

THE DIFFUSION OF NORMS, RULES AND
MECHANISMS FOR THE ENFORCEMENT
OF LABOR STANDARDS AND THE
RESOLUTION OF DISPUTES IN THE ASIA-
PACIFIC, IN PARTICULAR AMONG
SIGNATORY COUNTRIES OF THE TPP

by

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Abstract

People are central to economic development. Workers are relatively vulnerable compared to the other factors of the economy, including governments and employers. Because violations of workers' rights and poor working conditions are prevalent, especially in developing countries, the diffusion of internationally recognized labor standards is now emerging as a critical process in the world. This is a process by which internationally recognized labor rights are transferred between countries by various means with the expectation of improving labor conditions world-wide. For this process to be successful, it is important that not only labor standards but also rules and mechanisms for their enforcement be diffused.

The Trans-Pacific Partnership agreement (TPP) is currently under negotiation. The TPP is expected to be the first "high-quality, twenty-first-century agreement" in the world. Norm entrepreneurs have chosen the TPP to be a channel for the diffusion of labor standards in the Asia-Pacific. How is the TPP likely to diffuse the norms, rules and mechanisms for the enforcement of labor standards and dispute resolution? Will it be by means of goodwill, cooperation and consensus or through material conditionality?

Labor rights are human rights which must be upheld and promoted. The answer to the above empirical question is very important to the policy-makers of signatory countries of the TPP, given that labor standards are considered to be a sensitive issue in many Asian countries. Their concerns are grounded in history. The Government of Poland and the communist system in Eastern Europe were brought down as a result of the implementation of labor rights in the 1980s¹. How to implement these rights without causing social and political disorder is a complex question for policy-makers in the TPP countries.

¹ After the rights to organize freely and to strike was recognized by the Government of Poland, the Solidarity Unions was formed and after many ups and downs of its evolution, finally it had led successfully the overthrow of the communist Government of Poland and "played a central role in the demise of communism across the Soviet bloc, changing forever the course of history in Europe". Read more at <http://www.rferl.org/content/article/1060898.html>, and http://future.state.gov/when/timeline/1969_detente/fall_of_communism.html

The thesis reviews the literature on theoretical norm diffusion and labor standards as well as provides the empirical evidence of past diffusion of labor standards in order to identify which mechanisms of diffusion are likely to prevail in the field of labor standards in the Asia-Pacific region. It answers who are the drivers of diffusion. It draws on the record of all signed FTAs in the region to provide an empirical foundation for its projection about the likely content of the TPP in terms of rules and mechanisms for the enforcement of labor standards.

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List of Abbreviations

APEC	Asia-Pacific Economic Cooperation
EPZ	Export-Processing Zone
EU	The European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATT	General Agreement on Trade and Tariffs
ILC	International Labor Conference
ILO	International Labor Organization
IPNs	International Production Networks
ITO	International Trade Organization
ITUC	International Trade Union Confederation
MOU	Memorandum of Understanding
NAFTA	North American Free Trade Agreement
NAALC	North American Agreement on Labor Cooperation
OECD	Organization for Economic Cooperation and Development
P4 Agreement	Trade Agreement between Brunei, Chile, New Zealand and Singapore
TAC	the Treaty of Amity and Cooperation in Southeast Asia
TPP	Trans-Pacific Partnership
US	The United States of America
USTR	United States Trade Representative
WTO	World Trade Organization

1

Introduction

"Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the higher consideration."

Abraham Lincoln

Now capital² is used to promote labor.

Labor standards diffusion by means of linking to trade in Asia and research problem

Labor standards have caught public attention since the creation of the International Labor Organization (ILO) in 1919 although the miserable plight of workers was recognized long before this. The ILO Constitution observes: "Whereas conditions of labor exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled..." (ILO, 1919). The information revolution and the globalization have spread the norms and values of internationally-recognized labor standards across the globe. However, the level and speed of receptivity to these standards are different in different regions and different countries. They are also various for various actors including the state and non-state actors within the national border. Labor standards create a "two-level game" (Putnam, 1988) for

² Capital here is in extended meaning (material resources, investment, trade...)

certain countries in the world – placing their governments under both international and domestic pressure. In the Asia region, empirical evidence shows that labor standards would seem to be diffused more effectively by linking them to trade. “Trade was a pathway of diffusion. Market access served as an important instrument to encourage the diffusion of labour regulation” (Michael Huberman and Christopher M.Meissner, 2010). During the 20th century, most countries of the region gave priority first to the struggle for national independence and sovereignty and then to economic development. In the later part of the century, the international diffusion of market-oriented economic reforms together with the foreign investment boom in the region brought norms, rules and mechanisms for the enforcement of labor standards to Asia. This has taken place through the global extension of production chains in which “labor standards in developing countries are influenced by the labor standards of their exporting destinations” - the so-called “California effect”³ (Greenhill, Brian, Layna Mosley and Aseem Prakash, 2009). However, it can be seen that the scope of this channel of diffusion is limited to the production-for-export sector.

Despite this, there remain many incidents of labor rights violations in the region (ILO, Equality at Work, 2007).⁴ The diffusion of labor rights in the region has been driven a step further during the first decade of the 21st century by the negotiation of a growing number of FTAs. These FTAs include labor standards and often attach conditionality (both positive and negative) and institutional requirements to their enforcement and the resolution of disputes. By these means,

³ The term was coined by Vogel (Vogel, 1995) to “describe the way in which states with a strong environmental agenda (e.g., California, or Germany in the European context) have been able to facilitate the diffusion of these environmental standards to other jurisdictions” (Greenhill, Brian, Layna Mosley and Aseem Prakash, 2009). This term was then used to apply to the similar process of labor standard transfer from developed to developing countries (Greenhill, Brian, Layna Mosley and Aseem Prakash, 2009).

⁴ See also annual survey of violation of trade union rights conducted by International Trade Union Confederation (ITUC). Trade union rights are one of labor rights. To be accessed at <http://survey.ituc-csi.org/?edition=247> (7 June 2013)

it seems likely that the process of diffusion of labor standards in the Asia-Pacific region will accelerate.

However, the process of labor standards diffusion through this channel remains in its infancy. So far, there are only six FTAs in the region with 'negative' conditionality—'sticks', for example, that impose trade sanctions or monetary penalties for serious violations of labor standards. The first of these was signed between the US and Singapore in 2003. Only one FTA uses 'positive' conditionality—offering 'carrots,' for example, increased quotas for exporting countries that improve labor conditions. This is the (1999) US – Cambodia Textile Agreement. Because of the short time these agreements have been in effect, there is little reporting on the use of "sticks" for non-compliance with labor standards as well as on the use of dispute settlement mechanisms provided for in these agreements. Labor complaints to the US Department of Labor regarding violations did involve two countries in the region, namely Mexico and Peru, but it has not "resulted in formal consultation between the United States Trade Representative (USTR) and a foreign government" for dispute resolution (Bolle, 2013). Therefore, the thesis will focus on the spread of norms, rules and mechanisms for the enforcement of labor standards and the resolution of disputes through FTAs (i.e. in law), rather than their actual implementation in practice.

The Trans-Pacific Partnership agreement (TPP) is now under negotiation. We are not sure of the outcome. However, it is expected to be a "high-quality, twenty-first-century" agreement (C. L. Lim, Deborah K. Elms and Patric Low, 2012) with the inclusion of labor standards which are likely to be enforced through a mechanism of material conditionality as pursued by the US (which is the argument of this thesis). If this is the case, the "California effect" will spread labor standards further because the TPP is a broad channel – a plurilateral FTA rather than the more common bilateral FTAs in the region. So what? Such a conclusion to TPP would significantly change the situation of labor in the whole Asia-Pacific and especially in the TPP countries.

1.1. Research Questions

The thesis seeks to answer the question: "How are norms, rules and mechanisms for the enforcement of labor standards and the resolution of disputes likely to diffuse in the Asia-Pacific and, in particular, among signatory countries of the TPP?"

In order to answer this research question, the thesis seeks to answer a number of secondary questions:

- Which IR theories suggest answers for the research question?
- How do internationally-recognized labor standards diffuse in the Asia-Pacific region? Which would be the most prominent and the most potentially effective channel of diffusion for the region?
- What norms, rules and mechanisms for the enforcement of labor standards and dispute resolution have been found in all signed FTAs in the region?
- How are norms, rules and mechanisms for the enforcement of labor standards and dispute resolution likely in the TPP?
- Is TPP a great power-dominated process?
- Who are the main norm entrepreneurs? Why?
- What are the implications for a country like Vietnam?

1.2. Contending Hypotheses

If the TPP, as a plurilateral agreement, is not concluded to be a conditional agreement as argued by this thesis, it is likely that more bilateral or trilateral FTAs that include labor standards enforced with conditionality would be sought by the US with countries in the region. Such a process would slow down, but not stop, the diffusion of labor standards by means of linking them to trade as well as the use of material conditionality for their enforcement and dispute resolution.

1.3. Research Justification

This research clarifies the most prominent and, perhaps, the most effective mechanism for the diffusion of labor standards in the Asia-Pacific in the 21st century, given the reluctance of most developing countries in the region to adopt high labor standards. More importantly, understanding different mechanisms for the enforcement of labor standards and dispute settlement as well as the probability of their inclusion in the TPP provides useful information for policy-makers of developing countries as they prepare for the changes and challenges when signing onto free trade agreements. In addition, this research also observes the changing role and influence of the US in the region. Using the TPP as a means, the US has asserted its traditional goals of spreading human rights and democratic values in implementing a comprehensive diplomatic, economic and military ‘rebalancing’ of its policy in the region. The US has assumed a full presence in the region, rather than merely a presence as a military and security gatekeeper. The thesis helps explain that the logic of the proponent behind the push for the international diffusion of labor standards is to achieve greater democracy, peace, stability and prosperity for the world, in general, and to acquire the status of world leadership, in particular.

1.4. Chapter Outline

The thesis is structured as follows:

Part two explains international relations theories that account for the transfer of norms, rules and mechanisms for the enforcement of labor standards and the resolution of disputes in the Asia-Pacific region. It moves from the general picture of norm diffusion to the specific mechanism of coercion via material conditionality in FTAs as a tool for labor norms diffusion internationally. Which methodologies and case selection of FTAs for this research will also be identified in this part. At the same time, limitations of this research are also clarified here.

Part three considers the empirical evidence from the past concerning the diffusion of labor standards. It demonstrates how labor issues have been linked to trade from the creation of the International Labor Organization (ILO), to the debates about the WTO and the contemporary inclusion of labor provisions in free trade agreements (FTAs). It also unravels two different mechanisms for the enforcement of labor standards and dispute resolution in the FTAs. It helps to suggest that the future of FTAs with the inclusion of strongly-enforced labor provisions will be likely due to the main role of the US plus the influence of international trade unions.

Part four is very important as it describes the present and anticipates the near future with an emphasis on the main argument that norms, rules and mechanisms for enforcement of labor standards and resolution of disputes are likely to be imposed through material conditionality in the TPP. It analyzes empirical evidence of the past and makes projections about the TPP at present and its likely outcome in the future.

Part five is the conclusion, which, besides the main findings of this thesis, suggests some possible key changes in the norms and values underlying the organization of industrial relations in Vietnamese society that Vietnam's policy-makers might expect from signing onto the TPP. It also suggests further research in the field.

The thesis includes some tables and figures to illustrate the trend of using FTAs as a channel to diffuse norms of labor standards in the world. The mechanisms for the enforcement of labor standards and dispute settlement in different FTAs are also summarized in two tables for two different types of agreements to show the continuity in each type as well as to serve the purpose of comparison between the two types.

2 Literature Review

This section answers the following secondary questions: “Which international relations theories suggest answers for the thesis’ research question?” and “How do internationally-recognized labor standards diffuse in the Asia-Pacific region? Which would be the most prominent and potentially the most effective channel for labor standards’ diffusion in the region?”

As the topic of the thesis is focused on labor standards, the literature review will go from a general consideration of norm diffusion theories to a more specific consideration of the diffusion of labor standards. This part describes different mechanisms for labor standards’ diffusion and which theories help explain them as well as how effective these mechanisms are for the Asia-Pacific region. This section also identifies what it considers to be the most prominent as well as the potentially most effective mechanism for the diffusion of labor standards in the region.

2.1. Norm diffusion theories

Processes of globalization have blurred national boundaries. “How is it that we have come to live in such a globalized world?” is the question raised by scholars of international relations when talking about international diffusion (Beth A. Simmons, Frank Dobbin and Geoffrey Garrett, 2006). Globalization accelerates the process of norm diffusion. “Policies are rarely developed in a vacuum and in a much more connected world, policy diffusion may be even more prevalent” (Douglas, 2012). “International policy diffusion occurs when government policy decisions in a given country are systematically conditioned by prior policy choices made in other countries (sometimes mediated by the behavior of international organizations or even private actors or organizations)” (Beth A. Simmons, Frank

Dobbin and Geoffrey Garrett, 2006, p. 787). Many authors have written about the formation, evolution and effects of international norm diffusion (Martha Finnemore and Kathryn Sikkink, 2002) (Kowert, P. and J. Legro, 1996) (Björkdahl, 2002). Interdependence causes diffusion (Gilardi, 2012). Fabrizio Gilardi has described in detail the literature on the transnational diffusion of norms, ideas and policies including: the effect of “policy choice made in other countries”; explanations of diffusion “as a process as opposed to an outcome”; “convergence” due to the “pattern of adoption, not the fact all (or many) countries have adopted the policy”; linkage politics and so on (Gilardi, 2012). A wide range of social, economic, political, legal, military phenomena and others were mentioned (Gilardi, 2012). Gourevitch explained “the second image reversed” that “the international system is not only a consequence of domestic politics and structures but a cause of them” (Gourevitch, 1978).

According to constructivists, norms are defined as “shared standards of appropriate behavior held by a community of actors”, (Finnemore, 1996, p. 22) (Martha Finnemore and Kathryn Sikkink, 1998). However, according to realists, norms must be translated into law and state policy in the interests of national peace and security before they are translated into reality. “Transnational norm diffusion is a process” (Elkins, Zachary and Beth Simmons, 2005). The success of this process depends on the receptivity and acceptance of various actors in a target country. Considering this, actors will react to different norms differently. Generally, actors’ reactions are classified into three categories: (a) active receptivity, (b) passive receptivity and (c) negotiated receptivity, depending on the level of sensitivity of a norm itself for the domestic system. A country may respond to a norm in an active manner if the norm is not sensitive politically and in a passive manner if it is sensitive politically. Acharya and Checkel have written about active receptivity (Acharya, 2004) (Checkel, 1999). Authors have written about norms of passive receptivity, such as David Capie’s work on Responsibility to Protect or Small Arms (Capie, 2012) (Capie, 2013). Negotiated receptivity is the

case when the norms are morally and politically accepted but clash with internal values such as cultural values. Farrell and Elgström are among those who write about norms of negotiated receptivity (Farrell, 2001) (Elgström O. , 2000). For sensitive norms, which are defined as having a likely effect on national sovereignty or regime maintenance, the state actor plays an important role.

Scholars of international relations have written specifically about norm diffusion in certain areas. Beth A. Simmons, Frank Dobbin and Geoffrey Garrett explained the international diffusion of economic and political liberalism, or, more specifically, the spread of market-oriented economic reform, liberal constitutionalism and democracy (Beth A. Simmons, Frank Dobbin and Geoffrey Garrett, 2006). Schimmelfennig and Sedelmeier write about the issue of conditionality for new member states to access the EU (Schimmelfennig, Frank and Ulrich Sedelmeier, 2004) (Schimmelfennig, 2008). Susanne Alldén explained the international travel of women's political rights to Cambodia and Timor L'Este (Alldén, 2009). David Capie, Alex Bellamy, Catherine Drummond, Paul D. Williams, Jochen Prantl and Ryoko Nakano are among the scholars who have written about the global diffusion of the new norm of "Responsibility to Protect" (Capie, 2012), (Alex Bellamy and Catherine Drummond, May 2011), (Alex Bellamy and Paul D. Williams, 2011), (Jochen Prantl and Ryoko Nakano, 2011). These are just a few examples of norms of international diffusion and many others, all of which this thesis is unable to list.

The norms of labor rights "began as a general desire to improve working conditions through increasing the political power of the working class" since the late 19th century⁵ (O'Brien, 2004). The turning point in the evolution of the norms lies in the creation of the International Labor Organization (ILO) and later in the "continued agitation of trade unions, socialist groups, and the ILO" (O'Brien, 2004).

⁵ To understand more about norm emergence and transformation, please read the text by O'Brien (O'Brien, 2004)

Many authors have written about this norm including O'Brien, Greenhill, Brian, Layna Mosley and Aseem Prakash (Greenhill, Brian, Layna Mosley and Aseem Prakash, 2009).

2.2. Various mechanisms of the diffusion of labor standards

Labor standards can be transferred to different countries by means of coercion, competition, learning, or emulation. The classification of these four mechanisms is commonly defined by International Relations scholars (Gilardi, 2012) (Beth A. Simmons, Frank Dobbin and Geoffrey Garrett, 2006). This section analyzes these four mechanisms of labor standards' diffusion and explains the international relations theories that account for each mechanism. This section also argues that coercion and competition override learning and emulation in terms of diffusing sensitive norms of labor standards, especially the rules and mechanisms for the enforcement of labor standards and the resolution of disputes in the Asia-Pacific region.

