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List of Acronyms and trade agreement memberships

ACP	African, Caribbean and the Pacific countries
AFL-CIO	the American Federation of Labor and Congress of Industrial Organizations
ASEAN	Association of Southeast Asian Nations
CAFTA-DR	Dominican Republic-Central America-United States Free Trade Agreement
Cariforum	Caribbean Forum of African, Caribbean and Pacific States
CBI	Caribbean Basin Initiative
CEC/NACEC	North American Commission on Environmental Cooperation
CTM	Consejo de Trabajadores Méxicanos
CWA	Communication Workers of America
DR	Dominican Republic
EC	European Community
EIA	Environment Impact Assessment
EPA	Economic Partnership Agreement
EPZ	Export Processing Zone
EU	European Union
FAT	Frente Auténtico del Trabajo (the Authentic Workers' Front)
FIDH	Fédération internationale des droits de l'homme (International Federation of Human Rights)
FTA	Free Trade Agreement
GATT	General Agreement on Trade and Tariffs
GSP	Generalized System of Preferences
GSP+	New Generalized System of Preferences beneficiary scheme
IEA	Integrated Environmental Assessment
ILAB	Department of Labor's Bureau of International Labor Affairs
ILO	International Labour Organization
ITUC	International Trade Union Confederation
MEA	Multilateral Environmental Agreement
Mercosur	Mercado Común del Sur (Southern Common Market)
MFA	Multi-Fiber Agreement
NAAEC	North American Agreement on Environmental Cooperation
NAALC	North American Agreement on Labor Cooperation
NAC	National Advisory Committee
NACEC/CEC	North American Commission on Environmental Cooperation
NAFTA	North American Free Trade Agreement
NAO	National Administrative Office
NGOs	Non-Governmental Organizations
OECD	Organization for Economic Co-operation and Development
OTLA	The United States Department of Labor's Office of Trade and Labor Affairs
RTA	Regional Trade Agreements
SIA	Sustainability Impact Assessment
STRM	Sindicato de Telefonistas de la República Mexicana (Telephone Workers Union of Mexico)

TPA	Trade Promotion Act
UE	United Electrical, Radio and Machine Workers of America
UNEP	United Nations Environmental Program
UNITE-HERE	Union of Needletrades, Industrial and Textile Employees-Hotel Employees and Restaurant Employees International Union
US DOL	the United States Department of Labor
US	the United States
USCBTA	the United States-Cambodia Bilateral Textile Agreement
USTR	the United States Trade Representative
WTO	World Trade Organization

Executive Summary

While Free Trade Agreements (FTAs) of both, the United States and the European Union, include **labor** issues in specific chapters, only US FTAs explicitly have "labor chapters," while the EU FTAs have a general reference to labor rights through the human rights clause and otherwise refer to labor issues in chapters on "social aspects". Clearly, the US prioritizes labour issues over general human rights or social concerns, while the EU has a broader focus, embracing human rights and sustainable development issues. Based on congressional and civil society pressure, the US also provides clear avenues for sanctions, making labor issues actionable under regular dispute settlement processes. In contrast, the EU adopts a more nuanced approach, signalling a preference against sanctions and for dialogue and capacity-building. The EU social chapters are not enforceable. However, even though US labour provisions are more focused and subject to regular dispute settlement processes, the language of these respective paragraphs used to be rather vague. In addition, avoiding enforcement through sanctions is clearly also the preference of subsequent US administrations, and thus, in the end the enforcement performance of the two is not very different.

Most of the US FTA labor chapters provide room for public participation, which is denied in EU chapters. But both, the US and EU provide assistance to strengthen the capacity of its trading partners to promote respect for core labour standards and/or democratic principles.

With few exceptions the signing of labor chapters has not been followed by tangible improvements in labor rights and standards. As US and EU leverage arguably is highest during the negotiations of an FTA, the strengthening of labor rights happens mainly during negotiations for trade agreements. Improvements remain basically at the level of the national law with few efforts directed at the enforcement of labor laws through ministries and courts.

Even the North American Agreement on Labor Cooperation (NAALC), which allows for public submissions, has not produced tangible results for labor. Most case studies conclude that the NAALC's effectiveness is highly dependent on the U.S. government's priorities. This insight explains also the one major success story of a labor chapter, the 1999 US-Cambodia Textile Agreement (USCBTA). Here the U.S. government was very committed to make it work. This agreement connected increases in garment export quotas to systematically and publicly monitored increasing compliance with labour standards. It was the first and only U.S. trade agreement to use market incentives rather than sanctions to encourage governments' and employers' compliance with labour standards. Labour standards referred to ILO core labour standards and Cambodian labour law. The US, the Cambodian government and the Cambodian Garment Manufacturers Association cooperated with the ILO to create an external monitoring program.

The Cambodian experiment also highlights the potentials for the involvement of the ILO. Its strength rested in its technical expertise and reputation. Questions remain however as to the ILO's capacity to conduct monitoring and enforcement on a large scale.
Furthermore, the US Cambodia Bilateral Textile Agreement underlines the importance of civil society involvement. The efforts of the US textile worker union UNITE and the on-the-ground support of the AFL-CIO's Solidarity Center have been identified as crucial for the agreement's success.

Several elements are necessary for a strong FTA labour provision:

- Labour or social provisions should be stipulated in a specific chapter in the main agreement.
- Labour principles should explicitly refer to the internationally recognized labour standards of the ILO
- All labour provisions should be enforceable and should be subject to regular dispute settlement. Labour provisions should also allow independent monitoring.
- Labour provisions should provide room for public participation concerning the initiation of reviews of violations.
- Sanctions should be foreseen, although the choice between imposing trade measures and fines needs further assessment.

We have developed draft language for future social chapters (see, Annex II, III).

Substantive **environmental** provisions exist in very few agreements, primarily in to which the United States or EU are a party. The U.S. have focused on the enforcement and improvement of legislation already in place in partner countries, as well as the enforcement of particular international treaties that both Parties have passed. The wording of EU FTAs has, in contrast, focused on cooperation, capacity building and technical assistance.

Concerning dispute settlement, the EU's agreements have not set environmental issues on equal footing with economic provisions while US trade policy since 2007 not only requires that environmental commitments be fully enforceable through the same dispute settlement procedures, but also gives precedence to Multilateral Environmental Agreements (MEAs) over FTAs in case of conflict.

Again in contrast to EU practice, it is U.S. policy to allow for citizen and NGO submissions claiming ineffective enforcement of national environmental regulations. The renegotiated U.S.-Peru FTA features one more novelty. It creates a fully enforceable a plan to combat a specific trade-related environmental issue, in this case trade in illegal timber.

With the Cariforum-EU EPA, however, the EU is beginning to converge on U.S. practice. This agreement contains fully enforceable environmental clauses within its investment provisions and adopts NAFTA-like language by stating that the partners shall "seek to ensure" high levels of environmental protection. The latter is, however, not fully subject to dispute settlement.

The evaluation of the effectiveness of environmental provisions in FTAs faces significant obstacles. First, most have been in force for much less than ten years. Second, causality is difficult to ascertain because other factors intervene such as transition from authoritarian to democratic rule

Most studies currently available focus on NAFTA, it having the oldest environmental provisions in a trade agreement. Despite initial fears, NAFTA has not undermined levels of environmental protection in the U.S. and in Canada. However, NAFTA's goal of strengthening domestic legislation in Mexico seems not to have lived up to expectations.

The high degree of "legal inflation" in EU environmental clauses, i.e. their limited enforceability, lets their effectiveness rest on the good will of the partners. For example, despite similar environmental clauses in the Euro-Mexican FTA and the EU-Chile FTA, the outcome has been quite different. The EU-Chile FTA had been much more effective in terms

of implementing the cooperation goals outlined in its environmental chapter, and thus it appears that the legal wording of these chapters seems to have had very little, if any effect on actual cooperation.

International organizations in the field of the environment are not much involved in projects specifically related to FTAs. In terms of enforcement, most FTAs do not include standards or mechanisms of environmental enforcement which could be monitored by international organizations. UNEP, the most likely candidate for international involvement, has to date only played a limited role in providing assistance in conducting sustainability impact assessments.

The inclusion of civil society in intergovernmental negotiations is still a nascent aspect of trade relations. In case of NAFTA, although this tactic has not had the enforcement boosting effect hoped for by some, the capacity to name and shame it provides has been well used to successfully embarrass offenders.

The inclusion of environmental norms in trade agreements has so far not shown significant effects in terms of better standards. At best it has prevented the abrogation of environmental laws and the lowering of enforcement levels. It seems that the North American Agreement on Environmental Cooperation (NAAEC) has been comparably most effective in achieving these modest objectives. The key elements of NAAEC are:

- The clearly stated objective of preventing lower standards through changes in laws or lack of enforcement.
- Enforceability through dispute settlement procedures.
- Civil society participation through submissions.

Some further features found in some of the most recent FTAs may also contribute to more meaningful environmental chapters in trade agreements:

- Precedence to Multilateral Environmental Agreements (MEAs) over FTAs in case of conflict.
- Focus on specific trade related environmental concerns with an action plan.

In addition, civil society participation can be enhanced by carrying out Sustainability Impact Assessments preemptively, or at least at a much earlier stage in the negotiation process- and making these results immediately available to stakeholders. International Organizations such as UNEP could play an important role in enhancing the capacities of poorer countries for carrying out such assessments.

In sum, if the EU plans to continue to include more standards related clauses in its trade agreements to improve the appropriateness, effectiveness, ownership and therefore legitimacy of these requirements, it is important to aim for improved civil society participation in these agreements.

1 Introduction

Violations of core labour rights and substandard working conditions are unfortunately quite prevalent among trading partners of the European Union outside the OECD. Since the EU does not want to become an accomplice of these practices by granting special trade privileges to these partners, it has repeatedly stated its intention to ensure that liberalised trade shall not undermine social and environmental standards. One way to realise these intentions has been the integration of social and environmental norms in the Free Trade Agreements (FTAs) the EU has already negotiated or is in the process of doing so. This study wants to contribute to this effort by identifying the most effective ways of integrating these norms in FTAs.

For this purpose the study compares the language on social and environmental issues in ratified as well as in proposed Free Trade Agreements, mainly from the United States of America and the European Union. In addition, the study surveys the literature on the effectiveness of social and environmental clauses in trade agreements. The main objective is to identify best practices regarding the legal specification of norms, monitoring and enforcement processes, and the involvement of international organisations and civil society actors. The following specific research questions guide our analysis:

1) Which labour and social regulations, and which environmental regulations, in FTAs provide language regarding coverage, public participation, monitoring, and enforcement, as well as linkage to WTO law, that can best serve as a model for future FTAs?

2) Which labour and social regulations, and which environmental regulations, in FTAs have proven to be most effective in maintaining or improving social and environmental standards?

3) What role can international organisations play in the monitoring and enforcement of social and environmental regulations in FTAs?

4) What role can civil society actors play in the monitoring and enforcement of social and environmental regulations in FTAs?

5) What effects will the increased importance of FTAs in global trade, and the specific properties of labour and social regulations, as well as environmental regulations, in FTAs, have on the European Union's GSP+ scheme?

We will provide separate answers to these questions for the social and environmental dimensions.

2 Labour and Social Regulations in FTAs in Comparative Perspective

In this section we will first discuss the general rational for including labour rights in trade agreements. We will then focus on the Free Trade Agreements (FTA) of the United States and the European Union, since with few exceptions that is where one finds labour or social chapters. We will begin by comparing the language of the respective chapters and then proceed to a survey of the literature on their effectiveness.

2.1 Economic Justifications for Labour Rights Clauses in FTAs

International core labour rights are human rights and as such are to be respected (McCrudden 2007). In addition, they can also be justified on economic grounds. In the academic debate, the arguments of advocates of internationally binding workers' rights are based on a neo-institutional view of the market mechanism (Sengenberger 2002), while those of their critics stem from a neo-classical approach (Bhagwati, 2000, Grossmann and Michaelis, 2007). If criticism on purely ideological grounds is to be avoided, it is necessary to challenge these approaches on their own "home domain". It can be demonstrated that, on the question of the optimum international level of regulation, the neo-classical reasoning is circular, declaring the market to be the mechanism determining the regulatory scope of the market. Trading nations have long ago decided to lower barriers to international trade by negotiation, i.e., through GATT. For this reason it cannot be argued that the optimum level of regulation can be decided solely by the market (Langille, 1996). Furthermore, respect for core workers' rights does not automatically increase in step with the development and expansion of the export sector. In fact, in many countries the liberalisation of foreign economic policies has been accompanied by increasing social inequalities and a massive expansion of the informal sector, where labour rights are generally violated (Chan and Ross 2003; Marjit and Maiti, 2005; Mosley, 2008; ITUC 2008).

The neo-institutional approach, by contrast, points to the destructive potential that market mechanisms can have in trade between nations because of the absence of a central regulatory authority at an international level. According to that view, foreign trade should, therefore, be flanked by domestic social legislation and regulated externally by multilateral agreements (Piore, 1994; Palley 2004). Empirical evidence seems to support the neo-institutional claim that core labour rights are conducive to economic growth (World Bank 2005: Ch. 7; Bazillier 2008) and export competitiveness (Kucera and Sarna 2004; for an opposite view, see Neumayer and De Soysa, 2006).

Core workers' rights can, however, also be justified within the neoclassical paradigm. They are constitutive for markets (since the market is defined as a exchange of goods among free persons) and address market failures such as power imbalances or barriers to market exit. They are an important precondition for the development of "human capital" and therefore contribute to economic efficiency (Feld, 1996; Hansson, 1983). If standards are as beneficial as some claim, why are they not voluntarily adopted? Some of the motives for not signing on to the ILO conventions are political. Dictatorships have good reasons to believe that trade unions might become places of government opposition (e.g. Solidarnosc in Poland). There are also economic reasons. Although the "high road" promises long-term benefits, it may incur short-term costs. While attempts to assess the cost impact of adherence to ILO conventions have not delivered reliable results thus far (Dorman, 1995: 27; Rodrik, 1996: 52; Anker et al.,

1998), even small differences in production costs can be expected to be decisive for market success. Most export goods from developing countries are sold to wholesalers or transnational corporations, which command a strong market position vis-à-vis the producers. This competitive situation, however, is the very reason why social standards have to be negotiated internationally. As long as it is possible for an economic region to gain competitive advantage by undercutting the social standards in other regions, these other regions are in danger of losing market share and hence employment opportunities. The greater the similarity between the competing regions with regard to factor endowment and market position, the more acute is this danger. It will be particularly high if market success depends on a single factor, namely low-skilled labour. In such a case, the danger from lower standards cannot be offset by other factors. This situation is particularly true of developing countries, which face the constant risk that new regions with an even larger reservoir of cheap labour will break into the world market. For these reasons, developing countries cannot raise their social standards in isolation but only in conjunction with other countries by multilateral agreement (Scherrer 2007; Wood, 1999).

