# Global Governance of Labour

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May 11, 2022

**Global:** ILO, with 187 member states (of 193 countries) sets standards

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**International** (bilateral, plurilateral) trade agreements, trade preference programs, private sector agreements impose obligations

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a complex and overlapping web of rules or standards

**Governance:** obligations and enforcement range from aspirational → to soft law → to hard law

# International Labour Organization

- Created by the Treaty of Versailles 1919:

  *"universal and lasting peace can be established only if it is based upon social justice"*

- Tripartite governance: states, employers, workers
- Negotiate conventions setting minimum conditions covering various aspects of labor rights
  - Currently 73 up-to-date conventions
- States decide whether to ratify

- Nominally binding on the countries that choose to ratify
- If a country then fails to implement the obligations, the ILO can establish a Commission of Inquiry to investigate
- If violations continue, the ILO can recommend measures to other member states to exert pressure for compliance
- Such measures could include denial of trade benefits

As globalization and related labor concerns gained momentum in the late 20th century, ILO members decided to issue a **Declaration** in 1998, stating that some fundamental labor rights apply to workers in all countries, regardless of ratification. The following rights are covered:

- freedom of association and the effective recognition of the right to collective bargaining
- the elimination of forced or compulsory labour
- the abolition of child labour
- the elimination of discrimination in respect of employment and occupation

ILO expert committees provide oversight of countries' application of both ratified conventions and the fundamental labor standards covered by the Declaration

However the most rigorous tool, the recommendation to member states to take action against a country committing egregious violations of labor rights, has been used only once in the ILO's 103 year history, against Myanmar for forced labor practices

As a result many considered the ILO to be "toothless"

# Seeking mechanisms with teeth

- In the context of globalization from 1980's on:
  - Movement of capital for production (offshoring)
  - Exports/imports facilitated by trade certainty
  - Discontent in communities negatively affected by offshoring and trade; weak domestic safety net in US
  - Domestic constituencies for global governance of labour
  - **Focus on trade agreements as vehicle for labour**

# US pioneers linkage of trade and labor

- Unilateral preference programs beginning in the early 1980's to support workers' rights in beneficiary developing countries
- Due to mounting domestic discontent, labor obligations attached to a negotiated trade agreement for the first time - as a side agreement to NAFTA in 1993
- All subsequent US free trade agreements (2nd generation) include labor obligations within the FTA, with the scope of covered rights and the rigor of enforcement mechanisms increasing over time

# 2nd generation of US labor clauses (to 2020)

Obligations: from 2000 (US-Jordan FTA), labor rights are defined as the core labor rights in the 1998 ILO Declaration plus "acceptable conditions of work" wrt/ minimum wages, hours and OSH; from 2007, requirement to adopt and maintain ILO core rights in law and practice

Dispute settlement mechanism: State to state

- Initiated by a member government or in response to a public petition
- Attempt to remedy through consultation and collaboration
- If no resolution, can be referred to panel of private arbitrators for fact finding, possible recommendations (with notable loopholes/ambiguities)
- If panel finds a violation of agreement's labor obligations, a state can impose penalties, including withdrawal of preferential market access

## Actual enforcement:

- Extensive engagement and consultation with trading partners, especially developing countries, under both preference programs and negotiated FTAs
- Under unilateral preference programs – there was a withdrawal of benefits from 16 countries, of which 12 restored
- Under negotiated FTAs, only a **single use** of arbitration during the 25 years from 1994 (NAFTA) up to 2020
- Guatemala – Case initiated and lost by the US, with arbitral panel deciding the labor violations did not affect trade

# USMCA – a (fairly) radical change to trade-labor linkage

Obligations: Additional rights are covered: right to strike; obligation to protect workers exercising labor rights from violence; protection of migrant workers under each country's labor laws; prohibition of import of goods made with forced labor from non-USMCA parties; requirement of specific reforms to Mexico's corporatist labor relations regime

Two dispute settlement mechanisms:

State to state, with panel directed to presume that a failure affects trade or investment between the parties; eliminates ability of a party to block panel formation; 2 of 3 panelists must have expertise in labor law or practice

Facility-specific Rapid Response Labor Mechanism to address a denial by a specific firm of workers' rights to free association and collective bargaining

# Facility-specific Rapid Response Labor Mechanism

## Mechanism:

- Self-initiated by a member government or in response to a public petition
- Complaining party requests review by respondent party
- If no satisfactory resolution, party may request establishment of a Rapid Response Labor Panel—composed of 3 labor experts familiar with ILO standards—to verify compliance or determine a denial of rights
- After a determination of denial of rights, a party may suspend preferential treatment of goods from that facility or impose other penalties
- For repeated violations by the same firm, a party may deny entry of such goods

