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Working Beyond the Border? A New Research Agenda for the Evaluation of Labour Standards in EU Trade Agreements¹

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Abstract

The European Union (EU) has approximately fifty bilateral trade agreements in place with partners across the world, and more than twenty more that are at various stages of the negotiating process. At the same time as they increase in number, these agreements also increase in scope. EU trade agreements now cover a wide range of regulatory measures, including ‘Trade and Sustainable Development’ chapters, which, among other things, contain obligations in relation to labour standards. These labour standards provisions follow a common model (with limited variations) and adopt an approach which has been described as ‘promotional’ rather than ‘conditional’. In the context of the broader debate about the purpose and efficacy of the labour and trade linkage, this article examines the possibilities and limitations of the EU’s new provisions on labour standards. It draws attention to the limited research on the impact of existing provisions ‘on the ground’ with respect to different types of agreements, and why this is problematic. It then concludes with proposals for a research agenda that can fill this gap, involving a set of methodologies requiring greater concern for firm and country-level assessment of changes arising from the implementation of this new breed of EU bilateralism and directed to the question of whether EU labour standards can really work ‘beyond the border’.

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Working Beyond the Border? A New Research Agenda for the Evaluation of Labour Standards in EU Trade Agreements

Introduction

Inclusiveness is just as important outside the EU's borders. We are committed to promoting sustainable development, international labour standards and decent work outside the EU (European Commission 2010: 8).

Since the 1990s and the creation of the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA) and the European Union's Single Market, the rules that govern international trade have been subject to intense academic and public debate. Two aspects of this debate are particularly worthy of note in the context of this article. First, the idea that liberalizing trading relationships will lead to increased prosperity for all became increasingly contested, and the causal relationships between trade openness, economic growth and broad social goals like poverty reduction and better working conditions were acknowledged to be more complex than initially supposed (McCulloch, Winters et al., 2001; Harrison, 2007). Second, unlike the multilateral rules agreed in the 1947 General Agreement on Trade and Tariffs (GATT) that were centered on 'openness' and the unifying principle of liberalization, many of the more recent trade agreements have involved the creation of regulatory frameworks which place members under *positive* regulatory duties on a variety of issues – from the protection of intellectual property to conducting scientific risk assessments of food safety regulations (Heiskanen, 2004). As a result, there is therefore now widespread recognition of the need to carefully scrutinize international trade agreements in order to understand the complex effects that their rules have on the international trading system, individual countries which operate within that system, and particularly vulnerable groups who may be affected by any negative impacts (Harrison, 2007 and 2014).

This article concentrates on one particular set of *positive* obligations – international labour standards – which are increasingly prevalent in bilateral and regional trade agreements across the globe. The article explores a novel approach to their inclusion by the European Union (EU). Our focus concerns the new generation of EU bilateral trade agreements originating with the 2007 South Korea Free Trade Agreement (FTA), which are part of the EU's project to establish a 'deeper' and 'more comprehensive' range of trade and associated obligations.² This focus allows us to investigate the effects of labour provisions in agreements that contain similar provisions on labour standards, yet are greatly differentiated in terms of their geographical, developmental and broader legal contexts. Ultimately, we wish to know the extent to which (if at all) the EU meets its own lofty rhetoric outlined in the article's epigraph, especially given the assumption held by many critics of FTAs that 'agreements will only be as useful as the politicians desire them to be' (Vogt 2014, p. 145).

The article begins by recapping the failed attempts to incorporate labour standards in the WTO system, and the subsequent diversion of these efforts into the bilateral sphere. It is important to reflect on these differentiated bilateral 'experiments' as they cover an increasingly large proportion of international trade between countries. The article then explores one important and widespread model of labour standards; the 'promotional' model which the EU has incorporated within the sustainable development chapter of all of its recent trade

² The language of 'deep' and 'comprehensive' to signal what is new about the EU's current trade agreement agenda is captured in the current negotiations with neighbouring states involved in the Eastern Partnership and the Euro-Mediterranean Partnership over a range of bilateral Deep and Comprehensive Free Trade Agreements (DCFTAs) (see Wijkman 2011, Smith 2014).

agreements. The article sets out the basic components of this model, and the limited variations that exist in different agreements. It explores the existing academic literature which has analyzed these new arrangements, highlighting the lack of critical scholarship on the degree to which these arrangements have transformed (or have the potential to transform) labour and employment practices in particular differentiated national and industrial/sectoral contexts. It concludes by making proposals for a research agenda that can fill this gap, involving investigation of the concrete consequences of these agreements in countries now subject to this new breed of bilateralism. We thus call for an exploration of the phenomenon of EU-externalization not just from the perspective of policy makers and lobbying interests in Brussels and EU Member States (the focus of much of the existing literature), but also from the perspectives of industry and workers in partner countries.

Labour Standards Provisions in International Trade: From Multilateral Impasse to Bilateral Experimentation

There is a long history of linkage between trade agreements and labour standards (ILO and ILS, 2013) and since the inception of the multilateral trading system in the mid-twentieth century there have been periodic attempts to have labour conditionality – often as part of a wider social clause – included within the GATT and subsequently the WTO. This was often the result of proposals put forward by the USA and supported by various other powerful states, including the EU, both of which had begun to link their *unilateral* trade preferences to minimum labour standards from the 1980s onwards (Charnovitz, 2002; Haworth et al., 2005). This linkage became particularly prominent in the run up to the 1996 WTO Ministerial Conference in Singapore, where it became a major stumbling block for the trade negotiations as a whole. Indeed, an invitation to the International Labour Organization (ILO) to speak was withdrawn because of objections from developing countries³ who did not want any discussion of labour issues at the meeting (Leary, 1997). The so-called ‘Singapore Declaration’, produced as a result of that meeting, reflected this reluctance by many countries to use the WTO to directly govern labour standards. In this declaration, Members could only agree that the ILO was the competent body to set and deal with labour standards; they rejected labour standards as a means of disguised protectionism; and affirmed that ‘the WTO and ILO Secretariats will continue their existing collaboration’ (WTO, 1996, para. 4).

