Labour Market Concerns and Trade Agreements: The Case of Employment Policy Provisions

Quentin Delpech and Franz Ebert

February 2014

International Labour Office
### Table of Contents

Abstract ................................................................................................................................................... 3

1  Introduction ........................................................................................................................................... 4

2  An overview of labour market-related provisions in trade agreements ........................................ 5

   1. Provisions dealing with labour standards ....................................................................................... 5
   2. Labour mobility provisions .............................................................................................................. 5
   3. Employment-related safeguard provisions ..................................................................................... 7

3  The case of employment policy provisions .................................................................................... 10

   1. The international legal framework on employment policy .......................................................... 10
   2. The concept of EPPs ...................................................................................................................... 11
   3. Quantitative significance and evolution ....................................................................................... 13
   4. An overview of the main regulatory approaches .......................................................................... 15
      a) The approach of Asian trade agreements .................................................................................. 15
      b) The approach of the United States, Canada, and New Zealand ............................................... 16
      c) The approach of the European Union ..................................................................................... 17
      d) The approach of regional integration agreements ..................................................................... 19

4  Practical experiences ......................................................................................................................... 21

   a) Shaping bilateral employment dialogue: the EU-Chile Association Agreement ....................... 22
   b) Regional integration of employment policy: the example of the Andean Community ............. 23

4  Conclusion ............................................................................................................................................ 25

References ............................................................................................................................................... 26
Abstract

The past two decades have witnessed an unparalleled proliferation of bilateral and regional trade agreements. This has given rise to concerns such as the impact of these agreements on the equality of employment and labour standards between participating countries. Apart from provisions on labour standards, some agreements have incorporated employment policy provisions to address labour market concerns. This paper examines the potential of such provisions in improving employment generation and quality. Based on an overview of labour market-related provisions in trade agreements and the international legal framework regarding employment policy, this paper submits available employment policy provisions to a detailed analysis. It is shown that almost 40 percent of current trade agreements contain some provisions on cooperation regarding employment promotion matters. Also some practical experiences with the implementation of these provisions are reviewed. The paper concludes that increased awareness of the employment policy provisions could help to improve their effectiveness and that synergies could be created between these provisions and the ILO’s instruments and activities.

Keywords: bilateralism, regionalism, trade agreements, trade liberalization, employment policy, labour markets
Introduction

While multilateral trade negotiations have been stalled in recent years, bilateral and regional trade agreements\(^1\) have seen an unprecedented proliferation in the last two decades (Crawford and Fiorentino, 2005; Menon, 2007).

One of the key concerns relating to such trade agreements is their impact on the quantity and the quality of employment. While theorists argue that increased trade raises, in the long run, employment as well as living and working conditions, there is significant evidence suggesting that trade liberalization may, at least in the short run, have adverse effects on employment as well as on the quality of jobs (McMillan and Verduzco, 2011).\(^2\) Particularly when there is lack of mobility across sectors, workers may lose significantly in the course of trade liberalization (see, for example, Saint-Paul, 2007). Accordingly, research suggests that active labour market policies, such as education, training and retraining policies as well as job search assistance are crucial to ensuring that workers are able to adjust to changes brought about by trade liberalization.\(^3\)

In addition to appropriate measures at the national level, labour market concerns could also be taken into account in the trade agreements themselves. So far, most of the debate has revolved around the issue of inserting labour standards-related requirements into the text of the agreement to create a minimum floor between those countries engaging in reciprocal trade liberalization.\(^4\) Other ways of addressing labour market concerns have received less attention by researchers. A significant number of trade agreements have included provisions dealing with employment policy, providing, in particular, for cooperation between the parties, which this paper identifies as “employment policy provisions” (EPPs). However, little is known about the legal and practical implications of these provisions. In particular, the question arises as to what the potential of such provisions is in terms of contributing to improved employment policies and, more broadly, to positive effects on employment generation and employment quality.

The present paper analyses in more detail the EPPs of trade agreements. The second section provides a brief overview of the international legal framework regarding employment policy and how employment conditions are typically inserted into trade agreements. The evolution and review of the main regulatory approaches of these provisions in terms of their normative contents, and their legal and institutional implications are then analysed in section three. Section four follows with insight into the practical application of these provisions, focusing on two specific cases in bilateral and regional integration agreements (RIAs). The paper concludes by pointing to the potential of EPPs for contributing to sound employment policies in the context of trade liberalisation and reflects on their added-value vis-à-vis the already existing international legal framework on employment policy.

---

\(^1\) For the purpose of this paper, all agreements notified to the WTO will be referred to as “trade agreements” or “regional integration agreements”, regardless of their official title.

\(^2\) Conversely, it appears that potential efficiency gains obtained through trade liberalization can be thwarted through significant unemployment (McMillan and Verduzco, 2011).

\(^3\) See, for example, Lee 2005; Jansen and Lee, 2007; Harrison and Rodríguez-Clare, 2010:4112. Enhancing workers’ skills, including at the level of secondary and tertiary education is considered crucial in order to prevent an increase of the wage gap between skilled and unskilled workers, which may occur after trade barriers have been reduced. Retraining policies and other active market policies are also considered important for the informal sector, which may in certain cases increase in the short run as a result of trade liberalization measures (Sinha, 2011).

\(^4\) For an overview of these issues see Bartels (2008) as well as Dawar (2008).
2 An overview of labour market-related provisions in trade agreements

1. Provisions dealing with labour standards

Labour provisions have so far been the most visible labour market dimension of bilateral and regional trade agreements. While not dealing with employment issues, they contain conditions with which the employment relationship is bound to comply.

In terms of legal commitments, many labour provisions require compliance with certain minimum labour standards (most of which refer to the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work). They also require that national labour legislation is maintained and effectively enforced. In this respect, the specific normative content differs widely across agreements (Bourgeois et al., 2007).

With regard to the implementation mechanisms of labour provisions, one can distinguish between conditional and promotional provisions. Conditional provisions make non-compliance with labour provisions subject to the imposition of economic sanctions, while promotional provisions rely on cooperative activities such as dialogue and technical cooperation (Ebert and Posthuma, 2011:3). Typically the trade agreements of the United States and Canada contain labour provisions with both conditional and promotional aspects, while the trade agreements of other actors, including the EU, New Zealand, as well as certain South-South agreements, including RIAs, focus almost exclusively on the promotional dimension. (Lazo Grandi, 2009; Häberli et. al., 2011).

2. Labour mobility provisions

Increasingly, trade agreements also deal with worker’s access to the labour markets of other economies. Labour mobility provisions in trade agreements can thus augment access to employment opportunities for workers of the countries concerned while at the same time mitigating labour shortages in those countries. Such provisions have so far not been inserted into the multilateral trade framework of the WTO, given a lack of consensus in this regard. The key document in this regard is the Singapore Ministerial Declaration which declares the ILO to be “the competent body to set and deal with [labour] standards”. See the Singapore Ministerial Declaration, WTO Ministerial Conference, Singapore, 9–13 December 1996, available at: http://www.wto.org/english/theWTO_e/whatis_e/tif_e/bey5_e.htm. This was mainly due to the opposition of the two main schools of thought, with some contending that a labour dimension of trade agreements would help avoid globalisation at the cost of workers’ rights, others perceive this as protectionism in disguise and argued that trade and labour issues should be kept separate. See on this conflict De Wet (1994); Davies and McCrudden (2000.). A key proponent of the latter position has been Jagdish Bhagwati, see e.g. Bhagwati (1995).

Many trade agreements concluded by the United States, Canada and the EU prohibit in particular the weakening of domestic labour law with a view to attracting foreign direct investment, see e.g. Art. 15.4 of the US-Bahrain Trade Agreement, Art. 12 of the Canada-Chile Trade Agreement, and Art. 196.2(b) of the EU-Cariforum Trade Agreement.

On the different components of labour provisions in trade agreements see also Polaski (2004).

For a legal analysis of labour provisions in these trade agreements see, for example, Clatanoff (2005); Doumbia-Henry and Gravel (2006) and Siroën et al. (2008).

This can involve either employment in a company of the host state or temporary posting by a foreign company that is active in the host country. For a more detailed description of the categories, see Stephenson and Hufbauer (2011:277).

