

► Introduction

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Trade and investment policies comprise rules, regulations and formal practices that govern the conduct of international trade and investment activities. It is a stylized fact that the vast majority of trade (70 per cent) takes place in global supply chains, with traditional trade in final goods and services accounting for around 30 per cent (OECD 2020). Moreover, there is a “mutually reinforcing relationship” between foreign direct investment and global supply chain participation that is largely driven by multinational enterprises, which account for about 80 per cent of trade (Qiang, Liu and Steenbergen 2021, 34; UNCTAD 2013). As a result, trade and investment policies have far-reaching consequences for the development, structure and governance of global supply chains.

Since the 1990s countries located in the global South have increasingly integrated into regional and global production networks, particularly in the manufacturing sector. This has had the effect of enhancing productivity, while also helping to fuel rapid industrialization, increase formal employment, and reduce poverty in many developing and emerging economies. This increasing degree of integration has, at the same time, revealed the generally inadequate labour market institutions that frequently exist in developing and emerging economies to implement and enforce labour laws and regulations. This lack of institutional capacity could, in many cases, contribute to low wages and unfavourable working conditions. The practice of outsourcing production in such an environment has also been linked to the polarization of employment in developed countries, contributing to the erosion of middle-income groups (Firpo, Fortin and Lemieux 2011).

Against this backdrop, the question of how to integrate labour market considerations, notably labour standards, into trade and investment policies is of vital importance for policymaking that promotes sustainable development. Although this is a long-standing debate within the trade, investment and labour literature (for an overview, see Compa 1998; Tsogas 1999; McCrudden and Davies 2000), it has resurfaced among policymakers and stakeholders (see, for example, USTR 2021; WTO 2021; EC 2022; IOE 2022; IndustriALL 2023). This integration aims to balance economic and social objectives, ensuring that trade and investment policies do not undermine but rather support the attainment of social objectives.

However, labour issues are not generally dealt with in the multilateral trading system. The World Trade Organization (WTO) is responsible for setting the rules that govern the multilateral system of trade, but these rules do not directly address labour standards. In light of the constraints faced by the multilateral system, WTO Members have agreed to hundreds of unilateral, bilateral and plurilateral trade arrangements. Many of these agreements include deeper commitments – on a range of economic and social issues such as investment, labour and the environment – than in the multilateral system. In this vein, labour provisions have been included in about one of every three bilateral and plurilateral trade agreements reported to the WTO (ILO 2022). Such provisions often commit trading partners to adhere to minimum labour standards (frequently referencing the ILO's Fundamental Principles and Rights at Work), to enforce relevant domestic laws, or to avoid lowering domestic labour standards to encourage trade or investment. Similar requirements can also be found in some unilateral trade preference schemes with labour conditionality, while several countries have adopted customs border measures that prevent the entry of goods that are suspected of being associated with forced labour.

Additionally, in the absence of a comprehensive multilateral investment system, references to labour commitments have also flourished in international investment policies, the aim of which is to encourage and protect foreign investment. These include labour commitments in investment chapters of some trade agreements, in bilateral investment treaties, and in the investment policies of numerous development finance institutions, including the World Bank Group's International Finance Corporation. Furthermore, a number of complementary approaches to address labour standards have emerged, including public-private initiatives that compel companies to report and remedy labour violations in their supply chains.

Many studies have analysed how labour references have been included in trade agreements (for example, Doumbia-Henry and Gravel 2006; Siroën 2013; ILO 2013, 2016, 2019; Raess and Sari 2018 ; Marceau, Walker and Oeschger 2023); in unilateral trade instruments (for example, Amato 1990; Tsogas 2000; Stolzenberg 2019; Higgins 2023); in investment policies (for example, Penfold 2004; Prislán and Zandvliet 2014; Aisbett et al. 2018; Yifeng 2018); and in public-private initiatives (for example, Phillips, LeBaron and Wallin 2018; Delautre, Echeverría Manrique and Fenwick 2021). However, there has been less research on the implementation and effectiveness of these mechanisms.

This volume aims to contribute to the existing body of research by deepening our understanding of how labour market considerations, particularly international labour standards, have been incorporated into trade and investment policy. Additionally, this volume evaluates the efficacy of these

measures and extracts insights for future policymaking. The research expands beyond a strictly legal analysis by taking into account the larger role that trade and investment policies play as a tool for achieving sustainable development. To this end, the volume falls into three parts.¹

Part 1 reviews how labour issues are currently reflected in trade and investment agreements and explores their implementation in practice. Corley-Coulibaly, Grasselli and Postolachi (Chapter 1) shed light on labour provisions in trade agreements, focusing on the approaches taken by three key proponents of such provisions: Canada, the European Union and the United States of America. The authors analyse the design of relevant provisions and then look at their implementation, focusing on notable dialogue, cooperation and dispute settlement activities. On this basis, the authors draw several lessons for policymaking, including on avenues to involve stakeholders more effectively in the implementation of agreements.