The Singapore Declaration appeared to have signaled clearly that the ILO, and not the WTO, would lead on labour standards (O’Brien et al., 1998). However, the USA’s interpretation was that this did not discount the possibility that widely-agreed ILO standards could at some point be diffused into the trade system. So, using the WTO to enforce labour standards again became an issue leading up to the 1999 Seattle Ministerial Conference, and again contributed to the ultimate breakdown in negotiations (Charnovitz, 2002) and the reaffirming at the Fourth Ministerial Conference in 2001 of the position as stated in the Singapore Declaration. Since this time there has been no serious attempt to address labour standards within the multilateral WTO framework (Orbie et al 2011). However, this has not spelt the end of attempts to create linkage on this issue. Indeed, as has happened in relation to many other areas linked to trade, as progress has been blocked in the WTO, there has been an upsurge in the negotiation of labour standards within bilateral trade agreements (Ebert and Posthuma, 2011).⁴ Consequently, we are currently witnessing a period of experimentation

³ In this article we use the terms ‘developed’ and ‘developing’ country as they are in the WTO, i.e. Member States self-assign themselves to a category. Currently around one-quarter of the 159 WTO Members consider themselves as developed countries, counting the EU members as separate entities. Curiously, this does not include all OECD members. For instance, South Korea classifies itself as a developing country in the WTO context.

⁴ While there were only four regional and bilateral trade agreements containing labour standards in 1995, there were 58 as of June 2013 (ILO and ILS, 2013). Moreover, although it is clear that countries such as the US,

whereby different models of labour standards provisions are operating in different bilateral trade agreements between different trading partners. There is a great deal of diversity between these models in terms of trade coverage,⁵ labour standard coverage,⁶ methods of promotion,⁷ and methods of enforcement.⁸

In this article we concentrate on analyzing the model of labour standards included in recent EU bilateral trade agreements and argue that there is an absence of research to examine the potential and real impacts on improvements in labour conditions. This emerging EU model is analyzed in depth below, but it is worth highlighting that the EU model can be differentiated from that favoured by other countries, primarily the USA and Canada, which have also been promoting fairly standardized models of labour standards in their trade agreements. The ILO and ILS (2013) usefully differentiate two broad types of provisions that have been adopted. First, there is the *conditional* approach which includes provisions which make the conclusion of a trade agreement conditional on respect for particular labour standards (i.e. pre-ratification conditionality) and/or provisions in the concluded trade agreement which allow for sanctions to be taken if particular labour standards are violated (i.e. post-ratification conditionality). About 40 per cent of trade agreements that include labour provisions have a conditional dimension, meaning that there is a sanction or benefit as a result of compliance (ILO and ILS, 2013). This approach is particularly employed in US and Canadian agreements.⁹ Second, there is the exclusively *promotional* approach. In this:

...provisions do not link compliance to economic consequences but provide a framework for dialogue, cooperation, and/or monitoring and are found mainly in EU, New Zealand and South-South trade agreements that consider labour issues (ILO and ILS, 2013, p. 1).

As we detail in the next section, the origins and rationale for both the conditional and promotional approaches have been extensively discussed in the literature. But to date, research into the impact and effectiveness of these provisions has focused almost entirely on the former.¹⁰ The findings on these ‘hard law’ provisions suggest that they have generally been used to demonstrate political commitment to core labour standards, to ratchet up domestic labour legislation in signatory countries, and to provide crude but clear incentives by which to influence the behaviour of national governments (Cuyvers and Zhou, 2011; Grynberg and Qalo, 2006; Hafner-Burton, 2005).

However, the EU’s *bilateral* approach appears as a distinct alternative, favouring ‘soft law’ policy tools. Observers of EU trade policy report that the European Commission has increasingly come to see sanctions as “the nuclear option”, i.e. something to be deployed only

Canada and the EU have taken the lead in including such provisions, there is evidence that this is an increasingly international phenomenon (Kerremans and Gistelinck, 2009). From the roughly 190 countries which have trade agreements, 120 are partners to at least one agreement which contains some form of labour standards provision, and there are now 16 agreements between developing countries – referred to as South-South agreements – that contain labour standards (ILO and ILS, 2013).

⁵ Unilateral Generalized System of Preference (GSP) schemes only cover trade in certain goods, whereas bilateral trade agreements often cover a much wider range of goods, services, investment etc.

⁶ For example, the precise standards that are covered can be based on reference to ILO core labour standards, the ILO Better Work agenda, national legislation or particular Conventions, etc.

⁷ For example, they could be promoted through dialogue, complaints mechanisms, capacity-building, etc.

⁸ For example, they could be enforced through a standard dispute settlement mechanism, a bespoke labour dispute settlement, the opinions of groups of experts, etc.

⁹ The US utilizes both pre-ratification and post-ratification conditionality. Canada, at least in a formal sense, operates only post-ratification conditionality.

¹⁰ It is worth noting here that the EU does maintain conditionality in its GSP, although arguably the value of some of these trade preferences is diminishing as it signs ever-more bilateral agreements with third countries.

rarely and reluctantly.¹¹ Indeed, in the new generation of EU bilateral agreements this option no longer even exists (although it is preserved in its unilateral GSP+ scheme).¹² In this sense then, its approach has much more in common with labour standards as they have been advanced in private forms of trade governance, such as supply-chain certification, corporate codes of conduct and public-private compacts. Through mechanisms such as self-regulation, norm-setting, peer-review and international monitoring, this proliferating set of initiatives has produced a wide variety of outcomes, with some being more effective than others— although it remains the case that they are often only established and/or implemented in response to pressure brought by civil society watchdogs (see Fransen, 2012; Hughes et al., 2007). While the work on largely private-sector initiatives shares some characteristics with the EU’s *promotional* labour standards in its bilateral trade agreements, there are also marked differences. For instance, the former are not linked to international trade legislation. They are therefore not good indicators of the impact of mechanisms formally endorsed by political leaders and connected to legal obligations to enforce ILO Conventions. In the next section of the article we thus begin our exploration of the promotional EU model contained in recent EU bilateral trade agreements and what it means in practice.

