



FREE TRADE AGREEMENTS AND DECENT WORK

From windows dressing to real
improvements in decent and
healthy working conditions

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INTRODUCTION

Health is a basic right. International treaties and agreements oblige countries to guarantee that everyone can exercise this right. Is the right to health, however, compatible with economic interests? What are the impacts of free trade agreements on the healthcare of countries in the South with whom the European Union has concluded and/or is negotiating an agreement?

These policy briefs from the North-South working group of the Action Platform Health and Solidarity and the working group on Social Determinants of Health of Be-cause Health focus on various aspects of the impact international trade policy has on health. The policy briefs examine the following topics: international trade policy and the right to health in relation to (1) intellectual property rights (TRIPS), (2) decent work and (3) universal health coverage.

ABSTRACT

Supporters of free trade agreements say trade contributes to global growth and job creation. This may be the case but, as stated in a joint report by WTO and ILO¹, “strong growth in the global economy has not, so far, led to a corresponding improvement in working conditions and living standards for many.” The general belief that benefits from trade automatically trickle down towards employment creation and wage growth, has been proven false. Quick growth often even worsens employment and working conditions. Trade policies often tend to place economic group interests above the interest of workers. Over the past two decades however, labour standards -in particular the core labour standards as defined by the ILO Declaration on Fundamental Principles and Rights at Work of 1998² - are increasingly being included in free trade agreements, to ensure labour rights are being respected.³ But do these provisions really benefit the workers, or are they mere “window dressing”? It is the second. Free trade agreements should be a leverage for improving working and employment conditions, for men and women. These conditions have a serious impact on workers’ health and wellbeing. Therefore, it is morally imperative to place decent working conditions at the very heart of all trade policies.

1 Liberalization and free trade have a negative impact on working conditions and unions’ power, and thus on health

It’s obvious that liberalization and global market integration have a heavy impact on labour and working conditions. Since the increase in global market integration began in the 1970s, there has been an emphasis on productivity and supply of products to global markets. Institutions and employers wishing to compete in this market argue the need for a flexible and ever-available global workforce.⁴ In this way, a **race to the bottom** for maintaining competitive prices is initiated, on the shoulders of workers.

The emergence of a ‘new international division of labour’ is exemplified by the relocation of labour-intensive production to sites in the developing world selected on the basis of low wages and minimal social protection for workers.⁵ A good example of this practice are the so-called maquilas (manufacturing companies located in zonas francas or free trade

zones, producing a.o. garments for export) in Central-America, where working conditions are under constant pressure because of lethal competition between companies.

It’s been proven that trade liberalization has negative effects on **unionization and bargaining power of employees**.⁶ The increasing power of large transnational corporations and international institutions to determine the labour policy agenda has led to a disempowerment of workers and their unions.⁷

Trade liberalization has also contributed to a global increase in **informalisation and casualization**. The empirical evidence on this matter has grown considerably in recent years, with most showing increased informality as a result of trade liberalization.⁸ In this way in Latin America, for

example, the proportion of legally protected employment relationships dropped and there were increases in temporary work, part-time work, casual employment and a strong growth in various forms of the informal economy.⁹

The **social determinants of health** are the conditions in which people are born, grow, live, work and age. These circumstances are shaped by the distribution of money, power and resources at global, national and local levels. The social determinants of health are mostly responsible for health inequities - the unfair and avoidable differences in health status seen within and between countries.¹⁰

Work being an important **social determinant of health**, the negative impact of trade liberalization on employment and working conditions results in negative effects on health and health equity. In its

final report, the WHO Commission on the Social Determinants of Health¹¹ confirms that a flexible workforce may boost economic competitiveness, but brings with it negative effects on health.

Precarious work – such as informal work, temporary work, child labour and slavery/bonded labour¹² – **is associated with poorer health status**. Evidence indicates that mortality is significantly higher among temporary workers compared to permanent workers. Poor mental health outcomes are associated with precarious employment. Workers who perceive work insecurity experience significant adverse effect on their physical and mental health.¹³

Good employment and working conditions can provide financial security, social status, personal development, social relations and self-esteem, and protection from physical and psychosocial hazards – each important for health.¹⁴ Therefore, from a social and human rights perspective, it is morally imperative to place decent working conditions at the very heart of all trade policies.

2 Labour standards included in free trade agreements have not proven effective

a) Increase in number of labour provisions in trade agreements

To counterbalance the negative impact of trade liberalization on working conditions and to make sure it upholds or improves labour standards, rather than puts them at risk, labour provisions have been increasingly included in free trade agreements over the past two decades. From only four in 1995, the number of trade agreements that include labour provisions increased to 21 in 2005 and to 58 in June 2013 – including 16 South-South trade agreements.¹⁵

The majority of trade agreements that include labour provisions (60 per cent) are exclusively promotional in nature. These provisions do not link compliance with labour standards to economic consequences or sanctions, but provide a framework for dialogue, cooperation, technical assistance and/or monitoring. The remaining 40 per cent of

trade agreements with labour provisions have a conditional dimension. This implies that compliance with labour standards entails economic consequences – in terms of an economic sanction or benefit. Conditional labour provisions are typical of many of the trade agreements concluded by the United States and Canada. (see figure 1)