2.2.1. Coercion – the stronger actor wins

Coercion is the use of any kind of power by a stronger actor to pressure a weaker actor to change its behavior or policies. "Whether direct or mediated, this mechanism may involve the threat or use of physical force, the manipulation of economic costs and benefits, and/or even the monopolization of information or expertise—all with the aim of influencing policy change in other countries" (Beth A. Simmons, Frank Dobbin and Geoffrey Garrett, 2006, p. 790) . Therefore, coercion is a kind of "vertical diffusion" (Daley, Dorothy M., and James C. Garand, 2005) which happens between countries with asymmetric power levels or levels of economic development. Coercion can be divided into hard coercion and soft coercion (Beth A. Simmons, Frank Dobbin and Geoffrey Garrett, 2006, p. 791). Hard coercion refers to direct pressure exerted by the stronger power on the weaker power using carrots-and-sticks measures such as preferential treatment in

international trade or cuts of trade benefits. Soft coercion refers to indirect pressure, such as when “larger countries make policy decisions that significantly alter the status quo for others, giving the latter little choice but to follow suit” (Beth A. Simmons, Frank Dobbin and Geoffrey Garrett, 2006, p. 791). Taking the negotiations of the TPP as an example, hard coercion may happen during bilateral negotiations between a developing country who has not signed a bilateral FTA with the US and the US. Soft coercion may occur for a minority of TPP states (e.g.: Brunei, Malaysia and Vietnam), if the US and the majority of countries in the TPP, which have already signed bilateral FTAs with the US, agree on labor provisions for the TPP (even simply reaffirm those agreed in the original bilateral FTAs). This would leave Brunei, Malaysia, Vietnam, and, to some extent, even New Zealand and Japan, which have not yet signed bilateral FTAs with the US, to follow suit. This is similar to the position of Mexico when it joined the Canada-US Free Trade Area (Gruber, 2000).

The concept of coercion goes with the concept of power or in other words, power theories explain the coercive diffusion of norms. Powerful countries promote norm diffusions as a means of showing their power, and, vice-versa, they use power to diffuse norms.

Power theory and realism

One perspective of international relations suggests that all things start and end with power and occur by and for power in one way or another. Power is a means to an end and is an end in itself. Material power is the exclusive tool of realism. It is argued that in the process of globalization—the achievements of science and technology, the explosion of information technology and the subjective integration engaged by countries—the world is becoming increasingly connected and, as a result, more space has opened for the exercise of power in various shapes and shades.

What is power? There are many definitions of power, but within the scope of this thesis, the most common definitions in the field of international relations are cited. "Power is the ability to get someone to do something he or she would not otherwise do" or "A has power over B to the extent that he can get B to do something that B would not otherwise do" (Dahl, 1957, p. 202) with A and B in this thesis meaning country A and B and the main actors being states. "Power is the ability to produce intended effects" (Russell, 1938) or, in more details, "Power is the capacity of some persons to produce intended and foreseen effects on others" (Wrong, 1995, p. 2). Therefore, power plays between asymmetrical countries or in the context of this thesis, between the US and the rest of the world in terms of transfer of norms and values of labor standards.

In addition to the various measurements of power as "*dynamic, relative, situational, multidimensional*",⁶ power in this thesis also implies a living concept. The term "living" is taken from the term "living agreement" of the TPP to apply to power. The TPP is a living agreement in the meaning that it "enables the updating of the agreement as appropriate to address trade issues that emerge in the future as well as new issues that arise with the expansion of the agreement to include new countries" (Henry Gao, 2012, p. 78). Power as a living concept implies that there has been and there will be more and more creative ways of using power by the stronger over the weaker. Humans are subjective actors with consciousness and in the movement of human society, humans will find all ways possible to use power. This thesis takes the TPP as the case for analysis and argues that it will be a means for the US to use its power in order to diffuse labor standards across the region – a step towards the deep international diffusion of the norms across the globe.

⁶ Power and World Politics. The text can be accessed at <http://hhh.gavilan.edu/mturetzky/pols4/WhatIsPower.htm> (5 June 2013)

Coercive diffusion of labor standards

Coercive diffusion of labor standards requires coercive power as exemplified by the statement “large states coerced smaller countries to upgrade labor standards” (Michael Huberman and Christopher M.Meissner, 2010). The expansion of democratization makes the world seemingly more democratic and freer, but in practice, coercion is still commonly used by the stronger to influence weaker countries to change their policies. Hard power is still predominant and bears decisive characteristics although nowadays it tends to be used in parallel with soft power by great countries.

There are different ways to bring about the movement of labor standards through FTAs. A free trade agreement using cooperation, consultation, dialogue and consensus for promoting labor standards (promotional FTA⁷) is one channel of international diffusion. If, however, such an agreement imposes conditionality, for example, trade benefits or sanctions for cases of non-enforcement of labor standards (conditional FTA⁸), it represents coercive diffusion. The stronger actor coerces the weaker to sign onto agreements. It then compels the weaker party to implement the agreement, using positive incentives such as preferential tariffs and export quotas, or negative incentives such as sanctions and suspension of benefits. The empirical record shows that there is an increasing trend toward signing agreements that use conditional mechanisms to enforce labor standards. One might argue that countries need not sign onto such an agreement. However, if they are forced to choose between integration and isolation, then, past experience demonstrates that countries had better choose to be “in” rather than “out”. Vietnam is a case in point with a decade-long period of economic crises at home and isolation abroad after the unification⁹ (Luong Ngoc Thanh, 2012). Of course, a

⁷ The term is used by (Franz C. Elbert and Anne Posthuma, 2011).

⁸ The term is used by (Franz C. Elbert and Anne Posthuma, 2011).

⁹ After the unification, Vietnam joined the socialist bloc and its foreign policy was governed by communist ideology, which kept the country stay away from relations with the US and Western

decision of stepping “in” or “out” is likely to be made based on a cost-and-benefit analysis. However, more often than not it is difficult for countries to conduct a comprehensive analysis and project an exact prediction of the future. They may be not fully aware of all effect and will sign onto an agreement based on the judgment that (1) benefits are higher than costs, or (2) benefits can be lower in the short term but will increase in the long term. This is the gamble of the “in”/or “integration” game (with the belief and hope of *winning*) instead of “opting out” or “giving up” (the “out”/or “isolation” game is based on an acceptance of *losing* from the beginning). Once a conditional agreement is signed, there is again room for coercion to work. Signatory countries then come under pressure to implement the agreement to upgrade their labor standards. Empirical evidence shows that “when states failed to emulate the superior labor regulations of their most important trading partners, they left themselves vulnerable to embargos and sanctions on their exports.” (Michael Huberman and Christopher M.Meissner, 2010). At the same time, constructivists claim that, in a globalized and inter-dependent world, a country’s image and reputation plays an important role.

2.2.2. *Competition*

Diffusion of international norms by means of competition refers to the situation of importing markets using competitive leverage of preferential foreign investment or export quotas to transfer a norm to producing markets. Competitive leverage can be loosening of legal regulations, minimizing of investment risks or tax reduction (Beth A. Simmons, Frank Dobbin and Geoffrey Garrett, 2006, p. 792). Competitive leverage can also take the form of labor standards, if required by importing markets. “Competition is a more decentralized mechanism for policy diffusion” (Beth A. Simmons, Frank Dobbin and Geoffrey Garrett, 2006, p. 792) and is the result of regionalization. Competition theories explain competition as a

society. Understand more about Vietnam’ foreign policy, please read the text Vietnam in the Post-Cold War era: New Foreign Policy Directions (Luong Ngoc Thanh, 2012)

means of international norms diffusion. When there is competition, there is movement.

According to Greenhill, Brian, Layna Mosley and Aseem Prakash, based on the information of 90 developing countries, “importers can influence—positively or negatively—the collective labor laws and practices of trade partners” (Greenhill, Brian, Layna Mosley and Aseem Prakash, 2009, p. 684). Flanagan has conducted a good research on using competition as a tool for improving working conditions and labor rights in a globalized world (Flanagan, 2006). Layna Mosley has summarized theoretical literatures and empirical analyses concerning the transmission of labor standards and best practices by multinational firms (Mosley, 2013). In more detail, she has suggested ways of affecting labor rights in developing countries by multinational firms as well as causal linkages of knowledge transfer to local firms (Mosley, 2013, pp. 5-8). However, the scope of internationally competitive diffusion is limited due to the inability to reach firms producing for domestic markets. The requirements for certified standards only reach “first-tier suppliers rather than second or third-tier ones” in supply chains (Vachani, 2006, p. 204). What is more, the diffusion of labor standards usually take place when there is pressure from somewhere else such as consumers’ associations or private actors such as NGOs or stakeholders (Baron, 2003) (Spar, Debora and L. T. LaMure, 2003). Multinational companies or trading partners demand their suppliers comply with labor rules in their codes of conduct, or undertake product certification involving labor standards such as SA8000 or ISO9000, or implement Corporate Social Responsibility (CSR) as a condition for placing orders. Often, there is a lack of pressure from customers for certified products (Vachani, 2006, p. 204). Another limit on the competitive diffusion of labor standards exists in the tension between corporate competition for economic efficiency (profit maximization), which creates incentives to cut spending on improving labor standards, and corporate competition for preferential treatment and orders in case of improved labor standards, which creates incentives to

increase spending on labor standards. Regarding profit maximization, the ILO has reported “competitive pressures can have an adverse impact on conditions of employment and, at their extreme, can lead to forced labour” (ILO, 2005, p. 63).

2.2.3. Learning

Learning is a mechanism of policy diffusion by which “policymakers can learn from the experiences of other governments” (Charles R. Shipan and Craig Volden, 2008). For example, Vietnamese labor law did not come into existence until 1995 and even then, it did not provide for collective negotiation and social dialogue, among other things, until it was amended in 2012 (Vietnam Labor Code, 2012). “Learning involves a determination of whether a policy adopted elsewhere has been successful” (Charles R. Shipan and Craig Volden, 2008). According to Berry and Baybeck, policy diffusion takes place when a country faces a problem for which a solution is needed and it seeks to learn from the successful experience of other countries (Berry, William D., and Brady Baybeck, 2005, p. 505). However, in the Asia-Pacific, learning has not proved to be an effective mechanism as improvement of labor standards has not been addressed by firms unless they have been pressured to do so by customers, or by states, which have recently committed themselves to doing so by signing onto conditional FTAs. Even then, there is concern that labor rights might help undermine regime maintenance, as happened with the well-known example of the Solidarity Union in Poland¹⁰. Furthermore, there is a worry that promoting high labor standards may affect the inward FDI flow, affecting the priority goal of attracting foreign direct investment (FDI) in Asian countries. An ILO working paper observed that “under the assumption that union-free zones would attract greater investment, some EPZ-operating countries

¹⁰ After the rights to organize freely and to strike was recognized by the Government of Poland, the Solidarity Unions was formed and after many ups and downs of its evolution, finally it had led successfully the overthrow of the communist Government of Poland and “played a central role in the demise of communism across the Soviet bloc, changing forever the course of history in Europe”. Read more at <http://www.rferl.org/content/article/1060898.html>

have, under their laws, either deprived EPZ workers of their right to organize themselves or placed severe limitations on the free exercise of this right" (Gopalakrishnan, 2007, p. 1).

Constructivists and transformationalists argue that labor standards are now being globalised due to an increase in information as well as the ability of laborers to move between countries to seek better jobs and conditions. This movement spreads ideas through wider and bigger networks. Take the TPP as an example. It adds labor standards, it is the globalization of labor ideas and practices based on the globalization theories. However, it is unclear if globalization helps improve or erode working conditions – "racing to the bottom or climbing to the top?" (Layna Mosley and Saika Uno, 2007). Opponents or skeptics of globalization say that "globalization has spurred a downgrading of labor regulation set at the national level in favor of competition on the costs of production", particularly as a result of the entry of transnational corporations and the weakness of codes of conducts (Brown, 2009, p. 6). Supporters of globalization argue that it upholds working conditions and basic labor rights through "international trade, international migration, and the activities of multinational companies" (Flanagan, 2006). These arguments of supporters are again competition-based rather than learning-based as for labor standards improvement.

Constructivists see international organizations as norm diffusers - norm entrepreneurs which cultivate the interest of states (Grigorescu, 2002, p. 478). International organizations spread norms through "establishing regimes, forming international agendas, constructing discourse, enforcing rules, and mediating between states" (Park, 2005). In the field of labor standards, the International Labor Organization (ILO) is the United Nations' specialized multilateral agency which: formulates international labour standards; provides technical cooperation for member states; disseminates best practices world-wide; organizes training, communication, research and publications; promotes development of independent

employers' and workers' organizations; and fosters dialogue among tripartite constituents. The ILO, since its creation in 1919, has survived and done quite a lot to promote social justice and internationally recognized human and labor rights despite a lot of debate about the tripartite representation at its core (Cox, 1977, p. 388).¹¹ Norm diffusion through the ILO is a learning process as the ILO does not have any kind of sanctions or punishment to coerce member states to implement international labor standards. "Countries tend to ratify ILO labor standards that their domestic regulations already satisfy, rather than incurring the political costs of introducing or altering national legislation to meet higher standards" (Flanagan, 2006, p. Chapter 7). The ratification of ILO core conventions by a member state does not necessarily mean that the situation of labor will improve in that country. Many problems with the actual implementation of labor standards continue to be reported (ITUC, 2012). The ILO has now begun to implement new programs that depart from its traditional model of working with national tripartite constituencies for the ratification and enforcement of its conventions. Instead, its new model seeks to build capacity for the improvement of worker-management relations at factories in global supply chains in some countries. These are known as Better Work projects¹² and have shown some initial positive results¹³ (Brown, 2009).

2.2.4. Emulation

Emulation is defined as "actors see others behaving in a certain way and copy these behaviors" (Florini, 1996, p. 378). For instance, labor standards are

¹¹ The ILO's foundation principle is the tripartite decision-making with the participation of the representatives of the government, employers' organization and workers' organizations from each member state. However, there is a debate at the time and even today of the true representation from workers' and employers' organizations. At that time, the US was worried that the tripartism would be eroded due to the fact that workers' and employers' representatives from Socialist countries were appointed by the governments and thus reducing the US power.

¹² http://www.gapinc.com/content/csr/html/Goals/supplychain/our_program_in_action/ilo_ifc_better_workprogram.html

¹³ To understand more about the initiative and the progress of the program, read the biannual reports on Better Work Programs at <http://www.betterfactories.org>

diffused through FTAs with NAFTA's Side Accord on Labor as the first case signed by the US, Canada and Mexico in 1994. Later, Asia emulated Latin America by including labor provisions in trade agreements. The first Asian FTA to include a memorandum of understanding on labor was signed by Brunei, New Zealand, Singapore and Chile in 2005 - the so-called "P4 Agreement." However, we need to distinguish between learning and emulation through the definition: "learning is avoiding touching the hot burner after observing someone doing so with bad effects, whereas imitation is jumping off the garage roof after observing your older brother doing so, without regard for the consequences" (Charles R. Shipan and Craig Volden, 2008). Take the case of Cambodia as an example. Cambodia observes: "Ratifying ILO Conventions 87 and 98 in 1999 was important to the development of unions" in the country (Veasna Nuon and Melisa Serrano, 2010). Surveying the trade union situation in Cambodia, it is the thesis' view that Cambodia has not been aware of its causal consequence of the multiplicity, fragmentation and weakening of unionism. Indeed, many countries have ratified ILO conventions just as an emulative policy, demonstrated by the acknowledgement of most ILO staff members: "Far too many member states have ratified ILO conventions without ensuring that labour laws are implemented" (Seidman G. W., 2009, p. 587).

Emulation can ensure the diffusion of labor standards but not the rules and mechanisms for their enforcement, if a country does not really want to promote it. "States are more likely to ratify a given convention if it has already been ratified by states" (Leonardo Baccini and Mathias Koenig-Archibugi, 2010, p. 32). However, governments may – for reasons of political capacity or political will – "fail to effectively enforce such rights" (Michael Huberman and Christopher M. Meissner, 2010) (Greenhill, Brian, Layna Mosley and Aseem Prakash, 2009). The empirical research conducted by Flanagan, Salem and Rozental "has found no evidence that ratification improves labor conditions" (Flanagan, 2003) (Samira Salem and Faina Rozental, 2012). The ITUC has reported a lot of violations of fundamental labor

standards widely in the region such as freedom of association, collective bargaining right, dangerous working environment and forced overtime without pay (ITUC, 2012).

2.3. The most prominent and the most potentially effective channel of labor standards' diffusion in the Asia-Pacific

Among the four mechanisms of labor standards' diffusion, this section affirms the thesis' viewpoint that norms, rules and mechanisms for the enforcement of labor standards and dispute resolution are more likely to be diffused in the Asia-Pacific by means of linking them to trade or, in other words, by mechanisms of competitive and coercive diffusion. It can be seen that the main obstacle for the adoption of internationally-recognized labor standards and their effective enforcement in many of the Asia-Pacific countries is state actors backed by corporate actors. From the late of 20th century to the present, Asian states continue to play a large, central and powerful role in the socio-economic management, particularly in making and enforcing laws as well as settling disputes as compared to the more participation of non-state actors in the policy-making in Western society. Not only in the region, O'Brien has pointed out that "most state and corporate actors have not internalized these norms" or even that "powerful state and corporate interests continue to resist its internalization" (O'Brien, 2004). O'Brien also affirmed that "internalization and implementation require longer periods of pressure and vigorous domestic political activity" (O'Brien, 2004). For that reason, using trade benefits or trade sanctions as conditions for improving labor standards may be a feasible solution to move the state actor. Once this obstacle is addressed, learning and emulation can help promote working conditions and labor standards further.