The EU’s ‘Promotional’ Labour Standards Model: A Negotiating Blueprint

Since the mid-1990s, the EU has “deliberately put ‘sustainable development’ and ‘social solidarity’ at the heart of EU trade policy discourse” (Orbie, 2011). This commitment has since become institutionalized in key legal instruments of the EU, namely the 2009 Lisbon Treaty, which most commentators identify as a critical underpinning for the current trade policy (e.g. Orbie, 2011). Under Article 201(1) the Lisbon Treaty states that trade policy “shall be conducted in the context of the principles and objectives of the Union’s external action” – objectives which include equality and solidarity – and under Article 3(5) it creates the objective of “fair trade” alongside “free trade”. At the same time it also increased the scope of the European Commission to conclude trade and investment agreements independently of EU Member States, whilst introducing a greater role for the European Parliament in ratifying and reviewing trade policy (De Gucht, 2010).

This policy discourse and institutionalized legal commitment began to permeate into the EU’s trade agreements, in terms of protection of labour standards, around the turn of the millennium. The first agreement in which core labour standards appear is the Trade, Development and Co-operation Agreement with South Africa (1999), closely followed by clear commitments to labour standards in the Cotonou Agreement with the African, Caribbean and Pacific group of 77 countries (2000) and later the FTA with Chile (2003) (Van Den Putte et al., 2013). Subsequent to these agreements, and perhaps putting the failure of the Singapore Declaration behind it, the European Commission felt bullish enough about the prospects for trade-labour linkages to publicly pledge to “put more of its commercial weight behind efforts to promote social standards and decent work in bilateral and multilateral trade negotiations” (European Commission, 2006b, p. 8). Indeed, this can be seen as part of a wider attempt on behalf of the EU to establish an invigorated human rights and democracy framework beyond the realm of international trade alone (EU, 2012).

This commitment crystallized in the FTA with South Korea (2011) in which we see a distinct model of labour standard provisions appearing and what the EU itself refers to as a “new generation” agreement (DG Trade, no date), which includes a specific legal chapter on ‘Trade and Sustainable Development’. Over the same timeframe as the South Korea FTA was

¹¹ Interview with senior personnel, development policy NGO, Brussels, 2013.

¹² To date, preferences have only been suspended for Belarus, Myanmar and Sri Lanka, although they have been considered for China, India, Pakistan and Russia too.

being negotiated – and as part of the wider Global Europe strategy and deeper engagement with its neighbouring states – the EU also embarked on Deep and Comprehensive Free Trade Agreement (DCFTA) negotiations with countries in East Europe and North Africa, Economic Partnership Agreement (EPA) negotiations with sub-regions of African, Caribbean and Pacific countries, and a host of other free trade agreements. All trade agreements concluded as part of this new generation by the EU contain a similar chapter on Trade and Sustainable Development. Equivalent chapters are also found in the recently initialed Association Agreements with Moldova and Georgia, and it is reported that all agreements currently under negotiation by the EU contain similar provisions (Bartels, 2013).¹³ While there is some limited variation between the provisions in the different agreements, commentators have been able to observe sufficient commonality so as to identify a ‘blueprint’ emerging (Van Den Putte et al., 2013).

In each ‘new generation’ agreement we find common elements in terms of the context in which labour standards are invoked, the substantive labour standards relied upon, the institutional structures created, and the way that complaints are handled. The context in each agreement is recognition of the importance of consideration of labour standards if trade agreements are to promote sustainable development and international trade is to be appropriately ‘managed’.¹⁴ In terms of substantive standards, all the agreements involve the parties committing to the ILO’s Core Labour Standards, i.e. freedom of association and the effective recognition of collective bargaining, the elimination of forced and compulsory labour, the abolition of child labour, and the elimination of discrimination in respect of employment and occupation. All the chapters also include agreement by the parties that they will not use labour standards for the purposes of disguised protectionism, that they will uphold their own existing domestic labour laws, and that they will not weaken or waive laws to encourage trade or investment (Bartels, 2013). In terms of institutional structures, all the chapters include the establishment of a joint committee comprised of representatives of the two parties who will oversee the implementation of the chapter, accompanied by civil society mechanisms of various types. None of the agreements utilize the standard dispute settlement process for dealing with complaints, and so no party can bring an action that would result in the suspension of trade preferences against the other party. Rather, complaints are handled by a panel of experts who report their findings in various ways depending on the institutional structures established under each Agreement (Bartels, 2013).¹⁵

Existing Research on the EU Model: The Question of *Why*?

Existing research on the EU’s promotional approach to putting labour standards in trade agreements has largely revolved around the question of *why* such a linkage has been established. Drawing upon many of the themes that reoccur across the history of the trade and labour debate, yet influenced by the disciplinary and theoretical position of the author(s) concerned, different motivational aspects have been identified. Bringing together the various

¹³ However, negotiations with countries such as the US and Canada are likely to pose particular problems for the rolling out of the EU model, as these countries have their own standard sets of provisions on labour standards.

¹⁴ For example, in the recently initialed EU-Moldova Association Agreement, which contains within in it a DCFTA agreement, Article 365 of the Trade and Sustainability chapter states that the EU and Moldova “reaffirm their commitment to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all.” Identical provisions exist in the EU-Georgia Association Agreement, which was initialed at the same time in November 2013.

¹⁵ The EU-CARIFORUM Agreement contains provisions relating to a panel of experts, but also does not rule out using the standard dispute settlement procedure. This is perhaps the most significant variation in the ‘new generation’ model from the standard EU template. There are a range of other subtle variations which are explored in Bartels (2013).

strands of this literature, Orbie, Gistenlinck and Kerremans have offered four factors that explain the EU's approach in this area:

...the ideological disposition of EU member state governments; member state concerns about possible creeping EU competences in the area of labour regulations; the fact that trade-related labour standards may be less important for the member states than other trade-related objectives and concerns; and the increased attractiveness of the ILO as an alternative to a WTO-based approach to international labour standards (Orbie et al., 2011, p. 158).

Analysis of this motivationally-focused literature, demonstrates the limited extent to which it informs us in relation to how these arrangements have the potential to transform labour and employment practices 'on the ground' in third countries.

