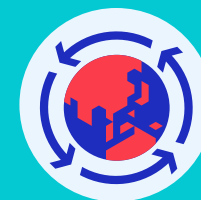


FOA and labour rights in the context of global trade and development financing

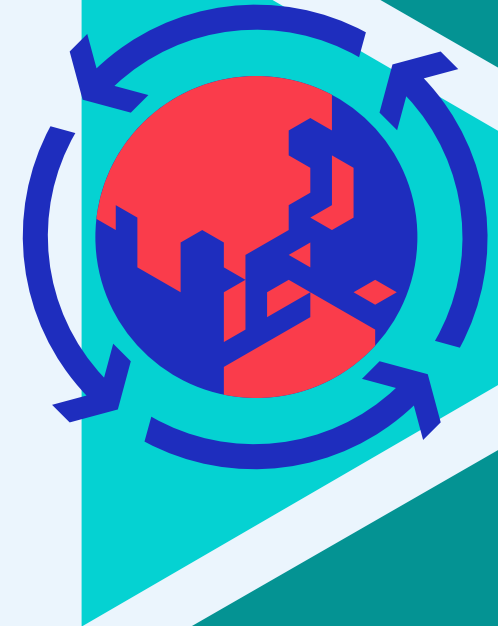


Session snapshot



► Session 14

- Explores the exercise of FOA and related labour rights within the context of international trade and development financing.
- It first provides a specific discussion point on the impacts of globalization on labour rights before proceeding to lecture notes on the incorporation of labour provisions and considerations in trade agreements and in the policies and practices of international financial institutions.



► Session 14

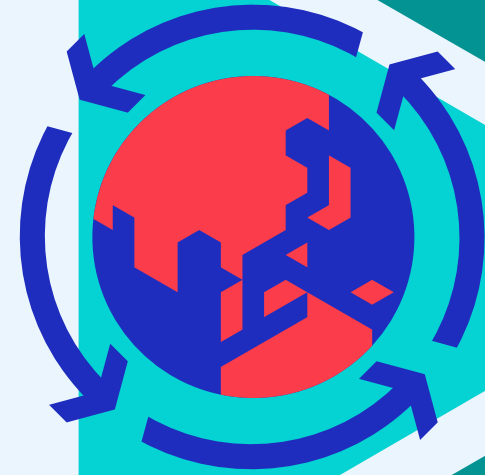
- Particular focus is given to Generalised Scheme of Preference (GSP) arrangements entered into by the Philippines, particularly with the European Union (EU GSP+) and the United States (US GSP) as well as to the World Bank and ADB insofar as safeguards in development projects are concerned. It can be delivered like a typical lecture, with space for questions and answers to promote interaction.



Estimated
duration:
60 minutes



Required materials:
**Usual presentation equipment
and accessories**





Facilitator's guide points

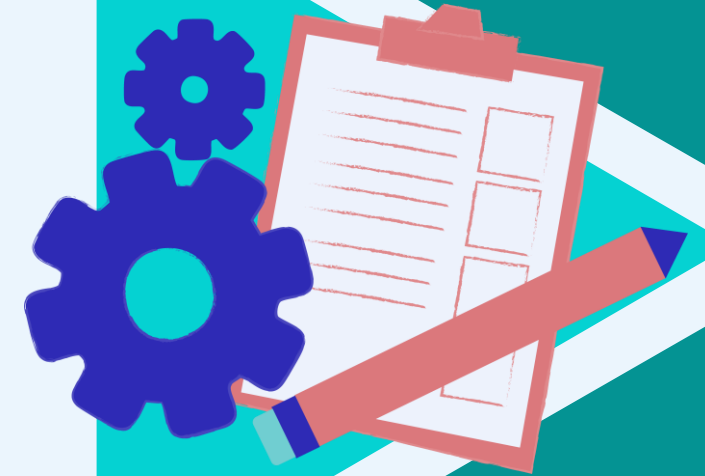
Facilitator's guide points

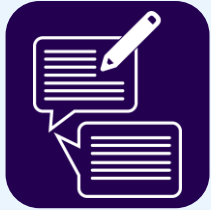


1. Introduce Session 14 by providing few remarks on the expansion of international norms and practices on responsible business conduct to the areas of global trade, investment and development financing. Use the Overview content as source of additional notes on what Session 14 will tackle.