Despite the spreading information, learning and emulation does not change state policies if the states do not recognize a net benefit nor come under some kind of pressure. Thomas I. Palley has identified that labor standards "potentially

generate efficiency gains” but only through “official intervention that makes core labor standards the globally applied “rules of the games””. This is due to the fact that “all agents” have “private incentives” to avoid core labor standards (Palley, 2004). This adds to the conclusion that learning and emulation at present are not effective ways of labor standards diffusion in the region. In reality, learning and emulation have not altered much the position of developing countries’ governments regarding labor standards over nearly a century since the creation of the ILO. There has been a “lack of support from most developing countries for new initiatives to strengthen the ILO supervisory machinery on basic labor standards at the 1997 International Labor Conference” (Lee, 1997, p. 178). There is also a concern of the “infringement of national sovereignty” (Lee, 1997, p. 183) on the side of developing countries, which makes it difficult to diffuse labor standards in the region through learning and emulation.

Norms, rules and mechanisms for the enforcement of labor standards did not really enter the Asia-Pacific region until the emergence of international production networks (IPNs)¹⁴ through the process of transferring labor standards from developed countries to developing countries, using market access as leverage. Before the period of IPNs, even with the increased awareness that harmonization of labor standards across countries are a public good (Lee, 1997, p. 181), learning and emulation could spread the norms but not rules and mechanisms for their enforcement and dispute resolution. Despite the advantage of competitive diffusion over learning and emulation, the limited scope of IPNs does not make them powerful enough to diffuse labor standards widely and deeply into domestic systems. What is more, governments in developing countries are “unwilling to enforce private, voluntary codes of conduct,” (Locke, 2009) (Schrage, 2004) (Mamic, 2004). Therefore, as an alternative, labor standards were included

¹⁴ To understand the IPN, please read the text by Yun, Chunji, ‘International Production Networks and the Role of the State: Lessons from East Asian Developmental Experience’, *European Journal of Development Research* Vol.15 No.1

in bilateral and regional FTAs as: a chapter in the agreement, a side agreement, a side letter on labor cooperation, or a memorandum of understanding on labor issues. Different agreements apply different mechanisms for enforcement of labor standards and the resolution of disputes, whether it is cooperation and consensus-based approach (promotional)¹⁵ or a coercive approach (conditional)¹⁶. The US is the leading proponent for a conditional approach that uses trade sanctions. It is the only country at present which has signed 13 conditional FTAs involving labor standards and six of which (see the annex) were signed bilaterally with six Asian countries (Bolle, 2013). All the other FTAs in the Asia-Pacific region take a promotional approach. So far, there have been nine of them (see the annex). The proponents for targeting labor issues as the subject to trade sanctions hold the view that “trade sanctions are the most effective means” to achieve fair trade (Lee, 1997). For many countries in the region, labor standards are considered sensitive, because of their political systems, unitary unionism and their not yet having ratified the ILO’s core conventions.¹⁷ In other countries—where there are democratic political systems, plural unions and ILO core conventions have been ratified—they are not considered sensitive. Because the security environment in Asia continues to be shaped by “security dilemmas” (Jervis, 1978), there is little receptivity of such a sensitive norm. It explains why the proponents of the norms take a conditional approach to look for a dramatic or quick change. Due to the lack of both political will and capacity by many developing countries (Witte, 2008), this thesis argues that the conditional approach (currently using trade sanctions) is more likely to prevail over the promotional approach in diffusing labor standards

¹⁵ The term ‘promotional’ is used in the literature by (Franz C. Elbert and Anne Posthuma, 2011). The Paper identifies two types of agreements which are promotional and conditional. Understand more about the concept in Part Four below.

¹⁶ The term ‘conditional’ is in the literature by (Franz C. Elbert and Anne Posthuma, 2011). Understand more about the concept in Part Four below.

¹⁷ Please see part three of the thesis concerning the creation of the ILO to understand the ILO’s core/fundamental Conventions

widely in the Asia-Pacific region, despite the debate about the effectiveness of trade sanctions (Fiestas, 2003). With the influence of the US, the TPP is more likely to be a conditional agreement rather than a promotional one.

2.4. Research Methodology, Case Selection and Limitations

Methodology

In order to answer the thesis' empirical research question, primary evidence was drawn from all signed FTAs in the region. The thesis classifies each agreement into a category, 'promotional' and 'conditional', based on its provisions for the implementation and enforcement of labor standards. It compares developments in the agreements in each category, asking whether there was continuity and improvement with regard to mechanisms for enforcement of labor standards over time. The thesis is also based on previous research conducted by scholars of international relations for its theoretical as well as empirical arguments.

Case selection

Based on the conclusion of the literature review, this thesis takes the establishment of the ILO as a turning point in the diffusion norms of labor standards internationally. It takes the debate at the WTO as well as the inclusion of labor standards in FTAs as evidence to demonstrate the prominence and prospects of using labor-to-trade linkage as a means for diffusing the norms, rules and mechanisms for the enforcement of labor standards and the resolution of disputes. The US and international trade unions are analyzed here as the two main proponents and supporters of linkage and coercion as a means for securing norm diffusion. The most important vehicle for the diffusion of labor standards in the Asia-Pacific region is the likely conclusion of the TPP. The TPP has been selected because, as a plurilateral agreement, it is a novelty that is likely to diffuse labor

standards more widely and quickly than bilateral agreements. Furthermore, analysis of the TPP is very important for policy-makers in the TPP signatory countries in order to prepare them for their entry into the agreement, especially those in countries that have never signed a FTA which includes labor provisions, like Vietnam.

Limitations

The thesis only engages the topic of labor standards and conducts the analysis purely on the positions of participating countries with regard to labor standards. Other topics related to trade, competition, intellectual property rights, service and investment, rule of origin, capital control, state-owned enterprises and so on may have had a greater influence on TPP. Therefore, the decision of countries to participate in the TPP may have been influenced more by other issues than by TPP's inclusion of labor standards. Given their preferences, negotiating countries may be willing to accept sacrifices on labor standards in an exchange for gains on other trade-related issues according to their analysis of cost and benefit. Nonetheless, this does not affect the thesis' conclusions on the diffusion of norms, rules and enforcement of labor standards and the resolution of disputes in the TPP. On the other hand, this helps to explain which countries in the TPP are likely to face a situation of soft coercion.

Due to the time and space constraints, this thesis cannot research the actual implementation of FTAs. However, this will be an area for further research and can start with the empirical evidence review by (Samira Salem and Faina Rozental, 2012).

2.5. Conclusion

The struggle to diffuse labor standards internationally has gone on for nearly a century since the creation of the International Labor Organization (ILO).

There are four mechanisms for the diffusion of norms, rules and mechanisms for the enforcement of labor standards and the resolution of disputes. The effectiveness of these mechanisms seems to increase from emulation, learning and competition to coercion. Theoretical research and empirical record in the field reveal that competition and coercion are likely to be more powerful means for the diffusion than the others in the Asia-Pacific region. This is because labor standards are somewhat sensitive norms for state actors, given the low level of labor standards in the region and the concern that labor standards might be abused to jeopardize the interest of the state. Furthermore, developing countries might be reluctant to enforce high labor standards and protect workers for fear that “doing so might frighten away investors” (Seidman, 2009).

As labor-trade linkage is argued to be the most prominent and the most potentially effective mechanism of labor standards diffusion in the Asia-Pacific region, the following parts will deal with empirical evidence in the past as well as projection for the present and the near future in the field. Although the ILO does play a role in diffusing labor standards, empirical evidence shows that “ratification of ILO conventions does not result in improved labor conditions” (Samira Salem and Faina Rozental, 2012). Though the thesis is focused on the trade-related mechanism of labor standards diffusion as an emerging and the most potentially effective channel in the region, the thesis will address the ILO in the next part because the creation of the ILO is an important milestone in the field. International labor standards set by the ILO are usually invoked in FTAs today.

3

The past

Diffusion of labor standards by linking labor to trade in the Asia-Pacific

The literature review concluded that coercion is the most potentially effective means for diffusion of labor standards in the Asia-Pacific region. This part provides empirical evidence of past diffusion of labor standards by means of linking them to trade. It describes the history of putting labor issues on the table, from the launch of the International Labor Organization (ILO), to the creation of ideas and initiatives to link labor to trade in the World Trade Organization (WTO). It also shows the differences of opinion on the topic between developed countries and developing countries as well as between interest groups, which lead to the temporary failure of the multilateral approach. As a result of this conflict, actors have pursued an alternative strategy by including labor provisions into bilateral and regional free trade agreements. This has taken place mostly through the initiatives and leverage of the United States. This initiative has room to grow as international trade unions act as a catalyst in this process. There is a convergence of interests between the US and international trade unions. The study of all signed FTAs in the Asia-Pacific region reveals that there are two mechanisms for the enforcement of labor standards and dispute resolution through FTAs: 'promotional' and 'conditional' agreements. This section is important for explaining the argument of the thesis concerning the enforcement of labor standards and the resolution of disputes in the TPP.

This seeks to answer the questions: “What rules and mechanisms for the enforcement of labor standards and dispute resolution have been found in all signed FTAs in the region?” and “Who are the main norm entrepreneurs? Why?”

3.1. The creation of the ILO – labor issues were first put on the international table

"Si vis pacem, cole justitiam" - "If you desire peace, cultivate justice."

The motto enshrined in the foundations
of the ILO's original building in Geneva

From the end of the Second World War, especially from the end of the Cold War to the present has been a period of increasing globalization, economic development and international trade. In Adam Smith's book *The Wealth of Nations*, labor is considered one of the three factors of production (Ingham, 2008). The rights of laborers only began to be recognized internationally when the International Labor Organization (ILO) came into being in 1919. Before the ILO's birth, labor was treated as a commodity (Marx, 1844). Creation of the ILO established the principle that "labor is not a commodity" (ILO Declaration of Philadelphia, 1944) and since then labor issues have been promoted further and further. The ILO is mentioned in this chapter because its labor rights norms are internationally recognized and intended to be implemented universally. They are invoked in all vehicles of labor protection.

Right from its inception, the ILO was a tripartite institution that included representatives of government, labor unions and employers.¹⁸ The three parties together discuss, develop and promote the implementation of international standards in the field of labor. In 1946, the ILO became the first specialized agency

¹⁸ ILO Website, <http://www.ilo.org/global/about-the-ilo/who-we-are/tripartite-constituents/lang-en/index.htm>

of the United Nations.¹⁹ To the present, the ILO works with the United Nations to improve working conditions and to create decent work worldwide. The ILO promotes international labor standards in the form of conventions and recommendations, which were adopted at the International Labor Conference (ILC) by a majority of the three parties from all member states. Currently, the ILO has 182 conventions and 190 recommendations,²⁰ of which eight are core/fundamental conventions²¹ covering four themes as follows:

Freedom of Association:

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (N°87)

- Right to Organize and Collective Bargaining Convention, 1949 (N° 98)

Forced Labor:

- Forced Labor Convention, 1930 (N° 29)

- Abolition of Forced Labor Convention, 1957 (N° 105)

Child Labor:

- Minimum Age Convention 1973 (N° 138)

- Worst Forms of Child Labor Convention, 1999 (N° 182)

Discrimination:

- Equal Remuneration Convention, 1951 (N° 100)

- Discrimination (Employment and Occupation) Convention, 1958 (N° 111)

The ILO conventions and recommendations are implemented on a voluntary basis by member states. Until the adoption of the ILO Declaration on the Fundamental Principles and Rights at Work in 1998²², member states selected and

¹⁹ ILO Website, <http://www.ilo.org/washington/ilo-and-the-united-states/brief-history-and-timeline/lang--en/index.htm>

²⁰ ILO Website

²¹ ILO website, http://www.ilo.org/asia/decentwork/dwcp/WCMS_143046/lang--en/index.htm

²² To be accessed at <http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm>

ratified only those conventions and recommendations which they wished to promote or found appropriate to their countries' situation, including these fundamental Conventions.²³ The ILO Declaration 1998 declares that member states, whether or not they ratify these eight fundamental conventions, are obliged to implement them. These fundamental conventions provide for compliance with internationally recognized fundamental labor standards. Fundamental standards, which are referred to as "enabling rights" (Samira Salem and Faina Rozental, 2012, p. 8), are distinguished from other standards in that the former can be implemented regardless of the level of development of a member state. Take, for example, the labor standard on wages (that is not considered as a fundamental standard), which may be set variably depending on the living standard of a country. The ILO has a supervisory mechanism for the implementation of conventions ratified by member states.²⁴ However, the ILO does not have rule-enforcing bodies but rather promotes the implementation of labor standards in the spirit of voluntarism, moral suasion and technical support to permit member countries to implement the conventions they have ratified. Serious violations of labor rights are discussed at the International Labor Conference of the ILO. If this happens, it can affect the country's reputation. So, for example, "naming names helped shift the policies of some Middle Eastern countries: Saudi Arabia announced in 2001 that it would permit the formation of worker committees, and Bahrain decided to allow trade unions" (Freeman, Kimberly Ann Elliott and Richard B., 2003, p. 99). The ILO can also call for sanctions and a boycott against a country that fails to rectify serious violations of international labor standards. However, this measure is not institutionalized and, therefore, has not been in use. In any case, the ILO attempts to avoid confrontation and, instead, promotes member states' voluntarism, goodwill and consensus rather than coercion.

²³ <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>

²⁴ ILO website, <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm>

Although the ILO has been in existence for more than 90 years and the awareness of benefits of labor and social standards²⁵ has grown, the implementation of international labor standards, especially the fundamental conventions, still does not receive full attention from all member countries. Developed countries, thanks to their strong labor union movements, have promoted international labor standards better than developing and less developed countries. Developing countries and the least developed countries give priority to addressing the problems of growth, poverty alleviation, improvement of social conditions, and these goals are pursued primarily through government action. In these countries, there is inadequate awareness of workers about their labor rights as well as the effect of international labor standards on improving labor conditions and quality of life. Due to the existence of weak labor unions, international labor standards are either not promoted or promoted in an incomplete manner. The OECD and others identifies the big gap between the ratification of conventions and their actual enforcement (OECD, 2000, p. 30) (Flanagan, 2003). Even the ILO itself has acknowledged that "the implementation of ILO standards is not always very effective in practice" (ILO, Globalization and Decent Work in the Americas, 2002). In conclusion, the ILO so far has not been a strong diffuser of international labor standards, especially in terms of the enforcement.

3.2. Linking labor to trade – the debate at the WTO

"The WTO is seen as little more than a forum."²⁶

Amrita Narlikar

With the passing of time, the demand for global fair trade has increased and more people have embraced the concept of "human-centered development". With

²⁵ ILO website, <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm>

²⁶ (Narlikar, 2002)

these developments has come the idea of establishing a relationship between labor issues and trade. Both the Havana Charter of the International Trade Organization (ITO) in the 1940s and the Marrakech Agreement establishing the WTO attach importance to the labor issues inside trade. The Havana Charter states:

*"The Members recognize that measures relating to employment must take fully into account the rights of workers under intergovernmental declarations, conventions and agreements. They recognize that all countries have a common interest in the achievement and maintenance of fair labor standards related to productivity, and thus in the improvement of wages and conditions as productivity may permit. The members recognize that unfair labor conditions, particularly in production for export, create difficulties in international trade, and, accordingly, each member shall take whatever action may be appropriate and feasible to eliminate such conditions in its territory."*²⁷

The Marrakech Agreement says in its Preamble *"relations in the sphere of trade and economic activity should tend to increase living standards (and) achieve full employment..."* (Chapter 1: Objectives and organization of the WTO). The Ministerial meeting of the WTO in Singapore, 1996 asserted: *"We renew our commitment to the observance of internationally recognized core labor standards."* (WTO, Singapore Ministerial Declaration, 1996). It did the same in the Ministerial meeting in Doha in 2001: *"We reaffirm the declaration that we made at the Ministerial Conference in Singapore regarding internationally recognized core labor standards"* (WTO, Doha Ministerial Declaration, 2001). Despite these efforts, *"currently, labor standards are not subject to WTO rules and disciplines."*²⁸ The inclusion of labor and social clauses in the WTO has remained a persistent debate with no end in sight. This debate occurs between economists, on one side, and

²⁷ Final Act of the United Nations Conference on Trade and Employment: Havana Charter for an International Trade Organisation

²⁸ http://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/18lab_e.htm

labor standards advocates, led by unions and human rights groups, on the other. It also takes place between developing-country governments and developed-country governments (Kimberly and Elliott, 2012). Economists advocate for free trade – advancing the orthodox theory of growth (Weelan, 2010), while trade unions and human rights groups seek balance between economic and social development. Economists and employers oppose the linkage for fear of its negative impact on trade, whereas trade unions and human rights groups support it, suggesting that it may help to prevent a “race to the bottom”²⁹ in which low labor standards are used as a competitive advantage in the international trade. Employers “have been consistently against linkages of any kind” (IOE, 2006, p. 6). Trade unions believe in the rule-enforcing tools and procedures of the WTO (Kimberly Ann Elliott and Richard B. Freeman, 2003, p. 73) with focus on incentives and trade preferences at first and sanctions as a last resort (Robert Howse and Makua Mutua, 2000). Developing-country governments share economists and employers’ viewpoint and oppose it for fear that might be abused for protectionist purposes (Kimberly and Elliott, 2012), while developed countries support it for the purpose of creating a level playing field in the global economy. Developed countries refer to “the economic dimension” where “lower labor standards result in an unfair competitive edge, and this unfair advantage would result in a “race to the bottom” of labor standards” (Anuradha R.V. and Nimisha Singh Dutta, p. 8) (Busse, 2003) (Aleo, 2006). Developing countries insist that a large role for government is necessary in economic development and that states are acting primarily to protect national interest. Due to concerns about the harmful effects on their economy (the fear of coercion), they generally object the linkage, arguing that their country’s low level of development and limited resources make it inappropriate for them to apply the same labor standards as the developed countries (Basu, 2001) (Lee, 1997, p. 178). They even hold the view that linking labor to trade “could make things worse for

²⁹ <http://www.wisegEEK.com/what-is-a-race-to-the-bottom.htm> and see discussions in Raj Bhala, Clarifying the Trade-Labour Link, 37 Colum. J. Transnat’l L. 11, 17 (1998)

many workers" (Anuradha R.V. and Nimisha Singh Dutta, p. 9) (Robert Stern and Katherine Turrell, 2003). In conclusion, the topic remains very controversial and contentious³⁰ even though there is evidence to support the connection between promotion of high labor standards and higher productivity as well as the link between promoting high labor standards and the expanded benefits of globalization and increased public support for trade agreements (Kimberly and Elliott, 2012).