There is no need to fear a decline in the overall demand for goods from the developing countries, as their long-term growth depends primarily on the training level of their workers and on transfers of technology. International standards can, therefore, plausibly be justified in terms of development theory (Singh, 1990: 52-254; see also Erickson and Mitchell, 1998: 179).

2.2 Comparing the Language of Labour and Social Regulations in EU and U.S. FTAs

2.2.1 United States: Labour and Social Regulations in FTAs

Labour chapters in trade agreements of the United States of America date back to the early 1980s when they were first negotiated for the Generalized System of Trade Preferences (GSP) and the Caribbean Basin Initiative (CBI; cf. Greven 2005). A major milestone was the 1993 North American Agreement on Labour Cooperation (NAALC), a side agreement of the North America Free Trade Agreement (NAFTA), where labour issues were covered for the first time in the context of an FTA. Since then, the twelve US-FTAs have included labour chapters in the body of the agreement. In addition, a temporary bilateral textile agreement with Cambodia included an incentive-based labour provision.

Coverage of labour rights has varied considerably among these agreements. A turning point was in August 2002, when the US Congress passed the “Bipartisan Trade Promotion Authority Act” (TPA, so called “fast-track” negotiating authority for the president), which incorporates labour issues as overall and principal negotiating objectives and supports “equivalent” dispute settlement procedures and remedies for labour issues (Elliott 2003: 14, Aaronson 2006: 22). Subsequent US FTAs then incorporated TPA-consistent labour clauses (Clatanoff 2005: 113). Another turning point was in 2007, when the Democrats had just gained a majority in both houses and fast-track authority was about to expire. The Bush administration was forced to compromise with the Democratic leadership and renegotiated the FTA with Peru regarding social and environmental issues. The FTA with Peru passed in Congress in April of 2007. The language of the compromise became the basis for a new bipartisan consensus on trade, the so called New Trade Policy for America. The consensus did

not last for long. The Bush administration failed to get the FTAs for Panama, Columbia and South Korea passed in Congress despite labour chapters similar to the Peru FTA.

Bolle (2008) categorised the labour provisions in US trade agreements in four different models. The first model for including labour rights in trade agreements is the 1993 NAALC, which requires countries to enforce their own labour laws and standards. The only provision entailing enforceable sanctions is a country's "persistent pattern of failure…to effectively enforce its occupational safety and health, child labour or minimum wage technical standards," provided that failure is trade-related and covered by mutually recognised labour laws (Article 29). However, fines ("monetary assessments") are capped. In contrast, all commercial provisions are fully enforceable under NAFTA.

The second model is the labour chapter of the 2001 US-Jordan FTA, which is part of the main agreement. Commercial and labour provisions are equally enforceable and subject to same dispute resolution procedures. Each country agrees to "not fail to effectively enforce its labour laws ... in a manner affecting trade" (Article 6.4). Labour laws are defined as "US internationally recognised workers' rights," which is a reference to a list first established in 1984 US trade legislation, from which the prohibition of discrimination is notably missing. In an exchange of letters, however, the two governments stated their intention to resolve any disputes without resorting to trade sanctions, which may considerably weaken the legal force of the agreement.

The third model is found in US FTAs with Chile, Singapore, Australia, Morocco, Bahrain, Oman and the six CAFTA-DR countries. This model includes only one enforceable provision: Each country "shall not fail to effectively enforce its labour laws…in a manner affecting trade between the Parties". In contrast to the "Jordan standard," labour laws are defined as "a Party's statutes or regulations… that are directly related to" the list of US internationally recognised workers' rights, effectively limiting the parties' obligations to enforcing their domestic labour law. There is non-enforceable language that parties shall "strive to ensure" that domestic labour laws incorporate the principles of the ILO Declaration (without reference to the specific core ILO Conventions, of which the US has only ratified two, No. 105 on the abolition of forced labour and No. 182 on the worst forms of child labour). These agreements share many of the same procedures for labour and commercial disputes, but monetary penalties for labour issues are limited while those for commercial disputes are not. For both types of disputes, suspension of trade benefits is the "last recourse." But since the labour chapter's language is weak, it seems unlikely that any dispute would get that far. Furthermore, the US-Chile and US- Singapore FTAs use fines rather than trade measures (Elliott 2003).

The fourth model is found in US FTAs with Peru, Colombia, Panama and South Korea. It reflects the 2007 compromise *New Trade Policy for America* and includes four enforceable labour concepts, namely: (1) a fully enforceable commitment that Parties adopt and maintain in their laws and practices the ILO Declaration on Fundamental Principles and Rights at Work, excluding, however, the Declaration's follow-up process, and requiring that violations occur "in a manner affecting either trade or investment between the two countries;" (2) a fully enforceable commitment prohibiting FTA countries from lowering their labour standards; (3) new limitations on "prosecutorial" and "enforcement" discretion (i.e. countries cannot defend a failure to enforce laws related to the five core labour standards on the basis of resource limitations or decisions to prioritise other enforcement issues); (4) the same dispute settlement mechanisms or penalties available for other FTA obligations such as commercial issues. But

for the FTA with Peru, whose implementation was ordered by President Bush in his final days in office, they have not yet passed Congress (see above).

A comparison of the four models shows that, firstly, only under models 2 and 4, all labour provisions are enforceable. Secondly, model 1 has separate and different enforcement procedures for labour and commercial disputes. Model 3 has relatively similar procedures for both types of disputes. Both impose caps on potential maximum monetary penalties for labour disputes, but place no caps on penalties for commercial disputes. Models 2 and 4 have the same enforcement procedures for labour and commercial disputes and impose no caps on penalties.

After a period of great inconsistency regarding the reference to international labour principles (Elliott 2003), exposing a double standard and political interests, the US has recently moved to a clearer commitment to ILO standards and has included a prohibition of discrimination. Reservations remain, however, and it is unclear as of yet, what trade policy the new Obama administration will pursue.

2.2.1.1 Public Participation and Capacity Building and Technical Assistance

Most of the US FTA labour chapters provide room for public participation, e.g., the articles concerning Institutional Arrangements stipulate that each meeting of the Subcommittee on Labour Affairs shall include a public session. Moreover, each party's "contact point"[1] shall:

> "…provide for the submission, receipt and consideration of public communications on matters related to this Chapter, make the communications available to the other Party, and as appropriate, to the public, and review the communications, as appropriate, in accordance with its procedures…" (Article 18.4 Institutional Arrangements)

Furthermore, formal decisions by the parties concerning the operation of labour provisions shall be made public, unless the Joint Committee decides otherwise. Some FTAs stipulate public participation in cooperative activities.

The US also provides assistance to strengthen the capacity of its trading partners to promote respect for core labour standards (Aaronson 2006: 31). The US Congress has authorised general trade capacity building assistance and provided specific funds for specific FTAs. Under the Clinton administration funding was more generous (up to $150 million p.a., Elliott 2003: 17) than under the Bush administration (Aaronson 2006: 31). In the context of US-CAFTA-DR, the US created working groups for its FTA partners to identify trade capacity building needs, and NGOs, firms, and the US government specified what they could do to help (USTR 2005, as cited in Aaronson 2006: 32).

2.2.1.2 A Special Case: the US-Cambodia Bilateral Textile Agreement (USCBTA)

The 1999 US-Cambodia Textile Agreement (USCBTA) stands out as a "best practice" model (Polaski, 2006a; Wells 2006: 360). It connected increases in garment export quotas to systematically and publicly monitored increasing compliance with labour standards (Wells-Dang 2002: 1). The agreement was in force until 2005 – when the Multi-Fibre Agreement's

[1] Each party designates as "contact point" an office within its central government agency that deals with labour or workplace relations.

(MFA) textile quota system was terminated – and was the first and only US trade agreement to use market incentives rather than sanctions to encourage governments' and employers' compliance with labour standards (Wells: 360). Labour standards referred to ILO core labour standards and Cambodian labour law. After the first review of the textile agreement in December 1999, the US, the Cambodian government and the Cambodian Garment Manufacturers Association cooperated with the ILO to create an external monitoring program (Wells-Dang 2002: 2). The ILO Garment Sector Working Conditions Improvement Project was largely funded by the US Government (Wells: 363). Monitoring was also carried out by private firms and NGOs but the ILO's monitoring had much greater legitimacy because it had no connection to the firms (Wells: 361). For its effectiveness, see 2.3.2.

2.2.2 European Union: Social Chapters in FTAs

The promotion and protection of general human rights is one of the EU's main objectives (Horng 2003: 90). Accordingly, the EU has included a human rights clause in its external agreements since the early 1990s (Bartels 2005). Human rights clauses now apply to over 120 countries (Horng 2004).

In the EU's bilateral agreements, the "essential clause" stipulates respect for the fundamental rights and democratic principles conveyed in the Universal Declaration of Human Rights as an essential element of the agreement (Horng 2003: 91). This is emphasised by an additional "non-execution" clause, which states that violations of human rights may result in the termination of agreement or suspension of its operation in whole or in part.

However, not all EU agreements that contain essential clauses also have non-execution clauses, e.g. the cooperation agreements with Brazil (1992), Mongolia (1992), India (1993), Sri Lanka (1993) and Vietnam (1995). There are no human rights and democracy clauses in any general cooperation agreements with any developed countries. There are no human rights and democracy clauses in any sectoral trade agreements with third countries, either developing countries or developed countries. Human rights and democracy clauses are poorly drafted. There is a lack of clarity on the normative value of the essential elements clause, and, therefore, the applicability (if any) of the non-execution clause. With the exception of the Cotonou Agreement, the procedures for consulting the other party before taking 'appropriate measures' are not described well in the agreements. Binding third party dispute settlement is available only under the Cotonou Agreement, the agreement with South Africa and the Europe and Euro-Mediterranean association agreements (except with Syria), but only non-binding conciliation is available under the partnership and cooperation agreements (Bartels 2005).

Besides the implicit inclusion of labour rights in the human rights clause of external agreements, the EU covers labour issues under the rubrics of "social aspects", "social matters", or "sustainable development". The EU asserts that it uses trade as a tool to achieve sustainable development, including the implementation of core labour standards and respect for the environment (Aaronson 2006: 7-8). "EU policy on trade and labour is based on the principle that good social conditions underpin sustainable productivity growth and promote the efficient production of high quality goods" (European Commission Directorate General Trade 2006).

In some EU's bilateral FTAs, e.g. in the EU Association Agreements, the chapters covering social or sustainable development issues also contain labour issues such as industrial relations, equal treatment of men and women, unemployment, vocational training, and work safety but they do not specifically refer to a definition of labour standards, e.g. through reference to ILO conventions. In some other bilateral agreements, e.g. the EU-Israel agreement, the chapters go beyond core labour standards to encompass disabled people etc. In the EU-CARIFORUM agreement is the first agreement with a social chapter that specifically refers to the ILO Core Labour Standards and the 2006 Ministerial declaration of the UN Economic and Social Council on Full Employment and Decent Work (Art. 191). Currently, the EU's draft negotiating mandate for the ongoing negotiations of an EU-ASEAN FTA also links sustainable development to the promotion of decent work through the effective implementation of ILO Core Labour Standards (cf. table 1).

The draft for a social chapter in the EU-Mercosur FTA goes beyond the EU-CARIFORUM FTA. This draft was prepared by the social legislation specialists Oscar Ermida Uriarte, Hugo Barretto Ghione und Octavio Carlos Racciatti. The Governing Body of Latin American Trade Unions and the Confederation of German Trade Unions proposed this draft during the Mercosur negotiations on the 2nd of July 2004. It also refers to the ILO Declaration on Fundamental Principles and Rights at Work, and additionally to the Charter of Buenos Aires from 2000 (concerning the social responsibilities of Mercosur plus Bolivia and Chile), and to the EU Social Charter and the 2000 EU Charter of Fundamental Rights. Unlike the EU-CARIFORUM, the EU-Mercosur draft explicitly mentions government responsibilities concerning workplace inspection (Müller & Scherrer 2007). Moreover, while the EU-CARIFORUM stipulates a consultation process on social issues and the establishment of a three member Committee of Experts in the case of violations that lead to controversies between the parties (Art. 195), its social chapter is not subject to the regular Economic Partnership Agreement dispute settlement process. Only if the consultation process has been exhausted, can a country initiate the dispute settlement process (Art. 204). The EU-Mercosur draft includes an independent monitoring process through a standing expert committee which is assigned to issue "a biennial report regarding the respect, promotion and effective fulfilment of the rights and guarantees recognised" (Art. 24). It does not provide for trade sanctions in case of violations (Müller & Scherrer 2007).

In the EU FTAs, disputes pertaining to social chapters are to be settled through co-operation, consultation, and dialogue (Aaronson & Rioux 2008; cf. the provisions on "Social Cooperation Actions" in the Association Agreements). Social chapters are not subject to the regular dispute settlement process, and thus the language of enforcement and implementation of labour obligations in the EU FTAs is rather weak (cf. table 2).

Table 1 Comparison of Social Provisions in the EU FTAs

EU-Israel	**EU-CARIFORUM**	**Draft Negotiating Mandate EU-ASEAN**
Title VIII Social Matters Article 63 1. The Parties shall conduct a dialogue covering all aspects of mutual interest. The dialogue shall cover in particular questions relating to social problems of post-industrial societies, such as unemployment, rehabilitation of disabled people, equal treatment for men and women, labour relations, vocational training, work safety and hygiene, etc.	Chapter 5 Social Aspects Article 191 Objectives and multilateral commitments 1. The Parties reaffirm their commitment to the internationally recognised core labour standards, as defined by the relevant ILO Conventions, and in particular the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of the worst forms of child labour and non-discrimination in respect to employment. The Parties also reaffirm their obligations as members of the ILO and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998). 2. The Parties reaffirm their commitment to the 2006 Ministerial declaration by the UN Economic and Social Council on Full Employment and Decent Work, promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all, including men, women and young people. other.	Title 9 Trade and Sustainable Development Article 36 The Agreement will include commitments by both sides in terms of the social and environmental aspects of trade and sustainable development. The Agreement will include provisions to promote adherence to and effective implementation of internationally agreed standards in the social and environmental domain as a necessary condition for sustainable development. The Agreement will also include mechanisms to support the promotion of decent work through effective domestic implementation of International Labour Organisation (ILO) core labour standards, as defined in the 1998 ILO Declaration of Fundamental Principles and Rights at Work as well as enhancing co-operation on trade- related aspects of sustainable development.