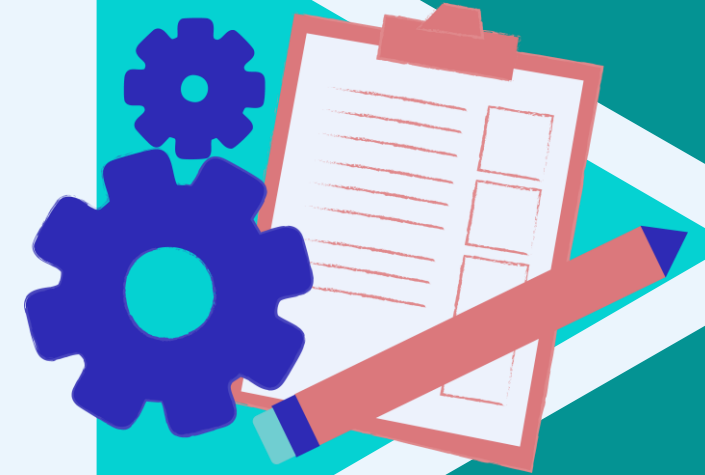
2. Proceed by sharing the learning objectives of the session.





3. Further facilitate the session by using Discussion Notes as a general guide. As necessary for a specific audience group or as the facilitator deems essential, introduce, add or modify certain contents. At the minimum, however, open the session for discussion on the following:

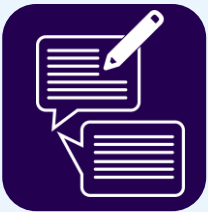
- ▶ Globalization and its Impacts on Labour Rights
- ▶ FOA and Labour Provisions in Trade Agreements
- ▶ FOA and Labour Standards in Generalized System/Scheme of Preferences
- ▶ FOA and Labour Standards in Development Finance Projects



Facilitator's guide points



4. Be mindful of the Key Learning Points as internal guide on messaging.



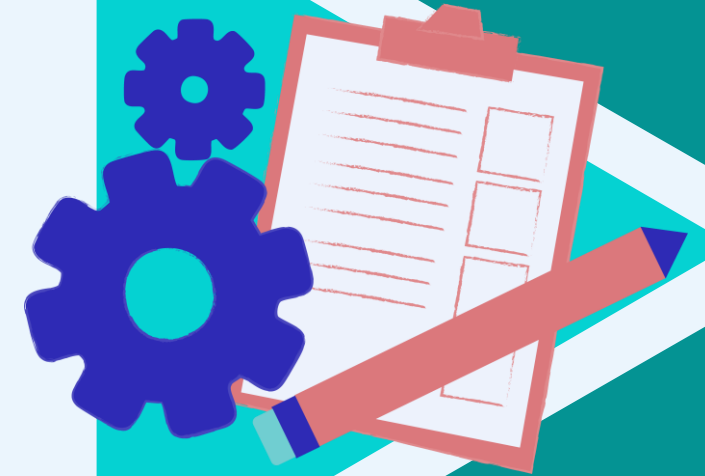
5. Deliver the optional discussion points and/or exercise/s contained in the session.



6. Occasionally engage participants through parts of the session heavier on delivery of lecture. Checking whether they have any questions or comments is one handy method of engagement.



7. Conduct the recap exercise at the end of the session.





Learning objectives



FOA and Global Trade

Appreciate the importance of ensuring protection, respect and promotion of FOA and related labour and human rights in the context of global trade and development financing



Labour Provisions

Identify the extent of incorporation of labour provisions or safeguards in trade agreements



Non-compliance

Analyze the possible implications and consequences of compliance/non-compliance with the labour requirements



Key learning points



Trade and investment agreements and other economic arrangements entered into by the Philippines serve as additional tools to drive responsible business conduct based on the UN Guiding Principles, the ILO MNE Declaration and other guidance documents.

The effective implementation of the core conventions and agreements under various trade and economic arrangements to which the Philippines is a signatory is essential to enhancing the country's trade and economic performance. **Inadequate compliance may pose challenges to achieving sustainable development goals** over the medium and long term.