## Significance of the new facility-specific approach:

- Changes the political calculus/cost to state filing a complaint by limiting damage to respondent country and thus to relationship
- Better aligns private incentives with public interest in labor law compliance (who pays the costs)
- Eliminates negative spillover to compliant firms
- If used consistently, provides a deterrent effect on other firms

## Actual enforcement:

- Two cases brought by US during first year of USMCA (v. one case during 25 years of other US FTAs)
- Use of RRLM led to unprecedented oversight of votes on collective bargaining agreements, votes to determine union representation
- USMCA RRLM created a safer space for workers to exercise their rights due both to oversight, risks to firms of denial of rights
- Those cases revealed the preference of workers for independent union representation, which had been out of their reach earlier

# Canadian, EU approaches to trade-labor linkage

Canada: Dissatisfaction with NAFTA labor side agreement by pro-labor political parties, unions, civil society also led to 2nd generation agreements

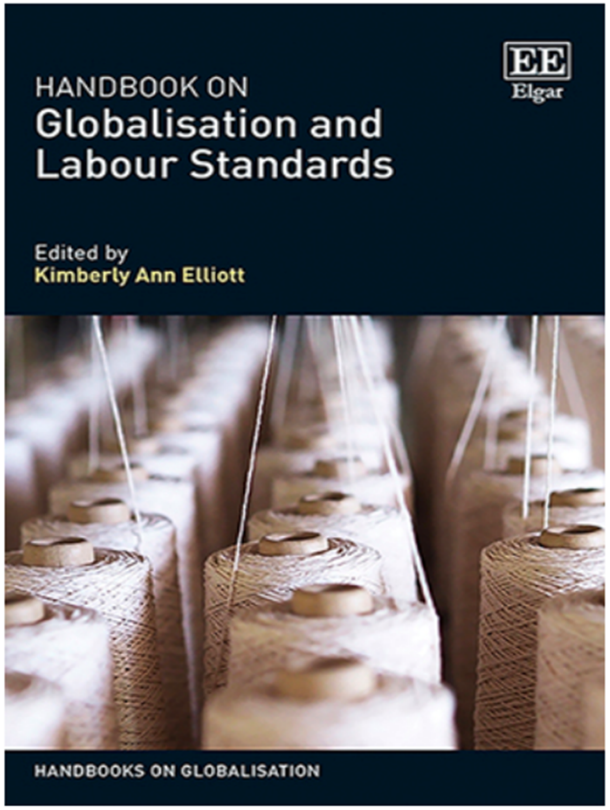
- path toward convergence with US after 2007 – 7 FTAs include sanctions
- Comprehensive Economic and Trade Agreement with EU: no sanctions
- CPTPP – converges again with US, labor chapter unchanged after US exit
- CUSMA – bilateral with Mexico on labor reform, RRLM

EU: Added labor requirements to GSP, then to FTAs, 1-2 decades after US

- Trade and Sustainable Development chapters (including labor) after 2010
- Soft law: consultations, excludes use of trade measures or other sanctions
- Review of TSD policy currently underway

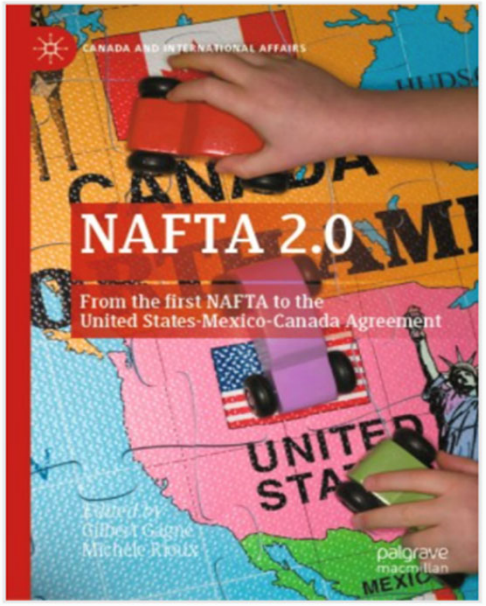
# For further reading

**Handbook on Globalisation and Labour Standards**




**NAFTA 2.0 From the first NAFTA to the United States-Mexico-Canada Agreement**

Eds. Gilbert Gagné, Michèle Rioux

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