

Ninth Tranche of the Development Account Project

Enhancing the Contribution of Preferential Trade Agreements to Inclusive and Equitable Trade

BACKGROUND PAPER NO.1/2017

Labour Provisions in Asia-Pacific Free Trade Agreements

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The Development Account is a capacity development programme of the United Nations Secretariat aiming at enhancing capacities of developing countries in the priority areas of the United Nations Development Agenda. The ninth tranche of the Development Account is aimed at supporting Member States in designing and implementing strategies and policies towards sustainable, equitable and inclusive development. Trade is an important part of this process, as expanding trade and investment has driven growth in many developing countries, leading to major reductions in poverty and overall increases in welfare. However, substantial variations in performance among countries persist and, as a consequence, not all countries - and much less all groups and individuals within countries - have been able to benefit equally from trade. In particular, the least developed countries, landlocked developing countries, and other countries with special needs, have not benefited from trade as much as some other developing countries. In order for these countries to foster further economic and social development, they need better access to markets alongside further development of productive and supply capacity.

Towards that end, the project 'Enhancing the Contribution of Preferential Trade Agreements to Inclusive and Equitable trade', led by the Economic and Social Commission for Asia and the Pacific (ESCAP), in partnership with the Economic Commission for Africa (ECA) and the Economic Commission for Latin America and the Caribbean (ECLAC) aims to increase the potential benefits of preferential trade agreements for a set of developing countries identified to be in crucial need for assistance. The project aims to increase the capacity of these countries in identifying the potential benefits and costs of preferential trade agreements, increasing their means to effectively negotiate development-focused preferential trade agreements, and better utilize already negotiated concessions for their benefit. The identified beneficiary countries are: Burkina Faso, Ethiopia, Guinea, Mauritius, and Senegal (Africa); Colombia, Ecuador, and Jamaica (Latin America); and Bangladesh, the Islamic Republic of Iran, Mongolia, Myanmar, and Viet Nam (Asia-Pacific). The project will involve capacity building national workshops in the pilot countries, followed by a capstone regional dialogue for the different countries to share experiences and learn from another. Furthermore, the training materials, in addition to background documents and other materials derived from the workshops, will be made available online through a public knowledge sharing platform for all interested users as reference material.

The most significant output of the project will be enhanced capacity among government officials and trade negotiators to formulate inclusive development-friendly preferential trade agreements so that trade arising from such policies has inclusive and equitable results: improvements in labour standards and wages; the elimination of child labour; positive impacts on gender equality; and enhanced contribution to general welfare, in particular for marginalized excluded groups.

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1. Introduction

After a period of rapid expansion of free trade agreements (FTAs), the unequal pattern of their benefits has led to a considerable backlash against this form of economic liberalization. As a response, some governments are now attempting to ensure more equitable outcomes from trade liberalization. One aspect that receives significant attention from critics of globalization and free trade is the unsatisfactory labour conditions in developing countries. Critics link these conditions directly to trade liberalization, as they view the lack of standards and regulations as an outcome of a race to the bottom, enabled by international trade and investments.

As a remedy to this trend, labour provisions in free trade agreements have been offered as a solution. These are provisions linking labour standards with trade through demanding the compliance with certain agreed upon base labour standards, in turn supported by various means of enforcement, including consultations and arbitration. Labour provisions are found in an increasing number of FTAs, even though their inclusion is met with resistance and skepticism from many developing countries, who see this as protectionism from developed countries. At the same time, their effectiveness and impact on de facto labour standards have not been confidently concluded by the existing evidence. As labour provisions are a relatively new feature in the international trade regime, they are still in a phase of experimentation, and the available information and evidence thus far is lacking.

In the Asia-Pacific region, labour provisions are relatively under-developed (and under-researched), driven largely by the main international actors in the field, the United States and the EU. In the region, New Zealand stands out as the champion of such provisions. At the same time, labour standards across the region are poor, and labour provisions could potentially play a role (albeit minor) in improving these. For this to happen, countries need to first embrace such provisions more than what is currently seen, and second, learn from other countries' experiences in order to improve their design and implementation in the future.

In supporting this goal, the aim of this paper is threefold. First, it is to synthesize existing empirical and theoretical literature on a) the relationship between trade and labour standards, and b) labour provisions, their structure, and the evidence emerging after more than 20 years of implementation in FTAs. This is carried out in Chapter 2. Second, the paper will map labour provisions in the Asia-Pacific region, which is rather under-studied compared to other regions, especially considering the magnitude of the labour condition problems extant. This comprises Chapter 3. Trends are extracted and compared to the international experience, keeping in mind the findings from chapter 2. Third, the paper concludes in Chapter 4 with policy recommendations, a) for policy makers aiming to improve the effectiveness of labour provisions, and b) with suggestions for capacity building programs to increase the capacity of developing country governments.

In researching labour provisions, the study is mainly concerned with labour standards as outlined by the core ILO labour standards; freedom of association and collective bargaining (FACB), child labour, discrimination, and forced labour. Other standards are mentioned where relevant, however the paper is mainly not concerned with wages or employment levels. Furthermore, the scope is limited chiefly to developing countries' labour standards, and not developed countries, although the latter are important as drivers for the trend towards labour provisions.

2. Background and literature review

Although the inclusion of labour standards in the multilateral trading system was rejected by developing countries at the 1996 WTO ministerial conference in Singapore, labour provisions have nonetheless managed to find their way into the global trading regime since then through bilateral and regional free trade agreements (FTAs). This reality reflects several interesting features of the current global trade regime. First of all, there is disagreement about the appropriateness of linking trade agreements and labour standards. While many developed countries argued for the inclusion of a social clause in the WTO to put a global floor to labour standards and to mitigate the assumed potential negative consequences of free trade, developing countries saw this as a potential source of protectionism, and argued that what was needed to bring improvements in labour standards was rather the economic growth that would emerge from free trade (De Ville et al., 2016). Second, while negotiations have come to a halt in the multilateral arena, countries have for the last 20 years signed an increasing number of bilateral and regional FTAs (Baldwin, 2006). Due to the different bargaining power dynamics present in the negotiations of these agreements, developed countries have been able to successfully push through provisions and areas that are not present in the WTO agreement due to developing country resistance – for example labour provisions (Shadlen, 2005; Bakhshi and Kerr, 2010). Thus, thirdly, labour provisions are now found in a number of FTAs around the world. These types of provisions are however still in their early stages, and work is currently ongoing to learn more about how to increase their efficacy and impact, which up to this point has been less than desirable (Campling et al., 2015).

In this chapter we will examine closer each of these points. In section 2.1 we will first introduce the rise of FTAs as the result of the halt of multilateral trade negotiations, before moving on to examine closer the debate on labour provisions in trade agreements. After looking at the history of the “social clause” debate, we will review the theoretical and empirical evidence for arguments both in support and against labour provisions. In short, it is found that empirical evidence is rather lacking, and no clear conclusions can be made either way. Regardless of these inconclusive findings however, labour provisions are already a fact of the FTA landscape, and these will be further scrutinized in section 2.2. Here we will examine the emergence of labour provisions and the current global landscape of such provisions, what types of provisions exist, and how they have impacted labour standards in practice.

2.1. Debates on labour standards, trade liberalization and labour provisions

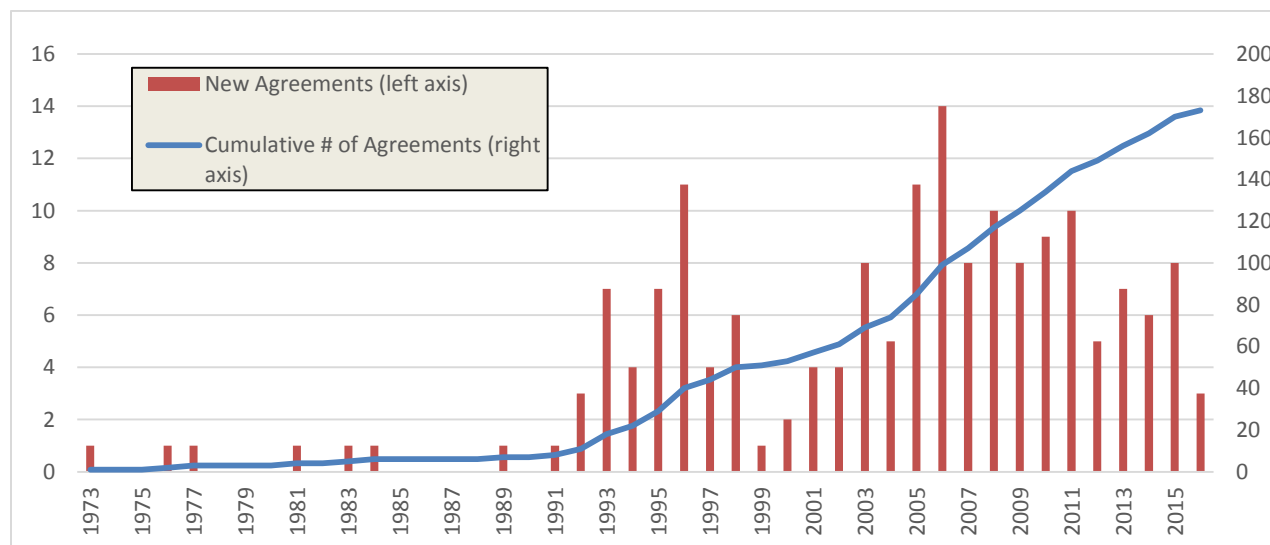
2.1.1. The rise of FTAs

The liberalization of trade and investment has undoubtedly been a major element of the post-war international economic order. However, while a central aspect of the initial era of liberalization after the Second World War was the growth of the multilateral trade order in the shape of GATT and later WTO; since the end of the Uruguay Round further progress on the multilateral arena has given way to a proliferation of bilateral and regional free trade agreements (Baldwin, 2006). This trend towards a fragmentation of the global trade system has emerged at least partly as a response to the standstill in multilateral trade negotiations (the so-called Doha Development Round), and has enabled a deeper integration between countries with provisions going far beyond tariff reductions, in particular in areas of regulatory coordination such as intellectual property rights (IPR) protection, investments, and labour

standards¹ (Shadlen, 2005; Bakhshi and Kerr, 2010). Interestingly, the proliferation of regional and bilateral FTAs in terms of volume has happened more or less simultaneously with North-North, North-South and South-South agreements, although their contents have not necessarily been similar.

As of 2016, more than 400 FTAs have been notified to the WTO, with every WTO member being signatory to at least one FTA. In the Asia-Pacific region 173 bilateral and regional agreements are in force² (figure 1).

Figure 1. Proliferation of FTAs in the Asia-Pacific Region



2.1.2. Including labour provisions in trade agreements

Debates about the relation between labour standards and trade have been around for a long time, with concerns dating back from the 19th or even 18th century that inadequate labour regulations would spill over from one country to another (Dolumbia-Henry and Gravel, 2006). Indeed, foreshadowing the debate of the late 20th century, the preamble to the Constitution of the International labour Organization (ILO) on its creation in 1919 asserts that: “The failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries” (quoted in Dolumbia-Henry and Gravel, 2006:186). While international agreements on labour standards emerged under the ILO, the first efforts to include a so-called social clause in the international trading system failed; first with the omitting of labour standards in the GATT, and then with the failure of the Havana Charter in 1948 intended to launch the International Trade Organization which did include provisions on labour (ibid.). The question was again brought up at the first WTO

¹ Deeper integration is commonly found in more comprehensive agreements including other areas than strictly trade. In this report we will however use FTA as shorthand for any Economic Partnership Agreement (EPA), Preferential Trade Agreement (PTA), Economic Integration Agreement (EIA) or Customs Union (CU) unless noted otherwise. See more in endnote 2, of Chapter 6 in APTIR 2016 (<http://www.unescap.org/sites/default/files/Chapter 6-Trade Agreements.pdf>).

² This number includes certain agreements that are not notified to the WTO and is attributed to APTIAD; see <http://artnet.unescap.org/databases.html#second>.

Ministerial Conference in Singapore in 1996. However this time the proposal from the United States and other developed countries to include the so called “social clause” in the WTO and thus link it to the dispute settlement mechanism was blocked by developing countries, in particular from Asia.³ The conclusion of the Singapore Ministerial Declaration was that the ILO should be the competent body dealing with core labour standards, not the WTO (WTO, 1996).⁴

The lack of agreement on a social clause in the WTO should not be mistaken for a lack of agreement on the role of labour standards in general; on the contrary the debate is mainly concerned with the appropriateness of involving labour issues in the global trade regime, in particular around concerns about using trade sanctions as a tool for enforcement⁵ (De Ville et al., 2016). Indeed, even among the opponents of labour provisions there is a widespread belief that labour standards in developing countries are poor, and that political and economic solutions to the problem is necessary. The traditional pro free-trade, anti-labour provisions economist Keith Maskus notes that “even if the economic case for a linkage between trade policy and labour standards is weak, the political case may be overwhelming in the absence of alternative mechanisms for improving labour standards around the world” (Maskus, 1999:1). Within the arena of the ILO there is a broad consensus between all its members on the value of the fundamental principles of core labour standards;⁶ the question is how to get there (De Ville et al., 2016). Indeed, the debate at the Singapore Conference was chiefly about the general principle of connecting labour standards with the global trade regime, not the value of specific labour standards⁷ (Shergill, 2015).

In order to unravel the debate, we look at two separate but interrelated issues. First we look at the arguments for and against labour provisions as presented in the discourse, literature and public debate; should labour provisions be linked to trade? Second, to examine the justifications and theories behind the arguments for and against this we need to look at the economic evidence; how does free trade impact labour standards? Obviously, how one answers the second issue is going to have an impact on the first, as a central part of the first debate rests on conflicting understandings of the second.

2.1.2.1. The arguments for labour provisions

The main arguments for labour provisions posit that there are indeed connections between trade and labour standards, and that regulations on both need to be connected. Two interrelated lines of arguments are central. On the one hand are arguments that view labour provisions as a compensation to make up for potential negative effects of trade liberalization that accompany trade agreements. In particular, these arguments are concerned that countries’ freedom to set their own labour standards

³ However, it is important to keep in mind that the dividing lines were not clear cut. Some labour unions of developing countries supported the inclusion of labour standards (Chan and Ross 2003), while some developed countries opposed it, notably Australia, United Kingdom, Germany and Switzerland (Shergill, 2015).

⁴ The only exception to this in today’s WTO is Article XX(e) dealing with prison labour.

⁵ Although note that labour provisions in most FTAs are not enforceable by trade sanctions. Granger and Siroen (2009) note however, that “the existence of a social clause does not prejudice the nature of actions to take”; what makes labour provisions special are their “contractual nature”.

⁶ Critics however, would point out that lacking any enforcement mechanisms, it is not surprising that countries sign up to “wellmeaning and broad principles without consequences for trade access” that they would not support in the face of sanctions in the case of noncompliance (Bhagwati, 1995:754).

⁷ The Singapore Declarations states: “We renew our commitment to the observance of internationally recognized core labour standards” (WTO, 1996)

without any global minimum standards combined with increased international competition through trade opening will lead to a “race to the bottom” where competitive pressure between countries incentivizes them to lower labour standards (Chan and Ross, 2003). Labour provisions are thus needed to prevent such a race, to protect workers’ rights and ensure that they aren’t sacrificed for economic gains, either because of moral issues or because of a perceived unfairness (Bhagwati, 1995; Rodrik, 1997).

On the other hand are arguments that see flexible labour standards as a trade distorting tool. From this perspective, the action of relaxing labour regulations in order to gain competitive advantage – “social dumping” – can be regarded as analogous to other forms of dumping, which *are* sanctionable under WTO (and FTA) trade rules (Bernaciak, 2012). Labour provisions are then needed to ensure a “level playing field”, where countries cannot compete on a fundamental issue such as labour standards. Similar arguments have been employed to promote the inclusion of other potentially trade-distorting practices in the WTO, such as competition policy, environmental regulation and currency manipulation, but with no success so far (Shaffer, 2001; Maskus 2002; Staiger and Sykes, 2010). A further point especially relevant for FTAs is that as these agreements often limit countries’ policy space in other areas, governments might be tempted or pushed to use relaxed labour regulations as the only available option for improving competitiveness (Arestoff-Izzo et al., 2008).

The fundamental assumption behind both these arguments is that lower labour standards are associated with higher competitiveness and thus more exports (more on this below).

From a juridical point of view, a further argument for connecting labour standards with trade is the enhanced possibilities for enforcement. As far as enforcement of international agreements goes, it is no secret that trade agreements and sanctions are relatively effective, at least compared to the toothless ILO (Chan and Ross, 2003; Bakhshi and Kerr, 2010). Indeed, ratified ILO conventions are legally binding, but the ILO has no way of enforcing these commitments (Shergill, 2015).

Although not necessarily an explicitly stated argument, a more self-interested reasoning for the labour provisions, from the point of view of the developed countries, is the appeasement of constituencies domestically during trade agreement negotiations. Considering the backlash against FTAs and free trade since the turn of the century, the promise of labour provisions that supposedly stem the exodus of jobs to developing countries⁸ can be a useful “fig leaf” to ensure wide support, especially from groups exposed to foreign competition (Bakhshi and Kerr, 2010; De Ville et al., 2016). Bakhshi and Kerr (2010) has pointed out that in addition to labour unions, in the case of labour provisions (and in a few other cases such as environmental standards), support for “leveling the playing field” is interestingly enough coming from *consumers*, and not producers, who have traditionally been the *vested interests* in protectionism.

In addition to the direct impact of free trade on labour standards, a separate but related strand of arguments for labour provisions point to another impact on labour standards FTAs can have: augmenting the relative power between capital and labour. Through various provisions extant in newer FTAs such as investor-state dispute settlement, private companies’ power is enhanced, while labour

⁸ The impacts of free trade and competition from developing countries on developed countries’ labour markets, while fundamental for the political movement pushing for labour provisions, are outside the scope of this study. See more details in Rodrik (1997), Krugman (2008), Liu and Trefler (2008), Autor (2013).

receives no equivalent boost. The relative power of capital over labour is important for labour standards on the workplace-level and the negotiations between employer and employee.

2.1.2.2. The criticism against labour provisions

Criticism of labour provisions and a labour-trade linkage has come from two main positions. First, many opponents to labour provisions have argued that the economic rationale behind the provisions, the “leveling of the playing field”, constitutes nothing more than thinly veiled protectionism (Bhagwati, 1995; Arestoff-Izzo et al., 2008). By linking labour standards to trade sanctions, developed countries are denying developing countries the use of their comparative advantage by forcing artificially high labour standards on them. Furthermore, social protection for workers is not only a function of economic development, but also a reflection of value judgements, and it is ethnocentric to expect all countries to share the same values as a few developed country proponents (Bhagwati, 1995). Critics on this side argue that the workers whom the labour provisions actually help are low-skilled workers in export industries in the North – the ones most exposed to competition from cheaper (production) locations, not the ones currently suffering under poor labour conditions (ibid.).

Second, opponents claim that labour provisions either don’t have the desired impact, or worse, have a detrimental impact on labour standards. Many critics have highlighted the blunt and imprecise nature of labour provisions, and claim that trade sanctions as a tool for improving labour standards is misplaced, as they are likely to harm the individuals they are meant to protect, for example by imposing trade sanctions on the industry the workers are found in (Maskus, 1999; Griswold, 2001; Martin and Maskus, 2001; Arestoff-Izzo et al., 2008). There are also worries that externally imposed labour standards will make labour too expensive compared to their productivity, eroding their competitiveness (Greenfield, 1997). Furthermore, protectionism and artificial restrictions on trade are likely to reduce trade, and thus to stymie the endogenous positive impact of trade and economic growth on labour standards. This notion is echoed in the stance taken by developing countries at the Singapore Ministerial Conference and is stated clearly in the final Declaration: “We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of [internationally recognized core labour standards]” (WTO, 1996). Finally, while these associated risks hypothetically could be outweighed by strong positive effects from including labour provisions, the slowly emerging empirical evidence generally showing little impact on de facto labour standards (see section 2.2.2).

The case for labour provisions then boils down to two key questions: First, are there negative effects from trade liberalization, in terms of social dumping and a race to the bottom (that can be avoided with the use of labour provisions)? And secondly, are exogenous measures needed to ensure labour standards or are the endogenous effects from trade openness and economic growth sufficient? In the following section we will look closer at the theoretical and empirical evidence.

2.1.3. Trade liberalization and labour standards

2.1.3.1. Theoretical approaches

The debate on labour provisions and the appropriateness of linking labour standards to trade is rooted in a debate about the causal relationship between the two. In broad terms, two opposing views dominate the debate, mirroring the two sides of the debate on the labour provisions themselves. On the

one hand are arguments that opening up to trade brings competitive forces to export sectors, which incentivizes a lowering of labour standards to increase trade and attract investments (Chan and Ross, 2003). In a race to the bottom countries compete with each other by undercutting labour regulations. The other side argues that this race to the bottom is not taking place, and views trade rather as inherently beneficial for labour standards, partly through its effect on economic growth, which in turn leads to an endogenous rise to labour standards (Arestoff-Izzo et al., 2008, Flanagan and Khor, 2012). Empirical studies examining whether the exogenous negative effect or the endogenous positive effect is strongest have not been conclusive, with widely ranging and often opposing findings, which makes any clear cut conclusion difficult. Considering the complexity and multi-faceted nature of both trade liberalization and labour standards however, it is reasonable that the ultimate impact is more nuanced than a simple “good or bad” answer.

Central to the case for labour provisions in trade agreements are arguments that trade liberalization can have detrimental impacts on labour standards, or at least that the endogenous effects from economic growth are reduced through exogenous factors, in some if not all aspects of labour standards. This theory argues that labour standards are costly, and countries thus have incentives to lower labour regulations (and thus standards) in order to gain a competitive advantage in trade and investments (Salem and Rozental, 2012). Liberalizing trade exposes countries to competition from other similar countries, for example other countries also competing on low wages or standards, which puts pressure on governments to lower regulations – “social dumping” – or neglecting to enact stronger regulation – “social chill” - in order to increase trade and attract investments (Bernaciak, 2012, De Ville et al., 2016). In terms of trade, the theory assumes that lower regulations means cheaper labour which in turn means lower prices and thus higher competitiveness (in particular in industries where labour is the main factor of production). In terms of investments, multinational companies are assumed to be attracted to locations with a docile and cheap labour force for the same reasons. A race to the bottom in labour regulations occurs when countries undercut each other due to a collective action problem. This supposes that lower labour standards is beneficial for trade and/or investments, and that countries’ enforcement and/or drafting of labour regulations is affected by the labour regulations of other countries (Olney, 2013).

While this problem is biggest between similar developing countries, some actors, in particular unions and workers of the developed countries, are equally worried about the effects of this race to the bottom on labour standards in developed countries. This view holds that production of goods is outsourced to countries with lower labour standards, which displaces production and shifts it from high labour standard-jobs to low labour standard-jobs (Stern and Terrell, 2003). At the same time the shifting of jobs reduces the wages and bargaining power of the laid off workers. All the while, the uneven liberalization of movement of goods and capital compared to workers (which trade agreements embody) further increases the bargaining power of employers relative to employees and governments (De Ville et al., 2016).

Meanwhile, the other side of the debate emphasizes the endogenous benefits of free trade on labour standards. According to the Heckscher-Ohlin and Stolper-Samuelsson theorems, opening up to foreign markets increases exports and thus increases demand for and enables higher returns to the relatively abundant factor, which in many developing countries would be unskilled labour (Luinstra 2004). This income effect is assumed to have a beneficial impact not only on wages, but also on broader labour standards (Flanagan, 2006). The pressure trade liberalization will have on labour standards varies between different standards, depending on whether it increases the supply of labour, as in the case of anti-discrimination regulation, or decreases it, as in the case of child and forced labour (Bakhshi and

Kerr, 2010). In another interpretation of neo-classical economic theory, a simple model of labour standards argues that the impact of trade on labour standards, through an expansion of the comparative advantage-following sectors, depends on the relative labour standards in these sectors compared to the rest of the economy, as workers will move into these sectors and a bigger share of workers will be under the reigning labour prevalent here (Luinstra, 2004). However this assumes that the labour standards themselves are static, which is not necessarily the case.

