




International  
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▶ **Promoting and enforcing compliance with labour provisions in trade agreements**



Comparative analysis of Canada, European Union and United States approaches and practices



Marva Corley-Coulibaly  
Gaia Grasselli  
and Ira Postolachi



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## ► List of abbreviations

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<b>ACWLA</b>	Advisory Council on Workplace and Labour Affairs
<b>ADR</b>	alternative dispute resolution
<b>AFL-CIO</b>	American Federation of Labor and Congress of Industrial Organizations
<b>ASTAC</b>	Ecuadorian Trade Union Association of Agricultural Workers and Peasants
<b>CAFTA-DR</b>	Dominican Republic-Central America Free Trade Agreement
<b>CETA</b>	EU-Canada Trade Agreement
<b>CSF</b>	civil society forums
<b>CSR</b>	corporate social responsibility
<b>CTSD</b>	committee on trade and sustainable development
<b>DAG</b>	domestic advisory group
<b>EU</b>	European Union
<b>FTC</b>	free trade commission
<b>ILAB</b>	Bureau of International Labor Affairs
<b>IWG</b>	Indigenous Working Group
<b>LCA</b>	Labour Cooperation Agreement
<b>LCFTA</b>	labour chapter of the free trade agreement
<b>LP Hub</b>	Labour Provisions in Trade Agreements Hub
<b>NAALC</b>	North American Agreement on Labor Cooperation
<b>NAFTA</b>	North American Free Trade Agreement
<b>NAO</b>	national administrative office
<b>NGO</b>	non-governmental organization
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OSH</b>	occupational safety and health
<b>OTLA</b>	Office of Trade and Labor Affairs
<b>RRLM</b>	Facility-Specific Rapid Response Labor Mechanism
<b>RTA</b>	regional trade agreement
<b>SEP</b>	Single Entry Point
<b>TSD</b>	trade and sustainable development

<b>USAID</b>	United States Agency of International Development
<b>USDRL</b>	United States Bureau of Democracy, Human Rights, and Labor
<b>USMCA</b>	United States–Mexico–Canada Free Trade Agreement
<b>USDOL</b>	United States Department of Labor
<b>USTR</b>	Office of the United States Trade Representative
<b>WTO</b>	World Trade Organization

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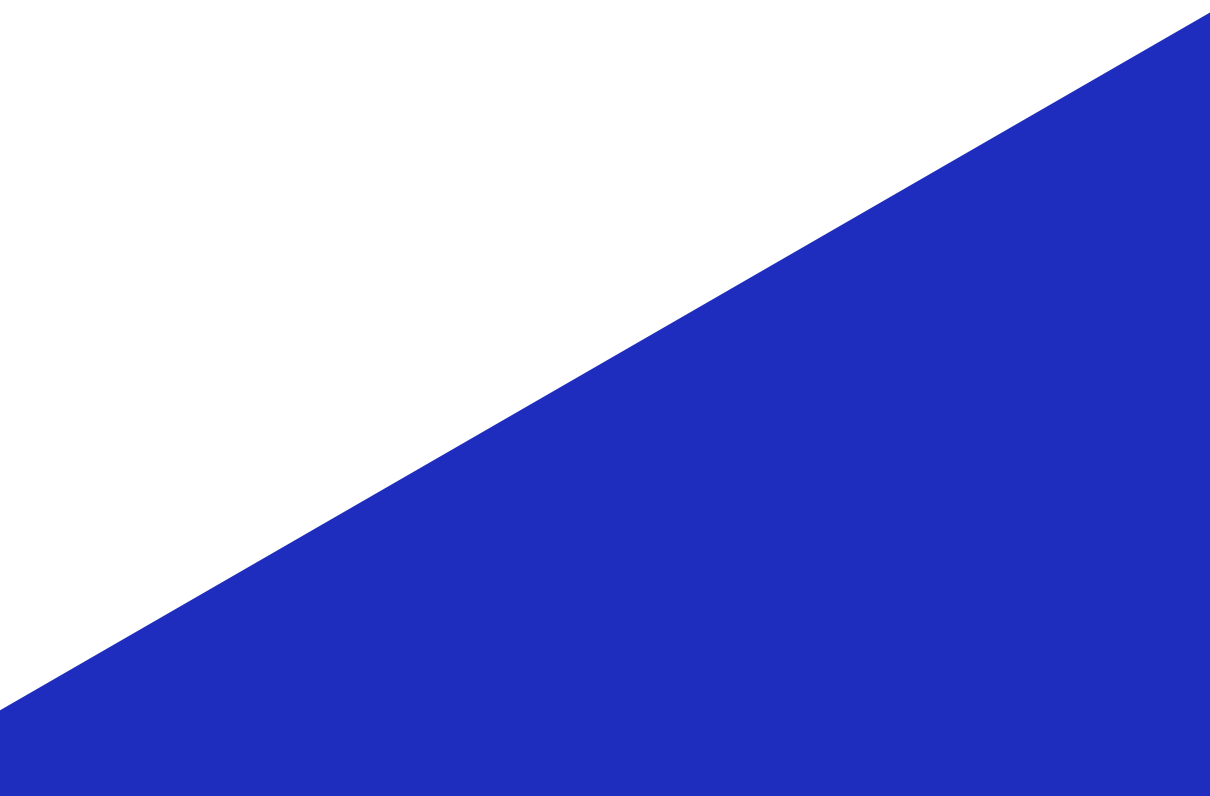
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## ▶ Executive summary

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International trade has long been viewed as an engine of growth and economic development. Through the opening up of new markets and global sourcing, trade allows firms to expand and their operations to become more cost-effective, thereby increasing their productivity. Workers may, as a result, benefit from more employment opportunities and better incomes. Nevertheless, there are concerns about the impacts of trade on firms and workers, especially on micro, small and medium-sized enterprises and individuals belonging to disadvantaged groups, such as low-skilled workers, women and workers operating in the informal economy. Such concerns, which are shared by governments, the social partners and broader civil society worldwide, are not new. Indeed, it has long been a matter of debate how international trade – especially between countries with different standards, including labour standards – might affect workers and firms. It is therefore no coincidence that trade is included alongside broader societal goals in international agendas, regional frameworks and domestic trade policies.

### **Labour provisions in trade agreements are the most widely used trade policy tool for promoting and enforcing compliance with labour rights**

More recently, there have been concerted efforts in many economies across different regions to step up the promotion of and compliance with international labour standards through trade. These efforts include the introduction of unilateral measures, such as preferential trade arrangements with labour conditionality and import bans on goods made using forced labour. In addition, there are voluntary and mandatory initiatives to encourage responsible business practices in multinational enterprises. Regional trade agreements (RTAs), which are contractual arrangements between two or more economies governing their trade relationship, are the trade policy measure most widely used around the world to promote and enforce compliance with labour rights. This is typically done through the inclusion of labour provisions either in a specialized chapter or in accompanying side agreements, which may set framework conditions for decent work. According to the International Labour Organization (ILO), labour provisions are defined as:

- ▶ any principle or standard or rule (including references to international labour standards) that addresses labour relations, minimum working conditions, terms of employment and/or other labour issues;
- ▶ any framework to promote cooperation and/or compliance with standards, through activities, dialogue and/or monitoring of labour issues; and/or
- ▶ any mechanism to ensure compliance with national labour law and standards set out in the trade agreement, such as through the settlement of labour-related disputes.

Labour provisions in trade agreements thus provide different mechanisms, including dialogue and cooperation, for enhancing the promotion of and compliance with labour-related commitments.

Globally, labour provisions are increasingly being integrated into trade agreements. Based on data from the recently launched ILO Labour Provisions in Trade Agreements Hub (LP Hub), one in three (113 out of 357) RTAs in force as of February 2023 included labour provisions. This reflects a significant increase since labour provisions were first incorporated into such an agreement, namely in 1994 with the signing of the labour side agreement to the North American Free Trade Agreement (NAFTA). Indeed, more than half of the existing trade agreements with labour provisions were concluded over the past decade, and the scope of engagement has expanded to over 140 economies. Also notable is the fact that 19 per cent of trade agreements with labour provisions are between trading partners from the global South, while 26 per cent are North–North agreements and the remaining 55 per cent are North–South agreements.

Canada, the European Union (EU) and the United States of America are party to almost half of the existing trade agreements with labour provisions, and for these three economies nowadays it is essentially a question of “how”, rather than “whether”, to incorporate labour provisions.

**As the study makes clear, promoting and enforcing compliance with labour commitments in trade agreements is not a straightforward process, and the challenges involved are reflected in real-life practice**

Their widespread use in trade agreements notwithstanding, more information is needed about how labour provisions are implemented and whether they effectively promote and enforce compliance with labour standards. While the texts of trade agreements have been the subject of intensive scrutiny, much less attention has been paid to the dialogue, monitoring and cooperative activities and dispute settlement procedures provided for by such agreements with a view to preventing and resolving conflicts. Consequently, labour provisions in trade agreements continue to be perceived by some as serving protectionist purposes and by others as toothless and amounting to “window dressing”. Equally important to this debate is the role of the ILO in terms of providing authoritative guidance and cooperative support.

The study addresses these issues through an analysis of three landmark labour disputes: between Canada and Colombia, between the EU and the Republic of Korea, and between the United States and Guatemala. These case studies serve to highlight the evolution of practices in the context of labour disputes, along with the interlinkages between the various mechanisms provided for by trade agreements. Drawing on desk research, interviews with key stakeholders and data from the ILO LP Hub, the study was able to connect the dots between the labour-related issues raised in the complaints, action on the ground (including

dialogue, monitoring and cooperative activities supported by the ILO) and dispute resolution.

### **First, there is no evidence that labour provisions have been used for protectionist purposes**

Examining the close to 50 complaints that have been submitted under Canadian, EU and US trade agreements since 1995, the study found no evidence of any complaint having been accepted for protectionist reasons. Indeed, not all the complaints received are accepted for review: the complaint must meet specific criteria in several areas for that to happen. In addition, the large majority of complaints are joint submissions, filed by two or more petitioners in one of the trading partner countries, including coalitions of workers' organizations (in some cases numbering as many as 90 such organizations) from within the alleged violating country.

More importantly, dialogue and cooperation remain the basic line of action when it comes to ensuring compliance with labour commitments. There has as yet been no labour dispute under a trade agreement leading to sanctions or a disruption of trade flows between the trading partner countries. Both in the desk research and during the interviews conducted for this study, dispute settlement procedures have been consistently recognized as a tool of last resort, to be applied only when dialogue and cooperation fail to improve compliance. One of the key lessons learned from the study is therefore the importance of a shared commitment, on the part of the trading partner countries, to both demonstrating the political will and providing the financial resources required to address non-compliance with labour standards. For example, technical cooperation projects have been carried out under most Canadian and US trade agreements to support the implementation of labour provisions, and additional financial resources can be mobilized upon request.

### **Second, it would be misleading to describe labour provisions as mere “window dressing”**

The study shows that governments and the social partners view trade agreements as a tool for rectifying deficiencies in labour rights and working conditions. For example, important labour law reforms have been undertaken before or after the ratification of trade agreements, as in the case of Guatemala, the Republic of Korea and Viet Nam. In addition, opportunities for social dialogue have been created where they did not exist previously, such as in Japan, the Republic of Korea and Viet Nam under their respective trade agreements with the EU, and in Guatemala under the Dominican Republic–Central America Free Trade Agreement (CAFTA–DR). Various means are used to achieve compliance, including dialogue and cooperation, the submission of complaints about alleged labour violations, and dispute settlement.

In these cases, therefore, it would be misleading to describe labour provisions as mere “window dressing”. Drawing their conclusions from ongoing and past disputes, the governments concerned have begun to combine dialogue and cooperative activities with a more assertive stance on enforcement. For example, in the case of the EU, the submission process was modified to boost the public’s willingness to prepare and submit complaints relating to labour violations under trade agreements. Moreover, the EU is also considering sanctions and pre-ratification conditionality, two features which are more characteristic of the US and (to a lesser extent) Canadian approaches to labour provisions.

The United States–Mexico–Canada Agreement of 2020 reflects several procedural developments that can be ascribed to the outcomes of the United States–Guatemala labour dispute (2008–17). One of these is that the strict interpretations applied by the arbitration panel in the United States–Guatemala dispute were broadened, leading to a reversal of the burden of proof. In addition, a specific dispute settlement mechanism was introduced, with a significantly shorter timeline for disputes involving violations of freedom of association and the right to collective bargaining.

### **Third, social dialogue is pivotal to the promotion of and compliance with labour commitments**

Most of the Canadian, EU and US trade agreements with labour provisions include institutional mechanisms to facilitate the engagement of workers’ and employers’ organizations, non-governmental organizations and the broader public in various ways in the negotiation and implementation of such provisions. While trade agreements rarely contain a mechanism exclusively designed for the social partners, these are generally part of the national (or domestic) advisory groups and are heavily involved in the filing of public submissions.

Although differences in the model of social dialogue prevailing in the trading partner countries can undermine the effectiveness of some monitoring and cooperative activities, the study found that any such impacts were likely to be short lived. In the long term, governments and the social partners tend to appreciate the creation of an institutionalized space for dialogue on labour issues, especially where such opportunities are absent or inadequate at the domestic level. This space for social dialogue includes formal and ad hoc structures. More importantly, the focus of social dialogue should be on early and continuous engagement with stakeholders during all phases of the trade agreement. Such engagement not only promotes transparency and inclusiveness but also enables the social partners and broader civil society to help governments in identifying potential labour market challenges and defining areas for cooperation to address those challenges.

### **Finally, stakeholders rely on the ILO's support, including support provided through its supervisory mechanism**

The study highlights widespread reliance of both governments and stakeholders on the ILO for cooperation, technical assistance and supervision of a country's application of labour standards through comments by the ILO supervisory bodies and ILO missions. Indeed, regular references to such comments were found in documents pertaining to the United States–Guatemala and the EU–Republic of Korea labour disputes, produced by both governments and the social partners. More generally, comments from the ILO supervisory bodies are used by governments to identify gaps in the protection of labour rights, which cooperation under trade agreements can help to address.

While further research is required on the synergies between the ILO's supervisory mechanism and activities under the trade agreement, it is evident that the findings of the ILO supervisory bodies are regarded as authoritative and thus capable of buttressing arguments and initiatives to promote labour commitments under trade agreements.

In addition, cooperative activities are frequently conducted with the ILO's assistance, particularly with regard to setting up social dialogue platforms, ratifying ILO fundamental Conventions and adopting labour law reforms. If the tendency for more countries to include labour provisions in their trade agreements continues, it is likely that there will be a need for greater technical assistance and cooperation to support them in fulfilling their labour commitments under those agreements. The ILO's role would be expected to expand further in line with these trends.

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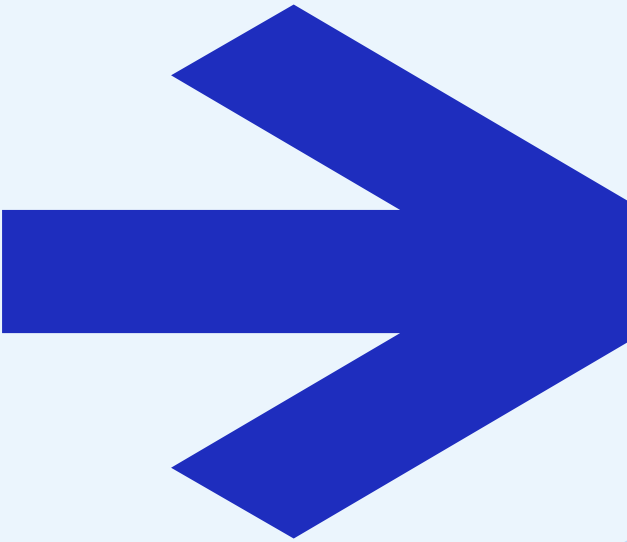
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# Introduction

Over the past few decades, there have been concerted efforts in many regions and countries to step up the linkage between trade and broader socio-economic objectives, both at the micro and the macro level. Unilateral trade arrangements and import bans are already used as vehicles to address societal goals, such as human and labour rights (ILO et al. 2019), while trade agreements have been establishing frameworks to promote labour and environmental objectives (ILO 2019a). There are also initiatives focused directly on the private sector to encourage responsible business practices through voluntary and mandatory reporting requirements (Delautre, Echeverria-Manrique and Fenwick 2021). The focus of this paper is on promoting and enforcing compliance with labour rights through regional trade agreements (RTAs).<sup>1</sup>

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<sup>1</sup> The term “regional trade agreement” is used interchangeably with the term “trade agreements” and refers in a broader sense to bilateral, plurilateral and regional agreements.

Labour provisions in trade agreements provide different mechanisms for promoting compliance with and enforcement of labour commitments. These include institutional and ad hoc mechanisms for stakeholder engagement and cooperation that promote dialogue, transparency and accountability, as well as dispute settlement mechanisms. One important question related to labour provisions is how these mechanisms – which are detailed in the trade agreements – work in practice, particularly in the context of a labour dispute.

This study seeks to answer that question through an analysis of monitoring, cooperation areas and activities, and dispute settlement procedures. Rather than focusing solely on how labour provisions are designed, it analyses their implementation, based on desk research and interviews with stakeholders. It focuses on dispute settlement processes in three landmark labour disputes: between Canada and Colombia, the European Union (EU) and the Republic of Korea, and the United States and Guatemala. These examples serve as case studies for the emergence and evolution of practices in the context of labour disputes, and for the interlinkages between the various dialogue and cooperation mechanisms in trade agreements. In this respect, it is also helpful to take a step back and understand the practices of the three key proponents of labour provisions that were parties to these disputes: Canada, the EU and the United States.

As the study makes clear, promoting and enforcing compliance with labour commitments in trade agreements is not a straightforward process, and actual practices are not fully reflected in the text of the trade agreement or in publicly available documentation. Thus, the analysis of these practices requires discussions with government officials, workers' and employers' representatives and other civil society actors with knowledge of the matter. This underscores a need for more transparency concerning the implementation of activities in relation to labour provisions.

Nevertheless, certain lessons can be drawn from the analysis of these actual practices, including the significance of: i) streamlining monitoring and dispute settlement through time-bound procedural guidelines; ii) creating more opportunities for meaningful social dialogue; and iii) recognizing the shared commitments among trading partners.

The study is divided into six chapters. **Chapter 1** presents the trade–labour linkage in the trade policies of Canada, the EU and the United States, relevant literature and a methodological framework for the study. **Chapter 2** provides an overview of labour provisions and related mechanisms based on global statistics and the text of the three economies’ trade agreements. **Chapter 3** moves from text to practice, focusing on stakeholder engagement in institutional mechanisms in the trade agreements, while **Chapter 4** focuses on cooperation areas and activities. **Chapter 5** offers a comparative analysis of the labour disputes between Canada and Colombia, the EU and the Republic of Korea, and the United States and Guatemala, by means of three interview-based case studies. Finally, **Chapter 6** identifies and presents lessons learned and conclusions.



1.



# Trade policy and labour linkage

**I**n Canada, the EU and the United States, the trade–labour linkage has become a standard element of all modern trade agreements. Although each country has its distinctive approach, shaped by its evolving trade policy objectives, these objectives tend to centre on championing trade for economic growth, while avoiding “social dumping” and its adverse impacts on domestic labour markets. There is also a general trend towards achieving these goals by increasing the transparency and inclusiveness of trade negotiations, strengthening the engagement with workers’ and employers’ representatives and other civil society actors during implementation, and strengthening the capacity of trading partner countries through cooperative activities.

Studies such as Polaski (2022) and Harrison (2019) provide a historical and political overview of the trade–labour linkage in a global context, based on EU and US trade policies. Polaski’s study traces the linkage back to the nineteenth century and discusses the influence of workers’ and employers’ representatives and other civil society actors in shaping this relationship in modern trade policy. Indeed, RTAs are shaped by modern trade policy documents, which are political, economic and procedural in nature.

In the United States, the Trade Promotion Authority prioritizes 13 trade objectives. In addition to trade openness, market access and economic growth, it includes the promotion of labour rights for its trading partner countries, among other objectives.<sup>2</sup> Adopting and observing internationally recognized core labour standards in line with the ILO Declaration on Fundamental Principles and Rights at Work (1998) is explicitly mentioned as a priority objective,<sup>3</sup> as is strengthening the capacity of trading partner countries to promote such standards. Specific guidelines are also included in the Trade Promotion Authority, a legislative procedure, to facilitate transparency and encourage public participation.<sup>4</sup> In 2022, the United States implemented a “worker-centered trade policy” that focuses on using trade agreements, and the global trading system more generally, to advance workers’ rights both domestically and abroad through greater enforcement and inclusive stakeholder engagement.<sup>5</sup>

The EU’s trade policy has the goal of fostering the sustainable economic growth of its Member States and of its trading partners through a values-based approach that prioritizes sustainable trade, which is an integral concept that encompasses human rights, decent work, and climate and environmental goals.<sup>6</sup> One of the objectives of the strategy is to secure “broader commitments from partner countries than those in trade agreements of other international players”,<sup>7</sup> in particular commitments to ratify and effectively implement ratified ILO Conventions, and to respect core ILO principles. The implementation of these commitments is achieved through stepped-up action on engagement and cooperation, aiming to identify country-specific priorities and provide “incentives and support to trade partners for reform processes and capacity-building”.<sup>8</sup> These cooperative actions are coupled with a more assertive stance on enforcement of labour commitments through the possibility of trade

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2 United States, Congress, [Public Law 114–26 of 29 June 2015](#). This document lays out the “objectives, policies and priorities of the United States in negotiating trade agreements”. See also: Office of the United States Trade Representative (USTR), [“Trade Promotion Authority”](#). Although the Trade Promotion Authority expired in July 2021, TPA-2015 is still used as the basis for trade negotiations. See Casey and Cimino-Isaacs (2022).