3.3. The inclusion of labor provisions in free trade agreements (FTAs) – the US initiative and role

"...will use trade agreements to spread good labor and environmental standards around the world."

Barack Obama's Economic Agenda:
Keeping America's promise³¹

The deadlock with the Doha Round of the WTO as well as the post-2008 global financial crisis and the uncertainty about trade has resulted in a push for FTAs in Asia over the past few years. APEC has existed for two decades, but it does not provide strong framework to promote trade cooperation. APEC is composed of member economies rather than state members. During the East Asian Financial Crisis, APEC members were divided among themselves over the role of APEC during and after the crisis – was its purpose free trade or economic development (Edward J. Lincoln, 2001)? APEC's decision-making is embedded in the ASEAN Way: informality over formal institutions, flexibility, the practice of consensus and non-confrontational bargaining styles (Yuen Foong Khong, Helen E. S. Nesadurai,

³⁰ Understand more about the debate for and against linkages through the research paper by Hazril Izwar Ibrahim, *School of Management, Universiti Sains Malaysia* Running on Parallel Tracks? Analysing the Effects of Linking Labour Standards to International Trade.

³¹ Barack Obama's Economic Agenda: Keeping America's promise To be accessed at http://obama.3cdn.net/8f478c5e1bb07ca0b1_sh1umv2zy.pdf (5 June 2013)

2007). This has left APEC unable to reach strong commitments in free trade. Therefore, FTAs in Asia act as a second layer of trade agreements.

Failure to resolve the labor-trade linkage debate within the WTO has meant that promotion of labor standards has been driven forward alternatively by linking them to trade in bilateral agreements. This was considered to be faster, more flexible, more binding and more likely to promote implementation. The United States has been in the vanguard of this process (Charnovitz, 2005)³² and has played a pivotal role in promoting labor standards as well in including them in trade agreements (Zoellick, 2004).³³ Looking back at the ILO's history, the US has played a decisive role in the relative power of the organization (Freeman, Kimberly Ann Elliott and Richard B., 2003, p. 109). "Since 1953, the United States has been pressing in all trade negotiation rounds to include an article or provisions on labor rights in the GATT" (Pedro da Motta Veiga and Miguel F. Lengyel, 2003). Since the late 1980s, it has proposed continuously the establishment of a working group for the linkage between trade and labor rights (Pablo Lazo Grandi, 2009, p. 3). Facing deadlock in multilateral negotiations, the United States has changed course to become active in promoting the negotiation of labor provisions in bilateral and regional agreements. Trade agreements driven by the US usually invoke the ILO Declaration 1998 as the basis for regulating commitments on labor issues. The ILO Declaration 1998 establishes fundamental labor standards commitments in four areas (covered in the eight fundamental conventions) (Grandi, 2009, p. 5):

- basic or fundamental labor rights and principles;
- jurisdiction of the ILO;
- labor standards should not be used for trade protectionist ends;

³² See part about historical context

³³ "The United States is the only nation pressing to include enforceable labor and environmental protections in its trade agreements.", said Robert B. Zoellick, US trade representative.

-the comparative advantages possessed by any particular country should not be jeopardized on the basis of the present Agreement or its follow up.

With the success of attaching labor to North American Free Trade Agreement (NAFTA) resulting in the North American Agreement on Labor Cooperation (NAALC), the United States continued to negotiate and sign free trade agreements that included protection of labor standards with other countries in the world. So far, the US has concluded 13 FTAs, which include provisions for labor protection involving 19 countries (Bolle, 2013, p. 2). These agreements have undergone six generations of changes.³⁴ Each change demonstrated the growing importance of labor protection provisions in trade agreements and their implementation.

The United States has always pushed for targeting labor issues as an object of trade sanctions because this would promote enforceability. However, implementation of labor protection provisions in developing countries remains controversial because the ILO Declaration 1998 and other ILO conventions are not as detailed and specific as trade regulations. By linking labor standards to FTAs, the US is likely to be able to use access to its market to enforce labor standards in developing countries. This is the case although only some provisions are enforceable (Bolle, 2008, pp. 5,6) and no complaint has so far been resolved successfully (Bolle, 2008, p. 6) (Bolle, 2013).

In addition to the role of the US, the European Union also plays a role in including labor provisions in FTAs.³⁵ However, the thesis is focused on labor standards diffusion in the Asia- Pacific, and in particular, among the signatory

³⁴ 6 templates of labor provisions in the US bilateral and regional FTAs: i) NAFTA; ii) US – Cambodia; US – Jordan; iii) Chile- US; iv) US – Central America + Dominique and other agreements after the Trade Promotion Authority (TPA); v) US-Peru; vi) US – Panama và other agreement after the Bipartisan Agreement on Trade Policy (BATP) (Pablo Lazo Grandi, 2009).

³⁵ To understand the EU's role, please read the research by (Pedro da Motta Veiga and Miguel F. Lengyel, 2003)

countries of the TPP. The EU is outside the scope of this thesis and therefore, its role will not be analyzed here.

3.4. The US Norm Entrepreneur

“Let me say it clearly: The United States can,
must, and will lead in this new century.”

Hilary Clinton

After successfully concluding 13 bilateral free trade agreements with labor provisions, the United States has begun to promote the same process in a plurilateral agreement - the TPP. If successful, inclusion of labor standards in the TPP would represent a step back toward the original approach of the US, promoting labor standards multilaterally in the World Trade Organization.

The actions of the US to promote diffusion of labor standards across the globe coercively through FTAs are first and foremost in the interests of the United States. It is an intermediate goal in the larger project of promoting democratization around the world. Besides creating a level playing field for US businesses and protecting jobs for American workers, the US also hopes to promote – “values that are both American and universal” (White, 2012) so as to strengthen its leadership in the world through soft power. Since the end of World War II, this policy has been consistent with the “global expansion of American capitalism” and even “American labor’s foreign policy has stressed American interests first” (Cox, 1977, p. 394). In US eyes, the TPP serves, above all the interest of the US hegemony. The Bush administration revealed clearly its intention to export US values through FTAs by proposing that FTAs include “the choice of the internationally recognized labor standards or labor standards ‘equivalent to’ U.S. standards” (Tarullo, 2007). This proposal was made despite the fact that US law and practice are themselves not static, which implies that any changes in US laws would require changes in laws of other parties to an agreement (Tarullo, 2007). More importantly, in facing China’s rise, given the low level of labor protections that operate as a competitive

advantage for Chinese exporters, a TPP with high labor standards might act as a barrier to Chinese accession and contribute to the economic encirclement of a rising China.

Labor standards in FTAs, in general, and in the TPP, in particular, illustrate the American interest in creating a bigger role for non-state actors and a smaller role of state actors (in pursuit of democratization) to advance the larger goal of US hegemony. Promoting labor standards is not an end in itself. The US has left the ILO when it did not serve US goals (Cox, 1977). "The TPP emerged as a US priority some years ago, but it has recently become identified with the "rebalancing" of US foreign policy toward sustaining a US presence in Asia" (Peter A . Petri and Michael G. Plummer, 2012). Anyway, from the perspective of workers, the US return to the Asia-Pacific might mean a good chance to uphold workers' rights in the region.

3.5. Trade Union Entrepreneur

"History is a great teacher. Now everyone knows that the labor movement did not diminish the strength of the nation but enlarged it. By raising the living standards of millions, labor miraculously created a market for industry and lifted the whole nation to undreamed of levels of production. Those who attack labor forget these simple truths, but history remembers them."

Martin Luther King Jr.

The international trade union movement supports innovative ways for protecting workers and improving workers' lives. We live in a world that is witnessing an increasing gap between the rich and the poor. In some places, trade liberalization and competition are creating pressures to reduce wages and working conditions, impacting the lives of a large part of the population in the world of

work. In developed and developing countries, with a desire to promote national development through free trade and competition in addition to pressure from international financial institutions and investors, governments are in the process of implementing flexible labor policies, which undermine workers' protections. Today around 870 million people live on less than 2 dollars / day and they account for one quarter of the working population.³⁶ About 197 million people are unemployed and this figure is expected to increase to 202 million in 2013 and over 205 million by 2014. The unemployment rate among the young is approximately 35% (ILO, Global Employment Trends, 2013).

In places where there is no protection of the basic rights of workers, global competition has led to a race to the bottom scenario³⁷. Intense competition to attract foreign direct investment has made the use of flexible labor regulations, exemptions from application of labor regulations (in law as well as in practice) and non-enforcement or insufficient enforcement of labor legislation increasingly popular. Trade union rights have been violated in a systematic way in export-processing zones (EPZs). For example, trade unions are forbidden and strikes are made illegal in EPZs. There is non-enforcement of minimum wage. All this is done under the threat to move factories to other countries (ILO, Globalization and Workers' rights, 1998).

Anti-union repression has increased in the Asia-Pacific³⁸. A survey conducted by the International Confederation of Trade Unions (ITUC) revealed that, "more than 1,000 Asian trade unionists were injured and almost as many were arrested. There was an increase over 2009 in the number of labour activists murdered (12 in 2010, as opposed to 10 in 2009) as well as in the number of death

³⁶ See http://www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS_211154/lang--en/index.htm

³⁷ See the definition at <http://www.wisageek.com/what-is-a-race-to-the-bottom.htm>

³⁸ See ITUC website and at <http://www.ituc-csi.org/press-release-anti-union>

threats directed against trade unionists.”³⁹ This has happened, for example, in Bangladesh, the Philippines, India, Pakistan, South Korea and elsewhere in response to protests and strike action.⁴⁰ In the context of such flexible labor rules and deregulation, the present global economic recession may lead to unpredictable social crises.

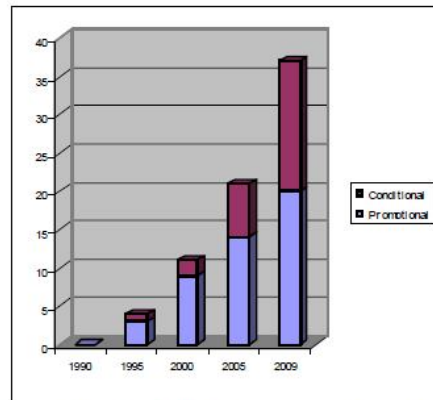
The interests of international trade union movement run parallel with the US initiative of promoting international labor standards through bilateral and regional free trade agreements. The proliferation of bilateral and regional trade agreements that include labor provisions, as indicated in the figures below, demonstrates “that labor standards in trade agreements are increasingly accepted among both developed and developing countries” (Bartels, 2007)(Franz C. Elbert and Anne Posthuma, 2011):

³⁹Read more in the article at <http://aipeup3bbsr.blogspot.com/2011/06/survey-more-anti-union-repression-in.html>

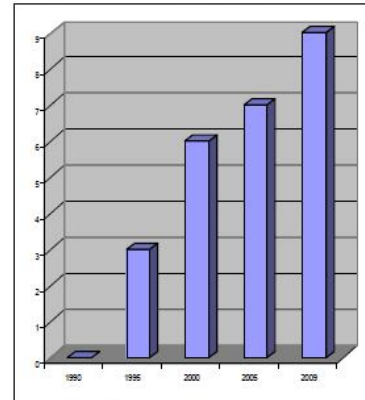
⁴⁰ Read more at <http://www.ituc-csi.org/press-release-anti-union>

Figure 1: The rising trend in the number of trade agreements with labor provisions*

Panel A. Evolution in numbers of labour provisions in bilateral and regional trade agreements between 1990 and 2009



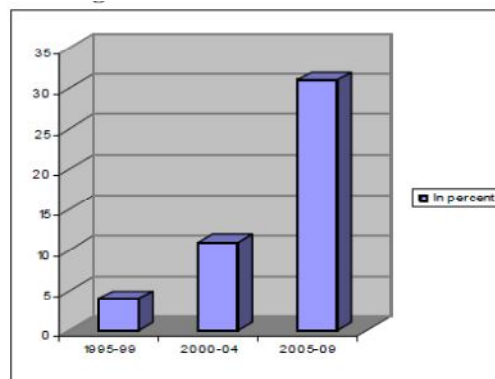
Panel B. Evolution in numbers of labour provisions in bilateral and regional trade agreements concluded between developing economies between 1990 and 2009



Note: * The data on 2009 refer to the period from 1 January of 2009 to 29 October of 2009.

Source: ILS estimates based on the WTO Regional Trade Agreements Information System and information of national governments and treaty bodies.

Figure 2: Share of trade agreements with labor provisions compared to the total number of trade agreements entered into force from 1995-2009*



Note: * The data on 2009 refer to the period from 1 January of 2009 to 29 October of 2009.

Source: ILS estimates based on the WTO Regional Trade Agreements Information System and information from national governments and treaty bodies.

At present, the International Trade Union Confederation (ITUC), in coordination with some national trade union organizations of the TPP countries,

has proposed that the labor and dispute resolution chapters of the TPP be based on the US-Peru FTA, with some amendments and additions.⁴¹ The ITUC represents 175 million workers, from 315 national affiliates⁴², in 156 countries and territories. Inclusion of labor standards in the TPP is backed by the international trade union movement.

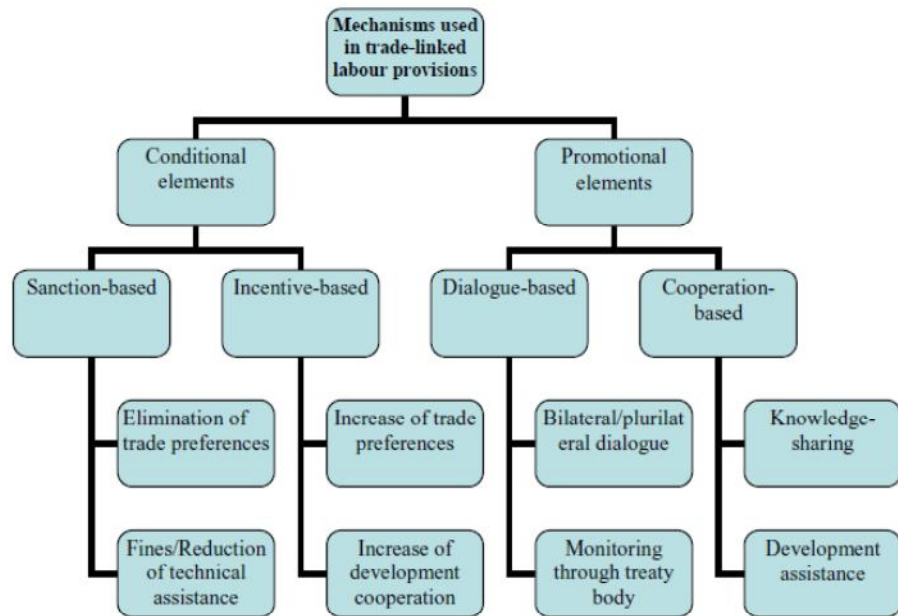
3.6. Different mechanisms for the enforcement of labor standards and the resolution of disputes in all signed FTAs in the Asia-Pacific region

Labor provisions in free trade agreements can be divided into two types: conditional and promotional (Franz C. Elbert and Anne Posthuma, 2011). Figure 3 below distinguishes between these two types.

⁴¹ See the text to be accessed at www.ituc-csi.org/.../Final-Official_ITUC_TransPacific_Partnership_Labor_Chapter.pdf

⁴² <http://www.ituc-csi.org/about-us>

Figure 3: Different implementation mechanisms used in labor provisions



The effects of norm diffusion differ between these two different types of agreement. Promotional agreements use learning and emulation for transnational diffusion of labor standards, while conditional agreements use coercion and competition. Conditional labor provisions, especially the provisions associated with material sanctions for non-compliance, are more powerful than promotional provisions due to the direct economic impact of a breach. For example, the NAALC provides for penalties of up to US\$20 million US dollars.⁴³ When sanctions are applied, it affects the reputation of the country in question as well as its political and economic relations with other countries (Cleveland, S.H., 2001) (Kryvoi, 2008). In the case of promotional provisions, the prestige of a country may be put in question and it may be badly affected if there is an independent auditor publishing reporting on the insufficient implementation of labor protections in the country.

