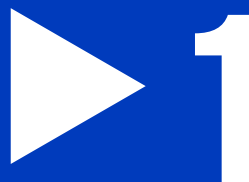


Implementation of labour provisions under Canadian, European Union and United States trade agreements

Marva Corley-Coulibaly, Gaia Grasselli
and Ira Postolachi*

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► Introduction

In recent decades, numerous countries and regions have made deliberate efforts to enhance the connection between trade and socio-economic goals, at both the macro and the micro level. Trade instruments including unilateral arrangements, import bans and regional trade agreements (RTAs) are being utilized to address human and labour rights concerns and promote social objectives (ILO et al. 2019; ILO 2019a). Private sector initiatives also exist with the aim of promoting responsible business practices through both voluntary and mandatory reporting (Delautre, Echeverría Manrique and Fenwick 2021). This chapter examines the promotion and enforcement of labour rights within RTAs.¹

Trade agreements that include labour provisions provide a variety of options for promoting compliance with and enforcement of labour commitments. These mechanisms entail different approaches to stakeholder engagement for the purpose of facilitating dialogue, enhancing transparency and accountability, promoting cooperation, and providing means for resolving disputes. However, the realization of labour commitments through these mechanisms is not always a straightforward process, and one critical concern is how such mechanisms work in practice. Indeed, while trade agreements outline the concept, the concrete practices are not always obvious.

This chapter seeks to explore how monitoring, cooperation and dispute settlement mechanisms are put into practice, rather than just considering how they are designed. It focuses on the practices of three main proponents of labour provisions in RTAs: Canada, the European Union (EU) and the United States. The reason for this focus is that these economies have been involved in landmark labour disputes under their trade agreements: the labour disputes between the EU and the Republic of Korea, between the United States and Guatemala, and between Canada and Colombia. These disputes are used as case studies to illustrate the emergence and evolution of practices in a resolution-oriented context.

As the chapter explains, Canada, the EU and the United States typically introduce institutional mechanisms for the engagement of social partners and broader civil society either in a specialized chapter of the trade agreement or in an accompanying side arrangement. This includes frequent public consultations and well-established public submission processes in

¹ The term “regional trade agreement” is used interchangeably with “trade agreement” in this chapter and refers in a broader sense to bilateral, plurilateral and regional agreements.

place to deal with labour violations. With regard to cooperation mechanisms, all three economies have identified areas for working together with their trading partners and/or are implementing relevant development projects, with the possibility for the social partners to be involved in the identification and implementation phases. As for dispute settlement mechanisms, the three case studies show that both officials and stakeholders (employers' and workers' representatives and, more broadly, civil society) have drawn lessons from such experiences. These lessons include realization of the need for greater space for social dialogue in both formal and informal mechanisms, and from the very outset of trade negotiations; acknowledgement of the trading partners' shared commitments, including political commitments; and awareness of the importance of development cooperation.

The chapter is divided into six sections. Section 1.1 offers an overview of labour provisions and related mechanisms that refer to the social partners based on the text of these three economies' trade agreements. Section 1.2 provides a review of the relevant literature and sets out the methodological framework for the research undertaken in preparation of this chapter. The next sections move from text to practice, examining stakeholder engagement in monitoring; cooperation areas and activities; and a specific labour dispute involving the EU (section 1.3), the United States (section 1.4) and Canada (section 1.5). Finally, section 1.6 identifies and presents lessons learned and conclusions.

► 1.1 Trends in labour provisions in trade agreements

1.1.1 The inclusion of labour provisions in trade agreements worldwide

Globally, about one third (113 out of 357) of trade agreements in force and notified to the World Trade Organization (WTO) in 2022 included labour provisions. This represents a notable rise compared with the initial inclusion of a labour provision in the side agreement of the North American Free Trade Agreement (NAFTA) in 1994.² Indeed, more than

² Based on data from the [ILO LP Hub](#), as of February 2023.

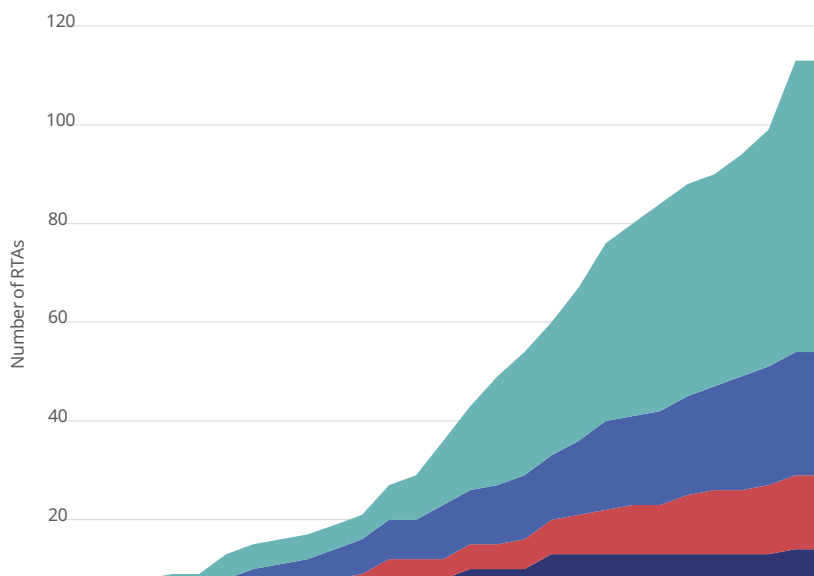
half of the trade agreements with labour provisions were concluded in the last decade, and the scope of engagement has expanded to over 140 economies. Nineteen per cent of RTAs with labour provisions involve South–South trading partners, comprising 22 agreements, while 26 per cent of these agreements are between North–North economies, comprising 29 agreements. The remaining 55 per cent of agreements are between North–South economies, amounting to 62 agreements. Nevertheless, the majority of trade agreements (68 per cent) do not include labour provisions. Approximately 55 economies, including Bangladesh, India and Saudi Arabia, do not have trade agreements that include labour provisions.

Of the RTAs with labour provisions in force and notified to the WTO, Canada, the EU and the United States have concluded almost half (51 out of 113,³ as can be seen in figure 1.1). The EU has the highest number of RTAs with labour provisions globally, with 25 out of 46 agreements. Canada follows with 15 out of 16 agreements, and the United States with 14 out of 15 agreements. While both Canada and the United States include labour provisions in the majority of their trade agreements, the EU includes such provisions in about half of its total number of RTAs. However, it is worth noting that most EU trade agreements concluded in the last ten years include labour provisions (13 out of 17).

At the same time, a growing number of other economies are also integrating labour provisions into their trade agreements: Chile (15 RTAs with labour provisions), the United Kingdom (12), the European Free Trade Association (11), New Zealand (9) and the Republic of Korea (9) are the major players in that regard.

3 Excludes double-counting of the North American Free Trade Agreement, the United States–Mexico–Canada Agreement and the EU–Canada Comprehensive Economic and Trade Agreement, so this number does not equal the sum of the totals for the individual economies.

► **Figure 1.1 Regional trade agreements with labour provisions, Canada, European Union, United States and global, 1994–2022**



RTA = regional trade agreement.

Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as of February 2023, including the first trade agreement with binding labour provisions, namely the NAFTA (1994), which is no longer in force. It is worth noting that no trade agreements with labour provisions entered into force in 2022 and that, at the time of publication, there were two trade agreements with labour provisions that entered into force in 2023.

Source: ILO, [Labour Provisions in Trade Agreements Hub](#).