Furthermore, a central argument for free trade is that it brings economic growth, which in turn endogenously gives rise to labour standards. Child labour is an example of a phenomenon closely associated with poverty, which is again related to economic growth (albeit not as straightforward as many suggest; Luinstra, 2004). Griswold (2001) argues that “[a] rising standard of living also creates a more educated and politically aware population that expects higher standards, increasing political pressure on the government to institute reforms”, which in turn improves labour standards (Griswold, 2001: 6). In terms of wages the theory on wages claims that “capital accumulation leads to increases in labour productivity, which are accompanied by increases in real compensation” (Greenfield, 1997:15). As for the effect of trade on economic growth, a long tradition has made strong claims that these are mutually reinforcing, the benefits of trade including *inter alia* division of labour based on comparative advantage, economies of scale, technology transfer, stimulating domestic competition, and enabling global value chains.

Finally, another theory suggesting a beneficial impact of trade on labour standards is the “reputation channel” theory, which posits that liberalizing trade exposes countries to foreign markets, where consumers are more demanding with regards to the labour standards employed in the production of the goods they are purchasing, thus leading to a demand for higher labour standards (De Ville et al., 2016).

2.1.3.2. Empirical evidence

The question of which of these effects outweigh the others should be answered empirically, but so far the literature has not yielded unambiguous results. Several reviews of the empirical literature have been done, which all arrive at the conclusion that “the impact of trade by itself on labour market outcomes can hardly be generalized” (ILO, 2016:71; see also Häberli et al., 2011, Salem and Rozental, 2012, ILO, 2013, De Ville et al., 2016).

Race to the bottom

Several studies have examined the theory of the race to the bottom in labour standards. Picking apart the theory, we find several assumptions that can be tested empirically. First, for the theory to be true, lower labour standards have to be associated with increased trade competitiveness and/or increased foreign direct investment (FDI) inflows. Second, one country’s enactment and/or enforcement of labour regulations has to be influenced by similar changes in other countries. Third, at the establishment-level, as labour standards are supposedly lowered to save costs and improve competitiveness in the face of international competition, we would expect export sectors to be performing as bad as inward-oriented sectors in terms of labour standards in order to exploit fully the low labour regulations present in the country.

The first assumption covers both competitiveness of trade and attractiveness as a location for FDI. In terms of trade, a thorough review of available empirical evidence from 2007 finds no striking evidence of any impact, mostly because of inadequate methodology and endogeneity problems in previous

studies (Dehejia and Samy, 2007, see also Maskus, 1999). Among more recent studies, Bonnal (2008) examines the impact on trade of labour standards (measured by frequency of strikes and lockouts as well as cases of injury to avoid endogeneity issues) and finds that the value of labour standards is positively associated with trade. Häberli et al., (2011) finds that trade under FTAs has a deteriorating effect on labour standards (as measured by three indicators on employment policy: notice period, severance pay and gross replacement ratio), but only in North-North agreements. Kucera and Sarna (2006) uses a gravity model on freedom of association and collective bargaining (FACB) rights in particular, and while they find a significant positive effect on aggregate exports, the effect disappears when focusing on labour-intensive exports, in which case they find no statistically significant result. It is likely that different types of labour standards affect trade differently, as some standards are more costly to comply with than others, but few empirical studies have been done to examine this (Salem and Rozental, 2012). An exception is Bakhshi and Kerr (2010) which finds a weak but significant negative impact on trade from higher standards in forced labour and FACB, but not in gender discrimination or child labour, on unskilled labour-intensive exports.

In terms of FDI, a majority of studies find a positive correlation between higher labour standards and higher FDI inflows (Aggarwal, 1995; Kucera, 2002; Brown et al., 2004; Brown et al., 2011), while some find no correlation (Flanagan and Khor, 2012). One explanation for this is that while labour standards increase labour costs, the significance of labour costs in FDI decisions is usually small, and is thus outweighed by other positive impacts of labour standards, such as increased quality of labour or political stability (Kucera, 2002). However, studies that have taken the heterogeneity of FDI into consideration find more mixed evidence. Blanton and Blanton (2012) find that higher labour standards are positively correlated with FDI in the manufacturing sector, while being negatively correlated in the services sector. Meanwhile, Olney (2013) finds negative correlation between labour standards and FDI inflows overall, with vertical FDI (manufacturing for sales in the home country) having the strongest correlation, but his measure of labour standards is only related to employment protection.

Are countries' decisions on labour regulations affected by other competing countries? Two empirical studies indeed find evidence of this (Olney, 2013; Davies and Vadlamannati, 2013). While Olney only examines OECD countries, Davies and Vadlamannati corroborates his finding with a more comprehensive spatial econometric analysis on developed and developing countries. Seen in light of the findings above this seems puzzling. It appears countries compete with each other on lowering labour standards, despite a lack of solid evidence to support that this lowering has any beneficial impact on trade or investment.

For the third assumption, the available empirical evidence is overwhelmingly clear. Contrary to the popular belief among critics of globalization, a large body of literature supports the fact that workers in export sectors and those employed by multinational companies (MNCs) enjoy better working conditions and higher wages than in the rest of the economy in developing countries (Aggarwal, 1995; Brown et al., 2004; Powell and Skarbek, 2004; Warren and Robertson, 2011; Lai and Sarkar, 2011,⁹). These findings have been put forward as a strong argument against the race to the bottom hypothesis; if developing countries compete to attract MNCs by lowering labour regulations, why don't the MNCs exploit the full potential of the low regulations/lack of enforcement (Stern and Terrell, 2003)?

⁹ Furthermore, see Black and Brainerd (2004) on gender discrimination, see Skarbek et al., (2012) for a sociological approach, and see Hijzen et al. (2010) for a less positive view.

On the other hand, while the evidence fails to show unambiguously that MNCs on aggregate are attracted by lower labour standards, qualitative studies have shown how they are in fact lobbying against labour regulations in countries they are investing in (Global Labour Strategies, 2007; Engen, forthcoming). These lobbying efforts have been further shown to be influenced by international consumer pressure (Global Labour Strategies, 2007; Engen, forthcoming), which hints at the importance of the brand image of MNCs, and suggests that a reputation effect (see above) might be part of the reason MNCs are more compliant with labour regulations and pay higher wages. The reputation channel is also supported by a 2010 study on the effect of the sweatshop movement on textile, footwear and apparel factories in Indonesia, where pressure from international consumers led to a general improvement in labour standards and wages in these sectors¹⁰ (Harrison and Scorse, 2010).

The endogenous effects from trade on labour standards

In terms of the endogenous effect of economic growth, the evidence is clear that growth is linked to improvements in labour standards. In static terms, countries with higher GDP per capita generally score higher on most aspects of labour standards (Arestoff-Izzo et al., 2008; Flanagan, 2006; Flanagan and Khor, 2012). While these static snapshots don't tell us anything about causality, there is also "widespread agreement that labour standards rise endogenously as income rises, along with some compelling evidence to that effect" (Maskus, 2003:13, see also Arestoff-Izzo et al., 2008; Giumelli and van Roozendaal, 2016). However endogeneity problems exist, as studies also find a positive impact on growth from labour standards (Bazillier, 2008). Meanwhile, other studies such as Mosley and Uno (2007) find a negative correlation between per capita income and labour rights, which suggests that the association might be context-specific.¹¹

The link between trade and economic growth is also well documented, although the empirical literature comprises intense debates over the last decades (Berg and Krueger, 2003; Wacziarg and Welch, 2003; see also Rodriguez and Rodrik, 2001). In terms of FTAs, empirical evidence shows that these increase trade (Baier and Bergstrand, 2004), which suggests that FTAs should improve labour standards regardless of labour provisions. Explicitly examining the link between trade and labour standards, a 1996 OECD study concludes that "[t]he strongest finding is that there is a positive association over time between successfully sustained trade reforms and improvement in core standards" (OECD, 1996:13).

While these empirical findings seem to support the idea that trade is beneficial for labour standards *in general*, this does not mean that the gains are evenly distributed or that additional measures would not have a further enhancing effect on labour standards (Arestoff-Izzo et al., 2008). Further, the lack of generalizable evidence suggests that the impact of trade liberalization is sensitive to variations in countries, institutions and industries, and in particular varies between different facets of labour standards. We will now turn to the four aspects of the ILO core labour standards: freedom of association and collective bargaining, child labour, discrimination, and forced labour.

¹⁰ However, the study also found that the increased wage led to falling profits, reduced productivity growth and plant closures for smaller exporters (Harrison and Scorse, 2010).

¹¹ Mosley and Uno (2007) explain this controversial finding by suggesting that countries with higher per capita income are more industrialized, which leads to more opportunities for labour right violations, merely because pre-industrialized societies have lower unionization and lower demands.

For freedom of association and collective bargaining rights (FACB), two studies by Neumayer and de Soysa (2006) and Mosley and Uno (2007) find opposite effects from openness to trade. Using the same indicators on FACB (taken from Kucera, 2002) and on trade openness (trade/GDP), the former paper finds a positive impact, while the latter study finds a negative impact. The discrepancy is presumably caused by the fact that the latter takes into account the effect of FDI, which has a positive impact on FACB rights, while this effect is hidden in the former (as the determinants of trade and FDI inflows are at least partly overlapping). Meanwhile, Vadlamannati (2015), using an aggregate variable on economic globalization taken from the KOF globalization index (Dreher, 2006) which includes flows and policies on both trade and investment, find no statistically significant effect on FACB. Further research is needed to weed out the exact factors responsible for the variation in effect.

Studies on the effect on child labour are somewhat less inconclusive, with the overall results tending towards either slightly positive or non-existent correlation. An early study by Shelburne (2001) finds a negative impact of trade openness on an ILO estimate of the labour participation rate of children 10-14 years (which is to say child labour was reduced). This finding is corroborated by a narrower study on Indonesia by Kis-Katos and Sparrow (2011), which found regional variation in child labour to be correlated with exposure to trade. A close examination on trade liberalization in Viet Nam showed that an increase in the price of rice, as a result of trade liberalization, accounted for almost half the decrease in child labour over the 1990s (Edmonds and Pavcnik, 2002). The case study shows further the complex outcomes from liberalization, as the decrease in child labour was only taking place in rural areas, which benefited from the price increase; in urban areas, the increase in rice prices led to an increase in child labour. On the other hand, Edmonds et al., (2010) found that while child labour was reduced overall in rural India in the 1990s, districts more affected by lower tariffs (because of the employment composition) witnessed a slower decrease than elsewhere. The authors find that the main mechanism for this is trade openness leading to slower poverty reduction in these districts, emphasizing the heterogeneous effects from trade on income. While the findings are robust, the effect is rather small, which suggests that the role of trade openness is minor. This is also the conclusion of a cross-country analysis by Edmonds and Pavcnik (2004), which finds no significant impact of trade openness on child labour once income differences are accounted for.

Evidence of gender effects from openness to trade have been found in multiple studies. A study on United States' manufacturing industries by Black and Brainerd (2002) finds evidence that the residual gender wage gap in industries exposed to international competition narrowed more rapidly than in less exposed industries. The authors' explanation is that discrimination is costly, and that competitive pressure from globalization forces employers to give up discrimination in order to compete. The same results are found in a study of German manufacturing (Klein et al., 2010). For developing countries, Juhn et al., (2013) corroborates this finding in a study of Mexican workers facing tariff reductions in NAFTA, but explain it with a slightly different theory. Using a panel of establishment-level data, they find that tariff reductions increased the employment and wage shares of female workers. The authors argue that competition and productiveness in the export sectors induces firms to use technological innovations, which are conducive to a higher share of female workers. A cross-country analysis by Oostendorp (2009) finds that the gender wage gap decreases with increased trade for developed countries, but with no coherent significant effect on developing countries.

A similar theory has been used to explain the effects on forced labour. While it could be argued that competitive pressure on wages would lead to increased forced labour in extreme cases (ILO, 2005), the only identified empirical study on the topic finds that openness to trade is correlated with reduced forced labour, although the study only uses a cross-sectional regression (Neumayer and de Soysa, 2007).

The authors explain this by treating forced labour as an extreme form of wage discrimination, which, as in the case with gender discrimination, is untenable under global competitive pressure. The lack of empirical studies on forced labour is striking, and would definitely be an area in need of further study.

Protectionism

Some of the criticism against labour provisions is that externally imposed higher labour standards would erode developing countries' competitiveness, and thus end up having a negative effect on trade, growth and the endogenous improvements in labour standards. However the empirical evidence shown above on the impact from lower and higher labour standards on trade and FDI remains inconclusive. If anything, the evidence available so far fails to show convincingly that improving labour standards will have a significant negative impact on trade. Quite the contrary, studies have found that improving labour standards is associated with increased economic growth, suggesting a positive feedback loop between labour standards and growth (Bazillier, 2008). This does not of course preclude the possibility that a social clause in WTO or in FTAs could be used to punish countries in violation of core labour standards, but it suggests that improving labour standards to the agreed level would not leave developing countries with reduced competitiveness. A recent econometric study by ILO (2016) examining the impact of FTAs on trade finds no significantly different impact on trade between agreements including labour provisions and those without (both have a positive impact), but this could just be because the labour provisions have no impact on labour standards (see section 2.2.2).

2.1.4. Summary of literature findings

The empirical evidence informing the debate on trade liberalization and labour standards is thin at best, and in need of further research. However the preliminary results available so far tend to suggest that:

- (1) There is little unequivocal evidence for a race to the bottom in labour standards,
- (2) Social dumping does not seem to have a strong effect on competitiveness (if any),
- (3) Improving labour standards is not detrimental to trade or attracting FDI, and
- (4) Economic growth is beneficial for improving labour standards.

The first three points are the most affected by a lack of strong empirical studies, and in particular it seems that it is likely that low-skill and low-wage manufacturing industries would be more affected than the aggregate results suggest. The fourth conclusion has the strongest empirical support.

With these caveats in mind, bringing this back to the debate on the labour provisions, it could be argued that the concerns of both sides are exaggerated. On the one hand, the fears of social dumping and the race to the bottom informing the arguments for a social clause have a weak or base in empirical evidence. On the other hand, fears that labour provisions will deny developing countries' comparative advantage and trade by enforcing labour standards also seem to be unfounded. On the whole, we can assume that the net benefit from trade on labour standards is positive, albeit not necessarily for all sectors or industries. At the same time however, as with other debates on automatic endogenous benefits from trade and economic growth,¹² the fact that economic growth is correlated with *endogenous* improvements of a social outcome does not imply that *exogenous* measures to improve it further are unnecessary or without effect. In this context the role of labour provisions might be more as

¹² See for example Rodrik (2000) on poverty, available at <http://www.imf.org/external/pubs/ft/fandd/2000/12/rodrik.htm>

an additional measure to support the improvement of labour standards rather than a check against the hypothesized negative impacts of trade. To this end, Arestoff-Izzo et al., (2008) have argued that “[t]he objective of promoting decent work and sustainable development is no longer to deal with the negative effects of opening up trade, but rather at supporting or boosting the endogenous development of labour standards resulting from the part played by trade in development”¹³ (Arestoff-Izzo et al., 2008:12).

2.2. Labour provisions

Despite the lack of decisive evidence in either direction, labour provisions are a nonetheless already a fact of life in the international trade regime through their inclusion in FTAs.¹⁴ In this section we will study labour provisions closer; what are labour provisions and what functions do they serve? What does the current global landscape of labour provisions look like? How do labour provisions differ from each other? And what does the empirical evidence tell us about their impact?

2.2.1. What are labour provisions?

The ILO definition of labour provisions describe them as “any standard which addresses labour relations or minimum working terms or conditions, mechanisms for monitoring or promoting compliance, and/or a framework for cooperation” (ILO, 2016:11). This wide definition mirrors the large variety in labour provisions and their wide scope.¹⁵ At the minimum, all labour provisions include at least two core functions, explicitly or implicitly; (1) they describe a certain set of standards or commitments, and (2) they outline a mechanism to ensure compliance and adherence to these standards.¹⁶

Labour provisions are found either in the main text of the trade agreement itself or as a memorandum attached to it, with or without explicit reference in the main text. In the main texts, labour provisions are found in separate chapters on labour or in chapters such as sustainable development, cooperation or investment.

It is noted that the ILO definition of labour provisions and its focus on “labour relations and/or working terms or conditions” does not include all aspects of FTAs that could have an impact on the welfare of workers. In particular, it does not capture what Delpech and Ebert (2014) have called “employment policy provisions” (EPP). In box 1 we look closer at one such aspect that falls outside the definition; labour mobility.

¹³ Other authors have argued completely opposite. For example Häberli et al., (2011) argue that FTAs are not a good arena for discussing social policy improvements, as the competent authorities for labour issues are not the lead agencies in a [FTA]” (Häberli et al., 2011:41). In their view the role of labour provisions in FTAs should be to prevent a race to the bottom.

¹⁴ Labour provisions are further included in unilateral trade arrangements, IIAs, and in investment policies of development finance institutions (ILO, 2016). As we will see below elements included in labour provisions are also found in other non-trade related international agreements and bilateral memorandums. This paper will focus mainly on FTAs.

¹⁵ See Kamata (2016) for a discussion on the definition of labour provisions.

¹⁶ References to labour standards are sometimes made in the preamble, but these are not referred to as labour provisions in this paper (see Bourgeois et al., 2007).

Box 1: Employment Policy Provisions #1: Labour mobility in FTAs

For workers, the opportunity to relocate to a different country for employment, temporarily or permanently, can have enormous implication for their welfare, especially considering the huge wage gaps between countries (Pritchett 2006; Stephenson and Hufbauer, 2011). Many FTAs include provisions that affect labour mobility in a wide variety of ways, ranging from common labour markets to detailed provisions on temporary entry of technical personnel (Delpech and Ebert, 2014). An overview from 2003 found the following range of labour mobility provisions in FTAs: access to the labour market, full national treatment and market access for service suppliers, commitments on visas, special market access or facilitated access for certain groups, separate chapters dealing with all temporary movement including that related to investment or to trade in goods or investment, specific reference to key personnel in relation to investment, extension of WTO treatment to non-WTO Members, and nondiscriminatory conditions for workers (Nielson, 2003).

Overall, two main trends are generalizable from a review of trade agreements; 1) the most comprehensive labour mobility provisions are usually found in the more comprehensive agreements and between countries of similar income level, such as the European Union, MERCOSUR and NAFTA, while limited provisions are found in bilateral agreements and between countries with wide income gaps. 2) labour mobility provisions most commonly involve highly skilled workers, such as technical personnel, investors, traders and business persons, and rarely involve low-skilled workers, despite the fact that these tend to make up the largest part of international labour migration (Delpech and Ebert, 2014).

For workers, the potential benefits of temporary or permanent labour migration are apparent in the enormous labour migration flows we see globally. FTA provisions enabling labour migration can have a huge impact on individual workers' lives and incomes, but also on their families back home through remittances. Among other benefits, studies have for example found a positive impact on reduction of child labour in home countries from increased international labour mobility (De Paoli and Mendola, 2014). Controlling labour migration and bringing it under the purview of international agreements might also help to reduce illegal migration and the plethora of negative consequences this entails for workers (Guthrie and Quinlan, 2005). Indeed, one of the stated objectives behind the 2002 Residence Agreement signed under MERCOSUR on labour mobility in the area was to regularize illegal migration across the area (Jurje and Lavenex, 2015). Labour cooperation under the New Zealand-Philippines MoU on Labour signed in conjunction with an FTA led in 2015 to a bilateral agreement on "The Principles and Controls on the Recruitment and Protection of Filipino Workers in New Zealand", with the objective of "eliminat[ing] costly job placement and other recruitment-related fees, illegal recruitment and human trafficking, document fraud and fake training and qualifications credentials".¹⁷

Labour mobility provisions are a contentious topic, and interestingly the opposition to these provisions are very different from what we see for other labour provisions (see section 2.1.2); whereas unions and workers in the North are among the biggest proponents for the standard labour provisions, they are in many cases opposed to labour mobility provisions, despite their potential positive impacts on migrants and their families. An obvious example is the 2004 eastward enlargement of the European Union, where labour mobility and the potential inflow of cheap labour from Eastern European countries became the most debated social issue among the old European Union members (Meardi, 2009). A recent case is the

¹⁷ Philippines Department of Labour and Employment Secretary Rosalinda Baldoz, quoted in Manila Times September 24, 2015; available at <http://www.manilatimes.net/new-zealand-ph-ink-labour-agreement/220472/>

labour union backlash against the Australia-China FTA signed in 2015. The lenient labour mobility provisions included came under fire from Australian workers fearing negative consequences on the Australian labour market of Chinese migrant workers, in particular because the agreements omits labour market testing for temporary workers, where employers must consider local employees before resorting to international labour.¹⁸

While the WTO doesn't deal directly with labour mobility, the General Agreement on Trade in Services (GATS) covers movement of natural persons as service suppliers under mode 4 ("temporary movement of natural persons"; Stephenson and Hufbauer, 2011). This is however strictly temporary, and does not cover questions of entering a labour market or of citizenship. In terms of specific details individual member countries have varying commitments under GATS, but in general these tend to be restrictive. Still, the mode 4 provisions under GATS have been used as a starting point in many FTAs, taking the same structure as GATS but expanding commitments (Nielson, 2003).

While the European Union is the undisputed paragon of labour mobility, Asia-Pacific countries are also increasingly emphasizing labour mobility in their agreements (see Stephenson and Hufbauer, 2011). The most prominent example is the Eurasian Economic Union (EAEU) which entered into force 1 January 2015. The union aims to enhance regionalization among former Soviet Union states, and builds on the free movement of goods, services, capital and labour, bringing together five states and around 180 million people (Vinokurov and Pereboyev, 2016). The agreement allows citizens from any state to move to and work in another state, without any licensing or quotas. In the Asia-Pacific region it is clearly the regional trade agreement with the most comprehensive approach to labour mobility.

The ASEAN Economic Community (AEC) also has high ambitions for free movement of labour, but has as of yet not achieved the same level of integration as the EAEU. Thus far, ASEAN labour mobility has not moved much beyond GATS commitments on mode 4 service delivery (Jurje and Lavenex, 2015), with the few commitments present mostly revolving around skilled workers, despite the fact that most of the current migration is in low-skilled workers (Huelser and Heal, 2014). In fact, the AEC Blueprint 2025 explicitly emphasizes the goal of facilitating the movement of skilled labour, with no mention of unskilled labour (ASEAN, 2015). Reports show that progress on the regional integration in terms of labour mobility has been lacking compared to other areas such as trade in goods and services or trade facilitation (Huelser and Heal, 2014).

In addition to these comprehensive regional trade agreements, labour mobility provisions are also found in various forms in bilateral FTAs.¹⁹ Most commonly these take the shape of regulations on "movement of natural persons" under trade in services, and build on GATS mode 4 but extend commitments. For example, the relevant chapter in the Japan-Philippines FTA outlines commitments for: short-term business visitors, intra-corporate transferees, investors, natural persons engaging in professional services or supplying services which require technology or knowledge at an advanced level or which require specialized skills belonging to particular fields of industry, and "natural persons of the other Party who engage in supplying services as nurses or certified careworkers or related activities" under certain conditions (Japan-Philippines 2008). Interestingly, and in contrast with usual practice, the last

¹⁸ The Guardian, June 17, 2015; available at <https://www.theguardian.com/australia-news/2015/jun/17/union-calls-for-labour-to-block-free-trade-agreement-with-china>

¹⁹ The Asia-Pacific region is also home to close to 100 MoUs and bilateral agreements dealing specifically with labour migration (ILO, 2015).

item involves low-skilled workers; however it is not clear how big impact this has had in practice, as The Japan Ministry of Health, Labour and Welfare later has announced that there would be quantitative restriction on these workers²⁰ (Amante, 2007).

Singapore is among the most active countries in the region with regard to labour mobility provisions in its FTAs, including “generous commitments” in its agreements with United States, New Zealand, Republic of Korea, Japan, India, China and the European Union (Jurje and Lavanex, 2015). Showing the potential extent of labour provisions, the United States established under the Singapore-United States FTA of 2004 a new type of visa for highly skilled Singaporean workers, the H1-B1, which does not require labour market testing and eases the procedures for employers (ibid.).