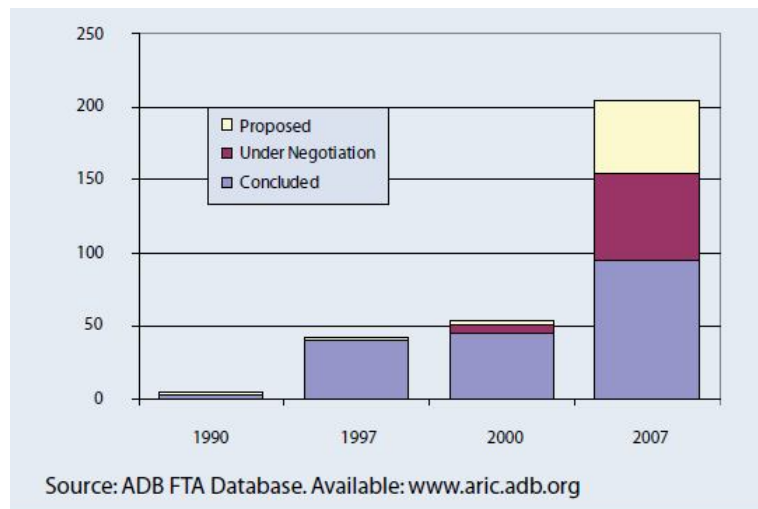
⁴³ See the text of NAALC, Annex 39

3.6.1. Diffusion of labor standards via promotional agreements

Promotional agreements are non-binding as they are based on cooperation, dialogue, consultation and consensus for enforcement, which means that their implementation depends on the goodwill of signatory parties.

In the Asia-Pacific region, like the general trend of the world, the rate at which FTAs have been signed has increased dramatically (see the Figure 4 below) (ADB, 2008, p. 3). On the other hand, the number of FTAs that include labor provisions signed among countries in the region can be counted on only a few fingers.

Figure 4: Number of Free Trade Agreements involving Asia and the Pacific Countries, 1990-2007



Most countries in the region are developing countries with labor conditions below international standards and they, generally, tend to reject linkage of labor to trade as a tool for trade protectionism (Kimberly and Elliott, 2012). For example, India traditionally opposes this linkage (Anuradha R.V. and Nimisha Singh Dutta, p. 16). China, given its low national labor conditions, definitely prefers labor provisions in FTAs of the promotional type. Vietnam has not yet signed any FTAs with the inclusion of labor standards. If any, it certainly likes the agreement of

promotional type. Vietnam had just begun to think about negotiating labor standards in FTAs when it decided to join the TPP. It has expressed concerns that it has no experience in either negotiation or practice in the field.

The list of promotional agreements on labor cooperation signed by countries in the region includes: TPP/P4 Agreement (Brunei, Chile, New Zealand and Singapore, 2005), Chile-China (Memorandum of Understanding on Labor Cooperation, 2005), New Zealand – Thailand (Agreement on Labor, 2006), New Zealand – China (Memorandum of Understanding on Labor Cooperation, 2008), New Zealand – the Philippines (Memorandum of Agreement on Labor Cooperation, 2008), Japan- the Philippines (minimum labor regulations, 2009), New Zealand - Hong Kong, China (Memorandum of Understanding on Labor Cooperation, 2010), Australia- Malaysia (side letter on labor issues, 2012) and New Zealand – Taiwan (Chapter 16 of the Agreement, July 2013). These agreements have been classified as the promotional type based on their labor provision content and not on the form of the agreement (e.g.s.: memorandum of understanding (MOU), side letter on labor cooperation or a labor chapter in a free trade agreement). This means that should disputes occur, they are to be resolved on the basis of consultation, dialogue, cooperation and consensus. In fact, the implementation of these agreements does not receive full attention from the governments in question. Take the example of New Zealand – China Labor MOU (2008). In the National Interest Analysis of New Zealand regarding the implementation of the China-New Zealand Labor MOU, it says “New Zealand’s social, legislative and regulatory frameworks will not be affected by the FTA.... In line with the government’s Framework for Integrating Labor Standards and Trade Agreements the MOU establishes mechanisms through which specific labor issues can be addressed via both cooperative and consultative

processes with China.”⁴⁴ This means countries may “ignore” the implementation for the sake of national interests when necessary.

At the same time, there have been few incentives or measures for monitoring the implementation of these labor provisions. No report has been published publicly on implementation. Whether trade unions participate in the negotiation of these labor agreements and are involved in monitoring their implementation remains an open question. So far, no complaint about labor issues related to the enforcement of free trade agreements in Asia has been publicly recorded.

3.6.2. Diffusion of labor standards via conditional agreements

Conditional agreements are divided into two types: those with positive and negative conditionality. There is so far only one example of an agreement with positive conditionality: the US – Cambodia Textile Agreement. Practice shows that the enforcement of labor provisions of this positive conditional agreement is much more effective than promotional agreements. The US-Cambodia Textile Agreement creates export quota bonuses reserved for Cambodia for improvements in labor standards. The practice showed improvements of working conditions and wages in factories, which led to increased exports from Cambodia (Fair Labor Association, 2005). The ILO has been involved in the monitoring process in conjunction with the Cambodian garment manufacturers’ association, various NGOs, and U.S. buyers of Cambodian apparel (Greenhill, Brian, Layna Mosley and Aseem Prakash, 2009). Monitoring is “unannounced and has to be independent, transparent and credible” (Busser, 2006, p. 102). There has been improved social dialogue at the company level as well as improved training for management and workers (Busser, 2006). “The Cambodia example shows a clear link between improvement in working conditions and improvement of productivity and quality of products” (Busser,

⁴⁴ See National Interest Analysis through www.chinafta.govt.nz/1-The-agreement/3.../National-interest-analysis.pdf

2006, p. 102). More information about the effectiveness of this agreement is found in Part Four below.

Negative conditionality refers to those agreements which impose monetary or trade sanctions in case of serious violations. Conditional agreements are more powerful according to the research by the ILO: "Conditional provisions are the hallmark of FTAs entered into by the US and Canada." (Anuradha R.V. and Nimisha Singh Dutta, p. 32). In the Asia-Pacific region, there have been six agreements of this type, which include labor provisions: US-Mexico-Canada FTA (NAFTA, 1994), US-Singapore FTA (2003), US-Chile FTA (2004), US-Australia FTA (2004), US-Peru FTA (2006) and US-Korea FTA (2007).

3.7. Conclusion

The diffusion of labor standards by means of linking them to trade has undergone an evolution from the creation of the ILO, to the debates at the WTO and recently to the inclusion of labor provisions in FTAs. The US has always played a key role together with the international trade union movement. The inclusion of labor provisions in FTAs has been emerging as a potentially powerful channel for diffusion of norms, rules and mechanisms for the enforcement and the resolution of disputes. This is especially true when the FTAs include enforcement provisions of the conditional sort, regardless of whether this is positive or negative conditionality, such as those signed between the US and several countries in the Asia Pacific. Promotional agreements, such as those signed among Asian countries, have been less effective in this regard. How the TPP is likely to diffuse the norms, rules and mechanisms for the enforcement of labor standards and dispute resolution is explained in Part Five below.

4

The Present and Future

Labor standards diffusion through the TPP: A promotional or conditional agreement?

This is the main part of the thesis and it answers the following questions: How are norms, rules and mechanisms for the enforcement of labor standards and the resolution of disputes likely to be diffused in the TPP? Is this process great power – dominated?

4.1. The ground and purpose for the prediction

Negotiation of the Trans-Pacific Partnership Agreement (TPP) has garnered a lot of attention in the world. The TPP is important because it is the first comprehensive, plurilateral FTA of high standard, covering advanced industrialized, middle income, and developing economies. It aims to be a model for FTAs in the twenty-first century. Due to the deadlock of the WTO Doha round negotiations, its ambition is “to liberalize trade in nearly all goods and services and include commitments beyond those currently established in the World Trade Organization (WTO)” (Ian F. Fergusson, William H. Cooper, Remy Jurenas and Brock R. Williams, June 2013, p. 1). This research focuses only on the enforcement and dispute resolution mechanisms that might be included in the labor chapter in the TPP. The purpose of this chapter is to provide reasoned conjecture about the enforcement and dispute settlement mechanisms for labor standards that US influence is likely drive into the TPP. This section also provides information for

policy-makers and negotiators in the TPP countries that might help them to prepare themselves for proposals likely to be raised at TPP talks. It may also help them prepare for the conclusion of negotiations as well as the changes that may occur in their countries if the stated conjecture in this research turns out to be correct. The likely content of the TPP with regard to labor standards enforcement and dispute resolution mechanisms can be anticipated by extrapolating from the content of bilateral and regional free trade agreements (FTAs) signed previously in the region.

4.2. TPP Background

TPP talks began in 2008 when the United States agreed to try to expand the so-called P4 Agreement concluded previously by Brunei, New Zealand, Singapore and Chile (signed in 2005). The decision of the United States was followed by the instant response of Australia, Peru and Vietnam to join the negotiation. The initial ambition was to conclude the Agreement at the APEC Leaders' Meeting in Honolulu, Hawaii, in November 2011. This and subsequent deadlines were missed as the negotiations expanded to include Malaysia in 2010 as well as Canada and Mexico in 2012. Japan joined the negotiations in 2013. Expanded participation has complicated TPP negotiations as they now include very open-trading states, such as New Zealand, Singapore and Chile, big economic powers, such as the United States and Japan, as well as the emerging markets of Vietnam and Mexico. Both China and Taiwan also want to enter. TPP negotiations include both democratic and socialist market-oriented economies. This means there will be many differences of opinion over how to proceed. The twelve existing members of the TPP are speeding negotiations with the completion of Round 17 in the last week of May 2013 in Lima, Peru; Round 18 in the last week of July in Kota Kinabalu, Malaysia and Round 19 in Brunei in the last week of August in an effort to achieve the agreement ambitiously in 2013. Media reports do not provide much

information with regard to the enforcement mechanisms of labor standards in the TPP.

4.3. Promotional or conditional TPP?

Chapter 2 distinguished between two types of FTAs: promotional and conditional agreements. The first type is based on the goodwill of the parties, encouragement, co-operation and dialogue to resolve problems of implementation. The second type imposes material conditions to pressure participants to meet their obligations under agreements. These conditions can be positive—‘carrots’—or negative—‘sticks’. So which way will the TPP go?

The TPP is still under negotiation. Its architects, including US negotiators, aspire to make the TPP a "high-quality, twenty-first-century" agreement (C. L. Lim. Deborah K. Elms and Patric Low, 2012). Together the twelve countries participating in TPP negotiations make up 40% of the world's population and account for nearly 60% of global GDP (Williams, June 2013, p. 2). The TPP's predecessor, the original P4 Agreement, is a promotional agreement, without legally binding enforcement or dispute resolution mechanisms. At present the TPP talks do not include China. If China joins now, it could change the setting by moving Sino-American tensions inside the TPP negotiations. With a large population and the ambition to become a regional hegemon, China gives high priority to economic development. Given its developing economy, China would prefer not to include high labor standards in free trade agreements, especially those that create mechanisms for compulsory enforcement. If it joins in late, however, China may have to accept a "fait accompli". It seems that at present, the US does not welcome China's presence in the negotiations. By some, "the TPP has been portrayed as an effort to contain China" (Peter A . Petri and Michael G. Plummer, 2012, p. 2). This thesis, therefore, anticipates completion of the TPP without the participation of China.

This section also does not examine the actual labor standards that the TPP might include. This is because most FTAs, whether with or without the involvement of the United States, promote the internationally recognized labor standards and direct member states to perform their obligations under the ILO Declaration 1998. The TPP will do nothing more than this because it would be difficult to push standards higher than these fundamental labor standards. These fundamental labor standards can be implemented regardless of the level of economic development of each country. Other standards can only be implemented in accordance with the level of development in each country. These standards, once implemented, act as the basis and means for implementation of other standards. For example, if workers are guaranteed the right to form genuine representative organizations and the right to collective bargaining, they will be able to negotiate salary and other terms consistent with the realities of their own countries. Because the countries participating in TPP have very different levels of development, it is difficult to apply similar wage levels across all members. So the commitments in the TPP only obligate member states to implement fundamental international labor standards. More important is the question of how to ensure these fundamental standards are implemented? The TPP will only be effective in diffusing labor standards if there is an effective mechanism for their enforcement and the resolution of disputes.

This study focuses on the likely terms for the enforcement of labor standards and dispute settlement in a potential TPP agreement. Will the TPP be a promotional or conditional agreement? An agreement is considered as promotional or conditional depending on the nature of its enforcement and dispute resolution mechanism. As a reminder, a promotional agreement has enforcement and dispute-settlement mechanisms based on cooperation and consensus. A conditional agreement, on the other hand, uses the mechanisms of “carrots and sticks”. Carrot-and-sticks policies have been the favored approach of the US so far. So how should one forecast what enforcement and dispute

settlement mechanisms negotiators are likely to build into the TPP? Sunk costs, entrenched interests and institutional complementarities are likely to ensure that new things grow out of existing ones. The TPP, therefore, is likely to be based on and developed from those FTAs, which the US has already signed with countries in the region. Why is it likely to be based on bilateral trade agreements signed by the US and not other agreements? This is the case because the US participates in TPP. If the TPP did not include the US, it would revert to being the P4 Agreement. This argument will be expanded in the analysis below.

We cannot be sure whether or how the TPP will conclude, but we can prepare ourselves in advance with scenarios based on the positions of the participating parties in existing FTAs that include labor provisions. To forecast what enforcement and dispute settlement mechanisms are likely to find their way into the TPP, this study analyzes the content of free trade agreements in the region with regard to their provisions for enforcement of labor standards and dispute resolution. This includes agreements with and without US involvement. The information used for this thesis draws only on the content of the signed agreements. The implementation of these agreements in practice is beyond the scope of this thesis. Such an inquiry would require in-depth field research on the actual implementation of labor standards in the many countries concerned. Even then, the evaluation would be incomplete, because there have been no reported complaints that have been addressed successfully so far (Bolle, 2013, p. 6).

The twelve countries participating in the TPP can be organized into three groups. The US is its own group. A second group consists of all those countries that have signed a bilateral FTA with the United States: Canada, Mexico, Singapore, Australia, Chile, Peru and South Korea. This is referred to as 'group A'. At present, South Korea is not a member of the TPP, but it has signed a bilateral FTA with the US. It has also expressed interest in the talks, and its inclusion is supported by the US. Subsequently, the US-Korea FTA is included in this analysis to demonstrate the continuity and consistency of US FTAs in the region. The rest of countries

participating in TPP negotiations have not signed a bilateral FTA with the United States and belong to 'group B'. This group includes: Brunei, Malaysia and Vietnam. Although New Zealand has not signed a bilateral FTA including labor provisions with the USA, it can be assumed that the country's stance on the inclusion of labor provisions in FTAs will follow the perspective of group A. This is because New Zealand, like Australia, is a developed country and the two share many similarities in their views on labor issues, along with other developed countries. Moreover, the Australia and New Zealand economies, including their labor markets, are closely integrated in the trans-Tasman Single Economic Market. Japan will also align with group A as Japan and South Korea enjoy similar high levels of economic development and democratic political systems. They consider each other partners in a strategic relationship, and both are strategic allies of the US in the region. South Korea has signed an FTA with the United States. If Japan concluded a FTA with the US, the content of this agreement would likely be similar to the FTA that Korea signed with the US.

So what would be scenarios for these three parties (the USA - group A - group B) concerning the TPP enforcement and dispute settlement?

4.3.1. Scenario for the US

The record of US bilateral FTAs with both developed and developing countries in the region suggests that the USA is certain to push the TPP to become a conditional agreement. So far Washington has signed 13 bilateral FTAs that include labor provisions, of which 7 agreements were signed with countries in the region. They are: (1) US-Mexico-Canada FTA (NAALC, 1994), (2) US-Singapore FTA (Chapter 17, 2003), (3) US-Chile (Chapter 18, 2004), (4) US-Australia (Chapter 18, 2004) , (5) US-Peru (Chapter 17, 2006), (6) US-Korea (Chapter 19, 2007), (7) US-Cambodia Textile Agreement (2006). All seven of these agreements include conditionality for the enforcement of labor provisions. Of these 7 agreements, 6

use negative conditionality for enforcement, while only the US-Cambodia Textile Agreement uses positive conditionality.