This section does not deal with equal treatment rights for migrants which may also be included in trade agreements.
The main regulatory instrument at the multilateral level is the General Agreement on Trade in Services, which was adopted as part of the WTO framework. This agreement contains commitments with regard to the free movement of business visitors and intra-corporate transferees as well as certain independent professionals and employees of foreign companies providing services to firms in the host country. These commitments focus on high-skill employment and are limited to certain categories of workers that are unilaterally defined by the WTO Member States (Carzaniga, 2009).

This rather limited multilateral framework on the free movement of workers has given rise to a significant proliferation of bilateral and regional agreements that deal with labour migration and aim to provide temporary market access for highly skilled workers from the partner country or countries (Panizzon, 2010a).

Provisions dealing with labour mobility have been inserted into a number of North-South trade agreements. The first of these agreements was the NAFTA in 1994 that included a chapter on the “temporary movement of business persons” and has served as a model for subsequent agreements. The chapter provides for renewable one-year employment in any NAFTA country in one of 62 professions, for workers within the NAFTA territory who have been offered employment. While similar labour mobility provisions are also contained in the US-Chile and the US-Singapore Agreements, later US agreements contain less comprehensive provisions in this regard because of the lack of consent in the US Congress (Stephenson and Hufbauer, 2011:281). By contrast, in other countries’ agreements there is a tendency to go beyond the NAFTA approach. Canada’s subsequent trade agreements contain a more progressive approach, with the most recent ones covering all professional categories without quantitative limits or temporal restrictions. Also some of the EU, Australian, New Zealand, and Japanese trade agreements contain provisions on labour market access.

Some trade agreements also explicitly include the right to residence from professional service providers to other types of workers, such as graduate trainees or specifically extend the right to residence to spouses and certain family members of the worker. These provisions are subject to dispute settlement unless such recourse has been explicitly excluded. In addition to this, more comprehensive labour market access has been established in the context of certain RIAs. The CARICOM legal framework provides, for example, for harmonization of travel documents, including a common passport since 2005 as well as free movement for certain categories of skilled workers.

Going beyond that, an agreement between the MERCOSUR Member States as well as Bolivia and Chile gives nationals of these countries the right to residence and access to the labour market of these countries. Similar initiatives have been taken in the framework of other RIAs, such as the Andean

---

11 See notably Art. 1(2)(d) of the GATS.
12 Stephenson and Hubauer (2011:277) define this term as “[e]mployees of a foreign services company that has set up a commercial presence abroad and that transfers these employees to its foreign location.”
13 For a critique of the GATS under global justice considerations see Broude (2007) and Chanda (2009).
14 See Chapter 16 of NAFTA.
15 See Art. 9.3 of the Canada-Colombia and Art. 9.3 of the Canada-Peru Trade Agreement.
16 For an overview of the different regulatory approaches see Stephenson and Hufbauer (2011).
17 See Art. 196 of the EU-Cariforum Trade Agreement.
18 See Art. 13.4 of the Australia-Chile Trade Agreement. This applies after the worker in question has resided in Australia at least during the period of one year.
19 See Art. 32, 34d, 35, 36, 36a, and 37 of the CARICOM Treaty and Art. 35d of the Second Protocol.
20 This right is initially limited to two years but may be rendered permanent under certain conditions. See Art. 4(1) and 5 of the Acuerdo sobre Residencia para Nacionales de los Estados Parte del Mercosur, Bolivia y Chile of 2002.
Community of Nations (CAN), the Association of South East Asian Nations (ASEAN), the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA).\footnote{For an overview of the different degrees of free movement of workers granted by the different agreements see Nielson (2003:7-19) and Martin (2011:10-21).}

It is important to note that with the exception of certain RIAs, labour mobility provisions of trade agreements focus typically on highly skilled workers. While a few trade agreements contain rather general references to migrant workers,\footnote{Such references can be found in certain EU trade agreements. For example, the EU-Egypt Trade Agreement commits the parties to use political dialogue “to find ways to achieve progress in the field of movement of workers and equal treatment and social integration of Egyptian and Community nationals legally residing in the territories of their host countries” which shall cover issues such as “migrant communities’ living and working conditions”; and migration issues more generally (Art. 63).} labour market access for low-skill workers is mainly regulated in non-trade related agreements on labour migration.\footnote{In this respect, the emphasis is, however, often on the regulation and control of migration rather than fostering free movement of workers (see, for example Panizzon, 2010b:23).}

3. Employment-related safeguard provisions

A key concern regarding the adverse effects of trade liberalisation relates to the impact on employment as the result of increased competitive pressure on domestic industries. In this regard, some safeguard provisions have been inserted into the WTO framework,\footnote{See in particular the WTO Agreement on Safeguards. Rules on safeguards are also contained in Art. XIX of the GATT, Art. 5 of the Agreement on Agriculture, Art. 6 of the Agreement on Textiles and Clothing, and Art. 16(1) of the Protocol of Accession of the People’s Republic of China. On the relationship between the WTO rules relating to safeguards and the safeguard provisions in bilateral and regional trade agreements see Pauwelyn (2004).} as well as in the majority of bilateral and regional trade agreements to allow State parties to protect domestic industries against unexpected shocks through trade liberalisation.

Safeguard provisions allow for temporal trade restrictions for specific imports, usually in the form of suspension of trade concessions already granted or further tariff reductions. In order to activate the safeguard provisions in relation to a given product, it must be demonstrated that the imports of this product have increased and that this has led or is likely to cause harm to the respective domestic industry (Kotera and Kitamura, 2007:12). The relevant investigation is entrusted to a domestic governmental institution.\footnote{One example is the United States International Trade Commission (USITC). See at: \url{http://www.usitc.gov/}.}

The design of safeguard provisions differs across agreements. While some of them, partly inspired by the WTO Agreement on Safeguards, require detailed investigation prior to the adoption of the safeguards, others contain only general guidance.\footnote{Kruger, et. al. (2009) distinguish four types of safeguard measures: 1) WTO, 2) NAFTA, 3) GATT, and 4) European. The different types of trade arrangements are then assessed in terms of the different criteria: conditions of invocation, investigation procedures, safeguard measure application, safeguard measure duration, compensation mechanisms, and the resolution of disputes relating to safeguard measures.} Certain trade agreements also provide safeguards for specific sectors, in particular the apparel and textile sector, whose requirements are typically less stringent than those of the general safeguard provisions (Kruger, et. al., 2009).

At least 32 trade agreements with safeguard provisions specifically take employment concerns into consideration.\footnote{A rather unique arrangement has been inserted into the Singapore-Australia FTA which provides in Article 15: “Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on} Two main approaches can be identified. In the most common approach, which has
been adopted by 25 of these agreements, the adverse effect on employment is to be taken into account by the competent authorities when investigating whether the increased imports “have caused or are threatening to cause” a “serious injury to a domestic industry”. That being said, employment concerns are only one out of several criteria to be considered, notably “the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses” (Article 4 (1) (a) of the WTO Safeguards Agreement). Some agreements specifically state that none of these criteria has to be decisive, highlighting that a combination of different criteria may well justify the activation of the safeguard measures. This approach is to be found in general safeguard provisions as well as in certain sector-specific arrangements, notably those concluded by the United States and Canada.

The second approach accords employment issues a more prominent role. Instead of defining the adverse impact on employment as one criterion to be taken into account among others, these trade agreements stipulate a substantial adverse impact on employment can, as such, justify the adoption of a safeguard measure. In this regard, the Global System of Trade Preferences among Developing Countries (GSTP) adopted in 1988, which included such an arrangement for the first time, defines a “serious injury”, whose existence justifies the adoption of safeguard measures under certain conditions, as:

“significant damage to domestic producers, of like or similar products resulting from a substantial increase of preferential imports in situations which cause substantial losses in terms of earnings, production or employment unsustainable in the short term”.

The Agreement states that the analysis of the adverse effects of the imports on the national industry “shall also include an evaluation of other relevant economic factors and indices having a bearing on the state of the domestic industry of that product”. Nevertheless, it appears that the employment effect can, just as the effect on earnings and production, in principle justify safeguard measures independent of the existence of an adverse effect on one of the other issues. This approach allows the State parties flexibility to adjust their commitments under the trade agreements in order to prevent major employment losses. While the agreements employing this approach remain rather scarce, from international trade, nothing in this Chapter shall prevent Australia from promoting employment and training opportunities for its indigenous people in regions where significant indigenous populations exist.”