Labour provisions originated in unilateral preference schemes such as Generalized System of Preferences (GSPs), where unilateral trade concessions offered to developing countries were linked to conditions such as human rights and labour standards (Compa and Vogt, 2001). Since the first labour provision in an FTA appeared in NAFTA in 1994, they have spread quickly, and are now found in 28% of all FTAs in force notified to the WTO (ILO, 2016). Of the agreements entered into force since 2008 almost half have contained provisions, and since 2013 this number is over 80% (ibid.). The main partners responsible for the emergence and spread of this trend are the United States, European Union, Canada and Chile,²¹ however other countries have also started experimenting (chapter 3 looks at labour provisions in Asia-Pacific). Worldwide, big variations exist between countries in terms of design and implementation of, and political processes behind labour provisions (Lazo Grandi, 2009; Ebert and Posthuma, 2011; ILO, 2016).

While labour provisions are intended to improve labour standards, measuring their effectiveness is fraught with difficulty. Two main approaches have been adopted in the literature: first, quantitative comparative studies of certain indicators of labour standards between countries with and without labour provisions or certain aspects of labour provisions; second, qualitative studies, cases studies and evaluations of countries with labour provisions.

On the quantitative side, several authors have pointed to methodological difficulties, including the lack of data and the difficulty of measuring labour standards (see ILO (2016) for an overview). As discussed in the review of the literature in the previous section, another problem in the quantitative literature is the lack of nuance in measuring labour provisions. An example is a recent cross-country regression by ILO (2016), which looks for a correlation between indicators on labour standards and whether a country has an agreement with labour standards or not, completely disregarding the great variety in labour provisions. Another study by Dewan and Ronconi (2014) alleviates the problem somewhat by looking at only agreements signed by the United States, which tend to be more similar; however even those agreements display great variety in terms of labour provisions. They find that signing an FTA with the United States (all of which contain labour provisions) led to an increase in the number of labour

²⁰ The Japan Times, April 22, 2016; available at <http://www.japantimes.co.jp/news/2016/04/22/national/social-issues/hurdles-cleared-disillusionment-homesickness-prompt-filipino-health-workers-exit-japan/#.WBrryi196ig>

²¹ Agreements with these four countries account for almost 60% of all agreements with labour provisions, and are as such the object of the most extensive research (ILO, 2016). For a comparative review of these countries' approaches see: Polaski (2003), Bourgeois et al. (2007), Arestoff-Izzo et al. (2008), Lazo Grandi (2009), Ebert and Posthuma (2011), ILO (2013), De Ville et al. (2016), ILO (2016). For US agreements see: GAO (2015), Bolle (2016), Giumelli and Roozendaal (2016). For EU agreements see: Campling et al., (2015), Ebert (2016).

inspectors and labour inspections compared to other countries. A study by Kamata (2016) goes further, and distinguishes between a conservative and liberal classification of what constitutes labour provisions. He finds no significant impact of either on labour standards as measured by work hours, earnings, fatal injury rate or the number of conventions ratified. The most refined look at labour provisions is a recent exploratory study by Giumelli and van Roozendaal (2016), which attempts to nuance labour provisions more, and differentiates between labour provisions based on pre-ratification conditions, the existence of a credible threat, and the amount of financial support received (they find no correlation between stricter provisions and improvements in labour standards, although the sample is very small). In light of the heterogeneity in labour provisions, for quantitative studies to be useful, they will have to incorporate a much finer typology of provisions in order to isolate the effects we are looking for.

On the qualitative side positive impacts have been identified, although the evidence base is rather small (Bourgeois et al., 2007). With varying attention paid to the specific mechanisms at work, reviews of countries with labour provisions have found evidence of improved labour standards (DOL, 2012; DOL, 2015; GAO, 2014; ILO, 2016; DOL, 2016). However in general terms, it is difficult to prove that the improvement is caused by the labour provision. Furthermore, how you measure results matter. A 2014 review of United States' labour provisions in FTAs finds that progress had been made in several partner countries according to some indicators, but that this did not give the full picture (GAO, 2014). For example, in El Salvador the Ministry of Labour's budget had increased by 120%, increasing the number of labour inspectors, inspections conducted and the number of fines imposed. However, stakeholder interviews revealed that the increase in budget and number of inspectors had not improved the effectiveness of the labour inspectorate, court decisions were often not enforced, and the ministry did not collect fines for violations. In Oman, the report found that the Government had enacted a number of positive labour laws including FACB rights, however these and other regulations were not enforced in relation to foreign workers.

2.2.2. A typology of labour provisions in FTAs

No matter which methodology is used to assess the impacts of labour provisions, it is clear that the heterogeneity of labour provisions needs to be taken into account if one is to distill recommendations for how to improve the impact in the future. As we will see, the design and text of the labour provisions can have consequences for its potential impact, although this inevitably is combined with implementation and practice. The remainder of this chapter will look at variations in labour provisions within three aspects; first, as outlined above, (1) standards, and (2) compliance mechanisms. Finally, (3) monitoring will be considered on its own. In particular the role of third party actors will be examined further, as the involvement of civil society and the private sector is an emerging feature in many FTAs. Table 1 gives a schematic overview of the typology.

Table 1. Typology of labour provisions in FTAs

1. Standards and Commitments (section 2.2.2.1)	
	International labour standards
	Mutually agreed labour standards
	Domestic labour laws
2. Compliance mechanisms (section 2.2.2.2)	
	Enforcement
	- Consultations
	- Arbitration
	Cooperation
3. Monitoring (section 2.2.2.3)	
	National Monitoring
	Centralized Monitoring
	Unilateral Monitoring
	Civil Society Monitoring

2.2.2.1. Standards and commitments

Every labour provision includes some normative content in terms of minimum standards. While few agreements demand that these standards be adopted into law (agreements often go to great extent to underline that the partners are free to set their own domestic policies), the standards are normally used to set the scope for the actions outlined in the provision, whether this is striving to comply with them, enforcing already existing labour laws on these standards, not lowering already existing labour laws on these standards, or cooperation on them. Three main categories of standards and commitments are found in FTAs: i) International labour standards, ii) Mutually agreed standards, and iii) Domestic labour laws. Each one is reviewed in turn.

i) International labour standards (ILS)

On the multilateral arena, several declarations, conventions and agreements have been signed by a majority of the world's states, and are in many cases used as a basis for labour standards in labour provisions. The most common references in FTAs are to the following:

- 1998 ILO Declaration on fundamental principles and rights at work and its follow-up ("1998 ILO Declaration"),²²
- 2006 United Nations ECOSOC Ministerial declaration on generating full and productive employment and decent work for all ("2006 ECOSOC Declaration"),²³ and
- 2008 ILO Declaration on social justice for a fair globalization ("2008 ILO Declaration").²⁴

²² ILO, 1998

²³ ECOSOC, 2006

²⁴ ILO, 2008

The 1998 ILO Declaration is by far the most commonly used baseline for standards. Unlike other ILO conventions, which depend on ratifications by individual member countries, the Declaration obligates every member country to respect its fundamental rights just by effect of being a member (ILO, 1998). These fundamental rights, sometimes called the Core Labour Standards (CLS), are: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination with respect to employment and occupation. These fundamental labour rights are embodied in eight fundamental conventions (two per fundamental right). The “Follow-up” to the Declaration includes mechanisms for monitoring the efforts of non-ratifying countries in ratifying remaining fundamental conventions (Bolle, 2016). In light of the debate discussed above (section 2.1), it is interesting to note that the 1998 declaration explicitly mentions that “labour standards should not be used for protectionist trade purposes” (ILO, 1998: §5).

The 2006 ECOSOC Declaration reflects a commitment by the UN to incorporate productive employment and decent work in all its activities, as a means to meet the Millennium Goals, thus building on the Decent Work Agenda set out by the ILO (Lazo Grandi, 2009). The ECOSOC Declaration refers to the 1998 ILO Declaration and recognizes its central role and the importance of continued work towards ratification of the fundamental conventions, but goes further in both highlighting the importance of aspects not contained in ILO conventions, such as macroeconomic policies for employment, as well as pushing for ratification of additional conventions, in particular those “concerning the employment rights of women, youth, persons with disabilities, migrants and indigenous people” (ECOSOC, 2006: 8).

The 2008 ILO Declaration was released as a major reformulation of ILO’s efforts to cope with new realities of a globalized world in 21st century (Maupain, 2009). Based on the Decent Work Agenda it contains four main objectives: 1) promoting employment, 2) developing measures of social protection, 3) promoting social dialogue, and 4) respecting, promoting and realizing the fundamental principles and rights at work, the latter being a link to the 1998 Declaration.

In addition to these major declarations, some labour provisions further explicitly promote ILO conventions, also beyond the fundamental conventions. Some recent European Union agreements for example state that “Parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions as well as the other Conventions that are classified as ‘up-to-date’ by the ILO” (EU-Republic of Korea, 2011; article 13.4). Another example has labour provisions urging partners to “reaffirm their commitment to effectively implement in their law and practice the fundamental, the priority and other ILO conventions ratified” (EU-Georgia, 2014).

While ratification of ILO conventions in no way ensures improvement of de facto labour standards (Flanagan, 2002), their use as an international standard (compared to the other declarations) has important benefits. Most notably, ILO conventions are impartially monitored by the ILO, who issues reports and evaluations of countries’ progress in adhering to the conventions, under the purview of the Committee of Experts on the Application of Conventions and Recommendations (CEACR). Linking commitments to externally monitored and relatively unambiguous standards can be beneficial for determining compliance as well as for providing legitimacy to a ruling in disputes.

On the other hand, highlighting the shortcomings of referring to other international labour standards, Agusti-Panadera et al. (2014) have argued that the 1998 Declaration was in fact never designed to be used as a basis for legal arbitration, and its use in labour provisions could involve difficulties in determining compliance, as it is not monitored by the ILO (in contrast with specific conventions).

Furthermore, there is a risk that if vague declarations (as opposed to conventions) are referred to in FTAs they can be interpreted differently under various agreements, leading to an erosion of the commitments (ibid.). Nonetheless, references to international standards can improve coherence between agreements; as countries sign agreements with labour provisions with several partners, the administrative burden can be decreased if countries only must commit to one common set of standards.

The way these commitments are included in the agreement varies, with varying legal implications. Agusti-Panadera et al. (2014) outlines three main categories. On one end of the spectrum are reaffirmations of partners' commitments and obligations under the declaration or convention in question. These are the most common references to ILS, but they have no legal obligations on their own. The second type cites ILS as a scope for further commitments and enforcement in the provision, for example delimiting the types of domestic labour standards that come under the purview of the agreement. The third type of reference uses the ILS as a basis for commitments that are legally binding under the agreement. This is implemented in two ways: first, the "best endeavors" approach, where partners "strive to ensure" compliance with the standard. The second model is stricter and demands that the partners "provide for" labour standards as set out in the ILS. Of course, although they vary in legal obligations, the actual legal *consequences* of these references vary depending on the enforcement mechanism of the provision (see section 2.2.2.2).

According to a 2013 survey of agreements, 70% of FTAs with labour provisions contained a reference to ILO instruments (Agusti-Panadera et al., 2014). Of these, 80% referred to the 1998 Declaration, while only 20% referred specifically to ILO conventions.

ii) Mutually agreed labour standards

Many agreements refer to a set of mutually agreed labour standards or principles instead of international labour standards, but there is often significant overlap between these two categories in terms of obligations. Although these standards can be tailored to each specific agreement, major partners often have a set of labour standards they tend to include in all their agreements, sometimes self-declared as "internationally recognized labour standards" (Ebert and Posthuma, 2011). Referring to standards this way is less common than the formal international labour standards, but are used in (1) agreements signed before 1998 (before the signing of the ILO Declaration), (2) agreements with a partner not in the ILO (e.g. Taiwan Province of China), (3) when partners do not want to include certain CLS, or (4) when partners want to go beyond CLS. An example of (3) is the US-Jordan FTA (2001), which does not include non-discrimination in its list of standards (see Arestoff-Izzo et al., 2011). In terms of (4) additional standards to CLS include *inter alia* working conditions (in terms of wage, hours of work, occupational health and safety) and protection for migrant workers in their standards.²⁵

iii) Domestic labour laws

The final form of commitments employed in FTAs refers to partner countries' own already existing domestic laws. These commitments are in contrast to the two outlined above, as they warrant no improvement in the domestic labour laws reflecting international standards. While these commitments can be potentially wider-reaching than CLS commitments (as they include *all* domestic labour laws), in

²⁵ See for example Canada-Peru FTA agreement on labour (2011) or the NAFTA side agreement on labour (NAALC; 1994).

most agreements the domestic labour standard commitments are combined with agreed labour standards (either international labour standards or mutually agreed ones) to limit the sectors of the domestic labour laws that are affected by the agreement.

2.2.2.2. Compliance mechanisms

The second main aspect of labour provisions is how they provide for the carrying out of the commitments and standards referred to above. Obviously, in terms of impact, what matters is not only the normative content of the agreement, but also whether the partners comply with their commitments. Compliance mechanisms found in FTAs range from very weak to strict, and usually involve either (A) an enforcement mechanism such as dialogue and consultations, sanctions or fines, and/or (B) cooperation mechanisms. Ebert and Posthuma (2011) categorize provisions with legally binding enforcement mechanisms such as sanctions and fines as *conditional*, and provisions with only cooperation elements and weak non-binding enforcement mechanisms as *promotional*. However, almost all agreements with enforcement mechanisms also contain cooperation in a combined approach using both “the carrot” and “the stick” (ILO, 2013; Cimino-Isaacs, 2016). A 2013 review by the ILO finds that close to 60% of all agreements with labour provisions contain promotional elements only (ILO, 2013). In terms of the partners with the most FTAs with labour provisions, the European Union, United States and Canada, the perhaps single biggest difference in their approaches to labour provisions is that the EU has adopted a strictly promotional approach (with one exception), while the United States and Canadian model combines promotional elements with conditional ones²⁶ (De Ville et al., 2016). As we have seen above (section 2.1), the main criticism from many critics of labour provisions is the enforcement aspect, but this is only present in 40% of agreements with labour provisions (ILO, 2013).

A) *The conditional approach - Enforcement*

The main theoretical motivation behind including conditional provisions is that compliance is assumed to be more likely when economic disincentives are put behind non-compliance.²⁷ While most countries have signed and ratified most of the ILO core conventions,²⁸ it is clear that what countries commit to internationally and what they enforce domestically are different things, either through not having a sufficient regulatory system or through not enforcing it if they do, presumably based on economic incentives to ignore labour standards (Chan and Ross, 2003). The argument for enforcement mechanisms in labour provisions to ensure compliance stems from this kind of observation, however contrary to many critics’ worries, enforcement mechanisms do not necessarily imply trade sanctions. Indeed, enforcement mechanisms are highly heterogeneous, most notably in their scope and their legal consequences.

The scope of the enforcement mechanism varies considerably between agreements, and in many agreements with conditional elements the enforcement does not apply to every commitment in the labour provision. Thus, while most labour provisions include language that encourages efforts to make labour laws compliant with international labour standards, these are not always enforceable. In

²⁶ In the recently signed CETA between the EU (which opposes arbitration) and Canada (which supports arbitration), the labour chapter does not include legally binding arbitration clauses.

²⁷ Another hypothesized effect of conditional provisions is a possible negative reputation effect in the case of publicity around the dispute settlement acting as a deterrent for investors (Ebert and Posthuma, 2011).

²⁸ See ILO Normlex for updated information: <http://www.ilo.org/dyn/normlex/en>.

contrast, in cases where enforcement is included it is typically with reference to already existing domestic labour laws. In particular, the two most common enforceable obligations are (1) the failure to enforce labour regulations, and (2) the lowering of existing regulations (ILO, 2013). The scope is delimited by the wording of the commitment, which ranges from vague obligations such as “shall *strive to ensure* that its laws provide for labour standards consistent with the internationally recognized labour rights” [emphasis added], which are difficult to prove in dispute settlements, to binding demands such as “shall *not fail to effectively enforce* its labour laws” [emphasis added]²⁹ (Polaski, 2003). Some agreements further limit the scope of enforcement by requiring that the non-compliance is done “in a manner affecting trade between the Parties”, making it explicitly aimed at preventing “social dumping”; however, in practice this can be extremely difficult to determine (De Ville et al., 2016). Finally, in many agreements the enforcement mechanism applies explicitly only to a subset of the labour standards listed in the agreements. An example is the North American Agreement on Labour Cooperation (NAALC; under NAFTA), where enforcement is available only with regard to occupational safety and health, child labour or minimum wage, and not the other CLSs listed (Arestoff-Izzo et al., 2008).

In terms of legal implications, there are broadly two main types of enforcement mechanisms in today’s FTAs: on the one hand are approaches that go no further than mediation through consultations and mutual agreement, while on the other hand are mechanisms that ultimately allow for legally binding arbitration.

The first approach includes arrangements for consultations, committees, panels of experts, etc. to mediate and resolve disputes, but with no recourse to legally binding penalties for non-compliance. These arrangements are designed to be used in conjunction with persuasion, political pressure and/or cooperation. A notable proponent of this approach is the European Union, which has been championing this softer approach (combined with cooperation) in all but one of its agreements (the 2008 EU-CARIFORUM agreement; De Ville et al., 2016). The exact institutional setup varies between agreements, for example including only government consultations or also external panels of objective experts.

The second approach – the inclusion of arbitration – means that non-compliance can lead to enforceable economic penalties in the form of sanctions or fines. However, it is usually combined with an aspect of the first approach, and is typically only available in the case that no amicable agreement could be made through negotiations (Ebert and Posthuma, 2011). This approach is implemented in two separate ways; the first provides a dispute mechanism for labour provisions that is separate from the rest of the agreement, while the second allows for the use of the agreement’s main dispute settlement provisions. In the first mechanism, sanctions are strictly non-trade-related, with arbitrations issuing monetary fines or punishments such as the readjustment of cooperation activities. In some cases, the money accrued from the fines is used in programs to help remedy the deficient protection that caused the dispute (ILO, 2013). Using the main agreement dispute settlement mechanism means that the ultimate recourse is the withholding of benefits given in the agreement, which in FTAs would be preferential tariff rates – i.e. “trade sanctions”. Even where this is included however, many provisions treat this as a final option, only available after exhausting every other mechanism, including fines (Ebert and Posthuma, 2011).

A conditional tool unique to recent United States agreements is the use of pre-ratification conditionality, where the United States Government makes the improvement of certain CLS a requirement for

²⁹ Both examples taken from the United States-Jordan FTA.

ratification, meaning the agreement will not enter into force until sufficient improvements in labour regulations have taken place.^{30,31} An example of this is the Colombia-United States FTA, where the two partners signed a “Labour Action Plan” in 2011 outlining nine issue areas where Colombia had to improve their standards before the United States congress would ratify the agreement (GAO, 2014). After taking concrete steps such as establishing a separate labour ministry and hiring additional labour inspectors the conditionality was considered met and the agreement entered into force in 2012.³² Successful compliance with the requirements is judged by the United States congress, which might or might not listen to feedback from civil society, ILO or other official reports (Vogt, 2015).

Assessing the impacts

In general, neither the impacts of strong nor weak enforcement mechanisms are immediately clear, partly because mechanisms are very rarely enacted. In a review from 2013, only four out of a total of 15 labour provisions with enforcement options worldwide had been enacted (ILO, 2013). To date, only one dispute has made it all the way to arbitration, a case between United States and Guatemala under the CAFTA-DR agreement which is still in progress (DOL, 2015; Vogt, 2015). 90% of all submissions filed under labour provisions have been under NAALC, the longest existing labour provision, yet no case has made it past ministerial consultations to the panel of experts, let alone arbitration (ILO, 2013).

Granted, the fact that bilateral issues have been resolved without enacting enforcement clauses could be a sign that they are working as intended, as disputes can be settled through amicable dialogue before it gets to the stage of arbitration. Indeed, several case studies indicate that the soft part of the enforcement process has led to improvements without resorting to punishment (see e.g. Ebert and Posthuma, 2011, ILO, 2013; Campling et al., 2015; ILO, 2016); however, the looming threat of arbitration might also have been helpful (Campling et al., 2015).

Although not widely used, pre-ratification conditionality has shown very promising results, and in the cases where they have been used they have arguably been the most effective tools (Vogt, 2015). An ILO review of pre-ratification conditionality in recent United States FTA found positive impacts in several cases (ILO, 2013). Several authors have pointed to the potential benefits of this form of enforcement, notably in the area of legislation, and in particular where they have been linked to cooperative elements, with the two partners work together to meet the pre-ratification conditionality (ILO, 2013; Vogt, 2015; Giumelli and van Roozendaal, 2016; ILO, 2016).

One of the challenges with enforcement mechanisms is their dependence on political support; both on the side of the plaintiff and the defendant (ILO, 2013). As with all inter-state arbitration, labour cases are cast in an international relations context, where a myriad of considerations other than workers’ welfare could take priority³³ (Ebert and Posthuma, 2011).³⁴ One possible solution to this problem has been to

³⁰ Pre-ratification conditionality is also often seen in unilateral preference schemes, including for the resumption of suspended benefits.

³¹ In the case of the Colombia-EU-Peru FTA, the European Union requested a roadmap for improving labour standards in Colombia, but its ratification was not conditional on the fulfillment of the plan.

³² However, reports show that the labour union situation in Colombia at that time was still unsatisfactory; see Vogt (2015).

³³ Bolle (2016) further argues that the institutional support for labour disputes are lacking compared to all other trade disputes.

³⁴ For a juridical perspective see Abel (2015).

allow for civil society to bring complaints, which has been used in several United States agreements (Häberli et al., 2011; ILO, 2013). A concomitant side benefit of this has been a strengthening of transnational alliances of labour organizations (ILO, 2013). In the case of pre-ratification conditionality, which has so far been consistently one-sided, the requirements the US can put on countries obviously depends on their negotiating power vis-a-vis their partner; since such provisions became the norm in the United States they have been requested in agreements with countries like Peru, Panama, and Colombia, but not in the case of Republic of Korea (Vogt, 2015).

Several studies have identified potential solutions to make enforcement mechanisms more effective. First of all, the fundamental concern for many observers is the lack of legally binding arbitration in most labour provisions (De Ville et al., 2016), or the insufficient scope of the enforcement it is included (Bolle, 2016), and advocates allowing for wide-ranging arbitration, even as a last resort. Second, some authors recognize that the lack of enforcement of labour laws on the part of defendant government might be related to a lack of capacity and not only political will. They suggest that the stick of dispute settlements and arbitration should be combined with the carrot of cooperation and dialogue (see *cooperation* below). Finally, the involvement of civil society has been proven to be fruitful in many cases, not only for putting pressure on governments, but also for creating transnational alliances and raising awareness of labour standards.

B) The promotional approach – Cooperation

From a theoretical point of view, while the conditional approach views non-compliance as an issue of lack of political will or of the existence of economic incentives to break the rules (“social dumping”), the idea behind the promotional approach views non-compliance as an issue of capacity and/or resources (Doumbia-Henry and Gravel, 2006; Ebert, 2016). Empirical studies have found that improvements in labour rights are indeed correlated with state capacity³⁵ (Berliner et al., 2015). Case studies have also corroborated this story, and explained lack of improvements under labour provisions to be caused by “limitations in partner countries’ capacity to enforce labour laws” (GAO, 2014:10). Seen in light of the debate above (section 2.1), many advocates for a promotional approach support the argument that sanctions and fines can hurt the population it aims to support, and that a softer, more targeted approach is needed (De Ville et al., 2016). As the cooperative approach is less controversial, it has also seen a much larger adoption, with a majority of labour provisions containing promotional elements³⁶ (Doumbia-Henry and Gravel, 2006).

The specific design of cooperation provisions varies considerably between agreements in terms of level of detail and legal implications, forms of cooperation, scope, and institutional setup.

³⁵ But only in countries with labour-friendly governments, as measured by left party power, democracy, union density, and potential labour power. However, in the context of labour provisions, an exploratory study by Giumelli and van Roozendaal (2016) finds no indication that indicators on democracy are related to improving labour standards.

³⁶ Promotional aspects are not limited to the type of FTA, and are found in North-North, North-South and South-South agreements.

The level of detail varies from detailed descriptions of the exact scope, procedures and institutions involved, to general commitments to enhance labour standards through cooperation.³⁷ This is further related to the legal implications of the cooperation provision; ranging from indicative lists without any obligation, to legally binding commitments to provide assistance and cooperation (Ebert, 2016).