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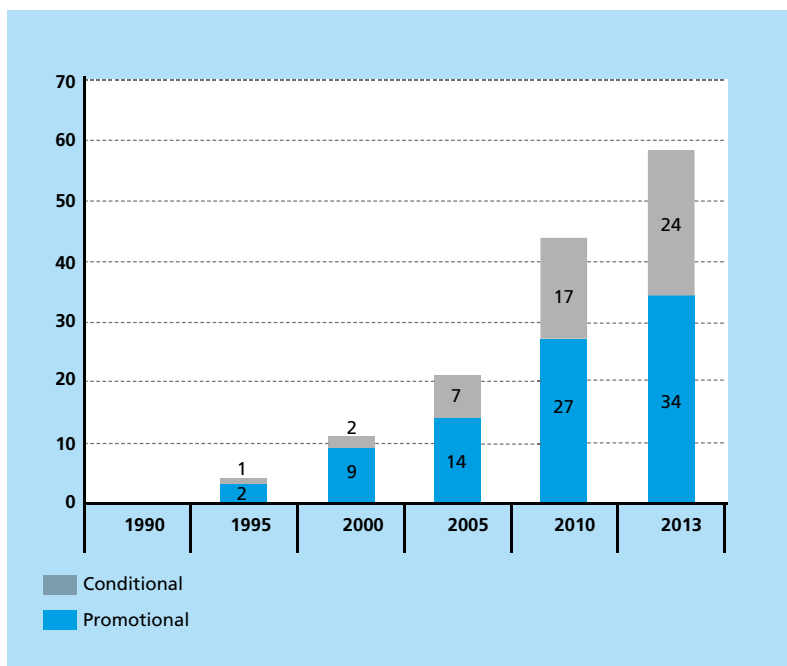


Figure 1: Increase in number of labour provisions in bilateral and regional trade agreements, 1990-2013 (ILO, 2013, p.19)

The increasing number of trade agreements including labour provisions, can be seen as a positive sign, as stated Raymond Torres, director of the ILO Research Department: "It's a reflection of the growing awareness that trade liberalization, important as it is, should go hand-in-hand with progress on the employment and social front."¹⁶ However, there's much to say about the impact and effectiveness of labour provisions in trade agreements.

b) Pre-ratification conditionality is the most effective but is rarely used

It's difficult to generalize about the impact and effectiveness of labour provisions, due to their variety and different legal and institutional implications.

Based on the ILO-findings, we can conclude that the more comprehensive effects on labour standard issues have emerged from **pre-ratification conditionality**; this is when the improvement of labour standards has been made a condition for ratification of the agreement. This has often led to improvements in worker's rights or the adoption of new legal protections, especially in the area of freedom of association.¹⁷

Labour provisions with **post-ratification conditionality** may play a role with respect to compliance of existing labour laws, contribute to labour law reforms and strengthen the enforcement framework. In the case of Peru, according to the ILO-report, "this included an extension of the authority of labour inspectors to sanction the fraudulent

use of temporary contracts and outsourcing, as well as lowering the legal requirements regarding strikes",¹⁸ under pressure of the US. This might sound like an improvement - which it is in a way - but at the same time other areas of labour law were seriously deregulated, in order to promote trade and export. Peruvian trade unions and labour organizations criticize the free trade agreements, stating that the government isn't taking responsibility and bases competitiveness on the reduction of labour rights.¹⁹

There has been, for example, a major increase in temporary work, because of the massive use of legal modalities that make it possible.

Today, more than 60% of formal

workers in the private sector have a temporary contract, which has a negative impact on the power of trade unions. Furthermore, several economic activities and enterprises have been subsidized by the Peruvian government through "promotional laws" that lower the labour protection in certain areas, because this reduction of "costs" would promote export, formalization and business development.

As a result, the percentage of workers falling outside regular labour law is increasing. This policy creates subcategories of workers with precarious labour conditions, in many cases in sectors directly linked to export activities, like the agro-industry.²⁰

Some conditional labour provisions in free trade agreements have a **mechanism for complaints and dispute settlement** after ratification, which can lead to the withdrawal of trade benefits or to monetary sanctions in the event of non-compliance. Compare it if you like, with the Investor-to-state Dispute Settlement mechanisms (ISDS), included in more than 4000 agreements worldwide. These mechanisms grant foreign investors the right to use dispute settlement proceedings against a foreign government, if they find their interests threatened. It seems right that, if there's a complaint mechanism for investors, there should also be one for workers and their representatives.

However, the ILO-report notes that complaint mechanisms with respect to non-compliance of labour rights, where available, have rarely been activated. So far, no complaint has given rise to a decision of a dispute settlement body or even led to sanctions²¹ (ILO, 2013, p.3). This is in stark contrast with the many cases in which governments have

been sanctioned because of complaints by foreign investors. Economic interests seem to be more important and enforceable than labour rights.

