous ILO research. See for instance: K. Addo: *Core Labour Standards and International Trade* (Heidelberg: Springer, 2015); C. Kauffman: *Globalisation and Labour Rights: The conflict between core labour rights and international economic law* (Oxford and Portland: Hart Publishing, 2007); and ILO: *World of Work Report 2009*, Geneva, 2009.

¹³ *Studies on Growth with Equity: Assessment of labour provisions in trade and investment arrangements*, op. cit., p. 21.

¹⁴ South partners refer to countries other than EU countries, United States, Canada, Australia, Israel, Japan, New Zealand and EFTA countries (Iceland, Switzerland, Norway and Liechtenstein).

agreements that include labour provisions, parties commit to not lower labour standards or deviate from labour law to improve their competitive positions (this is commonly referred to as a non-derogation clause), and to ensure that domestic labour laws are effectively enforced and consistent with certain labour rights and principles. In this respect, the ILO's 1998 Declaration on Fundamental Principles and Rights at Work is increasingly used as a baseline reference for these standards. As of December 2015 (see figure), 65.8 per cent of trade agreements made reference to the 1998 Declaration. Reference is also made to other ILO instruments such as the Decent Work Agenda (13.2 per cent), the ILO Declaration on Social Justice for a Fair Globalization (11.8 per cent), and to ILO fundamental Conventions, either in a broad sense (9.2 per cent) or directly referring to Convention No. 182 (18.4 per cent), in cooperative activities.

Figure. Reference to ILO instruments in trade agreements (2015)



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

Source: ILO Research Department.

- 13.** A growing number of trade agreements with labour provisions also make use of cooperative activities to promote labour standards and reinforce the implementation of labour provisions. In this respect, the ILO is increasingly referred to as the appropriate institution to implement such activities and promote compliance with labour standards in the framework of trade agreements (FTAs). This can take the form of development cooperation projects, technical assistance programmes, development of joint research projects, capacity-building activities, exchange of information and best practice, bilateral or regional cooperation activities or dialogue in different fora on trade-related labour issues as appropriate.¹⁵

¹⁵ For more information see: *Studies on Growth with Equity: Assessment of labour provisions in trade and investment arrangements*, op. cit., which refers for example to the Memorandum of Understanding on Labour Cooperation among the Parties to the Trans-Pacific Economic Partnership Agreement, the EU–Colombia/Peru Trade Agreement, United States–Peru Trade Agreement, and article 17.6 on the Labour Cooperation and Capacity Building Mechanism, among others.

14. There is some indication that programmes implemented with ILO assistance promote coherence between the work of the ILO and consistent implementation of international labour standards at national levels and across agreements. This has taken place, for example, within the framework of action plans in some trade agreements, which focus on strengthening capacity to protect fundamental principles and rights and work.¹⁶
15. Some agreements also include mechanisms for dispute settlement in case of violation of the obligations. In this regard, some trading partners have extended the mechanisms of enforcement to all labour rights in their latest agreements, which were initially applied fully to some rights only. However, it is important to note that dispute resolution mechanisms have only rarely been triggered, as signing parties ultimately make use of other options such as cooperation, consultation or dialogue with the aim of obtaining an amicable solution. Indeed, public submissions filed under the mechanism of dispute settlement attract a great deal of international attention and can raise awareness and pressure needed to engage in dialogue and set in place mechanisms to resolve the conflict.¹⁷

III. The role of workers and employers in negotiation and implementation of labour provisions in trade agreements

16. Although trade agreements are signed between States, stakeholders, such as the social partners (trade unions and employers' organizations), are often involved in the negotiation and implementation processes of these agreements. Over time, agreements have included more references to the role of stakeholders and past experiences have highlighted their participation in promoting labour rights, in general, and activating implementation mechanisms, in particular. However, there are still challenges, and stakeholders have expressed limited satisfaction with overall transparency and accountability, particularly in the negotiation processes.
17. The consultative mechanisms between governments and stakeholders can be permanent or ad hoc, mandatory or voluntary. For instance, in some trade agreements, special attention has been placed on the involvement of stakeholders and continued intergovernmental dialogue, mostly through active participation in advisory groups, and subcommittees created under the agreement to increase transparency and monitor implementation.¹⁸

¹⁶ See for example, United States–Colombia Trade Promotion Agreement and the Action Plan developed after a labour submission under Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) (see footnote 13).