3 See Sections 102(6) and 111(7) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. More recent trade agreements (for example, the United States–Mexico–Canada Agreement) refer to the ILO Declaration on Rights at Work, which means the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998).

4 United States, Congress, Public Law 114–26 of 29 June 2015, section 104, para. (d).

5 United States, Executive Office of the President, [2022 Trade Policy Agenda and 2021 Annual Report](#), 2022.

6 The EU introduced its new trade policy strategy in June 2022. See European Commission, [“The power of trade partnerships: together for green and just economic growth”](#), 22 June 2022. This new strategy replaces the 2021 Trade Policy Review (European Commission, [Trade Policy Review: An Open, Sustainable and Assertive Trade Policy](#), 2021).

7 European Commission, “The power of trade partnerships”.

8 European Commission, “The power of trade partnerships”.

sanctions. Moreover, the role of workers' and employers' representatives, local communities and non-governmental organizations (NGOs) is reinforced at all stages of the trade agreement.<sup>9</sup>

Canada has adopted a more inwards-focused "trade diversification strategy" that incorporates an inclusive pillar. The strategy promotes domestic investments to "support access to new markets", prioritizing the expansion of potential benefits to groups that have traditionally been under-represented in trade and investment in Canada (including women, small and medium-sized enterprises and Indigenous Peoples).<sup>10</sup> This "inclusive approach to trade" seeks to advance labour priorities, among other socio-economic objectives, through increased engagement with such groups during negotiations and implementation, and through expanding the content of labour chapters more broadly.

The distinctive approaches of Canada, the EU and the United States have in common the inclusion of labour provisions in a specialized chapter<sup>11</sup> of the trade agreement or in an accompanying side agreement. Labour provisions embody specific obligations and provide for monitoring and cooperative activities (including activities with stakeholder engagement) and dispute settlement mechanisms.



<sup>9</sup> The previous strategy was guided by a non-paper by European Commission services that included a 15-point Action Plan for enhanced implementation and enforcement. See European Union, "[Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements](#)", 2018.

<sup>10</sup> Government of Canada, "[Canada's inclusive approach to trade](#)". The inclusive approach to trade is part of the Government's trade diversification strategy (Government of Canada, "[Canada and the G20: Trade Diversification](#)").

<sup>11</sup> In this context, "specialized chapter" refers to any chapter addressing labour issues, among other issues related to sustainable development, such as the TSD chapter in EU trade agreements.

## ► 1.1. Literature review

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Specific country approaches, based on the design of labour provisions, and their evolution have been well documented in the literature (see, for example, ILO 2013, 2016, 2019c; Raess and Sari 2018; Harrison 2019). However, there are far fewer studies analysing the implementation of labour provisions; that is, how monitoring and cooperation activities and dispute settlement procedures are carried out in practice.

In general, the existing studies on monitoring and cooperation reviewed in this section show that institutional mechanisms accompanying labour commitments have been beneficial to increasing transparency and raising awareness of labour issues. There is also evidence that such mechanisms have, in some cases, been effective in enhancing transnational dialogue on labour issues.

A series of short case studies were presented in an ILO edited volume (ILO 2017) analysing stakeholder engagement, cooperative activities and dispute settlement. The case studies include Chile's experience in government-to-government dialogue and cooperative activities under trade agreements with Canada, the EU and the United States (Lazo-Grandi 2017), highlighting their effectiveness in facilitating social dialogue and supporting legislative reforms on occupational safety and health (OSH). Another case study (Oehri 2017a) analyses Morocco's and Mexico's cooperation activities and transnational dialogue in the context of their respective trade agreements with the EU and the United States (and with Canada, in the case of Mexico). The study finds a positive influence on strengthening the capacity of trade unions and raising workers' awareness of their rights (in Mexico) and capacity-building of labour ministry officials (in Morocco). Other case studies include one on civil society engagement and monitoring in the EU–Republic of Moldova Association Agreement (Smith et al. 2017), and another on Colombia's cooperative activities under trade agreements with Canada, the EU and the United States (Peels and Echeverria Manrique 2017a). These studies show that, although there have been some positive benefits of cooperative activities (such as training of labour inspectorates), in general, the effectiveness of the cooperative activities and transnational dialogue to address labour issues in the respective countries has been limited.

These issues are analysed further in more comprehensive studies on stakeholder engagement on labour issues in trade agreements focusing predominantly on EU trade agreements. The studies in this area suggest that, although institutional mechanisms enhance transparency, there is a need for strengthening accountability, both in the EU and in its trading partner countries.



For example, Van den Putte (2015) finds that the functioning and accountability of the mechanisms for stakeholder engagement in the EU's trade agreement with the Republic of Korea needed to be enhanced (and likewise in the case of the agreement of the United States with that country). Several studies of civil society mechanisms in EU trade agreements (Harrison et al. 2019; Martens, Potjomkina and Orbie 2020; van 't Wout 2022; Velut et al. 2022) take into consideration the perspectives of trading partner countries and discuss some key distinctions in their approaches. However, the perspective of stakeholders in the Republic of Korea is not taken into consideration. Using the text of trade agreements, official documents and expert interviews, the study finds that there is a need for strengthening institutional mechanisms to enhance their functioning and accountability in the EU and the United States. Drieghe et al. (2021) also analyse the implementation of civil society (includes workers' and employers' representatives and other organized groups) mechanisms in all EU trade agreements,<sup>12</sup> based on a mixed-method approach that includes interviews with members of the respective EU domestic advisory groups (DAGs); while members of non-EU DAGs were excluded due to "practical considerations in terms of access, language and sometimes political sensitivities".

Several studies of civil society mechanisms in EU trade agreements (Harrison et al. 2019; Martens, Potjomkina and Orbie 2020; van 't Wout 2022; Velut et al. 2022) take into consideration the perspectives of trading partner countries and discuss some key distinctions in their approaches. Harrison et al. (2019) find that, during the respective RTA negotiation processes, there was limited engagement by the EU with stakeholders from the Caribbean Forum, the Republic of Korea and the Republic of Moldova. The authors also point to a weakness of the common trade and sustainable development (TSD) approach, in which the respective trading partner countries' specificities are not taken into consideration during implementation. In the case of the negotiations between the EU and the Republic of Korea, the study finds that government committees lacked accountability in addressing civil society concerns, which resulted in limited meaningful dialogue with stakeholders.

Martens, Potjomkina and Orbie (2020) develop an analytical framework based on an "inclusiveness ladder" to evaluate the functioning of DAGs in eight EU trade agreements. Their methodology is based on surveys and interviews with members of both EU and non-EU DAGs. They find that, in general, despite the holding of meetings and the sharing of information (two of the lowest levels of inclusion on the inclusiveness ladder), there is still a lack of genuine dialogue within the DAGs. This constraint limits accountability of the group and its

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<sup>12</sup> The study notes that the EU tends to use a broad definition of civil society that includes workers' and employers' representatives, environmental and other organized groups, such as consumer organizations, and Indigenous communities. For more information on this definition, see Commission of the European Communities, 2002, p. 6.

ability to influence outcomes, thus undermining policy impact (the highest level of inclusion on the inclusiveness ladder). Velut et al. (2022) represents one of the most comprehensive studies to date on the implementation of labour provisions in trade agreements, including those of the EU. In addition to evaluating the implementation and enforcement of TSD provisions on the EU side, it analyses eight non-EU countries. The broad analysis focuses on both the labour and environment chapters and concludes that the highly institutionalized mechanisms for stakeholder engagement in EU trade agreements are rarely replicated in other countries' RTAs.

Some studies analysing the public submissions process as a mechanism for engaging the social partners raise concerns about the limited awareness of the petition process, while commending the cooperation activities under trade agreements, including technical assistance and capacity-building activities (Cimino-Isaacs 2020; USGAO 2014). The transnational activism of trade unions and NGOs is a crucial determining factor in submissions being accepted for review under United States and Canada trade agreements (Nolan Garcia 2011; Oehri 2017b). However, an in-depth analysis of the Guatemala submission under the Dominican Republic–Central America Free Trade Agreement (CAFTA–DR) (van Roozendaal 2015) finds the labour provisions ineffective in addressing and improving labour compliance, owing to the weak influence of trade unions and the lack of commitment and support from the Guatemalan and US government, respectively.

Moving from mechanisms for monitoring and cooperation to those pertaining to dispute settlement, studies exist which analyse specific labour disputes; in particular, the one between the United States and Guatemala, and the one between the EU and the Republic of Korea, which were the first disputes to emerge in relation to labour provisions in trade agreements. The studies suggest that these initial experiences have shed light on weaknesses of labour provisions and related mechanisms for enforcement, eventually leading to design changes on the part of the EU and the United States.

Starting with the US–Guatemala labour dispute, Compa, Gottwald and Vogt (2018) investigate the impact of the arbitral decision for workers' rights under CAFTA–DR and, more broadly, under labour chapters in US trade agreements. Following the analysis, the authors provide recommendations for future negotiations of labour commitments in trade agreements. Similarly, Claussen (2020) considers the implications of the US–Guatemala labour dispute with respect to what the author identifies as a “consensus” that the inclusion of labour provisions in trade agreements and their treatment as “ordinary trade issues” is positive; all with an eye turned to the design of labour provisions in the United States–Mexico–Canada Free Trade Agreement (USMCA). The design of labour provisions in CAFTA–DR and its influence on the outcome of the US–Guatemala labour dispute is also discussed by Cross (2017). The impacts of this dispute,

as well as the lessons that could be drawn from the entire process, such as the need for clearer standards concerning both the substance of commitments and the procedural aspects, constitute the main point of reflection for Paiement (2018) and Ortino (2021).

Studies focusing on the EU–Republic of Korea labour dispute recognize it as a turning point in the EU’s approach to compliance with labour commitments, with particular attention to those commitments that relate to ILO instruments. At the same time, these studies highlight critical issues in the handling of the dispute and in the role played by the social partners.

Novitz (2022) posits that the report of the panel of experts indicates that ILO Member States may have legally binding obligations regarding freedom of association where these are included expressly as commitments in a trade agreement. The author also hypothesizes that the report may indicate a “more assertive stance” taken by the EU towards the enforcement of labour provisions. García (2022) evaluates the results obtained by the EU after launching the dispute with the Republic of Korea, namely the addressing of European Parliament and DAG concerns, and the support, by countering domestic opposition, to a government that was committed to labour reforms in the Republic of Korea. In contrast, Nissen (2022) argues that, during the dispute, the EU failed to act assertively in relation to certain issues (collective bargaining and the right to strike) and to certain groups of workers, by missing an opportunity to use its leverage in the form of reputational risks to companies in the Republic of Korea. In a similar fashion, van ’t Wout (2022) recognizes the nature of the dispute as a potential turning point – an aspect also explored by LeClercq (2021) with a focus on the relationship between the panel report for the dispute and fundamental labour rights as defined and supervised by the ILO. Lastly, the EU–Republic of Korea labour dispute also constitutes a case study for Ha Thu and Schweisshelm (2020) and Velut et al. (2022), both investigating labour rights and stakeholder engagement under trade agreements, and confirming the need for more space for social dialogue in this context.<sup>13</sup>

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<sup>13</sup> Van ’t Wout (2022), Ha Thu and Schweisshelm (2020) and Velut et al. (2022) are based on mixed-method research (interviews and desk research).

## ► 1.2. Methodological framework

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This study focuses on three landmark cases under the trade agreements of Canada, the EU and the United States. It also analyses the institutional mechanisms in theory and in practice under these three economies' trade agreements. The rationale behind this approach is threefold. Firstly, each of these economies has developed a trade agreement model with certain key provisions, among which labour provisions are included.

Secondly, as major proponents of labour provisions in trade agreements, Canada, the EU and the United States have accumulated significant experience, not only in designing and negotiating labour provisions, but also in implementing them, which is central to the focus of this study. In fact, while these economies propose that specific commitments be included in trade agreements, they also have certain institutionalized mechanisms in place for dialogue and cooperation activities to support the trading partners in achieving compliance. Moreover, these economies have consistently designed mechanisms to facilitate compliance by means of dispute settlement.

Thirdly, significantly more information resources are available for Canadian, EU and US trade agreements compared with the agreements of other economies. These resources encompass primarily written documentation, as the Canadian, EU and US authorities regularly make information available through web pages, meeting notices and records, procedural documents, statements, official data, reports and papers. However, as the case studies in the next sections show, similar information is not always available from their trading partners.

Thus, this study relies on a mixed-method approach. The ILO LP Hub<sup>14</sup> provides the main data source for information, research and comparative legal analysis of labour provisions. This database, launched by the ILO in 2022, is a comprehensive, structured compilation of the text of labour provisions in more than 100 trade agreements, also including links to meeting records, submissions, consultations and dispute documents (where publicly available).

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14 ILO, [ILO Labour Provisions in Trade Agreements Hub](#), 2022.

**This study relies on the same definition of labour provisions (ILO 2022) that the LP Hub employs:**

- ▶ **any principle or standard or rule (including references to international labour standards) that addresses labour relations, minimum working conditions, terms of employment and/or other labour issues;**
  - ▶ **any framework to promote cooperation and/or compliance with standards, through activities, dialogue and/or monitoring of labour issues; and/or**
  - ▶ **any mechanism to ensure compliance with national labour law and standards set out in the trade agreement, such as through the settlement of labour-related disputes.**
- 

Based on the LP Hub, a database subset on stakeholder meetings and cooperation activities and areas was created in order to further capture the granularity of cooperation references and mechanisms included in the trade agreements of Canada, the EU and the United States.

Desk research on a wide range of governmental and non-governmental sources (text of trade agreements, meeting records, consultations, submissions, cooperation activities) was conducted to further map out the stakeholder engagement and implementation activities. Furthermore, hyperlinks to documents, meetings and activities were included whenever they could be located.

The case studies on the Canada–Colombia, EU–Republic of Korea and US–Guatemala labour disputes are similarly informed by desk research, as well as by a total of 22 in-depth online interviews, based on a questionnaire specifically designed for this study, with an average length of two hours each. Interviews were undertaken with key stakeholders (government officials, the social partners and members of dispute settlement panels) from the six trading partners involved in the three case studies (see [table 1.1](#)). Interviewees were granted anonymity and confidentiality, and were offered the chance to comment on an early draft of the study. The purpose of the questionnaire was to determine whether and how specific mechanisms established in the trade agreement were functioning throughout the dispute, and to what extent their evolution (if applicable) could be linked to the process and/or outcome of the dispute.

The interviews afforded information unobtainable from desk research, by discussion with stakeholders directly engaged in or knowledgeable about each dispute. Nevertheless, information obtained through the interviews was used to support the findings from desk research, rather than as primary evidence. This methodological choice was made in light of two considerations. Firstly, while a minimum of three stakeholders per trading partner were contacted to seek tripartite representation, the response of the different groups was unbalanced. Based on the total of all interviewees (22 out of a total of 30 contacted), 59 per cent were government officials, 23 per cent workers' representatives, 9 per cent employers' representatives and 9 per cent panellists. Secondly, the response of trading partners was also unbalanced, with relatively fewer stakeholder responses in Colombia, Guatemala and the Republic of Korea; this might be partly due to a lack of record-keeping and loss of knowledge when staff members rotate, a lack of knowledge or interest on the part of stakeholders, or language barriers, among other reasons.

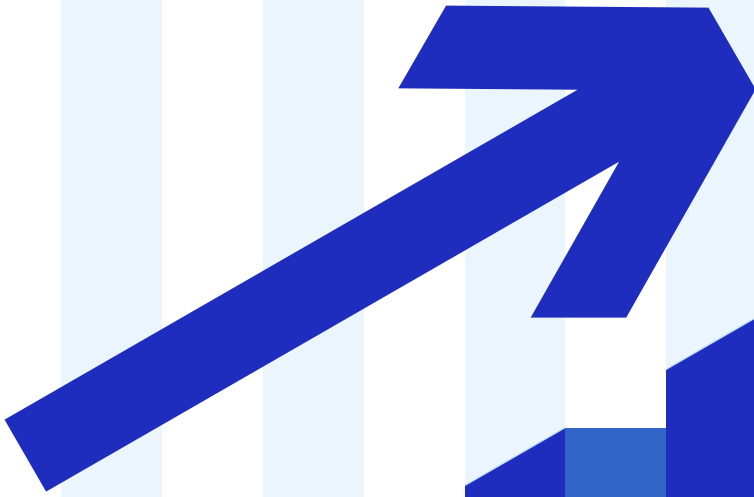
► **Table 1.1. List of interviewees**

	Government officials	Employers' representatives	Workers' representatives	Members of dispute settlement panels	Total
United States	4	0	1	1	6
Guatemala	1	0	0	0	1
European Union	4	0	1	1	6
Republic of Korea	1	1	1	0	3
Canada	2	1	2	0	5
Colombia	1	0	0	0	1
<b>Total</b>	<b>13</b>	<b>2</b>	<b>5</b>	<b>2</b>	<b>22</b>

Note: For all six parties, government officials, workers' representatives and employers' representatives were contacted in equal number. In addition to the tripartite constituents, panellists were contacted, where applicable.



2.





# Trends in labour provisions

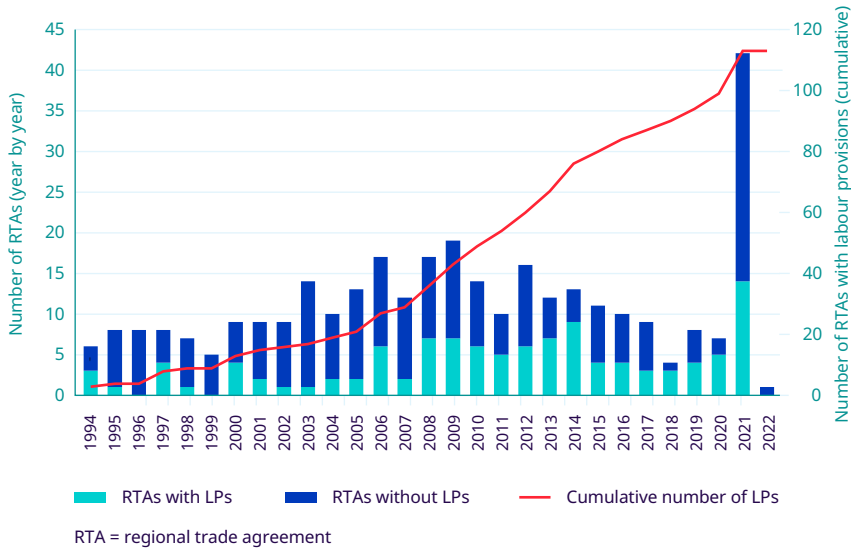
**G**lobally, labour provisions are increasingly integrated into trade agreements. Based on data from the ILO LP Hub, as of February 2023, one in three (113 out of 357) RTAs in force and notified to the World Trade Organization (WTO) included labour provisions, a significant increase since the first inclusion of a labour provision in the side agreement of NAFTA<sup>15</sup> in 1994 (see [figure 2.1](#)). Indeed, more than half of the trade agreements with labour provisions were concluded in the last decade, and the scope of engagement has expanded to over 140 economies. Thus, 19 per cent of RTAs with labour provisions are between South–South trading partners (22 RTAs), while 26 per cent are North–North agreements (29) and the remaining 55 per cent are North–South ones (62).<sup>16</sup>

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<sup>15</sup> Labour provisions are included in a side agreement, the North American Agreement on Labor Cooperation (NAALC).

<sup>16</sup> The classification of “North” and “South” is loosely based on the [UN G-77 group + China](#) definition. For this exercise, Mexico, the Republic of Korea and Türkiye, as well as Taiwan, China, are included in the “South”.

► **Figure 2.1. RTAs with and without labour provisions in force, cumulative and year by year, 1994–2022**



Note: The figure covers all 357 RTAs notified to the WTO as at February 2023, including the first trade agreement with binding labour provisions, namely NAFTA (1994), which is no longer in force.

Source: [ILO Labour Provisions in Trade Agreements Hub](#).

Nevertheless, about 55 economies do not have any trade agreements with labour provisions, including, for example, Bangladesh, India and Saudi Arabia. It should be noted that, in 2021, a significant number of trade agreements without labour provisions entered into force, which can be considered somewhat of an anomaly, owing to the high number of trade agreements concluded by the United Kingdom (36 in total) as a consequence of Brexit. Furthermore, at the time of writing, only one trade agreement (without labour provisions) had been notified to the WTO and entered into force in 2022.

Canada, the EU and the United States have concluded almost half of the RTAs with labour provisions in force and notified to the WTO (51<sup>17</sup> out of 113, as illustrated in [figure 2.2](#)). The inclusion of labour provisions in the RTAs of these three economies has essentially become a question of “how”, rather than “whether” to incorporate them. In fact, most trade agreements concluded by these three economies in the last decade include labour provisions, the content

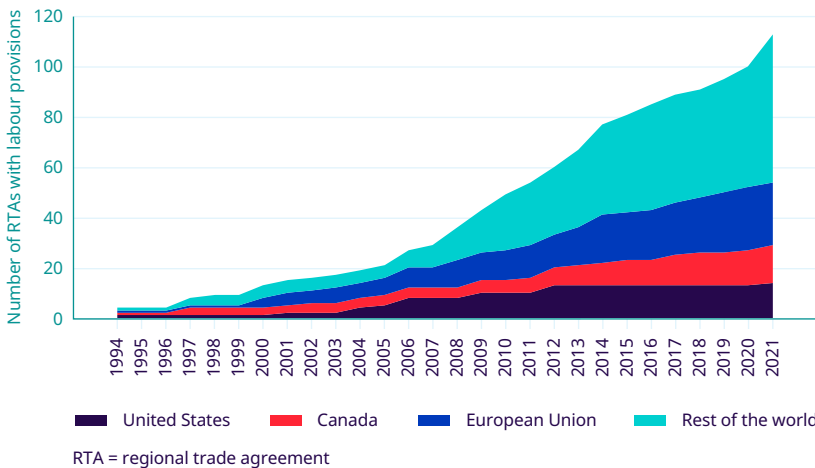
17 Excludes double counting of NAFTA, the USMCA and the EU–Canada Trade Agreement (CETA), so the sum does not equal the total of individual economies.