Looking at the forms of cooperation promoted, a 2013 study by the ILO found that a general trend in labour cooperation provisions is their focus on strengthening domestic labour institutions (ILO, 2013). This type of cooperation often takes place in the form of technical cooperation such as policy development and legal advice, or institutional capacity building in government institutions, such as training labour inspectors or strengthening the judiciary, or providing equipment and budget support to relevant institutions. Furthermore, capacity building is also done on the part of the workers, such as raising awareness of labour standards, providing legal assistance to workers, as well as capacity building and assistance to labour unions (Arestoff-Izzo, 2008; ILO, 2013). Yet there are also other forms of labour cooperation, popular in South-South agreements, such as forums and dialogue, knowledge sharing and study visits, as well as joint conferences, seminars, trainings and research projects. In certain regional agreements, we have seen extensive collaborative projects, such as the Andean Labour Observatory under the framework of the Andean Community, a joint research institution for compiling statistical, legal and other information on social and labour-related projects in the region (ILO, 2013). In several cases, the ILO has played a key role; either as the partners have referred to ILO instruments and/or priorities or through using ILO as the implementing actor of the program (ILO, 2016). An example of the latter is the case of a \$7.8 million project to build capacity in labour matters in the Colombian Government under the US-Colombia FTA, implemented by the ILO (ibid.). Working with or through the ILO in labour cooperation can potentially increase coherence between projects, which is becoming important as some developing countries sign agreements including cooperation provisions with several partners separately (ibid.).

The coverage in terms of labour standards featured in provisions with cooperation are in some cases just a reflection of the standards and commitments made (as seen above), but the cooperation section of the provision might also have a more limited or expanded coverage. Extended coverage beyond CLS might include areas such as: labour relations, including labour disputes; rights and obligations of migrant workers; inclusive labour markets and social policy; working conditions, including working hours, minimum wages, and health and safety at work; corporate social responsibility (CSR); productivity improvement; and statistics. Note that the last three points are not strictly related to labour relations or minimum working conditions, reflecting the shift of some actors to a more holistic approach to labour issues (for example the European Union; see Ebert, 2016). This is also true for a particularly salient aspect of labour cooperation in the Asia-Pacific region; human resource development (see Box 2). Again, some agreements list the scope in detail, while others are less concrete, or are to agree on the exact scope of cooperation after the signing.³⁸

³⁷ An example of the latter is found in the 2014 China-Iceland FTA, where the only mention of cooperation is: “1. The Parties shall enhance their communication and co-operation on labour matters.”

³⁸ An example of the latter is found in the 2011 Hong Kong, China -New Zealand MoU on Labour Cooperation, which states:

“1. The Parties agree to cooperate on labour matters of mutual interest and benefit. Such cooperation shall be subject to the availability of resources, the respective priorities of the Parties and their domestic laws. The Parties shall mutually determine specific labour cooperative activities.
2. The Parties’ intention is to identify and cooperate in labour areas of common interest and concern. To facilitate this, as an initial step, the Parties shall exchange lists of their areas of interest and expertise.”

Box 2: Employment Policy Provisions #2 – Human resource development in trade agreements

Another example of labour related aspects of FTAs that fall outside of our definition of labour provisions is cooperation in human resource development (HRD). Such provisions are becoming increasingly popular in FTAs, mostly in North-South and South-South agreements (Delpech and Ebert, 2014). These comprise a multitude of areas for cooperation, including improving education, vocational training, life-long learning, language training, exchanges of students and scholars, specific work-related skills building and knowledge transfer. HRD provisions are found within and linked to labour cooperation chapters, within cooperation chapters or under other topics such as ICT. A 2014 review by Delpech and Ebert found that 36% of FTAs globally contained provisions on HRD, compared to 23% with standard labour provisions.

The Asia-Pacific region is especially active in the promotion of HRD cooperation clauses in their agreements, amounting for around half of the global total (44 out of 89 had at least one Asian country, 18 were strictly between Asian countries; *ibid.*). This is reflected both in regional agreements such as ASEAN, as well as bilateral agreements. ASEAN was one of the first trade agreements containing cooperation on HRD issues (active since 1992), and their cooperation mechanism has seen substantial action since its inception (Tambunan, 2010). ASEAN has further included HRD cooperation in external trade agreements with e.g. Australia, New Zealand, India, and Japan. In terms of bilateral agreements, the Japan-Singapore agreement is notably comprehensive, including HRD as a separate chapter. The emphasis put on the HRD aspect of labour issues is also reflected in the development cooperation strategies of many Asian countries such as Japan, Republic of Korea and China.

Institutional arrangements are usually set out outside of paragraphs related to cooperation in particular, and relate to the committees and contact points set up for the labour provision in general. However, there are cases where explicit institutional arrangements are made for cooperation, usually in the form of committees, sub-committees, commissions or coordinators. One such example is the establishment of a Commission for Labour Cooperation under NAALCA, with responsibility for all aspects of labour cooperation (NAFTA, 1993). In cases where these arrangements are included for cooperation, specifics such as their responsibilities, composition, interaction with the broader institutional framework, and the timing of regular meetings vary greatly. As outlined in FTAs, this institutional setup is usually responsible for establishing, overseeing and reviewing labour cooperation programs. In practice labour cooperation also includes the actors involved in the actual implementation of the programs, even though these are not always mentioned in the FTAs but rather agreed upon at a later stage through deliberations in the committees etc. Looking at the two biggest partners in the area of labour provisions, in the United States these actors include Department of Labour, USAID and the State Department (ILO, 2013), while in the European Union the actors are mainly the Development Cooperation Instrument and the European Development Fund (Ebert, 2016). Note that these are all already existing agencies with roles in development cooperation outside of the labour cooperation outlined in the partners' labour provisions.

Assessing the impact

In terms of the impact of cooperation provisions, we need to look at two separate questions: First, do commitments in the form of cooperation provisions translate into action on the ground? And second, does that action lead to positive outcomes in the form of improvements in labour standards?

For the first question, we find many examples of labour cooperation programs initiated and carried out under free trade agreements, and overall, promotional activities have taken place much more

frequently than action under conditional provisions. An ILO overview from 2013 finds a multitude of such programs, both in capacity building and more dialogue-based, for example under United States agreements with Bahrain, Morocco, Oman, and CAFTA-DR; under Canadian agreements with Chile, Costa Rica and Peru; under New Zealand agreements with Thailand and China; under Chilean agreements with China, European Union and Peru; and under regional agreements such as the P4, NAFTA, MERCOSUR, the Andean Community, ECOWAS, CARICOM and the SADC (ILO, 2013). The level of commitment varies however, both in terms of budget and in terms of follow-up actions. Some include negligible yearly contributions, but some fund sizeable cooperation and capacity building projects (such as under CAFTA-DR amounting to \$170 million between 2005 and 2013). In terms of follow-up, examples range from one-off ad hoc projects to the case of the United States stationing a labour attaché in the embassy in Colombia in 2015 to directly support cooperation efforts on the ground (GAO, 2014; DOL, 2016).

However, these selected examples do not give the full picture. First, as they are case studies of labour cooperation in practice, they are naturally biased towards cooperation that took place. We have no numbers on how many agreements with cooperation provisions exist without any cooperation materializing. Many commentators have further pointed to the extremely limited budgets cooperation often happens under, and suggests that for effects to be seen, these need to be drastically increased (Polaski, 2003; Hufbauer and Schott, 2005). Second, in some agreements that have been under implementation for a long time, observers have noted a trend of decreasing interest in cooperation projects, the most notable example being the NAALC, which has seen a steady decrease in the number of projects since its inception in 1994 (17 project) to 2005 (1 project) (ILO, 2013).

Even if correlation between labour provisions and cooperation activity was established (which it has not), there is even less evidence of causation. It is noted that many partners already implement labour cooperation projects regardless of their trade agreement obligations³⁹ (ILO, 2013). Labour issues are included in many countries' development cooperation strategies already (ITUC, 2011), and it is not clear whether the inclusion of cooperation in trade agreements change the de facto labour cooperation, either in terms of budget or priorities. In the case of the European Union, a study by Ebert (2016) finds that among the six countries where European Union programming documents explicitly involved labour cooperation, only two of them were FTA partner countries with promotional labour provisions. Furthermore, he finds little coherence between the strategies for labour cooperation set out in the FTA and the actual implementation on the ground.

For the second question, the available data is limited, yet a handful of reviews have been done. In particular, the CAFTA-DR agreement has undergone extensive scrutiny. In summary, these find that while small improvements were made, especially in strengthening domestic labour institutions such as labour inspectorates and the judiciary (seen for example in an increase in budgets and the number of labour inspectors), as well as increased awareness of labour rights problems, the overall impact this has on improving labour conditions were limited (DOL, 2012; DOL, 2015; ILO, 2016). An example of a dialogue-based approach bearing fruit is given by Polaski (2003), who describes how cross-border workshops on labour issues under NAALC established in response to complaints about the practice led

³⁹ Note also that some countries have bilateral agreements on labour cooperation without having an FTA; for example, Canada has Memoranda of Understanding on Labour Cooperation with Brazil and Argentina, as well as two with China (on Industrial Relations and Labour Standards and Occupational Safety and Health respectively. See: <http://www.labour.gc.ca/eng/relation/international/agreements/index.shtml> .

to the Mexican government banning mandatory pregnancy testing in Mexican factories, but she notes that the practice continues in some areas. The author argues that this and other examples from NAALC cases suggest that labour cooperation programs can be more effective if they are linked to a concrete current issue rather than being purely informative, as well as if the programs are linked to an enforcement mechanism in the case that the problem does not get solved through promotional means (ibid.).

2.2.2.3. Monitoring

Monitoring of labour standards is obviously important, as it is a fundamental factor for both cooperation and enforcement. Without sufficient monitoring, there is no way to ensure that commitments are being upheld, cooperation is taking place, or that either of these are having any impact on the actual labour standard situation. Monitoring under labour provisions include evaluation and benchmarking the current situation of labour standards, breaches of the commitments outlined in the provision, and progress made unilaterally as well as through cooperation and capacity building. Monitoring in labour provisions is done in four main ways, which are not mutually exclusive.

The first element of monitoring is national monitoring, as conducted by domestic labour inspectorates. The problems with self-reporting are obvious, and the issue of a lack of political will inherent to this method is covered by the section on Cooperation above.

Second, some agreements appoint an official central body responsible for monitoring, such as a sub-committee or other institution established by the treaty. This is seen in many regional agreements, such as the Social-Labour Commission established under MERCOSUR, who issues reports containing recommendations based on annual reports prepared by the member states (ILO, 2013). In some cases, the ILO is used as a third-party monitoring mechanism, for example seen in projects on verifying labour standards commitments in Haiti, Panama and the Dominican Republic (Agusti-Panareda et al., 2014; DOL, 2015). As mentioned, linking labour provisions to ILO conventions (and not just declarations) can reduce the monitoring burden for the partner countries and enhance the legitimacy of reports, as they are continuously externally monitored by the ILO (De Ville et al., 2016).

Although not referred to in the labour provision itself, a third element of monitoring is unilateral monitoring, where one or more government agencies in a country monitors the status and progress in trade partners' labour standards. This is in particular the case where a developed country imposes labour provisions on a developing country out of an explicit concern for labour standards in that country, and serves the role of evaluating compliance and updating the government.⁴⁰ For example, the United States has a complex system of officials from the Department of Labour (DOL), the United States Trade Representative (USTR) and the State Department who tracks progress in the de facto and de jure labour rights situation, monitors compliance, oversees the implementation of labour cooperation projects and reviews labour cases filed by third parties (GAO, 2014). Notably the USTR is mandated by the congress to compile annual reports about labour aspects of United States trade relations, both within and outside of FTAs (see for example, USTR, 2014; USTR 2015; USTR 2016). For CAFTA-DR the United States DOL is mandated to publish a biannual evaluation of progress made under a white paper

⁴⁰ For this reason, unilateral labour standards monitoring mechanisms are also used in unilateral preference schemes such as the GSP, where a failure to comply can result in a termination of benefits.

setting out the strategy for member countries to improve their labour standards drafted by the partner country governments in 2005⁴¹ (see DOL, 2015).

The final element of monitoring is civil society monitoring, where institutions and/or procedures are established to engage the civil society, such as workers, labour unions or employers' organizations, in monitoring labour standards (Van den Putte, 2015).⁴² These monitoring mechanisms describe how civil society in both partner countries, and even transnationally, can participate in monitoring, with scheduled meetings of committees or advisory groups composed of representatives from civil society. An in-depth analysis by Van den Putte (2015) outline variations in these mechanisms in three aspects: (1) their institutionalization, meaning how obligatory the planned activities are and how detailed the plan is;⁴³ (2) their scope, including whether the institution is applicable for a single agreement or several and who the stakeholders allowed to participate are; and (3) their accountability, that is, the degree to which the participation impacts the actual policy process. An example of a permanent stakeholder committee is the United States "National Advisory Committee for Labour Provisions of United States Free Trade Agreements" (NAC), composed of a fixed group of representatives from the public, employees and employers, which meets once or twice per year and monitors all US agreements (Van den Putte, 2015; ILO, 2016).

Assessing the impact

Measuring the impact of monitoring schemes is difficult, however there are significant differences in the amount of output produced, and some agreements are covered better than others. In particular, the unilateral monitoring by the United States has produced frequent and comprehensive evaluations of both labour standards and the impact of cooperation projects (GAO, 2014). For most other agreements, the lack of publicly available documents makes it hard to pass any judgement on the extent of their monitoring.

In terms of civil society monitoring, case studies show mixed results. On the one hand, there are several examples of successful involvement of civil society, at least in terms of giving them an arena to have their voices heard. Examples from European Union, Canadian and United States trade agreements in Latin America has led to consultations and dialogues with local stakeholders, including for example the Canadian Government using inputs from Colombian civil society organizations to write reports on labour standards in the Canada-Colombia FTA (ILO, 2016). On the other hand, there are many examples of cases where de jure obligations and intended plans never materialized or failed to live up to expectations. An analysis of the United States-Republic of Korea agreement showed that despite the elaborate details of meetings of the United States NAC, the impact on policies has been questionable; partly due to the wide scope of the United States NAC and the lack of priority given to the US-Republic of Korea FTA as compared to other agreements (in particular in LAC) considered more pressing (Van den

⁴¹ Between 2006 and 2010 these DOL reports were based on the biannual ILO "Verification Report on the Implementation of White Paper Recommendations". Since the termination of these reports in 2010 the DOL has drawn from a wider range of sources (DOL 2015; See project summary, available at https://www.dol.gov/ilab/projects/summaries/Central%20America_Verification.pdf).

⁴² This section concerns civil society participation in the monitoring of agreements only. For an overview of the role of civil society participation during negotiations see: ILO (2016) chapter 3, Dür and De Bièvre (2007).

⁴³ A recent overview done by the ILO in 2016 finds that most labour provisions include civil society advisory groups only on a voluntary basis (ILO 2016).

Putte, 2015). Relying on civil society monitoring is not straightforward in countries with non-functioning civil society or government opposition to their activity. In the case of the EU-Peru FTA, studies have found that opposition from the Peruvian Government and a lack of resources, skills and incentives (owing to the lack of any enforcement mechanism) on the part of civil society in Peru has led to a failure of the domestic and transnational civil society forums and thus monitoring (Vogt, 2015; Orbie and Van den Putte, 2016). Ebert (2016) concludes on EU agreements that “Overall, the civil society participation mechanisms of the EU’s trade agreements have so far evinced rather modest potential for bringing states into compliance with labour standards” (Ebert, 2016:5). Yet at the same time other studies have found indirect benefits from this type of civil society participation, suggesting that partner country civil society organizations have increased their capacity in advocacy for labour standards through interaction with European civil society (Van den Putte, 2015).

2.2.3. Summary of labour provisions

In summary, while labour provisions have been implemented in agreements for over 20 years, their exact impact is not immediately clear from the existing literature. A central issue is that wide quantitative studies fail to capture the nuances and heterogeneity of labour provisions, while narrow case studies say little about the overall impact.

In broad terms, most large-scale surveys find that labour provisions in general have no impact on labour standards. However, case studies on successful provisions point to the importance of a combination of cooperation, enforcement and monitoring. This reflects the compound nature of the problems with labour standards; the lack of enforcement of a country’s own labour regulations can be caused not only by a lack of political will but also a lack of capacity. While cooperation and dialogue can have positive effects, legally binding enforcement mechanisms can act as an incentive for governments to embrace the outcomes of these promotional efforts. As we have seen, labour cooperation is taking place outside of FTAs as well, and it is not obvious why cooperation should be linked to trade agreements. If this cooperation is combined with effective enforcement mechanisms in the case of non-compliance however, the link might be more well-founded. Some of the clearest evidence of improvement has come from linking ratification of agreements to the satisfaction of pre-ratification conditional requirements while at the same time supporting partners in fulfilling them through cooperation.

Finally, the central role of civil society has been illustrated in several of the studies reviewed. Not only does civil society involvement in many cases benefit monitoring effort and accountability, it also serves to ensure that labour disputes are initiated. Conversely, we have also seen that civil society can be among the beneficiaries of labour provisions through transnational cooperation and exposure to other countries’ civil society.

3. Labour provisions in the Asia-Pacific region

In this section, we will look at how labour provisions in trade agreements have been implemented in the Asia-Pacific economies. Section 3.1 gives a quick overview of the current labour standard situation in the region. Next, section 3.2 reviews all existing agreements and maps out the regional landscape of labour provisions. Subsequently, these labour provisions are scrutinized and where possible outcomes are analyzed. Finally, preliminary analysis looks at the country level for patterns in who includes labour provisions and under what circumstances. This includes a closer look at the most prominent countries.

3.1. Overview of labour standards in the Asia-Pacific economies

Being home to over half of the world's work force, the quality of work in the Asia-Pacific region obviously has enormous consequences for the aggregate total welfare of workers globally. Just by account of its large size, the region naturally houses a large absolute quantity of labour problems, which makes it important to go beyond absolute numbers. While certain countries and sub-regions have seen great improvements in labour regulations and standards over the last decades, benefiting hundreds of millions of workers, great challenges remain, and a huge population of workers still toils in appalling conditions and with very little protection. This section will give a very brief overview of labour standards with regards to CLS in the region.⁴⁴

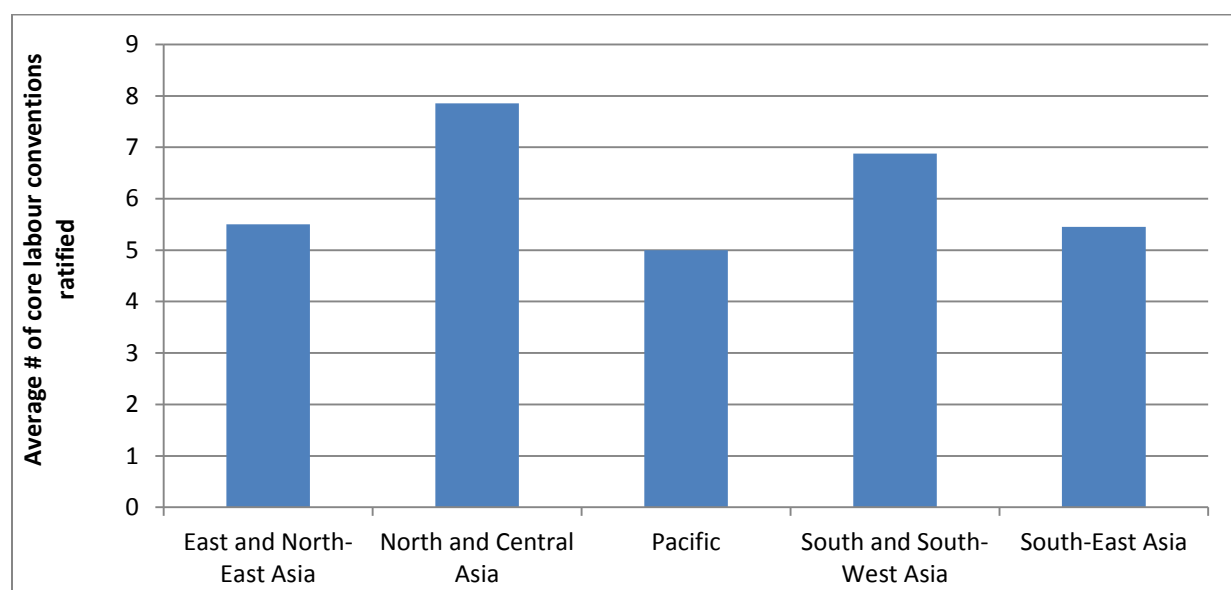
In terms of ratification of the ILO core conventions, countries in the Asia-Pacific score worse than the global average.⁴⁵ While the global average is 7.4 out of 8 core conventions ratified, the average for the region is only 5.6⁴⁶. In particular, the lack of ratifications of conventions on FACB standards stands out. Figure 2 shows the distribution across sub-regions and income groups: Central and South Asia come out as the top sub-regions, while LMICs is the income group with most ratifications. However, one needs to keep in mind that core convention ratifications is not a good predictor of de facto labour standards (Flanagan, 2002).

⁴⁴ See Flanagan and Khor (2012) for another review, including trends around the turn of the century.

⁴⁵ Among ESCAP member countries, the following are not members of the ILO: Bhutan, Republic of Micronesia, Nauru, and Korea DPR.

⁴⁶ See ILO Normlex: <http://www.ilo.org/dyn/normlex/en> . See Annex I for a complete list of ratifications.

Figure 2. Ratifications of ILO core conventions per sub-region



Source: ILO Normlex: <http://www.ilo.org/dyn/normlex/en>

To get a more realistic view of labour standards we have used other sources to compare the Asia-Pacific region with the world. Due to the large variations within the region however, it can be hard to generalize findings, and differences between sub-regions will be discussed.

3.1.1. Freedom of association and collective bargaining

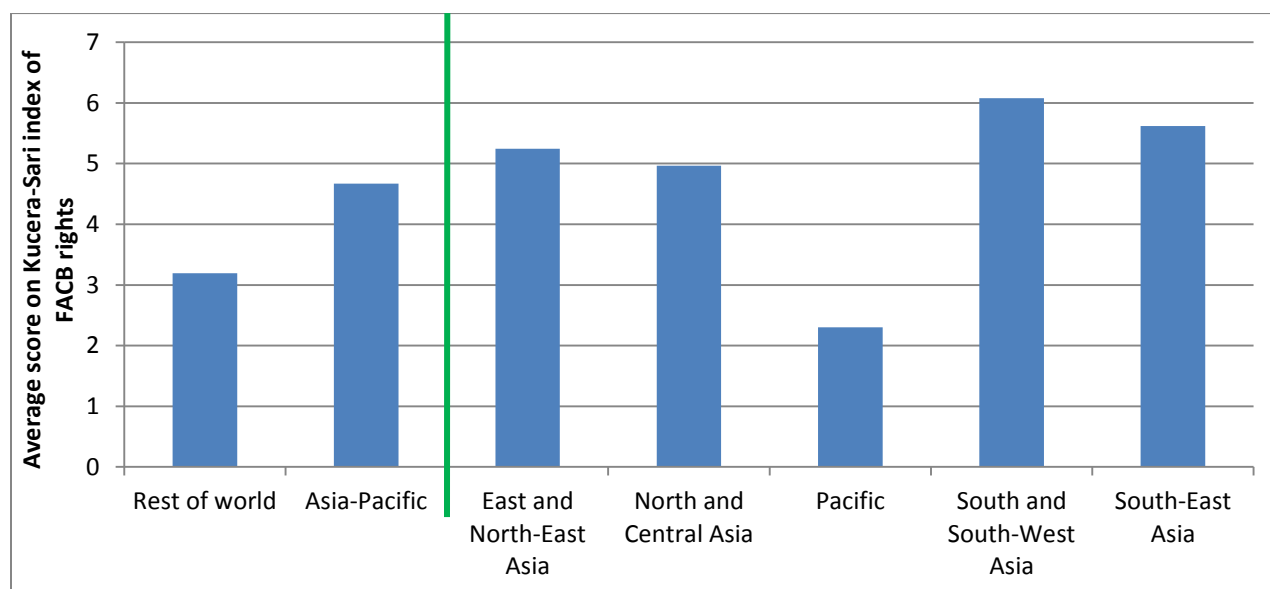
As suggested by the ratifications, FACB rights are not highly valued by many Asia-Pacific governments. Using the Kucera-Sari index of FACB rights⁴⁷, the Asia-Pacific region on average performs worse than the rest of the world. As Figure 3 shows, the sub-regions score mostly even, with the exception of the Pacific. Disaggregated however, ILO data shows that while South and South-West and South-East Asian countries in general score particularly poorly on union density, former Soviet countries with a longer history of labour associations in general score very high^{48,49} (see also Packard & Van Nguyen 2014). In the 2015 ITUC Global Rights Index measuring a number of indicators on labour strength and freedom of association, Asia-Pacific is the second worst region in the world, slightly behind Middle East and North Africa, and two countries from the worst-10 list are found in the region: China and Pakistan (ITUC 2015).