28 This approach was first adopted by the WTO Agreement on Safeguards of 2002 which further developed the safeguards provision of the General Agreement on Tariffs and Trade (GATT) and has since then been taken up in a number of bilateral and regional agreements.
29 See, for instance, Section 3 (2) (1) of Annex C-00-B of the Canada-Chile FTA.
30 See Art. 46.2 of the Chile-China FTA, Art. 21.3 of the Chile-Japan FTA, Annex.6.04.2 e of the Chile-Mexico FTA, Art. 23.3 c of the India-Japan FTA, Art. 5.04.6 e of the Israel-Mexico FTA, Art. 55.6 g of the Japan-Mexico FTA, Annex IV Art. 3. b of the agreement establishing MERCOSUR, Art. 8.05 of the Mexico-Central America FTA, Art. 8.10 of the Mexico-Nicaragua FTA, Art. 6.04.6 e of the Panama-Central America FTA, Art. 6.7.3 e of the Chile-Peru FTA, Art. 8.4.2 e ii of the Peru-Singapore FTA, Art. 21.3 c of the Brunei-Japan FTA, Art. 7.05.4 of the Costa Rica-Mexico FTA, Art. 504 of the Thailand-Australia FTA, and Art. 5.7 of the Thailand-New Zealand FTA.
31 See Art. 5.9 of the US-Singapore FTA, Art. 3.1 of the US-Peru FTA, Art. 3.1 of the US-Oman FTA, Art. 4.2 of the US-Morocco FTA, Art. 3.1 of the US-Bahrain FTA, and Art. 4.1 of the US-Australia FTA. The Canada-Chile FTA (Section 3.2.1 of Annex C-00-B and Annex F-03.3) and the Canada-Costa Rica FTA (Section 4.2.a of Annex III.1. and Annex VI.3) include a reference to employment concerns both in the general and the sectorial safeguard provisions.
32 Art. 13 of the GSTP.
33 Art. 1 e of the GSTP.
34 Art. 13 of the GSTP.
the GSTP this approach has subsequently found its way into three regional trade agreements\textsuperscript{35} as well as two bilateral trade agreements,\textsuperscript{36} all of which have been situated in the Asian region.

\textsuperscript{35} Art. II.5 of the India-Afghanistan FTA, Art. II.5 of the India-Sri Lanka FTA, Art. II.7 of the Pakistan-Sri Lanka FTA.

\textsuperscript{36} Chapter I Art. 1.12 of the Asia Pacific Trade Agreement (APTA), Art. 1.9 of the South Asian Free Trade Agreement (SAFTA), and Art. 1.3 of the South Asian Preferential Trade Agreement (SAPTA).
3 The case of employment policy provisions

1. The international legal framework on employment policy

The right to employment is recognized as a human right in a number of international treaties. At the global level, the International Covenant on Economic, Social and Cultural Rights protects “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”. This includes the obligation for State parties to adopt a national employment policy as well as measures to decrease the unemployment rate, especially concerning women and disadvantaged groups. Similar rights and obligations are contained in certain regional human rights treaties.

The most detailed international legal instruments relating to employment have, however, been adopted under the auspices of the ILO. The main instrument in this regard is the Employment Policy Convention, 1964 (No. 122). This convention commits countries to formulate an employment policy which must pursue three goals, namely (1) that “there is work for all who are available for and seeking work”, (2) that “such work is as productive as possible”, and (3) that “there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for [...] a job for which he is well suited”.

States are required to pursue their employment policy “by methods that are appropriate to national conditions and practices” and must keep the measures adopted for this purpose under review. Also, State parties are under an obligation to consult with “representatives of the persons affected by the measures to be taken”, notably workers’ and employers’ representatives. More specific normative guidelines are laid down in the related Employment Policy Recommendation, 1964 (No. 122) which states, among others, that “[m]embers should contribute to all efforts to expand international trade as a means of promoting economic growth and expansion of employment opportunities”.

As far as vocational training and other issues regarding human resources are concerned, the Human Resources Development Convention, 1975 (No. 142) is the main instrument. This convention obliges the State parties to “adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through

---

39 For example, the Revised European Social Charter obliges State parties to provide free-of-charge employment services for workers and “promote appropriate vocational guidance, training and rehabilitation”, Article 1(3) and (4) of the Revised European Social Charter of 1996. See on this Harris and Darcy (2001:53 et seq.).
40 For more details on this see CEACR (2010).
41 Countries, are, more specifically, required to “declare and pursue as a major goal, an active policy designed to promote full, productive and freely chosen employment”; see Art. 1(1) of the Employment Policy Convention, 1964 (No. 122).
42 Article 1(2) of the Employment Policy Convention, 1964 (No. 122). The latter must be provided “irrespective of race, colour, sex, religion, political opinion, national extraction or social origin”; see ibid.
43 Article 1(3) of the Employment Policy Convention, 1964 (No. 122). The employment policy “shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives”, ibid.
44 Article 2(a) of the Employment Policy Convention, 1964 (No. 122).
45 Art. 3 of the Employment Policy Convention, 1964 (No. 122).
46 Para. 31 of the Employment Policy Recommendation, 1964 (No. 122). See further on this Monereo Pérez et al. (2011:46 et seq.).
State parties shall furthermore “gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to all children, young persons and adults”. Additionally, State parties “shall gradually extend, adapt and harmonise its vocational training systems to meet the needs for vocational training throughout the life of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels ofskill and responsibility”. State parties are moreover required to design and implement the respective policies and programmes “in co-operation with employers’ and workers’ organisations”. Other conventions concern more specific issues, requiring the State parties, for example, to adopt a policy on paid educational leave and on employment and vocational rehabilitation of disabled people.

In addition to this, a number of conventions deal with employment administration. The main instrument in this regard is the Employment Service Convention, 1948 (No. 88) which contains, among others, detailed requirements for national employment services. Other conventions provide for the gradual abolition of fee-charging employment agencies or deal with the regulation of private employment agencies.

2. The concept of EPPs

The following section aims to shed light on provisions contained in the trade agreements whose purpose is to promote employment through improving employment policies. For the purpose of the present paper, we define EPPs as any provision which confers to the institutions of trade agreements the competence to address matters of employment policy or which imposes obligations on the State parties or the trade agreement’s institutions. In this regard, both provisions containing criteria that must be met by national employment policy makers and provisions providing or allowing for cooperation between the State parties with regard to employment policy issues is included. This comprises provisions that are contained in the text of the trade agreement itself as well provisions that are to be found in annexes and accompanying documents such as side agreements or memoranda of understanding provided they show a clear link to the trade agreement.

In terms of contents, we distinguish provisions designed to (1) increase employment opportunities in certain sectors (such as employment creation programmes); (2) increase the employability of workers through human resource policies (comprise cooperation on vocational education and training, sometimes as part of general cooperation on education, as well as lifelong learning or

---

47 Article 1(1) of the Human Resources Development Convention, 1975 (No. 142). The policies and related programmes must be taken into consideration “(a) employment needs, opportunities and problems, both regional and national; (b) the stage and level of economic, social and cultural development; and (c) the mutual relationships between human resources development and other economic, social and cultural objectives.” Article 1(2) of the Human Resources Development Convention, 1975 (No. 142).
48 Article 3(1) of the Human Resources Development Convention, 1975 (No. 142).
49 Article 4 of the Human Resources Development Convention, 1975 (No. 142).
50 Article 5 of the Human Resources Development Convention, 1975 (No. 142).
51 Article 2 to 11 of the Paid Educational Leave Convention, 1974 (No. 140).
52 Article 2 to 9 of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).
53 See notably Article 6 of the Employment Service Convention, 1948 (No. 88).
54 Article 3 to 9 of Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96). Similarly, Unemployment Convention, 1919 (No. 2) requires State parties to create “a system of free public employment agencies under the control of a central authority”. Article 2(1) of Unemployment Convention, 1919 (No. 2).
56 See for, example, Art. 71 and 75 of the EU-Morocco Trade Agreement. Similarly, the DR-CAFTA (Annex 16.5 3 k) and the US-Peru Trade Agreement (Annex 17.6 2 m) highlight the “promotion of new employment opportunities through cooperative activities and workforce modernization”.
57 Art. 17 of the GCC Treaty and Art. 27 (2) of the ECOWAS Treaty.
the adjustment of workers to possible economic restructuring\textsuperscript{60}), and (3) increase the coordination between available employment opportunities and available workers (employment agencies and job-search assistance)\textsuperscript{61}.