1.1.2 Institutional mechanisms for monitoring in Canada, EU and US trade agreements

The majority of Canadian, EU and US trade agreements with labour provisions include formal arrangements to facilitate the participation of civil society – employers’ and workers’ representatives, non-governmental organizations (NGOs) and individuals – in the implementation of those provisions.

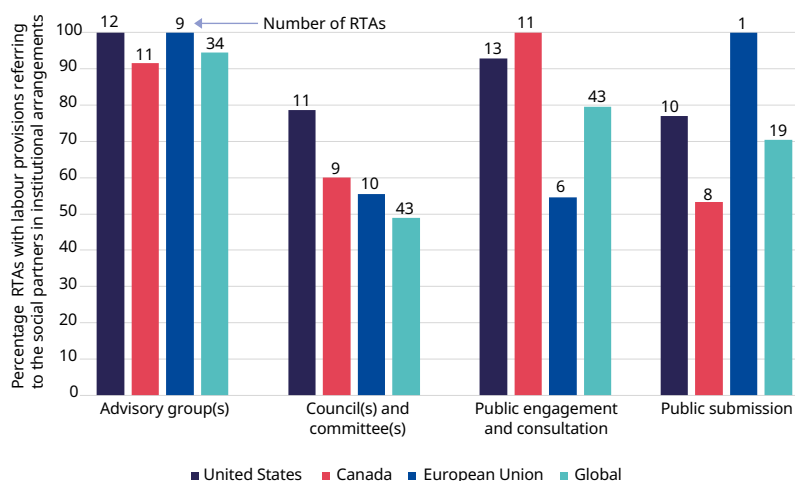
To target specific groups and stimulate cross-border engagement, four integrated institutional mechanisms are typically used in trade agreements with labour provisions. These mechanisms are: (a) a transnational ministerial-level council or committee for government officials of the respective parties; (b) a national administrative contact point or coordinator, which is normally a government entity; (c) national advisory groups that include employers’

and workers' representatives; and (d) public engagement and consultation procedures that invite views and perspectives from broader civil society (NGOs, grassroots organizations and individuals). A fifth mechanism, namely public submissions (that is, [a process for receiving complaints from the public](#)), [varies](#) depending on the trading partner.

Although there is no exclusive mechanism designated solely for the social partners, such would typically form the core of national (or domestic) advisory groups. As can be seen in figure 1.2, most of the trade agreements (94 per cent worldwide) that refer to the establishment of advisory groups, or to the use of existing consultative mechanisms, also include provisions on seeking advice from employers' and workers' representatives. All of the Canadian and US trade agreements include such a reference, as do most of the EU agreements (90 per cent).

In addition, a majority of all RTAs with labour provisions (80 per cent worldwide) lay down procedures for public engagement and consultations that also invite views and perspectives from the social partners. While this is the case for all of the Canadian trade agreements and most of the US ones (93 per cent), only half of the EU agreements (55 per cent) with provisions on public engagement include a reference to the social partners.

► **Figure 1.2 Share and number of regional trade agreements referring to the social partners in institutional frameworks, Canada, European Union, United States and global, 1994–2022**



RTA = regional trade agreement.

Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as of February 2023, including the first trade agreement with binding labour provisions, namely the NAFTA (1994), which is no longer in force. The total number of RTAs with such references is displayed at the top of the bars.

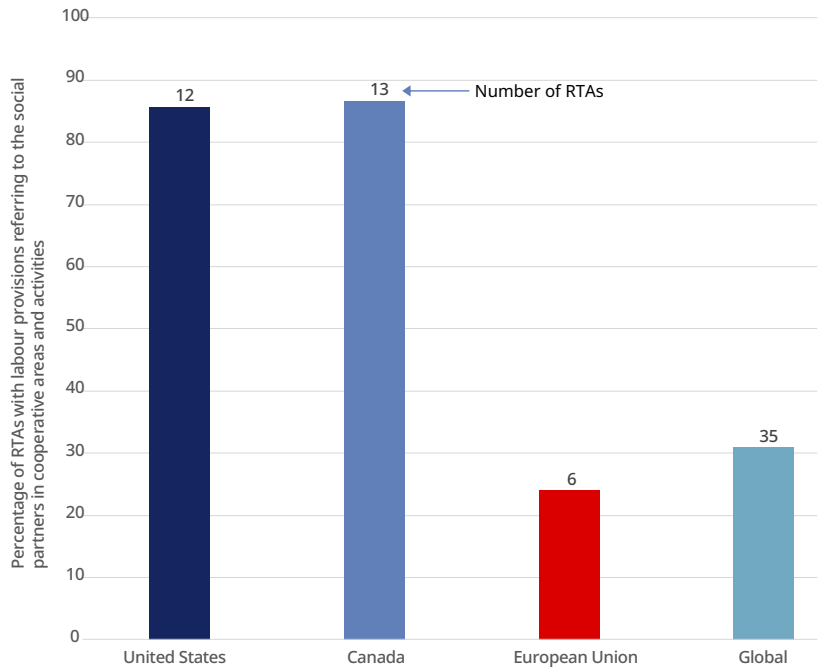
Source: ILO [Labour Provisions in Trade Agreements Hub](#).

1.1.3 Cooperation mechanisms in Canada, EU and US trade agreements

Canadian, EU and US trade agreements include labour provisions that establish mechanisms for cooperation between the parties on various labour-related issues. These mechanisms facilitate the identification of areas of cooperation and the development of specific activities, with the involvement of stakeholders, notably employers' and workers' representatives. Globally, areas of cooperation may refer to human capital development, occupational safety and health, working conditions, gender, child and forced labour, and the involvement of the social partners – in particular, to labour relations between, employers, workers and governments (48 per cent of all RTAs with labour provisions) and to social dialogue (30 per cent).

The role of stakeholders, such as employers’ and workers’ organizations and other independent civil society organizations, in identifying and carrying out cooperation activities is also explicitly mentioned in trade agreements (see figure 1.3). This is especially the case with US and Canadian trade agreements (86 and 87 per cent, respectively). Although EU agreements do so to a lesser extent, recent trade policy developments (EC 2022a) should make it possible for the social partners and other members of civil society to play an active role in the overall implementation of the trade agreements, including labour provisions.

► **Figure 1.3 Share and number of regional trade agreements referring to the social partners in cooperation mechanisms, Canada, European Union, United States and global, 1994–2022**



RTA = regional trade agreement.

Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as of February 2023, including the first trade agreement with binding labour provisions, namely the NAFTA (1994), which is no longer in force. The total number of RTAs with such references is displayed at the top of the bars.

Source: ILO, [Labour Provisions in Trade Agreements Hub](#).

1.1.4 Dispute settlement procedures in Canada, EU and US trade agreements

The majority of Canadian, EU and US trade agreements with labour provisions define procedures for the settlement of disputes, which may rely on some of the institutional mechanisms presented above. The settlement process starts when – upon review of violations of labour commitments reported, for example, through a public submission – one party initiates formal government-to-government or ministerial consultations with the alleged violating party. The parties then intensify their dialogue with a view to identifying cooperative solutions to labour violations, typically in the form of a compliance, action or enforcement plan. If the parties fail to arrive at a satisfactory conclusion through formal consultations, or if the violating party fails to comply with an agreed plan, the complaining party may escalate the process. In most of the Canadian, EU and US trade agreements with labour provisions, escalation consists in the establishment of a panel with a mandate to make recommendations and/or determinations. Should the panel determine non-compliance with labour commitments under the trade agreement, the complaining party may have access to an array of remedies.