Marx and Mattioli (Chapter 2) then turn to international investment agreements. Against the backdrop of concerns that such agreements may curtail domestic policy space for labour issues, the authors dissect the labour-related content and associated implementation mechanisms of these agreements. Noting various limitations of the extant provisions, the authors highlight several options for improving their design to increase their effectiveness in terms of enhancing domestic labour standards and safeguarding relevant domestic policy space.

Ebert, Francavilla and Guarcello (Chapter 3) complete the first part by exploring the potential of a variety of trade and investment governance instruments to address forced labour in supply chains. Following an overview of the root causes of forced labour in supply chains, the chapter shows how forced labour concerns have been integrated into instruments such as trade preference programmes and investment policies of development finance institutions. The authors then use two case studies, from Malaysia and Uzbekistan, to shed light on the extent to which trade and investment governance instruments can contribute to combating forced labour on the ground and how they interact with other regulatory layers in this regard.

Part 2 zooms in on examples from three regions to provide a contextualized understanding of how the integration of labour concerns into regional trade agreements (RTAs) can play out in practice. Bensusán (Chapter 4) examines the labour dimension of the United States–Canada–Mexico Agreement and its role in the important changes that Mexico’s labour market institutions have undergone in recent years. She traces the dynamics surrounding the

¹ For more detailed summaries, see the “snapshots” for the contributions in this volume available at ilo.org/ITDW.

negotiations of the agreements and explains how they provided a stimulus for reform and supported reform efforts by political actors at the domestic level. The author then examines the agreements' complex labour provisions, including the innovative Rapid Response Labor Mechanism, and shows how this mechanism has helped to address collective labour rights issues in Mexico to date.

Adopting a similar focus, Marslev and Staritz (Chapter 5) analyse the role of the European Union–Viet Nam Free Trade Agreement in the labour law reform process undertaken by Viet Nam since 2019. They argue that, while the agreement played an important role as a reform catalyst, the process of reform must be understood in the context of the domestic political dynamics in Viet Nam, where reform-inclined actors were able to harness external pressure for policy change. The authors then turn to the post-ratification phase, pointing to challenges over the implementation of the labour-related requirements of the agreement and the ongoing reform process.

Next, MacLeod (Chapter 6) directs the reader's attention to the African Continental Free Trade Area (AfCFTA). His contribution assesses the AfCFTA's potential to promote the realization of Sustainable Development Goal 8 (SDG 8) on decent work and economic growth, focusing on youth, gender and broader labour market issues. After reviewing available economic projections of the AfCFTA's labour market impact, the author proceeds to examine how concerns related to SDG 8 are reflected in the legal and institutional design of the AfCFTA. On this basis, the chapter sets out several policy options for strengthening the AfCFTA's contribution to implementing SDG 8.

Finally, **Part 3** looks at how structural labour market issues can be addressed through trade governance instruments at different levels, including the multilateral trading system. Der Boghossian (Chapter 7) focuses on trade policy and gender issues. She unpacks how WTO agreements, national policies and specific programmes, such as Aid for Trade, could interact to promote a “blended approach” to gender-responsive trade policymaking. This approach, which places women's economic empowerment as a central focus of trade policy, would support formal employment while also advancing decent work objectives.

Ünal and Barrowclough (Chapter 8) turn to agriculture as a sector highly integrated in trade that faces challenges in terms of both its labour practices and its environmental effects. The authors discuss the potential role of existing trade policies, including some recent regional trade agreements, in addressing these issues, and conclude that – instead of relying on trade policy alone – there is a need for coherence between distinct but intersecting policy spheres. In this regard, the authors put forward the Green New Deal as a possible option, as it offers a more comprehensive framework that brings together trade, finance, investment and employment policies in the course of an environmentally sustainable transition.

► References

Aisbett, Emma, Barnali Choudhury, Olivier De Schutter, Frank García, James Harrison, Song Hong, Lise Johnson, Mouhamadou Kane, Santiago Peña, Matthew Porterfield, et al. 2018. *Rethinking International Investment Governance: Principles for the 21st Century*. New York: Columbia Center on Sustainable Investment Books.

Amato, Theresa A. 1990. "Labor Rights Conditionality: United States Trade Legislation and the International Trade Order". *New York University Law Review* 65 (1): 79–125.