International financial institutions (IFIs) including the World Bank and the ADB, have the responsibility to ensure that the projects and clients (governments and private entities) they support through various forms of financing **observe and uphold workers' rights** including FOA and the right to collective bargaining regardless of employment status in accordance with the ILO Fundamental Principles and Rights at Work. Doing so is crucial to their core institutional objectives of reducing poverty and advancing sustainable development.



Session proper

Session 14



Globalization and its impacts on labour rights



FOA and labour provisions on free trade agreements



FOA and labour standards in development finance projects



Global framework agreements

Globalization and its impacts on labour rights



Globalization and labour rights

- ▶ Globalization has certainly brought about **significant benefits in boosting economic growth through trade and investments** across the world, particularly in developing countries.
- ▶ However, its impact on other indicators of development is just as important as increase in GDP has also drawn scrutiny over the last few decades since the introduction and expansion of globalization's driving forces in the form of trade liberalization, deregulation and privatization in late 1990s.

Globalization and labour rights

- ▶ The most common point of critique on globalization, in particular its economic dimension, **is that it tends to reinforce a sort of “race to the bottom” among countries in competition for investment and trade**, which comes in the form of lower labor costs through lower wages for workers and less regard for decent working conditions and the effective exercise of labour rights, including FOA.
- ▶ The untrammelled acceleration of specific facets of globalization has also been found in studies to be negatively associated with labour rights, particularly the right to organize and to bargain collectively.

Globalization and labour rights

► The following are some of the relevant findings on this trend:

► **Labour bargaining power falls with imports and offshoring for low-skilled workers** based on Belgian firm-level data to assess the impact of globalization on the bargaining power of employees (Dumont et al. 2010).

► Import competition exerts pressure on bargaining power of unions especially in the presence of increased competition low-wage countries (Abraham et al. 2009).

► Globalization adversely impacts union militancy (strike rates) in industrialized countries after the 1980s, based on an assessment of 15 advanced economies in North America, Western Europe and East Asia (Piazza 2005).

Globalization and Labour Rights

- ▶ In its World Economic Outlook in 2016, the International Monetary Fund (IMF) gave a warning about free trade being only beneficial for some that are already well-off instead of enabling a more inclusive development for the many.
- ▶ Based on this, it called upon countries and policymakers **to address issues specifically those affecting workers by introducing effective support for retraining, skill building and occupational and geographic mobility.** In its view, such measures will mitigate the negative impacts of further trade integration and help revive the global trade agenda.

Decent work agenda

For ILO, the **Decent Work Agenda** continues to represent the much-needed collective response to these unintended consequences of globalization.

First spelt out in a 1999 ILO report, Decent Work was institutionalized in 2008 with the adoption of the **ILO Declaration on Social Justice for a Fair Globalization** by representatives of governments, employers and workers from all Member States.



Decent work agenda

It has now gained a global significance having been incorporated into the United Nations' 2030 Agenda for Sustainable Development with Goal 8 calling for the promotion of **“inclusive and sustainable economic growth, employment and decent work for all.”** (Refer to Module 2 Session 2 for an overview of the landmark Declaration,)

8 DECENT WORK AND ECONOMIC GROWTH



Decent work agenda

The Agenda also serves as the framework for engaging Member States in assisting them shape and implement their national development strategies specifically through the formulation of **Decent Work Country Programmes (DWCP)**, which cover targets and indicators related to trade and investment such as ensuring the inclusion of labour standards in trade agreements.



FOA and labour provisions in free trade

Labour Provisions in Trade Agreements

- ▶ **A more critical angle to take in understanding the role and significance of labour provisions in trade agreements comes in their possible outcomes.**
- ▶ It is important to distinguish what may constitute as conditional elements in labour provisions from those that are merely promotional in order to **determine the level of strength of a certain trade agreement from the point of view of human and labour rights protection.**

Labour Provisions in Trade Agreements

- ▶ Labour provisions considered **having conditional nature link labour rights obligations** or requirements to economic consequences either as sanctions or as incentives.



(1) the “pre-ratification conditionality” or those cases where concluding a trade agreement hinges on respect for certain labour standards, and



(2) the “post-ratification conditionality” or those cases where after the conditional labour provisions take effect after the trade agreement is concluded.