⁴⁷ The Kucera-Sari index measures a number of indicators on FACB rights across 174 countries, and gives countries scores from 1-10 (lower is better). See Kucera and Sari (2016).

⁴⁸ Union density data taken from ILOSTAT: http://www.ilo.org/ilostat/faces/help_home/Rel_Indust?_adf.ctrl-state=z2dobz621_4&_afLoop=294919477093875#!%40%40%3F_afLoop%3D294919477093875%26_adf.ctrl-state%3D16w00p8s69_4.

⁴⁹ However, these indicators need to be seen in the context of union power, which tends to be low, or even subservient to political forces in former soviet countries and China (Hayter and Stoevska, 2011).

Figure 3. FACP rights in Asia-Pacific versus rest of the world and sub-regional breakdown (lower is better)



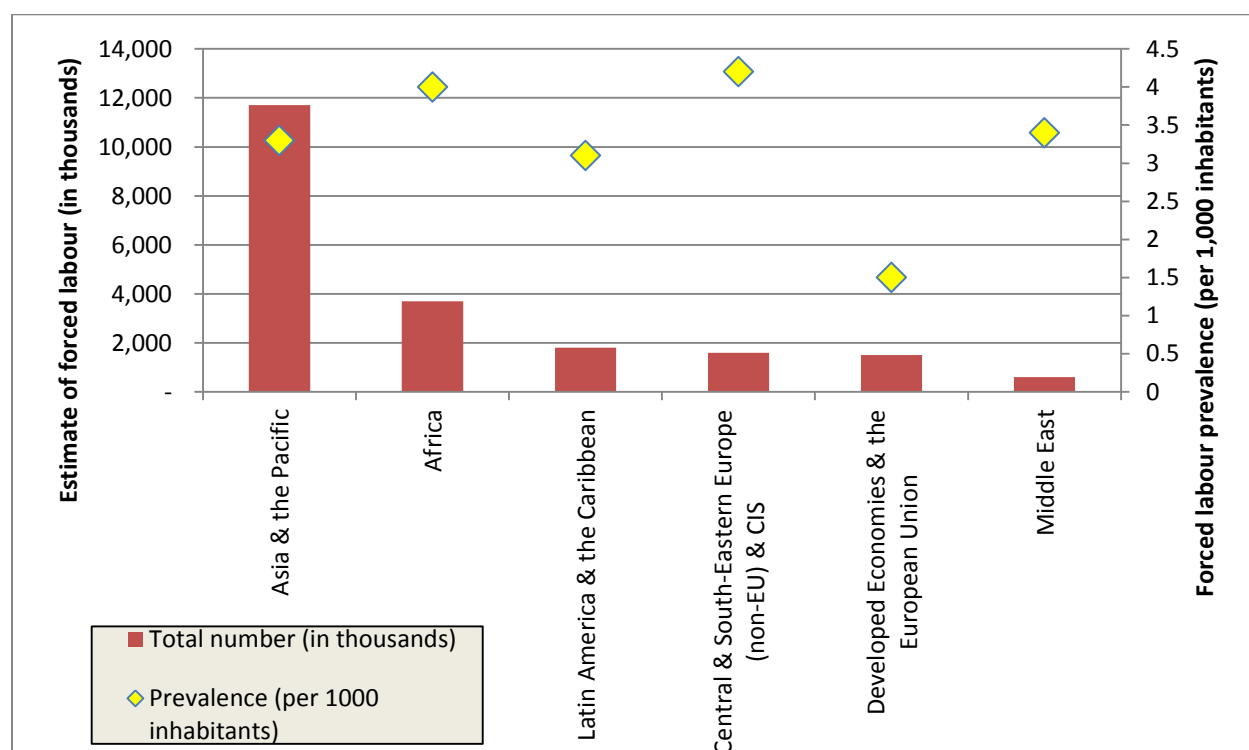
Source: Kucera and Sari (2016)

3.1.2. Forced Labour

The Asia-Pacific region accounts for more than half of the world's forced labour, amounting to around 13 million workers (ILO, 2012). Compared to the huge population numbers however, the region scores better than Africa and the Middle East in terms of prevalence, at around 3.3 workers per 1000 inhabitants; however, in the CIS countries the share is still high (Figure 4). Human trafficking and slave labour is a particularly prominent problem in several areas of the region. In 2012 UNODC reported that 47% of human trafficking in the South Asia, East Asia and Pacific regions was connected to forced labour – the highest of any region in the world (UNODC, 2012). According to estimates from the 2016 Global Slavery Index,⁵⁰ 66% of the world's total number of people in "modern slavery" are found in the Asia-Pacific (around 30 million), including four out of the five worst countries in terms of prevalence (Democratic People's Republic of Korea, Uzbekistan, Cambodia and India) and eight out of the ten countries with biggest absolute numbers (India, China, Pakistan, Bangladesh, Uzbekistan, Democratic People's Republic of Korea, Russian Federation and Indonesia).

⁵⁰ Available at <http://www.globallslaveryindex.org/> ; these numbers include child soldiers, forced begging, commercial sexual exploitation and domestic servitude.

Figure 4. Forced labour absolute estimate and prevalence by region



Source: ILO (2012)

3.1.3. Discrimination

Discrimination at the workplace and in employment takes place in many forms in Asia, including based on gender, age, and caste, as well as against migrants and people with disabilities and/or HIV/AIDS (ILO 2007). Gender discrimination is a huge problem, in particular Central and South Asia, where the female labour participation rate is as low as 30% and 40% respectively (ILO/ADB, 2011). In the WEF 2015 global gender gap index, Asia-Pacific scores second worst in terms of gender gap in the “Economic Participation and Opportunity” sub-index, only slightly better than Middle East and North Africa, however outliers such as the Philippines – ranked as number seven worldwide – exist (WEF, 2015).

3.1.4. Child labour

Finally, in terms of child labour, Asia-Pacific is by far the region with the largest absolute numbers of child workers, estimated at 77 million child labourers, amounting to more than half of the global total (ILO, 2013b). However, looking at prevalence, Africa with more than 20% of the children working as labourers comes out worse than Asia-Pacific with its 9%. Furthermore, Asia-Pacific is the region with the highest estimated decline in child labour in the period 2008-2012. Still, four out of the 12 countries with

a zero score (lowest possible) on Maplecroft's Child Labour Index⁵¹ are found in the region (Bangladesh, India, Myanmar and Pakistan).

3.2. Overview of Asia-Pacific FTAs with labour provisions

3.2.1. A note on methodology

For our review of Asia-Pacific FTAs we identified 173 bilateral and multilateral agreements with at least one partner located in the Asia-Pacific region.⁵² Income classifications for countries follow World Bank classifications based on GNI per capita (LIC/LMIC/UMIC/HMIC).⁵³ North-North agreements are defined as between HICs, North-South between one or more HIC and one or more LIC/LMIC/UMIC, and South-South between LICs/LMICs/UMICs.⁵⁴ The classification of agreements use the income level of both partners in the year of entering into force (except 2016 which uses 2015 classifications). Asia-Pacific in this context comprises the 49 regional member States of ESCAP, plus 9 associate members and Taiwan Province of China; in total 59 economies. Sub-regional divisions can be found in Annex II.

If the available evidence for analyzing the impact of labour provisions is thin on a global level, it is even more scant for the Asia-Pacific region, as these agreements have been less studied. One reason for this is that the agreements with labour provisions involving one or more of the Asia-Pacific economies are relatively new, with the oldest entering into force in 2004. Indeed, most of the available evidence is associated with agreements entering into force before 2010. Another reason is the lack of publicly available information. As we have seen in the literature review, extracting quantitative evidence on the impact of labour provisions is difficult, and cross-country regressions have yielded little useful information. In any case, we have not found any quantitative empirical studies on the effects specifically in the Asia-Pacific region or any of its countries. Conducting such a task is outside the scope of this study. Thus we have relied on case studies and reports on individual agreements and countries. While these can tell us something about the mechanisms at work, the findings might not be generalizable or transferable to other situations. Furthermore, the evidence linked to case studies comes from publicly available information only; as such there might be more undocumented activity taking place.

3.2.2. Overview of labour provisions in the Asia-Pacific FTAs

Out of 173 active FTAs in the region, 34 were identified as having some form of labour provisions, amounting to around 20% of the population.^{55,56} Out of the agreements entered into force starting from

⁵¹ Available at <https://maplecroft.com/about/news/child-labour-index.html>.

⁵² This list expands beyond agreements notified to the WTO. More details available from APTIAD (<http://artnet.unescap.org/databases.html#second>).

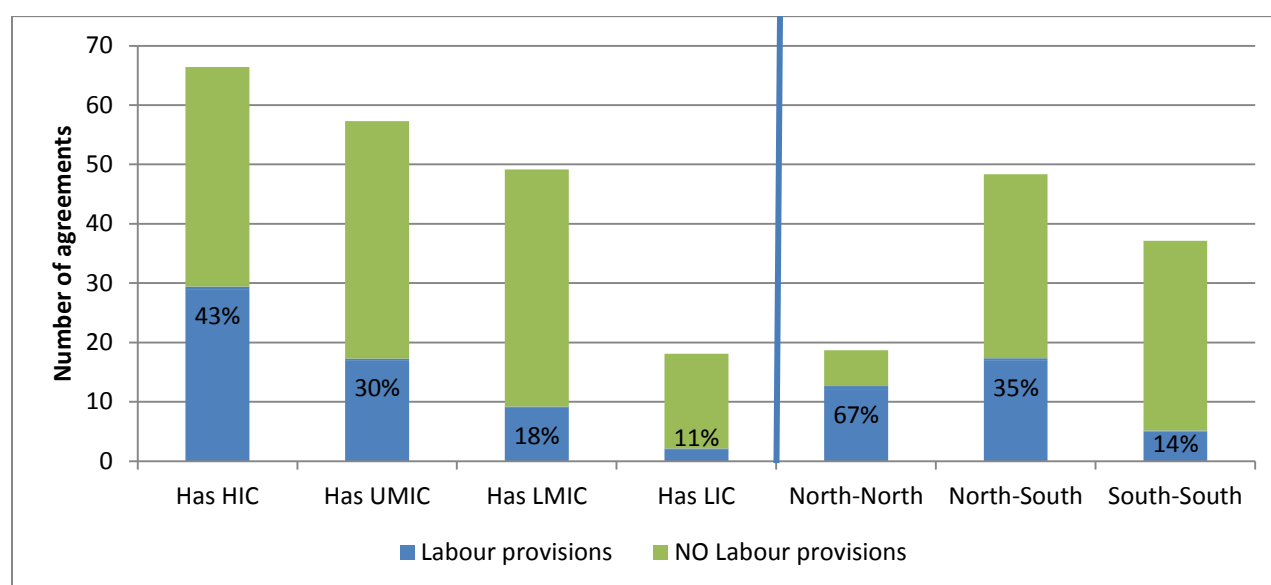
⁵³ As of 1 July 2016, low-income countries (LICs) are defined as those with a GNI per capita of \$1,025 or less in 2015; lower middle-income countries (LMICs) are those with a GNI per capita between \$1,026 and \$4,035; upper middle-income countries (UMICs) are those with a GNI per capita between \$4,036 and \$12,475; high-income countries (HICs) are those with a GNI per capita of \$12,476 or more.

⁵⁴ For comparisons with other papers, note that this classification is less restrictive on the definition of "North" than for example UNCTAD papers which use a very narrow definition of "North" and "South".

⁵⁵ In addition, in one case (Chile-Japan) a joint statement similar to a side agreement of labour was released at the time of signing. In another case (Australia-Malaysia) a side letter was released at the time of signing concluding

2004 (when the first agreement in the region with labour provisions was enacted), the share with those having labour provisions is 33%. The numbers for the region are thus slightly lower than the equivalent global numbers (all agreements notified to the WTO worldwide); 40% of all agreements since 2004, and 28% in total ⁵⁷ (ILO, 2016). Figure 5 shows the composition of agreements signed since 2004⁵⁸ with and without labour provisions in terms of economies' income classification.⁵⁹ While the biggest number of labour provisions is found in North-South agreements, the share is decidedly highest in North-North agreements. Agreements with at least one HIC have the largest share of agreements with labour provisions, and the share seems to be correlated to income level in general- the higher income FTA-members have, it is more likely their FTAs will carry labour provisions. In terms of historical evolution (Figure 6), provisions have become increasingly prevalent since 2007, reaching an average share of 63% of new agreements for the last five years (2012-2016).

Figure 5. Labour provisions in agreements grouped by economies' income classification (since 2004)



Source: Author's calculations, World Bank data on income classification

that labour provisions were not discussed in the trade agreement because they were expecting that those would be covered by the TPP.

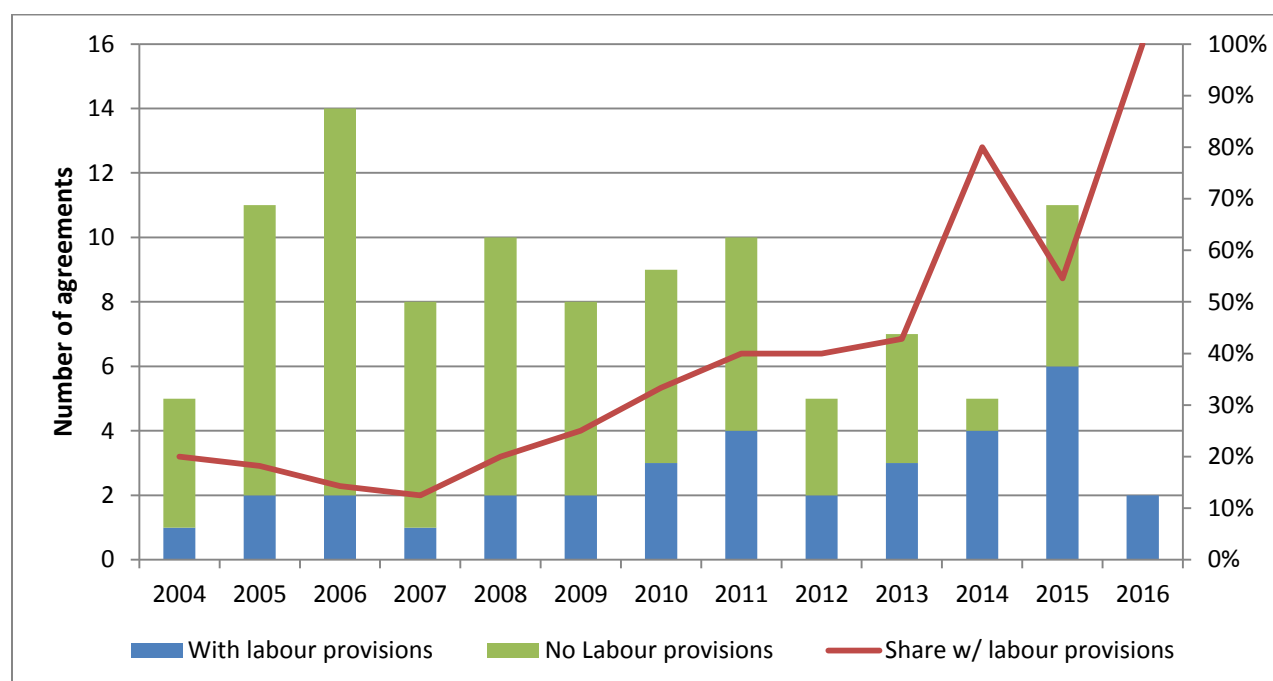
⁵⁶ In addition, five agreements with labour provisions have been signed but not yet entered into force, awaiting ratification by partner states: EU-Singapore, EFTA-Philippines, EFTA-Georgia, EU-Viet Nam, and the Trans-Pacific Partnership (TPP).

⁵⁷ While the shares compare, the absolute numbers do not match, as our list of Asia-Pacific agreements include some agreements that have not been notified to the WTO.

⁵⁸ The following analysis will only look at agreements enacted in 2004 and onwards.

⁵⁹ The relative trends are the same if we include agreements before 2004, but with lower shares across the board.

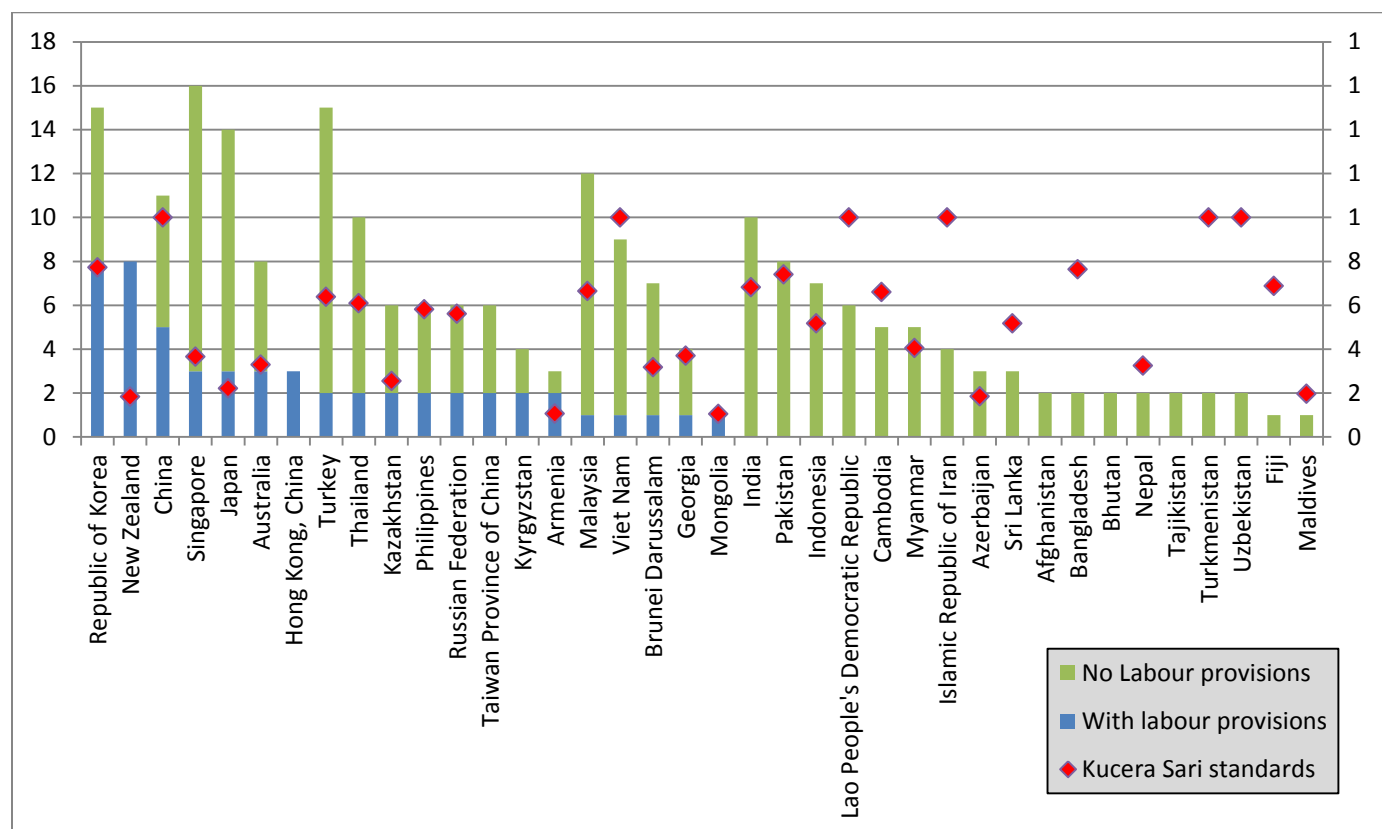
Figure 6. Historical evolution of labour provisions in FTAs with members from the region (since 2004)



Source: Author's calculations

Every third economy (20 of the 59) in the Asia-Pacific region has at least one FTA with labour provisions. Meanwhile, 19 economies have signed agreements since 2004 without including labour provisions in any of them, all but one of whom are in Central or South Asia. A further 20 economies did not sign any FTAs during the observed period. Republic of Korea and New Zealand have the highest number of FTAs with labour provisions in the region with eight agreements per country. However, while Republic of Korea has also signed seven agreements without labour provisions since it first included one in 2004, New Zealand has not concluded a trade agreement without labour provisions since it first included labour provisions in 2005 (with one partial exception; discussed in further detail in section 3.2.5.1). New Zealand and Hong Kong, China are the only two economies with a 100% share of trade agreements including labour provisions in more than 1 FTA since 2004. Figure 7 shows the total number of FTAs including and not including labour provisions for economies in the region with at least one agreement. Further, it maps economies' score on the Kucera-Sari labour standards index. No immediate correlation is identified, but except for China and Viet Nam, countries with the poorest score are clustered to the right of the chart and have no labour provisions.

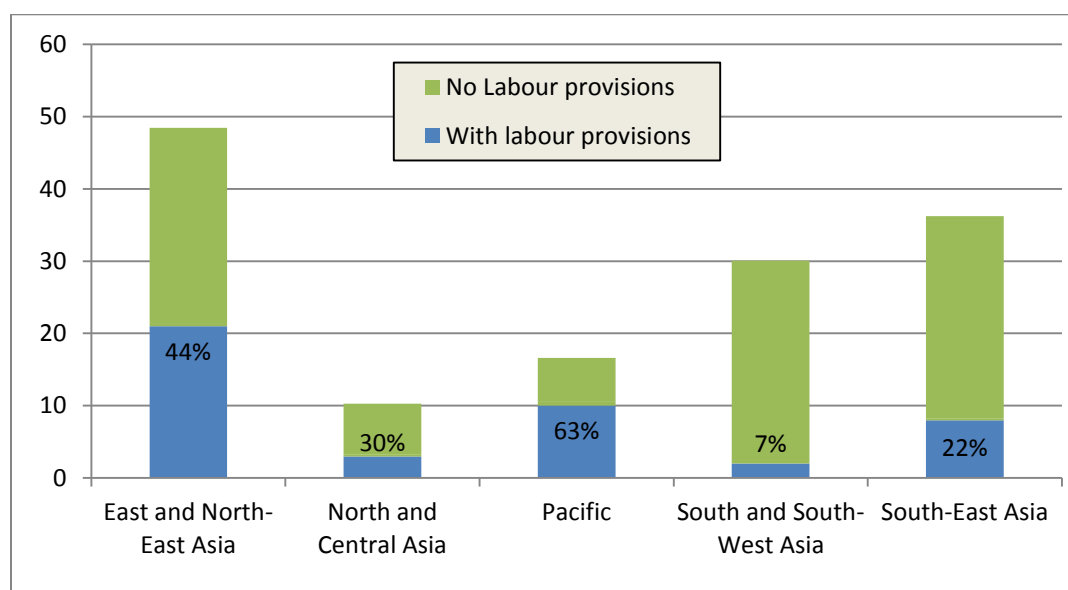
Figure 7. Total and share of agreements with provisions for countries in the Asia-Pacific region (since 2004), Kucera-Sari index scores (lower is better)



Source: Author's calculations, Kucera and Sari (2016)

Looking at the sub-regional composition we find striking differences (figure 8). Notably, Turkey is the only country in South and South-West Asia that has an agreement with labour provisions. This reflects the opposition against the social clause in WTO from South Asian countries, with India being one of the main opponents (Shergill, 2015). East and North-East Asia is the sub-region with most agreements, and higher than average share of agreements with labour provisions. North and Central Asia and South-East Asia both have a fairly low share with labour provisions. The Pacific is clearly the sub-region with the high prevalence of labour provisions in their agreements; however, Australia, New Zealand and Fiji are the only countries with any such agreements.