Globally, compliance plans and other corrective measures are the most common form of remedy, especially in the case of EU trade agreements, whereas Canadian and US agreements more frequently provide for compensation, suspension of benefits, or monetary contributions. The role of the social partners tends to be more limited at the dispute settlement stage compared with the monitoring stage, in particular when formal procedures are activated. Nevertheless, most RTAs providing for panel-based procedures for the settlement of labour disputes allow the social partners as well as other stakeholders to submit written views and opinions to the panel.

► 1.2 Literature review and methodology

1.2.1 Literature review

In general, the existing studies show that institutional mechanisms related to implementation of labour commitments have been beneficial when it comes to facilitating dialogue (Lazo Grandi 2017), strengthening the capacity of trade unions, enhancing transnational dialogue, raising workers' awareness of their rights (Oehri 2017a), and effectively supporting the capacity-building efforts of institutions (Lazo Grandi 2017; Peels and Echeverría Manrique 2017a).

Specifically focusing on EU agreements, a number of studies have found limitations to the stakeholder engagement model of the Trade and Sustainable Development chapters (TSDs). For example, Harrison et al. (2019) point to a weakness of the common TSD approach, namely failure to take a trading partner's national specificities into account during implementation of the relevant provisions. In the case of negotiations between the EU and the Republic of Korea, they noted that government committees lacked accountability when it came to addressing civil society concerns, which resulted in limited meaningful dialogue with stakeholders. Van den Putte (2015) also found that the functioning and accountability of the mechanisms for stakeholder engagement in the EU's trade agreement with the Republic of Korea needed to be enhanced. Martens, Potjomkina and Orbie (2020) found that, in general, despite the holding of meetings and the sharing of information, there is still a lack of genuine dialogue among the members of domestic advisory groups, which limits the influence of such groups and undermines their policy impact. In terms of impact, Smith et al. (2017) found that cooperative activities and transnational dialogue were not entirely effective in addressing labour issues in the Republic of Moldova.

Some studies analysing public submissions as mechanisms for engaging the social partners raise concerns about the limited awareness of petition processes (United States, GAO 2014; Cimino-Isaacs 2020). Indeed, the transnational activism of trade unions and NGOs is a crucial factor in determining whether submissions are accepted for review under US and Canadian trade agreements (Nolan García 2011; Oehri 2017b).

This chapter seeks to analyse how cooperation and monitoring mechanisms, especially in terms of stakeholder engagement, support the implementation

of labour provisions in trade agreements – a perspective yet to be explored in the literature.

1.2.2 Methodology

This chapter relies on a “mixed methods” approach, based on qualitative information gathered from databases, desk research and in-depth interviews. The primary data source was the ILO [Labour Provisions in Trade Agreements Hub](#), a comprehensive, structured compilation of the text of labour provisions in more than 100 trade agreements; it also includes links to meeting records, submissions, consultations and dispute-related documents, where publicly available (ILO 2022). This chapter adopts the definition of “labour provision” that is used in the Hub:

- ▶ any principle or standard or rule (including references to international labour standards), which addresses labour relations, minimum working conditions, terms of employment, and/or other labour issues;
- ▶ any framework to promote cooperation and/or compliance with standards, through activities, dialogue and/or monitoring of labour issues; and/or
- ▶ any mechanism to ensure compliance with national labour law and standards set out in the trade agreement, such as through the settlement of labour-related disputes.

Desk research using trade agreement texts, meeting records, consultation and submission materials, and other official and non-government sources was conducted to map stakeholder engagement in cooperation areas and activities.

Additionally, the case studies on the EU–Republic of Korea, United States–Guatemala and Canada–Colombia labour disputes are informed by a total of 22 in-depth online interviews, based on a questionnaire specifically designed for the study. Interviews were conducted with key stakeholders (government officials, representatives of the social partners and members of dispute settlement panels) from the six trading partners involved in the three case studies. The interviewees were granted anonymity and confidentiality, and they had the opportunity to comment on an earlier version of the chapter.⁴

⁴ The interviewees commented on the original report that served as the basis for this chapter; see Corley-Coulibaly, Grasselli and Postolachi (2023).

Interviews provided unique information not accessible through desk research, but were used to bolster the findings rather than serving as primary evidence. This methodological decision was made for two reasons. Although efforts were made to ensure tripartite representation, the distribution of responses among different categories of interviewees was not balanced. Out of the 30 individuals contacted for the study, 22 were interviewed. Among the interviewees, 59 per cent were government officials, 23 per cent were workers' representatives, 9 per cent were employers' representatives, and 9 per cent were members of dispute settlement panels. Furthermore, there was an uneven distribution of interviewees among the different trading partners, with a comparatively lower number of stakeholder responses from Colombia, Guatemala and the Republic of Korea. This may be due to inadequate record keeping and the loss of knowledge when staff members rotate, a lack of knowledge or interest on the part of stakeholders, or language barriers, among other reasons.

► 1.3 Implementation under EU trade agreements

The EU developed a new trade strategy in 2022 that seeks to secure “broader commitments from partner countries than those in trade agreements of other international players” (EC 2022a), in particular commitments to ratify and effectively implement ratified ILO Conventions, and to respect core ILO principles. The implementation of these commitments is to be achieved through enhanced cooperation to identify country-specific priorities and by the European Commission providing “incentives and support to trade partners for reform processes and capacity building” (EC 2022a). These cooperation efforts are accompanied by a more assertive enforcement of labour commitments, which includes the potential imposition of trade sanctions. Furthermore, through all stages of trade agreements, the role of employers' and workers' representatives, local communities and NGOs has been enhanced.

1.3.1 Activities of committees, forums and advisory groups

The institutional mechanism for stakeholder engagement under “new generation” EU trade agreements typically comprises three bodies: (a) a ministerial-level committee on trade and sustainable development (CTSD); (b) at the national advisory level, a joint forum or dialogue of domestic advisory groups (DAGs); and (c) for engagement with the general public, a civil society forum (CSF). The EU’s stakeholder engagement approach is characterized by the mandate of the DAGs, which are made up of a balanced mix of representatives of employers’ and workers’ associations and other independent organizations, including environmental and consumer groups. In EU agreements, DAGs have a unique cross-border function, which includes monitoring and advising on the implementation of the TSD chapter.⁵ The DAG members of the different parties to an agreement engage in regular dialogue known as joint forums or “DAG-to-DAG dialogue”.

According to the TSD chapter, it is generally expected that most meetings should take place annually, starting one year after the entry into force of the agreement,⁶ although this is not always the case in practice. An analysis of web pages for meetings and related documents indicates that delays occur, owing in particular to challenges in establishing or using suitable dialogue structures in the trading partner country.

Indeed, under several EU trade agreements the first DAG-to-DAG meeting was delayed, as in the case of the EU–Viet Nam and EU–Japan agreements. In the case of EU–Viet Nam, the EU DAG issued a statement expressing concern about the late cancellation of the meetings and called on “the Vietnamese authorities to swiftly establish a counterpart for the EU DAG in order to enable the organisation of the joint meetings, and urge the European Commission to provide any technical assistance needed to achieve this”.⁷

⁵ However, it has been proposed to expand the remit of DAGs to cover the entire trade agreement. See, for example, EESC (2018), EU DAGs (2021) and EC (2022a).

