



Recognizing the Imperative Need to Step up Integration Efforts of Occupational Health and Safety Provisions in Trade and Investment Agreements

Ivan Williams Jimenez
Organization(s) / Institution(s): Institution of Occupational Safety and Health

Submitted by: Dr. Ivan Williams Jimenez

(Institution of Occupational Safety and Health, UK), ID: 1643

Presenting Author: Williams Jimenez, Ivan ivan.williams@iosh.com

Conference Tracks: Track IV. The post COVID-19 world of work: In search of a human-centred recovery

Keywords: trade and investment agreements; occupational safety and health; socially responsible trade

Abstract

This paper puts the case for revisiting international trade negotiations and trade agreements, by gearing the articulation of occupational safety and health clauses and principles primarily towards a more sustainable and human-centered trade.

As an instrumental part of a sustainable, resilient recovery after the COVID-19 pandemic, trade policy and agreements need to have a more effective focus on the protection of workers health, safety, and welfare in order to raise standards and facilitate responsible trade. Work-related sensitive issues such as standards for the protection of workers' rights and occupational safety and health yet remain an issue to be properly covered in trade-related public policy agendas.

Historically, free trade agreements (FTAs) focused on removing trade barriers, generating growth, and incentivizing the production and selling of goods, covering social issues like occupational safety and health only indirectly, if at all. The way that many of these agreements fail to include robust and binding safeguards that can help to ensure the protection of, and respect for, health and safety rights and uphold existing occupational safety and health standards lay bare the ample room for improved governance.

The narrative from this paper was shaped by the research base analysis that was carried out to determine the evidence on the need for more emphasis and clarity on how occupational safety and health provisions are articulated, regulated, and enforced in trade policy and agreements. This was also the result from the different stakeholder engagement sessions that took place to discuss how to stimulate a social compact between governments, the private sector, the social partners, and civil society to achieve inclusive and sustainable economic growth and decent work through more responsible trade and investment policy developments.

Outcomes from these initiatives revealed that a possible route for global policy on world trade would entail the formal review of fundamental principles and rights at work framework on free trade agreements, the integration of a legally binding instrument on transnational corporations and other business enterprises with respect to human rights and decent work, as well as the facilitation of more effective and enforceable decent work and occupational safety and health clauses in the context of trade and development.

Introduction

The devastating effects of the COVID-19 pandemic on human lives, employment and economy put on the spotlight the urgency of placing occupational safety and health at the centre of global and national responses to prepare for a sustainable and human-centred recovery. This, coupled with significant trends such as the effects of the Covid-19 pandemic, the geopolitical tensions, the restructuring of global value chains, countries embarking themselves on the digitalization of the global economy, the 2030 Agenda for Sustainable Development, or the way nations are becoming strongly aligned to greener goals and therefore abandoning traditional dangerous sectors, are changing the way trade volumes are expected to rebound globally (ESCAP, 2020).

At the same time, the effects of the public health emergency have demonstrated the fundamental importance of safe and healthy working conditions as a key determinant to achieve sustainable economic growth, decent work, and more resilient societies. It has also placed higher on the agenda the growing and complex interface of public health, workers' health, and trade from a viewpoint of health diplomacy and international legal instruments (Nikogosian, Kickbusch, 2017).

Throughout this global crisis, one aspect that has not been given sufficient consideration is the promotion, ratification and implementation of core occupational safety and health standards and safe and healthy working conditions in major trade agreements, developments, and policy-related negotiations. Historically, free trade agreements (FTAs) primarily sought to remove barriers to trade, covering social issues like occupational safety and health only indirectly, if at all (Jones et al. 2020).

On a similar note, it is well-evidenced that the safety, health and working conditions of workers has traditionally '*lagged*' by the shifts in the economy that trade agreements bring as part of the deal. Under these circumstances, there is still a big imbalance between workers' health and safety protections in favour of multinational corporations and subsidiaries economic power that have seen their capacity to operate multi-nationally greatly enhanced and the ability to migrate and outsource their production and operations where labour and raw materials costs are lowest (Galvez, 2019). In the current context, trade policies and agreements are expected to include contingency for pandemic and other crisis and commitment to manage any related occupational health and safety risks to workers, whether this is to frontline staff or those working from home, quarantined, or furloughed or others adversely affected by international restrictions, such as those working at sea.