Each of the six agreements that employs 'sticks' applies nearly the same type of negative conditionality for enforcement and dispute resolution. However, these six agreements may also be classified into different generations according to when they were signed. In terms of labor provisions, the contents of agreements belonging to the same generation are identical. The North American Agreement on Labor Cooperation (NAALC) is the first generation (G1). The US-Singapore FTA, the US-Chile FTA and the US-Australia FTA belong to the second generation (G2). The US-Peru FTA and the US-Korea FTA fall in the third generation (G3). Developments between these three generations of FTAs show the US's firm stance in its use of conditionality for enforcement and dispute resolution. Whether with developed or developing countries, all the three generations of FTAs apply the same enforcement and dispute resolution mechanisms that include the following 6 steps: (1) cooperation and consultation; (2) referral to a joint committee; (3) dispute settlement panel; (4) mutually acceptable compensation; (5) annual monetary assessment (or in other words, monetary sanctions); (6) suspension of benefits (or in other words, benefit sanction).⁴⁵

Basically for the implementation of the agreements, the parties shall cooperate and consult each other in the spirit of consensus. All agreements provide for the creation of a committee or council at the ministerial / government officials level to be in charge of labor issues.⁴⁶ The Parties specify a point of contact, which

⁴⁵ Please see the annex at the end of the thesis on enforcement and dispute resolution mechanisms in Asian Pacific FTAs which include labor provisions, to which the US is a party for reference

⁴⁶ NAALC, part 3; US-Singapore FTA, Chapter 17, Article 17.4; US-Chile FTA, Chapter 18, Article 18.4; US-Australia FTA, Chapter 18, Article 18.4 and Chapter 20, Article 20.1; US-Peru FTA, Chapter 17, Article 17.5; US-Korea FTA, Chapter 19, Article 19.5

is usually an office within the Labor Ministry.⁴⁷ Within a country, each Party can freely establish a national consultation mechanism—which may include members of the public, representatives of workers’ organizations or employers’ organizations and other interest groups—as a channel of consultation in the process of implementing the labor provisions of the agreements.⁴⁸ If the parties cannot reach consensus, or a dispute arises and cannot be resolved, it is referred to the dispute settlement mechanism of the agreements.⁴⁹ This dispute resolution mechanism usually starts with discussion and negotiation amongst the parties for a mutually satisfactory solution in the spirit of openness and collaboration (step 1).⁵⁰ If the parties cannot reach an agreement, the case will be taken to a third party, which is usually a joint committee established by the two sides to conduct conciliation and mediation (step 2).⁵¹ In the case of failure of conciliation and mediation, the parties shall bring the case to arbitration (step 3).⁵² The report of the Arbitration Committee (often called dispute settlement panel or arbitral panel) will be presented to the parties for consultation until the parties agree on a final report.⁵³ The final report will be announced to the general public.⁵⁴ On the basis of

⁴⁷ NAALC, Article 8 and Section C, Part 3; US-Singapore FTA, Chapter 17, Article 17.4.2; US-Chile FTA, Chapter 18, Article 18.4.3; US-Australia FTA, Chapter 18, Article 18.4.2; US-Peru FTA, Chapter 17, Article 17.5.5; US-Korea FTA, Chapter 19, Article 19.5.3

⁴⁸ NAALC, Section D, Part 3; US-Singapore FTA, Chapter 17, Article 17.4.3; US-Chile FTA, Chapter 18, Article 18.4.6; US-Australia FTA, Chapter 18, Article 18.4.3; US-Peru FTA, Chapter 17, Article 17.5.7; US-Korea FTA, Chapter 19, Article 19.5.4

⁴⁹ NAALC, Section B, Part 2; US-Singapore FTA, Chapter 20; US-Chile FTA, Chapter 22; US-Australia FTA, Chapter 21; US-Peru FTA, Chapter 21; US-Korea FTA, Chapter 22

⁵⁰ NAALC, Article 27; US-Singapore FTA, Chapter 17, Article 17.6.1; US-Chile FTA, Chapter 22, Article 22.4; US-Australia FTA, Chapter 21, Article 21.5; US-Peru FTA, Chapter 21, Article 21.4; US-Korea FTA, Chapter 22, Article 22.3

⁵¹ NAALC, Article 28; US-Singapore FTA, Chapter 17, Article 17.6.4; US-Chile FTA, Chapter 22, Article 22.5; US-Australia FTA, Chapter 21, Article 21.6; US-Peru FTA, Chapter 21, Article 21.5; US-Korea FTA, Chapter 22, Article 22.8

⁵² NAALC, Article 29; US-Singapore FTA, Chapter 20, Article 20.4.4; US-Chile FTA, Chapter 22, Articles 22.6-22.14; US-Australia FTA, Chapter 21, Article 21.7; US-Peru FTA, Chapter 21, Article 21.6; US-Korea FTA, Chapter 22, Article 22.9

⁵³ NAALC, Article 37; US-Singapore FTA, Article 20.4.5; US-Chile FTA, Chapter 22, Articles 22.6-22.14; US-Australia FTA, Chapter 21, Article 21.9; US-Peru FTA, Chapter 21, Article 21.8; US-Korea FTA, Chapter 22, Article 22.11

recommendations outlined in the final report, the parties will discuss with each other a solution of the dispute. If the parties cannot agree on a solution, they will discuss an acceptable compensation at the request of the plaintiff (step 4 - except for the NAALC, which does not provide for this step).⁵⁵ If the parties cannot agree on compensation, or they have agreed on a solution but do not implement it, the complaining party can notify the other of the suspension of benefits and the proposed level of benefits suspension (step 6).⁵⁶ However, the complaining party can withdraw its proposal for the suspension of benefits, if the party complained against agrees to pay a penalty (monetary assessment)⁵⁷ and the fine will be subject to the discussion and agreement of the parties involved. In the case that no such agreement is attained, except for the NAALC, the amount will be equal to half of the level of suspended benefits decided by the Arbitration Committee or proposed by the complaining party.⁵⁸ This amount of compensation will be used for implementing programs to improve and enhance the enforcement of labor laws.

In addition to the continuity of the enforcement and dispute resolution provisions, there has also been an evolution across the three generations. In the NAALC, labor provisions were inserted as a side agreement to the North American Free Trade Agreement (NAFTA). The NAALC creates additional obligations and a

⁵⁴ NAALC, Article 37; US-Singapore FTA, Article 20.4.5; US-Chile FTA, Chapter 22, Articles 22.6-22.14; US-Australia FTA, Chapter 21, Article 21.9; US-Peru FTA, Chapter 21, Article 21.8; US-Korea FTA, Chapter 22, Article 22.11

⁵⁵ US-Singapore FTA, Article 20.6.1; US-Chile FTA, Chapter 22, Articles 22.15.1; US-Australia FTA, Chapter 21, Article 21.11; US-Peru FTA, Chapter 21, Article 21.16.1; US-Korea FTA, Chapter 22, Article 22.13.1

⁵⁶ NAALC, Article 41 and Annex 41B; US-Singapore FTA, Article 20.6.7; US-Chile FTA, Chapter 22, Article 22.15; US-Australia FTA, Chapter 21, Article 21.11; US-Peru FTA, Chapter 21, Article 21.11; US-Korea FTA, Chapter 22, Article 22.13.2

⁵⁷ NAALC, Article 39; US-Singapore FTA, Article 20.6.5 and Annex 20A; US-Chile FTA, Chapter 22, Article 22.15.5 and 22.16.2 and Annex 22.16; US-Australia FTA, Chapter 21, Article 21.11.5 and 21.11.6 and Annex 21-A; US-Peru FTA, Chapter 21, Article 21.16.6; US-Korea FTA, Chapter 22, Article 22.13.5

⁵⁸ US-Singapore FTA, Article 20.6.5; US-Chile FTA, Article 22.15.5; US-Australia FTA, Article 21.11.5; US-Peru FTA, Article 21.16.6; US-Korea FTA, Article 22.13.5

special enforcement and dispute resolution mechanism that is separate from the enforcement and problem-solving mechanisms for trade-related problems in NAFTA's main text (Hufbauer and Schott, 2005).⁵⁹ With the second generation agreements, labor provisions are included in the main text of the agreements as chapters equal to other chapters (Jeffrey J. Schott and Julia Muir, 2012, p. 56).⁶⁰ This means problem-solving related to the implementation of labor standards also follow the general enforcement and dispute resolution mechanisms in the agreements. This demonstrates the US giving greater weight to labor standards enforcement. The US considers labor issues as equivalent to other trade-related issues. Part Three has shown us the role of the US in promoting the linkage between labor and trade. The upgrading of labor provisions from a side agreement to a chapter in the main agreement demonstrates the overt linking of labor to trade as well as the increased importance placed on promoting and enforcing labor provisions in FTAs.

From the second to the third generation of agreements, limits on the maximum fine (monetary annual assessment) that could be assessed for non-compliance were abolished. This increases the risks for signatory countries as fines might be greater than the maximum level in the G2 or G1 agreements. The G1 agreement (NAALC) limits the maximum fine to 20 million US dollars.⁶¹ The G2 agreements restrict the maximum penalty to 15 million US dollars per year.⁶² The G3 agreements say that the fine shall be "equal to 50 percent of the level of the benefits of suspension the panel has determined to the Party complained against or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend."⁶³ With this regulation, the fine may

⁵⁹ See the text of NAALC

⁶⁰ See the texts of US-Singapore FTA, US-Chile FTA, US-Australia FTA, US-Peru FTA, US-Korea FTA

⁶¹ See Annex 39 of NAALC

⁶² US-Singapore FTA, Annex 20A; US-Chile FTA, Annex 22.16 and US-Australia FTA, Annex 21-A

⁶³ US-Peru FTA, Article 21.16.6; US-Korea FTA, Article 22.13.5

be higher than 15 million US dollars per year. It is unlikely that the TPP will impose penalties smaller than those in the G3 agreements. Countries that sign onto the TPP will have to take enforcement of the agreement seriously. Moreover, the US makes no distinction between developed and developing countries in negotiating FTAs. This has been demonstrated in the practice. In the NAALC, Canada, as a developed country, and Mexico, as a developing country, both face a maximum penalty of 20 million US dollars, if they commit serious violations of the agreement.⁶⁴ In the G2 agreements, relatively developed Australia and Singapore and developing Chile face the same enforcement and dispute resolution mechanisms as well as the maximum 15 million US dollars/year fine for non-compliance. In the G3 agreements, the US makes no provisions for different treatment of South Korea compared to Peru. This suggests that developing countries participating in the TPP can hardly hope to receive preferential treatment from the American side. Another author points out that the TPP Agreement aspires “to set the gold standard, it shall hold every country to the same standard, be it rich or poor, large or small” (Gao, 2012, p. 71). These disciplines might be relaxed, if the US seeks a TPP agreement at any cost. However, in such a case, it might not be easy for a US President to get an agreement with less stringent enforcement mechanisms approved by Congress.

The US - Cambodia Textile Agreement is the agreement that applies positive conditionality. So far this is the first and only agreement in the region in which the US has created positive incentives to encourage implementation of labor provisions. This agreement was first signed on 1 January 1999 and it is renewed each year. The agreement seems to have produced positive results. Under the terms of the Agreement, “the Government of Cambodia is committed to support the implementation of programmes to improve working conditions in the textile

⁶⁴ NAALC, Annex 39

and apparel sector, including internationally recognized core labour standards.”⁶⁵ Financing for these programmes will be sought by the Government of Cambodia with the assistance of the Government of the United States.⁶⁶ At least two consultations are conducted during each year of the Agreement to discuss the implementation of the programmes and specific improvements for the following year.⁶⁷ The quota for Cambodian textile and apparel products exported to the US market may be increased by not more than 6% annually.⁶⁸ However, the United States may increase the export quota by up to 14% above the annual growth, if it deems Cambodia has: implemented its obligations under the agreement, complied substantially with labour law and standards and improved working conditions.⁶⁹ Any increase in the quota remains in effect for the following year if and only if the US makes a positive evaluation for the previous year, otherwise the US can withdraw the increase.⁷⁰ It is reported that the Agreement has contributed significantly to promoting the enforcement of national labor laws and improving labor conditions and labor rights in Cambodia (Lejo Sibbel & Petra Borrmann, 2007). Although the US concluded only one agreement with positive conditionality, it has had positive effects. However, it is a question why the positive conditionality used for the Cambodian textile sector since 1999 has not been repeated in any of the bilateral FTAs that the US has negotiated subsequently. One point to note is that the US goal was achieved when the Cambodian Labor Law was revised in compliance with internationally-recognized labor standards. This was “a precondition to the 1999 US-Cambodian trade agreement” pushed by the US American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)

⁶⁵ See the text of the US-Cambodia Textile Agreement, Article 10 (B)

⁶⁶ Id., Article 10 (E)

⁶⁷ Id., Article 10 (C), (D)

⁶⁸ Id., Article 5 (A)

⁶⁹ Id., Article 10 (D)

⁷⁰ Id., Article 10 (D)

(Veasna Nuon and Melisa Serrano, 2010, pp. 29-30). The 1999 agreement was to provide incentives for the enforcement of the Labor Law. For countries whose labor law has not yet recognized international labor standards, this non-repetition of “carrots” demonstrates the US preference for negative over positive conditionality in enforcing labor standards in the region.

4.3.2. Scenario for countries which signed bilateral FTAs with the USA (Group A):

This group is more likely to agree to U.S. proposals concerning labor provisions in the TPP, if the content of those provisions is similar to the agreements that each country in this group has already signed with the USA bilaterally. Because most of the content concerning the enforcement of labor provisions and dispute settlement mechanisms in the bilateral FTAs signed between the countries of this group and the US is the same (see the table in the annex), the countries of group A are likely to share a common perspective. If a new proposal that differs greatly is raised, it will be put on the table for consideration and strategic calculation by all countries. Otherwise, group A will support the view of a conditional TPP. The procedures for the enforcement of labor standards and dispute resolution are the same across the agreements signed by the members of this group. The only one difference between agreements is the maximum level of penalty. The momentum of developments across the three generations of US FTAs, and the complexities of the US domestic politics make it likely that the TPP will follow the model of the G3 agreements (US FTAs signed with Peru and Korea). This means that it is unlikely to state a maximum fine. Most of the countries in the G2 Group (Singapore and Australia versus Chile) are more developed, so they may not be opposed to this. Chile is a less developed country than the other two G2 countries, but it has an active policy of negotiating FTAs (Rómulo A. Chumacero, Rodrigo Fuentes and Klaus Schmidt-Hebbel, 2004, p. 3). Chile has concluded FTAs

with 47 countries to date.⁷¹ In conclusion, Group A is likely to support a conditional TPP without provisions for a maximum penalty in case of serious violation.

Another scenario may occur if the TPP emerges as an agreement to replace the existing bilateral FTAs in the region. If this happens, Group A countries may wish to revise their agreements by inserting new content in the TPP. However, this option is unlikely because the US has stated it is against “reopening existing agreements.” An agreement was reached within the group that ‘anything not already covered in the bilateral agreements could be addressed multilaterally’ (Deborah K.Elms and C. L. Lim, 2012, pp. 36, 37). This is also the reason for using the bilateral free trade agreements signed with the USA as the basis for the forecasts of the TPP.

4.3.3. Scenario for countries without bilateral FTAs with the USA (Group B):

Group B will seek to insert promotional mechanisms for enforcement of labor provisions in the TPP. This conjecture follows from the observation that all agreements the countries of this group have signed with each other and with countries participating in the TPP except the US, to the extent that they include labor provisions, have enforcement provisions of the promotional type. These are: the Memorandum of Understanding of the P4 Agreement (MOU/P4, 2005) and the Australia-Malaysia Side Letter on labor issues (2012). As these countries have signed few agreements with each other, the survey will be expanded to include all other Asian FTAs. This will permit us to better understand what we might expect from this group. Other Asian FTAs include: the New Zealand – Thailand Agreement on Labor (2006), the New Zealand – the Philippines Memorandum of Understanding on Labor Cooperation (2008) and the Japan-Philippines Minimum Labor Regulation (2009). China has involved in the following agreements on labor

⁷¹ http://www.oxfam.org/en/programs/development/samerica/chile_regional_trade_agreements

cooperation: Chile-China Labor MOU, 2005; New Zealand – China, Labor MOU, 2008; New Zealand - Hong Kong, China Labor MOU, 2010; and New Zealand – Taiwan Agreement (Chapter 16, July 2013). These are supposed not to be included in this study because, as stated above, Chinese participation would transform the dynamics of TPP negotiations. Even though, regarding the contents of Chinese FTAs, they are also of promotional type, similar to all other Asian FTAs.

To understand Group B's incentives for a promotional TPP, this thesis recognizes that all Asian FTAs that have labor provisions adopt the method of cooperation and consensus for resolving implementation issues. This approach is not binding and can only be implemented by the good faith of the parties. If the parties do not enforce the signed agreements voluntarily, there is no mechanism to force them to do so. There are also few studies that report or assess the implementation of these agreements in practice. However, the existence of these agreements also demonstrates that labor issues have attracted the interest of countries in the region. It also demonstrates the commitment of countries to promote international labor standards in the region, even if enforcement and problem-solving mechanisms remain weak. This ambivalence can be understood if we analyze these developments from the perspective of the principles embedded in the Treaty of Amity and Cooperation in Southeast Asia (TAC) signed in 1976. The TAC establishes the principles that member states should not interfere in one another's internal affairs and that they should solve problems on the basis of consensus. This approach does not mean that the situation for laborers will not change, but only that any changes are likely to take place gradually as changes in perceptions and then changes in behavior introduced by the executive powers of governments. A number of reasons make it likely that the countries in Group B will prefer a promotional TPP agreement. Levels of economic development and protections of labor rights are lower than in the group A countries. Some also have incomplete legal systems which cannot uphold international law without reform.

These conditions are combined with their little experience in trade negotiations and in enforcing labor issues linked to trade.