Figure 8. Total and share of agreements with provisions per sub-region (since 2004)



Source: Author's calculations

3.2.3. A closer look at the labour provisions found

As has already been stressed in Chapter 2, it is of crucial importance to consider the heterogeneity of labour provisions, and move beyond simple “has-has not” dichotomous overviews. In table 2 we have outlined all 34 Asia-Pacific FTAs with labour provisions.⁶⁰ To a large extent, Asia-Pacific labour provisions follow the general trend identified in the literature (which was discussed in Chapter 2).

⁶⁰ There is no publicly available legal text in English for two of the agreements – the New Zealand-Thailand side agreement on labour, and the China-Peru agreement. For New Zealand-Thailand the information we have is from Ebert and Posthuma (2011). These two agreements are excluded from the following statistics.

Table 2. All Asia-Pacific agreements with labour provisions

Agreement	General		International Standards				Commitments		Enforcement	Cooperation	Civil Society
	Year	Members' income classification	ILO 1998	ECOSOC 2006	ILO 2008	ILO Conventions	Enforce own standards	Not encourage trade or investment through weakening labour laws	Dispute settlement mechanisms	Cooperation on labour issues	Civil Society involvement
Japan-Mongolia	2016	N---S	—	—	—	—	—	X	Normal agreement DSM	—	—
Colombia-Republic of Korea	2016	N---S	X	X	—	—	X	X	Consultation only, no enforcement	X	X
EAEU-Viet Nam	2016	S---S	X	X	—	—	—	X	Consultation only, no enforcement	X	—
Chile-Thailand	2015	N---S	—	—	—	—	—	X	No (purely cooperational)	X	—
Republic of Korea-New Zealand	2015	N---N	X	—	X	—	X	—	Consultation only, no enforcement	X	X
Canada-Republic of Korea	2015	N---N	X	—	—	—	X	—	Legally binding arbitration – fines	X	X
EAEU	2015	S---S	—	—	—	—	—	—		—	—
EU-Georgia	2014	N---S	X	X	X	X	X	X	Consultation only, no enforcement	X	X
China-Switzerland	2014	N---S	X	X	X	X	X	X	Consultation only, no enforcement	X	—
China-Iceland	2014	N---S	—	—	—	—	—	—	No (purely cooperational)	X	—
Chile-Hong Kong, China	2014	N---N	X	—	—	—	—	X	Consultation only, no enforcement	X	—
Australia-Republic of Korea	2014	N---N	X	—	—	—	X	X	Consultation only, no enforcement	X	—
Republic of Korea-Turkey	2013	N---S	X	X	—	X	X	X	Consultation only, no enforcement	X	—
New Zealand-Taiwan Province of China	2013	N---N	—	—	—	—	X	X	Consultation only, no enforcement	X	X
Costa Rica-	2013	N---S	X	—	—	—	—	—	No (purely cooperational)	X	—

Singapore											
Republic of Korea-United States	2012	N---N	X	–	–	X ^b	X	–	Legally binding arbitration – DSM	X	X
EFTA-Hong Kong, China	2012	N---N	X	–	–	X	X	X	Consultation only, no enforcement	X ^c	–
EU-Republic of Korea	2011	N---N	X	X	–	X	X	X	Consultation only, no enforcement	X	X
Hong Kong, China-New Zealand	2011	N---N	X	–	–	–	–	X	Consultation only, no enforcement	X	X
Republic of Korea-Peru	2011	N---S	X	–	–	–	X	–	Consultation only, no enforcement	X	–
Chile-Turkey	2011	S---S	X	–	–	–	X	X	Normal agreement DSM	X	–
New Zealand-Philippines	2010	N---S	X	–	–	–	X	X	Consultation only, no enforcement	X	X
Malaysia-New Zealand	2010	N---S	X	–	–	–	X	X	Consultation only, no enforcement	X	X
China-Peru^a	2010	S---S									
Japan-Switzerland	2009	N---N	–	–	–	–	–	X	Normal agreement DSM	–	–
Australia-Chile	2009	N---S	X	–	–	–	–	–	No (purely cooperational)	X	–
Japan-Philippines	2008	N---S	–	–	–	–	–	X	Normal agreement DSM	–	–
China-New Zealand	2008	N---S	X	–	–	–	–	X	Consultation only, no enforcement	X	X
Nicaragua-Taiwan Province of China	2007	N---S	–	–	–	–	X	X	Normal agreement DSM	X	X
Chile-China	2006	S---S	–	–	–	–	–	–	No (purely cooperational)	X	–
P4	2006	N---S	X	–	–	–	X	X	Consultation only, no enforcement	X	–
Australia-United States	2005	N---N	X	–	–	–	X	X	Legally binding arbitration – modified DSM	X	X
New Zealand-Thailand^a	2005	N---S									
Singapore-United States	2004	N---N	X	–	–	X ^b	X	X	Legally binding arbitration – modified DSM (after fines)	X	X
Total number	32		23	6	3	5	19	23		27	14
			72%	19%	9%	16%	59%	72%		84%	44%

^aNo public full text available

1415AL ESCAP
Background Paper 01/2017
^bILO Convention 182
^cDialogue only

Enhancing the Contribution of Preferential Trade Agreements
to Inclusive and Equitable Trade

3.2.3.1. Standards

As is the case with labour provisions globally, most of the agreements in the Asia-Pacific region refer to the 1998 ILO Declaration (72%), which makes it by far the most common international standard referred to. Of the eight exceptions to this, it is noteworthy that agreements with Taiwan Province of China and Japan never employ any international labour standards. In the case of Taiwan Province of China, this is likely due to the fact that it is not a member of the ILO. Still, in their agreements they refer to “internationally recognized labour rights” which include the same four core standards as the 1998 Declaration. In the case of Japan, except for their agreement with the Philippines which refers to a limited set of labour standards, their other agreements simply do not specify how they define “labour standards”.

Eight agreements go further than the 1998 ILO Declaration in including other international labour standards (ECOSOC, 2006 and/or ILO, 2008) – not surprisingly the newer ones, and notably both agreements with the European Union. Five agreements include explicit mention of further ILO conventions outside the core ones. Two types of mentions are found: (1) recalling/reaffirming commitments/obligations to implementing ILO conventions the countries have already ratified, and (2) making efforts to ratifying further conventions, in particular the ones classified as up-to-date by the ILO. The first is found in all five agreements, while the second is only found in the EFTA-Hong Kong, China and the two European Union agreements.

Only four agreements explicitly include labour standards beyond these international labour standards, except for in relation to cooperation. These are all Canadian and United States agreements in the region, and the standards they include are categorized as either minimum employment standards or acceptable conditions of work, including minimum wage and overtime pay, hours of work, and occupational health and safety (OHS). The Canada-Republic of Korea agreement further includes the prevention of and compensation for occupational injuries and illnesses, as well as non-discrimination in respect of working conditions for migrant workers.

A uniquely detailed list of standards to be followed is found in the EU-Georgia agreement. The agreement is special in that it is an extremely comprehensive Association Agreement, signed under a large and complex umbrella of European Union cooperation and partnerships with its neighboring countries. Most notably, Georgia has been a beneficiary of the European Union’s GSP+ program, and the two have signed agreements on cooperation and policy coherence under the Eastern Partnership, which in turn is a part of the European Neighborhood Policy.⁶¹ The Association Agreement contains a “Deep and Comprehensive Free Trade Agreement (DCFTA), but goes much further in terms of beyond-the-border provisions such as regulatory coherence. Annex XXX of the Agreement contains a long list of specific European Union Council and Parliament directives under “Employment, Social Policy and Equal Opportunities” that Georgia undertakes to implement in order to “gradually approximate” EU legislation. The directives are found under the headings of ‘Labour Law’, ‘Anti-discrimination and gender equality’ and ‘Health and Safety at Work’, and include specific timetables to the effect of “the provisions of Directive ... shall be implemented within X years of the entry into force of this Agreement”, ranging from three to nine years.

⁶¹ European Commission fact sheet on Georgia, available at <http://ec.europa.eu/trade/policy/countries-and-regions/countries/georgia/>.

3.2.3.2. Commitments

The most common commitment is the abstinence from encouraging trade or investments through lowering labour rights (72%). Of the eight that do not include this, four are purely cooperative agreements, while the other four all include the Republic of Korea. It is not clear why the Republic of Korea is seemingly reluctant to include such provisions in their agreements. Provisions banning the failure of enforcement of domestic labour regulations are found in 19 agreements (59%). Of the ones without, five are purely cooperative agreements and three of them are Japanese agreements with labour provisions in their investment chapter, which only prohibit states from encouraging investments by lowering labour standards.

3.2.3.3. Enforcement

In terms of enforcement, the pattern of labour provisions in FTAs negotiated by the Asia-Pacific economies follow the global trends, with most agreements including consultations and dialogue only, while only a few agreements feature legally binding arbitration. Interestingly however, five agreements include recourse to the normal agreement dispute settlement mechanism (DSM), which is (considering the small number of labour provisions) more frequent than we would expect. The type of enforcement mechanism used is clearly linked to the agreement partners, with United States and Canadian agreements including arbitration in all of their agreements, but also Japan is technically linking their relatively limited labour provisions to legally binding arbitration.

17 agreements include only consultations and dialogue as dispute settlement mechanisms. These range from vague and simple formulations such as “On request of a Party, the Joint Committee may decide to establish a committee or working groups to deal with any matter of mutual interest arising under this Chapter” (Republic of Korea-Turkey FTA), to extensive deliberations on the details of the process, such as the EU-Georgia agreement.⁶²

Turning to the legally binding arbitration, as we saw in chapter 2, there are several ways to include them in trade agreements. In five bilateral agreements (Japan-Mongolia, Japan-Switzerland, Japan-Philippines, Nicaragua-Taiwan Province of China and Chile-Turkey) there is no mention of dispute settlement in the provisions regarding labour, but also nothing preventing the agreement’s general DSM to be used, which means that trade sanctions could be used as the ultimate outcome (see Ebert & Posthuma, 2011). However, looking at the scope, the agreements vary in what commitments are enforceable by arbitration. In the case of the Japan-Philippines agreement, the only labour related provision involves waiving or derogating labour regulations in order to attract investments, but partners should only “*strive to ensure*” that they don’t do this; the non-compliance of which in practice is difficult to prove in international arbitration. Japan’s other two agreements have more bite, as they state that parties “*should not waive or derogate*” from similar actions. The Nicaragua-Taiwan Province of China and Chile-Turkey agreements are similar in that they both require that the partners “*shall not fail to effectively enforce its labour laws*”.

⁶² A party can request consultations with the other party, where they can seek advice from other organizations such as the ILO, and they may convene the Trade and Sustainable Development Sub-Committee, but if no agreement can be reached within 90 days a Panel of Experts may be convened, which will issue a report upon which the accused Party’s actions to solve the dispute will be based (EU-Georgia FTA).

The United States and Canadian agreements and their enforcement mechanisms have been studied extensively elsewhere (see footnote 21 in chapter 2). In the case of their agreements in the regions, the United States' agreements with Australia and Singapore belong to the third generation of United States agreements, meaning that only the commitment to “*shall not fail to effectively enforce its labour laws*” is included in the scope of the enforcement mechanism, while its Republic of Korea agreement belongs to the fourth generation, where the entire chapter is enforceable (ILO, 2016). In the Canada-Republic of Korea FTA, the ultimate recourse in the event that consultations do not lead to agreement are monetary fines, which shall be paid into a fund designated by the Labour Ministerial Council and spent on implementing an action plan for resolving the labour standard shortcoming.

Assessing the impact in the Asia-Pacific region

To date, there has not been a single episode where any of the enforcement mechanisms found in Asia-Pacific FTAs were enacted or even filed for. However, there has been at least one documented incidence of civil society requesting the Government to engage in government consultations (but was rejected), under the EU-Republic of Korea FTA (see section 3.2.3.5 below). Furthermore, there is no evidence that the threat of arbitration has contributed to improving labour standards, nor any evidence against it.

3.2.3.4. Cooperation and dialogue

In line with the global trend, Asia-Pacific labour provisions put a lot of emphasis on cooperation. With the exception of three Japanese agreements with labour provisions in their investment chapters, cooperation provisions are found in all the agreements with provisions reviewed. Indeed, several of the agreements have nothing besides cooperation (Chile-Thailand, China-Iceland, Costa Rica-Singapore, Australia-Chile and Chile-China). The levels of comprehensiveness of the provisions vary significantly. On the one extreme is the China-Iceland agreement, whose only mention of labour is “The Parties shall enhance their communication and co-operation on labour matters” without any further specification. Meanwhile, a rather detailed provision on cooperation is found in the Canada-Republic of Korea agreement, where an annex on labour cooperation outlines the goals and targets, mechanisms, topics and activities of cooperation, and further includes both the ILO and civil society.

Assessing the impact in the Asia-Pacific region

While cooperation clauses are ubiquitous in Asia-Pacific agreements, implementation has in many cases been lacking. Only a handful of agreements have seen actual labour cooperation programs taken place, and even then, their impacts in terms of labour standards are not well documented. To a large extent, the main outcomes of labour cooperation have been in the form of dialogue rather than implementing concrete projects. Nonetheless, this is the area where labour provisions seems to have had the most impact.

Four of New Zealand's agreements have had documented cooperation and dialogue activities. Starting with the New Zealand-Thailand side agreement on labour, cooperation activities have included a project on capacity building of the Thai health and safety-related labour inspectorate, a seminar on labour market cooperation, a study tour to New Zealand for information-sharing on labour inspection, a workshop on labour market issues, a project to strengthen Thai capacity in labour disputes mediation, and a workshop on OHS (ILO, 2013). The latest activity announced was the 6th meeting of the Thai-New

Zealand Labour Committee held in 2013 to follow up labour agency works in the two countries.⁶³ The side agreement on labour to the New Zealand FTA with China has also seen moderate labour cooperation activity. A 2013 overview by the ILO found that two workshops had been hosted by that time; one in New Zealand on young people in work, and one in China on labour market information and capacity building (ibid). Furthermore, dialogue under the New Zealand-Philippines side agreement⁶⁴ led in 2015 to the signing of a new MoU on the topic of overseas Filipino workers in New Zealand (see also box 1 in section 2.2.1).

The Trans-Pacific Strategic Economic Partnership Agreement (TPSEP, also known as P4) has also seen regional activity under its side agreement on Labour Cooperation since the first meeting of senior labour officials in 2006. Implementation activities here have focused on policy dialogue and policy-related workshops, including a regular meeting of country representatives coinciding with the International Labour Conference in Geneva (Lazo Grandi, 2009). One concrete outcome of dialogue between the members has been a study undertaken by the ILO on training and skill improvement of vulnerable groups. The report, “Report on the training and up-skilling of vulnerable groups in TPSEP countries: Brunei Darussalam, Chile, New Zealand and Singapore” (ILO, 2009) was funded by the four partner governments, and was the main outcome of the 2007 Senior Labour Officials Meeting. The report ends with suggestions for future regional cooperation on the topic, e.g. in terms of improved inter-country information, a common definition of vulnerable groups, data collection and a common framework for measuring program outcomes. This initiative indeed showcases both the potential significance of labour cooperation in trade agreements and a unique involvement of the ILO under a regional side agreement on labour cooperation. The report itself hails it as “a good model of cross-region knowledge sharing on a critical topic of common interest” (ibid.). The prominent role of the ILO in the P4 agreement is especially noteworthy in light of Brunei Darussalam’s only joining the organization in 2007 in parallel with the implementation of the agreement (Lazo Grandi, 2009).

A similar outcome is seen under the EU-Republic of Korea agreement, where the partners have agreed to launch a project on the implementation of ILO Core Convention 111 on Non-Discrimination (EU-Republic of Korea CTSD, 2015). The research project was launched July 2016 and includes a comparative analysis of implementation of the convention in the two countries as well as policy implications and suggestions (European Commission, 2016a). Dialogue between European Union and the Republic of Korea has also included the possible launch of a project on Corporate Social Responsibility and a number of workshops, presentations and knowledge sharing, with a high degree of civil society involvement (European Commission, 2014; European Commission, 2016b; see section 2.2.2.3 below for more on civil society participation in the EU-Republic of Korea agreement).

Looking at United States agreements in the region, preliminary dialogue and exchange of technical information related to the collection and analysis of labour statistics took place under the first (and only so far) meeting of the Labour Affairs Council under the Republic of Korea-United States FTA in 2013 (Republic of Korea-United States LAC, 2013). Furthermore, a workshop with the US DOL, USTR, State Department and the Republic of Korea Ministry of Employment and Labour (KMOEL) was held in 2015 with the topic of facilitating corporate compliance with international labour standards in global supply

⁶³ Thailand Ministry of Labour, March 18, 2013, “Thailand, New Zealand discuss labour cooperation”; available at <http://www.mol.go.th/en/content/thailand-new-zealand-discuss-labour-cooperation> .

⁶⁴ The side agreement was signed in conjunction with a much larger agreement, the ASEAN-Australia-New Zealand FTA (AANZFTA) in 2008, but only two of the partners agreed on labour cooperation.

chains (USTR, 2016). Under the agreements with Australia and Singapore however, there has not been any meetings – the only two such cases out of all the 19 partners the United States has labour provisions with.

Finally, dialogue has also been documented in the case of the Chile-China side agreement on labour and social security, in particular in the field of social security (Lazo Grandi, 2009).

As mentioned in chapter 2, when assessing the impacts of trade agreements with labour cooperation clauses, it is important to keep in mind that labour cooperation also takes place outside of trade agreements, and that the presence of cooperation cannot easily be attributed to the labour provision. In the Asia-Pacific region we see a large amount of labour cooperation taking place outside of trade agreements.

First, a significant portion of funding and projects in traditional bilateral and multilateral development cooperation targets labour standards and employment policies. In terms of multilateral cooperation, the ILO is the main actor. In 2015, the ILO budget in the Asia-Pacific region plus the Eastern Europe and Central Asia sub-region was \$97.4 million over 299 projects.^{65,66} Bilateral donors were responsible for \$72.5 million of these. Bilateral donors are also involved in labour cooperation programs under the umbrella of bilateral development cooperation. According to OECD data, in 2014 bilateral donors (including the EU) disbursed \$110 million in the Asia-Pacific on projects categorized as “Employment policy and administrative management”.^{67,68} Three quarters of this is from European Union institutions, mostly disbursed in Turkey. The vast majority of the development cooperation on labour falls outside of trade agreements.

South-South bilateral labour cooperation is also taking place in the region. For example, ASEAN+3 has had regular meetings discussing and summarizing labour cooperation activities between the countries since 2001.⁶⁹ China in particular is prominent in its South-South cooperation programs, including through a 2016 ILO-China-ASEAN High-Level Seminar to achieve the SDGs on Universal Social Protection through South-South and Triangular Cooperation⁷⁰, and an ILO program on employment services and labour market information in Cambodia and Lao People’s Democratic Republic.⁷¹

⁶⁵ The budget includes the expenditure of core voluntary contributions (Regular Budget Supplementary Account - RBSA) and non-core voluntary contributions (Extra-budgetary Technical Cooperation – XBTC). Source: http://www.ilo.org/DevelopmentCooperationDashboard/#map:Donor_Category|Region|Strategic_Objective::2015.

⁶⁶ For an example of a project see ILO Statement on the “New initiative to improve labour rights in Myanmar”, November 2014; available at http://www.ilo.org/yangon/info/public/speeches/WCMS_319811/lang-en/index.htm.

⁶⁷ Not including contributions to multilateral organizations. Employment policy and administrative management is purpose code 16020. Note that this category contains a portion of projects on human resource development. Source: OECD.Stat <https://stats.oecd.org/Index.aspx?DataSetCode=CRS1#>.

⁶⁸ For an example see the GIZ project “Social and labour standards in the textile and garment sector in Asia”; available at <https://www.giz.de/en/worldwide/34136.html>.

⁶⁹ ASEAN Plus Three Labour Ministers Statement, May 16, 2016; available at http://www.asean.org/storage/2016/05/Joint-Statement-of-the-9th-ALMM3_ADOPTED.pdf

⁷⁰ ILO-ITC Statement, “ILO-China-ASEAN High-Level Seminar to achieve the SDGs on Universal Social Protection through South-South and Triangular Cooperation”; available at <http://www.itcilo.org/en/community/news/ilo->

A particularly salient case of labour cooperation emerged after the Rana Plaza incident in Bangladesh 2013 where more than a thousand people died when a building collapsed. With some urgency, several donors and agents set about implementing labour cooperation programs in the country, in particular aimed at OHS. While the country has no FTAs with labour provisions, the country is a beneficiary of unilateral preference scheme benefits with labour standard conditions from both the United States and the European Union. The United States GSP benefits were suspended in 2013 after the incidence, and a capacity-building activity, “the Action Plan”, was implemented in the framework of the GSP, the fulfillment of which is a condition for reinstated benefits⁷² (DOL, 2013; ILO, 2016). Meanwhile, on the EU side the incident spurred a separate capacity-building activity, the Sustainability Compact, coordinated and monitored by the ILO, although not linked to their unilateral scheme (ILO 2016). Two private sector initiatives were also initiated: the Bangladesh Accord on Fire and Building Safety and the Alliance for Bangladesh Worker Safety, both holding MNCs responsible for labour inspection in the factories in their supply chains. At the same time, the ILO is running a separate project, the “Improving Working Conditions in the Ready-Made Garment Sector Programme”, financed by Canada, the Netherlands and the United Kingdom.⁷³ This is specifically aimed at supporting the Bangladeshi Government “National Tripartite Plan of Action on Fire Safety and Building Integrity”, and has funded government labour inspections that were not covered by private sector initiatives. Several reviews have found that the one or several of these interventions have had a positive impact on labour standards in Bangladesh, including amendments to the Bangladesh Labour Act in 2013, 350 new registered garment unions, a reform of the Department of Inspections of Factories and Establishments, 200 new government labour inspectors, and almost 4000 factories inspected in total (DFID, 2015; European Commission, 2016c;^{74, 75}).

Second, there are many examples of bilateral and regional labour cooperation taking place under other forms of agreements. On the one hand, labour cooperation and dialogue has taken place under other forms of bilateral trade-related agreements. Under its bilateral Trade and Investment Framework Agreements (TIFAs; which are only framework agreements and not fully fledged FTAs), the United States has promoted cooperation on labour matters with Viet Nam, Malaysia, Philippines and Maldives as well as engaged in dialogue on labour issues with countries such as Sri Lanka, Georgia, Bangladesh, Thailand and Pakistan (USTR, 2015; USTR, 2016).

Furthermore, there are non-trade related agreements or memorandums of understanding targeting explicitly labour issues and cooperation. Examples of this are the Finland-Viet Nam MoU on labour

china-asean-high-level-seminar-to-achieve-the-sdgs-on-universal-social-protection-through-south-south-and-triangular-cooperation .

⁷¹ ILO Website; available at http://www.ilo.org/asia/whatwedo/projects/WCMS_235034/lang--en/index.htm .

⁷² Note that GSP benefits do not cover ready-made garments, the main industry involved in the Rana Plaza disaster and other high-profile cases of labour rights violations in Bangladesh. However, some argue that the sector was affected by the suspension of benefits anyway, due to reputational damage (Kibria et al., 2016).

⁷³ ILO Website; available at http://www.ilo.org/dhaka/Whatwedo/Projects/safer-garment-industry-in-bangladesh/WCMS_226530/lang--en/index.htm

⁷⁴ USTR, January 2015; available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/january/gsp-review-bangladesh-recognizes>

⁷⁵ ILO, September 2016; available at http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_240343/lang--en/index.htm

cooperation,⁷⁶ two MoUs between Canada and China on cooperation in the fields of ‘Industrial Relations and Labour Standards’ and ‘Occupational Safety and Health’,⁷⁷ Republic of Korea MoUs with Viet Nam, Mongolia, Gabon, South Africa and the Philippines,⁷⁸ and United States MoUs with India, China and Viet Nam.⁷⁹ An especially prominent area covered in agreements in the region is labour mobility and the protection of migrant labour. A 2015 ILO report on labour mobility agreements found 96 agreements and MoUs in the Asia region alone (ILO, 2015). Some recent examples of this include agreements between the Lao People’s Democratic Republic and Thailand⁸⁰, India and Saudi Arabia,⁸¹ and Republic of Korea and Viet Nam.⁸² Labour mobility has also been the topic of ad hoc labour cooperation talks and dialogue between countries in the region, such as in ASEAN Sub-regional seminars on labour cooperation⁸³ or between Bahrain and Pakistan⁸⁴. With the exception of US MoUs we do not have a lot of documentation of action taking place under these labour cooperation agreements, let alone of their impact on actual labour standards.