¹⁷ In this regard, to date, 51 labour submissions have been filed. This figure corresponds to those submissions filed under US trade agreements (including closed and ongoing cases). The majority correspond to the North American Agreement on Labour Cooperation (NAALC) with 43 labour submissions filed from 1994 to 2016, four under the CAFTA–DR (in 2008: arbitration; 2010: closed; 2011: report issued; and 2012: monitoring and Action Plan adopted), two under the United States–Peru Trade Agreement (in 2010 and 2015: both reports issued), one under the United States–Bahrain Free Trade Agreement (in 2011: labour consultations) and one under the United States–Colombia Agreement (in 2016: accepted for review). See ILO: *Studies on Growth with Equity: Social dimensions of free trade agreements*, Geneva, 2013, p. 52, updated by the ILO Research Department, op. cit., footnotes 4, 7, 13 and 15. See also for the current status of the labour submissions: <https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions>.

¹⁸ It should be noted, however, that not all trade agreements (or policies applied during negotiations) include mechanisms for stakeholders' involvement.

18. In some cases, agreements also set frameworks with the aim of promoting transnational collaboration and dialogue between the stakeholders to the trade agreements, for example, civil society fora or mechanisms for presentation of public submissions. This has helped to strengthen transnational coalitions of trade unions, which have increased dialogue and established important relationships to report on labour violations within the framework of the trade agreements. For example, transnational coalitions are frequently responsible for public submissions (complaints) filed under the dispute settlement mechanism of the agreement.¹⁹
19. The discussions under the different fora promoted by trade agreements have sought to foster a more active engagement with the ILO and to develop initiatives to further cooperation. Topics under discussion in these fora include corporate social responsibility and the identification of obstacles, lessons learned and best practices to promote international labour standards.
20. Research shows that stakeholders can be involved in trade agreements through the activation of different mechanisms. This has been reflected in legal, political and institutional outcomes (for instance, the strengthening of labour ministries or reforms to labour laws or monitoring of the compliance with labour standards). But challenges remain with respect to fully activating and implementing the available mechanisms, for example the use of some of these mechanisms is limited in practice. Additionally, there is a need to enhance transparency and accountability, for example by providing feedback to stakeholders on the ways their inputs are considered in the decision-making process.

IV. The ILO's role concerning labour provisions in trade agreements

21. The ILO's constitutional mandate, which includes the promotion of ratification and compliance with international labour standards, as well as the provision of technical assistance, provides a broad basis to assist States, on a voluntary basis and upon request, in giving effect to labour provisions in trade agreements in line with their obligations as ILO Members.²⁰
22. Furthermore, the Declaration on Social Justice for a Fair Globalization explicitly requires the ILO to effectively assist its member States, upon request, in their efforts to promote the strategic objectives within the framework of bilateral and multilateral agreements to ensure compatibility with ILO obligations (Part II(A)(iv) of the ILO Declaration on Social Justice for a Fair Globalization).
23. The ILO is involved in various ways in the design and implementation of labour provisions in trade agreements. Trade partners have requested the ILO's advice through technical assistance on various questions related to labour standards and practices, and have also made use of the ILO's publicly available information, for instance, through the comments of its supervisory system and special procedures. Furthermore, the ILO has on occasion been engaged to further the implementation of international labour standards reflected in labour commitments through development cooperation programmes and partnerships.

¹⁹ ILO: *Studies on Growth with Equity: Social dimensions of free trade agreements*, Geneva, 2013, op. cit., footnotes 4, 7, 13 and 15.

²⁰ Part I(C) of the ILO Declaration on Social Justice for a Fair Globalization.