4.3.4. Will TPP be conditional or promotional?

This research argues that in the interaction between these three groups, the US approach will prevail. This means that the TPP is most likely to be a conditional agreement. All of the free trade agreements signed by the US, which include labor provisions, are conditional agreements. The architects of the TPP desire it to be a “high-standard” agreement—a goal established by US officials from the beginning of their involvement (Gao, 2012, p. 64). Therefore, it is unlikely that the US will accept a promotional TPP. The US is unlikely to join the TPP if it is a promotional agreement. Were this to happen, it would be regarded as a step backward by American leaders. “In broad terms, the US objective is to negotiate a comprehensive agreement that breaks new ground on labor” as well as in other areas such as environment, investment and competition (Jeffrey J. Schott and Julia Muir, 2012, p. 52). This is not merely a matter of trade or labor issues but also a matter of power, the export of US values and hegemony. Besides hard power, the US seeks to expand its influence through soft power and is unlikely to tolerate a reversal on the enforcement of labor standards that makes it appear to be a “toothless tiger”. If the TPP becomes a promotional agreement on labor standards, then history reverts to a situation in which the ILO enforces labor standards. The ILO has been “criticized for “lack of teeth” in enforcement” (Witte, 2008).

In addition to this, there is the matter of internal politics in the United States. In the US, these free trade agreements are classified as “congressional-executive agreements,”⁷² which differ from treaties. As “congressional-executive agreements,” they must have the consent of both Houses of Congress for

⁷² “Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather Than as Treaties” (pdf).

approval.⁷³ "Trade Promotion Authority" (TPA) allows the President the right to negotiate FTAs and then present them to the House and Senate for approval.⁷⁴ In the case of the TPP, "Congress may conduct oversight hearings and consultations with U.S. trade negotiators, providing Members an opportunity to oversee and influence the development of the final TPP" (Williams, June 2013, p. 1). The two dominant parties have approved several bilateral free trade agreements that include labor provisions enforced by conditionality. Partisan constraints make it unlikely that Congress will approve the TPP if it departs from this formula in favor of promotional enforcement.

For the US, the TPP is one step toward the goal of linking labor to trade in the WTO. To achieve this goal, the US is following a circuitous path from bilateral agreements to a plurilateral negotiation (the TPP being a first step in this phase) back to the multilateralism of the WTO. However, looking at the countries participating in TPP, the likelihood of an American victory seems high. Most of TPP countries have signed FTAs with the United States (Brunei, Malaysia and Vietnam have not) and all those agreements are conditional. The TPP is likely to be a "hybrid agreement" (Elms, 2012, p. 15), in which existing agreements will not be renegotiated. This means that those areas not covered in existing bilateral FTAs will be discussed multilaterally and the countries which have not signed a bilateral FTA will negotiate bilaterally with other relevant countries concerning the areas already agreed in the existing agreements. The attractiveness of the US market to developing countries gives the US more negotiating power in bilateral relations than it has in plurilateral dealings. This power is demonstrated in the US-Peru Agreement that created "rule provisions intruding deep into Peruvian domestic areas" (Deborah K.Elms and C. L. Lim, 2012, p. 37). This can be seen also in the US-

⁷³ "Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather Than as Treaties" (pdf).

⁷⁴ "Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather Than as Treaties" (pdf).

Australia Agreement with regard to the sugar cane issue (Deborah K.Elms and C. L. Lim, 2012, p. 37). As noted above, Brunei, Malaysia and Vietnam definitely want a promotional TPP. It is assumed that these countries, when deciding to join the TPP, learned about the US's firm position applying conditionality to the enforcement of labor provisions.

Of those countries without bilateral agreements with the US, Brunei's participation in TPP, or the P4 Agreement, preceded US participation. Malaysia and Vietnam joined the TPP negotiations after the US. Vietnam joined the TPP negotiations in the same year as the US, but as an "associate member". It became a full member in 2010 (Deborah K.Elms and C. L. Lim, 2012, p. 29). Participating as an associate member, Vietnam became aware of the US position and yet still decided to join in officially "the talks reserved only for committed members" (Deborah K.Elms and C. L. Lim, 2012, p. 30). Till now, Vietnam has clearly expressed its determination to complete TPP negotiations as expressed by Vietnam's President of State Truong Tan Sang during his official visit to the United States in July 2013⁷⁵. Vietnam has both political and economic reasons for joining. The country conducts a foreign policy of "implementing multilateral and diversified relations, active and pro-active international integration in the interests of the nation-state and for the benefit of a socialist Vietnam of prosperity; being a friend, reliable partner and responsible member in the international community, to contribute to the cause of peace, national independence, democracy and social progress in the world" (Platform for national construction, 2011). Maritime security and national economic development is a great concern for Vietnam. Malaysia proposed to join the TPP in 2010 in the spirit of "being prepared to take radical steps" (Deborah K.Elms and C. L. Lim, 2012, p. 31). Malaysia's position is

⁷⁵ [http://www.sgpp.org.vn/vietnamvathegioi/2013/7/324194/\(Journal Vietnam and the World\)](http://www.sgpp.org.vn/vietnamvathegioi/2013/7/324194/(Journal%20Vietnam%20and%20the%20World))

clearly seen in the side letters on labor issues⁷⁶ exchanged between the Minister of International Trade and Industry of Malaysia and the Ministry for Trade and Competitiveness of Australia. The two sides agreed that “they would be bound by the outcomes of the TPP negotiations once it has been concluded and the TPP Agreement has been ratified by both countries.”⁷⁷ Brunei, Malaysia and Vietnam are all developing countries. Actually, there are many developing countries that have signed FTAs with the US that include negative conditionality. In the Asia – Pacific region, these include Chile and Peru. In other regions, there are Morocco, Bahrain, Oman, Colombia, Panama and others⁷⁸. Facing these facts, the group B countries, if they are determined to join the TPP, must be prepared for the Reciprocity Rule of trade negotiations with the United States, including labor issues. Preferences for the countries in this group are conjectured to have the following ranking: (a) promotional cooperation, (b) positive conditionality and (c) step-by-step negative conditionality, depending on the costs and benefits that the TPP offers to each country. However, this group is a minority in the TPP—3/12 countries now that Japan has joined, and, perhaps, 3/13 countries, if South Korea joins. The conventional wisdom is that the majority defeats the minority.

The literature review suggests that this situation is likely to give rise to “soft coercion”. If these countries choose not to participate at the last minute, they will be excluded from the playing field of global trade. The position has been established during the TPP negotiations that “if a country is not ready, the members shall just let it go and keep the high standard” (Gao, 2012, p. 71). Even so, this worst-case scenario will also be less likely because all countries see the importance of early international economic integration (the “in”/or “integration”

⁷⁶ To be accessed at <http://www.dfat.gov.au/fta/mafta/documents/Side-Letter-Labour-Australia-to-Malaysia.pdf>. And <http://www.dfat.gov.au/fta/mafta/documents/Side-Letter-Labour-Malaysian-confirmation-to-Australia.pdf>.

⁷⁷ See the letters as above

⁷⁸ These countries have signed conditional FTAs with the US (Bolle, Overview of Labor Enforcement Issues in Free Trade Agreements, 2008)

game as explained in Part Two) in order to take advantage of globalization. Besides, when officially joining the TPP negotiations, they are fully aware that they are “committed members” and therefore, their reputation will be affected, if they choose to withdraw. Furthermore, countries in group B have a common problem to solve: the South China Sea dispute. It seems that all countries desire the presence of and a strong role for the USA in the region to cope with the increasingly aggressive rise of China regarding the dispute.

As mentioned, it is probable that the US can take a step back to win. The result of the negotiations depends on the TPP negotiating parties. If the US does want to sign the TPP at any cost with the participation of all existing countries, then the US may agree to apply both carrots and sticks in the TPP enforcement. In this case, positive conditionality can be reserved for the group B countries for a certain period of time, similar to the Cambodian case, before moving on to the application of negative conditionality. However, this possibility is not very likely. As noted above, why has the US not duplicated the positive conditionality of the Cambodian textile agreement with other developing countries between 1999 and now? Peru and Chile are also developing countries and both had to accept negative conditionality. Another question mark is whether other developed countries will permit the US to use two different mechanisms for different countries in the same agreement. In the world of developed countries, the creation of a level playing field in global trade is a top priority, because this provides economic benefits to their businesses and employment benefits to their workers. In this case, developing countries of group B may expect to be given more time to make adjustments to prepare for the application of negative conditionality.

4.4. Visualization of the enforcement of labor standards and dispute settlement in the TPP: from the bilateral approach to plurilateral approach.

The TPP talks take place behind closed doors and limited information is revealed publicly. Further, the negotiations on the TPP enforcement mechanisms

are just beginning. This section provides a supplement to help policy-makers in the TPP countries understand how the enforcement of labor standards and dispute resolution is likely to take form in a plurilateral agreement. If the TPP adopts negative conditionality – the most likely outcome – then the simplest way to create enforcement and problem-solving mechanisms for the agreement would be the extension of the 6 steps found in all signed US FTAs: (1) cooperation and consultation; (2) referral to a joint committee; (3) dispute settlement panel; (4) mutually acceptable compensation; (5) annual monetary assessment (or in other words, monetary sanctions); (6) suspension of benefits (or in other words, benefit sanction).

Although the TPP is a plurilateral agreement, its enforcement and dispute resolution is likely to follow bilaterally between relevant parties in the initial period of implementation. This would avoid creating too many changes and make it easier to gain approval both in the TPP countries and in the U.S. Congress. This is similar to a situation in which all TPP countries have signed identical cross-cutting bilateral agreements with each other, which is the TPP. The levels of compensation and sanctions may vary among different countries depending on the negotiation of the parties or the arbitration involved. In the longer term, drawn from practical experience of the implementation, the TPP may continue to be re-negotiated towards an upgraded agreement so as to form official plurilateral institutions for its effective implementation.

5

Conclusion

This part summarizes the main findings of the thesis and briefly answers the secondary question: What implication is TPP likely to have for a country like Vietnam? It also makes suggestions for future research in the field.

5.1. Summary of Main Findings

The literature review shows that labor standards may be diffused in the Asia – Pacific region by four mechanisms: coercion, competition, learning and emulation. However, coercion and competition are more important than the other two, because some governments in the region consider labor standards to be a potential threat to their security as happened with the Government of Poland in the 1980s and, therefore, they are sensitive norms. Learning and emulation, in which the ILO plays the main role, has been successful in diffusing norms but less so in diffusing mechanisms for the enforcement of labor standards and the resolution of disputes. Between coercion and competition, coercion overwhelms competition due to the scope of diffusion. Competition can assist the diffusion of labor standards within supply chains and in exporting sectors. Coercion using conditional FTAs, on the other hand, can help to transform entire systems of law and practices with regard to labor standards in a country. Given the insecurity of some regimes and the passive receptivity of state actors in some developing countries in Asia, coercion is seen as the most likely and potentially effective channel for the diffusion of labor standards in the Asia-Pacific.

Empirical evidence demonstrates that a coercive mechanism for the diffusion of labor standards has already begun to emerge in the Asia Pacific entering the twenty-first century. Labor standards themselves have already been

diffused through the activities of the International Labor Organization (ILO). While these did not prove to be effective enough, some actors sought to link labor to trade at the World Trade Organization (WTO). Conflicts, however, brought discussion of such linkages within the WTO to a standstill. This deadlock has motivated the US to include labor provisions in bilateral and regional free trade agreements (FTAs). In these FTAs, the US has insisted not only on fundamental labor standards, but also on inclusion of mechanisms that employ negative conditionality for their enforcement and dispute resolution. International trade unions have supported the initiative of the US as a secondary norm entrepreneur. Some countries in the region have signed FTAs with each other based on consultation, dialogue, cooperation and consensus for the enforcement of labor standards and problem-solving. This type of agreement, however, has been less effective than conditional agreements at ensuring enforcement. This is because labor protections in countries in the region are below the internationally-recognized labor standards and some governments may resist enforcement of international labor standards as sensitive norms.

A survey of all signed FTAs in the region (both those with promotional and conditional enforcement mechanisms) has been provided to gauge how the TPP is likely to diffuse labor standards in the region. This thesis argues and demonstrates that, because of US influence, mechanisms for the enforcement of labor standards and resolution of disputes are likely to be imposed through material conditionality in the TPP.

5.2. Implications of the Research Findings for Vietnam

“Progress is impossible without change,”

George Bernard Shaw

but how to change?

The findings of this thesis lead to the conclusion that the TPP is very likely to be a conditional agreement. Given that TPP is meant to be a “twenty-first-

century, high-quality" agreement, there is a good chance that the conditions it imposes on enforcement of labor provisions are likely to be tougher than previous bilateral FTAs signed by the US. "Transnational diffusion means that decisions in one country depend not only on domestic factors and international pressures, but also on decisions made in other countries" (Gilardi, 2012, p. 31). If the majority of the TPP countries agree to sign the agreement, what will happen to Vietnam, Malaysia and Brunei? The existing literature suggests that this situation will result in "soft coercion". Furthermore, if they do not sign onto labor provisions in the TPP, this research suggests that these countries are likely to face the same dilemma when negotiating bilateral FTAs to gain access to the large US market. Implementing international labor standards means more freedom, rights and protection for workers. However, the developing countries negotiating TPP, including Vietnam, must be prepared so that workers' demands that these rights be implemented do not become a source of political instability. Transnational actors will challenge the monopoly over representation currently enjoyed by Vietnam's national trade union umbrella and political institutions. Similar challenges were experienced by Mexico when it entered into the NAFTA's Side Accord on Labor (Garcia, 2010)⁷⁹, and Cambodia, when it revised its Labor Law to comply with the International Labor Standards upon entry into the US-Cambodia Textile Agreement (Veasna Nuon and Melisa Serrano, 2010)⁸⁰. Experience shows that Vietnam fully supports workers' rights, but it also does not allow forces to use workers' rights as a shield to cause instability. In recent years, Vietnamese media have reported many cases of inciting workers to strike and threats to public security, including in Tra Vinh⁸¹, Hau Giang⁸², Quang Ninh, Binh Duong, Dong Nai,⁸³

⁷⁹ To understand these challenges, please read the literature *Norm Socialisation and NAFTA's Side Accord on Labor* by (Garcia, 2010)

⁸⁰ To understand these challenges, please read the literature *Building unions in Cambodia: History, Challenges, Strategies* by (Veasna Nuon and Melisa Serrano, 2010)

⁸¹ <http://baotintuc.vn/phap-luat/bat-doi-tuong-kich-dong-cong-nhan-dinh-cong-20121123080345484.htm/> (persons who incited workers to strikes were captured)

Binh Thuan⁸⁴ among other provinces. Guaranteeing workers' rights without creating instability will be a challenge for the Government of Vietnam for the foreseeable future.

Vietnam will face considerable pressure to change domestic labor laws, institutions and practices in order to comply with TPP requirements should it decide to sign onto the agreement. Changes will have to be made to laws governing freedom of association and collective bargaining as Vietnam has not ratified the relevant ILO core Conventions. This will usher in a new period of norm socialization in the country. Although Vietnam has ratified the relevant ILO core Conventions on other fundamental labor standards such as forced labor, child labor and discrimination, these will need to be closely monitored and improved by the government in order to avoid violations and trade sanctions such as those that damaged the economy in the so-called "catfish war" a few years ago.⁸⁵ Although it is considered an emerging market, Vietnam still faces many problems, including: the rate and quality of its economic growth,⁸⁶ the uneven distribution of economic benefits country-wide (Asia Foundation, 2002), its relative lack of economic competitiveness (second-lowest ranking among eight members of the Association of Southeast Asian Nations (ASEAN) covered by the Report on Global competitiveness) (World Economic Forum, 2012), its high population and high unemployment and underemployment rates. Given these circumstances, Vietnam

⁸² <http://m.nguoiduatin.vn/vu-hang-nghin-cong-nhan-cong-ty-thuy-san-o-mien-tay-dinh-cong-doi-thuong-tet-dieu-tra-39-doi-tuong-kich-dong-cong-nhan-a67120.html/> (Investigation of 30 persons who incited workers to strike)

⁸³ <http://mrtu.vnweblogs.com/post/27738/327983>; <http://www.qdnd.vn/qdndsite/vi-VN/61/43/5/5/5/160387/Default.aspx>; <http://www.tienphong.vn/xa-hoi/507703/Trieu-tap-28-doi-tuong-loi-keo-kich-dong-cong-nhan-dinh-cong.html> (28 persons were called for inciting workers to strike)

⁸⁴ <http://laodong.com.vn/Phap-luat/Chong-nguoi-thi-hanh-cong-vu-kich-dong-cong-nhan-gay-roi/120874.bld> (investigation of persons who incited workers to strike)

⁸⁵ http://www.atimes.com/atimes/Southeast_Asia/EG31Ae02.html

⁸⁶ Information at the Forum on "Economic Growth Vietnam 2012", http://www.macroreforms.org/index.php?option=com_content&task=view&id=163&Itemid=27

will fall into a “two-level game” (Putnam, 1988) where the challenge will be for Vietnam to strike a balance between maintaining domestic political stability and implementing regional commitments. This will be a real battle for the peaceful transformation of the society, concerning, among other things, the implementation of labor rights. However, this struggle is necessary to introduce fundamental reforms and push the economic and political development of the country further.

5.3. Future Research

This thesis has only examined the diffusion of norms, rules and mechanisms for the enforcement of labor standards in the region through FTAs. It has not investigated the implementation of labor standards in practice. The practical implementation of labor provisions through FTAs needs to be researched in order to understand the actual diffusion of labor standards in the region. Once the TPP is signed, the impact of the TPP on the labor situation of countries like Vietnam also needs to be researched in order that policy-makers might adopt appropriate measures to avoid instability and chaos.