**1/3 RTAs**  
**113 out of 357** in force and notified  
 to the WTO included  
 labour provisions

of which – including the mechanisms for monitoring, cooperation and dispute settlement – has also expanded and deepened.

A total of 55 per cent of RTAs with labour provisions do not include Canada, the EU or the United States as a trading partner. Of these, Chile (15 RTAs with labour provisions), the United Kingdom (12), the European Free Trade Association (11), New Zealand (9) and the Republic of Korea (9) constitute the main actors.

► **Figure 2.2. RTAs with labour provisions in force, cumulative, 1994–2021**



Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as at February 2023, including the first trade agreement with binding labour provisions, namely NAFTA (1994), which is no longer in force.

Source: [ILO Labour Provisions in Trade Agreements Hub](#).

Globally, the EU accounts for the largest number of RTAs with labour provisions (25), followed by Canada (15) and the United States (14). Although the United States and Canada include labour provisions in most of their trade agreements, a little more than half of the EU's total number of RTAs include them. However, most EU trade agreements concluded over the last decade contain labour provisions (13 out of 17 concluded since 2011).<sup>18</sup> The EU is also modernizing some of its earlier trade agreements, like those with Tunisia (1998) and Mexico (2000), to include labour provisions.<sup>19</sup> The United States has consistently included labour provisions in its RTAs since NAFTA (1994), which was replaced by the USMCA (2020); while Canada has only concluded two RTAs without labour provisions: one with Israel (1997) and one with the European Free Trade Association (2009). However, the Canada–Israel Free Trade Agreement (1997) was also recently modernized to include labour provisions, and so was the Canada–Chile Free Trade Agreement (1997), to include provisions on gender and corporate social responsibility (CSR) in addition to the existing agreement on labour cooperation.

## ► 2.1. Institutional mechanisms for stakeholder engagement

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Most of the trade agreements with labour provisions of Canada, the EU and the United States include institutional mechanisms to facilitate the engagement of workers' and employers' representatives, NGOs and individuals in various ways in the negotiation and implementation of labour provisions. There are four integrated institutional mechanisms commonly used in trade agreements with labour provisions to target specific groups: i) a transnational ministerial-level council or committee for government officials of the respective parties; ii) an administrative contact point or coordinator, which is normally a government entity; iii) national (or domestic) advisory groups that include workers' and employers' representatives along with other organized civil groups; and iv) public engagement and consultation procedures that invite views and perspectives from broader civil society (this generally includes NGOs, grassroots organizations and individuals). A fifth mechanism, public submissions, is a process for receiving complaints from the public. The public submissions

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18 The following EU trade agreements do not include labour provisions: European Union–Eastern and Southern Africa States (2012), European Union–Cameroon (2014), European Union–Ghana (2016) and European Union–Côte d'Ivoire (2016). These four [Economic Partnership Agreements \(EPAs\)](#) are development-oriented agreements that represent a stepping stone for a free trade agreement with the EU.

19 The [EU and Mexico have negotiated a TSD chapter](#), but no final text has been agreed yet.

process varies depending on the trading partner (as described further in this chapter). Although there is no exclusive group for the social partners, they are generally included in the national (or domestic) advisory groups, and participate heavily in the public submissions process.

**Figure 2.3** provides a broad overview of these institutional mechanisms. In general, a larger share of Canada and US RTAs with labour provisions contain institutional mechanisms, compared with EU trade agreements. This disproportion stems from the fact that the EU started to include such mechanisms only in recent RTAs, which contain a TSD chapter. Nevertheless, all three economies share similar statistics when it comes to the number of RTAs with references to these mechanisms (with the exception of references to public submissions).<sup>20</sup>

Most RTAs with labour provisions establish councils and committees (80 per cent overall) to monitor implementation activities and support dialogue (including transnational dialogue), also in the context of labour violations. In general, all Canada (15) and US (14) RTAs with labour provisions include references to councils and committees, compared with 76 per cent of EU trade agreements (19). Prior to 2011, the EU only established councils and committees in its RTAs. However, starting with the EU–Republic of Korea Free Trade Agreement (2011), it began including mechanisms such as contact points, DAGs, and public engagement and consultation procedures in most of its RTAs with labour provisions.

Similarly, most RTAs with labour provisions provide for the establishment of national contact points or coordinators (79 per cent globally) tasked with administrative functions of support, such as coordinating the development and implementation of cooperative activities and receiving public submissions/communications. Additionally, almost half of all RTAs with labour provisions (46 per cent globally) establish procedures for public engagement and consultations: this is the case for all US and for most Canada and EU trade agreements.

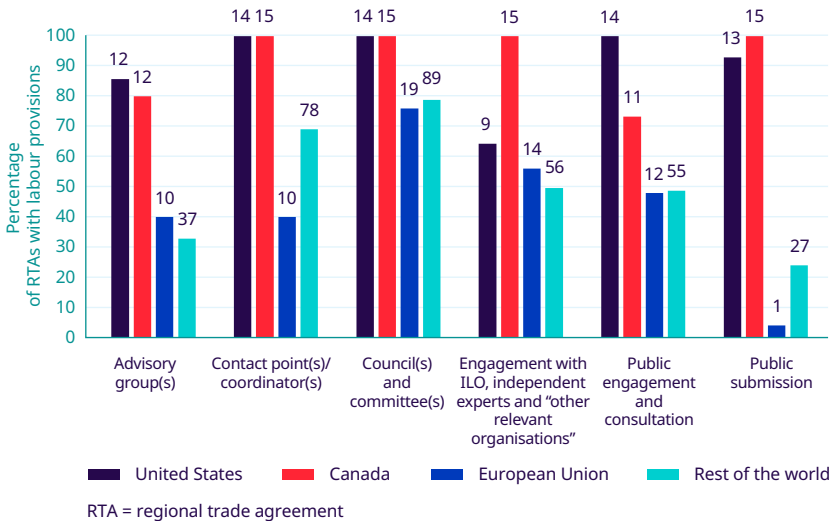
Conversely, a lesser percentage of RTAs with labour provisions (33 per cent globally) refer to the establishment of advisory groups or to the use of existing consultative mechanisms to seek advice from stakeholders, including workers' and employers' representatives. Most of Canada (86 per cent) and US (80 per cent) RTAs include such a reference, while it is found in all EU trade agreements that include a TSD chapter (40 per cent). Indeed, a specific characteristic of the EU approach to stakeholder engagement is the mandate of DAGs, first established as part of the TSD chapter in the EU–Republic of Korea Free Trade Agreement (2011). DAGs are now a common feature of TSD chapters, present

<sup>20</sup> Prior to 2020, with the exception of CETA, submissions of violations under EU TSD chapters were formally made through the DAGs.

in ten out of the 13 EU trade agreements with labour provisions concluded between 2011 and 2021.

Finally, 27 per cent of RTAs with labour provisions globally refer to public submissions/communications, with most of these references found in Canada and US trade agreements. Although only one EU RTA (CETA) (2017) refers to public submissions in its text, it should be noted that, in 2020, the European Commission changed its submission process to a public procedure for all trade agreements with a TSD chapter (see [section 3.1.2](#)).

► **Figure 2.3. Share and number of RTAs mentioning institutional frameworks, by trading partner, 1994–2021**



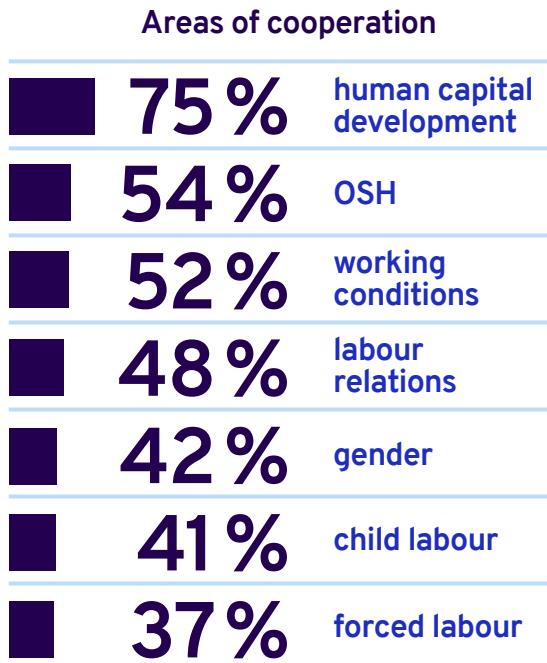
Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as at February 2023, including the first trade agreement with binding labour provisions, namely NAFTA (1994), which is no longer in force. Series labels refer to the number of RTAs.

Source: [ILO Labour Provisions in Trade Agreements Hub](#).

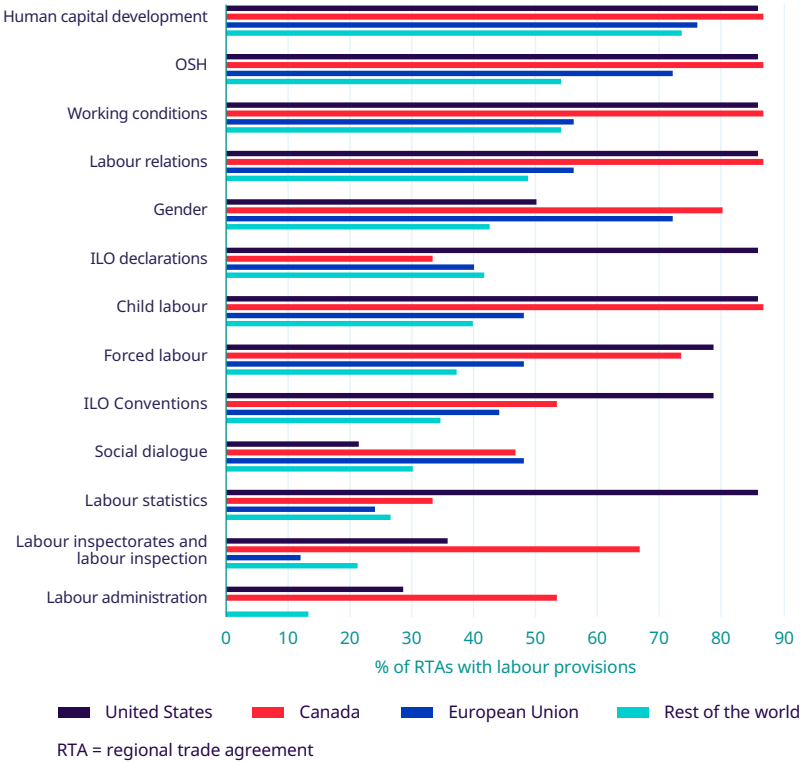
## ► 2.2. Cooperation activities and areas

All the trade agreements with labour provisions of Canada, the EU and the United States establish mechanisms for labour cooperation on a wide range of labour matters. Through these mechanisms, the parties identify areas of cooperation and outline the implementation of specific activities, including with the support of stakeholders, particularly workers' and employers' representatives.

The trade agreements with labour provisions of these three economies typically include an extensive but not exclusive list of areas of cooperation that can be expanded upon request and through consultations. Canada and the United States include a standardized yet growing list of areas of cooperation across their trade agreements, while the EU tailors its references to the individual trading partner. Globally, areas of cooperation tend to comprise human capital development (75 per cent), OSH (54 per cent), working conditions (52 per cent), labour relations (48 per cent), gender (42 per cent), and child and forced labour (41 and 37 per cent, respectively) (see [figure 2.4](#)).



► **Figure 2.4. Share of RTAs mentioning labour-related areas of cooperation, by trading partner, 1994–2021**



Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as at February 2023, including the first trade agreement with binding labour provisions, namely NAFTA (1994), which is no longer in force.

Source: [ILO Labour Provisions in Trade Agreements Hub](#).



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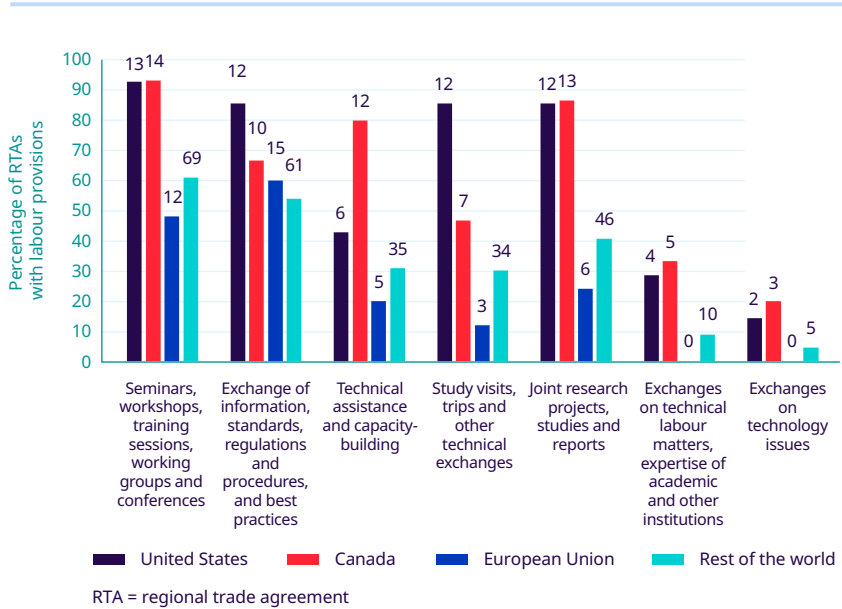
**Cooperation activities (which are the specific activities undertaken under areas of cooperation) in trade agreements with labour provisions commonly include seminars and training sessions (62 per cent of RTAs with labour provisions globally) and/or exchange of information and best practices through pertinent publications and outreach initiatives (56 per cent of RTAs with labour provisions globally) (see figure 2.5).**



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References to exchanges on technical labour issues or technology issues (for example, information systems) are also included but less frequent. Canada and US trade agreements tend to refer more to the means of cooperation, such as actively engaging in joint research projects (86 per cent of US and Canada RTAs with labour provisions), technical assistance and capacity-building (80 per cent of Canada RTAs with labour provisions), and study visits and other technical exchanges (86 per cent of US RTAs with labour provisions). EU trade agreements tend to refer more to exchanges of information and best practices (64 per cent of EU trade agreements with labour provisions), seminars (48 per cent of EU trade agreements with labour provisions), and joint research projects and technical assistance (24 per cent each).

► **Figure 2.5. Share and number of RTAs mentioning labour-related cooperation activities, by trading partner, 1994–2021**



Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as at February 2023, including the first trade agreement with binding labour provisions, namely NAFTA (1994), which is no longer in force.

Source: [ILO Labour Provisions in Trade Agreements Hub](#).



## ▶ 2.3. Settlement mechanisms for labour disputes

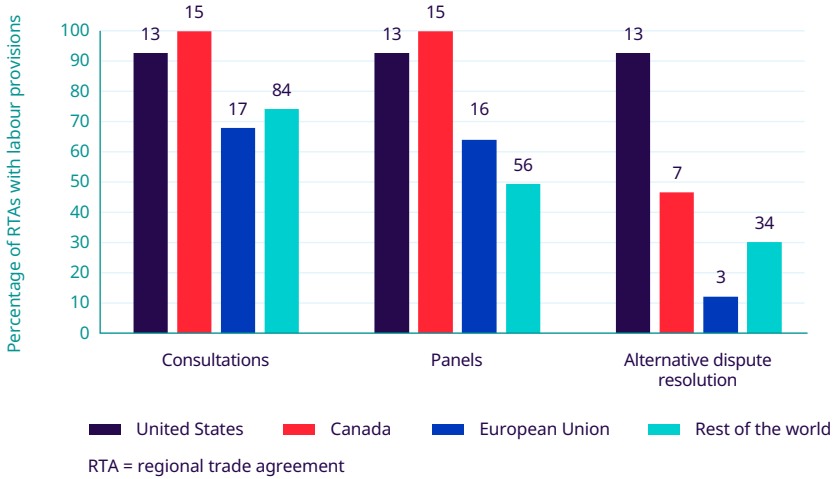
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The process of dispute settlement relies on some of the institutional mechanisms discussed above. The process starts when – upon review of violations of labour commitments reported, for example, through a public submission – one party initiates formal dialogue with the alleged violating party, with the goal of addressing the situation.

Once the review of the submission is completed by the respective administrative office, specific mechanisms for dispute settlement may be activated (**figure 2.6**), such as alternative dispute resolution, consultations or, following consultations, establishment of a panel. In the case of US RTAs, mechanisms are available both under the labour chapter and the general dispute settlement chapter (upon exhaustion of those under the labour chapter), which is not the case for EU trade agreements and a majority of Canada RTAs. All Canada RTAs with labour provisions and 93 per cent of US RTAs with labour provisions provide for both consultations and panel procedures, compared with 68 per cent and 64 per cent, respectively, of EU trade agreements.

All instances of labour dispute settlement begin with “amicable” procedures, such as formal government-to-government or ministerial consultations. During the consultations, the parties intensify the dialogue with the goal of identifying cooperative solutions to labour violations; these may concretize in a compliance, action or enforcement plan. If the parties fail to reach a satisfactory conclusion through formal consultations, or if the violating party fails to comply with an agreed plan, the complaining party may escalate dispute settlement procedures. In most of the RTAs with labour provisions of Canada, the EU and the United States, escalation consists of the establishment of a panel with a mandate to make recommendations and/or determinations.

► **Figure 2.6. Settlement mechanisms for labour disputes, by trading partner, 1994–2021**



Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as at February 2023, including the first trade agreement with binding labour provisions, namely NAFTA (1994), which is no longer in force.

Source: [ILO Labour Provisions in Trade Agreements Hub](#).



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Should the panel determine non-compliance with labour commitments under the trade agreement, the complaining party may have access to an array of remedies. **Figure 2.7** shows that, globally, compliance plans and other corrective measures are the most common forms of remedy (48 per cent). These oft-used measures represent the basic course of action to remedy violations and they can be implemented at different stages during dispute settlement procedures.



Compliance plans and other corrective measures are the only forms of remedy available under EU trade agreements, with the exception of the EU–CARIFORUM Economic Partnership Agreement (2008)<sup>21</sup> and the EU–United Kingdom Trade and Cooperation Agreement (2021),<sup>22</sup> which provide for temporary remedies such as compensation and suspension of benefits, respectively.

In case of non-compliance, US trade agreements with labour provisions allow the complaining party to seek remedies such as compensation (86 per cent), suspension of benefits (93 per cent) and monetary contributions (86 per cent). Canada RTAs mostly allow for the possibility of monetary contributions for non-compliance (73 per cent). However, within the framework of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (2018) and the USMCA (2020),<sup>23</sup> Canada provides for the first time the possibility of suspension of benefits and compensation.

The Facility-Specific Rapid Response Labor Mechanism (RRLM) under the USMCA (2020) – applicable between the United States and Mexico (Annex 31-A) and between Canada and Mexico (Annex 31-B) – is unique in the panorama of labour disputes under trade agreements, for several reasons. The RRLM may be activated when either the US or the Canadian Government (the complaining party) believes, on a good-faith basis, that workers at a covered facility in Mexico – one that produces goods or supplies services that either compete or are traded between the countries – are being denied the right to free association and collective bargaining. Under the RRLM, the complaining party may delay the final settlement of customs accounts for entries of goods from the covered facility until a “denial of rights” has been resolved or remedied, or until a panel has determined that there is no denial of rights. Should the panel determine that there has been a denial of rights at the covered facility, the complaining party may impose penalties on the facility, suspend preferential treatment for goods produced at the facility, or deny their entry altogether in the case of multiple violations.<sup>24</sup>

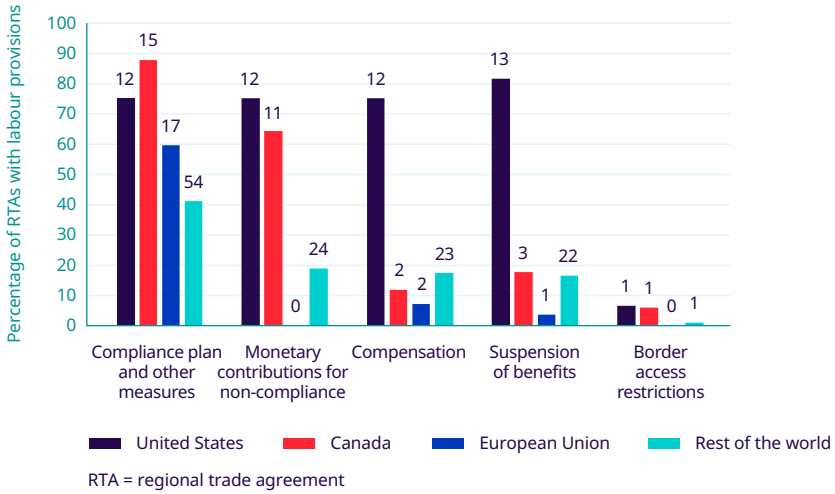
21 Article 213 of the European Union–CARIFORUM Economic Partnership Agreement (2008) states: “In cases involving a dispute under Chapter 4 and 5 (Social Aspects) of Title IV, appropriate measures shall not include the suspension of trade concessions under this Agreement.”

22 Articles 749 and 750 of the EU–United Kingdom Trade and Cooperation Agreement (2021) include both compensation and suspension of benefits.

23 The USMCA (2020), unlike NAFTA (1994), does not reference monetary contributions for non-compliance, instead including compensation and suspension of benefits. See Articles 31.18 and 31.19.

24 The [USTR website](#) provides more information on the functioning of the RRLM (including the full text of Annex 31-A) and on the cases that have been activated by the United States.