⁶ See, for example, the [Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam](#) (2020), which lays down in Art. 13.15(5) that “[m]embers of the domestic advisory group or groups of each Party shall meet in a joint forum to conduct a dialogue on sustainable development aspects of trade relations between the Parties”. Furthermore, Art. 13.15(6) states: “Unless the Parties agree otherwise, the joint forum shall meet once a year and in conjunction with the meetings of the Committee on Trade and Sustainable Development.”

⁷ See the webpage [Statement from the European Union Domestic Advisory Group of the EU–Vietnam Free Trade Agreement](#); see Marslev and Staritz in this volume for more details on stakeholder engagement under the EU–Viet Nam trade agreement.

However, even when meetings are held, critics argue that the EU's institutional framework for trade agreements faces challenges in terms of monitoring progress, facilitating meaningful dialogue, and influencing decision-making (EESC 2021a; Martens, Potjomkina and Orbie 2020; Oehri 2017a). This criticism is discussed in section 1.3.4 in relation to the labour dispute between the EU and the Republic of Korea.

The substance of the meetings is specific to the TSD chapter in each agreement, but recurring themes are commonly discussed, including corporate social responsibility, the elimination of child and forced labour, the ratification and implementation of the ILO fundamental Conventions and, since 2020, sustainable recovery from the COVID-19 crisis.

1.3.2 Cooperation areas and activities

The EU agreements generally include a dedicated chapter on regulatory cooperation related to various aspects of the agreement and a more specific article on labour cooperation and working together on trade and sustainable development. In the 2022 communication entitled "[The power of trade partnerships: Together for green and just economic growth](#)", the European Commission emphasized its adoption of an approach "based on engagement and cooperation" and confirmed that the EU would continue to engage with civil society and step up its role in TSD-related technical assistance projects through cooperation and the exchange of views (EC 2022a).

In the communication, the EU acknowledges the need for a country-tailored approach in view of the constraints faced by trading partners when it comes to compliance with labour commitments. As pointed out by an EU official, such constraints may be of a financial nature. For example, when a country seeks to implement commitments to tackle forced labour, it may need to appoint more labour inspectors, which entails significant costs. In such cases, support could be provided through a dedicated EU project or in the form of technical assistance from the ILO (such as under the Decent Work Country Programmes), which the EU can help a partner country to access.

There may also be technical capacity constraints. These often manifest themselves when a partner country is asked to ratify an ILO Convention or to repeal non-complying parts of its legislation. For instance, during the pre-ratification phase of the EU–Viet Nam agreement (2020), an ILO-supported project was implemented in Viet Nam between 2016 and 2018 to improve the existing legal framework and promote the ratification of ILO fundamental Conventions to which that country was not yet party. Consequently, Viet Nam adopted a new Labour Code in 2019, followed by the ratification of two fundamental Conventions – the Right to Organise and Collective Bargaining

Convention, 1949 (No. 98), and the Abolition of Forced Labour Convention, 1957 (No. 105) – and the signature of a memorandum of understanding with the ILO to work towards the ratification of outstanding ones (see ILO 2019b, 2019c, 2020, 2021).

Following ratification, the EU often provides development cooperation in collaboration with the ILO under the TSD chapters of its trade agreements. Some projects are geared towards the ratification of and compliance with “fundamental, priority and other up-to-date ILO Conventions” (a phrase found in many EU trade agreements). For example, the EU and the ILO have established a partnership through the Trade for Decent Work project to improve the application of the fundamental Conventions in EU trading partner countries (see also Volume 1, Curtis and Echeverría Manrique).⁸ An earlier ILO-supported project in El Salvador and Guatemala focused on strengthening those countries’ institutional capacity to fulfil labour obligations under their respective trade agreements with the EU.⁹ Most often, though, the EU fosters cooperation through the dialogue and institutional mechanisms established in its trade agreements.

In the labour dispute under the EU–Republic of Korea trade agreement, a development cooperation project was launched under the EU Partnership Instrument on the implementation of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), with a view to better understanding good practices and deficiencies in the implementation of the Convention (see EC 2015, 2016).

1.3.3 Submissions regarding alleged labour violations

There have been four official complaints submitted within the framework of EU trade agreements. Three of these complaints were made under the EU–Colombia–Peru–Ecuador agreement, while one was made under the EU–Republic of Korea agreement.

Since there was no standard process in place in the EU prior to 2020 to receive labour-related complaints from private citizens or civil society organizations, such complaints were submitted through various mechanisms. This included either submission through the DAGs or directly to government authorities (in the case of the EU, to the European Commission). For example, the

⁸ See: ILO, [Trade for Decent Work project](#)

⁹ See the ILO Development Cooperation Dashboard for a summary of the project, “[Sustaining strengthened national capacities to improve ILS compliance and reporting in El Salvador and Guatemala](#)” (2018–20).

EU–Republic of Korea labour dispute began when the European Commission requested consultations with the Republic of Korea. This request was made after conferring with the EU DAG established under the agreement. (More information about this dispute can be found in section 1.3.4.)

A complaint, filed by CNV Internationaal in May 2022 on behalf of Colombian and Peruvian trade unions, used for the first time the newly implemented common submission procedure, the Single Entry Point.¹⁰ Launched in November 2020, this online platform allows an organization or individual to submit directly to the European Commission a complaint about violations related to market access or sustainability commitments under the TSD chapter of trade agreements or the Generalised Scheme of Preferences.¹¹ At the time of writing, the case was still being reviewed by the European Commission.

1.3.4 Case study: EU–Republic of Korea labour dispute

The labour dispute between the EU and the Republic of Korea was the first under the TSD chapter of an EU trade agreement to trigger panel procedures, thereby serving as a litmus test for the EU’s non-sanction-based approach to dispute settlement. It is also important to note the role of the European trade unions and their counterparts in the Republic of Korea in seeking to address the concerns raised in the dispute by issuing various communications and opinions since 2013.¹²

10 A more detailed summary of the three complaints under the [EU–Colombia–Peru–Ecuador Trade Agreement](#) (none of which has so far triggered a dispute) can be found in Corley-Coulibaly, Grasselli and Postolachi (2023).

11 See EC 2022b. As at December 2022, only one complaint about labour violations had been submitted through the Single Entry Point (under the EU–Colombia–Peru–Ecuador agreement).

12 See EU DAGs (2021). For an overview of how the DAGs from the EU and the Republic of Korea engaged with each other up to 2017, see Peels and Echeverría Manrique (2017b).

In December 2018, the European Commission requested government consultations with the Republic of Korea (EU 2018), on the grounds of the country's failure to ratify four out of the then eight ILO fundamental Conventions, as it had pledged to do under Article 13.4(3) of the trade agreement.¹³ In July 2019, the European Commission requested the convening of a panel of experts (EC 2019), the final report of which was published in January 2021 (EC 2021). The panel confirmed that the labour commitments undertaken by the Republic of Korea under its trade agreement with the EU are legally binding, regardless of their effect on trade between the parties. Nevertheless, the panel also found that the Republic of Korea did not act "inconsistently with the last sentence of Article 13.4.3 by failing to 'make continued and sustained efforts' towards ratification of the core ILO Conventions".¹⁴ Following the dispute, the Republic of Korea ratified three out of the four outstanding ILO fundamental Conventions: the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention (No. 98).