Table 2: Comparison of Social Provisions in the EU FTAs

EU-Jordan	**EU-CARIFORUM**	**Draft Negotiating Mandate EU-ASEAN**
Chapter 2 Social Cooperation Actions Article 82 1. The Parties acknowledge the importance of social development which should go hand in hand with any economic development. They give particular priority to respect of basic social rights. 2. To consolidate social cooperation between the Parties, actions and programmes shall be undertaken on any issue of interest to them.	Article 195 Consultation and monitoring process 1. In accordance with Article 191, the Parties recognise the importance of monitoring and assessing the operation of the Agreement on decent work and other areas of sustainable development through their respective participative processes and institutions, as well as those set up under this Agreement. 2. The Parties may consult each other and the CARIFORUM-EC Consultative Committee on social issues covered by Articles 191 to 194. Members of the CARIFORUM-EC Consultative Committee may submit oral or written recommendations to the Parties for disseminating and sharing best practice relating to issues covered by this Chapter. 3. On any issue covered by Articles 191 to 194 the Parties may agree to seek advice from the ILO on best practice, the use of effective policy tools for addressing trade-related social challenges, such as labour market adjustment, and the identification of any obstacles that may prevent the effective implementation of core labour standards.	Article 36 "…The Agreement will foresee the monitoring of the implementation of these commitments, and of the social and environmental impacts of the Agreement, through inter alia review and public scrutiny, as well as instruments of encouragement and trade-related co-operation activities, including with relevant international fora." _____ **EU-CARIFORUM** cont'd 4. A Party may request consultations with the other Party on matters concerning the interpretation and application of Articles 191 to 194. The consultations shall not exceed three months. In the context of this procedure any Party may independently seek advice from the ILO. In this case the limit for the period of consultations is extended by a further period of three months. Article 196 Cooperation 1. The Parties recognise the importance of cooperating on social and labour issues in order to achieve the objectives of this Agreement.

2.2.2.1 Public Participation

EU Association Agreements are mostly silent concerning public participation regarding labour provisions. In contrast, the draft social chapter of the EU-Mercosur FTA indicates room for public participation. Social partners at the national and regional level are involved in technical co-operation regarding social and labour matters established by the parties (Article 27). The draft puts emphasis on social dialogue involving the civil societies of the parties. The drafts of social chapters of the EU-CARIFORUM and the other proposed Economic Partnership Agreements with the former ACP regions do not specifically mention the issue of public participation.

2.2.2.2 Capacity Building and Technical Assistance

The EU also provides financial resources to improve the human rights performance of trading partners. The EU has become the biggest donor of human rights assistance to the world (Horng 2003: 92). The EU also funds specific labour rights capacity building intended to build the expertise of government officials to enforce labour laws. It funds for example a project called the Joint Initiative on Corporate Accountability and Workers' Rights, aimed at improving workplace conditions in global supply chains. The EU also works closely with the ILO on similar capacity building projects (Aaronson 2006: 19).

Furthermore, the EU appoints independent consultants to conduct Sustainability Impact Assessments (SIAs). However, the Assessments have not yet covered the labour rights impact.

2.2.3 Comparative Analysis

While both US and EU FTAs today include labour issues in specific chapters, only US FTAs explicitly have "labour chapters," while the EU FTAs have a general reference to labour rights through the human rights clause and otherwise refer to labour issues in chapters on "social aspects" or "social matters" (Table 1). Clearly, the US prioritises labour issues over general human rights or social concerns, while the EU has a broader focus, embracing human rights and sustainable development issues (Aaronson 2006: 8, 20). Based on congressional and civil society pressure, the US also provides clear avenues for sanctions, making labour issues actionable under regular dispute settlement processes. In contrast, the EU adopts a more nuanced approach, signalling a preference against sanctions and for dialogue and capacity-building. "Whereas US agreements typically contain few areas where enforceable obligations have been agreed, the EC agreements contain a smaller (proportional to the overall) number of areas with enforceable obligations, and a much larger number of areas where exhortatory language has been agreed" (Horn, Mavroidis and Sapir 2009: 28). This "legal inflation" demonstrates the weakness of monitoring and enforcement of labour chapters in EU FTAs. However, even though US labour provisions are more focused and subject to regular dispute settlement processes, the language itself is rather vague. In addition, avoiding enforcement through sanctions is clearly also the preference of subsequent US administrations, and thus, in the end the enforcement performance of the two is not very different (see below).

Table 3: Comparisons between the US and the EU FTAs

No.	Elements	USA	EU
1	Agreement without labor provisions	Before NAFTA	Some
2	Do agreements uphold the ILO Declaration	Yes	Yes
3	Requires parties to adopt, maintain and enforce in their own laws and in practice labor rights as delineated in ILO Declaration	Yes	Yes
4	Lists of obligations beyond ILO Declaration	Acceptable conditions of work, procedural guarantees of access to labor justice	Decent work agenda and up-to-date conventions, 2006 ECOSOC Declaration Migrant Workers (some
5	Non-derogation clause	Yes	Yes
6	Special provisions on child labor Workers' rights in EPZs Trafficking in workers Labor mobility	Yes, covered EPZs covered No No	No No No No
7	Decent work agenda	Not specifically mentioned	Yes
8	Labor rights in body or side agreement	Yes	Yes
9	Labor rights subject to Dispute Settlement procedures	Yes	In most cases, mechanism specific to sustainable development
10	Labor rights obligations subject to the same dispute settlement procedures as other commercial provisions	Yes	No, in most cases, a specific dispute settlement mechanism
11	Rely on fines or sanctions	Trade sanctions, with possibility to pay fines. The fines go to treasury	No, main enforcement mechanism is public scrutiny, cooperative approach
12	Create body to promote cooperation	Yes	Yes
13	Linked to adequately funded capacity building	Yes	Yes
14	FTA impact assessment	Yes	Yes
15	Incentives to bolster local demand for labour rights	Yes	Yes
16	Individual right seek investigation	Disputes are government to government. Individuals may petition government	?

Source: Aaronson & Rioux 2008.

2.3 Comparing the Effectiveness of Existing Labour and Social Regulations in EU and U.S. FTAs

In this section we ask which labour and social regulations in FTAs have proven to be most effective in maintaining or improving social standards and labour rights. Given the lack of rigorous econometric studies, we rely on existing case studies regarding the resolution of individual violations of social norms.

2.3.1 The North American Agreement on Labor Cooperation

The North American Agreement on Labor Cooperation (NAALC) is the most studied labour rights agreement. Most case studies come to fairly negative conclusions as far as tangible results of the public submissions are concerned (Ayres 2004, Dombois et al. 2004, Dombois et al. 2003, Greven 2005, for instructive negative comments on individual submissions cf. Kay 2003). Brown/Stern (2008) wrote: "The most common outcome, however, has been an agreement between governments to inform workers and employers more fully of their rights and obligations under existing law." On the other hand, Polaski (2004) is more positive, arguing that there was "voluntary correction of problems in some cases," following the publicity of NAALC cases, citing the fact that Mexican law and practice regarding discriminatory treatment of pregnant women was changed for the public sector, and that in the US at least one state stepped up enforcement of laws protecting Mexican migrant workers. Most submissions were filed before 2000; since then there has been a certain "submission fatigue" (Dombois et al. 2004) due to the cumbersome submissions process and the lack of success in resolving individual cases, followed by a "scholarly fatigue": scholars lost interest in the NAALC.

On its website (http://www.dol.gov/ILAB/programs/nao/status.htm#iia21), the US Department of Labour's Office of Trade and Labour Affairs (OTLA), which serves as the National Administrative Office (NAO) for purposes of the NAALC, provides the following overview of public submissions:

> "Thirty-four submissions have been filed under the North American Agreement on Labour Cooperation (NAALC). Twenty-one were filed with the U.S. NAO of which nineteen involved allegations against Mexico and two against Canada. Eight were filed with the Mexican NAO and involved allegations against the United States. Five submissions have been filed in Canada, three raising allegations against Mexico and two raising allegations against the United States.
> Sixteen of the twenty-one submissions filed with the U.S. NAO involved issues of freedom of association and eight of them also involved issues of the right to bargain collectively. Two submissions (…) concerned the use of child labour, one (…) raised issues of pregnancy-based gender discrimination; three (…) concerned the right to strike; five (…) concerned minimum employment standards; and seven (…) raised issues of occupational safety and health.
> Of the submissions filed to date with the U.S. NAO, four (…) were withdrawn by the submitters before hearings were held or the review process completed. Hearings were held on ten (…). Eight of the U.S. submissions (…) have gone to ministerial-level consultations. The U.S. NAO declined to accept [6] submissions for review."

In 2007, the US NAO declined another submission to accept for review. Thus, of the seven submissions filed during the administration of George W. Bush, four were not accepted for review. The contrast with the Clinton record on acceptance of submissions for review (only three of twelve were not accepted) shows the highly political nature of the submissions process. It should be noted that often cooperative government activities have been prompted by submissions, even when not accepted for review.

How can the lack of tangible success in individual cases be explained? Early on, this may have been a result of weak preparation on the part of submitters. However, US unions and NGOs soon began selecting better cases, working with stronger Mexican partners (albeit not with CTM unions), and preparing the quasi-judicial proceedings professionally. Still, there was no tangible improvement of the situation of the workers immediately affected. Dombois et al. (2003, 2004) argue that the participating actors have not developed a common understanding of what the NAALC should be, and that they themselves are part of complex domestic institutional arrangements that constrain their actions. The Mexican and Canadian governments, and in the case of Mexico the dominant unions, did not want the agreement, and they therefore focus on cooperative activities and information gathering on "best practices" unrelated to the submissions process. Thus, in the end the NAALC's effectiveness is highly dependent on the US government's priorities.

Has there been indirect success of the NAALC? Authors in favour of labour rights provisions argue that the external pressure of an international labour rights regime can support endogenous processes of change, provided there are domestic actors that can make use of the "extra pressure" (Cook 2005). Submissions can be a useful tool for, among other things, gaining additional political space. Graubart (2008) argues that the NAALC provided an opening for independent labour in Mexico. The participatory elements and regional focus of NAALC have led to the development, or strengthening, of transnational networks of unions and human rights organisations and have provided for greater publicity than ILO complaints. Few had foreseen such cross-border union cooperation in the context of an agreement that was initially perceived as directed solely against Mexico. There are strong alliances, e.g. between the American communication workers union CWA and the Mexican union STRM, but cooperation seems to be strongest on the fringes of both labour movements, between the small and leftwing Mexican FAT and the independent American UE (Alexander/Gilmore 1999; Kay 2005).

2.3.2 Bilateral US FTAs

Anecdotal evidence seems to confirm an earlier study on the experiences with labour rights clauses in the Generalized System of Preferences and the Caribbean Basin Initiative of the United States (Scherrer et al. 1998). The strengthening of labour rights happens mainly during negotiations for trade agreements. Improvements remain basically at the level of the national law with few efforts directed at the enforcement of labour laws through ministries and courts (Aaronson 2006). As US leverage arguably is highest during the negotiations of an FTA, a causal effect is plausible. However, the demonstration of this causality is politicised as the office of the US Trade Representative (USTR) has an incentive to claim success in the face of congressional pressure regarding labour rights (ibid.). In addition, in some cases, progress might have followed from pressure originating from labour rights provisions in preferential trade programs such as the GSP or the CBI (cf. Schrank 2006 for the Dominican Republic's progress on labour law enforcement).

There is very little experience concerning the enforcement of labour rights provisions in US bilateral trade agreements. In part, this is due to the fact that until December 2006, there was no process for the public to submit complaints about labour rights violations in the context of bilateral FTAs (US DOL 2006). From then on, the receipt and review of public submissions for the NAALC and past and future labour chapters in FTAs lies in the responsibility of the new Office of Trade and Labour Affairs (OTLA) in the DOL's Bureau of International

Labour Affairs (ILAB), with one exception: in case of the US-Jordan FTA, it is still entirely up to the US administration to pursue enforcement. It should be noted that no US administration, Democratic or Republican, has ever initiated an investigation regarding labour rights violations of trading partners. In every case, public submissions have led to investigations.

In 2008, the AFL-CIO filed a public submission under Chapter 16 (the Labour Chapter) of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), together with six Guatemalan unions (AFL-CIO et al. 2008). The OTLA accepted for review this submission, which alleged that the government of Guatemala "failed to effectively enforce its domestic labour laws with regard to freedom of association, the right to organise and bargain collectively, and acceptable conditions of work" (US DOL 2009b). After a lengthy review process, in which OTLA consulted with the government of Guatemala, OTLA suspended further action for six months on Jan. 16, 2009. It reasoned that the Guatemalan government had sufficiently demonstrated its interest in resolving the issues.

A special case of enforcement of labour rights provisions is the US-Cambodia Bilateral Textile Agreement (USCBTA) of 1999, which expired at the end of 2004 due to the end of the textile quota system (Multi-Fibre Arrangement, MFA). As detailed in 2.2.1.3, USCBTA focused exclusively on positive incentives, providing additional quotas to good performers on labour rights, with an element of peer pressure (industry performance). Monitoring of labour rights performance in the factories was entirely left to the ILO ("Better Factories Cambodia," originally the ILO Garment Sector Working Conditions Improvement Project), and was financed by the US, the Cambodian government and Cambodian textile employers. Highlighting the Cambodian textile industry's success with an "ethical niche" in the textile market even after the end of the MFA as well as the apparent improvement in labour and union conditions, several studies argued for USCBTA as a potential model from which to develop future trade-labour rights linkages (Polaski 2006a, Sabel et al. 2000, Kolben 2007, Chiu 2007, Abrami 2003, Berik/Rogers 2008, Wells 2006; Wells-Dang 2002 is more cautious; Aaronson/Rieux 2008 report that the Ethical Trading Action Group and the International Right-to-Know Campaign have developed concrete suggestions for labour rights linkages from the USCBTA model).

The most thorough analysis to date of the ILO's Synthesis Reports on labour rights performance (Howell 2005), however, is more critical of the USCBTA approach, calling the ILO's monitoring and enforcement role inadequate. As the agreement has no punitive elements, the remedy of violations was left to the Cambodian labour ministry, which is said to be rampant with corruption. Also, the agreement allowed for free riders in the industry, as long as the industry as a whole reasonably complied. Howell also criticised too few inspections and the lack of any role for public involvement – especially concerning Cambodian workers or their representatives. Others, however, have noted the involvement of US unions, and that Cambodian unions have been considerably strengthened (Kolben 2007, see below for the role of civil society). The ILO's Better Factories program continues to exist and continues to receive funding by the US government (http://www.betterfactories.org/; see below for discussion of the possibility of expanding the ILO's monitoring role).