Labour Provisions in Trade Agreements

- ▶ Based on institutional and procedural frameworks, Labour provisions are regarded as promotional when they do not use sanctions or incentives as an implementation mechanism and only depend on :



Labour Provisions in Trade Agreements

- ▶ **ILO Labour Provisions in Trade Agreements Hub** has documented three regional trade agreements (RTAs) infused with labour provisions which directly involve the Philippines.

FTAs concerning the Philippines and status of integration of labour provisions

Trade agreement	Year of entry into force	Trade partner/s	RTA composition	Labour provision
ASEAN Trade in Services Agreement (ATISA)	2021	Cambodia; Thailand; Philippines; Indonesia; Lao People's Democratic Republic; Myanmar; Singapore; Viet Nam; Brunei Darussalam; Malaysia	Plurilateral	No
ASEAN - Hong Kong, China	2019	Hong Kong, China; Association of Southeast Asian Nations (ASEAN)	Bilateral; One Party is an RTA	No
EFTA - Philippines	2018	Philippines; European Free Trade Association (EFTA)	Bilateral; One Party is an RTA	Yes
ASEAN Free Trade Area (AFTA)	2010	Cambodia; Lao People's Democratic Republic; Philippines; Myanmar; Indonesia; Viet Nam; Brunei Darussalam; Malaysia; Thailand; Singapore	Plurilateral	No

FTAs concerning the Philippines and status of integration of labour provisions

Trade agreement	Year of entry into force	Trade partner/s	RTA composition	Labour provision
ASEAN - Australia - New Zealand	2010	Association of Southeast Asian Nations (ASEAN); New Zealand; Australia	Plurilateral; One Party is an RTA	Yes*
ASEAN - Korea, Republic of	2010	Association of Southeast Asian Nations (ASEAN); Republic of Korea	Bilateral; One Party is an RTA	No
ASEAN - India	2010	India; Association of Southeast Asian Nations (ASEAN)	Bilateral; One Party is an RTA	No
Japan - Philippines	2008	Japan; Philippines	Bilateral	Yes

FTAs concerning the Philippines and status of integration of labour provisions

Trade agreement	Year of entry into force	Trade partner/s	RTA composition	Labour provision
ASEAN - Japan	2008	Association of Southeast Asian Nations (ASEAN); Japan	Bilateral; One Party is an RTA	No
ASEAN - China	2005	China; Association of Southeast Asian Nations (ASEAN)	Bilateral; One Party is an RTA	No
Global System of Trade Preferences among Developing Countries (GSTP)	1989	Guinea; Guyana; United Republic of Tanzania; Chile; Benin; Sudan; Cuba; Republic of Korea; Malaysia; Egypt; Venezuela (Bolivarian Republic of); Myanmar; Cameroon; Morocco; Mozambique; Nigeria; Philippines; Iraq; Mexico; Bangladesh; Singapore; Colombia; Nicaragua; Indonesia; Korea (the Democratic People's Republic of); Bolivia (Plurinational State of); Zimbabwe; Tunisia; Peru; Ghana; Iran (Islamic Republic of); Algeria; Argentina; Trinidad and Tobago; Brazil; Sri Lanka; Pakistan; Thailand; Ecuador; India; Libya; Viet Nam	Plurilateral	No
Protocol on Trade Negotiations (PTN)	1973	Pakistan; Peru; Türkiye; Bangladesh; Brazil; Paraguay; Republic of Korea; Mexico; Egypt; Chile; Israel; Tunisia; Philippines; Uruguay; Serbia	Plurilateral	No

FOA and labour standards in generalized systems/scheme of preferences (GSPs)

Generalized System/Scheme of Preferences (GSP)

- ▶ The Philippines is currently part of two key GSPs that benefit specifically export-oriented industries linked to various global supply chains:

**European Union GSP Plus
(EU GSP+)**

United States GSP (US GSP).

The European Union Generalized Scheme of Preferences-Plus (EU GSP+)

- ▶ is an **incentive-based arrangement designed to promote sustainable development and good governance through zero duties/tariffs** on 6,274 products equivalent to 66 percent of all EU tariff lines entering the EU market from developing countries.
- ▶ It is one of **three different arrangements by the EU's GSP, seeking to leverage preferences to ensure compliance** with core international standards on human rights, labour rights, environmental protection, and good governance

The European Union Generalized Scheme of Preferences-Plus (EU GSP+)

- ▶ Part of the requirements to **qualify for the trade incentives arrangement is for a country to ratify all the 27 core conventions and exert efforts in their effective enforcement and monitoring**, including reporting to and cooperation with the EU in accordance with its procedures.