Significant monitoring efforts have been undertaken both prior to and following the labour dispute as part of the agreement. A total of eight DAG-to-DAG and CSF meetings took place between 2011 and 2022, excluding 2016 and with a two-year hiatus between 2019 and 2020 due to settlement procedures for the labour dispute. The April 2021 CSF meeting, which coincided with the DAG-to-DAG and CTSD meetings, included the participation of DAG members from the EU and the Republic of Korea, as well as academics and ILO officials (EESC 2021b).¹⁵ The conclusions of the meeting mention that the DAGs were facing challenges in engaging with civil society, both in the EU and in the Republic of Korea. Consequently, the CSF decided to undertake a study of the work performed by the civil society structures under the agreement over the first ten years since its entry into force to identify the best ways forward (EESC 2021c). A provisional assessment, published in the

13 Art. 13.4 ("Multilateral labour standards and agreements"), Para. 3, of the [Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part](#) (2011) stipulates that: "[t]he Parties reaffirm the commitment to effectively implementing the ILO Conventions that [the Republic of] Korea and the Member States of the European Union have ratified respectively. The Parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions as well as the other Conventions that are classified as 'up-to-date' by the ILO."

14 The panel also found that several aspects of the Korean Trade Union and Labour Relations Adjustment Act were not consistent with the principles under the 1998 Declaration, as referred to by the EU-Korea RTA.

15 The ILO is a regular participant in the annual CTSD meetings under the EU-Republic of Korea trade agreement.

form of a non-paper, recognizes the importance of independent civil society organizations (EU DAGs 2021).

With regard to these challenges, interviewees from the Republic of Korea described the EU's approach as "Eurocentric", in the sense that the EU was perceived to be imposing structures and mechanisms informed by a view of social dialogue – including in terms of the participation of the social partners and other stakeholders in government-led processes – that was not shared by the Republic of Korea, among other countries. While social dialogue is strongly institutionalized in the EU, that is not the case in the Republic of Korea, where relations between the Government, employers' organizations and trade unions have been described as "hostile", both during the interviews and in the literature (Chang 2002; Lee and Lee 2003; Yoon 2009; Kloepping 2010; Bae 2014).

An example that illustrates the strained tripartite relations in the Republic of Korea is the initial exclusion of the country's two most representative trade union confederations from DAG membership. Before the first CSF meeting, the two confederations communicated with the European Trade Union Confederation, which maintains contact with EU officials. In 2013, the secretary of the DAG for the Republic of Korea granted the two confederations observer status at the second CSF meeting, which was held in Seoul. The following year, when DAG membership was renewed (as it is every two years), the two confederations were invited to join the DAG for the Republic of Korea as fully fledged members.

Moreover, the Government of the Republic of Korea did not engage with the social partners or broader civil society during the negotiations on the agreement. The country's trade unions organized activities outside the framework of the negotiation process: they mobilized their members and civil society organizations, participated in a European Parliament hearing during the negotiations, and communicated with European trade unions. Notably, before the agreement was concluded, trade unions in the Republic of Korea had no stable mechanism for dialogue with their EU counterparts. It is not surprising, then, that the social partners in the Republic of Korea were asked to participate only at a relatively advanced stage of the labour dispute. After the panel of experts was set up, they were given a short deadline to submit position papers and briefs directly to the panel.

In this context, EU officials claim that the EU is "conscious of the importance" of not seeking to export its own practices without "critical reflection", as evidenced by the flexibility left to its trading partners in how their national authorities consult with civil society. Although the Republic of Korea's model of social dialogue under trade agreements still differs from that of

the EU chiefly with regard to stakeholder engagement at the negotiation stage an official from the Republic of Korea observed that the dialogue with stakeholders in the context of the EU–Republic of Korea agreement had improved on the whole. The same official added that the labour dispute between the two parties had made officials and stakeholders from the Republic of Korea aware of the need to have the social partners involved from the negotiation stage onwards in advising the Government on the potential impacts of labour provisions (including disputes).

► 1.4 Implementation under US trade agreements

The Trade Promotion Authority (TPA) of the United States incorporates specific guidelines to facilitate transparency and encourage public participation in trade negotiations.¹⁶ It prioritizes trade openness, market access and economic growth, alongside the promotion of labour rights in the countries that trade with the United States, among other objectives.

The principal negotiating objective on labour matters is to ensure that parties to US trade agreements:¹⁷

- (i) adopt and maintain measures implementing internationally recognized core labour standards as defined by the ILO Declaration on Fundamental Principles and Rights at Work (1998);
- (ii) do not waiver or derogate from national laws implementing labour standards in a manner affecting trade or investment; and
- (iii) do not fail to effectively enforce their labour laws through a sustained or recurring course of action or inaction in a manner affecting trade.

¹⁶ See the [Bipartisan Congressional Trade Priorities and Accountability Act of 2015](#) (Public Law 114-26 of 29 June 2015; known for short as TPA-2015), section 104, Para. (d) (United States, Congress 2015). Although TPA-2015 expired in July 2021, at the time of writing it served as the basis for trade negotiations (Casey and Cimino-Isaacs 2022).

¹⁷ See Sections 102(6) and 111(7) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (United States, Congress 2015). More recent trade agreements (for example, the United States–Mexico–Canada Agreement) refer to the ILO Declaration on Rights at Work, which means the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998).

The TPA also recognizes the need to strengthen the capacity of trading partner countries to promote internationally recognized core labour standards.

In 2022, the United States implemented a “worker-centered trade policy” that focuses on using trade agreements to advance workers’ rights both domestically and abroad through greater enforcement and inclusive stakeholder engagement (United States, Executive Office of the President 2022).

1.4.1 Activities of committees, councils and public sessions

The mechanisms for stakeholder engagement under US trade agreements include three main bodies, among others. At the ministerial level, there are “labor affairs councils”, which are transnational bodies responsible for the implementation of labour-related activities under specific US trade agreements. At the national advisory level, there is the Labor Advisory Committee for Trade Negotiations and Trade Policy, which consists of one committee for all agreements, composed of representatives of employers’ and workers’ organizations (United States, DOL and USTR 2020).¹⁸ Finally, public consultations take place in public sessions with civil society organizations and individuals, including employers’ and workers’ representatives, under specific US trade agreements.

There are some notable differences between the US structures and advisory groups when compared with EU trade agreements. To start with, the scope of the Labor Advisory Committee’s activities is broader than that of the EU DAGs: the former provides advice on general trade and labour policy matters for all US trade agreements. However, the Committee meets at irregular intervals (no consistent pattern of Committee meetings could be identified), compared with the EU DAGs which meet on an annual basis. Moreover, the Committee is not tasked with engaging in cross-border dialogue with a similarly organized committee in each trading partner country, as is done in the EU.

More recently, an Independent Mexico Labor Expert Board was established specifically for the implementation of the United States–Mexico–Canada Agreement (USMCA) of 2020. Comprising 12 members appointed by the US Congress and the Labor Advisory Committee for Trade Negotiations and Trade Policy, the Board monitors Mexico’s compliance with labour

¹⁸ It should be noted that another advisory body, the National Advisory Committee for Labor Provisions of United States Free Trade Agreements, composed of employers’ and workers’ representatives, NGOs and academics, has been inactive since 2019.

obligations under the USMCA and advises the Interagency Labor Committee for Monitoring and Enforcement (also established under the USMCA) on capacity-building activities.¹⁹

Ministerial-level labour affairs councils meet periodically, and their meetings are generally followed by a public session. Most US trade agreements have had council meetings occur only twice since the agreements came into effect. However, stakeholders do engage in discussions through other platforms. For example, the Labor Affairs Council established under the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) has not reconvened since its initial meeting in 2008. However, the labour ministers of the parties to the agreement maintain regular meetings in various forums. Some of these meetings occur annually during the International Labour Conference (in June) and biannually during sessions of the Governing Body of the International Labour Office (in March and November) (United States, DOL 2021).