2.3.3 Effectiveness of Labour Regulations in European Union FTAs

At the time of this writing, the EU has not enforced the labour rights provisions contained in its FTAs. If the practice regarding general human rights can serve as guidance, the EU's "brand" of enforcement (Aaronson 2006) is distinguished by an emphasis on consultations, cooperation, dialogue and capacity building (i.e., technical and financial assistance), as opposed to formal investigations of violations and sanctions (Bartels 2005). Still, the human rights clause has been applied, at least as a reference point. There are forums for the implementation of human rights and democracy clauses (Bartels 2005): 1. the establishment of subcommittees with a mandate to discuss the promotion of human rights and democracy; 2. consultations and adoption of appropriate measures following the failure to respect human rights and democratic principles. Subcommittees have been created under the association agreements with Morocco, Jordan and Tunisia, and subgroups on human rights have been created under cooperation with Bangladesh and Vietnam. Consultations have been performed on 14 occasions for non-execution of an essential elements clause, whereas appropriate measures have been adopted with respect to Togo, Haiti, Liberia, Zimbabwe, and Guinea (Bartels 2005). Hafner-Burton (2008) criticises the invocation of the human rights clause as inconsistent and politically driven. According to Fierro (2003) EU enforcement focuses on breaches of democratic principles rather than human rights (cf. also FIDH 2006). Bang (2007) finds little effect of this leverage on human rights practices. Nevertheless, Miller (2004) provides for some evidence that human rights concerns have precluded agreements.

Like in the case of US FTAs, there is some evidence that improvements of labour laws have been realised in the negotiations phase. Again, there is an incentive for the European Commission to claim such success, as the European Parliament is generally keener in this matter. The Commission correctly states, however, that it is not the contractual wording which precludes action but the lack of political will on the part of the Council of Ministers (European Commission 2006). The procedural requirement of unanimity is an obstacle to enforcement, as well as the technocratic and secretive decision-making of the Commission, which "allows commercial interests to trump human rights concerns" (Aaronson 2006: xx).

The EU also conducts social and environmental impact assessments of "all major multilateral and bilateral trade negotiations. These assessments are known as Sustainability Impact Assessments (SIAs). SIAs consider impacts on both EU members and on the other parties to the agreement in question (Harrison/Goller 2008)." Aaronson (2006) suggests that "EU policymakers could add a labour rights impact assessment to this assessment, to make it more comprehensive."

2.4 The Role of the International Labour Organization

In 1996, it was suggested that a Working Party on trade and labour rights be established within the World Trade Organisation (WTO) during the WTO ministerial conference in Singapore, but this was rejected by developing country members on the grounds that it might lead to protectionism on behalf of developed nations. The outcome was to reiterate that the ILO should remain the appropriate body to deal with the question of labour rights in global trade, with continued co-operation from the WTO.

This event served to strengthen the efforts within the ILO to reinvigorate the campaign for more ratifications of its conventions. In 1998, the ILO Declaration on Fundamental Rights and Principles at Work was passed - eight most important Conventions but independently

recognised as an obligation on all parties, whether or not they had ratified the various conventions, to respect, promote and uphold the following "fundamental rights" such as freedom of association and collective bargaining. The ILO also strengthened its monitoring program, but shied away from enforcement mechanisms in the form of trade sanctions. It continues to rely on “name and shame” tactics with limited success (Grynberg and Qalo, 2005; Hepple 2005)

The ILO conventions, however, serve as point of reference for the labour rights clauses in some of the trade agreements of the US and the EU. The 2002 Bipartisan Trade Promotion Authority Act (“fast track”) contained provisions that required labour rights protections to be negotiated under trade agreements. It included overall objectives such as the promotion of “core worker rights and the rights of children that are consistent with the core labour standards of the ILO”, along with a specific reference to promoting the ratification of ILO Convention 182 calling for the prohibition of the worst forms of child labour (Kolben 2007: 219). The above mentioned 2007 *New Trade Policy for America* refers explicitly to 1998 ILO Declaration. The recently concluded trade agreement of the EU with CARIFORUM includes also a direct reference to ILO norms (see, table 2).

While negotiations for the US-DR-CAFTA FTA were ongoing, and in part based on looming Congressional opposition, the governments of the CAFTA-DR countries invited the ILO to prepare a study of labour laws (USDOL 2009a)[2]. The ILO has also led the effort to prepare semi-annual progress reports regarding the implementation of goals agreed upon during the negotiations (ibid.). The EU also works closely with the ILO on specific labour rights capacity building projects (Aaronson 2006). In addition, the ILO has an advisory role in the Cariforum-EU Consultative Committee, of which unions and employer organisations are members (ITUC n.d.).

The only FTA where the ILO has had a monitoring and enforcement role is the US Cambodia bilateral trade agreement. It is described as one of the most innovative experiments in using trade as a vehicle for labour rights enforcement and has received attention for the potential it may offer for the ILO to play a monitoring role in other agreements.

The ILO in this instance was contracted to help design and implement the program outlined in the agreement (Kolben, 2007:236). The Agreement has now come to an end, but the ILO continues to run the “Better Factories Cambodia” monitoring program, and has created “Better Work” pilot programs in Jordan, Lesotho and Viet Nam. The program works in the following way: a condition for garment factories obtaining export licenses from the government is that they participate in the program, and in doing so, they sign a memorandum of understanding with the ILO as to each parties’ responsibilities. ILO-trained inspectors visit the factories once every nine months and complete a checklist of more than 500 standards covering the Cambodian labour code and international labour standards approved by the government, unions and employers. The results are then made public by being uploaded onto the ILO’s information management system. Although the ILO does not “certify” factories, it makes public whether or not it has found violations of a given law.

[2] “Fundamental principles and rights at work: A labour law study of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua,” ILO (2003), available at http://www.ilo.org/public/english/dialogue/download/cafta.pdf., and “Fundamental principles and rights at work: A labour law study of the Dominican Republic,” ILO (2003), available at http://www.ilo.org/public/english/dialogue/download/dominican.pdf. See, also ILO, *Baseline Report for the ILO Verification of the Compliance of White Paper Recommendations in Central America and the Dominican Republic*, San Jose, Costa Rica, August, 2007, available at http://portal.oit.or.cr/dmdocuments/verificacion/ingles/r_e_eng.pdf.

While some commentators have argued that this ILO monitoring program has been successful in improving working conditions, in particular wage payments and health and safety, and to a lesser extent, working time and freedom of association (Polaski, 2006a), it has also received criticism. In particular, for the absence of certification of compliance system that could guarantee compliance by individual factories and for any agreed definition of substantial compliance. In addition, there has been concern that the ILO's focus is too directed at labour standards rather than labour rights, resulting in insufficient efforts being made to encourage effective freedom of association and a space for independent unions to organise (Kolben, 2004).

The Better Factories program is now intended to be transformed into a fully self-supported and independent development project by 2009, to be governed and funded by a tripartite body of employers, the government and unions (Kolben, 2007:240)

Should the ILO become more involved in monitoring labour rights provisions in trade agreements? Arguments in favour of the ILO playing a lead role are: (a) the ILO is a respected UN body, which could put to rest developing country concerns about protectionism or other motives; (b) it already has extensive experience of monitoring and evaluation, and (c) as a UN body, it is an intergovernmental organisation with a strong inclination towards building up state capacity and integrating public law accountability into its processes.

Questions remain however as to the ILO's capacity to conduct monitoring and enforcement on a large scale; as to whether trade-related factory monitoring should indeed be part of the ILO mandate or whether it is too "political" an issue to engage in. Countries can still be reluctant to have the ILO on their territory as illustrated by the recent refusal of the US, for example, to have the ILO as a monitor in the Mariana Islands (Kolben, 2007:249).

2.5 The Role of Civil Society Actors

Many observers have noted the important role of civil society actors for the establishment and enforcement of norms. Especially when enforcement processes are initiated by public submissions, the interplay between civil society actors in "transnational advocacy networks" (Keck/Sikking 1998), and the pressure generated by it, can create political space for local civil society actors in the country where violations occur as well as policy space for local state actors. In addition, cross-border cooperation between civil society actors and state actors in the context of the enforcement of FTA norms can generate positive spill-over effects, affecting sectors and localities not originally subject to FTA norms. However, there are also potential negative effects of transnational cooperation, as domestic actors can be criticised for their association with "foreigners".

The US as well as the EU request public commentary on draft agreements. Prior to and during the negotiation process the US has a Trade Negotiation Advisory Committee that serves as its primary method of communicating with the public on upcoming trade agreements. However, among the Committee's 700 members currently only 12 represent labour[3]. The European Commission holds regular and ad hoc meetings with its Contact Group as part of the Civil Society Dialogue, to discuss trade issues both prior to and during the course of trade negotiations.

[3] http://www.ustr.gov/Who_We_Are/List_of_USTR_Advisory_Committees.html?htm

Each member state of NAFTA has established a national advisory committee (NAC), composed of employer, labour and government representatives (Banks, 2002: 196). Cross-border networks have developed in the context of the NAALC – most labour rights submissions are filed by transnational coalitions, and the credibility of the submission is greatly enhanced when documentation is provided by local actors from the country where the violations are alleged (Polaski 2006b).

In the case of the US Cambodia Bilateral Textile Agreement, the lobbying effort of the US textile worker union UNITE (now UNITE-HERE, also generally considered a protectionist union) and the on-the-ground support of the AFL-CIO's Solidarity Center have been identified as crucial for the agreement's success (Abrami 2003, Polaski 2006b; Kolben 2007).

2.6 Recommendations

Several elements are necessary for a strong FTA labour provision. First, labour or social provisions should be stipulated in a specific chapter in the main agreement. Second, like in the EU-Mercosur draft, labour principles should explicitly refer to the internationally recognized labour standards of the ILO, as well as link to the regionally valid charters on social and labour rights, if applicable. The reference in the EU-CARIFORUM agreement to the 2006 Ministerial declaration by the UN Economic and Social Council on Full Employment and Decent Work is also valuable. Third, in the vein of the US-Jordan FTA and recent US FTAs, all labour provisions should be enforceable and should be subject to regular dispute settlement. Labour provisions should also allow independent monitoring, as provided in the draft EU-Mercosur FTA and in the US-Cambodia Bilateral Textile Agreement. The ILO is well positioned to support capacity building for monitoring and to monitor the monitoring. Fourth, labour provisions should provide room for public participation concerning the initiation of reviews of violations, such as in most US FTAs. General cooperation with social partners and civil society, as proposed in the EU-Mercosur draft, is also noteworthy. Fifth, like in US FTAs, sanctions should be foreseen, although the choice between imposing trade measures and fines needs further assessment.

On the basis of a comparison of the U.S. and EU labor rights clauses in trade agreements and on the literature review about their effectiveness, we suggest in the following specific language for a social chapter in the next generation of free trade agreements of the European Union. Recognizing that such chapters are highly contested, we suggest two different proposals, one without sanctions and the other with sanctions. We call them Mercosur+ and US+ respectively (see, Müller & Scherrer 2008). The suggested drafts are placed in Annex II.

2.6.1 Recommended Mercosur+

The recommendation titled "Mercosur+" is based upon a draft version for a social chapter for a future free trade agreement between the EU and the Mercosur countries that was developed by the social legislation specialists Oscar Ermida Uriarte, Hugo Barretto Ghione und Octavio Carlos Racciatti. The Governing Body of Latin American Trade Unions and the Confederation of German Trade Unions proposed this draft during the Mercosur negotiations on the 2nd of July 2004. The following existing social pacts in the Mercosur-countries and the European Union respectively acts as a foundation for this social chapter: the Declaration on Fundamental Principles and Rights at Work of 1998, the Charter of Buenos Aires from 2000

regarding the social responsibilities in Mercosur, Bolivia and Chile, plus in the case of the EU the Social Charter from the 9th of December 1989 and the Charter of Fundamental Rights of the European Union from the year 2000.

The goal of these drafts is a social chapter:

- that is a self-contained entity, and therefore not included as part of another chapter nor simply attached as an Appendix;
- that is based upon both the ILO-Core labour standards in addition to the relevant social legal contracts from the contract partner;
- that allows for an independent monitoring process via an impartial expert committee;
- that embraces a social protocol with a detailed catalog of social rights.

One of the distinctive features of this draft can be attributed to the fact that in contains comprehensive coverage of social and labour rights. This thereby serves to prevent differences in interpretation, which is a common issue with specific ILO-clauses. In some points the draft for the Mercosur-social chapter extends beyond ILO-core labour standards, such that it incorporates aspects of social security as well as the integration of disabled persons in the workforce. When transferred to the case of the EPAs and the ACP States, the Mercosur draft establishes strong ties between the regionally valid contracts and aspects of social and labour-rights. In the six EPA-regions these are the African Union's "African Charter on Human and Peoples' Rights" and the "Charter on Fundamental Social Rights" in the South African Development Community. Calls for an independent debate concerning remuneration and the justification of social rights then accompany the idea of a social protocol.

2.6.2 Recommended US- and EU-Praxis: Sanctions

The goal of this approach is the expansion of effective sanctions opportunities, which would be possible in the European social chapter model. For this purpose reference is made to the "North America Agreement on Labour Cooperation“ (NAALC). The social chapters contained therein require the signing countries to implement the social standards as national law. A supervisory body would be created to ensure their compliance; it would investigate offences, deliver recommendations, conduct mediation and could impose sanctions to the point of the denial of trade preferences. What remains problematic is the differentiated scaling of sanctions in instances of social rights violations: infringements upon collective rights such as the right to association and organizing, the right to collective bargaining and the right to strike are subject to decreasing levels of severity in terms of the inflicted penalties - simply within the parameters of consultations and action programs - in contrast to an infraction upon the prohibition on forced labour or non-discrimination. The draft at hand is based on the NAALC model, specifically in terms of the therein-developed sanctions mechanisms and the highly differentiated definitions give for labour rights. Negative experiences with the NAALC are taken into account; therefore this draft forgoes the use of scaling for levels of sanctions. Furthermore, it contains a supplementation of social rights.