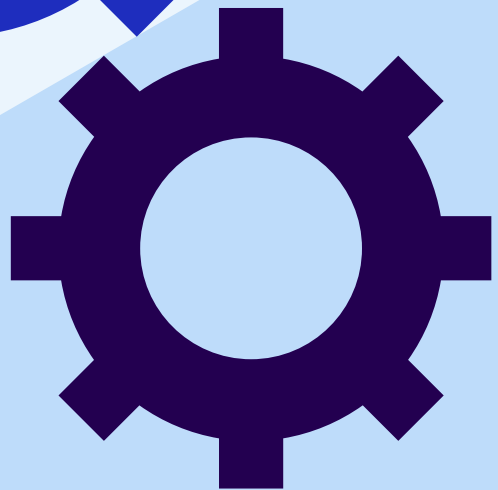
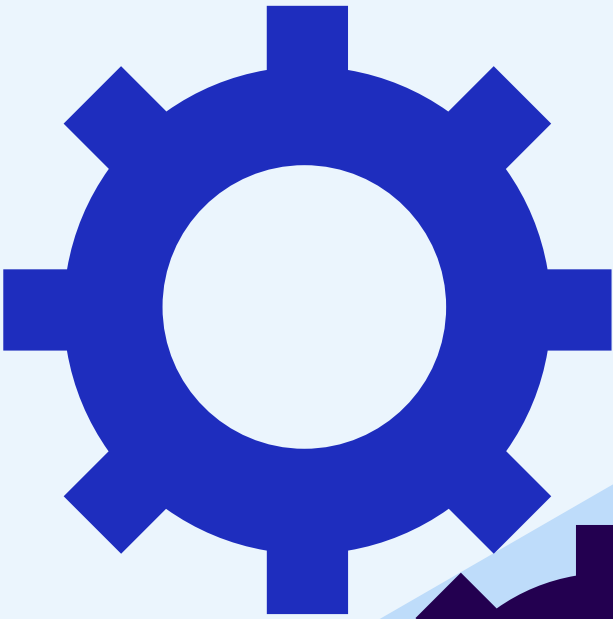
► **Figure 2.7. Remedies for non-compliance following settlement of labour disputes, by trading partner, 1994–2021**



Note: The figure covers all 113 RTAs with labour provisions notified to the WTO as at February 2023, including the first trade agreement with binding labour provisions, namely NAFTA (1994), which is no longer in force.

Source: [ILO Labour Provisions in Trade Agreements Hub](#).

3.



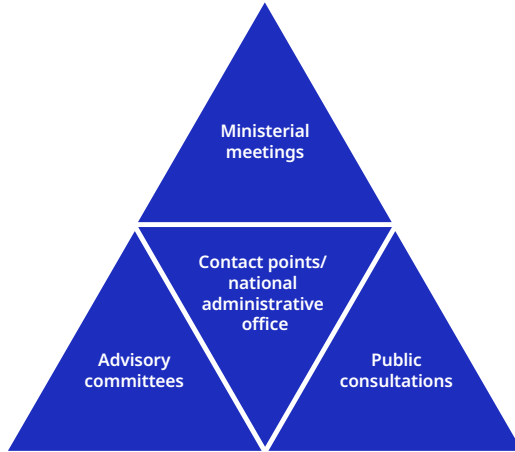


# Institutional mechanisms for monitoring *in practice*

**W**hile [Chapter 2](#) laid out the institutional frameworks for monitoring and cooperation that are established under trade agreements, this chapter focuses on how monitoring activities are implemented in practice. It provides evidence on the content and frequency of the various committee and group meetings under Canada, EU and US trade agreements. It also discusses the respective submission processes for labour violations and presents the total number of submissions that have been filed under the trade agreements of the three economies. Cooperation areas and activities are then discussed in [Chapter 4](#).

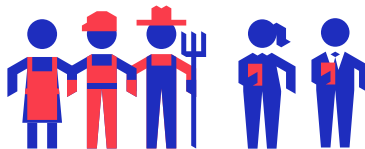
As noted in the previous chapter, most trade agreements of Canada, the EU and the United States include institutional mechanisms for the implementation of the specialized chapter or accompanying side agreement. Although each economy possesses a distinctive approach, there is a similar integrated institutional structure ([figure 3.1](#)).

► **Figure 3.1. Structure of institutional mechanisms in Canada, EU and US trade agreements**



The contact points/national administrative office (in the centre of the pyramid in **figure 3.1**) coordinate the implementation of programmes and cooperative activities, and assist the various committees (advisory and ministerial) in carrying out their respective functions. They also receive communications and submissions on labour issues, either directly from stakeholders (in the case of Canada and US RTAs) or through the committees.

### National/domestic advisory groups



**Workers' and employers' organizations**  
participating in consultations and providing advice

## ► 3.1. Monitoring under EU trade agreements

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With respect to stakeholder engagement, including cross-border, the institutional mechanisms that can be found in EU trade agreements are the committees on trade and sustainable development (CTSD), the DAG joint forums/dialogue, and the civil society forums (CSF). These three bodies hold meetings at least once a year to provide a platform for government officials, civil society organizations, which includes workers' and employers' representatives,<sup>25</sup> and the general public to engage on issues related to the TSD chapter. As shown below, the meetings generally discuss the implementation of the TSD chapter and specific projects, activities, and labour and environment issues, and can include presentations from academics and experts, including ILO officials.

A distinctive characteristic of the EU's approach to stakeholder engagement is the mandate of the DAGs, which were first introduced as part of the TSD chapter in the EU–Republic of Korea Free Trade Agreement (2011). The DAGs, which are composed of a balanced representation of workers' and employers' representatives and other independent organizations, including environmental and consumer groups, are established separately in the EU and in the trading partner country (or countries) under each trade agreement. Their function is to monitor and provide advice on the implementation of labour and environmental issues under the TSD chapter.<sup>26</sup> This advice, which can also include requests for consultations, is normally reported directly to the government administrative office (contact point) and communicated to the ministerial committee (CTSD). The CTSD comprises senior government officials from the parties to the agreement and holds annual public consultations to discuss the implementation of the agreement.

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25 See footnote 12: the EU tends to use a broad definition of civil society that includes workers' and employers' representatives, environmental and other organized groups, such as consumer organizations, and Indigenous communities.

26 Although there have been serious suggestions to extend the remit of the DAG to the entire trade agreement. See, for example: EESC, "[The role of Domestic Advisory Groups in monitoring the implementation of Free Trade Agreements](#)", 2018; EU DAGs, "[Non-paper: Strengthening and Improving the Functioning of EU Trade Domestic Advisory Groups](#)", 2021; and European Commission, "The power of trade partnerships".

The DAGs have a cross-border role that is unique to EU trade agreements: DAG members of the different trading partners participate in regular dialogue, referred to as “DAG-to-DAG dialogue”. Additionally, according to the TSD chapter, joint forums with broader civil society organizations and individuals are generally expected to take place annually, starting one year after the implementation of the agreement. However, this is not always the case in practice. Based on an analysis of meeting links and corresponding documents, delays occur, owing in particular to challenges in setting up or utilizing suitable dialogue structures in the trading partner country.

### 3.1.1. Activities of committees, forums and advisory groups

**Table 3.1** presents information on the total number of meetings that have occurred under selected EU trade agreements since 2011. It also provides an overview of the issues that were discussed in the most recent meetings of the CTSD, DAG and CSF. Generally, these three groups hold meetings annually, with the DAG or DAG-to-DAG meeting (between the EU DAG and the DAG of the trading partner country or countries) taking place immediately after the CSF.<sup>27</sup> The procedural aspects of the meetings are often presented in the first meeting of the CTSD under the trade agreement.

For example, during the first CTSD meeting under the EU–Japan Economic Partnership Agreement (2019) in January 2020, it was agreed that, “for the time being”, the joint dialogue with civil society (or the CSF) would be held immediately after the CTSD meeting.<sup>28</sup> The joint minutes from this meeting further note that “both sides would promote balanced representation of relevant stakeholders, including independent organizations which are representative of economic, environmental and social interests, within participants from civil society organizations”. The subsequent (second) joint dialogue with civil society was held in January 2021, followed by a third meeting in January 2022, and another scheduled for March 2023. At the third meeting, the ratification of ILO fundamental Conventions was discussed in addition to other issues, such as CSR, responsible business practices and just transitions.<sup>29</sup> Despite these annual CTSD meetings, the minutes of the January 2021 meeting note that the EU DAG “expressed the wish to work together with its Japanese counterpart in

<sup>27</sup> Meetings of the CSF are commonly referred to as joint public sessions or Joint Dialogue with Civil Society.

<sup>28</sup> European Commission, “[Joint Minutes of the 1st Meeting of the Committee on Trade and Sustainable Development under the Agreement between the European Union and Japan for an Economic Partnership](#)”, 2020.

<sup>29</sup> European Economic and Social Committee (EESC), “[3rd EU–Japan Joint Dialogue with Civil Society](#)”.

preparation of the joint meetings”.<sup>30</sup> The first DAG-to-DAG meeting eventually took place in July 2022. Nevertheless, it should be noted that the EU DAG under the EU–Japan Economic Partnership Agreement met frequently, convening twice a year between 2019 and 2022.<sup>31</sup>

Indeed, under several trade agreements of the EU, listed in [table 3.1](#), the first DAG-to-DAG meeting was delayed (for example, EU–Viet Nam FTA and EU–Japan Economic Partnership Agreement). One critique of the EU’s institutional framework has been that, even when meetings take place, additional challenges frequently exist, particularly with respect to monitoring progress, creating meaningful dialogue and influencing decision-making (EESC 2021; Martens, Potjomkina and Orbie 2020; Peels and Echeverria Manrique 2017b; Oehri 2017a).

Under the EU–Republic of Korea Free Trade Agreement, there have been eight DAG-to-DAG meetings and CSF between 2011 and 2022, with a two-year pause between 2019 and 2021 due to settlement procedures for the labour dispute; furthermore, no meetings were held in 2016. The CSF meeting of September 2022 notes that, in addition to DAG members from the EU and the Republic of Korea, academics and an ILO official also participated in the meeting.<sup>32</sup> The conclusions of the meeting mention that the DAGs were facing challenges in engaging with civil society, both in the EU and in the Republic of Korea. Consequently, the CSF decided to undertake a study of the work performed by the civil society structures under the agreement over the first ten years since its entry into force to identify the best ways forward.<sup>33</sup> A provisional assessment, which was published in a non-paper, recognizes the importance of independent civil society organizations and offers recommendations to improve their effectiveness, including strengthening the provisions for establishing and nominating independent, representative and balanced civil society representation in the DAGs.<sup>34</sup>

The substance of the meetings is specific to each TSD chapter. However, based on an analysis of the documents of these meetings, recurring themes such as CSR, elimination of child and forced labour, ratification and implementation of ratified ILO fundamental Conventions and, since 2020, sustainable recovery from COVID-19 are commonly discussed.

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30 Japan, Ministry of Foreign Affairs, 2021.

31 EESC, “[The EU–Japan Domestic Advisory Group – Related Events](#)”.

32 EESC, “[Programme – European Economic and Social Committee](#)”. It should be noted that the ILO is a regular participant at the annual EU–Republic of Korea CSF and CTSD meetings.

33 EESC, “[Civil Society Forum under the EU–Korea Free Trade Agreement](#)”, 2021.

34 EU DAGs, “Non-paper”.

► **Table 3.1. Latest meetings of committees, forums and advisory groups under selected EU trade agreements**

Agreement (date of enforcement)	Meeting date	Type and number of meetings held	Labour issues discussed
EU–Republic of Korea (2011)	Apr. 2021/ Sep. 2022	<ul style="list-style-type: none"> <li>• <a href="#">CTSD</a>, seventh meeting</li> <li>• <a href="#">Joint Dialogue and CSF</a>, eighth meeting</li> </ul> (Gap from 2019 to 2021 due to dispute procedures)	<p>The CTSD discussed: the report of the panel of experts and the implementation status; a project on forced labour; the economic and social impacts of COVID-19 and policy mitigation.</p> <p>The Joint Dialogue and CSF discussed: platform workers, OSH and the ratification and full implementation of ILO Conventions, including recent ratifications of Conventions Nos 29, 87 and 98 in the presence of an ILO representative.</p>
	Sep. 2022	DAG-to-DAG, eighth meeting	Exchanged views on the DAGs' experiences since the first meeting in 2012.
CETA (2017)	Feb. 2022	<ul style="list-style-type: none"> <li>• <a href="#">CTSD</a>, fourth meeting</li> <li>• <a href="#">CSF</a>, fourth meeting</li> </ul>	<p>The CTSD discussed: the implementation of the trade and gender recommendation; CSR and responsible business conduct; facilitation of trade for Indigenous businesses; respective technical assistance projects in third countries to promote labour rights and ratification of C190; legislation to combat forced and child labour in global supply chains.</p> <p>The CSF updated the public on TSD discussions; discussed implementation of the labour commitments; discussed forced labour and child labour in global supply chains.</p>
	Feb. 2022	<a href="#">DAG-to-DAG</a> , fourth meeting	Discussed the socio-economic impact of COVID-19; TSD early review.
EU–Singapore (2019)	Mar. 2023	<ul style="list-style-type: none"> <li>• <a href="#">CTSD</a>, second meeting</li> <li>• <a href="#">CSF</a> (Public Stakeholders Forum), second meeting</li> </ul>	<p>The CTSD discussed: sustainable post-COVID-19 recovery; the ratification efforts and implementation of ILO fundamental Conventions, with a focus on OSH; initiatives to improve labour protection of platform workers.</p> <p>The CSF (Public Stakeholders Forum) updated the public on TSD discussions; discussed sharing of views on trade and labour.</p>
	Dec. 2021	<a href="#">DAG-to-DAG</a> , second meeting	Discussed implementation of the TSD chapter.

Agreement (date of enforcement)	Meeting date	Type and number of meetings held	Labour issues discussed
EU–Viet Nam (2020)	Oct. 2022	<ul style="list-style-type: none"> <li>• <a href="#">CTSD</a>, second meeting</li> <li>• <a href="#">CSF</a>, second meeting</li> </ul>	<p>The first CTSD meeting scheduled for June 2021 was cancelled. The EU DAG issued a statement expressing concern about the late cancellation of the CTSD meeting.</p> <p>The CTSD meeting discussed the ratification of the two new fundamental ILO Conventions Nos 155 and 187 on OSH; implementation of the Viet Nam Labour Workplan, including ratification of Convention 87, Decree on workers' representative organizations and collective bargaining, labour inspectors, and child labour.</p> <p>In the Joint Forum with Civil Society, there was an exchange of views on matters related to the implementation of the TSD chapter.</p>
	Oct. 2022	<a href="#">DAG-to-DAG</a> , second meeting	<p>Participants agreed to create a common working group on due diligence; ratification of ILO Conventions.</p> <p>In 2022, the EU DAG released a statement over concerns about human rights violations, including harassment of civil society leaders.</p>
EU–Japan (2019)	Jan. 2022 <sup>35</sup> Jan. 2022	<ul style="list-style-type: none"> <li>• <a href="#">CTSD</a>, third meeting</li> <li>• <a href="#">CSF</a>, third meeting</li> </ul>	<p>The CTSD discussed: the TSD review process; the ratification and implementation of ILO Conventions; potential cooperation activities; and CSR and responsible business conduct.</p> <p>On the agenda, the CSF will update the public on TSD discussions; exchange views on just transitions, environmental issues, and trade and the ILO Decent Work Agenda, with a focus on Conventions 111 on discrimination and Conventions 155 and 187 on OSH.</p>
	July 2022	<a href="#">DAG-to-DAG</a> , first meeting	The participants discussed the ratification and implementation of ratified ILO Conventions.

<sup>35</sup> A fourth meeting was held in March 2023, but the minutes of the meeting were not available at the time of publication. For more information see: [https://policy.trade.ec.europa.eu/events/fourth-eu-japan-joint-dialogue-civil-society-2023-03-03\\_en](https://policy.trade.ec.europa.eu/events/fourth-eu-japan-joint-dialogue-civil-society-2023-03-03_en).

Agreement (date of enforcement)	Meeting date	Type and number of meetings held	Labour issues discussed
EU–Colombia–Peru–Ecuador (2013)	Oct. 2022	<ul style="list-style-type: none"> <li>• <a href="#">CTSD</a>, ninth meeting</li> <li>• <a href="#">CSF</a>, ninth meeting</li> </ul>	<p>The CTSD discussed: the EU ban on products of forced labour; the directives on adequate minimum wages and corporate sustainability due diligence; and the 2022 communication on trade policy and sustainable development; promoting employment and reducing informality; strengthening social dialogue and freedom of association; cooperation programmes in the context of labour inspections and of the ratification of Conventions Nos 155 and 187 on OSH.</p> <p>In 2021 and 2022, the EU DAG released a declaration highlighting labour market challenges in the trading partner countries and consequent challenges in complying with the ILO Decent Work Agenda.</p>
	Oct. 2022	<a href="#">DAG-to-DAG</a> , eighth meeting	

Note: Meetings registered electronically as of February 2023.

Source: Authors' compilation based on the [EU's CIRCABC platform](#), participation of civil society organizations, [press statements of meetings](#) having taken place, and selected European Economic and Social Committee (EESC) DAG, Japan Ministry of Foreign Affairs and Government of Canada web pages.

### 3.1.2. Submissions of alleged labour violations

There have been four formal complaints under EU trade agreements (three under the EU–Colombia–Peru–Ecuador Trade Agreement, and one under the EU–Republic of Korea Free Trade Agreement), following different submission procedures and reaching different outcomes ([table 3.2](#)). Until 2020, the EU did not have a common procedure for public submissions by individuals or civil society organizations. As such, labour-related complaints were submitted either through the DAGs or directly to government authorities (in the case of the EU, to the European Commission).



► **Table 3.2. Submissions filed under EU trade agreements, by agreement, status, and areas of alleged labour violations**

Agreement	Submission date and method	Alleged labour violations	Status
EU–Colombia–Peru–Ecuador (2013)	October 2017, by a coalition of 27 Peruvian civil society organizations, directly to the European Commission.	Restrictions on collective bargaining, low minimum wage and labour market challenges, such as high rate of informal employment in Peru.	An agreement was reached between the respective governments to improve the enforcement of labour standards through several means, including by strengthening the capacity of labour inspectorates.
EU–Colombia–Peru–Ecuador (2013)	2018, by the Ecuadorian Trade Union Association of Agricultural Workers and Peasants (ASTAC), with support from the Friedrich-Ebert-Stiftung (member of the EU DAG), directly to the European Commission.	Enactment of national regulations that “violate the rights to freedom of association, collective bargaining, fair remuneration and minimum wage”, restrictions on the right to freedom of association and “non-compliance with health and safety regulations”.	The EU called on Ecuador to align with the recommendations issued by the ILO on the right of association in the Committee’s Interim Report No. 391 – Case No. 3148 (Ecuador).
EU–Republic of Korea (2011)	Request for Consultations in December 2018, by the European Commission (after consulting with the EU DAG).	Failure by the Government of the Republic of Korea to ratify four out of the then eight ILO fundamental Conventions (Conventions Nos 29 and 105 on forced labour and Conventions Nos 87 and 98 on freedom of association and the right to collective bargaining).	A panel of experts was eventually convened and ruled that the Republic of Korea should adjust its labour laws and practices with respect to the principle of freedom of association, and engage in efforts towards the ratification of the outstanding ILO fundamental Conventions. As of December 2022, three of the four outstanding Conventions were ratified.
EU–Colombia–Peru–Ecuador (2022)	May 2022, before the Single Entry Point (SEP), by CNV Internationaal on behalf of Colombian and Peruvian trade unions.	Colombia: wage inequality between direct and outsourced workers, illegal employment intermediation and inadequate labour inspection.	As of December 2022, the complaint was under review by the SEP.

Note: Information available as of February 2023.

Source: Authors’ compilation based on the [submission filed with the European Commission by Peru](#), the [submission filed with the European Commission by Ecuador](#), the [complaint filed before the SEP by CNV Internationaal](#) under the EU–Colombia–Peru–Ecuador Trade Agreement, the Request for Consultation by the European Union and the Report of the Panel of Experts under the EU–Republic of Korea Free Trade Agreement.

In October 2017, a coalition of 27 Peruvian civil society organizations submitted a complaint directly to the European Commission alleging violations with respect to labour, environmental and civil society consultation commitments against Peru under the EU–Colombia–Peru–Ecuador Trade Agreement.<sup>36</sup> The complaint raised issues regarding restrictions on collective bargaining, low minimum wages and labour market challenges, such as the high informal employment rate in Peru. The review of the complaint included a fact-finding mission to Lima, Peru, by EU officials in October 2018 to gather information from “a wide range of stakeholders, including civil society organizations, the social partners, businesses, international organizations and the academic community”.<sup>37</sup> A formal response was issued by the European Commission’s Directorate-General for Trade in March 2019, stating that the Peruvian authorities had agreed to improve the enforcement of labour standards by strengthening the capacity of the country’s labour inspectorates, working towards the elimination of child labour, ensuring freedom of association and reducing informality (European Commission 2019a).<sup>38</sup> The details of this agreement are contained in the minutes of the fifth CTSD meeting between the EU and Colombia, Ecuador and Peru<sup>39</sup> “to ensure transparency with civil society”, as commented by an official of the European Commission’s Directorate-General for Trade.

In January 2017, Ecuador officially joined the EU’s trade agreement with Colombia and Peru. In 2018, the Trade Union Association of Agricultural Workers and Peasants (ASTAC), a union of Ecuadorian banana workers, with the support of the Friedrich-Ebert-Stiftung, a German political party-associated foundation with membership in the EU DAG, brought a complaint against the Ecuadorian Government before the European Commission. In the complaint, ASTAC requested the EU to hold government consultations “to discuss violations by Ecuador and transnational corporations of their obligations”<sup>40</sup> under the TSD chapter. The alleged violations referred to the enactment of national regulations that “violate the rights to freedom of association, collective bargaining, fair remuneration and minimum wage”, restrictions on the right to freedom

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36 The TSD chapter covers both labour and environmental issues, so both can be included in one complaint. For the complaint, see Peru Support Group, “[Title IX Complaint; What the European Commission Said](#)”, 17 May 2019; European Commission, “[Parliamentary question – E-006261/2018](#)”, 12 December 2018; Plataforma Europa Perú, “[The Peru Europe Platform welcomes Commissioner Cecilia Malmström’s letter](#)”, 9 August 2018.