In terms of the *ideological* disposition that drives the EU's inclusion of labour standards in trade agreements, the EU's approach is often characterized as based on an attempt to ensure that the working conditions of labour worldwide are gradually enhanced and improved, what we might term a universalist human rights rationale (Harrison, 2007) – a rationale that would always need careful scrutiny. Certainly this principle is embedded in much of the European Commission's discourse on the new generation agreements (Orbie, 2011). In contrast, the Commission readily downplays arguments that its new generation model is designed to protect EU industry from 'unfair' competition based on heavily-exploited labour once markets are liberalized, what we might term a social dumping rationale, although this may find more favour in individual EU Member States (Bossuyt, 2009). But campaigning groups and citizens across Europe do appear worried about the affects of opening up markets without social protection, as "workers in countries with lower standards 'subsidise' the production of cheap products through poverty wages, unsafe working conditions and subsequent hardship" (ILO, 2011, p.2; see also the Alternative Trade Mandate, 2014 and Aaronson and Zimmerman, 2009, p131). Therefore exploration of the explicitly expressed ideological motivation for the new generation model should not be sufficient to convince us that this is its single aim and objective, nor to inform us as to what the impacts of this model might be in third countries (Burgoon, 2009).

In terms of the *political* dynamics of the adoption of the new generation model, there are suggestions that it represents a weak compromise. EU Member States and institutions face pressure from particular interest groups to include some form of social provisions in their trade agreements and they act upon this. But the complex and often closed dynamics of EU policy-making make it difficult for such groups to be effective (Kerremans and Gistelinck, 2009) and EU Member States tend not to see labour standards as a priority beyond their immediate material impact on import-sensitive industries (Orbie et al., 2011). Therefore the new generation model is characterized as being more geared towards placating the more vociferous interest groups within Europe – be they industrial sectors or social campaigners, the contemporary equivalent of the 'Baptist and bootlegger' coalition¹⁶ – than actually attempting to have any meaningful impact on the trading relationships between the EU and third countries. This perspective suggests that the progressive possibilities envisaged by key EU policy-makers in relation to the new model are limited.

A more positive analysis about intended impacts stems from the argument that there is a strong *ideational* aspect to the EU's new generation of trade agreements. They have been developed in the shadow of genuine concern from developing countries about the EU's motives in pursuing its own 'social trade' agenda (Elgstrom, 2007). The EU has responded in

¹⁶ Baptist and bootlegger coalitions take their name from the interest groups that lobbied for alcohol prohibition in the US – a common cause bringing unlikely partners together.

its new generation of trade agreements with a model that aims to tackle this international legitimacy deficit. By utilizing ILO Core Labour Standards as the values it promotes, it seeks to counter criticism that it is promoting its own social agenda, and instead appears to embrace a set of values with universalist appeal (Manners, 2009). The use of co-operative mechanisms based on dialogue and persuasion is also vital to the EU being seen as a ‘reasonable’ actor in trade policy debates (Elgstrom, 2007). This perspective allows commentators to argue that the EU is primarily exercising ‘normative power’ through its new generation model, or from a legal perspective, that it is using a more consensual soft law approach (Elgstrom, 2007). But it is also recognized there is yet to be any determination of any actual impact of the EU’s approach beyond its own political acceptability (Manners, 2009).

Finally, the EU’s approach has been characterized as motivated by an attempt to create *policy coherence* between different areas, such as the social and human rights dimension of its policies on the one hand, and its trade policies on the other (see Bossuyt, 2009, p. 717). Traditionally these policies have been implemented separately, but by integrating labour standards into trade agreements the aspiration is to achieve policy coherence and to achieve both sets of objectives through the same policy mechanism. But integration of these differing policy objectives within the same legal instrument will not necessarily achieve coherence. One criticism is that overlap between the new provisions on labour standards and the human rights clauses which appear elsewhere in all EU trade agreements creates internal incoherence that might undermine the provisions in question (Bartels, 2013). A more far-reaching critique of the ‘coherence mindset’ suggests that the focus on achieving coherence can blunt the transformative potential and progressive possibilities of social agendas. This is because there is an assumption that the creation of legal coherence is equivalent to respect for underlying values, and that the incorporation of labour standards into trade agreements will lead to the protection of human rights and labour standards on the ground. This assumption should not be made (Harrison, 2014).

The ideological, political, ideational and coherence-orientated motivations for the new generation of trade agreements give us important insights into why EU policy has developed in the way that it has. Clearly, on questions of causality, there is no ‘right’ answer waiting to be uncovered, and, equally clearly, it is probable that overlapping rationales for the promotion of labour standards will be found within particular policy-making milieus. However, while this examination of the overlapping rationales for the EU’s approach is important in terms of its exploration of key motivational issues, it remains largely wedded to a Brussels-based perspective. In other words, it has been much more focused on tracing the domestic origins of trade policy within the EU than on studying the *contested, dynamic* and *differing translations* of this into the economies and polities of developing countries. Questions are left hanging throughout this debate about what might actually be achieved by the new generation model. *Ideologically*, will it seek to promote overall improvements in labour standards in third countries, or focus only on key export industries? *Politically*, is it window-dressing or well-crafted policy-making which can make a real impact? *Ideationally*, will a normative power or soft law agenda only be of interest conceptually, or will it actually have a real-world impact? And is the attempt to create *policy coherence* between different areas of policy-making a progressive step that will lead to more focused and less contradictory policy-making, or will it blunt the transformative potential of the social agenda?

We suggest that debate over the ‘progressive possibilities’ of promotional trade policy – i.e. policy which systematically privileges the disadvantaged; in this case, heavily-exploited workers – can only be advanced through the empirically-informed study of its effects in the fields and factories of the global economy. There is currently a paucity of research to this end. As noted by the ILO and ILS (2013, p. 67) while trade agreements with promotional as opposed to conditional labour standards are multiplying rapidly, “the effects of the promotional activities on workers’ rights on the ground have proven difficult to assess. ... More field

research on specific activities conducted under the different trade agreements is required in order to reach a better understanding of their effects”. Specifically on the EU’s bilateral trade agreements, Van Den Putte et al. (2013, p. 40) corroborate this gap, confirming that “no comparative and systematic research has been conducted on the scope, enforceability and the promotion of these social norms”.