As concerns the scope of EPPs, we distinguish (A) general EPPs applying to any sector and any worker in the territory of the State parties\textsuperscript{62} and (B) targeted EPPs which may be workers-specific (focusing on e.g. young workers\textsuperscript{63} or women workers\textsuperscript{64}), sector-specific (e.g. on the rural sector\textsuperscript{65}) or company-specific provisions (e.g. small and medium-sized enterprises\textsuperscript{66}).

The relation between the normative content of EPPs and the labour provisions and labour mobility provisions, respectively, discussed in section 2 is complex. EPPs and labour mobility provisions are in some cases closely intertwined. Among others, certain trade agreements, in particular RIAs, provide for an exchange of information on available employment, which fosters both the goal of employment promotion and labour mobility across State parties.\textsuperscript{67} In other cases EPPs are directly linked to the agreements’ labour provisions, e.g. through the inclusion of EPPs into the labour chapter. In a few cases, provisions dealing with human resource development focus specifically on the labour administration or the labour inspectorate and, hence, aim to strengthen the enforcement of labour law.\textsuperscript{68}

Finally, with regard to legal effects, there are conditional and promotional provisions. While none of the agreements reviewed, except one, submitted the EPPs to a sanction mechanism, usually the EEPs are linked to an institutional framework to oversee their implementation.\textsuperscript{69} Certain provisions also provide for the participation of the social partners or other civil society actors through consultation of cooperative projects to be carried out or through involvement in the policy dialogue activities.

\textsuperscript{58} See for example Art. 5 of the Annex on Economic Cooperation of the ASEAN-Republic of Korea Trade Agreement, Art. 18.10 of the Republic of Korea-Singapore FTA, Art. 100 of the EU-Albania Trade Agreement, Art. 58 of the EU-Palestinian Authority FTA, and Art. 46 of the EU-Tunisia FTA.
\textsuperscript{59} Art. 38 of the EU-Chile FTA; Art. 16.5 of the US-Morocco FTA; Annex 17A.3.e of the US-Singapore FTA and Annex 16A.4 of the US-Oman FTA. According to No. 2 (a) of the Human Resources Development Recommendation, 2004 (No. 195), the term “lifelong learning” encompasses all learning activities undertaken throughout life for the development of competencies and qualifications.
\textsuperscript{60} See, for example, Annex 17.6 of the US-Peru FTA.
\textsuperscript{61} Art. 101 of the EU-Montenegro Trade Agreement provides, for example, for cooperation on the “upgrading [...] job-finding and careers advice services”. Similar provisions are included in Art. 101 of the EU-South Africa Trade Agreement and Art. 61 of the EU-Croatia Trade Agreement.
\textsuperscript{62} This is the case of most EPPs in US trade agreements.
\textsuperscript{63} See, for example, Art. 30 of the EU-Mexico Trade Agreement.
\textsuperscript{64} See, for example, Art. 46.b of the EU-Morocco Trade Agreement.
\textsuperscript{65} See, for example, Art. 25b of the ECOWAS Treaty, providing for the cooperation of Member States with a view to “generat[ing] employment opportunities in rural areas”. See also the treaties establishing COMESA (arts. 133a and 147b), the Economic Community of West African States (Art. 25b), and the Economic and Monetary Community of Central Africa (Art. 35a).
\textsuperscript{66} See for example EU-Chile FTA (Art. 44.4 g).
\textsuperscript{67} See, for example, Art. 16.2 of the GCC Treaty and Art. 104.3 f of the EAC Treaty. It is conspicuous that some of the most comprehensive EPPs are to be found in RIAs. See, for example, the case of the EAC, Mercosur and the Andean Community.
\textsuperscript{68} See e.g. the Art. 9.3 of the Canada-Peru FTA, Art. 9.3 of the Canada-Colombia, and FTA Annex 18.05, Point 3(e) of the Taiwan, China-Nicaragua FTA.
\textsuperscript{69} See e.g. Turkey-Chile FTA, Art. 37; Japan-Malaysia FTA, Art. 143. The institutional design of the EPPs depends to some extent on their location. EPPs may be included into specific chapters dealing with these issues or, more frequently into the general cooperation chapters contained by many trade agreements. In some cases, the EPPs are contained by the labour chapter included in or the labour side arrangements attached to the trade agreements. In those cases, the implementation of the EPPs is likely to be closely linked to the overall implementation activities of the agreements’ labour provisions.
3. Quantitative significance and evolution

In order to analyse the quantitative significance of EPPs in trade agreements and their evolution over time, a review was carried out of the 246 trade agreements that were in force and had been notified to the WTO up to 30 April 2013. As shown by figure 1, the insertion of EPPs is a rather widespread phenomenon which concerned more than a third of the trade agreements (89 out of a total of 246 agreements). The number of trade agreements with EPPs exceeded the number of trade agreements with labour provisions concluded by that date, which only amounted to 57, or less than one fourth of the total number of agreements.

![Figure 1: Share of trade agreements with EPPs and labour provisions](source: IILS estimates based on the WTO RTA database)

While the first EPPs were already inserted into trade agreement in the early nineties, the widespread insertion of such provisions in trade agreements is a rather recent phenomenon. Of the trade agreements with EPPs that are currently in force, more than half entered into force after 2005 (see figure 2).

---

70 For the purpose of this analysis the Treaty on the Functioning of the European Union as well as the EU accession treaties and the EU’s trade agreement with the EU Member States Overseas Territories and Departments have not been considered. Also, HRD provisions that are linked to the implementation of trade-related provisions of the agreements were excluded from the analysis.
Interestingly, the inclusion of EPPs into trade agreements has to a significant extent been driven by developing countries. The first trade agreements with EPPs, adopted before 1995, were, with one exception, all concluded without the participation of developed countries. These agreements, all of which are RIAs, involve countries from a number of regions, including Latin America, Africa, and Asia, including Central Asia. In particular, India and Japan have been key proponents of such arrangements, although these States were heavily opposed to the insertion of any labour provisions into trade agreements. Subsequently, EPPs have been included also into other South-South regional integration agreements as well as in a number of South-South bilateral trade agreements mostly of South-East Asian participation (see further below).

In terms of normative content of the provisions, a clear preference with regard to human resource issues can be discerned. More than half of all EPPs in trade agreements focused on human resource development (HRD) while the remaining provisions dealt, with one exception, with both HRD and employment creation. (see figure 4). This tendency is even stronger in the case of South-South trade agreements, of which almost three quarters only concerned HRD issues.

---

71 The North American Agreement on Labour Cooperation attached to the North American Free Trade Agreement.
72 See the treaties establishing the Andean Community of Nations (CAN, according to the Spanish title) and the Southern Common Market (Mercosur, according to the Spanish title).
73 See the treaties on the Common Market for Southern and Eastern Africa (COMESA) and the Economic Community of West African States (ECOWAS).
74 See the treaty regarding the Economic Cooperation Organization.
75 See in particular the Eurasian Economic Community (EAEC), the Gulf Cooperation Council (GCC), Economic and Monetary Community of Central Africa (CEMAC, according to the French title), the East African Community (EAC), the Southern African Development Community (SADC), and the West African Economic and Monetary Union (WAEMU).
76 This is interesting, given that most developing countries have only a small formal sector where such policies could be applied. By contrast, references to the informal economy are missing in these agreements.
Interestingly, there is no reference in EPPs to ILO instruments. Indeed, none of the EPPs identified referred to any employment-related ILO Conventions or recommendations. This contrasts strongly with the situation of labour provisions, where more than half refer to either the ILO’s 1998 Declaration or specific conventions (Ebert and Posthuma, 2011:7).