1.4.2 Cooperation areas and activities

All US trade agreements establish labour cooperation and capacity-building mechanisms. Provisions on stakeholder participation in identifying and carrying out cooperation activities were included for the first time in the United States–Chile Free Trade Agreement (2004) – a practice that has become common in subsequent agreements. According to the US officials interviewed, cooperation takes place both through regular dialogue between the trade and labour ministries of the United States and its trading partners, and through mechanisms established in the trade agreements.

Development cooperation plays a critical role in the implementation of the labour provisions, both with regard to supporting the fulfilment of pre-ratification requirements and in post-ratification capacity-building activities. Indeed, the United States requires its trading partners to address certain labour issues within their jurisdiction before the entry into force of a trade agreement. For example, technical assistance and resources were provided to support Mexico's labour law reform under the USMCA, specifically in relation to workers' rights to unionize and ratify collective bargaining agreements (United States, DOL n.d.(a); Curtis and Echeverría Manrique in Vol. 1).

¹⁹ See Subtitle C ("Independent Mexico Labor Expert Board") in the [United States–Mexico–Canada Agreement Implementation Act](#) of 2020. See also IMLEB (2020). Further information on the labour provisions in the USMCA is provided by Villarreal and Cimino-Isaacs (2023).

After trade agreements are ratified, the United States engages in numerous development cooperation projects to assist trading partner countries in implementing labour provisions. These projects have an emphasis on improving the recognition of workers' rights and building capacity for social dialogue. Thus, the implementation of trade agreements relies heavily on funding from US Government agencies and other partners. Under CAFTA-DR, several labour capacity-building programmes have been implemented in line with a white paper from 2005 prepared with the support of the ILO and the Inter-American Development Bank.²⁰ In Guatemala, over 50 projects have been implemented, focusing on such areas as child labour (15), labour rights (8), labour administration (7), labour inspection (6), labour relations (4) and social dialogue (2).²¹

In the United States–Guatemala labour dispute under CAFTA-DR, both parties agreed to a comprehensive action plan in 2013 known as the “Enforcement Plan”. This plan involved the United States committing itself to support upon request Guatemala’s implementation of the plan by “providing technical advice and information regarding best practices, sharing expertise and assisting with outreach to international institutions” (USTR 2013, Para. 17.1). Between 2013 and 2016, the Bureau of Democracy, Human Rights and Labor in the US Department of State funded an ILO-administered project in Guatemala. The project’s objective was to enhance Guatemala’s institutional capacity to protect fundamental rights at work, notably freedom of association and collective bargaining, and strengthen social dialogue institutions and their stakeholders.²² Notwithstanding the labour dispute, the United States continues to provide technical assistance to the country. For example, between 2018 and 2022 the Department of Labor implemented, together with the ILO, a technical assistance project to improve the enforcement of regulations on minimum wages, hours of work, and occupational safety and health in the Guatemalan agricultural export sector.²³

20 The white paper includes as an annex the Santo Domingo Labour Declaration of 2002, in which government delegations and employers’ and workers’ representatives from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the Dominican Republic requested the ILO to “provide any technical assistance required to follow up on and carry out the subregional labor agenda through the corresponding tripartite national institutions and existing regional fora” (IDB 2005, 82).

21 Data obtained from United States, DOL (n.d.(b), n.d.(c)) and through the Project Finder function on the [ILO Development Cooperation Dashboard](#). See also USTR (2011).

22 A summary of the project is available on the [ILO Development Cooperation Dashboard](#).

23 See details of the project on the [ILO Development Cooperation Dashboard](#) and in United States, DOL (n.d.(d)).

1.4.3 Submissions regarding alleged labour violations

In the United States, public submissions regarding alleged labour violations under trade agreements must satisfy six specific criteria in order to be accepted for review. In particular, the submission must raise “issues relevant to any matter arising under a labor chapter or the NAALC [North American Agreement on Labor Cooperation]”, and its review must “further the objectives” of the trade agreement (United States, *Federal Register* 2006, 76695).

The Office of Trade and Labor Affairs (OTLA) has received a total of 30 submissions under seven US trade agreements, including the NAALC. About one third of these submissions (11), which all fell under the NAALC, were withdrawn by the filing parties or declined for review by OTLA. Out of the 19 submissions that were accepted for review, bilateral consultations were recommended in 63 per cent (12) of the complaints. Action plans were subsequently implemented in the majority (7) of those cases. It is important to highlight that only submissions that underwent consultations resulted in action plans. Furthermore, only one of these submissions (United States–Guatemala labour dispute under CAFTA–DR) proceeded to arbitration following the unsuccessful implementation of the corresponding action plan.

Similar to Canadian (see section 1.5) and (to a lesser extent) EU trade agreements, stakeholders from different parties form cross-border coalitions that have a significant role in the filing of submissions under US trade agreements (Nolan García 2011; Oehri 2017b). This set-up has been effective in promoting cross-border dialogue on labour matters, as most submissions under US trade agreements are joint cross-border submissions (23 of the total of 30).²⁴

Finally, as of February 2023, six proceedings had been initiated by the United States through the Facility-Specific Rapid Response Labor Mechanism established under the USMCA (2020), of which five have been concluded (see Bensusán in this volume). Two versions of the mechanism exist: one applicable between the United States and Mexico (Annex 31-A of the USMCA), and another applicable between Canada and Mexico (Annex 31-B).²⁵

24 Based on the authors’ analysis of [Submissions under the North American Agreement on Labor Cooperation \(NAALC\)](#) as at March 2022.

25 For more information on the Rapid Response Labor Mechanisms, see USTR (2021) and Bensusán in this volume.

1.4.4 Case study: United States–Guatemala labour dispute

The labour dispute between the United States and Guatemala took place under CAFTA–DR. In 2008, the US-based AFL-CIO and six Guatemalan unions filed a public submission with OTLA, alleging that Guatemala had violated its labour commitments under Article 16.2.1(a),²⁶ in particular commitments related to freedom of association and the right to collective bargaining (United States, DOL 2008). Formal consultations between the US and Guatemalan Governments were held in 2010, and the United States requested the establishment of an arbitration panel in 2011. Panel proceedings were suspended as the parties signed an 18-point Enforcement Plan in 2013 (see section 1.4.2). Panel proceedings resumed in 2014, as Guatemala had not fulfilled the requirements of the Enforcement Plan. In its final report, published in 2017, the panel recognized that Guatemala had failed to enforce its labour laws in certain instances, but concluded that evidence provided by the United States did not reach the threshold set by Article 16.2.1(a) of CAFTA–DR ([Dominican Republic–Central America FTA](#)).

The interviews highlighted the existence of a twofold space for the engagement of the social partners and civil society during the dispute. The first space was created as a result of the original submission that initiated the dispute: the social partners and representatives of broader civil society were asked to gather information for reviewing the submission, particularly in the form of statements and depositions by workers, workers' representatives and other actors with first-hand experience of labour issues in Guatemala. The second space was generated by the Enforcement Plan: civil society and workers' organizations in Guatemala, as well as workers' representatives in the United States and internationally, were consulted to ensure that the provisions of the plan addressed the key concerns of Guatemalan workers, and they were also involved in the monitoring and implementation of the plan.