The need for a research agenda examining the real material effects of EU bilateral trade agreements upon firms and workers ‘beyond the border’ of the EU is also demonstrated by the wide range of positions adopted by trade union groups and civil society organizations commenting on the new generation model. For example, among those civil society groups following EU trade policy, contrasting accounts have been offered. The European Trade Union Confederation has endorsed the South Korea FTA and appears hopeful that workers’ rights can be upheld via the new institutional architecture (ETUC, 2010). Meanwhile, the ‘Seattle to Brussels’ network of social campaign groups has been much more cautious, suggesting that without credible enforcement mechanisms and the threat of sanctions, any measures to protect labour will be largely ineffectual and are thus no more than rhetorical concessions (S2BN, 2012). According to the Transnational Institute, the EU’s FTA with Peru and Colombia even represented a backwards step from the more rudimentary but conditional requirements contained in its GSP+ (Fritz, 2010). Finally, a researcher at the CUTS Centre for International Trade, Economics and Environment has warned that many developing countries legitimately see labour standards as barriers to trade and that “social issues such as child labour are domestic problems and trade agreements should not be used as a tool to deal with them” (Jatkar, 2012, p. 10).¹⁷

Working Beyond the Border? Assessing the Impacts of EU Bilateral FTAs

The fundamental and under-explored questions which need to be asked in respect of EU trade and labour standards are to what extent, and how have they affected the lives of workers beyond the EU’s borders. This should include three key dimensions: the *legal protection afforded to workers* (referring to core labour standards in particular), the *conditions of employment* linked to this (e.g. collectively negotiated wage increases) and workers’ *political representation* (referring to the spaces opened up through the trade negotiating process and its subsequent institutional architecture). Without addressing these questions, we risk misunderstanding the possibilities for progressive trade policy by assuming that once a set of standards has been enshrined in a text they are effortlessly and uniformly ‘externalized’ throughout the working world. In Table 1 we map out a framework for research investigation to highlight distinct areas of indicative data and methodological approaches that need to be adopted to produce information required for an assessment of the effect on workers’ lives of EU bilateral FTAs across these three domains. To try and unpack the ‘question of how’, and as part of the development of a wider research agenda, in what follows we outline three key areas of enquiry (see also the first column of Table 1), before elaborating on the key methodological challenges such an approach entails. The three areas of enquiry incorporate to varying degrees the three dimensions of labour standards outlined above as cross-cutting issues, albeit some are situated more discretely into a particular enquiry than others (e.g. the legal protection of workers maps very neatly into the first enquiry on the negotiation and implementation of labour standards).

¹⁷ This author was writing in a personal capacity.

The negotiation and implementation of labour standards in the 'Trade and Sustainable Development' chapters of the EU's FTAs

Building on our critique of the EU-centred literature, we identify the need to start by looking at the extent to which negotiation processes are being shaped by the activism of state and civil society actors in third countries (Hurt et al., 2013). This may increasingly take the form of transnational campaigning – wherein opposition may be voiced in Europe on behalf of, or in solidarity with, groups in the proposed trade partner – given Lisbon Treaty provisions which accord a much stronger role for the European Parliament in shaping trade policy. The ‘bringing into being’ of labour standards is important as not only does it have implications for how the legislation is ultimately implemented, it also constitutes an opportunity for organized labour and their advocates to advance their interests *prior* to the agreement being struck. During trade negotiations and the now obligatory Sustainability Impact Assessments which inform them, state elites in third countries have frequently sought to convince the EU’s policy-making community that their government does protect human and labour rights, opening up “political space” for domestic coalitions to push for reform where they disagree with this assertion (ILO and ILS, 2013).¹⁸

The second aspect of negotiation and implementation requires a mapping and interrogation of the institutional mechanisms established as part of the agreements to understand the processes by which the agreement is brought into being, and how the mechanisms created have subsequently been utilised. For example, the EU-South Korea FTA made provision for the establishment of a Committee on Trade and Sustainable Development to monitor implementation of the relevant chapter and required civil society actors from both parties to participate in Domestic Advisory Groups that would feed into this Committee. There is some initial evidence which suggests that the combination of weak domestic advisory groups, a Trade and Sustainable Development Chapter which lacks any mechanism to arbitrate disputes or impose penalties and the absence of political will by the EU is such that the EU-Korea FTA thus far does not provide a particularly effective mechanism for the pursuit of resolutions to labour disputes. One commentator close to the advisory group process, citing the EU’s refusal to invoke formal consultations (the first step in the existing dispute settlement process) upon receiving evidence of serious labour violations committed by the government of South Korea involving teachers, civil servants and train drivers, among others, suggested “that there are no effective mechanisms for the resolution of disputes”.¹⁹ This is in comparison to the US FTA dispute settlement mechanisms, which contain provisions for lodging complaints over labour violations, international arbitration and sanctions (see below). In general, this commentator went on to suggest that the EU enforcement of labour standards is “extremely frustrating, with the EU taking a very mechanical reading of the arrangements and even then still not taking action when its own requirements are satisfied”. In another instance, a civil society participant nominally involved in the EU-Cariforum monitoring system explained that, despite being in force since 2008, no actual meetings have been held because of inactivity on the Caribbean side and the reluctance of the European Commission to speed things along because of the marginal trading status of the region.²⁰ These examples suggest the need for research strategies focused on understanding negotiation processes and implementation dynamics derived from key informants involved in bilateral FTA negotiation and implementation, as mapped out in the first two rows of Table 1.

¹⁸ Interview with representative of European Commission, Brussels, 2013.

¹⁹ Comments made by Jeff Vogt, International Trade Union Confederation, Brussels, at “Labour Standards and Sustainable Development” workshop, London, October 2014.

²⁰ Interview with representative of development NGO, Brussels, 2013.

