

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

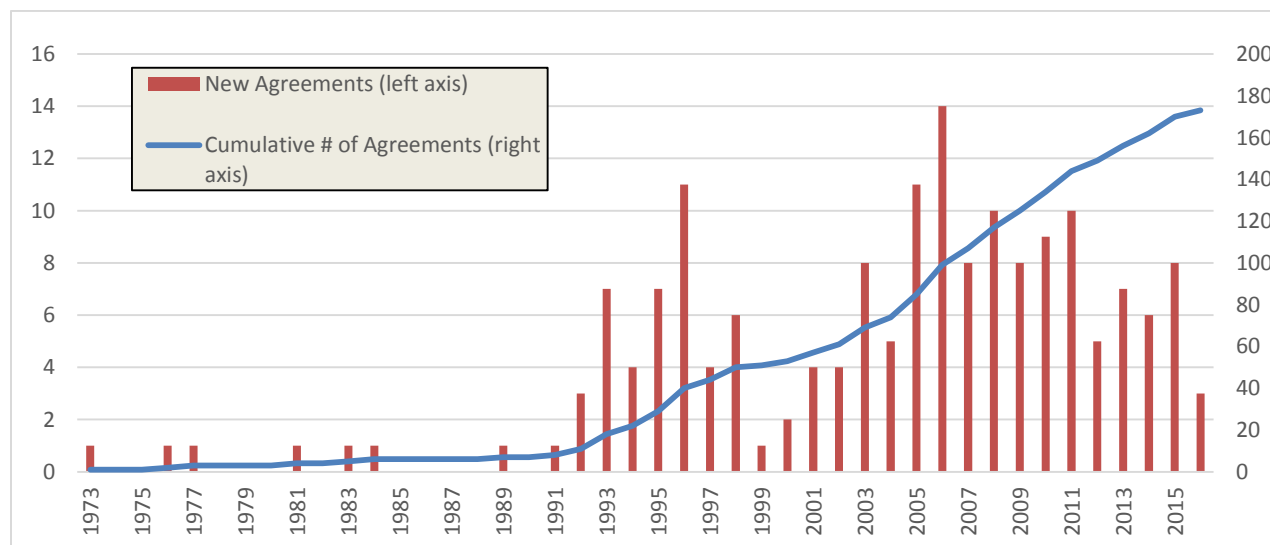
2.1.1. The rise of FTAs

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

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