United States trade unions maintain regular and direct communication with trade unions in Guatemala and other countries. This is achieved through organizations such as the Solidarity Center, a US-based NGO aligned with the AFL-CIO that has projects operating in 70 countries. The interviews confirmed that it is through these networks that the US labour movement

26 Art. 16.2 (“Enforcement of Labor Laws”), Para. 1(a), of the [Dominican Republic–Central America–United States Free Trade Agreement](#) (2006) reads: “A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.”

is able to obtain information relevant to disputes when requested by US Government agencies.

At the same time, the interview with a former Guatemalan official provided a different perspective on dialogue in the context of the United States–Guatemala labour dispute. The former official described social dialogue in Guatemala as marked by “deep scars”. These include the lasting impact of armed conflict, which had undermined the role of trade unions, and a pervasive lack of trust. These factors have hindered the ability of the social partners to overcome their historically antagonistic positions and progress towards a more cooperative approach. It is in that sense that the former official argued that the role of the private sector and the functioning of social dialogue in Guatemala had been “taken for granted” during the negotiations on CAFTA–DR. Given that social dialogue is key to achieving decent work outcomes, such deficits could have been addressed before the negotiations, ideally as part of a “development agenda for Guatemala”.

► 1.5 Implementation under Canadian trade agreements

At present, Canada is following a more inwardly focused “trade diversification strategy”, one of whose pillars is inclusivity (Government of Canada 2018a). The strategy aims to encourage domestic investments that facilitate access to new markets. It places importance on extending the potential benefits to historically under-represented groups in Canadian trade and investment, such as women, small and medium-sized enterprises, and Indigenous Peoples (Government of Canada 2020a). This inclusive approach promotes labour priorities and other socio-economic objectives by enhancing interaction with such groups during trade agreement negotiations and implementation, as well as through broader engagement on the content of labour chapters.

1.5.1 Activities of committees, councils and public consultations

The institutional mechanisms in Canadian trade agreements resemble those found in EU and US agreements. The “labour ministerial councils” formed under individual agreements consist of the ministers responsible for labour

affairs in the respective trading partner countries. Public consultations are crucial for promoting transparency during the negotiation process of Canadian trade agreements. They also serve as a mechanism for engaging stakeholders.

There is also an Advisory Council on Workplace and Labour Affairs, composed of civil society representatives (including employers' and workers' representatives and academics), which has served as a forum for both domestic and international discussions and provided advice to Canada's Minister of Labour on a wide range of labour issues (*Benzinga* 2012). However, that body now seems to be dormant.²⁷

According to the trade agreements, the labour ministerial councils are expected to meet periodically, followed by a public session. Although no records of meetings could be found, it is likely that they do take place. During the interviews, a Canadian official confirmed that when Canada embarked on negotiations for a trade agreement with Colombia, the Canadian social partners were involved for two years in a consultative role (see also Government of Canada 2021a).²⁸

Canada has a distinct public consultation process, whereby the Government issues a notice requesting comments from the social partners and representatives of broader civil society, which are collected through an online platform (Government of Canada 2022).

In 2017, the Indigenous Working Group (IWG) was established as a consultative mechanism. Its primary objective is to address trade policy matters of significance to Indigenous Peoples. This includes the formulation of provisions within trade agreements that protect their rights.²⁹ The Group comprises Indigenous representatives, including NGOs and employers' organizations. However, workers' representatives are not explicitly included, and there does not seem to be a labour-specific focus in the work of the IWG. Although meeting records were not found, it is evident that the IWG plays an active role (Government of Canada 2020b).

27 Pertinent meeting records could not be obtained from the Employment and Social Development Canada website or through interviews.

28 According to the Policy on Tabling of Treaties in Parliament, the Government must give notice of its intent to enter into a trade agreement no fewer than 90 days before initiating negotiations and must submit Canada's negotiating objectives for debate in Parliament at least 30 days before a first round of negotiations (Government of Canada 2021b).

29 According to the Government of Canada (2020b) "[government] officials have actively engaged with the members of the IWG through ongoing dialogue ... [which] has informed Canada's negotiating positions in recent and ongoing international trade negotiations, including CUSMA [as the USMCA is known in Canada], Mercosur and [the] Pacific Alliance".

Some Canadian trade agreements also include “trade and gender committees”, consisting of government officials from each trading partner. These committees are responsible for overseeing and providing guidance on the implementation of the gender-related chapter (Government of Canada 2023). For example, the Trade and Gender Committee established under the “Trade and Gender” chapter of the modernized Canada–Chile Free Trade Agreement held its third meeting in May 2021. During the meeting, the parties discussed various domestic issues and initiatives concerning women, including efforts to address gender-based violence in Chile and to support women returning to the workforce in Canada (Government of Canada 2021c).

1.5.2 Cooperation areas and activities

Cooperation is equally a key element of Canada’s approach when promoting and implementing the labour provisions of its trade agreements. In addition, the role of stakeholders, such as employers’ and workers’ representatives and civil society organizations, in carrying out cooperation activities is explicitly mentioned in Canadian trade agreements.³⁰

Although Canada is generally not involved in development cooperation projects in a given country before the ratification of a trade agreement, it engages with domestic stakeholders there through extensive labour consultations from the very beginning of negotiations, with the goal of capturing their expertise, advice and views on various topics, including cooperation priorities. Canada initiated development cooperation projects starting with the Canada–Costa Rica Free Trade Agreement of 2002, where the two parties agreed to work with the ILO on a programme to strengthen labour administration and modernize labour inspectorates in Costa Rica (ILO 2016). From the Canada–Peru Trade Agreement onwards, Canadian agreements have also provided for the involvement of the social partners in labour cooperation and capacity-building. Development cooperation projects have since then been conducted under all Canadian trade agreements to support the implementation of labour provisions.

In the context of the Canada–Colombia labour dispute (see section 1.5.4), the parties have engaged in continuous exchanges of information and consultations, including the ministerial consultations that eventually led to the adoption of an Action Plan in 2018 (Government of Canada 2018b). Moreover, Canada liaised with US government agencies on the parallel

³⁰ For instance, Annex 13-A (“Cooperative Activities”) of the [Canada–Ukraine Free Trade Agreement \(2017\)](#) states: “In identifying areas for labour cooperation and capacity-building, and in carrying out cooperative activities, each Party may consider the views of its worker and employer representatives, as well as those of other members of the public.”

United States–Colombia labour dispute, with a view to presenting “a common front” – as described by a Canadian Government official – regarding the two complaints (Government of Canada 2017; United States, DOL n.d.(e)). In addition, instead of only focusing on the issue of labour inspection or on the two companies that were the subject of the original public communication, the aforementioned Action Plan puts forward general recommendations and a set of concrete actions to be taken by the Colombian Government to address labour violations under the Canada–Colombia Labour Cooperation Agreement (Velut et al. 2022).

These efforts have been boosted further by the redirection of funds towards cooperation areas and activities supported by both Canada and the United States (Government of Canada 2021d; United States, DOL 2016). Canada currently administers two development cooperation projects to support the Action Plan in Colombia, amounting to 1 million Canadian dollars. The first project is implemented by the ILO and aims to promote workplace compliance and strengthen the institutional capacity of the social partners to participate in tripartite social dialogue, bargain collectively and develop the industrial relations system.³¹ The second project consists of a study by the University of Ottawa to analyse challenges related to the effective exercise of the rights to freedom of association and collective bargaining in Colombia (Le Bouthillier, Torres and Ovalle Díaz 2022).