The effect on workers' lives of labour standards provisions and institutional architecture in EU FTAs and the interplay with other aspects of EU trade arrangements

In order to more effectively assess the effect on workers' lives of labour standards provisions and the institutional structures of labour standards dialogue it is necessary to examine national- and regional-level policies that have emerged out of the trade agreement process and how these have influenced the three labour standards dimensions: legal protection, conditions of employment, and worker representation. One important question that arises from the discussion of ideological motivations of the new generation model highlighted above, is whether the focus of emerging policies has been on export industries (a social dumping focus) or on labour standards issues throughout the economy (a universalist human rights approach). These questions are most effectively tested, in the first instance, by focusing on industries where major labour concerns are likely to exist. For instance, we have identified the sugar industry in Guyana, the automotive industry in South Korea and the clothing industry in Moldova as suitable industries for testing out this issue: each country has signed a bilateral FTA with the EU in recent years, and each of these industries are significant employers and EU-oriented exporters within their respective countries.²¹ In each of these sectors there are labour-related concerns that need to be considered, including strikes over wages by sugar workers in Guyana, the intimidation of auto-parts suppliers in South Korea, and the exploitation of seasonal female factory labour in Moldova (see Stabroek News, 2013; Amnesty International, 2013; Clean Clothes Campaign, 2005, 2014). In order to understand the extent to which the institutional mechanisms of the respective FTAs have engaged with these issues it is important to not only consider the institutional structure of the FTAs. It is also necessary to drill down to the firm-level to look at remuneration and working conditions and attempt to identify the causal pathways by which the 'Trade and Sustainability' chapters of EU trade agreements generate material improvements (or not) for workers. As part of this, it is necessary to avoid focusing solely on 'labourism', with its emphasis on the permanent, male, centralized and unionized workforce, and to pay equal attention to the precarious workforce constituted by temporary, outsourced and dis-organized patterns of employment.²²

Since the chapters in the FTAs concerning sustainable development and labour standards do not work in isolation, it is also necessary to pay attention to the ways in which they intersect with other aspects of the trade agreements and with mechanisms of private governance in supply chains, such as corporate codes of conduct. For example, Locke (2013), in his analysis of the use of private standards in promoting better working conditions in the global economy, has suggested that these are most effective when private standards are "layered" alongside and interact with state regulation. There are three main dimensions to this. First are the impacts of other aspects of trade agreements as a secondary effect. For example, this requires an analysis of: how technical standards influence the upgrading of work-place

²¹ Automobiles (more specifically transport equipment at two-digit HS code level) constituted 16 per cent of EU imports from South Korea in 2012 (the second most important category of product import); sugar accounted for 43 per cent of EU imports from Guyana in the same year; and clothing accounted for 18 per cent of EU imports from Moldova (the most important category of product import) (all data extracted from Comext database). This dependence on the EU market is important as it provides the best possible chance to identify any effects that the provisions and processes of the trade agreements are having. It is our assumption that these will have most leverage over businesses that are commercially sensitive to European markets and public opinion. So each would represent a good potential case study of the 'social dumping' rationale. In addition, both the South Korean automotive sector and the Guyana sugar sector have been noted for their labour conflicts and strikes in recent years, and the integration of the Moldovan clothing sector into EU production and contracting networks has raised questions concerning working and employment conditions (Kingston, 2014).

²² See, for example, Barrientos *et al* (2011) on the differentiated impacts on workers in the clothing sector arising from Morocco's integration into the fast fashion segment of the EU industry, in part as a result of the earlier free trade agreement in industrial goods between the EU and Morocco.

practices and safety; or where DCFTAs are embedded in wider Association Agreements, as is the case for Moldova and Georgia, how these requirements influence other aspects of labour rights recognition such as working hours directives; or finally, as in Papua New Guinea's Interim EPA, secondary effects whereby a review clause for a new rule of origin contributed to the improvement of labour law and the unionization of several thousand workers (Hamilton et al., 2011; Campling and Havice, 2013).²³ Second, consideration needs to be given to the way labour standards contained in these provisions interplay with other aspects of European external relations, such as how aid for trade finance is targeted toward training for certain civil society groups to help them monitor implementation. Third, it is necessary to understand the interplay between FTAs and private governance standards such as corporate codes of conduct, where applied, and the extent to which these two dimensions drive change in workers' experiences in mutually beneficial or contradictory ways.

The uneven geographical effects of EU Free Trade Agreements on labour standards

Typically research on the trade-labour linkage has compared across rather than within sets of agreements, i.e. the US model compared to the EU model, or the US to the Canadian model, etc. (see Doumbia-Henry and Gravel, 2006; Grandi, 2009). This tends to assume uniformity within agreements and overlooks the fact that broadly similar texts can have very different effects depending on the context. For instance, a free-standing EU FTA (e.g. South Korea), an FTA as part of a wider European Neighbourhood Policy and Association Agreement (e.g. Moldova) and an FTA as part of a regional Economic Partnership Agreement (e.g. Cariforum) are likely to look very different in practice – even before we take into account the influence of the political economy, state and civil society in the country concerned. As well as recognizing the effects that the particular geo-political context of an FTA will play, it is also important to consider particular industry contexts. Different industrial sectors will be unevenly and differentially affected by the agreements in place, depending upon the sector and its forms of employment and prevalent labour regimes. Again, effective implementation of labour standards provisions will likely differ based on whether they are applied to capital-intensive manufacturing (e.g. automobiles), labour-intensive manufacturing (e.g. clothing) or agricultural production and processing (e.g. sugar). Implementation is, in part, dependent upon firms' having the financial resources (as well as will) to restructure workplace practices and such a position will differ considerably between activities with low capitalisation in clothing workshops and sugar plantation and processing plants, and those with much higher levels of capitalization in automotive assembly plants.

Sensitivity to geographical and sectoral difference is therefore of central importance in delineating the prospects for the EU's 'new generation' trade agreement model in enhancing working conditions in key export sectors, particularly given differing perspectives on the replication-dynamic of EU FTAs. For example, trade union lobbyists are hopeful that the precedent set by the South Korea 'blueprint' could be incorporated, and even strengthened, in the EU's proposed free trade agreement with India and probable agreement with China.²⁴ However, others have argued that in order to protect human and labour rights agreements must "be designed in full partnership between the negotiating parties and not based on a template

²³ One of the major gains to PNG in the IEPA was a liberalized rule of origin for fish products (a major export to the EU). This was tied to a review clause after three years of implementation of the new rule to assess its developmental and environmental impacts. The official review identified weaknesses in relation to core ILO conventions, which the PNG government agreed to redress in the second EU-Pacific interim EPA Trade Committee in February 2012. In this new context, the International Transport Workers' Federation worked with representatives of over 5,000 fish processing workers to shift membership from 'company' unions to the independent national Maritime and Transport Workers Union.