Compa, Lance. 1998. "The Multilateral Agreement on Investment and International Labor Rights: A Failed Connection". *Cornell International Law Journal* 31 (3): 683–712.

Delautre, Guillaume, Elizabeth Echeverría Manrique, and Colin Fenwick, eds. 2021. *Decent Work in a Globalized Economy: Lessons from Public and Private Initiatives*. ILO.

Doumbia-Henry, Cleopatra, and Eric Gravel. 2006. "Free Trade Agreements and Labour Rights: Recent Developments". *International Labour Review* 145 (3): 185–206.

EC (European Commission). 2022. *The Power of Trade Partnerships: Together for Green and Just Economic Growth*. COM(2022) 409.

Firpo, Sergio, Nicole M. Fortin, and Thomas Lemieux. 2011. "Occupational Tasks and Changes in the Wage Structure". IZA Discussion Paper No. 5542. Institute of Labor Economics.

Higgins, Matthew M. 2023. "Closed Loophole, Open Ports: Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor". *Stanford Law Review* 75 (4): 917–977.

ILO. 2013. *The Social Dimensions of Free Trade Agreements*.

———. 2016. *Assessment of Labour Provisions in Trade and Investment Arrangements*.

———. 2019. *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*.

———. 2022. [Labour Provisions in Trade Agreements Hub](#). Accessed 1 September 2023.

IOE (International Organisation of Employers). 2022. "Social Clauses in Trade Agreements: Implications and Action Points for the Private Sector in Developing Countries". IOE Position Paper.

IndustriAll. 2023. "AfCFTA International Labour Standards Deficit Must Be Addressed", 23 February 2023.

Marceau, Gabrielle, Rebecca Walker, and Andreas Oeschger. 2023. "The Evolution of Labour Provisions in Regional Trade Agreements". *Journal of World Trade* 57 (3): 361–410.

McCrudden, Christopher, and Anne Davies. 2000. "A Perspective on Trade and Labor Rights". *Journal of International Economic Law* 3 (1): 43–62.

OECD (Organisation for Economic Co-operation and Development). 2020. "Trade Policy Implications of Global Value Chains". Trade Policy Brief. February 2020.

Penfold, Bonnie. 2004. "Labour and Employment Issues in Foreign Direct Investment: Public Support Conditionalities", Working Paper No. 95. ILO.

Phillips, Nicola, Genevieve LeBaron, and Sara Wallin. 2018. "Mapping and Measuring the Effectiveness of Labour-Related Disclosure Requirements for Global Supply Chains", ILO Working Paper No. 32.

Prislan, Vid, and Ruben Zandvliet. 2014. "Labor Provisions in International Investment Agreements: Prospects for Sustainable Development". In *Yearbook on International Investment Law and Policy 2012–2013*, edited by Andrea Björklund, 357–414. Oxford University Press.

Qiang, Christine Zhenwei, Yan Liu, and Victor Steenberg. 2021. *An Investment Perspective on Global Value Chains*. World Bank Group.

Raess, Damian, and Dora Sari. 2018. "Labour Provisions in Trade Agreements (LABPTA): Introducing a New Dataset". *Global Policy* 9 (4): 451–466.

Siroën, Jean-Marc. 2013. "Labour Provisions in Preferential Trade Agreements: Current Practice and Outlook". *International Labour Review* 152 (1): 85–106.

Stolzenberg, Hendric. 2019. "Inspection of the Inspectors: Is the European Commission Sufficiently Prosecuting Violations of ILO Conventions under the GSP Regulation?" *Archiv des Völkerrechts* 57 (2): 207–233.

Tsogas, George. 1999. "Labour Standards in International Trade Agreements: An Assessment of the Arguments". *International Journal of Human Resource Management* 10 (2): 351–375.

———. 2000. "Labour Standards in the Generalized Systems of Preferences of the European Union and the United States". *European Journal of Industrial Relations* 6 (3): 349–370.

UNCTAD (United Nations Conference on Trade and Development). 2013. *World Investment Report 2013: Global Value Chains – Investment and Trade for Development*.

USTR (Office of the United States Trade Representative). 2021. "Remarks of Ambassador Katherine Tai Outlining the Biden–Harris Administration's 'Worker-Centered Trade Policy'". 10 June 2021.

WTO (World Trade Organization). 2021. "The Use of Forced Labor on Fishing Vessels: Submission of the United States". TN/RL/GEN/205.

Yifeng, Chen. 2018. "The Making of Global Public Authorities: The Role of IFIs in Setting International Labor Standards". *AIIB Yearbook of International Law* 109–128.