In sum, considerable labour cooperation is indeed taking place in the Asia-Pacific region, but this does not seem to be correlated with FTAs with labour provisions. While a few examples of activity under FTAs are documented, this has mostly involved dialogue, while the wide range of labour cooperation outside of them suggests that FTAs are not necessary for labour cooperation to take place. At the same time, very little evidence of de facto labour standards improvements has been documented.

3.2.3.5. Monitoring

Overall, monitoring is an obvious shortcoming in Asia-Pacific labour provisions. In most the agreements reviewed, the provisions provide for some kind of labour committee or sub-committee, or at the very least contact points for both partners. However, most provisions do not specifically mention how these committees are responsible for monitoring or any sort of timeframe or schedule for evaluations.

Only 14 agreements (44%) include any mention of civil society participation, and even fewer involve them in the context of monitoring. Four modes of inclusion have been identified in the provisions, some

⁷⁶ ScandAsia, September 7, 2010, “Viet Nam, Finland to Boost Labour Cooperation”; Available at <http://scandasia.com/7232-vietnam-finland-to-boost-labour-cooperation/>

⁷⁷ Government of Canada; Available at

http://www.labour.gc.ca/eng/relations/international/agreements/mou_china1.shtml ;

http://www.labour.gc.ca/eng/relations/international/agreements/mou_china2.shtml

⁷⁸ MOEL (2009)

⁷⁹ United States Department of Labour Website; Available at <https://www.dol.gov/agencies/ilab/our-work/diplomacy>

⁸⁰ Thailand Ministry of Labour, July 7, 2016, “MOU between Thailand and Laos Focuses on Labour Cooperation to Resolve Issues to International Standards”; Available at <http://www.mol.go.th/en/content/51590/1468134010>

⁸¹ The Wire, August 8, 2016, “Workers’ Plight in Saudi Arabia Exposes Chinks in Modi’s Policy For Indians Abroad”; Available at <http://thewire.in/57416/saudi-arabia-indians-labour/>

⁸² Viet Nam Ministry of Labour, July 10, 2014, “Strengthening labour cooperation with Republic of Korea”; Available at <http://www.molisa.gov.vn/en/Pages/Detail-news.aspx?IDNews=1953>

⁸³ Thailand Ministry of Labour, March 28, 2016, “Ministry of Labour Joins Viet Nam on Seminar to Enhance Labour Cooperation in Alignment with UN SGDs”; Available at <http://www.mol.go.th/en/content/ministry-labour-joins-vietnam-seminar-enhance-labour-cooperation-alignment-un-sgds-0>

⁸⁴ Bahrain News Agency, November 25, 2015, “Bahrain, Pakistan labour cooperation discussed”; Available at <http://www.bna.bh/portal/en/news/698106>

agreements containing several: (1) broad paragraphs involving stakeholders in matters related to the labour provisions in its totality (2) in cooperation activities, (3) in clauses on transparency, and (4) in detailed outlines of joint civil society forums. The latter two (3; 4) are both only found in EU agreements (EU-Georgia and EU-Republic of Korea), and involve communication and consultations with non-state actors as well as joint transnational forums between civil society representatives of both partners. 10 out of the 14 agreements include some form of general involvement of civil society (1), such as “Recognising the desirability of clear and well understood labour policies and practices and the utility of broad domestic consultation with stakeholders in formulating these policies, each Party shall, inter alia, maintain close dialogue with its stakeholders” (Hong Kong, China-New Zealand FTA). In the case of EU and US agreements, these stakeholder interactions are institutionalized; in the EU in the form of ad hoc Domestic Advisory Groups, and in the United States in the form of national labour advisory committees. 12 out of the 14 agreements with civil society involvements outlined in their labour provisions include them in the context of labour cooperation⁸⁵ (2), all through some variation of “In identifying areas for cooperation and carrying out cooperative activities, the Parties shall consider the views of their respective worker and employer representatives”.

Assessing the impact in the Asia-Pacific region

Monitoring is an area where the agreement text gives very little indication of what the actual practice is going to look like. Not much public information was found related to monitoring and evaluation of labour provisions in the area. Even in the case of the United States, who are considered the leaders in unilateral monitoring of trade partners’ labour standards, official documents say extremely little about its FTA partners in the region. An internal evaluation of the United States monitoring mechanisms done by the GAO highlighted that the US agencies “focus limited monitoring and enforcement resources on a few priority countries” (USTR 2015:44), notably a handful of Latin American countries, and as such annual reports have not included reviews of trends in labour standards in Australia, Republic of Korea or Singapore (ibid.). A similar prioritization has been found in civil society monitoring of United States agreements, where US labour unions and other stakeholder emphasize Latin American countries over Republic of Korea (Van den Putte 2015).

An exception to the lack of publicly available information is the EU, and in particular from its agreement with the Republic of Korea which has been active for over 5 years we can gain important insights into their challenges with using civil society mechanisms. The following will analyze this case in detail.

The EU-Republic of Korea FTA was, as the first of its new generation of FTAs under the EU’s Global Europe Strategy, the EU’s most comprehensive trade agreement at the time of signing (2009, entered into force 2011). The agreement goes to great lengths in outlining institutional measures for including civil society in the monitoring of labour standards in both countries. On a national level, both countries are to establish Domestic Advisory Groups (DAGs) composed of representatives of employers, trade unions and NGOs, while the DAGs of both countries plus additional participants come together for annual joint Civil Society Forums (CSF), hosted alternately in Brussels and Seoul. Both groups give feedback, opinions and inputs to the inter-governmental Committee on Trade and Sustainable Development (CTSD), the institution in charge of implementing the chapter on Trade and Sustainable Development. The CTSD has been meeting annually since 2012 and releases joint statements after its

⁸⁵ The two without are both EU agreements, whose Domestic Advisory Group are involved in the implementation of the entire labour provision.

annual meetings. Additionally, the European Commission publishes annual reports on the implementation of the agreement in its totality, and the CSF releases conclusions of its annual meetings.

The EU DAG has been active in putting pressure on both the CTSD and the European Commission in response to breaches of commitments and shortcomings in Republic of Korea labour regulations. In 2013 the EU DAG published an opinion report on “the Fundamental rights at work in the Republic of Korea, identification of areas for action”, outlining the status of labour standards in the Republic of Korea and suggestions on how to improve them (Altintzis, 2013). In particular FACB rights were highlighted as lacking, including strict regulations on unionization (ban on unionization among public servants, restrictive limits on union officials’ pay, limitations on union membership, single bargaining channel), procedures on strikes (excessively broad definition of “essential services” and “minimum service”, striker replacement and emergency arbitration, the inclusion of “obstruction of business” in the Criminal Act), prohibition on union political activity, as well as a number of cases of illegal methods used to curb unionism (including hacking and tracking financial transactions and surveillance and spying on union members). Much of the criticism builds on reports and admonishment from the ILO. The opinion concludes with a series of recommendations on issues the CTSD and the EC should discuss with the Republic of Korea Government, most notably ratifying and implementing the missing core conventions and amending national legislation.

Based on the breaches and shortcomings found in the 2013 Opinion as well as further cases of concern, the EU DAG sent a letter to Commissioner Karel De Gucht of the European Commission early 2014, formally requesting they invoke Article 13.14 – Government consultations (the agreement’s enforcement mechanism; Jenkins 2014). However, the response from the EC emphasized the importance of dialogue and civil society cooperation, and deferred any action on the matter. In particular, they promised to “keep a close eye on the work and any conclusions of the ILO bodies, including the Committee on Freedom of Association [CFA] which is due to meet in March 2014” (de Gucht 2014).

However, the dialogue approach has not seemed to be effective. In October 2016, the EU DAG welcomed an ITUC authored “Update on Core Labour Standards in the Republic of Korea”. Comparing recent developments and the status of labour affairs to the 2013 Opinion, the report notes that “none of the Opinion’s recommendations were redressed by the Government of the Republic of Korea except one relating to the recognition and registration of the Migrants’ Trade Union (MTU)” (ITUC 2016). In particular, the report notes that Republic of Korea still has eight standing cases before the ILO Committee on Freedom of Association, and cases of prosecution of union leaders and undue violence against protestors are ongoing. The report concludes that the Republic of Korea Government “ignores its own commitments in the FTA, promises for behavioural change to the European Commission and the [CTSD], the EU-Republic of Korea Civil Society Forum outcomes and decisions of the ILO CFA” (ibid). In December 2016, the EU DAG submitted a new letter to the new EU Commissioner for Trade, Cecilia Malmström, stating that none of the cases identified in the first letter had been redressed, and again urging the EU to “initiate the formal consultations process provided for in the FTA” (Stoev 2016:2). Due to complications from the Korean Government, no EU-Republic of Korea Civil Society Forum was held in 2016.

Despite recommendations from the CSF, the EC and the ILO, the Republic of Korea Government has still not ratified its four missing core labour conventions on FACB and forced labour (c087, c098, c029 and c105), however during the last CTSD meeting (September 2015) the Republic of Korea agreed to prepare

texts before the next CTSD meeting, setting out planned concrete steps towards removing remaining obstacles for their ratification (EU-Republic of Korea CTSD 2015).

The EU DAG's requests have however had some impact in other areas. Notably, early concerns about the composition of the Republic of Korea DAG, and in particular the prominence of Government affiliated academics and the absence of the Republic of Korean Confederation of Trade Unions (KCTU) who previously had been in ferocious disagreement with the Government, were assuaged (van den Putte 2015). Partly in response to pressure from the EU DAG the composition of the Republic of Korea DAG was changed in 2014, and the KCTU was allowed as a member of the Republic of Korea DAG (ibid). In another incident, inclusiveness was promoted through requests by the EC and the EU DAG that workshops hosted in conjunction with the CSF annual meeting was opened for stakeholders not represented in the respective DAGs (European Commission 2014).

The EU-Republic of Korea case shows that while the monitoring mechanisms under the FTA work insofar as labour standards violations and insufficiencies are being detected and reported, the overall effect of the labour provision is very limited. The institutional setup is strong to the extent that voices are heard and bilateral dialogue abounds, both between the civil societies of the two countries, between their governments, and between civil society and government. However, the Republic of Korea's reluctance to implement changes to their FACB legislation and practice illustrates the limits of dialogue. At the same time however, the EC's failure to initiate even relatively weak government consultation clauses suggests that political concerns are extant, and it is not clear that the availability of stricter legally binding arbitration clauses would have changed the outcomes (at least not without the option for civil society to activate the enforcement clauses). While civil society monitoring can play an important role in monitoring, this needs to be combined with stronger incentives for governments to implement changes.

3.2.3.6. Summary of Asia-Pacific labour provisions

Labour provisions are getting more prevalent in the Asia-Pacific region, although they are not yet as common as on the global stage. Looking at their structure and design however, we find great similarities between agreements in the region and those found elsewhere. A clear majority favour dialogue and consultations rather than arbitration, and cooperation clauses are wide-spread. Notably, we do not find any agreements that have attempted to copy the enforcement mechanisms of US and Canadian agreements. A handful of agreements include legally binding arbitration, but these are limited in their use by their scope and the commitments found in the provision.

Looking at the effects and impacts, it is in most cases too early to conclude anything, as the agreements have been in force for a short duration. Still, even for the older agreements we find little evidence that labour provisions in the region have had much impact. One of the biggest issues is that the lack of monitoring and evaluation has left us with little case evidence of improvements in partner countries, without which it is difficult to determine causation. Cooperation is the area where most action has taken place, and we have seen evidence of modest amounts of labour dialogue, workshops and joint studies. However, labour cooperation is also taking place between countries outside of agreement frameworks, and the extent of this extra-FTA cooperation activity is much larger than what is taking place within them. A relatively high amount of agreements include arbitration, yet none of these have ever been activated. The case of the Republic of Korea illustrates that despite several agreements with labour provisions (two of them including arbitration) and vocal criticism of labour standards in the Republic of

Korea from several of these partners, this has led to very few changes. Civil society has in this case been important as a watchdog, but this has not amounted to change in de facto labour standards.

3.2.4. The pattern of labour provision prevalence in the FTAs of the Asia-Pacific economies

While labour provisions are relatively prevalent in the Asia-Pacific region, the substantial labour provisions are concentrated among a handful of countries. In this section, we will analyze the patterns of labour provision prevalence. We focus on FACB rights as a proxy for labour standards here, as comprehensive, accurate, comparable and updated data is available from Kucera and Sari (2016).

First, searching for broad patterns in agreements with and without labour provisions, we look for correlations between the presence of labour provisions and labour standards in terms of (a) the gap between the two partners, and (b) the highest score in a country pair, as measured by the Kucera-Sari index. The hypotheses are respectively that (a) country pairs that introduce labour provisions are ones where one country scores well (and thus values labour rights) and one scores poorly (and the first country sees this as a problem), and (b) labour provisions are more likely to be included when one of the countries is a prominent offender in terms of labour standards. We find no significant difference in the average values between agreements with and without labour provisions (Table 3). Indeed, labour provisions are found in agreements between two high performers (e.g. Australia and Chile), between two poor performers (e.g. Republic of Korea and Turkey), and everything in between.

Table 3. Labour standard differences between two partners in free trade agreements with and without labour provisions

	With provisions		No provisions	
	Average	StDev	Average	StDev
Absolute difference	3.80	2.69	3.38	2.14
Maximum	6.76	2.46	7.24	2.06

Source: Author's calculations, Kucera and Sari (2016)

Second, by looking at individual countries we can get a sense of who are pushing for labour provisions, who are merely accepting them, and who are refusing them completely. We assume that we can see who are the leaders and who are the followers by analyzing what kind of partners countries include provisions with and not. Looking at the debate on a social clause in the WTO (see section 2.1), we would expect developed countries in general to be promoting labour provisions, and developing countries to oppose them.

We find that a disproportionately large number of the total number of agreements is concentrated among a few countries. With some exceptions, the large amount of labour provisions included by these countries implies that they are pushing for labour provisions in their agreements. These “promoters” are New Zealand, Republic of Korea and Japan inside the region, and the United States, EU, Canada and Chile outside. The EAEU countries have as a single unit recently emerged as promoters, although they have only signed one external agreement so far. New Zealand, Republic of Korea, United States and the

European Union have all officially stated that labour provisions are a part of their trade policy (⁸⁶, MOEL 2015, USTR 2007, European Commission 2015). For Japan, no similar official statements were found, but they still seem to be pro-active in including provisions, as witnessed by the fact that they both include them with countries that are not categorized promoters. It is interesting to note that while the EU, the US, Canada and New Zealand have labour provisions in *all* their recent agreements, Republic of Korea, Japan and Chile only include them with certain partners. This is likely to be caused by a lack of bargaining power in relation to their negotiating partner, a lack of political pressure domestically to push for labour provisions, or a combination of both.

Most countries in the region with labour provisions only include them in a few of their agreements, and where they include them it is only in agreements with the handful of labour provision-promoting countries. We categorize these countries as “accepters”, as they accept labour provisions, possibly as a price to gain concessions in other areas or because the partner will not conclude negotiations without labour provisions, but they will not take initiative to include them themselves. Whether these countries accept labour provisions or not depends on the relative bargaining power in the negotiations. An illustration of this comes from two agreements signed by Australia, with Chile and the United States, who both wanted to include labour provisions in their FTAs. During a congressional hearing on the Australia-Chile agreement, questions were raised as to why the Australia-Chile agreement did not include labour provisions while the Australia-US agreement did so. The Department of Foreign Affairs and Trade response was that “ILO and UN labour standards were included in the Australia – United States Free Trade Agreement because of a requirement to do so by the United States, and ... the inclusion of these standards in other free trade agreements negotiated by Australia is contrary to Government policy” (Parliament of Australia, 2008:33).

Using the Kucera-Sari index, we have compared three groups of countries: (1) promoters, (2) accepters, and (3) refusers⁸⁷ (table 4). Despite variation, an indicative trend points towards promoters having the best labour standards and refusers the worst. A plausible explanation is that the countries with the worst labour standards, i.e. the ones who would be in violation of labour provisions and thus “vulnerable” to disputes, are more reluctant to sign onto agreements with labour standards. Outliers do exist however, in particular China and Viet Nam, both with the worst possible score (10). Even more salient is Republic of Korea, one of the worst countries in the region with 7.7, but still including labour standards in many of their agreements (see below). It can be argued, however, that signing up to labour provisions without any binding enforcement mechanism is only paying lip service to labour standards, and that countries like China and Viet Nam has little to fear from violations of labour commitments. In any case, two out of China’s five labour provisions are purely cooperational. With the exception of Republic of Korea, none of the worst performers on the index have labour provisions with binding enforcement.

⁸⁶ New Zealand Ministry of Foreign Affairs and Trade Website; Archived copy available at <https://web.archive.org/web/20150329210253/http://www.mfat.govt.nz/Trade-and-Economic-Relations/NZ-and-the-WTO/Trade-Issues/0-labour-framework.php> .

⁸⁷ Refusers are countries with FTAs, but none of them have labour provisions. Countries with no FTAs are not included in the analysis.

Table 4. Labour standards variations between countries promoting, accepting and refusing labour provisions in their FTAs

Group	Labour standards indicator	Stdev Labour standards indicator
Promoters	3.50	2.59
Accepters	5.51	2.60
Refusers	6.19	3.21

Source: Author's calculations, Kucera-Sari (2016)

3.2.5. Prominent cases

Due to the low number of agreements with provisions it can be more informative to look at countries individually. In this section, we will first look at the most important promoters and their stance towards labour provisions. Second, we will look at South-South agreements, an area where the Asia-Pacific region is particularly progressive.

3.2.5.1. New Zealand

New Zealand set out its trade policy with relation to labour matters in 2001 in a “Framework for Integrating Labour Issues into Free Trade Agreements”.⁸⁸ The framework emphasizes cooperation and dialogue rather than sanctions, underlines the importance of involving the ILO, and explicitly states that the Government is flexible on the matter of including labour provisions in main agreements or outside (all of which are seen in practice in New Zealand's agreements). While building on the ILO fundamental principles, the framework acknowledges that countries are free to implement labour standards as appropriate, if they adhere to these minimum standards. Since the adoption of the framework in 2001, New Zealand has included labour provisions in all its FTAs,⁸⁹ with the partial exception of the ASEAN-Australia-New Zealand FTA (AANZFTA) where a side agreement on labour was signed with the Philippines only (Table 5). The consistent inclusion is likely the result of a combination of domestic political agreement on the value of these provisions, as well as the country's significance as a trading partner for many of its agreement partners⁹⁰.

⁸⁸ New Zealand Ministry of Foreign Affairs and Trade Website; Archived copy available at <https://web.archive.org/web/20150329210253/http://www.mfat.govt.nz/Trade-and-Economic-Relations/NZ-and-the-WTO/Trade-Issues/0-labour-framework.php>

⁸⁹ It is noted that New Zealand (unlike the EU and the US) does not include labour conditionality in their GSP scheme (ILO 2016)

⁹⁰ One suggestive example illustrating this is Malaysia. While both New Zealand and Chile signed FTAs with Malaysia in 2009 and 2010 respectively, only the New Zealand agreement contained a side agreement on labour, despite both countries having stated that they pursue labour provisions in trade agreement negotiations. For reference, Malaysia's export flows to New Zealand in 2009 were more than eight times as large as to Chile (<http://trade.stats.gov.my/tradeV2/>)

Table 5. New Zealand FTAs

With provisions		Without Provisions	
Republic of Korea	2015	ASEAN-Australia*	2010
Taiwan Province of China	2013	Singapore	2001
Hong Kong, China	2011	Australia	1983
The Philippines*	2010	SPARTECA	1981
Malaysia	2010		
China	2008		
Brunei Darussalam, Chile,	2006		
Singapore			
Thailand	2005		

* The 2001 ASEAN-Australia-New Zealand agreement did not contain labour provisions, but New Zealand signed a side agreement with the Philippines on labour

Source: Author's calculations

3.2.5.2. Republic of Korea

While Republic of Korea has the same number of agreements with labour provisions as New Zealand, it also has almost as many agreements without labour provisions since 2004 (table 6). Interestingly however, it has included labour provisions not only in agreements with the classic promoters, but also other countries. A historical evolution seems to have taken place, witnessed not only by the fact that later agreements are more likely to contain labour provisions, but also by the Republic of Korea's opposition to labour provisions⁹¹ that ostensibly has been reduced, even to the point of including labour provisions in agreements with countries not traditionally associated with labour provisions, such as Australia and Turkey, and to a lesser extent Colombia and Peru (which do have a small number of agreements with labour provisions). In the 2015 version of the annual review of Labour and Employment Policy in the Republic of Korea, one responsibility of the Republic of Korea Ministry of Employment and Labour (MOEL) in the context of international cooperation is described as "ensures that FTAs concluded with other countries include a separate chapter on the promotion of labour rights, and cooperates with international community to improve labour and human rights through the implementation of those FTAs" (MOEL 2015:45). Yet even recently the pattern of inclusion has not been consistent, and the pattern of partners with which it has included labour provisions is not apparently related to bargaining power, which might suggest that there are domestic political forces at play.

The Republic of Korea has been an active participant in labour cooperation outside of FTAs, and labour cooperation plays a central role in its development cooperation strategy (MOEL 2013). In addition to multilateral cooperation through the ILO⁹², WB and other arenas, bilateral labour cooperation has been documented in Mongolia, Myanmar, Viet Nam, Sri Lanka, Uzbekistan, the Philippines, China and

⁹¹ During the Republic of Korea-United States negotiations of 2007, officials from the Republic of Korea "balked at opening negotiations" to add labour provisions, but eventually agreed (Williams et al 2014).

⁹² Republic of Korea signed an MoU with ILO in 2003 formalizing their partnership for development – the ILO/ Republic of Korea Partnership Programme. This cooperation focuses on countries in the Asia-Pacific region and in particular on skills training, social protection and labour migration. See http://www.ilo.org/asia/WCMS_376991/lang--en/index.htm ; http://www.ilo.org/wcmsp5/groups/public/---dgreports/---exrel/documents/genericdocument/wcms_360429.pdf ; http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_404766.pdf

Indonesia (MOEL 2009, MOEL 2013, MOEL 2014). Interestingly, none of the reports mention any cooperation with the countries it has signed agreements with labour provisions with. Viet Nam is an interesting case, as it signed an FTA with the country in 2015 without any mention of labour; possibly because it already has a well-functioning cooperation under its 2004 MoU⁹³. Republic of Korea's bilateral cooperation is chiefly conducted under its MoUs on labour cooperation (with Viet Nam, Mongolia, Gabon, South Africa, Philippines) and since 2010 through joint committees (with UAE and Oman) (MOEL 2013, MOEL 2014). In sum, while Republic of Korea has a strong focus on labour cooperation, this is not linked to their FTAs.

Table 6. Republic of Korea FTAs

With labour provisions		Without labour provisions	
Colombia	2016	China	2015
New Zealand	2015	Viet Nam	2015
Canada	2015	ASEAN	2010
Australia	2014	India	2010
Turkey	2013	EFTA	2006
United States	2012	Singapore	2006
EU	2011	Chile	2004
Peru	2011	GSTP	1989
		APTA	1976
		PTN	1973

Source: Author's calculations

In the case of the Republic of Korea, the variations in labour provisions are exceptionally evident, as it has agreements with all the major actors in terms of labour provisions: United States, EU, Canada and New Zealand. As already discussed, while the US and Canadian provisions include legally binding arbitration, the EU and New Zealand agreements favour a dialogue and cooperation-based approach. Furthermore, the standards and commitments vary slightly between these four agreements as well. In these instances, the variations in labour provisions suggest that Korea is accepting rather than promoting labour provisions, as their design is very similar to other agreements signed by those partners⁹⁴.

Despite pressure from several of these partners, labour issues remain prominent in many areas in the Republic of Korea, and some reports argue that very little improvement has been seen in recent years (ITUC 2016). Notably, the country has still not ratified ILO core conventions on freedom of association and forced labour.