²⁴ Interview with representative of trade union confederation, Brussels, 2013.

model that one party develops and the other signs on” (Mohamadiéh, 2012, p. 4). Likewise, Grynberg and Qalo (2006, p. 651) suggest that the EU model could become “a precedent setting means of introducing new issues into the WTO negotiating process”, while others caution that because it sets a high bar in terms of civil society involvement it will be “difficult to have the same model set up with all trade partners as well as at the multilateral level” (EESC, 2012).

Methodological Challenges

In undertaking research on the effects of ‘new generation’ EU FTAs in the fields and factories of third countries there are clear methodological challenges. Causal chains are likely to be long and complex, and there is no consensus on how best to identify the effects of a single trade arrangement or the impact of the degree of export orientation on economic and social development – however that might be defined (see Milberg and Winkler, 2011). A common reading of ‘effectiveness’ as far as labour standards are concerned has been to consider the extent to which a cohesive external policy on human and labour rights is constructed and is then taken up by signatory countries. Here, the tracking of official documentation and expert commentary on legislative decision-making can be used to assess changes in law that can be connected to the negotiating process of a particular trade agreement (Cammett and Posusney, 2010). Making this causal claim is somewhat harder where post-ratification conditionality is the contributory factor. In this situation, some have opted to assess the reaction of governments to trade disputes alleging breaches of obligations and/or the suspension of preferences resultant from the violation of minimum labour standards as evidence of their effectiveness (ILO and ILS, 2013). This is a valid pathway but one which will have to be adapted in the case of the promotional approach given the absence of clear-cut hard law rulings (e.g. by interviewing personnel on the Committees on Trade and Sustainable Development and Domestic Advisory Groups to assess how institutional dialogue shaped government policy²⁵).

In order to go beyond national-level changes to labour law or ratification of international conventions (neither of which necessarily entail effective implementation), other scholars have articulated effectiveness as the correlation between measurements of actual labour rights and some independent variable. Mosely and Uno (2007), for example, look at the extent to which different aspects of economic globalization, such as trade openness, correlate with collective labour rights in a wide range of developing countries. They determine the experience of labour by scoring violations of 37 types of union-related rights in each country across a 17-year period, based on reports compiled by the US, the ILO and the International Confederation of Free Trade Unions. To make the claim that it is trade that is having a certain effect, rather than some other factor, they ‘control’ in their regression analysis for factors such as the level of democracy, the strength of civil society, and the degree of economic development.²⁶

Rather than pursuing this kind of quantitative approach – which would tell us little about the specific causal pathways of promotional labour standards, nor the social significance and biases of the labour rights abuses that they did or did not address²⁷ – we suggest there is greater value in following those methodological techniques used primarily in the literature on non-state governance mechanisms. For example, to assess the effectiveness of Hewlett-Packard’s auditing system on workers in its supply-chain, Locke et al. (2013) supplement their study of these audits with interviews conducted with a range of factory managers and

²⁵ Moreover, as indicated in Table 1, our methods for gathering data incorporate a multi-scalar approach which tries to capture dynamics of change at local-national-regional and firm-industry-sectoral levels.

²⁶ As an aside, the authors found that trade openness was positively related to labour rights violations.

²⁷ For instance, are people of a particular sex, ethnicity or race discriminated against more than others?

supervisors, with progressive change located in improvements in the settlement of workers' grievances and payment of overtime. Moreover, by conducting this fieldwork at two similar suppliers based in both Czech Republic and Mexico, they were able to see how a similar global auditing system took root in different national contexts – sometimes substituting for public enforcement of national law (as in Mexico) and sometimes complementing it (as in Czech Republic). In the same way, we suggest that there is a need to supplement collation of labour rights reports with interviews with elite-level policy-makers and factory-level stakeholders (managers and unions), and to do so in different national contexts. The aim is not to 'score' the lived experience of workers under new EU trade arrangements, but, in the spirit of Max Weber's *verstehen*, to elaborate what importance actors in developing countries ascribe to EU trade policy in the way labour is governed, and how it has structured their attempts to change the protection, conditions and representation afforded to workers (see also Delp et al., 2004), as well as to assess the real material consequences of labour standards implementation arising from FTAs.

Our approach offers an original contribution to the academic literature on trade and labour linkages and an evidence-based opportunity for policy makers to better understand the effectiveness of labour standards in FTAs beyond looking at what can be 'seen' on the surface (e.g. by formal legal triggers such as disputes or complaints). Semi-structured interviews in the export-orientated factories and fields may find, for example, that labour standards are not properly applied or fully respected or, conversely, that managers of firms based in export processing zones do not fully utilize the legal opportunity afforded by EPZ status to exploit labour or degrade working conditions because of concerns that EU FTA conditions will be applied.

Existing research on US FTAs and labour is instructive in understanding some of the methodological advances and challenges. There is a considerable body of research since 1994 on the effects of trade liberalization under NAFTA on labour markets in general (e.g. Hanson 2003; Klein et al. 2003; Delgado-Wise and Covarrubias 2007) and in particular sectors such as Mexican retail (e.g. Tilly 2006), the Mexican agricultural sector (e.g. Otero 2011), and divestment in US manufacturing and the rise of garment *maquilas* in Mexico (e.g. Bair and Gereffi 2003; Bair and Werner 2011). Yet there is considerably less focussed empirical research on the effects of labour standards in US FTAs on employment relations in the factories and fields of partner countries beyond statistical analyses of time series on the incidence of formal labour disputes (see below). Some grounded work has been done on the effectiveness of The North American Agreement on Labor Cooperation (NAALC), which was the first international agreement on labour to be linked to a trade agreement. NAALC has some considerable parallels in the EU Committees on Trade and Sustainable Development outlined above, but having entered into force in 1994 it has heard dozens of labour disputes over the last 20 years and has produced several policy reports on labour issues occurring under the umbrella of NAFTA (see NAALC 2014).