4. An overview of the main regulatory approaches

Over the last two decades, a variety of approaches regarding the regulatory design have emerged. These vary significantly with regard to their normative density, the most comprehensive ones being located in RIAs.

a) The approach of Asian trade agreements

About half of all trade agreements with EPPs (44 out of 89) were concluded with Asian participation and one quarter (18 out of 89) strictly between Asian countries.

One of the roots of this development may be the ASEAN Trade Agreement, in force since 1992. This agreement includes (as one of the first trade agreements) cooperation on HRD issues, both in the section on industrial cooperation and “other areas of cooperation”. Similar provisions have subsequently also been inserted into the five trade agreements concluded after 2000 between ASEAN

77 See Art. 3 of the ASEAN Trade Agreement.
and other Asian countries, as well as Australia and New Zealand.\(^\text{78}\) Indeed, both India and Japan concluded their first trade agreements with EPPs with an ASEAN Member State, Singapore,\(^\text{79}\) before taking up this approach in other trade agreements.\(^\text{80}\)

In terms of content, EPPs in Asian trade agreements focus exclusively on HRD issues. Most of these provisions refer mainly to cooperation on HRD-related capability development in general, leaving the specifics of such cooperation to the State parties.\(^\text{81}\) That being said, certain Asian trade agreements contain more detailed arrangements. The prominent example in this regard is to be found in the Japan-Singapore Trade Agreement of 2002 which dedicates an entire chapter to HRD issues. This chapter generally requires the State parties to cooperate on HRD and to stimulate cooperation among private entities in their territories\(^\text{82}\) and goes on to set out specific areas for such (mandatory) cooperation. This includes the facilitation of exchanges of educational and training staff as well as students,\(^\text{83}\) increased cross-border cooperation between educational institutions\(^\text{84}\) and the exchange of government officials in order to increase the understanding of each other’s HRD policies.\(^\text{85}\) The chapter also provides for cooperation on HRD issues relating to the elderly workforce\(^\text{86}\) while cooperation on human resources in the ICT sector is addressed in another chapter.\(^\text{87}\)

Similar provisions have been included in the Republic of Korea-Singapore Trade Agreement (Art. 18.10) which also refers to cooperation on “double degree programs between higher educational institutions of the Parties” (Art. 18.10(1)(b)) and the Japan-Mexico Trade Agreement.\(^\text{88}\)

b) The approach of the United States, Canada, and New Zealand

A different approach vis-à-vis EPPs has been used in agreements of the United States, Canada and New Zealand. These agreements integrate EPPs into the chapter concerning labour issues or the respective side agreements. As a consequence, these provisions are linked to the institutional framework which is specific to labour issues, usually consisting of a high level body such as a labour council or committee as well as national contact points in the domestic administration of the State parties.\(^\text{89}\)

\(^\text{78}\) These are: ASEAN-China Trade Agreement, ASEAN - Australia - New Zealand Trade Agreement, ASEAN-India Trade Agreement, ASEAN-Japan, and ASEAN-Republic of Korea Trade Agreement.

\(^\text{79}\) See Art. 13.1 of the India-Singapore Trade Agreement and Art. 134 of the Japan-Singapore Trade Agreement.

\(^\text{80}\) Also other early trade agreements concluded by Singapore contain EPPs, such as the Singapore-Australia Trade Agreement and the Panama-Singapore Trade Agreement (in force since 2003 and 2006, respectively).

\(^\text{81}\) See, for example, Art. 144(a) of the Japan-Philippines Trade Agreement, Art. 140(b) of the Japan-Malaysia Trade Agreement, Art. 11(2) of the India-Malaysia Trade Agreement.

\(^\text{82}\) Art. 121 of the Japan-Singapore Trade Agreement.

\(^\text{83}\) Art. 122 of the Japan-Singapore Trade Agreement.

\(^\text{84}\) Art. 123 of the Japan-Singapore Trade Agreement.

\(^\text{85}\) Art. 124 of the Japan-Singapore Trade Agreement.

\(^\text{86}\) Art. 125 of the Japan-Singapore Trade Agreement.

\(^\text{87}\) See Article 113(1)(c) of the Japan-Singapore Trade Agreement.

\(^\text{88}\) This agreement refers to the “exchange of information related to best practices on technical and vocational education and training”, the “encouragement of technical and vocational education and training” and “encouragement of exchange of scholars, teachers, instructors and students” (Art. 143(a-c)).

While commitments to cooperate on HRD issues is a common feature of EPPs in United States FTAs, only two rather recent FTAs take into account employment creation issues. Eight agreements provide for cooperation on issues relating to the employment administration (see table 2). Also, these arrangements typically provide for involvement of interested civil society actors in the design of respective cooperative activities.

### Table 2. EPPs in trade agreements of the United States

<table>
<thead>
<tr>
<th>Name of FTA</th>
<th>Year of entry into force</th>
<th>Employment creation</th>
<th>HRD</th>
<th>Employment Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAFTA</td>
<td>1994</td>
<td>no</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>US - Chile</td>
<td>2004</td>
<td>no</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>US - Singapore</td>
<td>2004</td>
<td>no</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>US - Morocco</td>
<td>2005</td>
<td>no</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>US - Bahrain</td>
<td>2006</td>
<td>no</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>DR-CAFTA</td>
<td>2006</td>
<td>yes</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>US - Oman</td>
<td>2009</td>
<td>no</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>US - Peru</td>
<td>2009</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>US-Korea</td>
<td>2012</td>
<td>no</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>US-Colombia</td>
<td>2012</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>US-Panama</td>
<td>2012</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
</tbody>
</table>

Source: ILO

A similar approach is taken by New Zealand’s trade agreements whose side arrangements contain EPPs focusing on cooperation on HRD issues while in some cases also including additional EPPs in the main body of the agreement. These agreements, too, foresee the possibility of consultation with civil society on the respective cooperative activities, albeit, on a voluntary basis. The scope of EPPs in Canada’s trade agreements is even more closely tied to the objectives of the labour provisions in that they focus on HRD in the labour administration.

c) The approach of the European Union

A different approach is pursued in agreements concluded by the EU. This approach is characterized by the variety of issues addressed as well as by their dispersed nature. These EPPs are, with some exceptions, not included in one single chapter but scattered across different areas, such as education, social issues, and industrial cooperation.

---

90 See Art. 3(3)(e and f) of the Memorandum of Agreement on Labour Cooperation Between the Government of New Zealand and the Government of the Republic of the Philippines attached to the ASEAN - Australia - New Zealand Trade Agreement, Art. 2(2)(e) of the Memorandum of Understanding on Labour Cooperation attached to the China-New Zealand Trade Agreement, Art. 3(4)(e) of the New Zealand-Malaysia Agreement on Labour Cooperation attached to the New Zealand-Malaysia Trade Agreement, and Para. 2.3 of the Arrangement on Labour between New Zealand and the Kingdom of Thailand attached to the Thailand-New Zealand Trade Agreement.
91 See, for example, Art. 122 (1) of the China-New Zealand Trade Agreement and Art. 13(1)(c) of the New Zealand-Malaysia Trade Agreement, and Art. 9.4(1)(c) of the Thailand-New Zealand Trade Agreement.
92 See, for example, Art. 3(2) of the New Zealand-Malaysia Agreement on Labour Cooperation attached to the New Zealand-Malaysia Trade Agreement and Art. 2(4) of the Memorandum of Understanding on Labour Cooperation attached to the China-New Zealand Trade Agreement.
93 See Article 12 (2) (d) of the Agreement on Labour Cooperation attached to the Canada-Chile Trade Agreement, Para. 1 (e) of Annex 1 of the Agreement on Labour Cooperation attached to the Canada-Peru Trade Agreement, and Para. 1 (e) of Annex 1 of the Agreement on Labour Cooperation attached to the Canada-Colombia Trade Agreement.
94 These are notably the EU-Cariforum Trade Agreement and the EU-Republic of Korea Trade agreement.
EU trade agreements address both general employment creation and HRD issues (see table 3). The EU’s trade agreements with the south-eastern European countries include specific references to enhancing local employment services,\(^{95}\) the broadest approach being taken by the EU-Montenegro Trade Agreement.\(^{96}\) Only the EU-Cameroon Trade Agreement deals exclusively with HRD issues.