Last, let us say something about the **promotional labour provisions** in free trade agreements. The so-called sustainable development chapters in recent trade agreements concluded by the EU are a good example of this approach. They combine commitments to fundamental and other ILO conventions with an institutional framework involving cooperative activities as well as several monitoring and dialogue mechanisms, including considerable civil society involvement. This involves the creation of domestic advisory committees composed of social partners and other civil society representatives as well as dialogue meetings with the parties to the agreements.²² This sounds very promising for the improvement of labour conditions.

However, practice shows that successes aren't guaranteed. Civil society organizations and labour unions have proved repeatedly that trade agreements, even if they have extensive labour provisions or 'sustainable development chapters', don't result in improvements in working conditions. In Colombia for example, several organizations declare that working conditions haven't improved, worse yet, they have deteriorated:

"One year since the partial implementation of the FTA between Colombia, Peru and the EU; two years since the declaration of the Resolution 2628 of the European Parliament; more than three years since the signature of the Obama-Santos Labour Action Plan; and almost three years since the entering in force of the FTA between Canada and Colombia, the government stays in debt and there even have been regressions: in matters of outsourcing and labour intermediation, labour informality, violence against trade unions, impunity of crimes against unionists, anti-unionist practices, lack of institutional spaces for social dialogue, resolution of labour conflicts, legislative statements, and political measures that guarantee freedom of association and collective bargaining, labour inspection and the effectiveness of sanctions in case of violations of labour laws. In addition, the hostile and repressive attitude of the government towards social protest and union struggle has increased."²³

Colombian trade unions were already warning members of the European Parliament before the ratification of the FTA between the EU, Colombia and Peru. There was extensive evidence that labour rights were being massively violated, before and at the time of ratification. This year again (April 2015), at the Andean Ethical Tribunal organized by FOS, the Peruvian trade union federation CGTP and the San Marcos University, violations of labour and human rights in Peru, Colombia, Ecuador, Bolivia and Chile were extensively documented and proved.²⁴

To sum up, it's clear that the effectiveness of both the conditional and the promotional labour provisions, crucially depends on the **political will** of partner countries. Therefore, the role of accompanying advocacy action by civil society actors, in particular workers' organizations, has been instrumental in activating the different dimensions of labour provisions.²⁵ Civil society keeps on reminding governments that they have the responsibility to make sure labour provisions don't remain hollow phrases and are actually turned into action.

3 Working women suffer most

Protection and benefits provided by work, are generally poorer for women than men.²⁶ Women are typically employed in lower paid, less secure, and informal occupations. Even for equivalent work, women worldwide are paid 20-30% less than men.²⁷ In this way, when employment and working conditions worsen under pressure of free trade agreements, women are the first to feel it. In addition, precarious working conditions have a serious impact on workers' social protection. In most

countries social security systems are linked to formal employment.²⁸ Informal workers (the majority of the informal workers are women) are not building up a pension, do not get an unemployment allowance, no maternity leave or allowance, no replacement income when sick, no refund of medical expenses, etc. As stated in part 1 of this paper, trade liberalization leads to more informalisation and casualization. This has its undeniable effect on workers' social protection, hitting women particularly hard.



POLICY RECOMMENDATIONS

A dramatic shift in the way the EC is leading on trade policies is needed in the next five years. DG-Trade should stop considering trade policies as a tool to protect the commercial interests of EU industries, and should collaborate more closely with other Directorate-Generals and EU institutions to make sure that trade policies benefit EU citizens as well as people in developing countries. EU institutions and Member states should honour their commitments to improve labour and human rights. The principle of 'policy coherence for development', enshrined in the Lisbon Treaty, should be implemented to avoid that EU policies contradict the objectives of EU development policies.²⁹ More specifically:

1) In its future and ongoing trade policies, the EU should

- consider social/labour provisions as a structural, integrated part of free trade agreements, instead of confining them to separated "sustainable development chapters" without any conditionality.
- make compliance to core labour standards and the improvement of labour conditions a pre-ratification conditionality. If there is proof that labour rights are being violated at the time of negotiating the agreement, there should be no agreement at all. Pre-ratification conditionality has proven to be the most effective way to improve labour standards through trade agreements.
- promote binding regulations, including sanctions for labour and human rights violations by European companies, companies with European capital or companies which export products to the European Union.³⁰
- provide, in line with the ISDS-mechanism, a mechanism for complaints and dispute settlement after ratification, which can lead to the withdrawal of trade benefits or to monetary sanctions in the event of non-compliance with labour standards.
- apply labour provisions in coherence with the relevant ILO instruments.

- Be transparent in free trade negotiations and engage social partners and civil society organizations in the planning, negotiation and monitoring of labour provisions in free trade agreements.

2) For the trade agreements that already have been ratified, the EU should

- implement a transparent and democratic mechanism to follow up the "sustainable development chapters" or "Road Maps", and demand compliance with these mechanisms.
- introduce specific time-bounded goals on labour standards.
- undertake serious monitoring of the activities of European companies in other countries where there is proof of violations of human rights and trade union rights by these companies.

FURTHER READING

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- 12 A person becomes a bonded labourer when their labour is demanded as a means of repayment for a loan. The person is then tricked or trapped into working for very little or no pay. The value of their work becomes invariably greater than the original sum of money borrowed.
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