The recent Regional Comprehensive Economic Partnership agreement (RCEP), the European Union and Mercosur and other Asian countries agreements, or the Comprehensive and Economic Trade Agreement (CETA), to name a few, are just some examples of agreements that have the potential to improve the quality of billions of people's working conditions, welfare, and livelihoods (UNCTAD, 2020). Unfortunately, the capacity of these major trade agreements to become a great leveller fall short of its decent work and economic growth commitments, therefore impeding the effective protection of workers health and safety under the umbrella of these frameworks.

Methodology

This paper is based on the advocacy work that the Institution of Occupational Safety and Health is carrying out to evidence how occupational safety and health provisions when integrated into general trade and development strategies, become a critical part in the process of achieving socially responsible trade. The foundations for this advocacy work are based on the following objectives that look to:

- (1) Provide evidence on the need for more emphasis and clarity on how occupational safety and health provisions are articulated, regulated and enforced in trade policy and agreements.
- (2) Engage a broad cross-section of trade-related bodies to help identify existing gaps and areas for improvement in this particular field.
- (3) Identify opportunities for collective action and civil society engagement.

The findings of a series of policy initiatives and stakeholder engagement events were initially used to gather a deeper understanding of the issue. Key outcomes were extracted from IOSH's contributions to the United Nations Policy Hackathon on Model Provisions for Trade in Times of Crisis and Pandemic in Regional and other Trade Agreements (ESCAP, 2020), IOSH's response to regular consultations on trade policies reviews and calls for evidence (IOSH, 2020), or from the outputs as part of the organization of multi-stakeholder discussions with like-minded bodies with an interest on the subject, as the session hosted for the Asia - Pacific United Nations Forum on Responsible Business and Human Rights (United Nations, 2021), the International Labour Organization's Regulating for Decent Work conference (ILO, 2021) or the World Trade Organization's Public Forum 2021 (WTO, 2021) — *Trade Beyond COVID-19: Building Resilience*.

Occupational safety and health regulatory shortcomings and workers' health and safety deficits in trade agreements

In recent decades, the importance of labour provisions and social clauses has been increasingly recognised as an assurance mechanism that help to establish basic principles and rights at work. While the right to the highest attainable standard of safe and healthy working conditions is increasingly referenced in labour clauses and ILO Conventions, the better integration of these principles need to constitute basic requirements for all future trade and investment policy.

IOSH's participation in a UN Policy Hackathon paper (IOSH, 2020) confirmed the growing evidence that underline how labour obligations, including health and safety obligations, are becoming increasingly important elements in major Free Trade Agreement negotiations led by major players such as the US or The European Union that require the parties to respect decent work principles in accordance with pertinent international standards.

In recent decades, the importance of social-related clauses including labour and occupational safety and health provisions has been increasingly recognised as part of trade negotiations processes. To this respect, research by the International Labour Organization (ILO, 2016) indicates that agreements subject to labour provisions increase trade on average equal to, or slightly better than, those without them.

That said, our paper alerted of not so well-developed practices that compromise the protection of labour rights or that do not uphold International Labour Standards (ILS). This is particularly the case for those agreements that involve challenging regions such as the novel Bi-regional association agreement between the European Union and Mercosur, with countries from the South America region, that in the chapter on Trade and Sustainable Development, does not articulate specific instruments to monitor the implementation of International Labour Standards, in particular the fundamental conventions of the International Labour Organization (ILO) on decent work, the Charter of Fundamental Rights of the European Union and the Social and Labour Declaration of Mercosur (ETUC, 2021).

It is true that Free Trade Agreements can lead to positive aspects such as increased economic growth and act as catalyst for foreign direct investment. Conversely, they can lead to negative aspects, poor working conditions, precarization of particular sectors, or the outsourcing of jobs to least developed countries where labour protections aren't that robust. This was particularly the case of the North American Free Trade Agreement (NAFTA) signed by Canada, Mexico, and the US that led to many manufacturing industries closing and allocating their jobs to Mexico, where enforcement of labour and health and safety protections were and continue to be more fragmented.

These deficits when not properly tackled by the parties involved in the design phase of the trade agreement or at the ratification stage by the different signatories can help to perpetuate the principle that growth in trade comes at the expense of worker protection. It can also negatively contribute to inequalities between high-income economies and least developed countries (LDCs).

The importance of integrating effective occupational safety and health provisions in trade agreements and negotiations.