**Table 3. EPPs in trade agreements of the EU**

<table>
<thead>
<tr>
<th>Name of FTA</th>
<th>Employment creation policies</th>
<th>Employment services</th>
<th>HRD issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU - Cameroon</td>
<td>no</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>EU - CARIFORUM States EPA; EU - Korea, Republic of; EU – Chile; EU – Egypt; EU – Israel; EU – Jordan; EU – Morocco; EU - Palestinian Authority; EU – Tunisia; EU – Mexico; EU - South Africa</td>
<td>yes</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>EU – Croatia; EU - Former Yugoslav Republic of Macedonia</td>
<td>no</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>EU - Montenegro</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
</tbody>
</table>

Particularly noteworthy is the focus on specific groups of workers, typically vulnerable groups of workers. While references to fostering employment and training for young\(^{97}\) and women workers\(^{98}\) are most common, two trade agreements also specifically deal with employment for disabled workers.\(^{99}\) The most comprehensive scope is contained in the EU-Chile Trade Agreement, which not only refers to employment policies for young and disabled workers but also addresses training for ethnic minorities.\(^{100}\)

Some of these trade agreements also link the goal of employment creation to the reduction of migrants into the EU’s territory. This concerns particularly the EU’s agreements with countries which serve as an entry point to the EU for migrants, especially in the Mashreq and Maghreb zone. For instance, Article 65 of the EU-Egypt Trade Agreement stipulates that “projects and programmes shall be carried out in any area of interest to [the Parties, with] priority to reducing migratory pressures, notably by improving living conditions, creating jobs, and income generating activities and developing training in areas from which emigrants come”. Similarly, Article 71 of the EU-Morocco FTA expressly places the priority of conducting projects focusing on employment creation in the context of the objective to “reduce[e] migratory pressure”.\(^{101}\) Employment promotion is, in these agreements, thus not an objective on its own but linked to the EU’s broader policy agenda.

\(^{95}\) See particularly the EU-Croatia FTA (Art. 91(1)) and the EC-Macedonia FTA (Art. 90(1)).

\(^{96}\) Article 102 of the EU-Montenegro Trade Agreement.

\(^{97}\) See Art. 44.4.b of the EU-Chile Trade Agreement, Art. 100 of the EU-Albania Trade Agreement, Art. 30 of the EU-Mexico Trade Agreement, Art. 102 of the EU-Montenegro Trade Agreement.

\(^{98}\) See Art. 100 of the EU-Albania Trade Agreement, Art. 78.b of the EU-Algeria Trade Agreement, Art. 46.b of the EU-Morocco Trade Agreement, Art. 102 of the EU-Montenegro Trade Agreement, Art. 46 of the EU-Tunisia Trade Agreement.

\(^{99}\) See Art. 38 of the EU-Chile Trade Agreement and Art. 63 of the EU-Israel Trade Agreement.

\(^{100}\) Articles 38 and 44.4.b of the EU-Chile Trade Agreement.

\(^{101}\) For similar provisions, see Art. 82 of the EU-Jordan Trade Agreement, Art. 71 a of the EU-Tunisia Trade Agreement, Art. 71 of the EU-Morocco Trade Agreement, Art. 74 of the EU-Algeria Trade Agreement, and Art. 65 of the EU-Egypt Trade Agreement.
Also, the regulatory density differs significantly. While some agreements only contain broad references to cooperation on employment creation or HRD, others detail the areas and the measures to be focused on with regard to employment. One of the most comprehensive EPPs has been included into the EU-Mexico Trade Agreement which specifies measures such as business and university exchanges, establishing “permanent links between the respective specialist agencies” as well as “exchanges of information, know-how, experts, technical resources and in the field of youth” (Art. 30(3)). This agreement also requires the parties to undertake “periodic consultations” on the employment-related cooperative activities which involves representatives of civil society (Art. 36(3)). In most cases, the implementation of the EPPs is to be supervised by the agreement’s administrative body, either a Council or a committee, which may in some cases create sub-committees focusing on social or employment issues.

d) The approach of regional integration agreements

The most comprehensive approach to EPPs is contained in RIAs, which often go beyond cooperative arrangements. Instead, some RIAs provide for the possibility of adopting joint policies, which may in some cases be of binding character. The comprehensive approach of RIAs can to some extent be explained by the objective of RIAs to foster economic and political integration, often linked to the integration of labour markets and the increase of free movement of workers.

In this regard, three main approaches can be identified. First, RIAs often provide for cooperation on employment matters, similar to other trade agreements. This often involves issues of human resource development, which have received particular attention by a number of African RIAs, such as the Treaties establishing COMESA, EAC and the Economic Community of West African States (ECOWAS). Of these commitments, those concerning the cooperation regarding exchange of information, the coordination of policies, the exchange of students and educational personnel as well as the harmonization of vocational curricula stand out. Also, the establishment of cooperation on joint regional training is foreseen by some of these treaties, including through regional human resources plans and joint training and educational institutions. Similar provisions are contained in the Treaty on the Gulf Cooperation Council (GCC).

---

102 See the following Trade Agreements: EU-CARIFORUM States EPA, EU-Republic of Korea, EU–Chile, EU–Egypt, EU–Israel, EU–Jordan, EU–Morocco, EU-Palestinian Authority, EU–Tunisia, EU-South Africa.
103 This Article also links such cooperation to the EU’s programme on cooperation between higher education institutions of the EU and Latin America.
104 See Art. 54 of the ASEAN-Japan Trade Agreement; Art. 11.4 and 5 of the India-Malaysia Trade Agreement.
105 See for example Article 4(d) of the WAEMU Agreement. Similarly, Art. 101 of the COMESA Treaty commits Member States to adopting policies such that MNEs contribute to employment.
106 See, for example, the case of Mercosur, detailed below.
107 See for example Art. 104 of the East African Community and Art. 5.2d of the Southern African Development Community.
108 The EPPs of the SADC are of a rather general nature, providing for cooperation in the area of “social and human development” (Art. 21(3)(d) of the SADC Treaty).
109 Art. 102(1)(h) of the EAC Treaty; Art. 61(2)(a) of the ECOWAS Treaty.
110 Art. 156(2)(a) of the COMESA Treaty; Art. 102(1)(a) of the EAC Treaty; Art. 29(c) of the CEMAC Treaty. Art. 60(2)(a) of the ECOWAS Treaty goes further by providing for the harmonization of such policies.
111 See Art. 156(2)(b) of the COMESA Treaty; Art. 102(1)(g) of the EAC Treaty; Art. 60(2)(b) of the ECOWAS Treaty.
112 Art. 102(1)(e) of the EAC Treaty.
113 Under the ECOWAS Treaty, Member States shall involve the private sector in designing HRD policies (Art. 102). On the employment-relevant institutional framework of the ECOWAS Treaty see Robert (2004:11-12).
114 Art. 156(2)(f) of the COMESA Treaty.
115 Art. 102(1)(b) of the EAC Treaty; Art. 29(a) of the CEMAC Treaty.
116 Art. 15 of the GCC Treaty.
Second, a number of RIAs vest the regional institutions with the competence to adopt common employment policies. For example, the EAC Treaty grants the EAC Council the competence to establish common employment policies for the EAC Member States\textsuperscript{117} and to “establish a regional centre for productivity and employment promotion and exchange information on the availability of employment”.\textsuperscript{118} The COMESA and the EAC Treaties furthermore specifically provide for cooperation on employment policies regarding women workers, including the development of specific training schemes.\textsuperscript{119}

The third approach involves rather general EPPs in the treaty itself which have, however, been complemented by side arrangements or secondary legal acts adopted by the institutions created by the RIA. In this regard, the Mercosur Social-Labour Declaration is particularly worth mentioning as it contains commitments to carry out active policies regarding employment creation, to “establish, maintain, and improve mechanisms on protection against unemployment”, and to “establish [...] services or programmes of vocational training or orientation”.\textsuperscript{120} This Declaration also provides for the right of “all workers” to “orientation, training and vocational education”\textsuperscript{121}. Apart from providing for the creation of a Social-Labour Commission for the implementation of the Declaration, this framework has also led to the adoption of certain specific measures, in particular the creation of a regional strategy for employment promotion, including a high-level working group in this area.\textsuperscript{122} Similarly, the CAN has led to the adoption of a comprehensive framework on social development, the “Integral Plan on Social Development”, which encompasses a number of employment issues, including a programme on coordination of vocational education and training policies as well as a sub-regional programme for employment promotion.\textsuperscript{123}