Core conventions under the EU GSP+ arrangement.

Human Rights

- ▶ Convention on the Prevention and Punishment of the Crime of Genocide (1951)
- ▶ International Convention on the Elimination of All Forms of Racial Discrimination (1969)
- ▶ International Covenant on Civil and Political Rights (1976)
- ▶ International Covenant on Economic, Social and Cultural Rights (1976)
- ▶ Convention on the Elimination of All Forms of Discrimination against Women (1981)
- ▶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987)
- ▶ Convention on the Rights of the Child (1990)

Core conventions under the EU GSP+ arrangement.

Labour Rights

- ▶ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- ▶ Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- ▶ Forced Labour Convention, 1930 (No. 29)
- ▶ Abolition of Forced Labour Convention, 1957 (No. 105)
- ▶ Minimum Age Convention, 1973 (No. 138)
- ▶ Worst Forms of Child Labour Convention, 1999 (No. 182)
- ▶ Equal Remuneration Convention, 1951 (No. 100)
- ▶ Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Core conventions under the EU GSP+ arrangement.

Environmental Protection

- ▶ Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973)
- ▶ Montreal Protocol on Substances that Deplete the Ozone Layer (1987)
- ▶ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)
- ▶ Convention on Biological Diversity (1992)
- ▶ United Nations Framework Convention on Climate Change (1992)
- ▶ Cartagena Protocol on Biosafety (2000)
- ▶ Stockholm Convention on persistent Organic Pollutants (2001)
- ▶ Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998)

Core conventions under the EU GSP+ arrangement.

Good Governance

- ▶ United Nations Single Convention on Narcotic Drugs (1961)
- ▶ United Nations Convention on Psychotropic Substances (1971)
- ▶ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
- ▶ United Nations Convention against Corruption

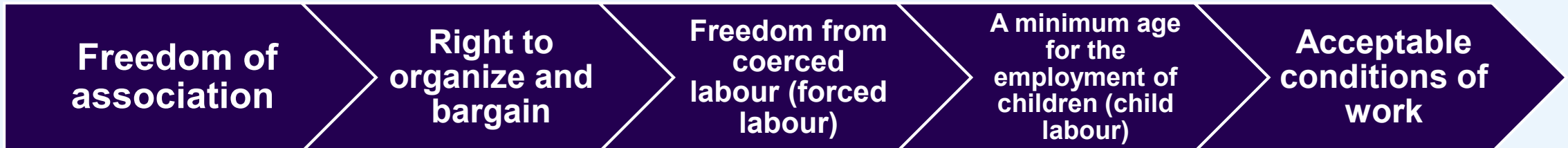
The European Union Generalized Scheme of Preferences-Plus (EU GSP+)



- ▶ The **Philippines is one of eight (8) EU GSP+ beneficiary-countries**, enjoying greater market access to the EU and leading to a significant increase in exports and growth among export-oriented businesses.
- ▶ Its record of complying with the core conventions promoted through the regional incentive scheme has rather been problematic, with concerns around labour rights violations and human rights abuses against workers and trade unionists as previously discussed .

The US Generalized System of Preferences (US GSP)

- ▶ The US GSP is another incentives-based trade arrangement intended to boost economic development in developing countries while attaching compliance with key international norms and standards on human rights, such as what it refers to as “**internationally-recognized worker rights**” **which include under the US Trade Act of 1974:**



The US Generalized System of Preferences (US GSP)



- ▶ The Philippines is a beneficiary-country of US GSP, ranking **5th among the beneficiary-countries** across the world by total claimed US GSP value. **Its top exports under the arrangement included the following (for 2019):**
 - ▶ new pneumatic tires of rubber (radial) (USD 106.11M);
 - ▶ handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather (USD 64.58M);
 - ▶ insulated electric conductors (USD 63.97M);

The US Generalized System of Preferences (US GSP)

- ▶ travel, sports and similar bags with outer surface of MMF textile materials (USD 61.08M);
- ▶ other cane sugar, raw, in solid form, w/o added flavoring or coloring (USD 59.27M);
- ▶ electrothermic hairdressing apparatus other than hair dryers (USD 57.44M);
- ▶ telescopic sights for rifles not designed for use with infrared light (USD 47.96M);
- ▶ nonalcoholic beverages excluding fruit or vegetable juices of heading 2009 (USD 41.31M)
- ▶ electrothermic hair dryers (USD 38.43M); and
- ▶ handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics (USD 37.96M).