5.4. Final Conclusions

“We will not enjoy security without development,
we will not enjoy development without security,
and we will not enjoy either without respect for
human rights.”

UN Secretary-General Kofi Annan

Labor rights are human rights. In one way or another, they must be promoted. It is a means to an end and an end in itself that depends on different state and non-state actors. Whether a means or an end, it is a value of humankind and everything must be done for the betterment of the human being.

This thesis has presented four mechanisms for the diffusion of labor standards: learning, emulation, competition and coercion. Labor standards can be diffused by all four mechanisms in the Asia-Pacific region, but it is likely that the most potentially effective way of doing this is by linking it to trade through material conditionality. This is true because labor standards are likely to be sensitive norms in a region where there are still many developing economies, less-than-fully democratic political systems and the overwhelming principle of respect for “sovereignty and non-interference”. This thesis has explained the past record of labor standards diffusion in the region. Attempts have been made to diffuse labor standards by means of linking labor to trade since the creation of the ILO. The thesis has also emphasized the role of the US and the support of international trade unions in the promotion of norms, rules and mechanisms for the enforcement of labor standards as well as dispute resolution. The findings from empirical evidence of all Asian and US FTAs as well as the correlation of forces in the TPP has helped to project that the TPP is very likely to be an agreement that employs negative conditionality to enforce implementation of labor standards. This poses great challenges for developing countries, including Vietnam, which consider labor standards as sensitive norms due to their political characteristics. Therefore, the research helps to prepare policy-makers in these developing countries to manage the challenges of international integration and domestic socio-political stability as they undertake these processes.

Annex

Table 1: Enforcement and dispute resolution mechanisms in Asian Pacific FTAs which include labor provisions but to which the US is not a party

Labour provisions	Enforcement and dispute resolution mechanism	Institutional arrangements	Notes
Memorandum of Understanding, P4 Agreement, 2005	Cooperation, consultation, dialogue, consensus ⁸⁷	- A national contact point for labour matters (senior official of the government agencies) ⁸⁸	Meet within the first year ⁸⁹
Chile-China (Labor MOU, 2005) ⁹⁰	Cooperation ⁹¹	- A coordinator for each side ⁹²	Meet regularly and every two years ⁹³
New Zealand - Thailand Agreement on Labor, 2006 ⁹⁴	Cooperation, consultation, dialogue and consensus	- A national focal point for labour matters - A Labor Committee (senior officials of the government agencies)	Meet within the first year and subsequently thereafter as mutually decided

⁸⁷ See the text, Articles 3 and 5

⁸⁸ Id., Article 4

⁸⁹ Id., Article 4 (2)

⁹⁰ See the text of Memorandum of Understanding on Labour and Social Security Cooperation between the Ministry of Labour and Social Security of the People's Republic of China and the Ministry of Labour and Social Security of the Republic of Chile, to be accessed at http://www.sice.oas.org/Trade/CHL_CHN/CHL_CHN_e/Labor_e.asp

⁹¹ Id., Articles 1-2, 4

⁹² Id., Article 3

⁹³ Id., Article 3

⁹⁴ See the text of the New Zealand- Thailand Closer Economic Partnership published by New Zealand Ministry of Foreign Affairs and Trade, [nzthaicepbooklet.pdf](#), pp.46-47

New Zealand – China (labor MOU, 2008) ⁹⁵	Cooperation and consultation ⁹⁶	- A coordinator for each side ⁹⁷	Meet within the first year and every two years ⁹⁸
New Zealand – the Philippines (Memorandum of Agreement on Labor Cooperation, 2008) ⁹⁹	Cooperation, ¹⁰⁰ Consultation, ¹⁰¹ Disclosure of information ¹⁰²	- A national contact point ¹⁰³ - A Labor Committee ¹⁰⁴	Meet within the first year and subsequently every two years ¹⁰⁵
Japan - Philippines (minimum labor regulations, 2009) ¹⁰⁶	Consultation ¹⁰⁷		
New Zealand - Hong Kong, China (Labor MOU, 2010) ¹⁰⁸	Cooperation and dialogue	- A national contact point for each side	

⁹⁵ See the text of the Memorandum of Understanding on Labour Cooperation between the Department of Labour of New Zealand and the Ministry of Human Resources and Social Security of the People's Republic of China

⁹⁶ Id., Articles 2,4

⁹⁷ Id., Article 3

⁹⁸ Id., Article 3

⁹⁹ See the text of the Memorandum of Agreement on Labour Cooperation between the Government of New Zealand and the Government of the Republic of the Philippines, to be accessed at <http://www.asean.fta.govt.nz/instruments-negotiated-in-the-context-of-the-agreement/>

¹⁰⁰ Id., Article 3

¹⁰¹ Id., Article 5

¹⁰² Id., Article 6

¹⁰³ Id., Article 4

¹⁰⁴ Id., Article 4

¹⁰⁵ Id., Article 4

¹⁰⁶ See the text of the Japan-Philippines Economic Partnership Agreement

¹⁰⁷ Id., Article 103 on Investment and Labor

¹⁰⁸ See the text of the New Zealand - Hong Kong, China Closer Economic Partnership, Section 14 on Labor and Environment, Memorandum of Understanding on Labor Cooperation, to be accessed at <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Hong-Kong/index.php>

Australia - Malaysia (side letter on labor issues, 2012) ¹⁰⁹	Cooperation and Consultation		
New Zealand – Taiwan (Chapter 16 of the Agreement, July 2013) ¹¹⁰	Cooperation, consultation and dialogue ¹¹¹	<ul style="list-style-type: none"> - Contact points¹¹² - Meetings of the parties (within the first year and as mutually agreed); Review of the operation and outcomes after three years, which is subject to being made public¹¹³ - Public participation¹¹⁴ 	

¹⁰⁹ See the mutually-exchanged side letters on labor issues between Australia and Malaysia

¹¹⁰ See the text of the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation, Chapter 16, <http://www.nzcio.com/node/252>.

¹¹¹ Id., Articles 4-5, Chapter 16

¹¹² Id., Article 3, Chapter 16

¹¹³ Id., Article 3, Chapter 16

¹¹⁴ Id., Article 3, Chapter 16

Table 2: Enforcement and dispute resolution mechanisms in Asian Pacific FTAs, which include labor provisions and to which the US is a party

Labour agreements	Enforcement mechanism	Dispute resolution mechanism	Notes
NAALC, 1994	<ul style="list-style-type: none"> * <i>Commission for Labor Cooperation</i>¹¹⁵: composed of <ul style="list-style-type: none"> - A <i>ministerial Council</i> - A <i>Secretariat</i> * <i>National Administrative Office</i> (point of contact)¹¹⁶ * <i>National Committees</i> (advisory role to each Party)¹¹⁷ * By means of cooperation and consultations¹¹⁸ * <i>Evaluation Committee of Experts</i> (ECE)¹¹⁹ * <i>Evaluation Report</i> with recommendations¹²⁰ * The <i>Council</i> keeps the matter under review¹²¹ 	<ul style="list-style-type: none"> * Consultation¹²² * <i>Special session</i> of the Council¹²³ * <i>Arbitral Panel</i> (convened by the Council) – <i>Final Report</i> with recommendations¹²⁴ * <i>Monetary enforcement assessment</i> (maximum 20 million US dollars)¹²⁵ * <i>Suspension of benefits</i>¹²⁶ 	

¹¹⁵ See the text of North America Agreement on Labor Cooperation (NAALC), Articles 8 - 14

¹¹⁶ Id., Articles 15-16

¹¹⁷ Id., Articles 17-18

¹¹⁸ Id., Articles 20-22

¹¹⁹ Id., Articles 23-24

¹²⁰ Id., Articles 25-26

¹²¹ Id., Article 26

¹²² Id., Article 27

¹²³ Id., Article 28

¹²⁴ Id., Articles 29-37

¹²⁵ Id., Articles 38-40

¹²⁶ Id., Articles 41

US-Singapore FTA, Chapter 17, 2003	<ul style="list-style-type: none"> * <i>Joint Committee</i> for the implementation of Agreement¹²⁷ * <i>Subcommittee on Labor Affairs</i> for the implementation of Labor Chapter¹²⁸ * An <i>office</i> within the labor ministry of each Party (contact point)¹²⁹ * <i>National Labour Advisory Committee - joint reports</i>¹³⁰ * A Labor Cooperation Mechanism¹³¹ * A Labour Consultation Mechanism¹³² 	<ul style="list-style-type: none"> * A <i>Labor Consultation Mechanism (mutually satisfactory resolution)</i>¹³³ * <i>Dispute Settlement Panel (Final Report)</i>¹³⁴ * <i>Mutually Acceptable Compensation</i>¹³⁵ * <i>Annual Monetary assessment</i> (maximum 15 million US dollars)¹³⁶ * <i>Suspension of Benefits</i>¹³⁷ 	
US-Chile FTA, Chapter 18, 2003	<ul style="list-style-type: none"> * Labour Affairs Council¹³⁸ * An <i>office</i> within the labour ministry of each Party (contact point)¹³⁹ * National Consultative or Advisory Committee¹⁴⁰ 	<ul style="list-style-type: none"> * <i>Cooperative consultation</i> (for mutually satisfactory resolution)¹⁴⁴ * <i>Meetings of the Commission – Good Offices, Conciliation and Mediation</i> (for mutually 	

¹²⁷ See the text of US-Singapore Free Trade Agreement, Chapter 17, Article 17.4.1

¹²⁸ Id., Article 17.4.1

¹²⁹ Id., Article 17.4.2

¹³⁰ Id., Article 17.4.3

¹³¹ Id., Article 17.5 and Annex 17A

¹³² Id., Article 17.6.1

¹³³ Id., Article 17.6.1

¹³⁴ Id., Article 20.4.4

¹³⁵ Id., Article 20.6.1

¹³⁶ Id., Article 20.6.5 and Annex 20A

¹³⁷ Id., Article 20.6.2

¹³⁸ See the text of the US-Chile Free Trade Agreement, Chapter 18, Article 18.4

¹³⁹ Id., Article 18.4.3

	<ul style="list-style-type: none"> * A Labour Cooperation Mechanism ¹⁴¹ * Cooperative consultation¹⁴² * Commission – Good Offices, Conciliation and Mediation (for mutually satisfactory resolution)¹⁴³ 	<p>satisfactory resolution)¹⁴⁵</p> <ul style="list-style-type: none"> * <i>Arbitral Panel</i> (final report)¹⁴⁶ * <i>Mutually Acceptable Compensation</i> ¹⁴⁷ * <i>Annual Monetary assessment</i> (maximum 15 million US dollars)¹⁴⁸ * <i>Suspension of Benefits</i>¹⁴⁹ 	
US-Australia FTA, Chapter 18, 2004	<ul style="list-style-type: none"> * <i>Joint Committee</i>¹⁵⁰ * <i>Subcommittee on Labour Affairs</i>¹⁵¹ * An <i>office</i> within the central government agencies¹⁵² * National advisory committees¹⁵³ * Labor Cooperation Mechanism¹⁵⁴ 	<ul style="list-style-type: none"> * Consultation¹⁵⁸ * Refer the matter to <i>the Joint Committee</i> for resolution¹⁵⁹ * Dispute settlement panel¹⁶⁰ - Final report * <i>Mutually Acceptable Compensation</i>¹⁶¹ * <i>Annual Monetary assessment</i> (maximum 15 million US 	

¹⁴⁰ Id., Article 18.4.6

¹⁴⁴ See the text of the US-Chile Free Trade Agreement, Chapter 22, Article 22.4

¹⁴¹ Id., Article 18.5

¹⁴² Id., Article 18.6

¹⁴³ Id., Article 22.5

¹⁴⁵ Id., Article 22.5

¹⁴⁶ Id., Articles 22.6 - 22.14

¹⁴⁷ Id., Article 22.15.1

¹⁴⁸ Id., Article 22.15.5, 22.16.2 and Annex 22.16

¹⁴⁹ Id., Article 22.15

¹⁵⁰ See the text of the US – Australia Free Trade Agreement, Chapter 18, Article 18.4.1 and Chapter 20, Article 20.1

¹⁵¹ Id., Article 18.4.1

¹⁵² Id., Article 18.4.2

¹⁵³ Id., Article 18.4.3

¹⁵⁴ Id., Article 18.5

	<p>* <i>A Labour Consultation Mechanism (mutually satisfactory resolution)</i>¹⁵⁵</p> <p>* Meeting of <i>Subcommittee on Labour Affairs</i> (including to recourse to such procedures as good offices, conciliation, or mediation)¹⁵⁶</p> <p>* Refer the matter to the <i>Joint Committee</i>¹⁵⁷</p>	<p>dollars)¹⁶²</p> <p>* <i>Suspension of Benefits</i>¹⁶³</p>	
US-Peru Trade Promotion Agreement, Chapter 17, 2006	<p>* Labour Affairs Council¹⁶⁴</p> <p>* An <i>office</i> within the labour ministry of each Party or equivalent entity (contact point)¹⁶⁵</p> <p>* National Labor Advisory or Consultative Committee¹⁶⁶</p> <p>* Labor Cooperation and Capacity Building Mechanism¹⁶⁷</p> <p>* Cooperative Labor Consultations¹⁶⁸ (for mutually satisfactory resolution)</p>	<p>* <i>Consultation</i>¹⁷⁰</p> <p>* <i>A Meeting of the Commission</i>¹⁷¹ (cabinet-level representatives), including recourse to good offices, conciliation, or mediation or making recommendations)</p> <p>* <i>Arbitral Panel</i>¹⁷² - Final Report</p> <p>* <i>Mutually Acceptable Compensation</i>¹⁷³</p> <p>* <i>Annual Monetary assessment</i>¹⁷⁴</p>	

¹⁵⁸ Id., Article 21.5

¹⁵⁹ Id., Article 21.6

¹⁶⁰ Id., Article 21.7

¹⁶¹ Id., Article 21.11

¹⁵⁵ Id., Article 18.6.2

¹⁵⁶ Id., Article 18.6.3

¹⁵⁷ Id., Article 18.6.4

¹⁶² Id., Articles 21.11.5, 21.11.6 and Annex 21-A

¹⁶³ Id., Article 22.11

¹⁶⁴ See the text of the US-Peru Trade Promotion Agreement, Chapter 17, Article 17.5.1

¹⁶⁵ Id., Article 17.5.5

¹⁶⁶ Id., Article 17.5.7

¹⁶⁷ Id., Article 17.6 and Annex 17.6

	* Refer the matter to the Council (including recourse to such procedures as good offices, conciliation, or mediation) ¹⁶⁹	* <i>Suspension of Benefits</i> ¹⁷⁵	
US-Korea FTA, Chapter 19, 2007	<p>* <i>Labour Affairs Council</i>¹⁷⁶</p> <p>* an office within its labor ministry (contact point)¹⁷⁷</p> <p>* a <i>national labor advisory committee</i>¹⁷⁸ (including tripartite constituents in order to advise the Party on the Implementation of the Chapter)</p> <p>* <i>Labor Cooperation Mechanism</i>¹⁷⁹</p> <p>* <i>Labor Consultation</i>¹⁸⁰ (for mutually satisfactory resolution)</p> <p>* Refer the matter to <i>the Council</i> (including recourse to such procedures as good</p>	<p>* <i>Cooperation and consultation</i>¹⁸² (for mutually satisfactory resolution)</p> <p>* Referral to <i>the Joint Committee</i>¹⁸³ (Joint Committee comprises officials of each party and is co-chaired by both sides¹⁸⁴)</p> <p>* <i>Dispute Settlement Panel</i>¹⁸⁵ (for <i>Final Report</i>¹⁸⁶ with determinations and recommendations)</p> <p>* <i>Mutually Acceptable Compensation</i>¹⁸⁷ (if the parties are unable to reach agreement on a resolution pursuant to the Final Report)</p>	

¹⁶⁸ Id., Article 17.7

¹⁷⁰ Id., Article 21.4

¹⁷¹ Id., Article 21.5

¹⁷² Id., Article 21.6

¹⁷³ Id., Article 21.16.1

¹⁷⁴ Id., Articles 21.16.6 and Annex 21-A

¹⁶⁹ Id., Article 17.7.5

¹⁷⁵ Id., Article 22.11

¹⁷⁶ See the text of the US-Korea Free Trade Agreement, Chapter 19, Articles 19.5.1-19.5.2

¹⁷⁷ Id., Article 19.5.3

¹⁷⁸ Id., Article 19.5.4

¹⁷⁹ Id., Article 19.6 and Annex 19-A

¹⁸⁰ Id., Article 19.7

	offices, conciliation, or mediation) ¹⁸¹	* <i>Annual Monetary assessment</i> ¹⁸⁸ * <i>Suspension of Benefits</i> ¹⁸⁹	
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¹⁸² Id., Chapter 22, Section B, Article 22.3

¹⁸³ Id., Article 22.8

¹⁸⁴ Id., Article 22.8

¹⁸⁵ Id., Article 22.9 and Article 22.10

¹⁸⁶ Id., Article 22.11

¹⁸⁷ Id., Article 22.13.1

¹⁸¹ Id., Article 19.7.3

¹⁸⁸ Id., Articles 21.13.5

¹⁸⁹ Id., Article 22.13.2

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