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NOPOOR POLICY BRIEF



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NOPOOR POLICY BRIEF NR. 5: TRADE AGREEMENTS AND CORE LABOUR STANDARDS

Over the last two decades, a growing number of free trade agreements have included social and labour provisions. This Policy Brief investigates the repercussions of such clauses on the ratification of what are seen as fundamental ILO conventions and on workers' rights practices. An empirical estimation indicates that labour provisions have not played a significant role in improving labour practices, and that their effect has been limited to the ratification of ILO conventions. This gap highlights the importance of mechanisms that guarantee the enforceability of labour clauses included in trade agreements.

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INTRODUCTION

The violation of fundamental workers' rights sustains or exacerbates poverty in different ways such as underpaid work, lack of education and the misallocation of labour. The influence of trade globalisation on labour is a very long-standing and debatable issue with discussions surrounding the "race to the bottom" wherein the reinforced constraint of competitiveness pushes countries to lower workers' rights. Yet trade openness also creates opportunities for growth conducive to poverty reduction.

Over the last two decades, the number of free trade agreements (Regional Trade Agreements – RTAs – in WTO terminology) has increased dramatically. In some cases, this growing economic integration among countries has been paired with the introduction of provisions concerning social issues, such as labour rights. This trend was in particular initiated by NAFTA ratified in 1994. The European Union, albeit not as systematically as the United States and Canada, is one of the proponents of linking benefits derived from trade agreements to a specific provision. Social and labour provisions included in trade agreements may pursue several objectives: protecting fair trade against "social dumping", minimizing the negative effects of free trade on certain workers, upholding universal values, or promoting decent work in developing countries. This last objective is currently the most explicit in the trade actions of the EU.

Nevertheless, the relationship between labour rights and international trade agreements is still a controversial issue. While some consider these provisions as an effective mechanism for raising labour standards and improving working conditions in developing countries, others judge them as ineffective, unenforceable or even as disguised protectionism. The main question is whether the inclusion of such labour provisions has had any effects on labour standards in the countries concerned and on their compliance with these commitments.

We endorse the position that labour provisions in regional and preferential trade agreements may represent an effective and legitimate way of introducing labour issues into the globalisation trend, in particular following the Singapore Ministerial Conference (1996), which rejected labour standards as a matter of concern for the World Trade Organization. However, the research presented in this policy brief suggests that **labour provisions in trade agreements have not played a significant role in improving labour practices**. Their effect has been somewhat limited to institutional measures such as the ratification of ILO conventions. This gap between formal involvement and actual protection of labour rights highlights the importance of the enforceability of these labour provisions. The inclusion of internationally recognised labour standards in trade agreements cannot be an effective instrument in itself if the provisions are not sufficiently enforceable. The most respectful countries involved in the agreements, associating international organisations such as the ILO, might then help partners to improve their social practices.

EVIDENCE AND ANALYSIS

ILO conventions ratification

The empirical estimations indicate that countries that ratify trade agreements with labour provisions tend to have a higher number of ILO conventions ratified one, two and three years after the entry in force of the agreement. In contrast, trade agreements without labour provisions have no effect on ratification, with each country having a high probability of maintaining the status quo. Nevertheless, the **adoption of international labour standards does not imply that these provisions actually improve labour conditions**. The reason is that, even if ratified conventions are under international law and should be binding, they are de facto weakly enforceable because ILO does not have sufficient legal instruments. Consequently, ratification does not always reflect real compliance with workers' rights. Some countries frequently blamed for their poor practices, such as Chad, Pakistan, Rwanda and Yemen among many others, have ratified the eight conventions unlike Canada and the United States, which have respectively ratified six and two of them.

Workers' rights practices

Paradoxically, the results show that trade agreements that include labour clauses have no significant effects on workers' rights while trade agreements that do not include provisions increase the odds of having a higher level of protection of workers' rights. Such a paradoxical finding might reflect the fact that countries exhibiting good labour practices prior the negotiation of the agreement neglect labour clauses because they are faced with less political pressure to include such provisions. However, recent negotiations on mega-regional trade agreements, such as the *Trans-Pacific Partnership (TPP)* and the *Transatlantic Trade and Investment Partnership (TTIP)*, show that the inclusion of labour standards is important to the debated issues in negotiation, even between compliant countries. This result may be also due to a statistical artefact and indeed is not confirmed when we test developing and developed countries separately (see below).

These results suggest that the effects of labour provisions in trade agreements are frequently limited to formal measures like the ratification of ILO conventions. While some RTAs that include labour clauses are accompanied by mechanisms to guarantee the enforceability of these clauses, as in the case of NAFTA, many others are not.

The case of developing countries

Further results indicate that the effect of trade through trade agreements may also differ between developing and developed countries. For developing countries, the effect on the number of ILO conventions ratified is almost three times greater than for developed countries when labour provisions are included. Moreover, higher trade intensities with partners under trade agreements without labour provisions do not increase, and even reduce, the expected number of ratified ILO conventions by developing countries, but have a positive effect for developed countries. Our research shows that trade agreements promote the ratification of conventions by developed countries without it being necessary to introduce provisions, while for developing countries, trade agreements have to include social provisions if they are to stand more of a chance of giving rise to ratifications of ILO fundamental conventions.