FOA and labour standards in development finance projects

Agreements entered by countries, particularly from the developing world, with development finance or international financial institutions (DFIs/IFIs) also represent an important perspective to look from with respect to promoting the framework of business and human rights or responsible business conduct.

International Financial Institutions



- ▶ IFIs—which include, among others, the IMF, the World Bank, multilateral development banks such as the Asian Development Bank (ADB), and other international development agencies—are basically institutions that provide critical financial and technical support to developing countries in achieving their development outcomes through financing that usually comes in the form of loans, equity and quasi-equity extended to both governments and private sector entities.

International Financial Institutions: World Bank



- ▶ In 2002, the **World Bank released a public announcement of its support for all the four Core Labour Standards** enshrined in the ILO 1998 Declaration on the Fundamental Principles and Rights at Work.
- ▶ Concrete steps were subsequently taken by the International Finance Corporation (IFC), the private sector arm of the World Bank Group (the public sector being the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA)).

International Financial Institutions: World Bank



- ▶ In 2003, it adopted the **IFC Policy and Performance Standards on Social and Environmental Sustainability**, which has been applied to all IFC-financed projects starting in May 2006.
- ▶

FOA and labour standards in development finance projects

2003

2006

- ▶ IFC Policy and Performance Standards on Social and Environmental Sustainability was applied to all IFC-financed projects starting in May 2006.
The requirements related to FOA and other labour standards are as follows:

Freedom of Association

Compliance with national law
Where national law prohibits unions: alternative mechanisms for grievance and protection of working conditions must be put in place
Clients may not, under any circumstances, discourage workers from, or discriminate against workers for, organizing or bargaining collectively

Non-discrimination

Compliance with national law if it prohibits discrimination
No discrimination regarding recruitment, compensation, working conditions, termination of employment training and retirement regarding gender, colour, religion, etc.

Grievance Mechanism

Possibility for workers to raise concerns with the management in a transparent and expeditious manner

Supply Chains

Client must “inquire about and address child labour and forced labour in its supply chain”

Labour provisions in the policies of key IFIs

Name of IFI	Reference to ILO instruments*	Areas covered by IFI policies**	Labour provisions inserted into contracts with partners companies
International Finance Corporation (IFC)	Fundamental Conventions	Issues related to CLS and other selected labour issues	Yes (for investment through financial intermediaries the specific standard applied depends on the risk factor)
Asian Development Bank (ADB)***	ILO 1998 Declaration	Issues related to CLS, minimum wage, occupational safety and health	Yes (usually for large infrastructure projects depending on the social assessment)

Labour provisions in the policies of key IFIs

Name of IFI	Reference to ILO instruments*	Areas covered by IFI policies**	Labour provisions inserted into contracts with partners companies
FMO	Fundamental Conventions	Issues related to CLS and other labour issues (identical to the IFC Performance Standards)	Yes
IFU	Fundamental Conventions	Issues related to CLS, weekly rest, working hours, annual leave, wages and OSH	Yes (primarily national legal requirements – international standards are typically aimed at through a specific action plan)

2016

World Bank Environmental and Social Framework (ESF)

- ▶ in 2016 the World Bank approved its **Environmental and Social Framework (ESF)**
- ▶ The ESF came into effect starting October 1, 2018, covering all Investment Project Financing (IPF) projects initiated on and after that date.