37 European Commission, “[Submission filed with the European Commission on 25 October 2017 regarding alleged non-compliance by Peru with labour, environmental and civil society consultation commitments under the Trade Agreement with the European Union](#)”, 2019.

38 European Commission, “Submission”.

39 European Commission, “[V Reunión del Comité de Comercio del Acuerdo Multipartes Unión Europea – Colombia – Ecuador – Perú](#)”, 2018.

40 Instituto de Estudios Ecuatorianos and ASTAC, [Complaint from banana workers for violation of rights under the framework of the Multiparty Trade Agreement of Colombia, Ecuador, Peru and the European Union](#), 2018.

of association and “non-compliance with health and safety regulations” in Ecuador. Ecuadorian civil society representatives met with the EU DAG and held round-table talks at the EU office of FES, which had invited the representatives to Brussels.

Prior to filing the complaint with the EU, ASTAC had filed a similar complaint with the ILO. In October 2019, the ILO’s Committee of Freedom of Association responded to the request (for the second time) and recommended the recognition of ASTAC as a trade union and the investigation by the Ecuadorian Government of domestic complaints filed by ASTAC and other organizations at the national level.<sup>41</sup> Concurrently, in the sixth CTSD meeting between the EU and Colombia, Ecuador and Peru – which also took place in October 2019 – the EU encouraged Ecuador to “strengthen efforts to address the ASTAC case at the ILO”.<sup>42</sup> In the seventh CTSD meeting in November 2020, the EU called on Ecuador to align with the recommendations issued by the ILO on the right to freedom of association.<sup>43</sup> However, the ILO’s Committee of Experts on the Application of Conventions and Recommendations noted in its remarks in 2021 and 2022 that the Government of Ecuador still had not taken action concerning measures to address the comments of the supervisory bodies.<sup>44</sup>

The complaint against the Republic of Korea was submitted on 17 December 2018 following a request by the European Commission – upon consulting with the EU DAG – for consultations with the Government of the Republic of Korea, based on the latter’s failure to make progress towards the ratification of the four (out of the then eight) outstanding ILO fundamental Conventions. This dispute, discussed in extensive detail in [section 5.1](#), became the first under the TSD chapter of an EU RTA to trigger panel procedures, thus becoming a litmus test for the EU’s non-sanction-based approach to dispute settlement. It is also important to note the role of the European trade unions and their counterparts in the Republic of Korea in seeking to address the concerns raised in the dispute through various communications and opinions since 2013.<sup>45</sup>

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41 ILO, [Interim Report No. 391 – Case No. 3148 \(Ecuador\)](#), October 2019. In 2015, a formal complaint was filed with the ILO against the national government, alleging breaches of Conventions Nos 87, 98, 110 and 141, ratified by Ecuador. The complaint received a response in 2017, when the ILO’s Committee of Freedom of Association published its interim report No. 381, requesting that “the necessary measures be taken to allow, without delay, the registration of ASTAC and, in the meantime, provide the necessary guarantees and protections to its members”, as well as the revision of legislation that was preventing organizations such as ASTAC from being recognized.

42 European Commission, [“VI Reunión del Comité de Comercio del Acuerdo Multipartes Unión Europea – Colombia – Ecuador – Perú”](#), 2019.

43 European Commission, [“VII Reunión del Comité de Comercio del Acuerdo Multipartes Unión Europea – Colombia – Ecuador – Perú”](#), 2020.

44 See the Observations by the Committee of Experts on the Application of Conventions and Recommendations [regarding C.87](#) and [regarding C.98](#).

45 See European Union Domestic Advisory Groups (2021). For an overview of the engagement of the DAGs for the EU and the Republic of Korea prior to 2017, see Peels and Echeverria Manrique (2017b).

Since November 2020, the European Commission has changed the public submission process so that any organization or individual can directly submit a complaint via an online platform, the Single Entry Point (SEP).<sup>46</sup> The SEP covers violations related to both market access rules under the entire trade agreement and sustainable development commitments under TSD chapters or the Generalized Scheme of Preferences.<sup>47</sup> As of December 2022, only one complaint related to violations of labour commitments had been received (under the EU–Colombia–Peru–Ecuador Trade Agreement; see [table 3.2](#)).

## ► 3.2. Monitoring under US trade agreements

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The US approach to stakeholder engagement through RTAs differs from the EU's approach in several ways. First, members of the respective committees can engage in dialogue on the entirety of the trade agreement, not only the labour chapter. For example, the Labor Advisory Committee for Trade Negotiations and Trade Policy, composed of representatives of workers' and employers' organizations, is tasked with participating in consultations and providing advice to the USTR and the United States Department of Labor (USDOL) on general trade and labour policy matters.<sup>48</sup> This contrasts with EU trade agreements, where advisory group members (the DAGs) deal with matters specific to the TSD chapter.

The second feature of the US approach since the beginning has been the ability of the social partners, broader civil society organizations and individuals to directly engage with contact points, who act as a channel for communication with the public in their respective economies. This feature allows any person to lodge complaints directly with the Office of Trade and Labor Affairs (OTLA).

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46 Submission guidelines can be found on the European Commission's website. The guidelines currently combine market access issues with sustainable development issues. See European Commission, "[Operating guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and arrangements](#)", 2022.

47 Sustainability rules pertain to both environment and labour. According to the [operating guidelines](#), "under TSD chapters, the following entities can submit a complaint: Citizens of any EU Member State; EU Member States; Entities having their registered office, central administration or principal place of business within the Union; Industry associations of EU companies; Associations of EU employers; Trade unions or trade union associations formed in accordance with the laws of any EU Member State, or; NGOs formed in accordance with the laws of any EU Member State."

48 USDOL and USTR, "[Charter of the Labor Advisory Committee for Trade Negotiations and Trade Policy](#)", 2020.

It also allows individuals or coalitions of stakeholders in the respective economies that are parties to the agreement to file complaints jointly. This set-up has been effective in promoting cross-border dialogue on labour matters, as most submissions under US trade agreements are joint submissions (23 out of 30 total) of trade unions and civil society organizations.<sup>49</sup> However, as noted above, in November 2020 the EU also changed its submission procedure to an approach more similar to that of the United States.

### 3.2.1. Activities of committees, councils and public sessions

The Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) meets infrequently. Indeed, there are no consistent meeting records available from the USDOL or USTR websites, or in the form of interviews with relevant government officials. Moreover, the [National Advisory Committee for Labor Provisions of United States Free Trade Agreements](#), composed of workers' and employers' representatives, NGOs and academics has not been active since 2019.<sup>50</sup>

In contrast, more information can be found on periodic meetings of the ministerial-level "labor affairs councils", which are responsible for the implementation of labour-related activities under specific US trade agreements. The councils' meetings are generally followed by a public session with civil society, including workers' and employers' representatives. **Table 3.3** presents the number of council and other high-level meetings under US trade agreements and the date of the last meeting for all US trade agreements with labour provisions, as of December 2022. A summary of the issues discussed at these meetings is also included in the table.

Based on the available information, there is no record under most US trade agreements of the council having met more than twice since entry of force of any agreement. For example, for the US–Oman Free Trade Agreement (2009), there is a record of only one meeting (the inaugural meeting) in April 2012, to discuss the implementation of the labour chapter. Similarly, the Labour Affairs Council, established under CAFTA–DR, has also not met since its first meeting in 2008. Nevertheless, in an annual report on CAFTA–DR, the USDOL notes that the labour ministers of the parties to CAFTA–DR continue to meet regularly in different forums, including annually during the International Labour Conference

<sup>49</sup> Based on public [submissions to the United States National Administrative Office](#) as of March 2022 (excluding complaints under the RRLM).

<sup>50</sup> See the [National Advisory Committee for Labor Provisions of United States Free Trade Agreements](#).

(in June) and bi-annually during the Governing Body of the International Labour Office (in March and November).<sup>51</sup>

There are other ministerial-level trade committees in which labour issues are sometimes discussed, such as during the free trade commissions (FTCs). However, meetings of the FTCs do not include workers' and employers' representatives, which may constitute a missed opportunity for the social partners' engagement on labour issues.

For example, the FTC established under the US–Colombia Trade Promotion Agreement (2012) held a meeting in October 2021, which was attended by, among others, the Assistant United States Trade Representative for the Western Hemisphere and Colombia's Vice Minister of Foreign Trade for the Ministry of Commerce, Industry and Tourism. However, there is no indication that workers' and employers' representatives or other civil society organizations were present at the meeting. Participants discussed the new US Administration's trade policy, and the progress and collaboration on the USDOL's 2017 public report on the submission filed under the agreement's labour chapter in July 2016. There were also discussions on improving Colombia's labour law enforcement, combating abusive subcontracting and addressing violence and harassment against trade union representatives by strengthening the judicial system.<sup>52</sup> Finally, meeting notes state that, in 2021, "the Colombian Government took some steps to address the issues raised in the report, including increasing its number of labour inspectors and implementing the electronic case management system".<sup>53</sup>

Under the USMCA (2020), the Independent Mexico Labor Expert Board was established, comprising 12 members appointed by the US Congress and the Labor Advisory Committee. It monitors Mexico's compliance with labour obligations under the USMCA, as well as advising the Interagency Labor Committee (also established under the USMCA) on capacity-building activities.<sup>54</sup>

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51 USDOL, *Progress in Implementing Chapter 16 (Labor) and Capacity-Building under the Dominican Republic – Central America – United States Free Trade Agreement*, June 2021.

52 United States, Executive Office of the President, *2022 Trade Policy Agenda and 2021 Annual Report*.

53 United States, Executive Office of the President, *2022 Trade Policy Agenda and 2021 Annual Report*, p. 7. It should be noted that, in 2016, [the Committee of Experts on the Application of Conventions and Recommendations](#) flagged the issue of labour inspectorate posts and the number of labour inspections taken and requested follow-up information from the Government of Colombia. In 2021, [the same Committee](#) noted that the use of collective accords (collective agreements with non-union members) was one focus of labour inspections and this was simultaneously being examined in accordance with considerations of Canada and the United States.

54 Business & Human Rights Resource Centre, "[New Independent Mexico Labor Expert Board publishes interim report on the USMCA Trade Agreement Implementation Act](#)", 29 January 2021.

► **Table 3.3. Labour-related high-level meetings under US trade agreements, latest meetings**

Agreement (date of enforcement)	Meeting date	Type and number of meetings held	Labour issues discussed
US–Colombia (2012)	Oct. 2021/ June 2013	<ul style="list-style-type: none"> <li>• Third FTC, third meeting</li> <li>• Labor Council and Public Session, first meeting</li> </ul>	<p>The FTC meeting discussed: the Biden–Harris Administration’s Worker-Centered Trade Policy; progress and collaboration on the 2017 Public Report on the Review of US Submission 2016–02, which focused on improving Colombia’s labour law inspection system; combating abusive subcontracting and collective pacts; and addressing violence and threats against trade unionists.</p> <p>The Labor Council meeting discussed the implementation of the labour chapter and the Colombia Action Plan. A public session followed the meeting.</p>
US–Singapore (2004)	Oct. 2021	Joint Committee meeting	The meeting discussed: the Biden–Harris Administration’s Worker-Centered Trade Policy; commitment to American engagement and leadership in the Indo-Pacific region; and WTO reform, among other areas.
USMCA (2020)	June 2021	Labor Council and Public Session, first meeting	The session included a government-to-government Labor Council meeting and a virtual public session on the implementation of the labour chapter. The Labor Council meeting discussed: the prohibition of import goods produced by forced or compulsory labour; the ongoing implementation of Mexico’s recent labour law reform; labour policies for migrant workers; ongoing and future cooperation; and technical capacity-building. A public session followed the meeting.
US–Peru (2009)	Oct. 2014	Labor Affairs Council and Public Session, second meeting	The Labor Affairs Council meeting discussed the ongoing cooperation on labour matters, such as those related to the prevention and abolition of child labour and forced labour. A public session followed the meeting.
US–Jordan (2001)	Oct. 2022/ July 2019	<ul style="list-style-type: none"> <li>• Labor Subcommittee and Public Session, fourth meeting, 2022</li> <li>• Joint Committee meeting, second meeting, 2019</li> </ul>	<p>The Labor Subcommittee discussed: domestic mechanisms, institutions and procedures to advance the labour chapter; efforts to promote international labour standards in the garment sector (including through the ILO’s Better Work Program); gender discrimination in the labour market; promoting social dialogue in and through workers’ representatives; and decent work. A public session followed the meeting.</p> <p>There is no record of labour issues being discussed at the Joint Committee meeting.</p>

Agreement (date of enforcement)	Meeting date	Type and number of meetings held	Labour issues discussed
US–Panama (2012)	Jan. 2014	Labor Council meeting and Public Session, first meeting	The Labor Council meeting discussed: possible areas for future cooperation; activities to strengthen institutional capacity and labour law enforcement and compliance; child labour and youth employment; the use of temporary contracts; and processes for union registration. A public session followed the meeting.
US–Morocco (2006)	Sep. 2014/ July 2019	<ul style="list-style-type: none"> <li>• Labor Subcommittee and Public Session, second meeting</li> <li>• Joint Committee meeting, sixth meeting</li> </ul>	<p>The Labor Subcommittee meeting discussed: strengthening institutional capacity and labour law enforcement and compliance; preventing child labour; promoting youth employment; protecting against gender discrimination and sexual harassment in the workplace; and promoting tripartite social dialogue. A public session followed the meeting.</p> <p>No labour issues were discussed at the Joint Committee meeting.</p>
US–Republic of Korea (2012)	Apr. 2022/ Nov. 2021	<ul style="list-style-type: none"> <li>• Labor Council meeting and Public Session, second meeting</li> <li>• Joint Committee meeting, sixth meeting</li> </ul>	<p>The Labor Council meeting celebrated the tenth anniversary of the trade agreement and discussed a shared desire for strengthened cooperation on labour standards and worker protection; in-depth discussions were held on a range of topics, including the US legal framework related to forced labour in trade, the Republic of Korea's ratification of ILO fundamental Conventions, and areas for ongoing and future cooperation and technical capacity-building. A public session followed the meeting.</p> <p>At the Joint Committee meeting, the importance of labour issues was affirmed, and parties agreed to hold meetings of the US–Republic of Korea Labor Affairs Council in the near future.</p>
US–Oman (2009)	Apr. 2012/ Feb. 2010	<ul style="list-style-type: none"> <li>• Labor Subcommittee and Public Session, first meeting</li> <li>• Joint Committee meeting, sixth meeting</li> </ul>	<p>The Labor Subcommittee meeting discussed: furthering cooperative activities to improve the enforcement of labour laws; and holding more regular meetings to review the progress on the implementation of the labour chapter. A public session followed the meeting.</p> <p>At the Joint Committee meeting, initiatives to increase cooperative efforts on labour rights were discussed.</p>



Agreement (date of enforcement)	Meeting date	Type and number of meetings held	Labour issues discussed
US–Bahrain (2006)	Sep. 2010	Labor Subcommittee and Public Session, first meeting	The Labor Subcommittee reaffirmed commitments to recognize and protect workers' rights according to the ILO Declaration on Fundamental Principles and Rights at Work. A public session followed the meeting, as well as a series of one-on-one meetings with stakeholders from trade unions, the private sector and broader civil society.
US–Australia (2005)	Dec. 2017	Joint Committee meeting, sixth meeting	No labour issues were discussed at the Joint Committee meeting.
CAFTA–DR (2004)	Nov. 2008	<ul style="list-style-type: none"> <li>• Labor Affairs Council and Public Session, first meeting</li> <li>• FTC, third meeting</li> </ul>	<p>The Labor Affairs Council meeting discussed the implementation of the labour chapter, effective enforcement of labour laws and respect of the ILO Declaration on Fundamental Principles and Rights at Work. A public session followed the meeting.</p> <p>The FTC meeting mentioned the strengthening of labour capacity and monitoring as set out in the White Paper. Participants also welcomed the report on activities of the Labor Affairs Council.</p>
US–Chile (2004)	Oct. 2018	FTC, 12th meeting	There is no record of labour issues being discussed at the FTC meeting.

Note: Meetings registered electronically as of February 2023.

Source: Authors' compilation based on various sources including USDOL, "[Free Trade Agreement Labor Meetings](#)", USTR press releases and archives (for information on FTC and Joint Committee meetings), and the SICE–OAS Foreign Trade Information System. For Colombia, see United States, Executive Office of the President, [2022 Trade Policy Agenda and 2021 Annual Report](#), 2022, 7.

### 3.2.2. Submissions of alleged labour violations

In the United States, public submissions of alleged labour violations under trade agreements are filed with the USDOL's OTLA.<sup>55</sup> Submissions must meet specific criteria (there are six according to the procedural guidelines) to be accepted for review.<sup>56</sup> For example, any violation “must be related to a labor matter as detailed under the specific trade agreement (or NAALC)”, and “it must also further objectives of the trade agreement”. In general, the Office determines if a submission is accepted for review within two months of filing.

To date, there have been 30 submissions to OTLA under seven US free trade agreements, including the North American Free Trade Agreement (NAFTA) – more precisely, its side agreement the North American Agreement on Labor Cooperation (NAALC). **Figure 3.2** shows that about one third of these submissions (11), which all fell under NAALC, were withdrawn by the filing parties (4) or declined for review by OTLA (7). Of the four submissions that were withdrawn, the reason given was either that more evidence was being gathered or that an internal agreement had been reached. For five of the seven submissions that were declined for review, the reason given was that OTLA had determined that the submission “would not further the objectives of the trade agreement (or NAALC in this case)”.<sup>57</sup> Two other submissions were declined because the information provided by the filing parties did not substantiate the allegations and was considered insufficient on the whole.<sup>58</sup>

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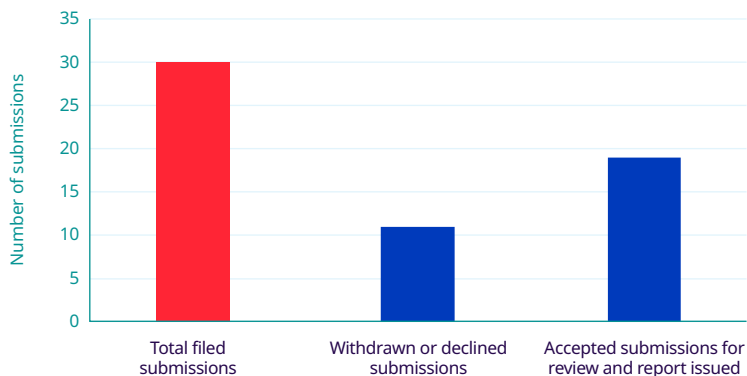
55 The specific office is the [Monitoring & Enforcement of Trade Agreements Division](#), which operates within the International Labor Affairs Bureau, Office of Trade and Labor Affairs.

56 For criteria, see the [Federal Register](#).

57 The five cases are: “U.S. NAO Submission No. 2006-01 (Coahuila)”, concerning occupational safety and health; “U.S. NAO Submission 2005-01 (Labor Law Reform)”, concerning the proposed labour law reform in Mexico; “U.S. NAO Submission 2001-01 (Duro Bag)”, concerning freedom of association; “U.S. NAO Submission 9801 (Flight Attendants)”, concerning freedom of association; and “U.S. NAO Submission 9804 (Rural Mail Couriers)”, concerning the right to collective bargaining and occupational safety and health. See the [submissions to the United States National Administrative Office](#).

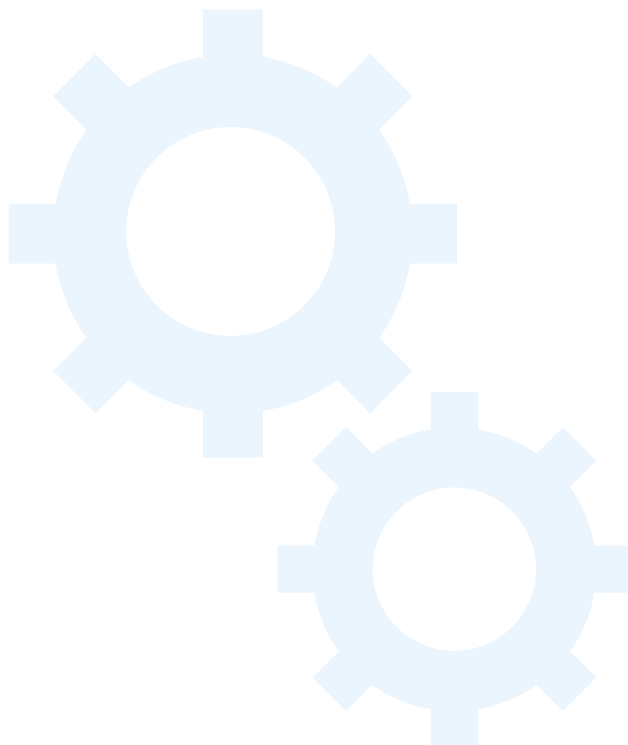
58 The two cases are: “U.S. NAO Submission No. 2005-02 (Mexican Pilots – ASPA)”, concerning non-enforcement of labour law; and “U.S. NAO Submission 9802 (Tomato/Child Labor)”, concerning the use of child labour in the production of fruit and vegetables in Mexico. See the [submissions to the United States National Administrative Office](#).

► **Figure 3.2. Status of submissions filed to the US Office of Trade and Labor Affairs, 1994–2021**



Note: Cases under the USMCA's Labor Mechanism are not included in the figure.

Source: Authors' compilations based on USDOL, "[Submissions under the Labor Provisions of Free Trade Agreements](#)".