24. Member States have requested direct assistance to the ILO concerning policy coherence between national labour market policies and trade, to assess the impact that trade may have on national employment, and to provide advice on how to formulate effective labour provisions and policy responses. Parties to trade agreements have also requested ILO advice in implementing labour standards commitments once a trade agreement has entered into force. This role has been expressly recognized in the labour provisions of many trade agreements in terms of monitoring, dialogue and dispute settlement, where various agreements explicitly include reference “to seek advice from the ILO”. The possibility to seek advice from the ILO in the context of trade agreements is also mentioned in the framework of development cooperation.
25. In addition to the direct assistance noted above, the ILO’s supervisory system enables trade partners to make use of the ILO’s findings concerning member States’ implementation of labour standards. This information is publicly available and has been used by trade partners in assessing the labour practices in other States. For instance, in GSP+, ²¹ one of the determining criteria regarding eligibility and maintenance of special incentives provided by the unilateral trade preferences consists of the conclusions of relevant monitoring bodies, for example with respect to ratification and implementation of ILO fundamental Conventions. There is also evidence that ILO comments and information have been used by both States and labour advocates in the process of conflict resolution. ²²
26. The ILO is also involved in the actual implementation of labour standards through development cooperation projects referred to in trade agreements. Some projects focus on capacity-building activities of trade partners to foster the implementation of labour standards. These programmes are carried out in the ILO’s technical departments and field offices, in collaboration with the country’s tripartite constituents and sometimes trade partners. ²³
27. All areas of ILO involvement are closely interlinked, as development cooperation references in trade agreements are often aligned with the overall priorities of the ILO, and critical issues that are addressed in the outcomes of the regular supervisory mechanisms and special procedures. Cooperative activities between trade partners may refer to labour standards that have been the subject of complaints, public comments or efforts to promote the ratification of fundamental Conventions. These instances can be identified in the Committee of Experts on the Application of Conventions and Recommendations (CEACR) observations, discussions of the Committee on the Application of Standards (CAS) and in conclusions or in reports of the Committee on Freedom of Association (CFA).

V. Links to the broader trade framework

28. Increasingly, academic literature points to institutional mechanisms as a way to improve the decent work outcomes of globalization and trade, particularly by addressing the risk of increased inequality, underemployment and gender gaps as a result of weaknesses in labour market governance. In this respect, the follow-up to the Resolution on Advancing Social Justice through Decent Work adopted at the 105th Session of the ILC presents a timely moment to reflect on the role that the ILO can play with respect to trade-related labour

²¹ In the case of the EU Generalized System of Preferences.

²² E. Gravel and Q. Delpech: *The comments of the ILO’s supervisory bodies: Usefulness in the context of the sanction-based dimension of labour provisions in US free trade agreements*, ILO Research Paper No. 4 (Geneva, ILO, 2013).

²³ See footnote 15 for relevant examples.

provisions, and more broadly, the harnessing of trade growth towards the goal of decent work, inclusive growth and sustainable development. The Resolution emphasizes, inter alia, the importance of strengthening constituents' capacity to evaluate the impact of trade and investment policies and facilitating appropriate tripartite dialogue.

29. The ILO's support is increasingly sought by member States wishing to strengthen their capacity to apply relevant international labour standards in the context of trade agreements with labour provisions. With concern rising that trade growth has slowed and that increasing inequality is fuelling popular reaction questioning the value of globalization, the search for greater coherence between the promotion of decent work and of open markets is likely to further increase the number of requests for ILO technical assistance. The resolutions concerning Decent Work in Global Supply Chains and on Advancing Social Justice through Decent Work indeed call for an increase in ILO support to meet constituents' needs.
30. Implementation of the 2030 Agenda creates further opportunities to work with relevant partner agencies to provide integrated policy advice and technical support to member States so that trade opening can realize its potential for enabling poverty reduction, decent work and inclusive and sustainable development. In this regard, the ILO suggestion to UNCTAD XIV on "enhancing its collaboration with UNCTAD to offer coherent policy advice on linking trade and investment policies to the promotion of the four strategic objectives of decent work in support of implementation of the 2030 Agenda" was well received and provides a basis for a strengthened partnership with relevant multilateral organizations.²⁴

Draft decision

31. *The Governing Body may wish to request the Director-General to:*

- (a) continue to collect and analyse information regarding labour provisions in trade agreements and provide technical assistance to constituents requesting support in the context of applying such provisions;*
- (b) develop partnerships with relevant international organizations and others with a view to offering integrated policy advice to constituents regarding the promotion of decent work in the context of trade and investment opening as part of the implementation of the 2030 Agenda; and*
- (c) report periodically to the Governing Body on action regarding trade, investment and decent work for sustainable development.*

²⁴ ILO: *Translating the 2030 Agenda for Sustainable Development into Action: Integrating trade, investment and decent work policies*, op. cit.