3 Environmental Regulations in FTAs in Comparative Perspective

According to the website of the WTO, of the nearly 400 WTO notified Regional Trade Agreements (RTAs) scheduled to be in force by 2010, only 230 of these were in force as of

December 2008. Of these, specific, substantive environmental provisions exist in only a very small number of agreements, usually where at least one OECD member is a party, as most South-South agreements do not contain environmental provisions[4]. Additionally, unless encouraged or assisted by their trading partners, developing countries do not regularly carry out Environmental Impact Assessments (EIAs) of the FTAs negotiated among themselves. For example, although Chile, Jordan, Morocco and Singapore all carried out EIAs for their FTAs with the United States, which promotes its trading partners to do so, none of these countries carried out subsequent assessments for later agreements (OECD 2007). When tallied together, only about one fourth of all notified FTAs involve a partner who pushes for impact assessments.

In 2007, the OECD carried out an in-depth study of FTAs and the environment, finding that nine types of key environment related provisions exist in trade agreements today (Ibid, p16):

- References to environment of sustainable development in the preamble
- Commitments to effectively enforce national environmental laws
- Commitments related to environmental standards (not lowering, enhancing, or harmonising standards)
- Procedural guarantees and public submissions processes to ensure enforcement of domestic environmental laws
- Binding dispute settlement mechanisms with respect to environmental obligations
- Co-operation and capacity building mechanisms in the field of environment
- Language to reconcile commitments under the RTA and regional or multilateral environmental agreements
- Environmental exceptions to trade disciplines
- Mechanisms for public participation in the implementation of the agreement

Trade agreements of course vary widely in their scope and depth, as do their commitments to environmental protection, with the majority of relevant agreements only contain a few of the attributes listed here. Interestingly, the EU remains the only case of inclusion of supranational environmental law in an economic integration zone (Altmann, 2002).

Of those trading entities which regularly promote the inclusion of environmental aspects in trade agreements, the two of the most important are the US and EU, which until 2008 with the passage of the Cariforum-EU Economic Partnership Agreement (EPA), have traditionally taken fundamentally different approaches to the integration of environmental norms in FTAs.

3.1 Comparing Language of EU and U.S. FTAs

The United States, beginning with the negotiation of NAFTA in the early 1990s, has focused on the enforcement and improvement of legislation already in place in partner countries, as well as the enforcement of particular international treaties that both Parties have passed. From 2002-2007, the United States Trade Representative was legally mandated by the Trade Promotion Act (TPA) to include such provisions on both labour and the environment, and in

[4] Notable exceptions are Mercosur and ASEAN, both of which address environmental concerns common among the signatories: eco-labelling in the case of Mercosur and smog in ASEAN (IISD 2004).

addition, to negotiate agreements in which to "seek" equal standing of all provisions in dispute settlement, including those on the environment.

The wording of EU FTAs has, in contrast, traditionally focused on co-operation, capacity building and technical assistance. Although not official, a de facto mandate exists in Europe in the form of the EU's Sustainable Development Strategy, which calls for "stepping up efforts to see that international trade and investment are used as a tool to achieve genuine sustainable development" (Colyer 2008: 8). In contrast to the US, when it comes to dispute settlement the EU's agreements have not traditionally set environmental issues on equal footing with economic provisions. Another difference is that the United States often creates side agreements, annexes and memorandums of understanding to address specific environmental goals and/or operationalise the agreements whereas the EU generally keeps to one text listing general areas of cooperation without going into many specifics. The EU has also signed memorandums of understanding with its trading partners, but these have not related to the environmental goals of the agreements. Europe does however produce Country Strategy Papers discussing the EU's co-operation goals for periods of approximately five years, which often reference the environment.

After the TPA expired in the summer of 2007, and with it the US negotiating mandate, a new mandate containing stronger wording was introduced, going as far as to demand the renegotiation of recently completed agreements with Columbia, Peru and Panama. (Bartels forthcoming) This new mandate, without the fast track component of the TPA, was announced as a "fundamental shift" in US trade policy and *requires* commitments not to lower environmental standards and to enforce those already in place. Importantly, these new requirements are to be fully enforceable through the same dispute settlement procedures and with the same penalties as all other obligations within the agreements. Most significant in terms of environmental concerns, however, is that the mandate requires new agreements to include a trump card, or savings clause, for Multilateral Environmental Agreements (MEAs)- declaring that if a conflict exists between the FTA and an MEA covered by the agreement, the FTA is subordinated and the MEA given precedence (Committee of Ways and Means 2007). Before examining the progress made through this new mandate in terms of best practices in the case of the new US-Peru FTA however, first we must examine NAFTA, the groundbreaking agreement that was the first to incorporate environmental provisions and has set the standard in many ways for all subsequent US trade agreements.

NAFTA and its side agreement on the environment, the North American Agreement on Environmental Cooperation (NAAEC) remain the international benchmark for comprehensive inclusion of environmental arrangements in a FTA. Several key provisions of the NAAEC have served as a basis for all significant environmental aspects of US FTAs to follow, including the following important phrasing: "each Party *shall ensure* that its laws and regulations provide for high levels of environmental protection and shall *strive to continue to improve* those laws and regulations" (emphasis added, NAAEC Article 3). This language remains the strongest in terms of addressing domestic levels of protection in a FTA. NAAEC's Article 5 set the precedent that: "each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action." Although the phrase "effectively enforce" in some FTAs has been replaced with "shall not fail to effectively enforce"- the meaning remains unchanged.
Arguably the most significant provision of NAFTA and its side agreements however, is that allowing for citizen and NGO submissions claiming ineffective enforcement of national environmental regulations. These are submitted to the Commission on Environmental

Cooperation (NACEC, or simply CEC), which is mandated to investigate and report on citizen submissions, facilitate coordination of environmental policy amongst the Parties, monitor and address environmental issues, build environmental management capacity, and work on raising environmental standards amongst member states. And although many aspects of NAFTA and its side agreements have been found in subsequent trade agreements around the world, unfortunately, as noted by Zhang and Carpentier (2007) "The CEC is, to this day, the only organization with a mandate to monitor the environmental impacts of a trade agreement on an ongoing basis" (p106). A final point to be made here is that although other US FTAs do not institutionally compare to the CEC of NAFTA, most do call for the creation Environmental Affairs Councils to begin implementing the agreement, handle public submissions of complaints, and public requests for information on environmental matters. They also often include memorandums of understanding in which starting points for environmental cooperation are laid out and plans are made for future work on environmental issues. One example being the Secretariat for Environmental Matters set up in 2006 within the framework of the DR-CAFTA, which is to accept citizen submissions of non-enforcement of environmental laws and develop factual records of offenses if deemed necessary. Lacking are the monitoring and capacity building goals of the CEC.

Moving from the original, to one of the newest US trade agreements to include environmental provisions, we turn to the renegotiated US-Peru FTA, which was scheduled to enter into force on 1st January, 2009. The main text of the agreement for the most part follows the NAAEC model concerning domestic legislation as outlined above. However, in two important aspects it represents a significant step forward in including environmental conditionality in a US trade agreement. The first particularly noteworthy difference is the Annex on Forest Sector Governance (Chapter 18.3.4.). This annex creates a fully enforceable a plan to combat a specific environmental issue, in this case trade in illegal timber, through cooperation, timber verification, the creation of a Sub-Committee on Forest Sector Governance, public comments, auditing of producers and exporters, and an increase in the number and effectiveness of enforcement personnel.

The second provision of the US-Peru FTA that diverges from its predecessors and raises the environmental bar is its Multilateral Environmental Agreements (MEA) savings clause; stating that if the FTA comes in conflict with one of the seven MEAs covered by the agreement, the "Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade." (Article 18.13) This wording appears less restrictive, giving the Parties more freedom to act on environmental matters domestically, than Article 104.1 of NAFTA which provides that in case of an inconsistency with a covered MEA, the MEA will prevail "provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement." In this regard, it seems that the new US trade mandate has indeed raised the bar in terms of agreement design (OECD 2007).

The environmental provisions of European FTAs have traditionally not been as in depth or regulatory in nature as those of the United States, as can inferred by the titles of EU FTA environmental chapters: "Cooperation on the Environment". Most begin with the statement similar to that found in the EU-Chile FTA, which reads: "The aim of cooperation will be to encourage conservation and improvement of the environment, prevention of contamination

and degradation of natural resources and ecosystems, and rational use of the latter in the interests of sustainable development." Most then list a number of areas for planned cooperation tailored to the partner countries situation, which may include issues such as: desertification, water resource management, education in environmental topics and the execution of joint research projects; or the development of channels for increased civil society participation. In addition, recognition of environmental issues and need for environmental cooperation comes up in other areas of EU FTAs, such as articles on tourism or energy, where promotion of renewables and technology transfer are often mentioned.

With the Cariforum-EU EPA of November of 2008 however, the rules seem to have changed. It contains fully enforceable environmental clauses within its investment provisions. Signatories agree that foreign investment will not be encouraged by lowering environmental or labour standards and that the Parties will provide through domestic legislation if necessary, that investors do not operate in a way that circumvents international agreements which the signatories have all ratified (Articles 72 and 73).

The environment appears again in chapter four (Articles 188-193) which, for the first time, Parties to an EU agreement adopt the NAFTA-like language that they shall "seek to ensure" high levels of environmental protection, "strive to continue" to improve legislation, and shall not lower standards for purposes of attracting trade or investment. These provisions are also subject to dispute settlement although in a very limited form compared to the investment clauses noted above; i.e. dispute settlement proceedings can only officially begin once a consultation process, laid out in Article 189, fails to resolve the issue at hand. Even then, suspension of trade concessions is ruled out as an option in article 213.2. The last environmentally significant aspect of this agreement is the Consultative Committee established in Article 232 (but elaborated upon in Article 189) that is responsible for the implementation and monitoring of the environmental provisions contained in the agreement (Bartels 2008). Although still weaker than the fully enforceable clauses found in the US-Peru FTA, the EU's move towards conditionality in the Cariforum EPA is highly significant for its emphasis on improving environmental policy formation and implementation in partner countries.

Europe also uses conditionality to promote conformity with international social and environmental standards in the new GSP+ system and the potential for FTAs to influence incentives to qualify for the GSP+ schemes is a very important issue. This potential depends firstly on the nature of the particular FTA in question: a commitment filled FTA like the Cariforum EPA obviously presents a higher hurdle in many ways than the typical EU FTA of the past. One area where this is not the case is the controversial Rules of Origin (RoO) requirements attached to the GSP schemes that are also present in very similar form in all European FTAs, meaning that in this respect, FTAs would not have much influence on desire to participate in GSP+. On the other hand, the other two primary barriers to join the GSP+ are economic "vulnerability" (middle or low income and a lack of economic diversity) and the ratification and implementation of 27 labour, human rights, environmental, and good governance conventions. Of 176 countries and territories potentially eligible for GSP+ preferences, as of January 1, 2009, only 14 (with two more under consideration) have been accepted as beneficiaries of the program in the 2009-2011 period[5]. The implementation requirements of the GSP+ scheme seem to be the most potentially time and resource

[5] The fourteen currently accepted being: Armenia, Azerbaijan, Bolivia, Colombia, Costa Rica, Ecuador, Georgia, Guatemala, Honduras, Mongolia, Nicaragua, Paraguay, Peru, and Venezuela. The two nations waiting for confirmation are El Salvador and Sri Lanka. http://www.eu-un.europa.eu/articles/en/article_8356_en.htm

consuming aspect which tends not to exist in most EU FTAs. It therefore seems likely that existing European FTAs have the potential to erode GSP+ participation not only for the aforementioned reason, but also because by definition FTAs aim to liberalise "substantially all trade" (GATT Article XXIV) and must theoretically offer better tariff preferences in the long run than the GSP+ does. One possibility to reduce erosion of the GSP+ scheme is to require more comprehensive conditionality in European FTAs, as was done with the Cariforum EPA (Evenett, 2008).

3.2 The Effectiveness of Environmental Regulations in EU and U.S. FTAs

In attempting to concretely evaluate the relative effectiveness of environmental provisions in FTAs, one is presented with three significant obstacles. First, there is the youth of agreements in question - most of them have been in force for less than ten years (only two US agreements with environmental provisions were in force before the TPA of 2002) (OECD 2007). Substantive cooperation on environmental issues often does not begin until many years after the treaty is enacted, as in the case of EU-Mexico considered below where it was only 11 years after the signing of the agreement that the first funds directly related to FTA environmental cooperation were made available.

Secondly, causality is difficult to ascertain. As noted in the large scale OECD report of 2007 on Regional Trade Agreements and Environment, “the key question is whether [improvement] has been the result of the commitments made in RTAs, or of the normal function of government acting in the interest of public welfare” (OECD 2007, p74). The authors note the example of rising standards in MERCOSUR countries, and note that the fact that three of the four nations recently transitioned from authoritarian to democratic rule was a more likely positive influence on environmental protection than the trade agreement.

Finally, for years the goal of EU environmental provisions was to provide co-operation, but it is very difficult to identify what specific, measurable goals many EU FTAs actually have in terms of environmental cooperation. In most cases, actual co-operation seems to be based rather on the Country Strategy Papers as discussed below, which sometimes, but not always contain environmental goals. With the EU already present environmentally and developmentally in many of their FTA partner countries before trade agreements were signed, determining whether any increases in activity on these fronts was a specific reaction to the environmental cooperation goals of the agreement and not to the more general air of heightened interaction and interdependence that FTAs bring, is not possible without further research. Furthermore, Horn et. al.’s (2009) comprehensive analysis the legal enforceability of all US and EU FTAs notes that in general, EU trade agreements contain a very high degree of “legal inflation”, meaning essentially that the vagueness displayed in many areas of these agreements leaves them largely unenforceable. These difficulties notwithstanding, an analysis of the relative effectiveness of current European and American FTAs, as far as is possible, is given below.

To date, only NAFTA is in existence long enough to provide truly demonstrable results. Some positive environmental accounts do exist concerning the agreement as a whole, such as Gaines’ (2007) analysis of the environmental implications of NAFTA’s investor-state arbitration, finding that, despite an initial wave of claims that environmental standards were unfairly hindering foreign investment, that this tendency has receded and the agreement does not seem to pose much of a threat to domestic environmental legislation. Ederington’s 2007

review of three case studies also finds that concerns over the creation of a pollution haven are largely unfounded. These results however, are in direct contradiction to those of MacDermott (2006) who finds strong evidence that NAFTA has created pollution havens in Mexico.

Indeed, like MaDermott, most studies on the environmental effects of NAFTA provide negative or uncertain conclusions. Gallagher (2004), for example finds that although the CEC has had some positive results, such as helping to push through a Mexican Pollution Release and Transfer Registry stronger than those of the US or Canada, and creating funding programs for small and medium sized enterprise capacity building, that overall the CEC is "ill-equipped to help solve Mexico's significant environmental problems" (p16). Schatan and Castilleja (2007) found that many of the foreign owned factories in the electronics sector (89% of a 200 factory sample in this case) have high environmental standards in their countries of origin. However, less than half of these companies had implemented similar standards in their Mexican subsidiaries, which the authors suggest is due to a lack of industry specific legal standards in Mexico. In this case at least, NAFTA's goal of strengthening domestic legislation in Mexico seems not to have lived up to expectations.