When we consider developing and developed countries separately, trade agreements have no effects on workers' rights, with or without provisions.

The case of each convention

When we consider each of the eight conventions separately, involvement in trade agreements always increases the probability of ratification, irrespective of the inclusion of labour provisions. However, the relation is statistically significant only for the freedom of association, discrimination and child labour. The coefficient is then always higher for agreements without labour provisions. This paradoxical result is due to the fact that a large number of trade agreements between countries having ratified conventions were signed prior the recent wave of the introduction of labour provisions. A further explanation is that the United States and Canada did not ratify all the conventions concerned, albeit they ratify only agreements with labour provisions.

Trade agreements with labour provisions do increase the expected number of conventions ratified. Nevertheless, such an effect is not systematically found in the case of the protection of workers' rights. The increasing tendency to include labour provisions in trade agreements seems to reflect a certain consensus that labour issues can be addressed at a bilateral level. However, the results presented suggest that the mere inclusion of labour provisions in trade agreements does not directly or automatically translate into improvements to workers' rights.

POLICY IMPLICATIONS AND RECOMMENDATIONS

To the question, "Do trade treaties have to include provisions dealing with core labour standards?", the answer is positive even if the transition from the ratification of ILO conventions to the respect of workers' rights remains a critical issue. These clauses should aim to promote sustainable development and the reduction of poverty. Many of the UN's Sustainable Development Goals (SDG) are concerned, mainly "no poverty", "gender equality", decent work and economic growth", "reduced inequality" and "partnership for the goals".

The EU considers workers' rights and the promotion of decent work as part of sustainable development into which its trade policy must fit. The EU, as well as the US and other developed countries, should continue to consider social and labour provisions in trade agreements as a potentially useful mechanism to improve labour conditions and reduce poverty.

Regardless of the objective assigned to the labour provisions included in trade agreements (whether it is protecting fair trade, minimizing the negative effects of free trade on certain workers, upholding universal values or promoting decent work in developing countries), they should contain provisions in which the parties expressly recognize, first, the legitimacy of the ILO to deal with labour issues, and second, the core conventions as the benchmark for acceptable working conditions. Although ratification is barely enforceable, it is a first step that allows for inspection and surveillance by the Organisation.

In this respect, **trade agreements could be made conditional** on prior ratification of ILO conventions, which would increase ratification not only in countries that ratify these trade agreements, but also in countries that expect to sign a trade agreement with the EU in the future. Additionally, **the agreement should establish a follow-up procedure** in order to check compliance with these standards.

The results presented above highlight the importance of the enforcement mechanisms attached to the labour provisions included in trade agreements. When enforcement mechanisms are not clearly included, countries ratifying trade agreements that include labour provisions might ratify additional ILO conventions, but without upgrading labour practices in order to comply with them.

However, when labour provisions are limited to making reference to the ILO core conventions without discussing further mechanisms of promotion and enforcement of labour rights, countries to some extent **shift the burden of responsibility of surveillance and enforcement to the ILO**, whose capacity and sanction powers are too limited to be effective. Countries may use the ratification of ILO conventions as a more visible way to signal their commitments to the protection of workers' rights. Nonetheless, they are inadequate to enforce these commitments in practice if there are not enough incentives to do so.

Enforcement mechanisms differ among agreements, with no unique design to guarantee their effectiveness. Accordingly, they should be understood in a broad sense. Whether they rely more on consultation and dialogue, as in EU agreements, or take the form of sanctions, as in the case of US treaties, they do play a central role in ensuring the credibility of labour clauses and in promoting actual improvements in working conditions. Monitoring of the implementation of labour provisions and follow-up procedures should be strengthened and more systematically applied.

However, countries with low levels of labour rights may consider the enforceability required by "virtuous" partners as a form of protectionism and intrusion, which could make trade negotiations more difficult. These countries will have to consider the ratified ILO conventions and provisions included in trade treaties as an additional instrument that legitimizes a policy of economic and social development designed to reduce poverty.

"Positive" sanctions, such as conditional aid and supplementary trade openness, should provide more incentives than traditional sanctions such as fines or extra-tariffs. Trade agreements should avoid provisions that may give grounds for the charge of disguised protectionism by developed countries against developing countries.

The EU General System of Preference applies a system of "positive" sanctions (GSP+) giving more preference to countries accepting deeper commitments to comply with human rights, including labour rights. This principle of positive sanctions has also been successfully tested by the famous US-Cambodia agreement on textiles. For new agreements with concerned countries, the EU might schedule an enlargement of preferences, bound to improvements in workers' rights and eventually targeted on sectors or firms.

These procedures, along with other labour-protection-related issues, should be preferably treated in a separate section of the agreement guaranteeing coherence and clarity. For example, for Colombia, the US trade agreement imposes a specific chapter titled “labor”, while the EU prefers a more general “trade and sustainable development” title.