Research on the effectiveness of this side agreement in practice indicates mixed results, with a running conclusion being that 'unions were not able to score any major victories within NAALC' (Tilly 2013, p. 210, see also Dombois 2002), despite it having the 'capacity to advance the struggle for labor rights' (Singh and Adams 2001, p. 1, see also Compa 2001).²⁸ For example, Nolan Garcia (2011) combines a statistical analysis of recorded NAALC disputes with interview data from key participants and found that, of all union techniques, transnational activism based petitions and worker testimony is the most effective approach to having a dispute *heard*. This suggests that less well organised and/ or resourced workforces are less likely to be accepted into the NAALC process, but they are also excluded from Nolan Garcia's

²⁸ In the very different context of the Middle East, Cammett and Posusney (2010) found that US FTAs sparked an improvement in labour standards.

research design because the impact on the ground of NAFTA-associated labour standards may be more diffuse or tacit than the submission of a formal dispute. For example, Singh and Adams argue that ‘many employers and governmental authorities may be changing questionable labor practices under threat of exposure through NAALC’ (2001, p. 12). Conversely, from the perspective of labour, given the lack of ‘major victories’ workers may not have faith in the NAALC mechanism and thus consciously opt to not engage it, while some businesses have established labour standards in response to public pressure that are ‘much more extensive than the system included in FTAs’ (Gresser 2010: 491-2). Therefore, while Nola Garcia’s research methods are able to tell us something about different approaches to labour activism and the institutional activities of NAALC, it is less informative on the relative uptake (or not) of labour standards in the factories and fields. It is precisely this type of methodological weaknesses that the research agenda outlined in this paper seeks to overcome.

Conclusion

The ‘Trade and Sustainable Development’ chapter contained in all recent EU trade agreements creates a ‘blueprint’ for how the EU seeks to integrate social concerns around labour standards in all its future trade agreements. The rhetoric in relation to this ‘new generation model’ is lofty and suggests a serious and integrated approach to tackling labour issues in the context of the EU’s globalizing and liberalizing agenda.

Thus far, the academic literature on this issue has focused on the reasons why this blueprint has emerged. This article has suggested that, as a result, academic analysis is unable to seriously engage with what this new model might achieve in terms of its outcomes for workers in third countries. We argue that empirical research on the impact of labour standards ‘on the ground’ in different countries is required in order to be able to seriously engage with these important questions and to develop understandings of how ‘working beyond the border’ is structured around the uneven externalization of EU governance mechanisms. In particular, we need to be attentive to the ways in which this new architecture of labour governance structured through FTAs is differentiated by contingent national and local dynamics. In other words, we need to recognize the significance of geographical differentiation in the structuring of labour protection, conditions of employment and mechanisms for representation of workers beyond the EU’s borders as emerging systems of governance at the EU level intersect with sectoral, national and local specificities. This requires openness to an understanding of how complex articulated dynamics lead to differentiated outcomes, rather than blueprint theorizing and rule-making, and to assess how both locally specific and common outcomes are experienced in a range of countries and in industries integrated into the EU market. This research agenda should be taken seriously, and acted upon promptly, because the current period of bilateral experimentation is leading to a wide range of different models of labour standards provisions, operating in different trade agreements between different trading partners. The EU model has the potential to seriously influence the future of trade and labour linkage, but it has not, as yet, been subject to any sustained evaluation.

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Table 1. Indicative framework for research on the assessment of EU bilateral FTAs

Area of Enquiry	Type of Key Informant	Indicative Types of Evidence Sought	Notes
Negotiation and implementation of labour standards in FTA – case study third countries	National government officials National sectoral/industry associations/CEOs National trade union/union federations Local civil society/NGOs Academics and specialist researchers	First-hand experience of negotiation process (e.g. role of political leadership, local lobbying, pressure/demands from EU) First-hand experience of implementation process and pre-ratification effects in areas of employment conditions, worker protection and representation (e.g. legislative reform such as labour codes/acts, ILO core labour standards, minimum working age, working time directives, minimum wage levels and their review, creation of dispute and/or formal complaint mechanisms) First-hand experience of engagement with FTA Committees on Trade and Sustainable Development and Domestic Advisory Groups Collection of legal and policy documents, grey literature (e.g. consultancies), descriptive statistics	Emphasis on individuals involved in policy change to assess <i>causal links</i> and <i>impacts</i> in the development and institutionalisation of labour standards in case study third countries
Negotiation and implementation of labour standards in FTA – European Union level	EU officials (various Directorate Generals) EU industry associations European Trade Union Confederation NGOs and civil society organisations at EU level	First-hand experience of negotiation process (e.g. political leadership of EU member states, internal EU institutional dynamics, lobbying by industry, labour and civil society, pressure/demands by partner government) Formal monitoring experience of labour standards implementation process (e.g. legislative reform as above) First-hand experience of engagement with FTA Committees on Trade and Sustainable Development and Domestic Advisory Groups Collection of legal and policy documents, grey literature (e.g.	Emphasis on individuals involved in policy change to assess <i>causal links</i> and <i>impacts</i> in the development and institutionalisation of labour standards at EU level

		consultancies), descriptive statistics	
Affect of labour standards clauses on workers' lives Interplay of labour standards with other aspects of EU trade agreements – national/EU level	National govt/EU officials National/ EU sectoral/ industry associations National trade union/union federations	Monitoring of employment conditions, protection and representation in particular firms/sectors Monitoring of national-level data on worker protection and protest Knowledge of interplay with other aspects of EU trade agreements (e.g. technical standards) Knowledge of implementation of labour standards outside of EU trade agreements (e.g. private standards of buyers, labour standards in other FTAs such as with the US)	Emphasis on <i>actual impacts</i> on the lived experience of workers from perspective of third country and EU level officials and organisation to triangulate with research described below
Affect of labour standards clauses on workers' lives Interplay of labour standards with other aspects of EU trade agreements and private governance – firm level	Firm managers Shopfloor stewards Sample of workers (including informal and/ or non-organised) Local civil society	Employment conditions: description of contracts, pay/ bonuses, application of minimum age, wage and working time legislation, management/workplace pressure (intensification of labour). Worker protection: safety, occupational health, training, incidence of workplace accidents. Worker representation: ability to organise, existence of labour organisations (and differences between them), management responsiveness to negotiation/requests, quality of labour representation (use of independent or company unions; affiliation to political parties, etc.) First-hand knowledge of interplay with other aspects of EU trade agreements (e.g. technical standards) First-hand knowledge of implementation of labour standards outside of EU trade agreements (e.g. private standards of buyers) Collection of employment contracts, information on wage and employment levels, company reports, descriptive statistics	Emphasis on <i>actual impacts</i> on the lived experience of workers
Impact of differing	National government/EU	First-hand experience of negotiation process	Emphasis on