World Bank Environmental and Social Framework (ESF): **10 Environmental and Social Standards**

1. Assessment and management of environmental and social risks and impacts
2. Labor and working conditions
3. Resource efficiency and pollution prevention and management
4. Community health and safety
5. Land acquisition, restrictions on land use and involuntary resettlement
6. Biodiversity conservation and sustainable management of living natural resources
7. Indigenous peoples/sub-Saharan African historically underserved traditional local communities
8. Cultural heritage
9. Financial intermediaries
10. Stakeholder engagement and information disclosure

ILO Statement on the World Bank Environmental and Social Policy



... the objective of ‘supporting the principles of freedom of association and collective bargaining’ now to be required only “in a manner consistent with national law” undercuts the universal principles adhered to by the ILO’s 187 member states and jeopardizes the purpose of having such an objective. In the ILO Declaration on Fundamental Principles and Rights at Work, all categories of rights and principles are of equal importance, and they are applicable to all ILO members. As ILO and World Bank membership is almost identical, this could create difficulties for member States in applying these fundamental principles and rights consistently. None of the other objectives of ESS2 are qualified in this manner.”

Asian Development Bank (ADB)'s procedures on core labour standards

- ▶ The initial pledge by ADB to promote core labour standards through its **2001 Social Protection Strategy** did not necessarily lead to binding conditionalities for the loan programs.
- ▶ it became an enabling factor for the Bank to more closely engage the ILO on social protection and decent work. Part of its strategy statement, which remains in effect today, is as follows:



Asian Development Bank (ADB)'s procedures on core labour standards

1.A

In the design and formulation of its loans, **ADB will comply with the internationally recognized core labour standards;**

1.B

Take all necessary and appropriate steps to ensure that for **ADB-financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country's labour legislation**

2

As part of its regular loan reviews, **ADB will monitor that (i) and (ii) are complied with.**

Asian Development Bank (ADB)'s procedures on core labour standards

- ▶ In 2006, ADB co-produced with ILO the **Core Labour Standards Handbook** that sought to “assist policymakers at the national and regional levels, ADB staff, project teams, consultants, and members of national executing/implementing agencies inviled in the design and implementation of country programs and projects to take into aaccount core labor standards (CLS) wherever and whenever appropriate.

- ▶ The other further actions taken by ADB relative to incorporating labour considerations into its operations and activities include the following:

Social Protection Operational Plan (2014-2020)

ADB will comply with the internationally recognized core labour standards (CLS) in its lending.” The main concern with this is the lack of indicators established for tracking compliance and progress.

ADB Strategy 2023

ADB will “help enhance the work environment by supporting core labor standards.”

Operations Manual

The consideration of labour issues in project preparation is encouraged including by through project documents such as an initial poverty and social analysis (IPSA),



RECAP EXERCISES

TRUE OR FALSE

1. It is enough for business enterprises to just prevent adverse impacts of their operations and business relationships on human and labour rights of workers. When violations or abuses occur, business can run as usual.

2. This refers to another form of trade agreement that plays a vital role in the facilitation of major exports of developing countries to strategic markets while providing for another formidable tool to advance the protection and respect of human and labour rights as well as the remediation of violations of these rights.

- a) Generalized System/Scheme of Preferences
- b) Generalized System/Scheme of Privileges
- c) Generalized System/Scheme of Perks

3. Which of the following is the complaints mechanism established by the European Commission to receive complaints and tackle issues of compliance with GSP commitments?

- a) Single-Entry Approach (SENA)
- b) Single-Entry Point (SEP)
- c) Unified Reporting System (URS)

4. There are ILO conventions that need to have been ratified by a beneficiary-country under the EU GSP+ and the US GSP. Which one is not among those core conventions?

- a) C87 (Freedom of Association and Protection of Right to Organize Convention)
- b) C138 (Minimum Age Convention)
- c) C189 (Domestic Workers Convention)

5. Fill in the blanks:

ILO's overarching response to globalization is the Agenda, institutionalized in the Declaration on Social Justice for a Fair Globalization.



Recap exercises

Answer keys

TRUE OR **FALSE**

1. It is enough for business enterprises to just prevent adverse impacts of their operations and business relationships on human and labour rights of workers. When violations or abuses occur, business can run as usual.

2. This refers to another form of trade agreement that plays a vital role in the facilitation of major exports of developing countries to strategic markets while providing for another formidable tool to advance the protection and respect of human and labour rights as well as the remediation of violations of these rights.

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- a) C87 (Freedom of Association and Protection of Right to Organize Convention)
- b) C138 (Minimum Age Convention)

c) C189 (Domestic Workers Convention)

5. Fill in the blanks:

ILO's overarching response to globalization is the **Decent work** Agenda, institutionalized in the Declaration on Social Justice for a Fair Globalization.