Labour clauses in trade agreements: worker protection or protectionism?

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(with contributions by Dora Sari, University of Geneva)

Can trade and investment agreements promote decent work?
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A “Social Clause” through the Back Door? Labour Provisions in Preferential Trade Agreements

- Two-year project (Nov. 2014 – Oct. 2016) funded by the Swiss Network of International Studies

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Key outputs of the project

• Labour Provisions in PTAs (LABPTA) dataset (Raess & Sari 2017)
  – Covers 487 PTAs and 165 countries (1990-2015)

• 3 quantitative studies
  – Causes (1 paper) and Consequences (2 papers)

• 1 qualitative study
  – Design of LPs in PTAs signed by EFTA

• Fieldwork in selected Asian and Latin American countries, and at the EU level
# Labour Provisions in PTAs (LABPTA) dataset

## I. Preambular Provisions (P)
- Aspirational statements regarding labour-related commitments in the Preamble or Objectives part of the agreement

## II. Substance Provisions (S)
- International LS (e.g. ILO 1998 Declaration; ILO core conventions etc.)
- Domestic LS (non-derogation, effective enforcement; access to domestic courts)

## III. Obligation Provisions (O)
- Bindingness and the extent of obligations established through careful legal analysis (wording such as shall, will etc.)

## IV. Enforcement Provisions (E)
- Political DSM (no 3rd party adjudication)
- Quasi-Judicial DSM (arbitration)
- Judicial DSM (judicial adjudication)
- Sanctions (consensual and unilateral sanctions)

## V. Cooperation Provisions (C)
- Means of cooperation (exchange of information or people or technical assistance/capacity building)
- International LS (see Substance)
- Domestic LS (See Substance)

## VI. Institutions Provisions (I)
- Committee (regular or separate)
- Operation (regular or ad hoc); rank of participants (high or low)
- Third party involvement (social partners, ILO, NGOs etc.)
Figure 1. Share of LPs in total PTAs per year, 1990-2014
Preexisting beliefs about LPs in PTAs

1. *Protectionism in disguise* benefiting high-income countries

2. Ineffective in protecting workers at home and abroad

3. Only PTAs with strongly enforceable LPs are effective (while “soft” provisions are inadequate)

4. Fundamental labour rights have achieved status of an ‘unobjectionable norm’ (particularly in EU context)
Paper 1: Impact of PTAs with LPs on trade flows

- **Research interest**: economic impact of LPs in PTAs; what type of LPs best promote (or hinder) economic development

- Not a priori clear whether LPs reduce or increase bilateral trade flows
  - Reduction in *low income* country comparative advantage?
  - Increase in demand in *high income* countries for goods produced with higher labour standards?

- **Key findings**:
  - Introduction of LPs has on average no impact
  - Exports of *low income* countries benefit from the introduction of LPs in N-S PTAs
  - The impact is larger when LPs include deep cooperation mechanisms (strong enforcement does not matter)
Paper 2: Impact of PTAs with LPs on labour rights

• **Research interest:** role of labor-related (soft) cooperation provisions

• Labour rights indicators (Kucera & Sari 2016)
  - Violations of freedom of association & collective bargaining rights
  - *In law* LR and *in practice* LR indicators
  - [http://labour-rights-indicators.la.psu.edu/](http://labour-rights-indicators.la.psu.edu/)

• Main findings:
  - PTAs with deep cooperation mechanisms are effective in improving state compliance with *in law* (but not *in practice*) labour rights
  - However, PTAs with strongly enforceable LPs (e.g. US & Canada TAs) are not
Paper 3: Domestic politics and the trade-labour linkage

• **Research question**: are strong trade unions and left-leaning governments associated with more, and more far-reaching LPs in PTAs?

• Stringency of LPs (0-5): (0) no LPs; (1) reference to “create employment opportunities” in preamble; (2) reference to “improve working conditions” in preamble; (3) reference under substance or cooperation (4) deep cooperation; (5) strong enforcement

• Main findings:
  ➢ The stronger trade unions are in at least one member country of a PTA, the more likely it is that we see far-reaching LPs in that PTA.
  ➢ We do *not* find an effect of left governments on the depth of LPs; left governments at best reinforce the postive effect of strong unions
Lesson #1: Labor clauses are good for economic development

- Fear that enforceable labour standards would be abused by high-income countries for protectionist purposes is a myth
- Low-income countries benefit from signing onto PTA with LPs, particularly when accompanied by deep cooperation mechanisms
- Low-income countries should not oppose trade-labor linkage
- More trade is likely associated with “fairer trade,” helping to create a “level playing field” for workers and businesses in high-income countries
Lesson #2: “Soft” mechanisms best promote decent work

- LPs with deep cooperation mechanisms are most effective in reducing *in law* violations of fundamental labour rights.
- Enforcement mechanisms, on the other hand, do not seem to lead to stronger (ex post) compliance with labour rights.
- Design of cooperation provisions and accompanying institution (“deep cooperation”):
  - a. specialized committee in charge of implementation;
  - b. involvement of third parties (social partners, NGOs)
Lesson #3: Trade unions play critical role in trade-labour linkage

• Not new or surprising perhaps, but confirmed across time and space

• Role of trade unions is key both ex ante (negotiation) and ex post (implementation) phase

• There is scope for improvement in the cooperative approach, which ought to be the primary focus of the labour movement

• Trade unions should consider giving up their demand for hard sanctions (trade sanctions or fines)
  ➢ Adjudication based model (tit-for-tat) and threat of sanctions is inadequate (unfavorable) in tackling complex labor related issues
Strengthening cooperative approach

1. *Renegotiation* of PTAs to bring provisions up to date

2. Compulsory, regular and inclusive *impact assessment*

3. *Decentralization and enhanced coordination*: decentralisation of mechanisms from Brussels to country-level and the strengthening of country-level coordination with other trade actors (e.g. US or Canada) therein and policy coherence between trade and broader development policies (e.g. SDGs)

4. Enhanced and tangible *resources* commitments from high income countries

5. *DSM procedure*: finding adequate solution for the *trade-off* that exists between the political will on the EU’s side to take action and the need for independent trigger mechanism
Further readings