Of the 19 submissions that were accepted for review, bilateral consultations were recommended in 63 per cent (12) of the complaints. In these instances, action plans were subsequently implemented in the majority (7) of cases. It is worth noting that only submissions that were followed by consultations led to action plans; while only one of these submissions (US–Guatemala under CAFTA–DR) led to arbitration after an Action Plan was unsuccessfully implemented (for further details on the Action Plan, see [Chapter 4](#); for further details on the dispute process and arbitration, see [Chapter 5](#)).

It should be noted that all seven complaints submitted under agreements other than NAFTA (NAALC) between 2008 and 2016 were accepted for review. [Table 3.4](#) provides an overview of the status, petitioners and main labour violations alleged in each of these submissions. By doing so, the table highlights two aspects of the US approach. The first aspect is related to the filing of submissions. Similar to submissions under Canada and (to a lesser extent) EU trade agreements, cross-border coalitions of stakeholders from different parties have an important role in the filing of submissions (Nolan Garcia 2011; Oehri 2017b). Noticeably, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) is a co-petitioner in half of these submissions (which are filed under US trade agreements with Bahrain, Colombia, Guatemala and Honduras). Additionally, US trade agreements allow any person (including a person outside of the United States) to file an individual submission (see, for example, Dominican Republic, CAFTA–DR).

The second aspect concerns the violations alleged in these submissions, which tend to relate to three main areas:<sup>59</sup>

- ▶ freedom of association and the right to collective bargaining (Bahrain, Colombia, Guatemala, Honduras, Peru);
- ▶ transparent, fair and effective tribunals (Colombia, Guatemala, Peru);
- ▶ child labour, forced labour and conditions of work (Dominican Republic, Honduras).

Thus, three areas resonate strongly with petitioners filing under US trade agreements. Accordingly, based on OTLA's submission criteria, these three areas would also fall under the areas of violations that “further the objectives of a labor chapter”.

Finally, as of February 2023, six proceedings had been initiated by the United States through the RRLM established under the USMCA (2020), of which five have been concluded.<sup>60</sup>

<sup>59</sup> Extracted from USDOL, “Submissions under the Labor Provisions of Free Trade Agreements”.

<sup>60</sup> See [Chapter 31 Annex A; Facility-Specific Rapid-Response Labor Mechanism](#).

► **Table 3.4. Submissions filed under US trade agreements (excluding NAALC), by agreement, status and areas of alleged labour violations**

Agreement	Date of filing	Submitted by	Status	Areas of alleged violations
Guatemala (CAFTA-DR)	2008	AFL-CIO/six Guatemalan trade unions	Consultations (2010), Enforcement Plan (2013), panel decision (2017)	Freedom of association and the right to collective bargaining, access to fair and efficient administrative or judicial tribunals, violence against trade unions
Peru (US-Peru)	2010	Peruvian National Union of Tax Administration Workers (SINAUT)	Report issued (2012)	The right to collective bargaining
	2015	ILRF, Peru Equidad and seven Peruvian trade unions	Report issued (2015)	Freedom of association and the right to collective bargaining, labour law enforcement
Bahrain (US-Bahrain)	2011	AFL-CIO	Consultations (2014)	Freedom of association, particularly non-discrimination against trade unionists
Dominican Republic (CAFTA-DR)	2011	Father Hartley (Spain)	Report issued (2013)	Child labour, forced labour, acceptable conditions of work, minimum wage
Honduras (CAFTA-DR)	2012	AFL-CIO/26 trade unions	Report issued (2015), consultations with contact points (2015), monitoring and Action Plan (2015)	Freedom of association and the right to collective bargaining, access to fair and efficient administrative or judicial tribunals, acceptable conditions of work, child labour
Colombia (US-Colombia)	2016	AFL-CIO/five Colombian trade unions	Reports issued and consultations with contact points (2017); second period review (2021)	Freedom of association and the right to collective bargaining, access to fair and efficient administrative or judicial tribunals

Source: Authors' compilations based on Cimino-Isaacs (2020) and data on USDOL, "[Submissions under the Labor Provisions of Free Trade Agreements](#)".

## ► 3.3. Monitoring under Canada trade agreements

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Canada's approach to stakeholder engagement is distinct, in that it includes an online consultation process which enables the public to submit their views in writing.<sup>61</sup> Furthermore, a public submission process for complaints exists through Canada's National Administrative Office (NAO), which operates within Employment and Social Development Canada's Labour Program.<sup>62</sup> Although the submission process is similar to that in the United States, it has been used less frequently in practice (ILO 2016). A total of seven submissions, mostly under NAALC, have been filed by joint coalitions of transnational trade unions and other independent civil society organizations. Other avenues for stakeholder engagement, such as national consultative bodies, do not seem to be functioning on a regular basis.

### 3.3.1. Activities of committees, councils and public consultations

The structure of institutional mechanisms in Canadian trade agreements is similar to that of such mechanisms in EU and US agreements. Thus, "labour ministerial councils" established under individual agreements are made up of the ministers responsible for labour affairs in the trading partner economies. The council is expected to meet periodically (according to the trade agreements), followed by a public session, but there is no pertinent record of meetings that have taken place.

Canada trade agreements generally refer to a national labour committee that provides advice to the Government and includes representatives of workers' and employers' organizations. With this in mind, the Advisory Council on Workplace and Labour Affairs (ACWLA), composed of civil society representatives (including workers' and employers' representatives and academics), was established in 2010. The ACWLA, which serves as both a domestic and international council, has provided forums for discussion and advice to Canada's Labour Minister on a range of issues, including industrial relations, labour standards, workplace

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61 Government of Canada, "[Free Trade Agreements \(FTA\) Consultations](#)".

62 Government of Canada, "[Guidelines for Public Communications](#)".

mental health, occupational safety, international labour affairs and workplace diversity.<sup>63</sup> Nevertheless, there is a record of only one meeting taking place with Canada's Labour Minister in 2012, and the group seems to be dormant.<sup>64</sup>

A new consultative mechanism was set up in 2017: the Indigenous Working Group (IWG), which is tasked with working on broad trade policy issues that affect Indigenous Peoples, including the development of provisions for trade agreements that protect their rights.<sup>65</sup> The Group comprises Indigenous representatives, including NGOs and employers' organizations. However, workers' representatives are not explicitly included, and there does not seem to be a labour-specific focus in the work of the IWG. While records of meetings could not be located, the IWG does appear to have an active role.<sup>66</sup>

Specific Canada trade agreements also establish "trade and gender committees", comprising government officials from each trading partner to monitor and advise on the implementation of the respective gender chapters.<sup>67</sup> For example, the Trade and Gender Committee established under the "Trade and Gender Chapter" of the modernized Canada–Chile Free Trade Agreement (2019) held its third meeting in May 2021. The parties shared information on a broad range of domestic issues and initiatives related to women, such as initiatives to tackle gender-based violence in Chile and support women returning to the workforce in Canada.<sup>68</sup>

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63 "[Minister Meets With Advisory Council on Workplace and Labour Affairs](#)", *Benzinga*, 26 November 2012.

64 "[Minister Meets With Advisory Council on Workplace and Labour Affairs](#)", *Benzinga*, 26 November 2012. Consistent ACWLA meeting records could not be located from Employment and Social Development Canada's website, nor through interviews.

65 Government of Canada, "[International Trade Agreements and Indigenous Peoples: The Canadian Approach](#)". According to the website, "[government] officials have actively engaged with the members of the IWG through ongoing dialogue ... [which] has informed Canada's negotiating positions in recent and ongoing international trade negotiations, including CUSMA, Mercosur and Pacific Alliance".

66 Government of Canada, "[International Trade Agreements and Indigenous Peoples: The Canadian Approach](#)".

67 Government of Canada, "[Trade and gender in free trade agreements: The Canadian approach](#)".

68 Government of Canada, "[Third Trade and Gender Committee meeting under the Canada-Chile Free Trade Agreement \(CCFTA\) Trade and Gender Chapter](#)", 2021.

Public consultations, which are meant to “promote transparency in negotiations”, represent an important means of stakeholder engagement in Canada trade agreements.<sup>69</sup> Consultations take place through an online platform that collects the views of the public, whether an individual or an organization.<sup>70</sup> Even after the consultation period has ended, the Canadian Government continues to seek inputs from stakeholders, as they might help to inform on future negotiations.

### 3.3.2. Submissions of alleged labour violations

Public submissions of alleged labour violations under trade agreements – or “public communications” as they are referred to in Canada – are filed with the Canadian NAO. The Canadian NAO provides detailed procedural guidelines, including the review criteria, for “persons of Canada” interested in filing a submission. One criterion among those explicitly mentions:

relevance to a specific labour cooperation agreement (LCA) or labour chapter of the free trade agreement (LCFTA) ... where applicable, the submission should describe the failure by the party being complained against to effectively enforce its labour law or that its labour laws and practices thereunder do not embody and provide protection for the internationally recognized labour principles and rights set out in the relevant LCA or LCFTA.<sup>71</sup>

A total of seven public communications have been filed to the Canadian NAO: six were filed under NAALC (1994),<sup>72</sup> and another one was filed under the Canada–Colombia Free Trade Agreement (2011)<sup>73</sup>. Of the seven submissions filed, three were accepted for review, with reports issued. Two of the submissions were declined for review and the two remaining are still under review (since 2008). **Table 3.5** provides an overview of the status, petitioners and main labour violations alleged in these seven public communications. Most submissions under NAALC were filed by a cross-border coalition of trade unions

69 Government of Canada, “[Minister of International Trade – Briefing Book](#)”, 2021. According to the policy on the tabling of treaties in Parliament, the Government must give notice of the intent to enter into a trade agreement “no fewer than 90 days before initiating FTA negotiations and tabling Canada’s negotiating objectives at least 30 days before a first round of negotiations”.

70 Government of Canada, “[Public consultations: CUSMA dairy tariff rate quotas Panel report implementation](#)”. Persons can include, for example, the Canadian public, provincial and territorial governments, business owners, industry associations, regional associations and international trading partners. However, the list of individuals and organizations is targeted and varies depending on the agreement.

71 Government of Canada, “Guidelines for Public Communications”.

72 USDOL, “[Submissions under the North American Agreement on Labor Cooperation \(NAALC\)](#)”.

73 Government of Canada, “[Canada–Colombia Free Trade Agreement](#)”.



and independent civil society organizations. Interestingly, two submissions were filed against the United States, both pertaining to the right to collective bargaining. The 2003 public communication filed under NAALC against Mexico was the first to lead to ministerial consultations, whereas the 2016 public communication filed under the Canada–Colombia Free Trade Agreement against Colombia was the first to involve the establishment of an Action Plan as a remedial measure (see [section 5.3](#)).

Finally, regarding the USMCA (2020), at the time of writing one denial-of-rights claim had been filed under the Canada–Mexico Rapid Response Labour Mechanism and accepted for review in March 2023<sup>74</sup> (see [section 2.3](#)).

► **Table 3.5. Public communications filed under Canada trade agreements (including NAALC), by agreement, status and areas of alleged labour violations**

Agreement	Date of filing	Submitted by	Status	Areas of alleged violations
Canada–Colombia (2011)	2016	Canadian Labour Congress and five Colombian trade unions	Report issued (2017); ministerial consultations held (2017/2018); Action Plan (2018–ongoing)	Abuse of subcontracting, systematic anti-union practices, violations of freedom of association and the right to collective bargaining
NAFTA (NAALC) (1994)	2011 Submission 2011-1	80 trade unions from across North America, including several Canadian trade unions	Currently under review	Violation of basic labour rights at a state-owned electric facility in Mexico
	2008 Submission 2008-1 (North Carolina)	United Electrical, Radio and Machine Workers of America and the Canadian Association of Labour Lawyers (CALL), along with more than 40 other labour organizations in Canada, Mexico and the United States	Currently under review	Failure by the Government of the United States to provide public sector employees with the right to engage in collective bargaining in North Carolina, as well as other issues related to NAALC labour principles

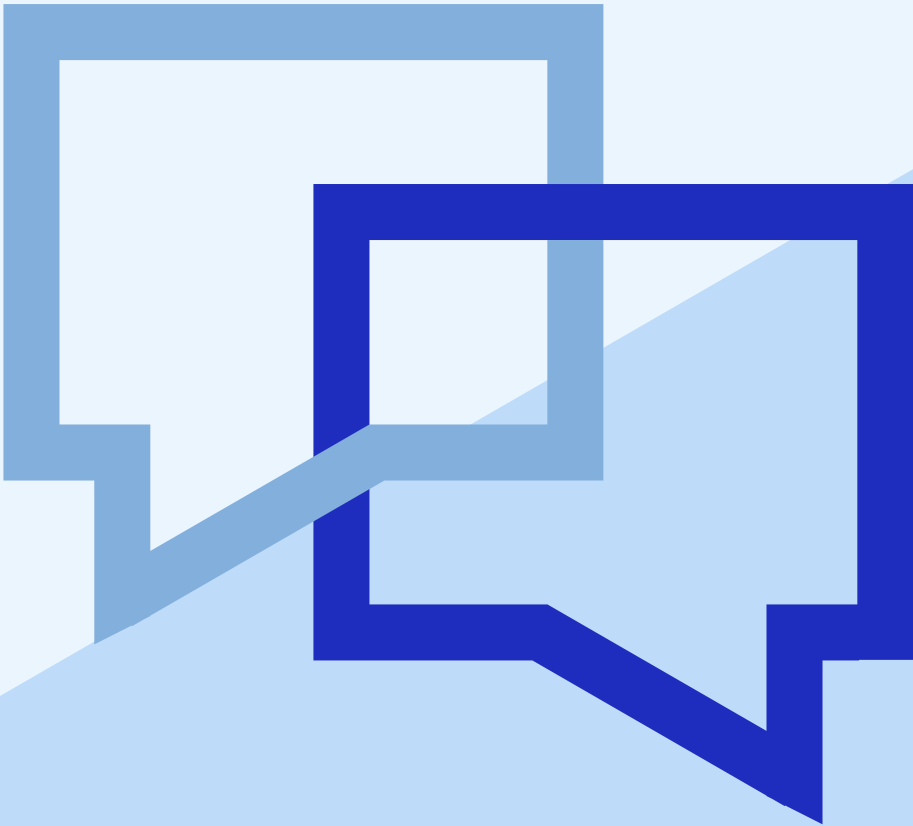
74 See [Canada-Mexico Facility-Specific Rapid Response Labour Mechanism](#).

Agreement	Date of filing	Submitted by	Status	Areas of alleged violations
NAFTA (NAALC) (1994) cont.	2005 Submission 2005-1 (Mexican pilots – ASPA)	35 pilots supported by the Mexican Airlines Pilots Union (ASPA)	Declined for review	Failure by the Government of Mexico to enforce its labour laws on freedom of association and the rights to organize and bargain collectively; and failure to provide access to fair, equitable and transparent labour tribunal proceedings
	2003 Submission 2003-1 (Puebla)	United Students Against Sweatshops and the Centro de Apoyo al Trabajador	Report issued (2005); ministerial agreement signed (2008)	Failure by the Government of Mexico to meet its obligations concerning three of the labour principles under NAALC: freedom of association, occupational health and safety, and minimum employment standards
	1999 Submission 99-1 (LPA)	Labour Policy Association and EFCO Corporation	Declined for review	Failure by the United States to enforce section 8(a)(2) of the National Labor Relations Act
	1998 Submission CAN 98-1 (Itapsa)	Canadian Office of the United Steelworkers of America, with 11 other trade unions and 31 organizations from Canada, Mexico and the United States	Report issued (1998/1999); ministerial consultations requested (1999)	Failure by Mexico to enforce labour legislation covering OSH and the right to freedom of association of workers at the Itapsa export processing plant in Ciudad de los Reyes, Mexico

Source: USDOL, “[Submissions under the North American Agreement on Labor Cooperation \(NAALC\)](#)” and Government of Canada, “[Canada-Colombia Agreement on Labour Cooperation](#)”.



4.



# Cooperation mechanisms *in practice*

Cooperation mechanisms are detailed in the text of trade agreements and their implementation, including on labour issues, is typically managed through contact points/national administrative offices and ministerial councils (for an overview, see [section 2.1](#); for specific approaches, see [Chapter 3](#)). In the case of US trade agreements, “labor affairs councils” oversee and coordinate the implementation of labour cooperation mechanisms with the support and assistance of OTLA. Discussions on technical assistance are led by the USDOL, which possesses the necessary technical expertise and the ability to engage transnationally with counterparts in other labour ministries. Similarly to the United States, Canada RTAs establish “labour ministerial councils” to oversee the implementation of trade agreements, including the coordination of labour cooperation activities through national contact points (NPC) or the Canadian NAO. In practice, the main engagement on cooperation activities has been through Canada’s Labour Program of Employment and Social Development. In the case of EU trade agreements, the CTSD, established under the trade agreement, oversees the implementation of cooperation activities and may adopt rules for implementing dialogue and cooperation, which are carried out (and funded) by the European Commission directorates.

The role of stakeholders, such as workers' and employers' representatives and other independent civil society organizations, in carrying out cooperation activities is also explicitly mentioned in trade agreements.<sup>75</sup> During the negotiation phase and prior to the trade agreement being ratified (pre-ratification), the social partners may be consulted for various reasons; for example, to share their expertise in the design of labour provisions, identify key areas of cooperation or engage in the impact assessment of the trade agreement. After the trade agreement is ratified, the social partners may also have the opportunity to participate in the implementation of labour provisions through various technical cooperation projects (see Corley-Coulibaly, Grasselli and Postolachi, forthcoming).

Additionally, a role for the ILO is frequently provided, in an explicit manner, within the framework of labour cooperation in trade agreements. The parties may seek support and advice, as appropriate, from the ILO on advancing labour commitments (for example, the US–Colombia Trade Promotion Agreement), establishing cooperative arrangements with the ILO (see, for example, the USMCA) or more broadly, cooperating in international forums, including with the ILO (see, for example, the EU–Singapore Free Trade Agreement). In practice, the engagement with the ILO may take the form of technical cooperation projects or technical assistance at the request of Member States. The ILO's supervisory system<sup>76</sup> may also help in identifying gaps in areas of cooperation, establishing development cooperation projects or monitoring progress in implementing labour provisions (ILO 2016).

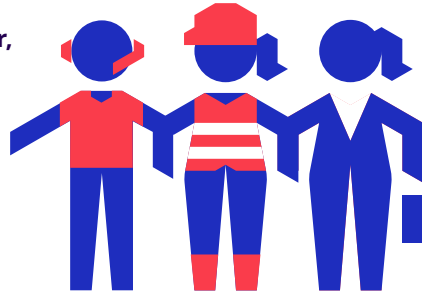
Based on interviews undertaken for this study, additional observations can be made about the specific approaches of Canada, the United States and the EU. Canadian government officials consider cooperation as either project-based, which typically involves a more significant allocation of resources, or operations-based, which typically translates into an exchange of experts, mediators, conciliators and training personnel. United States government officials, comparatively, highlight the dual nature of cooperation, taking place both informally, through regular dialogue between the trade and labour ministries of the United States and its trading partners, and formally, through mechanisms established in the trade agreement. Finally, EU officials note that trading partners may require support in two forms: either financially through technical cooperation projects or as technical assistance, including with the support of the ILO.

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75 For instance, Annex 13-A of the Canada–Ukraine Free Trade Agreement (2017) states: “In identifying areas for labour cooperation and capacity building, and in carrying out cooperative activities, each party may consider the views of its worker and employer representatives, as well as those of other members of the public.”

76 For more information on the ILO's supervisory system, see ILO, [“Applying and promoting International Labour Standards”](#).

**A role for the ILO is frequently provided, in an explicit manner, within the framework of labour cooperation in trade agreements**



Indeed, Canada, the United States and the EU have relied on technical assistance and cooperation projects to support the implementation of labour provisions by their trading partners, including with support from the ILO. These projects are designed to strengthen the capacity of the trading partners to comply with labour provisions, particularly when specific gaps have been identified and resources are needed to address them. The projects can take place prior to or after ratification of the trade agreement, including during formal consultations in light of a labour-related dispute.

However, it is challenging to represent the full spectrum of technical cooperation projects that support the implementation of labour provisions. Firstly, certain projects might not be carried out within the framework of a trade agreement. For instance, both Canada and the United States have funded projects to address child and forced labour in trading partner countries with the support of the ILO International Programme on the Elimination of Child Labour, without these projects being linked to a specific trade agreement.<sup>77</sup> Secondly, several technical cooperation projects are funded by other government agencies (such as the USDOL in the case of the United States) or European Commission directorates (such as the European Commission Directorate-General for Employment in the case of the EU) than those with direct competence on trade matters. This makes it harder to map out the full range of cooperation activities. In the case of the EU, technical cooperation projects on issues covered by labour provisions in EU trade agreements are also carried out by the individual EU Member States. Thus, the remainder of this chapter provides a selection of cooperation projects for illustrative purposes rather than for carrying out a comprehensive mapping of such activities under trade agreements.

<sup>77</sup> ILO, "[Projects on child labour](#)".

## ► 4.1. Pre-ratification cooperation activities

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Starting from the negotiation and pre-ratification phases of a trade agreement, technical cooperation projects may be administered to support the implementation of certain commitments. This practice has been specific mainly to the United States, which, through a presidential certification of compliance,<sup>78</sup> requires its trading counterparts to address certain domestic labour deficits prior to the entry into force of a trade agreement. For example, technical assistance and resources were provided to support Mexico's labour law reform under the USMCA (2020),<sup>79</sup> and capacity-building activities were delivered to strengthen labour law enforcement in Colombia under the United States–Colombia Trade Promotion Agreement (2012).<sup>80</sup>

During recent negotiations, the EU also called for reforms of domestic labour laws prior to ratification of its trade agreements. For instance, during the pre-ratification phase of the EU–Viet Nam Free Trade Agreement (2020), a project was implemented in Viet Nam between 2016 and 2018, with the assistance of the ILO and funded by the European Commission, to improve the existing legal framework and support the ratification of outstanding ILO fundamental Conventions.<sup>81</sup> Consequently, Viet Nam adopted a new Labour Code in 2019,<sup>82</sup> followed by the ratification of two ILO fundamental Conventions (Nos 98<sup>83</sup> and 105<sup>84</sup>) and the signature of a Memorandum of Understanding with the ILO to work towards the ratification of the outstanding fundamental Conventions.<sup>85</sup>

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78 A procedure that grants the President of the United States “considerable discretion to determine whether a partnering country has complied with the terms of the trade agreement and therefore, when the FTA would enter into force.” For more information, see Velut et al. (2022), p. 147.