On the institutional side of NAFTA, to date 67 submissions have been accepted by the CEC for which factual records have been or are being compiled and made public. Although this outlet has proven to be relatively effective in raising environmental issue awareness, improving transparency of environmental issues, and boosting civil society participation, again, even the shaming of violators through the submission process has not led to much in the way of concrete policy results. In line with Vilas-Ghiso and Liverman's statement that "the environmental effects of agricultural trade liberalization in Mexico are still controversial, emerging, and not fully understood" (p137), that ambiguity and uncertainty remain the key adjectives describing the environmental effects and effectiveness of NAFTA at this point.

Staying with the Mexican case but moving on to the EU-Mexico agreement, we find a typical European FTA based on cooperation but in this case with additional clauses calling for the harmonization of environmental and other standards among the Parties. Here, despite the fact that the agreement was signed in 1997 (with an Interim Agreement until it came into force in 2000), very little substantive work has been done on environmental issues. Indeed, it was only when Mexico signed a Framework agreement with the European Investment Bank (EIB) in 2006 that the Commission noted that a framework for environmental cooperation had been created (European Commission 2008). As might be expected due to the circumstances, our research was unable to find any academic analyses addressing this FTA's effectiveness as a tool to improve the environment.

The lack of environmental action in the EU-Mexico case coincided with the absence of the environment as a specifically targeted area for cooperation in either the 2002-2006 or the 2007-2013 Mexico Country Strategy Papers, although both Papers do refer to the importance of the environment. In January of 2008 an EU-Mexico environment and climate change sector policy dialogue was launched, resulting in the establishment of further high level dialogues and the creation of a working group on climate change to "exchange experiences in this area, encourage cooperation around science and technology, and promote vulnerability studies and strategies for adapting to climate change, among other things" (European Parliament 2008, p16). It was only 11 years after the signing of the treaty, in May of 2008 at the Fourth Mexico EU Troïka Summit, that environmental cooperation was finally concretised financially in the form of a 50€ million line of credit from the EIB for climate mitigation projects (European Council 2008). As Europe's Country Strategy Papers indeed

serve as a guide for foreign relations and cooperation abroad, it is not surprising that efforts to begin environmental cooperation were not seen until 2006 when the 2007-2013 Paper was being drafted. It appears that the inclusion of environmental clauses in the Euro-Mexican FTA had very little, if any, direct effect on actual implementation of environmental projects/cooperation.

At the opposite end of the spectrum we find the EU-Chile agreement, signed in 2002, and coming into force in two phases, goods in 2003 and services in 2005. Although no more comprehensive in terms of intended cooperation than the EU-Mexico agreement, EU-Chile has been much more effective in terms of implementing the cooperation goals outlined in its environmental chapter. With the EU-Chile Country Strategy Paper of 2000-2006 placing Environment and Natural Resources as a priority area, the EU and Chile have carried out a number of co-operative environmental projects and have set up an informative website, the Chilean European Portal (CHIEP, at www.chiep.cl), with information and resources about these and other co-operation efforts. To determine the precise reasons why action was so delayed in the Mexican case and so quick in the Chilean is beyond the scope of this paper, but with the environmental chapters of both agreements being so similar, the legal wording of these chapters seems to have had very little, if any effect on actual co-operation.

3.3 Role of International Organizations

At the moment, international organizations are not very much involved in projects specifically related to FTAs. UNEP has made some inroads here however with its work on Integrated Assessments of Trade-Related Policies and, for example, its 2002 Reference Manual for the Integrated Assessment of Trade-Related Policies. With the help of the International Institute for Sustainable Development (IISD), this manual was updated and expanded as the IEA Training Manual (Integrated Environmental Assessment) in November 2008 which now includes an interactive web-based tool for IEA capacity building, which can be found at: http://gcp.aspen.grida.no/. From 2003-2006, with the help of the Norwegian government, UNEP conducted an Integrated Assessment and Planning initiative which worked together with nine developing countries to provide technical and financial assistance in conducting sectoral analyses of potential environmental impacts of FTAs. UNEP also holds an annual conference of the International Association for Impact Assessment (IAIA).

In terms of scope for further action, at this point multilateral institutions such as the UN seem to have rather limited options. In terms of enforcement, most FTAs do not include standards or mechanisms of environmental enforcement and for those that do, external actors or institutions cannot bring forth complaints. Further capacity building activities are of course possible and needed, but this does not solve the problem that most developing countries, despite assistance offered by the EU, US and UNEP, normally do not carry out environmental assessments, and as was previously mentioned, normally do not include environmental provisions in their FTAs unless prompted to do so.

3.4 The Role of Civil Society Actors

The inclusion of civil society in intergovernmental negotiations is still a nascent aspect of trade relations as young as the inclusion of environmental norms themselves in these agreements. Indeed, it was first with NAFTA negotiations in the early 1990s that civil society

can be said to have made substantive contributions to a trade agreement. The already mentioned Trade Negotiation Advisory Committee includes 24 representatives of environmental organizations, twice the number of trade unions. Additionally, as discussed in previous sections, both NAFTA and the most recent U.S. agreements provide the public with the opportunity to participate in the enforcement of these agreements through public complaint submissions. In case of NAFTA, although this tactic has not had the enforcement boosting effect hoped for by some, the capacity to name and shame it provides has been well used to successfully embarrass offenders (IISD 2004). The possibility for public submissions has not yet been included in FTAs to which the EU is a Party. This is hardly surprising however due to the fact that to date the EU has only included enforceable provisions related to the environment in one agreement, the Cariforum EPA of 2008.

Sustainability Impact Assessments (SIAs) have been an important tool used since 1999 to evaluate possible negative effects of trade agreements (OECD 2007). In their current form however, it has been noted that although European SIAs have come a long way in terms of improving methodologically, they still face legitimacy issues in the eyes of many civil society groups. Critics note that SIAs are generally carried out after negotiations have already begun (Knigge 2008; University of Manchester 2008).

In order to improve access to developing country stakeholders, regional stakeholder meetings are now carried out but often only take place in only few major cities, far away geographically from many of the stakeholders most likely to be affected by these agreements, and are not often held in local languages (Knigge 2008)[6].

3.5 Recommendations

The inclusion of environmental norms in trade agreements has so far not shown significant effects in terms of better standards. At best it has prevented the abrogation of environmental laws and the lowering of enforcement levels. It seems that the North American Agreement on Environmental Cooperation (NAAEC) has been comparably most effective in achieving these modest objectives. The key elements of NAAEC are:

- The clearly stated objective of preventing lower standards through changes in laws or lack of enforcement.
- Enforceability through dispute settlement procedures.
- Civil society participation through submissions.

Some further features found in some of the most recent FTAs may also contribute to more meaningful environmental chapters in trade agreements:

- Precedence to Multilateral Environmental Agreements (MEAs) over FTAs in case of conflict.
- Focus on specific trade related environmental concerns with an action plan.

In addition, civil society participation can be enhanced by carrying out Sustainability Impact Assessments preemptively, or at least at a much earlier stage in the negotiation process- and making these results immediately available to stakeholders. International Organizations such as UNEP could play an important role in enhancing the capacities of poorer countries for carrying out such assessments.

[6] For details of SIA methodologies and the public participation involved in them, see for example the EU-ACP SIA of 2003 at: http://www.sia-acp.org/acp/download/20070516-Rapport-SIA-EU-ACP-UK.pdf and the EU-Korea SIA of 2008 at: http://trade.ec.europa.eu/doclib/docs/2008/march/tradoc_138118.pdf

In sum, if the EU plans to continue to include more standards related clauses in its trade agreements to improve the appropriateness, effectiveness, ownership and therefore legitimacy of these requirements, it is important to aim for improved civil society participation in these agreements.

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Annex I: FTA Labor Provisions

FTAs	Labour provisions	Reference to ILO	Enforceability
NAFTA (Mexico and Canada)	In a separate side agreement, North American Agreement on Labour Cooperation (NAALC) NAALC is founded on eleven Labour Principles which include (i) freedom of association and protection of the right to organise; (ii) the right to bargain collectively; (iii) the right to strike; (iv) prohibition of forced labor; (v) labor protection for children and young persons; (vi) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements; (vii) elimination of employment discrimination on the basis of such grounds as race, religion, age, sex, or other grounds as determined by each Party's domestic laws; (viii) equal pay for men and women; (ix) prevention of occupational injuries and illnesses; (x) compensation in cases of occupational injuries and illnesses; and (xi) protection of migrant workers (Grynberg and Qalo:16).	NAALC espouses the protection of labour rights which go beyond the core ILO conventions. Countries agree to enforce their national laws and standards, but partners must enforce labour standards on child labour, minimum wages and occupational health and safety. Not however, the core labour rights of freedom of association and the right to collective bargaining.	Only complaints related to child labour, minimum wages and health and safety are subject to sanctions.
US-Jordan	Labour provisions are within the main body of the agreement	Require conformity with ILO standards. "reaffirm the parties obligation with the ILO) and with the commitments under the ILO Declaration on Fundamental Principles and Rights at Work. However, while the ILO standards constitute a nominal reference, the	The language of this agreement also became a template for future agreements i.e. "[a] Party shall not fail to effectively enforce its labour laws through a sustained or recurrent course of action or inaction, in a manner affecting trade between the parties".

		agreement goes on to define a set of "international recognised labour rights" which does not include the core ILO right to non-discrimination, and adds "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health" which is not included in the ILO fundamental principles.	Both countries have the right to challenge an alleged failure by the other to protect citizens' labour rights. Resolution is by a neutral, international dispute settlement panel. - All labour obligations come under the same dispute resolutions as commercial obligations. (Doumbia-Henry and Gravel/ILO). - Procedures for labour disputes place limits on monetary penalties, whereas commercial disputes do not (Bolle, 2008)
US-Chile (2003) ,US-Morocco (2004) and US-Singapore	As above	As above. In addition, the US-Singapore agreement refers to US and Singapore's obligations under the ILO Declaration, specifically that labour standards should not be used for protectionist trade purposes.	As above
Peru, Colombia, Panama and South Korea	As above	Reflect the New Trade Policy for America. Fully enforceable commitment that parties adopt and maintain in their domestic law, the standards of the ILO Declaration.	Fully enforceable through the same dispute resolution mechanisms as commercial disputes (Bolle) However, Bolle notes that a footnote limits the scope of the ILO Declaration on the parties. It suggests that countries can be held to the principles of the Declaration but not to the details of the Convention and the Follow-up procedures.
US-CAFTA (2003) (Costa Rica, Honduras, Nicaragua, Guatemala and El Salvador)	As above	As US-Jordan	As US-Jordan
US-	Incorporated into the	Direct role for the ILO in	The ILO ran an

Cambodia 1999	agreement	design of agreement, monitoring, capacity building, technical assistance and enforcement of the Cambodian Labour Law and "internationally recognised core labour standards" (Kolben, 2004)	independent monitoring programme and provided capacity building by training Cambodian labour inspectors. It also provided technical assistance by helping draft labour regulations and laws
EU GSP		EC Council Regulation simply incorporates the ILO Conventions by reference. Accordingly, for a country which had already signed and ratified the Conventions, the arrangement imposes no further obligations (Grynberg and Qalo)	However, the EU GSP arrangement does achieve the creation of incentives to comply with the Conventions, i.e. it authorises trade sanctions for non-compliance. Similarly, the EU GSP arrangements create an incentive for countries which have not signed-up to the Conventions to do so and then authorises trade sanctions for those not in compliance (Grynburg and Qalo 2005).
EC-Chile (2002)	First trade agreement by the EU which explicitly contains any reference to labour standards.	Recognises the 'core labour standards' enshrined in the ILO Convention. States that priority should be given to the creation of employment and respect for fundamental social rights, notably by promoting the relevant conventions of the ILO such as the freedom of association, the right to collective bargaining and non-discrimination, the abolition of forced and child labour and equal treatment between men and women.	

Annex II: Recommended draft Mercorsur +

I Social and labor rights (7)

Art.1 Principles of and rights at work

The ACP States and the European Union reaffirm their commitment to the following principles and rights in the area of the work, without impinging upon others, which the legislation or the national, regional or international practice of the participating states have restored or are going to restore. In particular they reaffirm their commitment to already existing treaties concerning social rights and standards, such as the „African Charter on Human and People's Rights“ and [in case of the treaty with the Southern African Development Community] the „Charter on Fundamental Social Rights in SADC“.

Art. 2 Right to work

1. All people have the right to work, to professional formation, to the free choice of occupation, to access to gratuitous occupational integration and for the protection against unemployment.

2. The State parties are committed to promoting economic growth along with social justice and cohesion, and the extension of internal and regional markets.

Art 3. Prohibition of slavery and forced labor

1. Nobody can be submitted to slavery or servitude.

2. The respective parties are committed to eliminate forced labor, in the terms stated in the Universal Declaration of Human rights (art. 4), of the International Pact of Civil and Political Rights (art. 8) and of the ILO Declaration of 1998 in relation to the principles of and fundamental rights at work.

Art. 4 Prohibition of child labor and the protection of youth at work

1. Prohibits child labor.

2. The minimum age of admission to work cannot be inferior to the age at which schooling is compulsory.

[7] Thanks go to Dan Hawkins for the translation of the Spanish original.

3. The work of minors will be the object of special protection by the affiliated States.

4. Young people admitted to work must be provided with working conditions that are adapted to their age and they must be protected against economic exploitation or against any form of work that could be detrimental to their security, health, and to their physical, emotional, moral or social development, or that could endanger their chances of education.

5. The daily working schedule for these minors must be limited in accordance with international and national legislation, and will not be allowed to be extended by means of the accomplishment of extra hours or via nocturnal schedules.

Art.5 Education and professional orientation and formation

1. All persons have the right to education and professional orientation and formation.

2. The State parties shall strive to institute, with the involved organizations that voluntarily desire to do so, services and programs of direction and continuous and permanent professional formation, in a manner that permits workers to obtain the qualifications demanded for the fulfillment of a productive activity, to gain required knowledge and abilities considering modifications brought about by technical progress.[8]

Art. 6 Equality and non-discrimination

1. All people are equal before the law.

2.[9] For the purpose of this chapter Discrimination comprises any kind of distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

3. All discrimination is prohibited, particularly that exercised for reasons of sex, race, color, ethnic, social or national origin, genetic characteristics, language, religion or convictions, political opinions or any other kind of discrimination such as belonging to a national minority, patrimony, birth, disability, age or sexual orientation.