The Economic and Monetary Community of Central Africa (CEMAC) Treaty deserves particular attention as it is the only trade agreement that contains a monitoring mechanism on employment policy issues, which is moreover linked to a sanction mechanism. Under this treaty, the Council of Ministers has to pronounce itself at least once per year on the general economic policies of the Members of CEMAC. In this regard, the Council shall direct recommendations to the Member States aimed at ensuring compatibility of domestic policies with the objective of employment creation as well as three other goals such as growth, price stability, and the viability of the balance of payments (Art. 53 (1) and (2) of the CEMAC Treaty). Member State Governments are also under an obligation to inform the Executive Secretary of any decision taken at the national level, which could change the main macroeconomic data of their economies or of the CEMAC (Art. 53 (3) of the CEMAC Treaty). The Council’s recommendations are to be based on data collected by specific national units as well as a regional unit (Art. 50 of the CEMAC Treaty) under the guidance of a monitoring college (“college de surveillance”) composed of national and regional officials (Art. 52 of the CEMAC Treaty).\textsuperscript{124}

\textsuperscript{117} Art. 104(3)(d) of the EAC Treaty.
\textsuperscript{118} Art. 104(3)(f) of the EAC Treaty. This provision is linked to the EAC policies on free movement of workers.
\textsuperscript{119} Art. 122(d) of the EAC Treaty. See for policies focusing on technical progress Art. 154(d and e) of the COMESA Treaty.
\textsuperscript{120} See Art. 14-16 of the Mercosur Social-Labour Declaration. Similar commitments are contained in the CARICOM Declaration of Labour and Industrial Relations Principles “pursue policies designed to promote full productive and freely chosen employment.” (Art. 15(2)), “develop policies and programmes of vocational guidance and training, closely linked with employment.” (Art. 15(3)), and “promote training and development schemes to enhance the career prospects of workers, their skills and productivity in order to contribute to national, social and economic development.” (Art. 16).
\textsuperscript{121} See Art. 16 of the Mercosur Social-Labour Declaration.
\textsuperscript{122} See MERCOSUR/CMC/DEC. Nº 46/04: Estrategia Mercosur de Crecimiento del Empleo. For an overview of the relevant institutional framework of Mercosur see Cortina and Robles (2006:117-147).
\textsuperscript{123} See Decisión 601 del Consejo Andino de Ministros de Relaciones Exteriores sobre el Plan Integrado de Desarrollo Social, p. 20 and 21.
\textsuperscript{124} The CEMAC Treaty also provides for a harmonization of national macro-economic data for the purpose of the multilateral supervision (Art. 54).
CEMAC Treaty also provides for an enforcement mechanism. If a Member State does not respect these objectives, the Ministerial Council may adopt a directive addressed to this Member State (Art. 59 of the CEMAC Treaty). The Member State concerned will subsequently have to adopt an adjustment programme in order to address the issues raised by the directive. The adoption of an appropriate adjustment programme is linked with certain positive measures, including a public statement by the Executive Secretary as well as the CEMAC’s support regarding the mobilisation of additional resources for the adjustment programme (Art. 60 of the CEMAC Treaty). By contrast, if the Member State fails to adopt or to implement an appropriate adjustment programme, the Executive Secretary shall propose to the Ministerial Council the adoption of sanctions, which may, among others, comprise the withdrawal of economic support of the Member States in question (Art. 61 of the CEMAC Treaty).

5. Practical experiences

Practical application of EPPs can, among others, be observed with regard to a number of RIAs. The employment-related activities of Mercosur have, for example, involved the creation of a Mercosur Labour Market Observatory to collect and systematize labour market relevant information. Also, a high level working group on employment (GANEMPLE) has been created with a view to advancing a common sub-regional employment strategy.

The employment dimension of certain African RIAs has also been given a practical follow up, including through the adoption of a labour and employment policy for ECOWAS and a framework for policy discussions of employment issues in the context of the Southern African Development Community (SADC). In this regard, a number of regional integration organizations have sought the involvement of the ILO on the employment-related activities, including through the conclusion of a Memoranda of Understanding and in some cases also provided technical cooperation or policy advice on employment issues.

Two specific cases, the EU-Chile Association Agreement and the CAN are reviewed below. While these experiences are still rather recent, they suggest that EPPs can serve as platforms for policy discussions and may, especially in the case of RIAs, also lead to common policies and programmes in the area of employment.

125 The original Spanish name is Observatorio del Mercado de Trabajo del Mercosur.
126 See the website of the Observatory at: http://www.observatorio.net/. Some of the data provided in the relevant databases do, however, seem to be up-to-date.
127 MERCOSUR/CMC/DEC. Nº 46/04, Estrategia Mercosur De Crecimiento Del Empleo del 16 de diciembre de 2004. See also MERCOSUR/CMC/DEC. Nº 04/06, Estrategia Mercosur De Crecimiento Del Empleo del 20 Julio 2006 which approves the proposal for a regional employment strategy.
128 This policy was adopted in 2009 by the ECOWAS Ministers of Labour and Employment and provides for the regional harmonization and monitoring of national employment policies as well as the creation of an “ECOWAS Labour and Employment Fund” which would finance projects related to labour and employment issues (ECOWAS, 2009:14 et seq.).
129 This includes regular meetings of the Ministers of Labour of the SADC Member States, as well as specialized technical sub-committees (SADC, 2010: 5 et seq.). Since 2009 there is also specialized staff in the SADC secretariat dealing with labour issues funded by the ILO (Masemene, 2009).
130 The ILO participates, for instance, as an observer at the SADC Employment and Labour Sector Meetings. Since 2010, the ILO has also provided input to the ELS Meetings, including the attending social partners (ILO Harare Country Office, 2011).
131 For example, a Memorandum of Understanding was signed between ECOWAS and the ILO in 2005.
132 Even before the adoption of the ECOWAS Labour and Employment Policy, ECOWAS had engaged in cooperation with the ILO. Between 2006 and 2008 the ILO assisted to the drafting process of the aforementioned ECOWAS Labour and Employment Policy and has mostly cooperated in a research project on the labour market impact of regional integration under the ECOWAS framework.
a) Shaping bilateral employment dialogue: the EU-Chile Association Agreement

The main employment-related activity carried out in the context of the EU-Chile Association Agreement has, so far, mainly consisted of a regular policy dialogue.133 Administered by the Agreement’s Association Council, this dialogue was initiated in 2005 and had, until 2011, taken place three times in Brussels and Santiago, respectively, on an alternating basis. The meetings were initially focused on possible revisions to EU and Chilean strategies and policy responses for promoting employment, but subsequent meetings focused on such issues as public employment services, broader employment policies, and labour standards, focusing on occupational safety and health (table 5).134

The focus of the dialogue activities has become more specific over time, resulting in increasingly tangible policy inputs (Lazo Grandi, forthcoming). For instance, the 2008 dialogue’s exchange of information and discussions informed a policy package the Chilean Government was at that time deliberating in order to tackle adverse employment effects of the crisis, in particular the creation of a national employment database (“Bolsa de Empleo”). At the same time, the scope of participants has gradually increased from government representatives to other stakeholders, such as trade union and employers’ representatives as well as academics (see table 4) and have hence also contributed to a national debate on employment policies (Lazo Grandi, forthcoming), although the precise extent of the impact of these dialogue on domestic policy-making is hard to determine.