79 USDOL, “[Labor Rights and the United States–Mexico–Canada Agreement \(USMCA\)](#)”.

80 USDOL, “[Promoting Compliance with International Labor Standards](#)”.

81 ILO, “[Promoting fundamental conventions of the ILO - ratification of conventions 87, 98, 105](#)”.

82 ILO, “[Revised Vietnamese Labour Code to help everyone gain fair shares of economic growth](#)”, 20 November 2019

83 ILO, “[ILO welcomes Viet Nam's vote to ratify ILO fundamental convention on collective bargaining](#)”, 14 June 2019.

84 ILO, “[ILO welcomes milestone to end forced labour in Viet Nam](#)”, 8 June 2020.

85 ILO, “[ILO, Viet Nam join force to promote international labour standards and decent work for all](#)”, 20 May 2021.



Although Canada has not generally engaged in technical cooperation projects prior to the ratification of a trade agreement, it engages with domestic stakeholders through extensive labour consultation groups from the beginning of negotiations, with the goal of collecting expertise, advice and views from stakeholders on various topics, including cooperation priorities.

## ► 4.2. Post-ratification cooperation activities

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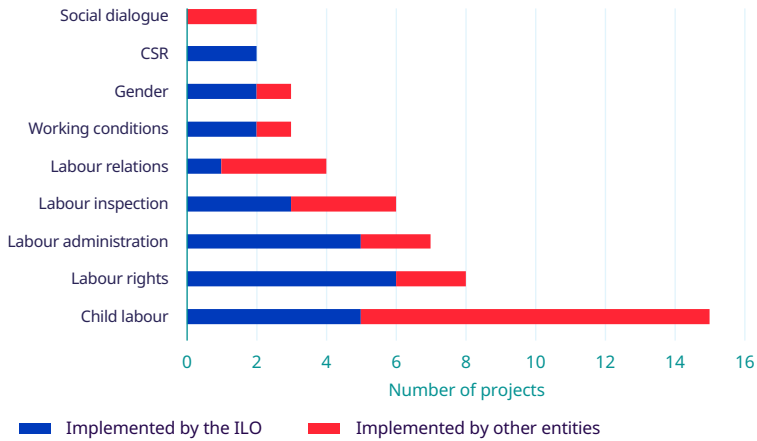
The United States invests in a significant number of technical cooperation projects in trading partner countries in the post-ratification phase of its trade agreements, with the goal – among others – to support the implementation of labour provisions, and more precisely to improve workers’ rights and build capacity for social dialogue. The implementation of trade agreements draws heavily on funding from the USDOL and its Bureau of International Labor Affairs (ILAB), as well as the United States Agency of International Development (USAID) and the United States Bureau of Democracy, Human Rights, and Labor (USDRL). For instance, under CAFTA–DR, several labour capacity-building projects have been carried out under the framework of the so-called “White Paper”,<sup>86</sup> prepared with the support of the ILO and the Inter-American Development Bank. The ILO has also supported the verification of compliance with the White Paper recommendations under a USDOL-funded project.<sup>87</sup> In Guatemala, more than 50 projects have been implemented, focusing on areas such as social dialogue, labour relations and labour inspections, among others, estimated at a total cost of approximately US\$84 million (see [figure 4.1](#) and [table 4.1](#)).

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86 Inter-American Development Bank (IDB), *The Labor Dimension in Central America and the Dominican Republic. Building on Progress: Strengthening Compliance and Enhancing Capacity*, 2005, p. 82. The White Paper asks the ILO to “provide any technical assistance required to follow up on and carry out the subregional labor agenda through the corresponding tripartite national institutions and existing regional fora”.

87 USDOL, “[ILAB Technical Cooperation Project Summary: Verification of Compliance of the White Paper Recommendations](#)”, 2013.

► **Figure 4.1. Areas of cooperation in US-administered projects in Guatemala under CAFTA-DR, 2006–21**



Source: Authors' compilation based on [technical assistance projects](#) and [progress reports](#) by the USDOL, the USDRL and USAID. See also the USTR's [CAFTA-DR Labor Capacity Building](#) and the [ILO Development Cooperation Dashboard](#) (Guatemala).

The EU often provides technical assistance under the TSD chapters of its trade agreements in collaboration with the ILO. The scope and extent of these cooperation projects are country-specific. Some projects are geared towards the ratification of and compliance with “fundamental, priority and other up-to-date ILO Conventions”, a phrasing found in many EU trade agreements. For instance, the EU and the ILO have established a partnership through the Trade for Decent Work project to support trading partner countries of the EU in the ratification of and compliance with ratified ILO fundamental Conventions. The budget for the Trade for Decent Work project amounts to €7.548 million from the EU and €1 million from Finland. The project's activities in El Salvador<sup>88</sup> and Guatemala focus on strengthening the countries' institutional capacity to fulfil labour obligations under the respective trade agreements.<sup>89</sup> The ILO has also supported a range of EU projects on improving OSH and strengthening the labour inspection capacity of the EU's trading partners in the context of global

<sup>88</sup> ILO, “[Trade for Decent Work Project](#)”.

<sup>89</sup> ILO, “[Sustaining strengthened national capacities to improve ILS compliance and reporting in El Salvador & Guatemala](#)”.

supply chains.<sup>90</sup> More frequently, the EU fosters cooperation with its trading partners through the dialogue and institutional mechanisms established in its trade agreements.

Canada initiated cooperation through technical cooperation projects starting with the Canada–Costa Rica Free Trade Agreement (2002): the two parties agreed to work with the ILO on a cooperation programme to strengthen labour administration and modernize labour inspectorates in Costa Rica.<sup>91</sup> Subsequently, technical cooperation projects have been carried out under most Canada RTAs to support the implementation of labour provisions. Furthermore, according to a Canadian government official, specialized budgets exist for technical cooperation projects with trading partner countries and additional financial resources can be mobilized upon request.

### 4.2.1. Cooperation activities in the context of a labour dispute

Development cooperation projects also play an important role in the context of a labour dispute. The three labour disputes under study and further analysed in **Chapter 5** (United States–Guatemala, EU–Republic of Korea and Canada–Colombia) show the wide range of cooperation projects to support the implementation of labour provisions, both during the respective labour dispute and after it has been resolved. Canada and the United States, for example, have invested in several cooperation projects from the inception of their respective trade agreements and adopted action plans at early stages of labour disputes (see **tables 4.1** and **4.2**). The EU has also relied on cooperation, with the assistance of the ILO, through exchange of information and continuous dialogue using stakeholder engagement mechanisms. This emphasizes the extent to which trading partner parties rely on cooperation to address labour violations, be that through technical cooperation projects or technical assistance.

In the context of the EU–Republic of Korea labour dispute, the parties agreed at the fourth CTSD meeting<sup>92</sup> in 2015 to launch a cooperation project under the EU Partnership Instrument on the implementation of Convention No. 111, to better understand good practices and shortfalls in the implementation of

90 ILO, “[Strengthening the technical capacity of the labour inspection to promote compliance with national labour laws in the rural sector in Colombia](#)”; ILO, “[Vision Zero Fund Initiative: Improving occupational safety and health in coffee supply chains](#)”; ILO, “[Joint ILO-EU project to improve knowledge base and safety and health in global supply chains to support G20 work on safer workplaces](#)”.

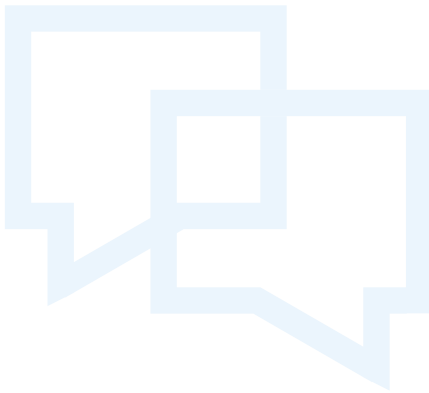
91 ILO, *Studies on Growth with Equity – Social Dimensions of Free Trade Agreements*, 2015.

92 European Commission, “[Joint Statement of the 4th Meeting of the Committee on Trade and Sustainable Development under the Korea–EU FTA](#)”, 9 September 2015.

the Convention.<sup>93</sup> The EU engaged with the ILO to access available information and findings from the ILO’s supervisory mechanism that further informed on the ratification and implementation of specific ILO Conventions. The ILO was also involved in setting up workshops to analyse relevant issues.

Under CAFTA–DR, in the context of the US–Guatemala labour dispute, the two parties agreed to a Comprehensive Labor Enforcement Plan (2013), with the Guatemalan Government committing to improving the enforcement of labour laws.<sup>94</sup> The implementation of the Enforcement Plan could rely on the support of and cooperation with the United States, upon request, in the form of “technical advice and information regarding best practices, sharing expertise and assisting with outreach to international institutions”.<sup>95</sup> Starting from the beginning of the dispute, the exchange of information between the parties had taken place at all levels, from ministerial dialogue to stakeholder engagement. Moreover, the USDRL provided funding to support a labour project (2013–16) administered by the ILO on “strengthening institutional capacity to protect fundamental rights at work”.<sup>96</sup>

Even though Guatemala failed to fully implement the Enforcement Plan, causing panel procedures to resume (see [section 5.2](#)), the United States still maintains technical cooperation projects in the country. Between 2018 and 2022, the USDOL implemented with the ILO a technical project to improve the enforcement of minimum wage, hours of work and OSH laws in Guatemalan agricultural export sectors.<sup>97</sup>



<sup>93</sup> European Commission, 2016.

<sup>94</sup> USTR, “[Fact Sheet: Guatemala Agrees to Comprehensive Labor Enforcement Plan](#)”.

<sup>95</sup> USTR, “[Mutually Agreed Enforcement Action Plan between the Government of the United States and the Government of Guatemala \(“Enforcement Plan”\)](#)”, 2013.

<sup>96</sup> ILO, “[Strengthening national mechanisms to protect fundamental rights at work, particularly freedom of association and collective bargaining](#)”.

<sup>97</sup> ILO, “[Supporting Respect for the Working Conditions of Workers in the Agro-Export Sector in Guatemala](#)”; USDOL, “[Improving Labor Law Enforcement in Guatemala](#)”.

► **Table 4.1. Development cooperation projects in Guatemala under CAFTA–DR administered by the United States and implemented by the ILO, 2006–22**

Project	Details	Description
Labour justice training	2006–09 US\$2 million USDOL/ILO	This programme provided training to judicial personnel on national labour laws, the application of international labour standards and the proper handling of labour-related cases. Specifically, the programme trained over 600 legal professionals and 140 judges in CAFTA–DR countries.
Verification of White Paper recommendations	2006–12 US\$11.6 million USDOL/ILO	This project tracked progress made by CAFTA–DR countries on the implementation of the White Paper recommendations regarding implementing labour laws in accordance with international labour standards. It produced and distributed verification reports semi-annually and conducted technical assistance activities and workshops in order to build labour capacity around six areas: <ul style="list-style-type: none"> <li>• labour law and implementation (freedom of association, trade unions and labour relations, inspections and compliance);</li> <li>• budgetary and personnel needs of the ministries of labour;</li> <li>• strengthening the judicial systems for labour law;</li> <li>• protections against discrimination in the workplace;</li> <li>• worst forms of child labour; and</li> <li>• promoting a culture of compliance.</li> </ul>
Strengthening civil service systems for labour inspectorates	2007–11 US\$1.19 million USDOL/ILO	The project was implemented within the inspectorates of the Ministries of Labour of <b>El Salvador, Guatemala and Honduras</b> to improve the recruitment and retention of qualified, experienced and professional staff. The project created inspection training modules that focused on ethical protocols, unification of inspector positions and responsibilities, and it drafted a code of ethics and integrity.
Promoting tripartite social dialogue	2008–12 US\$2.97 million USDRL/ILO	This project implemented in CAFTA–DR countries focused on strengthening national tripartite institutions and mechanisms for social dialogue among governments, workers and employers to increase compliance with labour law and improve cooperation with a view to developing common agendas and formal agreements. In 2010, the project provided assistance to help create a united subregional trade union platform, facilitated by the Trade Union Confederation of the Americas.

Project	Details	Description
Strengthening national mechanisms to protect fundamental rights at work, particularly freedom of association and collective bargaining	2013–16 US\$891,000 USDRL/ILO	The project was implemented in <b>Guatemala</b> and focused on: <ul style="list-style-type: none"> <li>strengthening the institutional capacity of the Guatemalan Government to enhance protection measures for trade union leaders, members, activists and organizers, and to combat impunity for perpetrators of violence against them;</li> <li>strengthening the institutional capacity of the Ministry of Labour to effectively enforce Guatemalan labour laws and guarantee fundamental rights at work, particularly in relation to freedom of association and collective bargaining in accordance with international labour standards and with the participation of stakeholders; and</li> <li>strengthening social dialogue institutions and their stakeholders, particularly at the departmental and local level.</li> </ul>
Supporting respect for the working conditions of workers in the agro-export sector in Guatemala	2018–22 US\$2.5 million USDOL/ILO	This project seeks to ensure that workers in the agricultural export sector in <b>Guatemala</b> receive the minimum wage, work within legal limits for hours, receive due compensation for overtime and operate in a safe working environment. It focuses particularly on improving the capacity of the labour inspectorate and judiciary system to become more efficient and effective in investigating violations regarding acceptable conditions of work in the agricultural export sector.

Source: Authors' compilation based on USDOL/USDRL/USAID technical cooperation projects and progress reports available at USTR, "[CAFTA-DR Labor Capacity Building](#)"; USDOL, "[ILAB Technical Cooperation Projects Search](#)"; and USDOL, "[ILAB Reports and Publications](#)"; also available at ILO, "[ILO Development Cooperation Dashboard](#)" (Guatemala).

In the context of the Canada–Colombia labour dispute, the parties engaged in continuous exchanges of information and consultations. Among those were ministerial consultations that eventually led to the adoption of an Action Plan in 2018.<sup>98</sup> Moreover, Canada coordinated with US government agencies on the parallel US–Colombia labour dispute, with the goal of presenting “a common front” – as described by a Canadian government official – on the two complaints.<sup>99</sup> However, compared with the United States, Canada seems to have adopted a more holistic approach towards Colombia. Instead of only focusing on labour inspections, the Action Plan puts forward general recommendations and a set of concrete actions to be taken by the Colombian Government to address labour violations under the Canada–Colombia LCA (Velut et al. 2022). These efforts have been further supported by the redirection of funds towards cooperation activities supported by both Canada and the United States.<sup>100</sup>

In 2022, Canada was administering two cooperation projects in Colombia, amounting to a cost of 1 million Canadian dollars. The first project is implemented by the ILO and aims to promote workplace compliance and strengthen the institutional capacity of the social partners, following up on the implementation of the Action Plan. The second project consists of a study by the University of Ottawa under point 1.5 of the Action Plan, which analyses challenges related to the effective exercise of the rights to freedom of association and collective bargaining in Colombia.<sup>101</sup> It should be noted that the type of cooperation involved in the Action Plan is different from the projects usually implemented by the Canadian Ministry of Labour, as the former involved a rapid shift in focus and in resource allocation (see [section 5.3](#)).

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98 Government of Canada, [Action Plan 2018–2021 under the Canada-Colombia Agreement on Labour Cooperation](#).

99 Government of Canada, “[Review of public communication CAN 2016-1. Report issued pursuant to the Canada-Colombia Agreement on Labour Cooperation](#)”; USDOL, “[Submissions under the Labor Provisions of Free Trade Agreements](#)”.

100 For further information on technical cooperation projects: for Canada, see Government of Canada, “[Annual Reports Pursuant to the Agreement Concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia](#)”; for the United States, see USDOL, [The Colombian Labor Action Plan: A Five Year Update](#), 2016.

101 The study, *Building Constructive and Sound Labour Relations in Colombia* (2022), referred to in point 1.5 of the Action Plan, has been published in [English](#) and [Spanish](#).

► **Table 4.2. Development cooperation projects in Colombia under the Canada–Colombia Labour Cooperation Agreement, 2011–22**

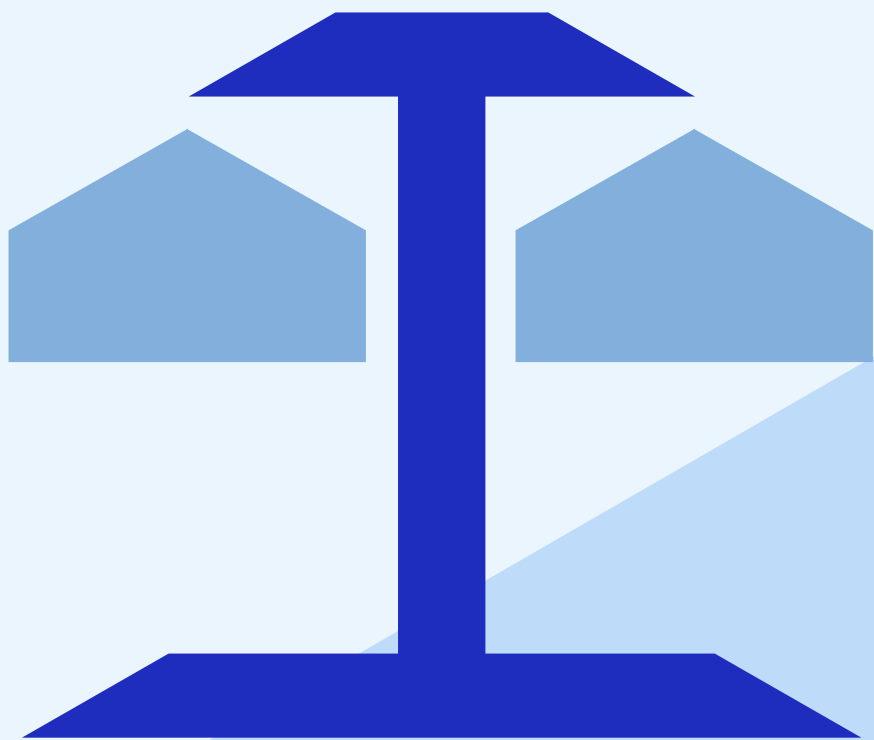
Project	Details	Description
Constructing decent work agendas at local and regional levels in Colombia	2011–13 341,531 Canadian dollars ILO	This project focused on strengthening Colombia's institutional capacity and further facilitating interactions between the Government and employers' and workers' organizations at the local and departmental level. It led to the development of a training programme under which more than 200 government officials, workers and employers received training in the areas of fundamental labour rights, child labour, collective bargaining and strategic planning.
Occupational health and safety and social dialogue in the mining sector in Colombia	2013–15 US\$292,883 ILO	The project contributed to strengthening the institutional capacity to promote the respect of fundamental rights at work, OSH practices and productive development in the coal mining sector in La Guajira, Colombia.
National strategy for prevention and elimination of the worst forms of child labour and protection of young workers	2015–17 US\$248,167 ILO	The project contributed to strengthening the capacities of Colombia's public institutions, and employers' and workers' organizations, for the formulation and implementation of the first stages of the new National Strategy for the Prevention and Eradication of the Worst Forms of Child Labour and Protection of Young Workers 2015–25 (ENETI).
Institutional strengthening for promoting compliance with national legislation in Colombia	2019–23 US\$634,275 ILO	This project aims to support the Colombian Ministry of Labour in modernizing its trade union registration/certification system. It does so by emphasizing the promotion of workplace compliance and by strengthening the capacities of employers' and workers' organizations to participate in tripartite social dialogue, bargain collectively and develop the industrial relations system. It also follows up on the implementation of the Action Plan signed between the Ministries of Labour of Canada and Colombia in 2018.
Building constructive and sound labour relations in Colombia	2019–22 496,000 Canadian dollars University of Ottawa	This project aimed to address issues related to the effective exercise of the rights of freedom of association and collective bargaining. Key outcomes of the project included the production of a study with recommendations on potential legislative measures to improve labour relations in the country.

Source: Authors' compilation based on the [ILO Development Cooperation Dashboard for Colombia](#) and [Annual Reports on Human Rights and Free Trade](#) between Canada and Colombia.





5.



# Dispute settlement process from submission to arbitration

**T**his chapter presents three case studies based on landmark labour disputes under trade agreements: EU–Republic of Korea, United States–Guatemala and Canada–Colombia. The purpose of this approach is to shed light on how the mechanisms established in a trade agreement are implemented during the dispute settlement process. For each case study, a brief chronology of the labour dispute is provided, followed by the presentation of interview findings. The latter are divided into an overview of the proponent’s approach (respectively, the EU, the United States and Canada), followed by the perspectives of the various stakeholders engaged in the dispute. There is also a specific focus on cross-border ministerial-level dialogue and dialogue with and between the social partners. Each case study closes with considerations of the outcomes of the labour dispute.

## ► 5.1. The EU–Republic of Korea labour dispute

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### 5.1.1. Chronology of the dispute

The EU–Republic of Korea Free Trade Agreement, signed in 2009 and applied provisionally from 2011,<sup>102</sup> entered into force in late 2015. As part of the EU’s new generation of trade agreements, it was the first one to include a TSD chapter.