A priori, the fact that the USA and the EU respect core labour standards should make the TIPP negotiations easier. However, first we are in a paradoxical case where EU countries have ratified the eight fundamental ILO provisions when the United States has only ratified two of them (abolition of forced labour and worst forms of child labour). Secondly, both sides deal differently with the issue in terms of content (the USA usually introduces health at work or minimum wages) and form (specific chapter or inclusion in a more general title) and the nature of enforceability.

Whatever the ideological approach by the EU and other developed and democratic countries, the inclusion of labour standards in trade agreements is under pressure from civil society, including trade unions and NGOs. The ILO conventions, which are international treaties, strengthen civil society by giving it the legitimacy of international law. The close **involvement of civil society should continue to be considered as fundamental for the successful implementation of the provisions**. This, in addition, lends a sense of transparency and inclusiveness to the process. Civil society’s role should not be limited to denouncing violations of labour rights, but should also be extended to giving advice and monitoring, which will have more credibility if it is carried out by experts who are independent from states. However, follow-up must be more attentive to the progression than the level of standards. Civil society also has an important role to play in putting pressure on companies that do not respect the core labour standards and denouncing violations of workers' rights.

RESEARCH PARAMETERS

Reliable data are among the main limitations encountered when researching the link between trade and labour. Our approach considers two broad measures of labour conditions. First, for each country, we consider the number of ratified core conventions among the eight established by the ILO Declaration on Fundamental Principles and Rights at Work (ILO NORMLEX database). Secondly, we use data from the CIRI Human Rights Data Project to assess the effect of trade agreements on actual compliance with workers’ rights. A key element was to consider the different extent of implications that each trade agreement generates to improve labour conditions. Such implications have been measured based on the economic importance that trade under each trade agreement has for signatory countries. The labour provisions included in trade agreements are identified and ranked based on the studies by Siroën (2013) and Kamata (2014, 2015).

In order to estimate the effect of labour clauses included in bilateral and regional trade agreements on the ratification of ILO conventions, and to contrast this effect with the impact on workers’ rights practices, we developed different econometric models using data on 194 countries covering the period from 1980 to 2013. We have also controlled the econometric models for other determinants such as size (GDP and population), institutions (civil liberties, political rights and federalism) and structure (FDI and industrial production). We have taken into account possible lags between the entry into force of the agreement and its effects on ratifications and practices. We have also dealt with some technical issues (estimation methods and unobservable variables).

PROJECT IDENTITY

PROJECT NAME	NOPOOR – Enhancing Knowledge for Renewed Policies against Poverty
COORDINATOR	Xavier Oudin, Institut de Recherche pour le Développement, Paris, France oudin@dial.prd.fr
CONSORTIUM	CDD Ghana Centre for Democratic Development – Accra, Ghana CDE Centre for Development Economics – Delhi, India CNRS-CSH Centre National de Recherche Scientifique (India unit), Centre de Sciences Humaines / Institut Français de Pondichéry – Pondichéry, India CRES Consortium pour la recherche économique et sociale – Dakar, Senegal GIGA German Institute of Global and Area Studies – Hamburg, Germany GRADE Grupo de Analisis para el Desarrollo – Lima, Peru IfW Kiel Institute for the World Economy – Kiel, Germany IRD Institut de Recherche pour le Développement – Paris, France ITESM Instituto Tecnológico y de Estudios Superiores de Monterrey – Monterrey, Mexico LISER Luxemburg Institute for Socio-Economic Research – Esch-sur-Alzette, Luxemburg Oikodrom The Vienna Institute for Urban Sustainability – Vienna, Austria UA-CEE Université d'Antananarivo – Antananarivo, Madagascar UAM Universidad Autonoma de Madrid – Madrid, Spain UCHILE Universidad de Chile – Santiago de Chile, Chile UCT – SALDRU University of Cape Town – Cape Town, South Africa UFRJ Universidade Federal do Rio de Janeiro – Rio de Janeiro, Brazil UNAMUR Facultés Universitaires Notre-Dame de la Paix – Namur, Belgium UOXF-CSAE University of Oxford, Centre for the Study of African Economies – Oxford, United Kingdom UPD Université Paris Dauphine – Paris, France VASS Vietnamese Academy of Social Sciences – Hanoi, Vietnam
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FURTHER READING	<p>Kamata, I. (2014). Regional Trade Agreements with Labor Clauses: Effects on labor standards and trade. Research Institute of Economy, Trade & Industry, IAA. Retrieved from: http://www.rieti.go.jp/en/publications/summary/14030004.html</p> <p>Kamata, I. (2015). Labor Clauses in Regional Trade Agreements and Effects on Labor Conditions: An Empirical Analysis. Kyoto University, Graduate School of Economics, Research Project Center Discussion Paper Series.</p> <p>Siroën, J-M. & Andrade, D. (2015). Regional Trade Agreements and Diffusion of International Labour Standards. NOPOOR Working Paper.</p> <p>Siroën, J-M (2013). Labour provisions in preferential trade agreements: Current practice and outlook, International Labour Review, International Labour Organization, vol. 152(1), pages 85-106, 03.</p> <p>Siroën, J-M (2012). Core labour standards and exports, Working Papers</p>

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