Promoting greater level of accountability for governments and stronger obligations on organisations to ensure compliance in traditionally challenging areas (e.g. occupational safety and health increasingly present in trade and investment agreements or by promoting sustainable and decent work in global supply chains) is proving to be a complex matter that will require effective and integrated solutions. The below recommendations have been compiled from the different initiatives IOSH has been involved at a public policy level.

It should be noted that contemporary worker-centered trading systems stand out for respecting business and human rights, supporting the implementation of the UN's Guiding Principles for Business and Human Rights, the UN Global Compact and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises (European Commission, 2015). These principles help to provide the framework to identify and address risks to workers at a time when occupational safety and health is critical to the operation of supply chains both prior to and during the pandemic, and has therefore attracted commitment, investment and resources ensuring workers and workplaces are safe.

In this changing world of work, fundamental labour rights, including occupational safety and health, can lead to decent working conditions, safer and healthier workplaces and support the achievement of the Sustainable Development Goals (SDGs) to which the world has committed. It has also the potential of making employers and governments more aware and increasing the scrutiny in the case they fall short of occupational safety and health provisions and protections.

Positive developments in this arena are setting the standard for excellence and sustainable performance in multilateral, regional al bilateral trade negotiations. To name a few, the recent trade-related efforts geared towards capacity building in the European Union require its trading partners to respect and implement the ILO fundamental conventions on labour and occupational safety and health provisions represent a positive move to benchmark. Initiatives such as the '*Trade for Decent Work*' (European Commission, 2021) project by the ILO and the European Commission (already implemented in countries such as Bangladesh, Myanmar and Vietnam) that looks to strengthening the capacity of constituents to comply with International Labour Standards (ILS) should be extended to other trading partners to help improve

application of the ILO fundamental Conventions and working conditions, contributing to achieving SDG8, through improved occupational safety and health and working conditions.

Safe and healthy working conditions are explicitly referenced in labour clauses of several recent free trade agreements (FTAs) (ILO, 2021) and in a large number of private compliance initiatives on corporate social responsibility. The FTA between the USA and Jordan of 2001 as well as several other FTAs concluded by the USA since 2001; the FTA between Canada and Costa Rica of 2002 and several other FTAs concluded by Canada since 2002; but also, the recent Comprehensive Economic and Trade Agreement between Canada and the EU, which has however not fully come into force yet constitute some examples of embedding proactive clauses at the very early stage of the negotiation process.

Other initiatives look at both the ground level and negotiation table, by not only consolidating stronger prevention and cooperation clauses but assuring practical enforcement as part of the trade agreement negotiation process. For example, commitments around occupational safety and health and enforcement efforts through labour inspectorates are gradually being included in almost all recent G7 trade agreements (ILO, 2019).

It is also highly recommended that the principles of the ILO guidelines on OSH management systems and the international standard ISO 45001 – Occupational safety and health management systems - are implemented by organisations, governments, regions, and investors to support responsible and sustainable trade. These frameworks include leadership and worker involvement, occupational safety and health risk assessment and control, competent occupational health and safety assistance, supply chain management and emergency planning. These aspects can all help to ensure that trade in essential goods and services can be safely maintained during a crisis, and that there is speedy and safe resumption of operations post-disaster (Miroudot, 2020).

Another route to an immediate positive trigger action in this field relies on renewing the focus on sustainable corporate governance and business human rights covered by due diligence requirements, as an increasingly common voluntary feature of the modern trade agenda that helps to link occupational safety and health to human rights due diligence as an essential element in creating a level-playing field for states and companies worldwide. Shifting the approach to the ongoing trend of enforced and mandatory human rights due diligence legislation and requirements is something that governance and trade regulations have demonstrated to be fit for purpose. Here an area for improvement within negotiated free trade agreements will imply making sure that clauses proactively require the parties involved to lay down comparable obligations for companies affected under the umbrella of the agreement.

This positive regulatory development should rely on the importance of upholding human rights and of international labour standards, throughout global supply chains and tackling instances of occupational safety and health and decent work breaches. While in the last decades there's been substantial improvements on international health and safety standards, such as the International Labour Organization's core labour standards, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines on Multinational Enterprises, or the EU Action Plan on human rights and decent work in global supply chains to name a few, there is still a requirement to build on the basic foundations through a 'human rights-based approach' to workplace health and safety.