4. Cultural, religious and linguistic diversity must be respected.

[8] Art. 5 a bit weaker than original MERCOSUR draft.

[9] Art. 2 follows the definition of discrimination in ILO 111.

4. Equality between men and women will be guaranteed in all areas, including the fields of employment, work and repayment.

Art.7 Equitable and satisfactory working conditions

1. All workers have the right to work in conditions that respect their dignity, health and security.

2. The right to enjoy equitable and satisfactory working conditions includes:

- Right to an equitable and satisfactory remuneration that assures the worker and his/her family an existence that allows a life in human dignity, and that will be complemented, when necessary, by any other means of social protection;

- Health, security and hygiene at work: the right to exert his/her activities in an atmosphere of healthy and safe work, that preserves his/her dignity, his/her physical and mental health and stimulates his/her development and professional performance;

- Right to rest, the enjoyment of free time, to a reasonable limitation on the duration of work and to paid, periodic vacations.

- Employment stability and protection against unjustified dismissal, except in cases of fair separation.

Art. 8 Inspection of work

States parties are committed to institute and to maintain services of work inspection, with the assignment to control, in their respective territory, the fulfilment of the requirements that refer to the protection of workers and the conditions of health and security at work.

Art. 9 Protection of maternity and workers with family responsibilities

For the purpose of this Chapter, family means any relationship between parents and children, irrespective if the parents are married or not.[10]

1. The family has a right to a suitable social, legal and economic protection.

2. With the purpose of being able to harmonize family life and professional life, all persons have the right to be protected against any dismissal by a cause related to maternity, as well as the right to permission paid for maternity.

[10] Definition of family added.

3. The parties shall pay respect to the aims and content of the Maternity Protection Convention ILO C103, especially regarding the provisions on maternity leave and shall strive to ratify and implement them.

Art.10 Migrant workers

All migrant workers, independent of their nationality, have the right to help, information, protection to equal rights and to equal working conditions as the citizens of the country in which they are exerting their activities, in accordance with the regulations of each country.

Art. 11 Social, legal and professional integration of the disabled and their participation in the life of the community

All disabled people, irrespective of the origin and nature of their disabilities, have the right to benefit from concrete additional measures directed to favor their professional and social integration.

Art. 12 Multinational companies

Companies or groups of multinational companies that act in the territory of the countries of both regions have to adjust their activities to the Tripartite Declaration of principles concerning multinational companies and social policy (Council of Administration, 204.ª meeting, November 1977, in the form amended in the meeting 279.ª,in November 2000), and to the Directing guidelines of the Organization of Economic Cooperation and Development (OECD) for multinational companies (revised Text, 27th of June, 2000).

Art. 13 Social dialogue

States parties are committed to further social dialogue in the national and regional arenas, instituting effective mechanisms of permanent consultation between representatives of the governments, the employers and the workers, in order to guarantee, by means of social consensus, favorable conditions for sustainable economic growth with social justice and the improvement of the conditions of life of their communities.

Art. 14 Freedom of expression, meeting and association

All persons have the right to freedom of expression, peaceful meetings and associations.

Art. 15 Trade union freedom and the protection of trade union activity

1. Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

2. Workers' and employers' organizations have the right to write up their statutes and regulations, to choose their representatives freely, to organize their administration and their activities and to formulate their programs of action.

3. Workers' and employers' organizations have the right to join and establish federations. Any such organisation, federation or confederation shall have the right to affiliate themselves to international organizations of workers and employers.

4. Workers should enjoy suitable protection against all acts of discrimination that tend to reduce trade union freedom in relation to their employment.

5 . There should be:

a) a guarantee for the freedom of affiliation, without jeopardizing one’s access to employment or one’s career within an employment

b) a guarantee in order to avoid dismissals or prejudices that have as their cause the affiliation of a worker to a trade union or that worker’s participation in trade union activities.

Art.16 Right to collective bargaining

1. The employers or their organizations and the organizations of workers have the right to negotiate and to celebrate collective agreements that regulate:

a) the working conditions and employment, or

b) the relationship between employers and workers, or

c) the relationship between employers or their organizations and an organization or several organizations of workers, or to obtain all these aims simultaneously.

2. The dialogue between social partners on a regional and national scale will be promoted in such a way that it will lead to the conclusion of agreements in the enterprise, inter-professional and sectoral levels.

Art. 17 Right to strike

1. All workers and trade union organizations have, as a guarantee, the exercise of the right to strike, according to the effective national laws and regulations.

2. The exercise of this right includes the international or regional collective action.

Art. 18 Worker participation: information and consultation[11]

1. Workers' representatives will receive from the employers the information needed to start negotiations concerning working conditions.

2. The employers will communicate to the workers and their representatives the

information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations

3. The States will promote consultation and cooperation between employers and the workers and their representatives in matters of mutual interest. The public authorities should make available such information as is necessary on the over-all economic and social situation of the country and the branch of activity concerned, to the extent to which the disclosure of this information is not prejudicial to the national interest.

Art. 19 Social security

1. Member States shall create an enabling environment so that every person in the EPA region has the right to social security, and to obtain the satisfaction of economic, social and cultural rights, indispensable to one's dignity and the free development of one's personality.

2. Every person has the right to a suitable standard of life that assures him/her, as well as his/her family, health and well-being, and especially sufficient food, clothes, shelter, medical aid and the necessary social services; one also has the right to security in case of unemployment, disease, disability, widowhood, old-age or other cases resulting in the loss of his/her means of subsistence by circumstances independent of his/her will.

3. The periods of maternity and infancy demand the right to care and special assistance. All children, born either within or outside marriage, have the right to equal social protection.

4. The respective parties reaffirm their commitment to make effective the right to social security, including social assistance, with the purpose of combating social exclusion and poverty.

5. The parties declare their willingness to study the coordination of their respective social security regimes, developing the experience via effective bilateral and regional conventions between countries of both regions.

Art. 20 Interpretation and integration

1. Immediate application

[11] Follows Collective Bargaining Recommendation, 1981 (ILO R163)

The rules of the present Protocol that recognize rights, as well as those that include facultative provision and impose duties on public authorities, will not be left unimplemented due to a lack of respective regulation, instead, this will be replaced regarding similar international norms, in line with general principles of right and those doctrines which are generally admitted.

2. Protective principle

2.1 Most favourable interpretation

In case of doubt concerning the interpretation of these provisions, the one that more suitably assures the effective fulfilment of the rights and guarantees recognized in the present instrument will prevail.

2.2 Application of the most favourable norm

In case of a concurrence of norms in relation to the same right, the one that is more favourable to the accomplishment of the protected right will prevail.

2.3 Progressive and irreversible

None of the dispositions of this instrument will be able to be interpreted in the sense of limiting or excluding the rights recognized in each of the member States of both regional blocks, whether this be to reduce the procedures of control or the solution of existing controversies.

3. Interdependence of treaties concerning human rights

The enumeration of rights, duties and guarantees does not exclude others that are inherent to human personality or that are derived from a democratic form of government. The exercise of the recognized social rights in the present instrument supposes the full recognition of civil and political rights in accordance with the Universal Declaration of Human Rights, the International Pact of Civil and Political Rights, the ILO Resolution concerning trade union rights and their relation to civil liberties ILO 1970), and the existing regional instruments such as the „African Charter on Human and Peoples' Rights of the African Union" (AU 1981) or the „Charter on Fundamental Social Rights in SADC" (SADC 2003).

Art. 21 Irrefutability

These rights stated in favour of workers are not refutable.

II Control and Processing

Art. 22 Promotional nature

All parties agree to establish procedures and follow-up organs in order to control the fulfilment of the rights recognized in this instrument, those that have a promotional purpose

by means of cooperation between both regions and the participation of national, regional and international organizations of worker and employer representatives.

Art. 23 Coordination Committee on Social Rights

1. A Coordination Committee on Social Rights consisting of experts from Europe and the ACP States will be established in order to coordinate and monitor the activities of the contracting partners in implementing and promoting the issues of this chapter.

2. The Committee will have an equal number of national members from the European Union and the respective EPA region whom will enjoy absolute technical independence in the exercise of their functions. This Committee will not be able to comprise more than one national from each of the two blocks country member States.

3. The International Labor Organization will be invited to designate a representative so that he/she can participate in the consultative deliberations of the Committee of experts.

Art. 24 Periodic reports

1. The contracting parties will send to the permanent secretariat of the Coordination Committee on Social Rights a biennial report regarding the respect, promotion and effective fulfilment of the rights and guarantees recognized in this instrument.

2. As well as this, the permanent secretariat will receive alternative reports that present the worker and employer representative organizations of the member countries of each block. These alternative reports may be presented by the representatives of national, regional or international organizations.

3. The Coordination Committee on Social Rights will emit a biennial report, which will periodically determine the special analysis of some or numerous of the rights enumerated in section I. In addition, it will be able to formulate specific observations about the effective fulfilment of these same rights, and to propose the recommendations that it considers pertinent.

Art. 25 Other procedures of control or solution of controversies

The application of the established follow-up procedures in the present Protocol will not exclude the right of the States or of the respective representative organizations to go to the established control mechanisms in the ILO, the International Pact of Economic, Social and Cultural Rights, or in other international instruments.

III Cooperation and social dialogue

Art. 26 Technical Cooperation

The parties decide to establish mechanisms of technical cooperation in social and labour matters, including advising, exchange of information, data bases and observatories that will be coordinated and organized in the intergovernmental level, with participation of the national and regional social partners.

Annex III: Recommended draft US +

Preamble

1. Relation to the law of nations [12]

REAFFIRMING the importance the Parties attach to the principles of the United Nations Charter, to the Universal Declaration on Human Rights, to the 1993 Declaration of Vienna and the Programme of Action of the World Conference on Human Rights, to the 1995 Copenhagen Declaration on Social Development and programme of action, and to the 1995 Beijing Declaration and platform of action for the Fourth World Conference on Women;

2. Relation to ILO Clauses [13]

REAFFIRMING the commitment of the Parties to economic and social development and the respect for the fundamental rights of workers, notably by promoting the relevant International Labour Organisation (ILO) Conventions covering such topics as the freedom of association, the right to collective bargaining, the elimination of discrimination in respect of employment

and occupation; the abolition of forced labour and child labour, the equal treatment between men and women;

3. Relation to the Decent Work Agenda

REAFFIRMING the importance the Parties attach to the principles and values set out in the ILO's „Decent Work Agenda“ and to its further implementation in the member states through active policies to promote and protect decent jobs;

Art. 1 Objectives

The objectives of this Chapter are to:

- 1. improve working conditions and living standards in each Party's territory;

- 2. promote, to the maximum extent possible, the social and labor[14] principles set out in Annex 1

- 3.recognize the obligations of the Parties as members of the International Labor

Organization (“ILO”) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up[15]

12 Adopted from FTA EU - Bangladesh, 1999

13 Follows FTA EU – South Africa, 1999

14 The dimension „social law“ has been added.

- 4. encourage cooperation to promote innovation and rising levels of productivity and quality;

- 5. encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labor and social rights in each Party's territory;

- 6. pursue cooperative labor-related activities on the basis of mutual benefit;

- 7. promote compliance with, and effective enforcement by each Party of, its national labor law and social law; and ensure compliance with internationally recognized social and labor rights.[16]

- 8. foster transparency in the administration of social and labor law.

Art. 2 Definitions[17]

1. For purposes of this Agreement:

„labor law“ means laws and regulations, or provisions thereof, that are directly related to:

- 1. freedom of association and protection of the right to organize;

- 2. the right to bargain collectively;

- 3. the right to strike;

- 4. prohibition of forced labor;

- 5. labor protections for children and young persons;

- 6.minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements;

- 7. elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws;

- 8. equal pay for men and women;

- 9. prevention of occupational injuries and illnesses;

- 10. compensation in cases of occupational injuries and illnesses;

- 11. protection of migrant workers;

„social law“[18] means laws and regulations concerning social rights and issues of social security related to

15 Adopted from FTA US – Jordan, 2004, referring to ILO conventions.
16 Adopted from FTA US – Jordan, 2004.
17 Follows Art. 49 NAALC.

- 1. the access to social security systems

- 2. the access to education and vocational training

- 3. elimination of discrimination on the basis of grounds such as sex, race, color, ethnic, social or national origin, genetic characteristics, language, religion or convictions, political opinions or any other kind of discrimination such as belonging to a national minority, patrimony, birth, disability, age or sexual orientation[19]

- 4. protection of maternity

- 5. social and occupational integration of the disabled

„mutually recognized labor laws“ means laws of both a requesting Party and the Party whose laws were the subject of ministerial consultations that address the same general subject matter in a manner that provides enforceable rights, protections or standards;

„trade-related“ means related to a situation involving workplaces, firms, companies or sectors that produce goods or provide services traded between the territories of the Parties

Art. 3 Levels of Protection

1. Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

2. The Parties recognize that it is inappropriate to encourage trade by relaxing domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.[20]

3. The Parties agree not to use labor laws for protectionist purposes. [21]

Art. 4 Government Enforcement Action

1. Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action, such as:

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18 „Social law“ added, since no reference to social rights in NAALC.

19 Thsi definition adopted from the Mercosur draft.

20 Wording adopted from FTA US - Jordan, 2004.

21 Own suggestion.

- 1. appointing and training inspectors;

- 2. monitoring compliance and investigating suspected violations, including through on-site inspections;

- 3. seeking assurances of voluntary compliance;

- 4. requiring record keeping and reporting;

- 5. encouraging the establishment of worker-management committees to address labor

regulation of the workplace;

- 6. providing or encouraging mediation, conciliation and arbitration services; or

- 7. initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law.

2. Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labor law.

Art. 5 Private Action

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labor law.

2. Each Party's law shall ensure that such persons may have recourse to, as appropriate, procedures by which rights arising under:

- 1. its social and labor law, including provisions regarding occupational safety and health, employment standards, industrial relations, non-discrimination and migrant workers, and[22]

- 2. collective agreements,

can be enforced.

[22] Own suggestion

Art. 6 Participation of organised civil society in cooperation[23]

1. The Parties recognise the role and potential contribution of organised civil society (social interlocutors and Non Governmental Organisations) in the cooperation process and agree to promote effective dialogue with organised civil society and its effective participation.

2. Subject to the legal and administrative provisions of each Party, organised civil society may:

- (a) participate in the policy-making process at country level, according to democratic principles;
- (b) be informed of and participate in consultations on development and cooperation strategies and sectoral policies, particularly in areas concerning them, including all stages of the development process;
- (c) receive financial resources, insofar as the internal rules of each Party so allow, and capacity building support in critical areas;
- (d) participate in the implementation of cooperation programmes in the areas that concern them.