Table 5. Implementation of the EU-Chile Employment Dialogue 2005-2010

<table>
<thead>
<tr>
<th>Time and place</th>
<th>Subject</th>
<th>Results</th>
<th>Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Santiago, September 2005</td>
<td>Employment policies</td>
<td>Review of policy strategies and approaches for employment promotion in the framework of a seminar</td>
<td>Representatives from the EU and the Chilean Government</td>
</tr>
<tr>
<td>Brussels, March 2007</td>
<td>Seminar on public employment services, followed by a workshop on the reform of pension systems</td>
<td>Review of national policies in which Chile’s efforts to modernize its local employment offices as well as the Chilean pension reform were discussed; a follow-up on these discussions was agreed</td>
<td>Representatives from the EU and the Chilean Government</td>
</tr>
<tr>
<td>Santiago, November 2008</td>
<td>- Four panels on specific employment policy issues in Chile and the EU - Workshop on employment intermediation - Workshop on vocational education and training</td>
<td>- Exchange of best practices - Input to the Chilean Government’s policy package of anti-crisis measures</td>
<td>Representatives of the Government and the EU, trade unions, employers and academia</td>
</tr>
<tr>
<td>Luxemburg, Bilbao, and</td>
<td>- Visits and expert meetings at the EU Commission, the Danish</td>
<td>- Exchange of information helped gather information for the reform of</td>
<td>- Visit of tripartite Chilean</td>
</tr>
</tbody>
</table>

133 The EU has also funded certain technical cooperation projects in Chile dealing with employment creation. However, it appears that these projects have not been adopted in the institutional framework of the EU-Chile Trade Agreement and can thus not necessarily be attributed to this agreement. Interview with Gerhard Hatler (Coordinator Development Cooperation) and José Miguel Torres (Political, Economic, and Commercial Affairs), Delegation of the European Commission to Chile, Santiago de Chile, 18 November of 2011.

b) Regional integration of employment policy: the example of the Andean Community

The EPPs of the Andean Community legal framework have given rise to multi-faceted implementation activities, which are developed by various committees of government officials, most of whom meet via video conference. In this regard, two activities are noteworthy. First, since 2004, the Andean Community has held at least six sub-regional employment conferences with a view to exchanging information and defining common policies on employment matters. The most recent conference also involved contributions from various international organizations, including the ILO, the International Organization for Migration (IOM) and United Nations Economic Commission for Latin America and the Caribbean (CEPAL). Some conferences also led to the adoption of joint ministerial declarations which defined commitments and specific work programmes on employment matters.

Second and similarly to Mercosur, in 2001 the Andean Community decided to develop an Andean Labour Market Observatory as a platform on labour and employment-related statistics and analysis. A pilot phase was started in 2005 with the financial cooperation of the Consejo Económico y Social de España, which continues to be ongoing and overseen by a specific governmental committee which meets regularly. These preparations are being accompanied by regular meetings of experts in labour statistics who are supposed to provide a methodology for obtaining harmonized statistical information.

In addition to this, several smaller projects are being carried out in the area of employment promotion and free movement of workers. Among others, one project aims to establish a network among the Andean employment agencies which aims to provide information on employment opportunities and

---

135 See Annex II of the Informe de la IV Reunión del Comité Técnico de Seguimiento de las Conferencias Regionales Andinas sobre el Empleo, SG/CT.CRAE/IV/INFORME, 20 de septiembre de 2011.
136 Declaración Final de la Segunda Conferencia Regional Andina sobre Empleo de 24 y 25 de noviembre de 2005; Declaración Final de la Tercera Conferencia Regional Andina sobre el Empleo de 14 y 15 de diciembre de 2006; Declaracion Final de la Quinta Conferencia Regional Andina sobre el Empleo de 15-16 de febrero de 2010.
137 See in particular Declaración Final de la III Conferencia Regional Andina sobre el Empleo de 14 y 15 de diciembre de 2006.
138 See the Acuerdo Marco Tripartito entre el Consejo Asesor de Ministros de Trabajo de la Comunidad Andina y los Consejos Consultivos Empresarial y Laboral Andinos para la Constitución del Observatorio Laboral Andino, adopted 11 December of 2002.
139 See the project description at http://www.comunidadandina.org/camtandinos/OLA/OLA1.asp?MnuSup=1&Ola=1&doc=1.
141 See, for example, the Informe sobre la Octava Reunión de Expertos Gubernamentales en Estadísticas del Mercado de Trabajo de la Comunidad Andina de 9 de septiembre de 2011.
modalities for potential intra-Andean migrant workers. This project consists of four steps involving the increase of technical capacity of domestic employment services, the creation of the regional network, the design of regionally integrated employment intermediation, and the implementation of a pilot project. A second project envisions establishing harmonization criteria and mechanisms with recognition of professional skills with a view to facilitating the employment of workers who have obtained their professional qualification in another Andean Member States. This project comprises three stages: gathering relevant technical information, the design of legal and methodological foundations for a future Andean regulation on this issue, and the execution of a pilot project on one selected profession.
4 Conclusion

This paper has shown that EPPs have been integrated into a significant number of trade agreements. The preliminary evidence on the initial experiences with the practical application of EPPs indicates that they have given rise to various cooperative activities regarding employment promotion. In general, it seems that while bilateral trade agreements have mainly lead to dialogue activities and technical cooperation, RIAs have also served as a platform for the adoption of common policies, given the more elaborate institutional framework linked to EPPs and the more far-reaching integration objectives to which these treaties typically subscribe. Given that the implementation of many EPPs is still at a rather early stage, the definitive effects of these provisions would be premature. A more general awareness of these provisions by the social partners as well as the broader public, however, could help to direct the implementation activities to areas that are of most social concern. This may be particularly relevant in terms of putting pressure on the respective governments to activate such provisions – in particular where the EPPs provide a role for the social partners or civil society in their implementation.

The inclusion of EPPs into trade agreements also raises policy issues for the ILO. While no EPP referring to the employment-related ILO instruments could be identified, it appears that they are largely complementary to ILO conventions. In this regard, the question arises whether, and if so how, the ILO could have a role in the implementation activities. The ILO instruments could serve, in the event of lack of clarity regarding the meaning of certain terms used in the EPPs, as source of interpretative guidance for the construction of the provisions. Furthermore, ILO advice, including the reports of the supervisory machinery regarding the relevant ILO conventions, could serve as input into the bilateral and regional dialogue and cooperation programmes. A role for the ILO could also be envisioned regarding the implementation of the relevant activities carried out under the EPPs as has indeed occurred under certain RIAs.

As the current spread of trade agreements is likely to continue, it can be expected that the issue of EPPs in trade agreements will remain a dynamic one. Additional research would be warranted in order to more comprehensively assess the practical implications of the EPPs and to shed more light on their relation with other employment-related effects of other provisions of trade agreements.
References

Bilateral and regional trade agreements. commentary and analysis (Cambridge, Cambridge University Press), 


Bourgeois, J. et al. 2007. A comparative analysis of selected provisions in free trade agreements (Brussels, 

A. Marchetti and M. Roy (eds.): Opening Markets for Trade in Services Countries and Sectors in Bilateral and 

Chanda, R. 2009. “Mobility of Less-Skilled Workers under Bilateral Agreements: Lessons for the GATS”, in 


Committee of Experts on the Application of Conventions and Recommendations (CEACR). 2010. General 
Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair 


Davies, A.C.L. and McCrudden, C. 2000. “A Perspective on Trade and Labor Rights”, in Journal of 

Dawar, K. 2008. Assessing Labour and Environmental Regimes in Regional Trade Arrangements, Society of 

Agreement on Tariff and Trade/World Trade Organization”, in Human Rights Quarterly 17(3), pp. 443-462.


Ebert, F.C. and Posthuma, A. 2011. Labour provisions in trade arrangements: current trends and perspectives, 

ECOWAS. 2009. ECOWAS Labour and Employment Policy. 2nd Conference of ECOWAS Ministers of Labour 
and Employment on the Validation of the ECOWAS Labour Policy.

Häberli, C., Jansen, M., and Monteiro, J.A. 2011. References to Domestic Labour Market Regulation in 
Regional Trade Agreements, NCCR Trade Regulation Working Paper 2011/35 (NCCR, 2011). Available at: 


Harrison and Rodríguez-Clare. 2010. “Trade, Foreign Investment, and Industrial Policy for Developing
Labour Market Concerns and Trade Agreements: The Case of Employment Policy Provisions


Masemene, R.F. 2009. Statement at the SADC employment and labour sector meeting held in Cape Town, South Africa on the occasion of the handing over of the chairmanship of SADC ELS on 2 April (Gaborone, SADC).