This ambition comes as part of a renewed societal responsibility that looks to achieve sustainable economic growth, decent work, and more resilient societies. It also makes policy and business sense as a key part of the ongoing universal post COVID-19 recovery effort that has highlighted the importance of strengthening the coherence between human rights and

occupational health and safety standards and the prioritisation of the occupational safety and health dimension of human rights due diligence.

One additional potential avenue for improving the effectiveness of health and safety provisions in trade agreements is given by the increase of public policy efforts towards worker-centered trade policies and systems, as recently seen in the G7 Trade Ministers' Meeting in October 2021 (White House, 2021). The summit looked at identifying ways to eradicate forced labour from the global supply chains and reaffirming the importance of decent work and the respect of the ILO Fundamental Principles and Rights at Work, by considering relevant international labour standards, and the role trade plays in ensuring the building back better mindset from the Covid-19 pandemic, and in contributing to the Sustainable Development Goals (SDGs).

Finally, initiatives that envisage raising global, regional, and local awareness through targeted public policy and civil society initiatives are needed to make a real difference to workplace safety and health. For this reason, changes on how civil society engagement operate, in the context of free trade agreements are necessary to meet the goal of achieving socially responsible trade. Forging links with civil society was one of the main outcomes extracted from the panel session discussion at the UN Responsible and Business Human Rights Forum that the Institution of Occupational Safety and Health hosted to better understand how decent work can inform trade and development strategies in the Asia Pacific region.

The way forward – Health and safety as a fundamental human right

The Institution of Occupational Safety and Health has been one of many advocating that national states recognise workers' safety and health as a material element in national and corporate prosperity, arguing that basic compliance with national occupational safety and health laws should be only a starting point (IOSH, 2021). The policy case for this to happen was recently restated as part of a submission to a UN review of its framework for improving business impacts on human rights, where the formal recognition of occupational safety and health as both a right and a driver of economic good was put on the spotlight once again.

Protecting the fundamental human right to a safe and healthy workplace has been a long-standing demand and a strategic objective of the existing Decent Work Agenda. Since the UN Universal Declaration of Human Rights proclaimed by the United National General Assembly in Paris on 1948 that stated that *everyone has the right to just and favourable conditions of work*; The UN International Covenant on Economic, Social and Cultural Rights of 1966 defined *safe and healthy working conditions as fundamental human rights*. More recently, in 2008, the Seoul Declaration on Safety and Health at Work (ILO, 2008) explicitly linked workers' health and safety with human rights by emphasizing the right to a safe and healthy working environment should be recognized as a fundamental human right. This declaration was followed-up by the 2011 Istanbul Declaration on Safety and Health at Work (UN, 2011).

This initiative is well aligned with the evolving understanding of the social elements of sustainability, responsible trade, business human rights due diligence and sustainable development including decent work issues. It also helps to materialise the stronger alignment of occupational safety and health management through a human rights-based approach in policy and business practices. If the current ILO due diligence process is successful in explicitly including the promotion of the occupational safety and health, as one of the fundamental principles and rights of every worker, along with other existing universal rights such as the freedom of association and collective bargaining and protection from

discrimination, forced labour and child labour, this could lead to global policy and business improved capacity building in occupational safety and health. One anticipated direct impact of this approval would be the formal inclusion of this fundamental right in many major international instruments and policy documents, such as existing trade agreements (commonalities can be seen in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up - adopted 18th June 1998).

The way this decision, if finally approved by the ILO governing body and its constituents through the established internal mechanism, will affect existing and future trade agreements and negotiations is yet uncertain and will be a matter of further policy, legal and academic research. Based on these lines, the ILO has declared that *'it will be the sole prerogative of national states to exercise the ownership to mandate, include, articulate and implement the principle of occupational safety and health as a new fundamental principle and right at work'*.

"The integration of a revised 1998 Declaration, or a new ILO declaration adding OSH as a fundamental principle and right at work into existing FTAs would depend entirely on the States parties to those agreements, who would, in principle, need to take specific action to this effect – that is, explicitly agreeing to include or exclude the new fundamental principle and right at work from the scope of such agreement or not." (ILO, 2021).

Conclusion

This paper puts the case for increased efforts to be pursued towards a more socially responsible trade system. To design better and more efficient bilateral and multilateral trade agreements there is a need to understand how different occupational safety and health provisions included and enforced in trade negotiations can positively affect trade flows and consequently workers health and safety and decent work. A message is worth resonating is the recommendation that general elements of trade agreements need to better embed a minimum level of occupational safety and health regulations; upward harmonisation of regulatory standards and practice; effective enforcement of regulations; implementation of international standards and civil society involvement.