Art.7 Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and, to this end, each Party shall provide that:

- 1. such proceedings comply with due process of law;
- 2. any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;
- 3. the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence; and
- 4. such proceedings are not unneccessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

- 1. in writing and preferably state the reasons on which the decisions are based;

[23] Wording follows FTA EU-Chile, Artikel 44+ 45

- 2. made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

- 3. based on information or evidence in respect of which the parties were offered the opportunity to be heard.

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

5. Each Party shall provide that the parties to administrative, quasi-judicial, judicial or labor tribunal proceedings may seek remedies to ensure the enforcement of their labor rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or emergency workplace closures.

6. Nothing in this Article shall be construed to require a Party to establish, or to prevent a Party from establishing, a judicial system for the enforcement of its social or labor law distinct from its system for the enforcement of laws in general.

7. For greater certainty, decisions by each Party's administrative, quasi-judicial, judicial or labor tribunals, or pending decisions, as well as related proceedings shall not be subject to revision or reopened under the provisions of this Agreement.

Art. 8 Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. When so established by its law, each Party shall:

- 1. publish in advance any such measure that it proposes to adopt; and

- 2. provide interested persons a reasonable opportunity to comment on such proposed measures.

Art. 9 Public Information and Awareness

Each Party shall promote public awareness of its labor law, including by:

- 1. ensuring that public information is available related to its labor law and enforcement and compliance procedures; and

- 2. promoting public education regarding its social and labor law.

Art. 10 Commission for Social and Labor Cooperation

1. The European Union and each EPA region hereby establish a Commission for Social and Labor Cooperation.

2. The Commission shall comprise a ministerial Council and a Secretariat.

Art. 11 Council Structure and Procedures

1. The Council shall comprise representatives of the social partners of both parties.

2. The Council shall establish its rules and procedures and shall convene on a regular basis.

Art. 12 Council Functions

1. The Council shall be the governing body of the Commission and shall:

- 1. oversee the implementation and develop recommendations on the further elaboration of this Agreement

- 2. direct the work and activities of the Secretariat and of any committees or working groups convened by the Council;

- 3. establish priorities for cooperative action

- 4. approve the annual plan of activities and budget of the Commission;

- 5. approve for publication, subject to such terms or conditions as it may impose, reports and studies prepared by the Secretariat, independent experts or working groups;

- 6. facilitate Party-to-Party consultations, including through the exchange of information;

- 7. address questions and differences that may arise between the Parties regarding the interpretation or application of this Chapter; and

8. promote the collection and publication of comparable data on enforcement, labor standards and labor market indicators.

Art. 13 Cooperative Activities

1. The Council shall promote cooperative activities between the Parties, as appropriate,

regarding:

- 1. social and labour law
- 2. capacity building for the implementation and promotion of social and labour law[24]
- 3. labor statistics;
- 4. labor-management relations and collective bargaining procedures;
- 5. employment standards and their implementation;
- 6. compensation for work-related injury or illness;
- 7. legislation relating to the formation and operation of unions, collective bargaining and the resolution of labor disputes, and its implementation;
- 8. the equality of women and men in the workplace;
- 9. forms of cooperation among workers, management and government;
- 10. the provision of technical assistance, at the request of a Party, for the development of its labor standards; and
- 11. such other matters as the Parties may agree.

2. The Parties shall carry out the cooperative activities referred to in paragraph 1 with due regard for the economic, social, cultural and legislative differences between them.

Art. 14 Secretariat Functions

1. The Secretariat shall assist the Council in exercising its functions and shall provide such other

support as the Council may direct.

2. The Secretariat shall report to the Council annually on its activities and expenditures.

Art. 15 Secretariat Reports and Studies

1. The Secretariat shall periodically prepare background reports setting out publicly available

information supplied by each Party on:

- 1. social and labor law and administrative procedures;

[24] Own suggestion

- 2. trends and administrative strategies related to the implementation and enforcement of social and labor law;

- 3. labor market conditions such as employment rates, average wages and labor productivity; and

2. The Secretariat shall prepare a study on any matter as the Council may request.

Art. 16 Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to resolve any matter that might affect its operation.

Art. 17 Consultations

1. Following a report to the Council that addresses the enforcement of a Party's standards of social or labor law any Party may request in writing consultations with any other Party regarding whether there has been a persistent pattern of failure by that other Party to effectively enforce such standards in respect of the general subject matter addressed in the report.

2. The requesting Party shall deliver the request to the other Parties and to the Secretariat.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations under this Article.

Art. 18 Initiation of Procedures

1. If the consulting Parties fail to resolve the matter pursuant to Article 17 within an appropriate period of time [subject to further negotiation] any such Party may request in writing a special session of the Council.

2. The requesting Party shall state in the request the matter complained of and shall deliver the request to the other Parties and to the Secretariat.

3. Unless it decides otherwise, the Council shall convene within a reasonable period of time after the delivery of the request and shall endeavor to resolve the dispute promptly.

4. The Council may:

- 1. call on such technical advisers or create such working groups or expert groups as it

deems necessary,

- 2. have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or

- 3. make recommendations, as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute.Any such recommendations shall be made public.

5. If the matter has not been resolved mutually , the Council shall, on the written request of any consulting Party and by a two-thirds vote, convene an arbitral panel to consider whether the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its social or labour law standards is

- 1. trade-related; and

- 2. covered by mutually recognized labor laws.

6. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties and the Secretariat. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of the vote of the Council to convene a panel.

7. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part.

Art. 19 Rules of Procedure

1. The Council shall establish Model Rules of Procedure. The procedures shall provide:

- 1. a right to at least one hearing before the panel;

- 2. the opportunity to make initial and rebuttal written submissions; and

- 3. that no panel may disclose which panelists are associated with majority or minority opinions.

2. Unless the disputing Parties otherwise agree, panels convened under this Part shall be established and conduct their proceedings in accordance with the Model Rules of Procedure.

Art. 20 Third Party Participation

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties and the Secretariat, shall be entitled to attend all hearings, to make written and oral submissions to the panel and to receive written submissions of the disputing Parties.

Art. 21 Role of Experts

On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

Art. 22 Initial Report

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the disputing Parties and on any other information available.

2. Unless the disputing Parties otherwise agree, the panel shall, within [an appropriate persiod of time - which is subject to further negotiation] present to the disputing Parties an initial report containing:

- 1. findings of fact;
- 2. its determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its social or lanor law standards in a matter that is trade-related and covered by mutually recognized labor or social laws, or any other determination requested in the terms of reference; and
- 3. in the event the panel makes an affirmative determination, its recommendations, if any, for the resolution of the dispute, which normally shall be that the Party complained against adopt and implement an action plan sufficient to remedy the pattern of non-enforcement.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. A disputing Party may submit written comments to the panel on its initial report within 30 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Party, may:

- 1. request the views of any participating Party;
- 2. reconsider its report; and
- 3. make any further examination that it considers appropriate.

Art. 23 Final Report

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the disputing Parties otherwise agree.

2. The disputing Parties shall transmit to the Council the final report of the panel, as well as any written views that a disputing Party desires to be appended, on a confidential basis within 15 days after it is presented to them.

3. The final report of the panel shall be published five days after it is transmitted to the Council.

Art. 24 Implementation of Final Report

If, in its final report, a panel determines that there has been a persistent pattern of failure by the

Party complained against to effectively enforce its social or labor law standards the disputing Parties may agree on a mutually satisfactory action plan, which normally shall conform with the determinations and recommendations of the panel. The disputing Parties shall promptly notify the Secretariat and the Council of any agreed resolution of the dispute.

Art. 25 Review of Implementation

1. If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its social and labor standards, and:

- 1. the disputing Parties have not agreed on an action plan under Article 24 within 60 days of the date of the final report, or
- 2. the disputing Parties cannot agree on whether the Party complained against is fully implementing
    - 1. an action plan agreed under Article 24,
    - 2. an action plan deemed to have been established by a panel under paragraph 2,

any disputing Party may request that the panel be reconvened. The requesting Party shall deliver the request in writing to the other Parties and to the Secretariat. The Council shall reconvene the panel on delivery of the request to the Secretariat.

2. Where a panel has been reconvened under paragraph 1.1.it:

- 1. shall determine whether any action plan proposed by the Party complained against is sufficient to remedy the pattern of non-enforcement and
    - 1. if so, shall approve the plan, or
    - 2. if not, shall establish such a plan consistent with the law of the Party complained against, and

- 2. may, where warranted, impose a monetary enforcement assessment in accordance with Annex 2, within 90 days after the panel has been reconvened or such other period as the disputing Parties may agree.

3. Where a panel has been reconvened under paragraph 1.2, it shall determine either that:

- 1. the Party complained against is fully implementing the action plan, in which case the panel may not impose a monetary enforcement assessment, or

- 2. the Party complained against is not fully implementing the action plan, in which case the panel shall impose a monetary enforcement assessment in accordance with Annex 2, within 60 days after it has been reconvened or such other period as the disputing Parties may agree.

4. A panel reconvened under this Article shall provide that the Party complained against shall fully implement any action plan referred to in paragraph 2 or 3, and pay any monetary enforcement assessment imposed under paragraph 2.2 or 3.2, and any such provision shall be final.

Art. 26 Further Proceeding

A complaining Party may, at any time beginning 180 days after a panel determination under Article 25, request in writing that a panel be reconvened to determine whether the Party complained against is fully implementing the action plan. On delivery of the request to the other Parties and the Secretariat, the Council shall reconvene the panel. The panel shall make the determination within 60 days after it has been reconvened or such other period as the disputing Parties may agree.

Art. 27 Suspension of Benefits

1. Subject to Annex 2, where a Party fails to pay a monetary enforcement assessment within 180 days after it is imposed by a panel:

- 1. under Article 25.2.2, or

- 2. under Article 25.3.2,

any complaining Party or Parties may suspend, in accordance with Annex 3, the application to the Party complained against of duty-free quota-free access to the EU in an amount no greater than that sufficient to collect the monetary enforcement assessment.

2. Where more than one complaining Party suspends benefits under paragraph 1 or 2, the

combined suspension shall be no greater than the amount of the monetary enforcement assessment.

3. Where a Party has suspended benefits under paragraph 1 or 2, the Council shall, on the delivery of a written request by the Party complained against to the other Parties and the Secretariat, reconvene the panel to determine whether the monetary enforcement assessment has been paid or collected, or whether the Party complained against is fully implementing the action plan, as the case may be. The panel shall submit its report within [an appropriate period of time] after it has been reconvened. If the panel determines that the assessment has been paid or collected, or that the Party complained against is fully implementing the action plan, the suspension of benefits under paragraph 1 or 2, as the case may be, shall be terminated.

4. On the written request of the Party complained against, delivered to the other Parties and the Secretariat, the Council shall reconvene the panel to determine whether the suspension of benefits by the complaining Party or Parties pursuant to paragraph 1 or 2 is manifestly excessive. Within [an appropriate period of time after the delivery of] the request, the panel shall present a report to the disputing Parties containing its determination.

Art. 28 Enforcement Principle

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

Art. 29 Private Rights

No Party may provide for a right of action under its domestic law against any other Party on the ground that another Party has acted in a manner inconsistent with this Agreement.

Art. 30: Cooperation with the ILO

The Parties shall seek to establish cooperative arrangements with the ILO to enable the Council and Parties to draw on the expertise and experience of the ILO for purposes of implementing Article 27(1).

Art. 31 Funding of the Commission

Each Party shall contribute an equal share of the annual budget of the Commission, subject to

the availability of appropriated funds in accordance with the Party's legal procedures. No Party shall be obligated to pay more than any other Party in respect of an annual budget.

ANNEX 1

LABOR PRINCIPLES

The following are guiding principles that the Parties are committed to promote, subject to each Party's domestic law, but do not establish common minimum standards for their domestic law. They indicate broad areas of concern where the Parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces.

1. Freedom of association and protection of the right to organize

The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.

2. The right to bargain collectively

The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.

3. The right to strike

The protection of the right of workers to strike in order to defend their collective interests.

4. Prohibition of forced labor

The prohibition and suppression of all forms of forced or compulsory labor, except for types of compulsory work generally considered acceptable by the Parties, such as compulsory military service, certain civic obligations, prison labor not for private purposes and work exacted in cases of emergency.

5. Labor protections for children and young persons

The establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full physical, mental and moral development of young persons, including schooling and safety requirements.

6. Minimum employment standards

The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

7. Elimination of employment discrimination

Elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, where applicable, *bona fide* occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

8. Equal pay for women and men

Equal wages for women and men by applying the principle of equal pay for equal work in the same establishment.

9. Prevention of occupational injuries and illnesses

Prescribing and implementing standards to minimize the causes of occupational injuries and illnesses.

10. Compensation in cases of occupational injuries and illnesses

The establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment.

11. Protection of migrant workers

Providing migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions.

ANNEX 2

MONETARY ENFORCEMENT ASSESSMENTS

1. For the first year after the date of entry into force of this Agreement, any monetary enforcement assessment shall be no greater than [.....] € or its equivalent in the currency of the Party complained against. Thereafter, any monetary enforcement assessment shall be no greater than [.....] percent of total trade in goods between the Parties during the most recent year for which data are available.

2. In determining the amount of the assessment, the panel shall take into account:

- 1. the pervasiveness and duration of the Party's persistent pattern of failure to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards;

- 2. the level of enforcement that could reasonably be expected of a Party given its resource constraints;

- 3. the reasons, if any, provided by the Party for not fully implementing an action plan;

- 4. efforts made by the Party to begin remedying the pattern of non-enforcement after the final report of the panel; and

- 5. any other relevant factors.

3. All monetary enforcement assessments shall be paid in the currency of the Party complained against into a fund established in the name of the Commission by the Council and shall be expended at the direction of the Council to improve or enhance the labor law enforcement in the Party complained against, consistent with its law.

ANNEX 3

SUSPENSION OF BENEFITS

1. Where a complaining Party suspends EPA tariff benefits in accordance with this Agreement, the Party may increase the rates of duty on originating goods of the Party complained against to levels of the Generalized System of Preferences and such increase may be applied only for such time as is necessary to collect, through such increase, the monetary enforcement assessment.

2. In considering what tariff or other benefits to suspend pursuant to Article 41.1:

- 1. a complaining Party shall first seek to suspend benefits in the same sector or sectors as that in respect of which there has been a persistent pattern of failure by the Party complained against to effectively enforce its social or labor law standards; and

- 2. a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.