3.2.5.3. US and EU agreements in the Asia-Pacific

The United States and the EU are unarguably the global leaders and forerunners with respect to labour provisions. Against a backdrop of domestic pressure for fairer outcomes of trade agreements, the two

⁹³ Republic of Korea and Viet Nam further signed a Letter of Intent in 2014 outlining their mid- to long-term cooperation activities in the area of employment and labour (MOEL 2014). The letter

⁹⁴ One way to identify who are promoting certain provisions in an agreement is to see whether that provision is similar to which of the countries' previous agreements. Promoting countries often have model FTAs or templates, which are copied from one agreement to the next with the necessary changes (Allee and Elsig 2015).

actors have been responsible for initiating the trend towards their inclusion, as well as for experimenting with a number of designs, as witnessed by the evolution of their provisions (ILO 2013, ILO 2016, De Ville et al. 2016). At the same time, their economic sizes add to their negotiating power, and they have been able to push labour provisions through in all of their FTAs. Both the EU and the United States are on average relatively good performers on labour standards, although the US has only signed 2 out of 8 core conventions.

In the Asia-Pacific region four countries currently have active trade agreements with the two partners: Georgia, Republic of Korea, Singapore and Australia. Of these, the latter three have agreements with the United States, which implies legally binding arbitration, but so far these have never been activated. While Singapore and Australia have relatively high labour standards, and the labour provisions are ostensibly less likely to be invoked, the Republic of Korea does considerably worse in terms of labour protection. This serves to underscore the point that the pattern of labour provision inclusion is not based on ex ante labour standards, but on the (promoting) partner.

Three agreements with the United States and EU have been signed but not yet ratified. These are two EU agreements with Singapore and Viet Nam, and the Trans-Pacific Partnership (TPP), whose Asia-Pacific signatory members are Australia, Brunei Darussalam, Japan, Malaysia, New Zealand, Singapore and Viet Nam. All of these countries already have FTAs with labour provisions; however their content is not as comprehensive as the labour provisions found in these modern agreements. In particular, the introduction of legally binding arbitration under the TPP would be a departure from earlier agreements for all the regional members (besides Australia and Singapore who already have this in their agreements with the US). The new EU agreements' labour provisions are similar in content to recent agreements such as the EU-Georgia FTA.

The TPP has been hailed by some as a next-generation FTA, however in terms of the labour chapter no radical changes have been implemented compared to recent United States FTAs such as the United States-Republic of Korea FTA⁹⁵. The biggest differences in the text is a greatly expanded list of cooperation areas, the possibility for public submissions of complaints, and the inclusion of acceptable working conditions in standards (minimum wages, hours of work and OHS, as found in the Canada-Republic of Korea agreement; however "acceptable conditions" here is determined by each party). The major departure from previous agreement is the comprehensive side agreements with Brunei Darussalam, Malaysia and Viet Nam, which outline commitments the countries have to meet *before* they can enjoy the benefits of the agreement; a pre-ratification conditionality clause in the same spirit as those used in some earlier US agreements (on a smaller scale), but never seen in the Asia-Pacific region (Brown 2016, ILO 2016). Currently under considerable political pressure however, the future of the TPP is not clear.

3.2.5.4. South-South agreements

Out of 89 South-South agreements in the region, only five have some form of labour provisions, and only two of those are intra-regional. Apart from being South-South agreements, these have no obvious common factor that is unique for South-South agreements. While Chile-China is a purely cooperative agreement, the Chile-Turkey provision includes full recourse to the agreement's dispute settlement mechanism (however the labour clauses are all of a non-binding nature).

⁹⁵ See Allee and Lugg (2016) for an interesting word-analysis of the TPP in relation to previous FTAs

The extra-regional agreements are Chile-Turkey, Chile-China and China-Peru⁹⁶. The fact that China includes labour provisions is rather surprising, considering the fact that the country has considerable economic leverage to bring to trade negotiations (and thus could presumably easily refuse them), combined with the fact that the Government has an open stance against free unions, and that its present and historical poor record of labour rights. As mentioned above however, it can be argued that their agreeing to labour provisions carry no real significance to the extent that they are not in any case enforceable. Furthermore, the China-Peru labour provision is a purely cooperative one.

The intra-regional South-South agreements with labour provisions are all on account of the EAEU. First of all, the EAEU agreement itself contains labour provisions, in particular to the extent that it allows for full labour mobility in the region, but this also includes cooperation on labour migration and non-discrimination of migrant labour (see also box 1 in section 2.2.1). Secondly, and more significantly, the EAEU in its first FTA (with Viet Nam, signed 2015) included labour provisions in its chapter on sustainable development. While reaffirming the partners' commitments to the ILO 1998 Declaration and the ECOSOC 2006 Declaration however, there is not much substance to the agreement besides cooperation on labour matters. The EAEU is currently in talks over FTAs with several countries, many of which are developing countries, and has the potential to become an important player in Asia-Pacific regional South-South trade agreements.

4. Policy implications and suggestions

Comparing the labour provision situation in the Asia-Pacific with the rest of the world, we find that the same issues of limited impact are prevalent in both. Yet that is not to say that labour provisions cannot have positive impacts; we have seen a handful of cases where they have been associated with positive, albeit very small, changes. As labour provisions have continually evolved since their inception, so they should continue to be improved in the future. In light of the available evidence from both the Asia-Pacific region and the rest of world, we will here put forth recommendations for further improving labour provisions and enhance their impact on labour standards.

4.1. Suggestions for improving labour provisions in the Asia-Pacific region

4.1.1. Enhancing monitoring and impact evaluations

An overarching concern in our review of Asia-Pacific FTAs is the lack of information available and the lack of evaluations, impact studies and compliance validation reports. There is a stark contrast between the efforts we have seen in United States involvement in Latin American FTA partners and the lack of attention countries in the region have given their labour provisions. Monitoring is a fundamental element of improving labour standards without which determining the effectiveness of enforcement mechanisms, cooperation projects or the labour provision in total is impossible. On a larger scale, impact evaluations could also be beneficial for supporting the research on labour provisions and for identifying

⁹⁶ The full text of the China-Peru free trade agreement is not publicly available, so we were not able to analyze this agreement.

best practices that could potentially be transferred to other countries and agreements, in particular important considering the experimental phase labour provisions currently are in.

The United States and EU agreements are more developed in this aspect, although evaluations of their agreements have also found shortcomings in terms of monitoring. The United States has a large apparatus monitoring labour standards and progress in its trade partners both inside and outside of FTAs, but even they face issues with a lack of resources, leading them to focus attention on other regions than the Asia-Pacific. As the number of labour provisions keep increasing, the centralized unilateral approach to monitoring might not be ideal, as even the biggest economy in the world struggles to finance appropriate monitoring. The inclusion of civil society in monitoring could help alleviate this problem, and has led to awareness-raising and dialogue in several cases, notably in the EU-Republic of Korea case. However this is also not without difficulty and requires an effort on the part of both partners. The ILO is already playing an important role in monitoring and evaluating impacts, but only in a limited number of agreements, and their role as monitors of the ILO conventions is limited by the small number of agreements specifically referring to conventions.

Recommendation: Labour provisions should put more emphasis on monitoring and evaluation of progress in labour standards. Involving civil society and/or the ILO can be a cost-effective way of ensuring that issues are followed up and that cooperation and enforcement aspects of the agreement are working as intended.

4.1.2. Combining enforcement and cooperation

Most of the case evidence of successful labour provisions all points to the importance of combining enforcement and cooperation. In the most successful cases, particularly the CAFTA-DR, labour standard improvements have taken place in a context where (1) detailed plans with concrete issue areas were outlined ex-ante, (2) a comprehensive labour cooperation program with a big budget was implemented to meet the goals of these plans, (3) frequent monitoring of progress and evaluation of project was provided with inputs from the United States Government, ILO, and civil society in both countries, and (4) the option of arbitration and dispute settlement was present in the case of non-compliance, giving partner governments an extra incentive to value and prioritize cooperative measure offered (Polaski 2003, ILO 2013, DOL 2015, GAO 2015, Vogt 2015, ILO 2016). In the Colombia-United States agreement, ratification was conditioned on meeting certain requirements ahead of the entry into force of the agreement, and the United States Government combined this approach with cooperation in the form of technical assistance, capacity building and funding, yielding tangible results.

While most agreements with labour provisions in the region already include provisions on labour cooperation, this has not led to many projects in practice. For Asia-Pacific labour provisions to have an impact on labour standards, they first of all need to actually carry out their commitments to labour cooperation. Secondly, to ensure positive effects, they should draw from lessons learned under US agreements, which suggest that cooperation programs can be more effective when they're linked to specific current issues that have received attention, and when they are backed by the threat of arbitration (Polaski, 2003).

As seen above, most countries are hesitant to include legally binding arbitrations in labour provisions. However, the evidence available so far has led several commentators to argue that the scope for improvements is much larger with their presence, and that some form of dispute settlement is

favourable, even as a last resort if all other accommodating and amiable negotiations and dialogue fail (see for example Vogt 2015, De Ville et al. 2016, Orbies and Van den Putte, 2016). Pre-ratification conditions should also be considered seriously, as they not only have shown promising results, but they can also be considered to avoid some of the problems associated with arbitration and trade sanctions, as they are more similar to a positive sanction than a punishment.

Recommendation: To improve effectiveness labour provisions should favour an approach that combines cooperation with binding enforcement and monitoring. Cooperation efforts need to be increased to see results, and they should preferably meet a demand from the partner countries related to current issues. A penchant for mediation rather than arbitration should not automatically preclude the possibility of using arbitration as a last resort, and pre-ratification conditions could be considered.

4.1.3. Involving the private sector

The role of the private sector cannot be ignored when examining the issue of labour standards. As employers, the private sector is in many cases ultimately responsible for many aspects of labour standards, for example OHS, wages, child labour and discrimination. Meanwhile, the design of modern labour provisions usually puts the focus solely on the government, in particular on areas such as de jure labour regulations, FACB rights, enforcement of regulations and labour inspections. In the case of dispute and arbitration, cases are brought against the offending government, and they are also the targets of potential fines and sanctions, leaving the private sector offenders relatively unscathed. Involving the private sector directly through positive and negative sanctions can incentivize the private sector to work *with* the government in adhering to labour regulations, alleviating in particular some of the problems related to enforcement.

The private sector has for several decades attempted to meet some of the concerns about labour standards in their supply chains through various private sector initiatives. Globally, governments and the private sector have joined forces in programs supporting labour standards, such as the OECD Guidelines for MNCs or the United Nations Global Compact. In bilateral and regional FTAs however, these initiatives have been largely ignored. While some recent agreements have included language on the private sector, this has been completely without binding commitment, often in the form of cooperation on CSR (ILO 2016). However, one case stands out as a very successful experiment with involving the private sector directly: the Cambodia-United States Textile Agreement (see box 3).

Box 3: The Cambodia-United States Textile Agreement

The Cambodia-United States Textile Agreement (UCTA) was a sector-specific agreement active between 1999 and 2005 in the era of the Multi-Fiber Agreement (MFA) when textile imports to the United States were heavily regulated by country-specific quotas. The unique approach of the agreement linked increasing quotas to adherence to a set of labour standards, awarding quotas to individual companies as a positive sanction for compliance (ILO 2013). Monitoring at the factory-level was done by the ILO under its Better Factories Cambodia Program, which all exporting apparel factories had to participate in to obtain export licenses from the government. A third pillar of the approach was the publication of compliance reports, where non-compliance would be publicly shamed, and thus avoided by reputation-

sensitive global buyers. Several studies have documented improvements in labour standards as a result of the agreement (ILO 2013), and some of the benefits have continued after its termination, as producers recognize the value of labour standards to global buyers (Wells 2006).

While the UCTA cannot be replicated in its totality after the end of the MFA and the phase-out of quotas in the global trading regime, the experiment carried certain aspects that can be imitated in contemporary labour provisions, including the importance of specific goals and benchmarks, ILO monitoring and transparency (Polaski 2006). More than anything, it displays the potential of positive sanctions and of involving the private sector directly.

As the Cambodia case illustrates, involving the private sector can assist in improving labour standards beyond what the government might have been able or willing to do on its own. This is one example of a mechanism through which trade agreements can give additional weight to a labour standards program which would perhaps not be possible or politically feasible under a unilateral program.

Recommendation: Involving the private sector can be beneficial for ensuring compliance with programs, in particular where government enforcement and monitoring is lacking. As of yet the only good example of a scheme involving the private sector is based on quotas and limited access which is not directly replicable today, but further innovation and experimentation with approaches is highly desirable.

4.1.4. Labour provisions can have a positive impact on labour standards as an additional exogenous measure to reinforce positive endogenous developments

Finally, in contrast to the undeserved bad reputation of labour provisions as a protectionist tool, in practice they have mostly been about cooperation and dialogue, even in the few cases where they allow for arbitration. As has been argued in chapter 2, the empirical evidence is not convincing on the theory that free trade inevitably leads to a race to the bottom in labour standards or social dumping. In this context, labour provisions are not then primarily targeted at alleviating negative consequences of free trade, but rather at enhancing the positive consequences, and at ensuring that the gains benefit everyone (Arestoff-Izzo et al 2008). From the empirical studies, it seems that the most effective labour provisions are not necessarily the most stringent, but the most supportive. This sentiment is well reflected in labour provision practice, where the focus has been on promotion and cooperation; working *with* developing country governments to overcome labour standard issues⁹⁷. Furthermore, this particular role for labour provisions is very different from the proposed social clause under the WTO, and meets to a large extent the criticism of anti-labour provision critics who argue that trade sanctions are an inappropriate tool to improve labour standards⁹⁸ (Maskus, 1999; Martin and Maskus, 2001).

For developing countries seeking to improve labour standards and labour regulations, the question then is whether labour provisions can be helpful beyond what unilateral labour regulatory reform can achieve. The main aspect of this is that labour cooperation in the form of capacity building, technical

⁹⁷ This is further echoed in suggestions from the ILO (2013) on establishing Labour Development Plans under labour provisions, including time-bound commitments, commitment based on country specific context, linkages to enforcement provisions, positive incentives, cost sharing mechanisms, and systems for enhancing synergies between several agreements in the same country.

⁹⁸ This sentiment is also mirrored in the fact that labour provisions are found in South-South agreements and agreements between countries where neither has very high labour standards.

assistance, knowledge sharing, training or financial support, as well as external monitoring and evaluation of impacts, can buttress already existing domestic efforts in cases where weak labour regulation is caused by a lack of capacity. An important question however is whether this cooperation and promotion needs to be linked to trade agreements. As we have seen, a large amount of bilateral and multilateral labour cooperation already takes place between countries not linked by trade agreements. The strongest argument for linking cooperation to trade agreements is the value of the nexus between cooperation, enforcement and monitoring (in particular external monitoring by the partner countries, civil society and/or external actors such as the ILO). As argued above, combining cooperation with enforcement as a last resort can give further incentives to embrace cooperation efforts and put value on improvement. In this case, international commitments can work as commitment devices, tying the government's hand in the face of domestic opposition (Waldkirch 2004). The fact that the empirical evidence this builds on still is thin should not be overlooked however; more research into the importance of enforcement in this nexus is highly warranted.

Recommendation: Labour provisions should not be dismissed as a protectionist tool, but can on the contrary bring benefit for developing countries. From developing countries' point of view, negotiating labour provisions in their trade agreement can be an opportunity to ensure cooperation in labour standards which goes beyond what unilateral programs can achieve. At the same time, developed countries also need to uphold their end of the bargain and actually carry out labour cooperation programs.

4.2. Suggestions for capacity building in Asia-Pacific developing countries

This final section provides recommendations for developing countries and for capacity building exercises to support their policy makers.

Improving labour standards in developing countries is a difficult process, with no quick fixes available. Labour provisions in FTAs should not in any way be considered a silver bullet, but rather as a supplement to other domestic and international efforts. Although labour standards issues can be related to trade (although not as straightforward as many argue, see section 2.1), they are first and foremost domestic issues, and need to be tackled with domestic policies. In the context of FTAs, this points to the need to coordinate efforts between trade officials and labour officials. Cooperation activities can be more effective if they are linked to a domestic effort and backed by political support. Capacity building and assistance programs should therefore highlight the need to coordinate these efforts and to build a coherent plan for labour regulations, where labour provisions can be used as one of several tools.

This paper has painted a positive picture of the potential benefits from labour provisions, albeit with the caveat that most provisions have extremely limited effect. As discussed above, a central part of labour provisions' impact on de facto standards are through cooperation activities and (in some cases) the potential pressure from arbitration. However, governments will need to individually determine whether labour provisions are necessary to obtain such cooperative assistance or whether they can secure it through other means. An important part of the strategy is mapping the current labour issues, identifying areas where action is desired, and matching this with the available assistance. If labour cooperation activities under labour provisions can be targeted at specific issues it is more likely to have an effect. Combined, these two points suggests that capacity building should be targeting labour officials as much as trade negotiators, and that a holistic approach to the issue should be embraced.

As for trade officials, education and awareness building on the empirical and theoretical facts behind labour provisions is necessary to give a clearer picture of what they entail in practice. Misconceptions about labour provisions have arguably led to stronger criticism against their protectionist tendencies than what is warranted from the experience so far. This paper gives a thorough overview of both existing literature and a mapping of the current situation in the Asia-Pacific region, and serves as a natural starting place. However, more detailed case studies exist (especially of Latin American countries), which can be useful for governments facing labour provisions in trade negotiations. These are referenced to throughout this paper.

It is clear that varying designs and implementation strategies of labour provisions have differing effectiveness. The previous section (4.1) listed four recommendations for trade officials for improving the effectiveness of labour provisions. However, this should not be treated as a laundry list of solutions. What countries want out of labour provisions should not be ignored, and echoing the concerns above, capacity building should be focused on enabling countries to identify exactly how they want to use (or not) labour provisions to achieve certain goals. Nonetheless, the recommendations are a good starting point to improve the oversight and potential for improvement, and are drawn from studies of labour provisions worldwide. Capacity building on labour provisions should ideally build awareness of what options are available and how such provisions have been used in other cases, enabling countries to tailor provisions to their need. At the same time, as labour provisions are outcomes of negotiations, it is important to keep in mind constraints.

Finally, as the discussion in section 2.1 suggested, a major potential impact on labour standards come from the endogenous effects of trade and growth themselves. Trade officials should above anything else focus on getting the basics right. Ensuring that the FTA benefits economic growth for everyone, and keeping in line with the overall growth strategy of the country should be the first priority. Capacity building exercises are already targeting this aspect, and should be continued.

In conclusion, capacity building activities around labour provisions should emphasize the role labour provisions can play in a bigger strategy towards labour regulations, the promotion of evidence-based research on labour provisions and their potential, the need to tailor provisions to countries' needs (while keeping in mind identified positive experiences, as in this paper), and the need to get the basics right.

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Annex I – Ratifications of ILO core conventions in the Asia-Pacific region

Ratification year of ILO core convention

Country	<u>Freedom of association</u>		<u>Forced labour</u>		<u>Discrimination</u>		<u>Child labour</u>	
	C087	C098	C029	C105	C100	C111	C138	C182
Afghanistan	-	-	-	1963	1969	1969	2010	2010
Armenia	2006	2003	2004	2004	1994	1994	2006	2006
Australia	1973	1973	1932	1960	1974	1973	-	2006
Azerbaijan	1992	1992	1992	2000	1992	1992	1992	2004
Bangladesh	1972	1972	1972	1972	1998	1972	-	2001
Bhutan	Not ILO member							
Brunei Darussalam	-	-	-	-	-	-	2011	2008
Cambodia	1999	1999	1969	1999	1999	1999	1999	2006
China	-	-	-	-	1990	2006	1999	2002
Democratic People's Republic of Korea (the)	Not ILO member							
Fiji	2002	1974	1974	1974	2002	2002	2003	2002
Georgia	1999	1993	1993	1996	1993	1993	1996	2002
India	-	-	1954	2000	1958	1960	-	-
Indonesia	1998	1957	1950	1999	1958	1999	1999	2000
Islamic Republic of Iran	-	-	1957	1959	1972	1964	-	2002
Japan	1965	1953	1932	-	1967	-	2000	2001
Kazakhstan	2000	2001	2001	2001	2001	1999	2001	2003
Kiribati	2000	2000	2000	2000	2009	2009	2009	2009
Kyrgyzstan	1992	1992	1992	1999	1992	1992	1992	2004
Lao People's Democratic Republic (the)	-	-	1964	-	2008	2008	2005	2005
Malaysia	-	1961	1957	-	1997	-	1997	2000
Maldives	2013	2013	2013	2013	2013	2013	2013	2013
Marshall Islands (the)	-	-	-	-	-	-	-	-
Micronesia (Federated States of)	Not ILO member							
Mongolia	1969	1969	2005	2005	1969	1969	2002	2001
Myanmar	1955	-	1955	-	-	-	-	2013
Nauru	Not ILO member							
Nepal	-	1996	2002	2007	1976	1974	1997	2002
New Zealand	-	2003	1938	1968	1983	1983	-	2001

Pakistan	1951	1952	1957	1960	2001	1961	2006	2001
Palau	-	-	-	-	-	-	-	-
Papua New Guinea	2000	1976	1976	1976	2000	2000	2000	2000
Philippines (the)	1953	1953	2005	1960	1953	1960	1998	2000
Republic of Korea (the)	-	-	-	-	1997	1998	1999	2001
Russian Federation (the)	1956	1956	1956	1998	1956	1961	1979	2003
Samoa	2008	2008	2008	2008	2008	2008	2008	2008
Singapore	-	1965	1965	-	2002	-	2005	2001
Solomon Islands	2012	2012	1985	2012	2012	2012	2013	2012
Sri Lanka	1995	1972	1950	2003	1993	1998	2000	2001
Tajikistan	1993	1993	1993	1999	1993	1993	1993	2005
Thailand	-	-	1969	1969	1999	-	2004	2001
Timor-Leste	2009	2009	2009	-	2016	2016	-	2009
Tonga*	-	-	-	-	-	-	-	-
Turkey	1993	1952	1998	1961	1967	1967	1998	2001
Turkmenistan	1997	1997	1997	1997	1997	1997	2012	2010
Tuvalu	-	-	-	-	-	-	-	-
Uzbekistan	-	1992	1992	1997	1992	1992	2009	2008
Vanuatu	2006	2006	2006	2006	2006	2006	-	2006
Viet Nam	-	-	2007	-	1997	1997	2003	2000

Associate ESCAP Members

American Samoa	Not ILO member
Cook Islands (the)	Not ILO member
French Polynesia	Not ILO member
Guam	Not ILO member
Hong Kong, China	Not ILO member
Macao, China	Not ILO member
New Caledonia	Not ILO member
Niue	Not ILO member
Northern Mariana Islands (the)	Not ILO member

*Tonga became an ILO member in 2016

Annex II – Sub-Regional divisions

Sub-Region	Country
<u>North and Central Asia</u>	Armenia
	Azerbaijan
	Georgia
	Kazakhstan
	Kyrgyzstan
	Russian Federation
	Tajikistan
	Turkmenistan
	Uzbekistan
<u>South and South-West Asia</u>	Afghanistan
	Bangladesh
	Bhutan
	India
	Islamic Republic of Iran (the)
	Maldives
	Nepal
	Pakistan
	Sri Lanka
	Turkey
<u>South-East Asia</u>	Brunei Darussalam
	Cambodia
	Indonesia
	Lao People's Democratic Republic
	Malaysia
	Myanmar
	Philippines
	Singapore
	Thailand
	Timor-Leste
	Viet Nam

Sub-Region	Country
<u>Pacific</u>	American Samoa*
	Australia
	Cook Islands (the)*
	Fiji
	French Polynesia*
	Guam*
	Kiribati
	Marshall Islands (the)
	Micronesia (Federated States of)
	Nauru
	New Caledonia*
	New Zealand
	Niue*
	Northern Mariana Islands (the)*
	Palau
<u>East and North-East Asia</u>	Papua New Guinea
	Samoa
	Solomon Islands
	Tonga
	Tuvalu
	Vanuatu
	China
	Democratic People's Republic of Korea (the)
	Hong Kong, China*
	Japan
	Macao, China*
	Mongolia
	Republic of Korea (the)
	Taiwan Province of China**

* ESCAP associate member

** Not an ESCAP member

Ninth Tranche of the Development Account Project

Enhancing the Contribution of Preferential Trade Agreements to Inclusive and Equitable Trade

BACKGROUND PAPERS

No.1/2017 Labour Provisions in Asia-Pacific Free Trade Agreements