1.5.3 Submissions regarding alleged labour violations

In Canada, public submissions alleging labour violations under trade agreements – or “public communications” as they are referred to there – must meet specific review criteria, one of which is “relevance to a specific LCA [labour cooperation agreement] or LCFTA [labour chapter of a free trade agreement]”. As the guidelines explain, “[w]here applicable, the submission should describe the failure by the Party being complained against to effectively enforce its labour law or that its labour laws and practices thereunder do not embody and provide protection for the internationally recognized labour principles and rights set out in the relevant LCA or LCFTA” (Government of Canada 2014). Although the submission process is similar to that in the United States, it has been used less frequently in practice (ILO 2016).

³¹ See the ILO Development Cooperation Dashboard for a summary of the project, “Institutional Strengthening for Promoting Compliance with National Legislation in Colombia” (2019–23).

The Canadian National Administrative Office (NAO) has received a total of seven public communications. Six of these were filed under the NAALC, while one was filed under the Canada–Colombia Free Trade Agreement. Out of the seven submissions, three were accepted for review; two were declined for review; and the remaining two have been under review since 2011. An analysis of the information in the US Department of Labor database reveals that the majority of Canadian submissions made under the NAALC were filed by a cross-border coalition of civil society organizations.

The 2016 public communication filed against Colombia under the Canada–Colombia Free Trade Agreement was the first to lead to the drawing up of an action plan as a remedial measure (see section 1.5.4 for more details). With regard to the USMCA, at the time of writing one denial-of-rights claim had been filed under the Canada–Mexico Rapid Response Labour Mechanism and accepted for review in March 2023. To establish an agreement, the NAO supported dialogue between the parties during the review. The company pledged to uphold freedom of association and collective bargaining in a public statement, reinstated workers with retroactive pay and held a union election vote in June 2023 that was validated by a federal labour judge in July 2023. Thus, four months after the complaint was accepted for review, the NAO closed the case against the facility, with beneficial results.³²

1.5.4 Case study: Canada–Colombia labour dispute

The labour dispute between Canada and Colombia took place under the Canada–Colombia Free Trade Agreement (2011). In 2016, the Canadian Labour Congress and five Colombian unions submitted a public communication to the Canadian NAO, alleging that Colombia had breached its obligations under the parallel Labour Cooperation Agreement. The alleged violations primarily pertained to freedom of association, enforcement of labour laws and non-derogation of labour laws (Government of Canada 2017). In 2017, Canadian authorities conducted a review of communication and subsequently requested ministerial consultations with their Colombian counterparts. These consultations consisted of a series of six meetings. In 2018, Canada and Colombia signed a three-year Action Plan, in which Canada committed itself to acting as a “strategic partner” in supporting Colombia’s labour initiatives (Government of Canada 2018b).

³² See [Canada–Mexico Facility-Specific Rapid Response Labour Mechanism](#) (Government of Canada 2023).

The social partners played a crucial role in the creation of the Action Plan, both by providing information in the original public communication and through their fieldwork experience. Representatives of the Canadian social partners flew to Bogotá in February 2020 to meet with stakeholders and officials from the Colombian Ministry of Labour. A second visit scheduled for November 2020 had to be cancelled owing to the COVID-19 pandemic. In August 2021, a virtual session was organized to inform a Colombian audience about how the Canadian labour system (Ministry of Labour, labour courts, trade union registration) operates and to discuss whether some of its features could be adopted in the Colombian system. It is worth noting that the Canadian Government shares documents received from the Colombian Government with the Canadian social partners.

According to a Canadian official interviewed, the experience of the Canada-Colombia labour dispute corroborates two advantages of engagement with the social partners and broader civil society. The first is that these stakeholders are “an invaluable source of underground expertise”, which greatly helps governments in their work. The second is that when these stakeholders are invited to the table during the negotiation or implementation of a trade agreement, governments can not only profit from their knowledge and contributions, but also ensure that the former buy into the process, thereby limiting “unrealistic demands”. The Canadian official argued that in order to fully reap these benefits, governments should seek synergies with stakeholders, involving them in the practical resolution of issues, whether or not formal mechanisms are in place.

► 1.6 Conclusions

What clearly emerges from the research underlying this chapter is that stakeholders, including governments and the social partners, have been using trade agreements to promote labour objectives and address deficiencies in labour rights and working conditions. This has been accomplished by various means, such as dialogue, development cooperation, the submission of complaints about alleged labour violations and dispute settlement.

In general, Canadian, EU and US trade policy objectives point to engagement with employers’ and workers’ representatives and broader civil society in the negotiation and implementation of trade agreements. This is reflected

in a greater emphasis on the transparency and inclusiveness of trade negotiations; in the involvement of employers' and workers' representatives and other civil society actors in advisory groups, committees, consultations and submissions; and in efforts to strengthen the capacity of trading partner countries through cooperation, including with the participation of employers' and workers' representatives.

In fact, most of the Canadian, EU and US trade agreements with labour provisions include dialogue mechanisms to facilitate the engagement of employers' and workers' representatives in the implementation of those provisions. Although there is no exclusive mechanism for the social partners, they generally make up the core of national (or domestic) advisory groups. In addition, other mechanisms such as the public submission process, [designed to receive complaints from the public](#), have regularly been used as vehicles for cross-border dialogue on labour matters.

Stakeholders, notably employers' and workers' representatives, can also be involved in the identification of areas for cooperation – such as human capital development, occupational safety and health, working conditions, gender issues, child and forced labour – and in the implementation of specific activities. Some of these activities include support for [improving dialogue structures through the recognition of workers' rights and building capacity for social dialogue](#).

In addition, stakeholders have drawn lessons from ongoing and past labour disputes under trade agreements, which have helped to shape the design and implementation of labour provisions in new agreements, including the modalities of stakeholder engagement.

One lesson learned is that early engagement with the social partners has proved to be helpful. In the case studies analysed for this chapter, employers' and workers' representatives all appear to benefit from engaging in social dialogue at the negotiation stage. Such engagement enables the social partners and representatives of broader civil society to bring their technical expertise to the table. This, in turn, helps governments to identify potential challenges and areas for cooperation. However, as the chapter highlights, engagement in social dialogue already at the negotiation stage may not be common practice in all countries. Indeed, different social dialogue models, which are shaped by economic, cultural, social and political factors, influence engagement both within and between countries. These differences may have an impact on the effectiveness of institutional mechanisms for stakeholder engagement introduced under trade agreements.

Another lesson is that both formal and informal dialogue structures are key to the promotion of and compliance with international labour standards.

European Union trade agreements are characterized by a high level of institutionalized engagement between officials on the one hand, and the social partners and broader civil society actors on the other. In contrast, while the United States and Canada also rely on formal structures for social dialogue under trade agreements, informal dialogue takes place as well on a regular basis between government officials and the social partners on all matters related to compliance with labour commitments. This is an aspect that is hardly reflected in the written records but should be taken into consideration when reviewing the key contributions of both formal and informal structures to social dialogue.

A final lesson is that cooperation mechanisms continue to be a primary means of achieving compliance with labour commitments. Robust consultative and cooperation mechanisms for engagement and support (both technical and financial) are important as a means of de-escalating disputes and addressing labour challenges. Such mechanisms may be activated both during dispute settlement, as in the case of the Canada–Colombia Action Plan, and after the dispute has concluded, as illustrated by the ongoing US-funded cooperation programmes in Guatemala.

In this respect, development cooperation with the support of the social partners plays a key role, especially where a trading partner exhibits shortcomings in terms of labour rights and working conditions.

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