In the near-term, the path towards global trade and investment recovery, evidence that there remains an ample room for improved governance on how trade agreements embed robust protections of workers health and safety. That said, the everchanging trade scenario provides a unique opportunity, for the effective prioritisation of occupational health and safety provisions with current and future trade and investment policy and agreements. This process will only succeed if key players engage in safer, healthier, and more sustainable trade strategies by elevating occupational safety and health standards as part of worker-centered trade policy and agreements.

References

- ESCAP. Trade in Goods Outlook in Asia and the Pacific 2020/2021. https://www.unescap.org/sites/default/d8files/knowledge-products/APTIT%20Trade%20in%20goods_21Dec.pdf
- ESCAP. Policy Hackathon-Model Provisions for Trade in Times of Crisis and Pandemic. 2020. <https://www.unescap.org/resources/online-repository-contributions-policy-hackathon-model-provisions-trade-times-crisis-and#>
- European Trade Union Confederation. CONO SUR"(CCSCS). Joint statement on the Bi-Regional association agreement between the European Union and MERCOSUR. Geneva, February 2021. <https://www.etuc.org/en/publication/cono-surccscs-etuc-joint-statement-bi-regional-association-agreement-between-european>
- European Commission. Trade for all Towards a more responsible trade and investment policy. Luxembourg, 2015.
- European Commission. International Labour Organization. Geneva, Brussels, 2021. https://www.ilo.org/global/standards/WCMS_697996/lang--en/index.htm
- Jones, R, Williams, I. and Zivkovic, M. Revitalising 2.0: building back better and healthier – Policy Brief. UN-WTO Policy Hackathon <https://www.unescap.org/sites/default/files/135%20Final-Team%20Richard%20Jones-UK.pdf>.
- Human-Centered Trade: Still Possible? 2019 A. Galvez <https://fairworldproject.org/human-centered-trade-still-possible/>
- Institution of Occupational Safety and Health. A renewed trade policy for a stronger Europe – Consultation note. Leicester, September 2020. <https://iosh.com/media/8577/iosh-response-to-ec-on-eu-trade-policy-sept20.pdf>
- Institution of Occupational Safety and Health. Wusteman, Louise. IOSH Magazine. OSH for all: the fight for basic human rights. Leicester, May, 2021
- Institution of Occupational Safety and Health. UN business and human rights – towards a decade of global implementation – call for evidence. Leicester, July 2020. <https://iosh.com/media/9086/response-to-un-business-and-human-rights-november-2020.pdf>
- International Labour Organization. 7th Regulating for Decent Work Conference. Geneva, July 2021. <https://www.ilo.org/global/research/events-courses/rdw/7/lang--en/index.htm>
- International Labour Organization. Labour-related provisions in trade agreements: Recent trends and relevance to the ILO. Geneva: ILO, 2016. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_530526.pdf
- International Labour Organization. Labour provisions in G7 trade agreements: A comparative perspective / International Labour Office. Geneva: ILO, 2019
- International Labour Organization. Proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work. Geneva, February, 2021.
- International Labour Organization. Seoul Declaration on Safety and Health at Work. Meeting document | Seoul, Republic of Korea | 29 June 2008.
- Nikogosian H, Kickbusch I. Interface of health and trade: a view point from health diplomacy. BMJ Glob Health 2018;3:e000491. doi:10.1136/bmjgh-2017-000491
- S. Miroudot. Resilience versus robustness in global value chains: Some policy implications. London: Vox CEPR Policy Portal, 18 June 2020. <https://voxeu.org/article/resilience-versus-robustness-global-value-chains>
- UNCTAD. RCEO agreement a potential boost for investment in sustainable post-Covid recovery. November, 2020.
- United Nations. Responsible Business and Human Rights Forum, Asia-Pacific. The new decade of action. May, 2021. <https://www.rbhforum.com/>
- United Nations. Istanbul Declaration. Istanbul, May 2011. <https://www.un.org/en/conf/ldc/pdf/istanbul%20declaration.pdf>
- World Trade Organization. Public Forum 2021 - Trade Beyond COVID 19: Building Resilience. September, 2021. https://www.wto.org/english/forums_e/public_forum21_e/callforproposals_e.htm

White House. Carbis Bay G7 summit communique. June, 2021.