#### **Government consultations: 17 December 2018 to 3 July 2019**

On 17 December 2018, the European Commission initiated a dispute against the Republic of Korea by requesting government consultations<sup>103</sup> under Article 13.14. The dispute chiefly focused on the failure on the part of the Government of the Republic of Korea to ratify four out of the then eight ILO fundamental Conventions, as it had pledged to do under Article 13.4(3) of the trade agreement.<sup>104</sup> The EU regarded as insufficient and politically uncertain the actions taken until that point by the Government of the Republic of Korea towards ratification, as well as to implementing domestic legal guarantees compliant with the ILO Declaration on Fundamental Principles and Rights at Work.

#### **Panel of experts: 4 July 2019 to 25 January 2021**

On 4 July 2019, the European Commission requested that a panel of experts be convened,<sup>105</sup> the final report of which was published on 25 January 2021.<sup>106</sup> The panel ruled that the commitments undertaken by the Republic of Korea under the trade agreement were legally binding, regardless of their effect on trade between the parties. Nevertheless, the panel also found that the Republic of Korea did not act “inconsistently with the last sentence of Article 13.4(3)

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<sup>102</sup> As per Article 15.10.5 of the EU–Republic of Korea Free Trade Agreement.

<sup>103</sup> European Union, “[Request for Consultations by the European Union](#)”, 2018.

<sup>104</sup> EU–Republic of Korea Free Trade Agreement, Article 13.4: Multilateral labour standards and agreements, paragraph 3: “The Parties reaffirm the commitment to effectively implementing the ILO Conventions that Korea and the Member States of the European Union have ratified respectively. The Parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions as well as the other Conventions that are classified as ‘up-to-date’ by the ILO.”

<sup>105</sup> European Commission, “[Request for the establishment of a Panel of Experts by the European Union](#)”, 2019.

<sup>106</sup> European Commission, “[Report of the panel of experts](#)”, 2021.

by failing to ‘make continued and sustained efforts’ towards ratification of the core ILO Conventions”.<sup>107</sup>

#### **Follow-up: 26 February 2021–ongoing**

The final report was made available to the parties’ DAGs, which are tasked with discussing the implementation of its recommendations (the implementation is monitored by the TSD Committee). Three out of the four outstanding ILO fundamental Conventions (Nos 29, 87 and 98) were ratified on 20 April 2021, and entered into force in the Republic of Korea on 20 April 2022. As a result of ratification, the compliance of the Republic of Korea with the international labour standards enshrined in these Conventions is now monitored by the ILO’s supervisory mechanism. Upon ratification of the outstanding Convention No. 105, a research project was undertaken by the Government of the Republic of Korea to identify the necessary changes in the country’s legal framework to guarantee compliance with the Convention. The results of this project are currently under discussion.

## **5.1.2. Interviews**

### **a. Overview of the EU approach to implementation**

Interviews conducted for this study described the EU’s approach as seeking a balance between: i) the EU’s vision of trade, intended not as a goal in itself but as a tool to achieve other goals, chiefly sustainable development; and ii) the needs of the EU’s trading partners, which are frequently less familiar with legally binding (although not sanctions-backed)<sup>108</sup> labour commitments in trade agreements (see **Chapter 1**).

When labour commitments are included in an agreement, regardless of the way they are enforced, they enable conversations through the mechanisms for dialogue and cooperation that come with the agreement. As such, the EU recognizes the essential role played by stakeholders – from the social partners to non-governmental entities – in promoting compliance and supports the institutionalization of stakeholders’ presence and participation in the above-mentioned mechanisms, as well as in the domestic structures and mechanisms of its trading partners (see **section 3.1**).

<sup>107</sup> The panel also found that several aspects of the Korean Trade Union and Labour Relations Adjustment Act were not consistent with the principles under the 1998 Declaration, as referred to by the EU–Korea RTA.

<sup>108</sup> Interviews were held before the publication of the [European Commission’s Communication on the power of trade partnerships: together for green and just economic growth](#). Therefore, their content might not reflect the position expressed by the European Commission in the Communication.

At the same time, the way trading partners perceive the EU's approach may impact how the respective governments uphold their commitments under a trade agreement. In the case of the EU–Republic of Korea Free Trade Agreement, interviews confirmed that the Government of the Republic of Korea struggled with recognizing commitments under the TSD chapter as legal obligations and as a core part of the agreement.

## **b. The dispute from the perspective of the Republic of Korea**

### **Government-to-government engagement**

Interviews highlighted that the opening of the dispute (and even more so, the panel's interpretation of labour commitments under the EU–Republic of Korea Free Trade Agreement) played a major role in amplifying the years-long campaign of trade unions in the Republic of Korea for the ratification of fundamental ILO Conventions and for the reform of domestic legislation.

According to one official from the Republic of Korea, before the dispute, the Government of the Republic of Korea had not appeared close to reaching ratification. However, with the dispute, civil society in the Republic of Korea came to know about the labour provisions in the EU–Republic of Korea Free Trade Agreement; they understood that the EU had filed a strong complaint against the country, implying possible reputational damage and negative trade effects. Similarly, members of the Republic of Korea's National Assembly became more aware of labour issues covered by the dispute, and ultimately agreed on the necessity of ratifying the Conventions. The increased attention created a public "social consensus" for ratification, which the Government of the Republic of Korea had previously claimed was lacking.

In contemporary trade agreements, such as the Peru–Republic of Korea Free Trade Agreement, the Government of the Republic of Korea had only accepted labour provisions already compatible with its domestic legislation. Similarly, according to the official, the Government of the Republic of Korea understood the agreement with the EU as setting an obligation not to *complete* the ratification of outstanding fundamental conventions, but to *make efforts* towards it. In turn, the minimum level of effort was interpreted by the Government of the Republic of Korea as the level due as a Member State of the ILO.

The official from the Republic of Korea posited that a change in the position of the EU, from minimum level of effort to completion of ratification, had happened after the signature of the agreement, likely as a result of discussions within the European Parliament. This change of position was evident from the first meeting of the TSD Committee (for an overview of the structure and functions of the TSD Committee, see [section 3.1](#)).

## Stakeholder engagement

A critique shared by all interviewees from the Republic of Korea to the EU's approach is that it is perceived as imposing on trading partner countries structures and mechanisms informed by a view of dialogue, particularly social dialogue, not shared by such countries. In a sense, the EU's approach is viewed as "Eurocentric", in that it assumes that social dialogue and the culture surrounding it – also in terms of participation of the social partners and other stakeholders in government-led processes – is the same as that prevailing in EU countries.

This might affect the effectiveness of the EU's approach in creating avenues for the social partners and other stakeholders to participate in dialogue and decision-making at both the domestic and international level. According to stakeholders from the Republic of Korea, structures that are not compatible with their understanding of social dialogue might produce results ultimately unbeneficial to the social partners in the Republic of Korea.

While social dialogue is strongly institutionalized in the EU, that is not the case in the Republic of Korea, where relations between the Government, trade unions and employers' organizations have been described as "hostile", both during interviews and in the literature (Bae 2014; Klopping 2010; Yoon 2009; Lee and Lee 2003; Chang 2002).

An example of this tripartite relationship is offered by the initial exclusion from membership in the DAG for the Republic of Korea of the two most representative trade union confederations in the country. Before the first CSF meeting, the two confederations communicated with the European Trade Union Confederation, which delivered their concerns to the meeting; information then travelled from stakeholders to EU officials. The following year, the second CSF meeting took place in Seoul and the secretary of the DAG for the Republic of Korea granted observer seats to the two confederations. The following year, when DAG membership was renewed (as it is every two years), the two confederations were invited to join the DAG for the Republic of Korea.

The Government of the Republic of Korea did not engage with the social partners or broader civil society organizations during the negotiations of the EU–Republic of Korea Free Trade Agreement. Trade unions in the Republic of Korea staged activities outside the negotiation process, mobilizing their members and civil society organizations, participating in an EU parliamentary hearing during negotiations and exchanging communications with European trade unions. It must be noted that, before the agreement was concluded, trade unions in the Republic of Korea had no stable dialogue mechanism with their EU counterparts.

Similarly, the social partners in the Republic of Korea were asked to participate only at a relatively advanced stage of the dispute. After the panel of experts was

set up, they were given a short deadline to submit position papers and briefs directly to the panel.

Before the EU–Republic of Korea Free Trade Agreement, the only way for trade unions in the Republic of Korea to bring international attention to alleged violations of the Republic of Korea’s obligations as an ILO Member State was through the ILO’s supervisory mechanism, namely the Committee of Freedom of Association. This engagement proved helpful at the dispute stage for trade unions in the Republic of Korea and the EU, which reported findings of the CFA in relation to the Trade Union and Labor Relations Adjustment Act<sup>109</sup> in their briefs to the panel of experts. This was also done by the EU in its written submission to the panel.<sup>110</sup>

### c. The dispute from the EU perspective

#### Government-to-government engagement

Already at the time of the EU–Republic of Korea labour dispute, efforts were being made in the EU to facilitate the filing of complaints. These efforts culminated post-dispute in the establishment of the SEP (see [section 3.1.2](#)).

Firstly, the rising presence of enforcement on the European Commission’s agenda stems from the role of the European Parliament, which was granted more power by the 2007 Lisbon Treaty, including with respect to international trade. The influence of stakeholders was (and is) similarly strong in the European Parliament. For example, DAGs are increasingly involved in the Parliament, and there was also an agreement that EU DAG chairpeople should be included in the trade agreement monitoring groups that are established within the Parliament.

In addition, enforcement increasingly appears on the European Commission’s agenda because of “the way trade is viewed in certain European capitals”, in the words of one EU official. When certain EU Member States with a substantial weight in the EU’s trade take the lead and push for more stringent enforcement, the Commission’s strategy tends to take their positions into account.

#### Stakeholder engagement

The EU identifies the strength of the DAG structure in its ability to bring together different strands of society, even when this structure reflects the model of social dialogue predominant in the EU. European Union officials reported that civil society in trading partner countries tends to appreciate the contribution of DAGs to the creation of dialogue. This was the case, for example, in several Latin American countries that have agreements with the EU. Yet EU officials described

<sup>109</sup> ILO, *Case No. 1865 (Republic of Korea)*, [Report No. 353](#), 2009; [Report No. 363](#), 2012; [Report No. 382](#), 2017; ILO, *Case No. 2602 (Republic of Korea)*, [Report No. 363](#), 2012.

<sup>110</sup> European Commission, “[First Written Submission by the European Union](#)”, 2020.



the EU as “conscious of not exporting a model without critical reflection”, which is mirrored in the flexibility left to its trading partner countries in terms of how their national authorities consult with civil society.

The activation of the DAG structure is not uniform for all trade agreements (see [section 3.1.1](#)). In the case of the EU–Singapore Free Trade Agreement and the EU–Japan Economic Partnership Agreement, for example, this is shown by differences in the length of time elapsed between the entry into force of the agreement for each party and the first meeting of the respective DAGs. This period was longer for Singapore and Japan than it was for the EU. Frequently, this longer time derives from scarcer familiarity with the tripartite model of dialogue in an institutionalized structure on the part of either the government or the social partners, or both.

The example of the EU–Japan Economic Partnership Agreement is of interest because, according to EU officials, Japanese workers’ and employers’ representatives valued the institutionalized space that an international partner had to offer. The institutional set-up under the TSD chapter in the EU–Japan Economic Partnership Agreement, combined with cooperation with the ILO and the Organisation for Economic Co-operation and Development (OECD), enabled more pressure to be exerted on the Japanese Parliament towards enacting the legislation that would pave the way for the ratification of Convention No. 105. This could be evidence that stakeholder engagement under TSD chapters may bring positive contributions even in the face of resistance to the model of dialogue on which it is built.

The EU–Republic of Korea Free Trade Agreement was the first EU trade agreement to include the obligation to create DAGs under its TSD chapter. A member of the EU DAG under this trade agreement stated that this experience has influenced and informed the establishment of later DAGs and TSD chapters. For example, the EU DAG under the EU–Republic of Korea Free Trade Agreement was the first one to deal with issues of independence and representation of its counterpart (the DAG for the Republic of Korea) and relate them to the European Commission, ultimately managing to get recognition of, and action on, these issues.

In turn, these issues were brought to the attention of the EU DAG through communication between its members, particularly on the trade unions’ side, and representatives of trade unions and civil society in the Republic of Korea. It is through similar communication that the EU DAG now receives information on whether legislation of the Republic of Korea is effectively in line with recently ratified fundamental ILO Conventions.

#### **d. Outcomes of the dispute**

Interviews emphasize that the Government of the Republic of Korea drew some lessons from the EU approach to social dialogue. While the approach of the Republic of Korea still strongly differs on many aspects, chiefly regarding

stakeholder engagement at the negotiation stage, an official from the Republic of Korea observed that the dialogue with stakeholders in the context of the EU–Republic of Korea Free Trade Agreement appears to have improved overall.

Interviewed stakeholders and officials from both sides agreed that the outcomes of DAG and CSF meetings are yet to become meaningful from the perspective of the Republic of Korea, as the frequent emergence of internal conflicts hampers the attainment of efficient conclusions. Yet, according to an official from the Republic of Korea, the dispute showed the unsustainability of the approach taken by the Government of the Republic of Korea until then. The dispute also helped to expose the Republic of Korea to the EU’s approach and way of conducting dialogue among the social partners.

Stakeholders in the Republic of Korea also agreed on the importance of being involved from the negotiation stage, to advise the Government of the potential impacts of labour provisions (including disputes), and on the need for cross-border social dialogue.

The EU–Republic of Korea labour dispute appears to have set the engine in motion for the European Commission to be more open to using mechanisms available under trade agreements to ensure compliance. It also appears that certain trading partners of the EU are paying close attention to the outcome of the EU–Republic of Korea labour dispute – such as Japan, which ratified Convention No. 105 in July 2022.<sup>111</sup>

Nevertheless, the EU acknowledges limitations faced by its trading partners in compliance. On the one hand, limitations can be financial. For example, when a country implements commitments against forced labour, it might require more labour inspectors, which comes at a significant cost. Support from the EU through a dedicated project and/or technical assistance, including from the ILO, might help in this sense. On the other hand, limitations can also be political in nature. This occurs, for example, when a trading partner is asked to ratify an ILO Convention or to repeal non-complying parts of its legislation.

Political limitations have proved to be best solved through dialogue, by creating safe spaces where officials from both sides can discuss issues openly. These spaces also give local officials the possibility to establish contacts with EU officials concerning labour commitments. Such connections may become helpful in the relationship between these local officials and their ministries of labour or trade, or higher-level bodies and entities.

Finally, an important role is played by the ILO, particularly through its standard-setting function. The comments of the ILO’s supervisory mechanism concerning the implementation of these standards were consistently referred to by

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<sup>111</sup> Convention No. 105 will enter into force in Japan one year after the instrument of ratification was deposited with the ILO.

EU officials, with one official stating that the position of the ILO constitutes the main guiding line for the EU, on account of its “belief in multilateralism” and in the substantial need for international actors to “cooperate and build on each other’s findings”. Therefore, a country’s membership in the ILO and its membership in a trade arrangement with the EU reinforce each other towards the implementation of international labour standards.

## ► 5.2. The US–Guatemala labour dispute

### 5.2.1. Chronology of the dispute

The Dominican Republic–Central America Free Trade Agreement (CAFTA–DR) was signed in 2004 and entered into force in 2006. It represents the first free trade agreement between the United States and a group of Central American economies: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic.

#### **Submission and review: 23 April 2008 to 29 July 2010**

The AFL–CIO and six Guatemalan unions filed a public submission<sup>112</sup> under CAFTA–DR, alleging that Guatemala had violated its labour commitments under Article 16.2.1(a).<sup>113</sup> After reviewing the submission, the USDOL issued a public report of review finding significant weaknesses in Guatemala’s enforcement of its labour laws,<sup>114</sup> followed by an extensive examination of Guatemala’s compliance with labour commitments under CAFTA–DR.

#### **Government consultations: 30 July 2010 to 8 August 2011**

The United States requested consultations under Article 16.6.1 on 30 July 2010,<sup>115</sup> which were held in Guatemala in September and December 2010. Pursuant

112 USDOL, “[Public Submission to the Office of Trade & Labor Affairs \(OTLA\) under Chapters 16 \(Labor\) and 20 \(Dispute Settlement\) of the Dominican Republic–Central America Free Trade Agreement \(DR–CAFTA\)](#)”, 2008.

113 CAFTA–DR, Article 16.2: Enforcement of Labor Laws, paragraph 1(a): “A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.”

114 USDOL, “[Public Report of Review of Office of Trade and Labor Affairs U.S. Submission 2008–01 \(Guatemala\)](#)”, 2009.

115 USDOL, “[20100730-Letter](#)”, 2010.

to Article 16.6.6, the United States then requested a meeting of the FTC, moving from consultations under Chapter 16 (Labor) to general dispute settlement procedures under Chapter 20 (Dispute Settlement).<sup>116</sup> The meeting took place on 7 June 2011 and the parties failed to agree on an enforcement plan. Therefore, the United States requested the establishment of an arbitration panel under Article 20.6.<sup>117</sup>

#### **Enforcement plan: 9 August 2011 to 17 September 2014**

The arbitration panel was established on 9 August 2011, but its proceedings were suspended as the parties signed an 18-point enforcement plan on 25 April 2013.<sup>118</sup> The concrete actions to be taken by Guatemala under each point were to be supported by the United States, upon request, by providing technical advice, sharing expertise and best practices, and assisting with outreach to international institutions.

#### **Arbitration panel: 18 September 2014 to 14 June 2017**

On 18 September 2014, panel proceedings resumed, as Guatemala had not met the terms of the Enforcement Plan 17 months after its signature. The final report of the arbitration panel was published on 14 June 2017.<sup>119</sup> In the final report, the panel recognized Guatemala's labour violations, but found that evidence provided by the United States did not reach the threshold required by Chapter 16 (Labor) to impose remedies. According to the final report, the United States proved that, at eight worksites and with respect to 74 workers, Guatemala had failed to effectively enforce its labour laws, but not that these instances constituted a course of inaction that was in a manner affecting trade.

#### **Follow-up: 15 June 2017-ongoing**

Following the final report, labour groups such as AFL-CIO and members of the United States Congress released statements arguing that the outcome of the US-Guatemala dispute proved the ineffectiveness of the language used in the "May 10th deal",<sup>120</sup> which laid out the basis for labour chapters in US trade agreements, building upon the language in CAFTA-DR. As such, they held that the labour chapter in the renewed NAFTA (now the USMCA) should not mirror the language used in CAFTA-DR (Claussen 2020).

116 USTR, "[Letter – FTC Request \(signed\) May 16 2011](#)", 2011.

117 USTR, "[U.S. Trade Representative Ron Kirk Announces Next Step in Labor Rights Enforcement Case against Guatemala](#)".

118 USTR, "[Mutually Agreed Enforcement Action Plan between the Government of the United States and the Government of Guatemala \("Enforcement Plan"\)](#)", 2013.

119 Organization of American States, "[Final Report of the Panel](#)", 2017.

120 USTR, "[Bipartisan Trade Deal](#)", 2007. This deal is informally known as the May 10th deal.

## 5.2.2. Interviews

### a. Overview of the United States approach to implementation

Interviews for the study supported the premise that the US approach extensively favours cooperation over sanctions in addressing issues of mutual interest: dispute settlement appears to represent the absolute last resort, as proven by the length of the US–Guatemala labour dispute, which lasted for six years (2008–14) before the United States opted for panel proceedings. These six years were entirely occupied by engagement in the form of cooperation and consultations, coordinated by the USDOL with support from the USTR. The United States thus adopts a whole-government approach to engagement on labour issues, with several agencies involved (for example, in the context of cooperation, see the beginning of [Chapter 4](#)).

According to one US official, the aim of the United States when engaging on labour issues in the trade space is to “elevate” those issues in such a way that attention can be obtained at more senior levels, including at the presidential level. Combining this type of attention (ability to *effectuate* changes) with the technical expertise of labour ministries (ability to *design* changes) would ideally guarantee meaningful progress on labour commitments. The United States progressively escalates diplomatic engagement across government levels through its technical assistance portfolio or work with multilateral institutions and organizations.

Labour provisions in US trade agreements have also evolved, with more attention and resources on one side, and more specific benchmarks on the other. The latter are exemplified by Annex 23-A to the USMCA and by the consistency plans for Viet Nam and Malaysia under the former Trans-Pacific Partnership,<sup>121</sup> to which the United States was initially a party (ILO 2019c). Both instances were directly influenced by the outcome of the US–Guatemala labour dispute. Another consequence, starting with the USMCA, lies in the change of wording of the trade agreement text: the presumption expressed in the wording is now that labour violations affect trade unless otherwise proved.<sup>122</sup>

Regarding multilateral coherence, US officials confirmed that, in the run-up to the US–Guatemala labour dispute, there were exchanges with the European Commission to ensure that the United States and the EU were identifying the same issues in Guatemala, given the high-profile nature of the dispute. There were also exchanges with the ILO, especially given that some of the issues at stake in the dispute had also been discussed within the ILO’s supervisory

<sup>121</sup> These consistency plans were not concluded due to the withdrawal of the United States as a signatory of the Trans-Pacific Partnership.

<sup>122</sup> USMCA, Article 23.3: Labor Rights, footnote 5: “For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”

mechanism, specifically the Committee on Freedom of Association (Gravel and Delpech 2013).<sup>123</sup> This suggests that, while different actors have different approaches to addressing labour issues, they share the same fundamental objective: to advance labour rights and reach the same understanding of issues.

## b. The dispute from the Guatemalan perspective

### Government-to-government engagement

The interview with a former Guatemalan official, in office during the dispute, reinforced the sense that the issues covered by the labour dispute can be traced back to three elements: i) a lack of funding for the Ministry of Labour; ii) a lack of institutional capacity; and iii) political instability.

The budget reserved for Guatemala's Ministry of Labour (and for labour inspections, in particular) was described by the former official as "very low" in the 2000s,<sup>124</sup> adding to the fact that labour inspectors were unable by law to impose fines (Ahmad 2021; Vega and Robert 2013). Given that labour issues in the country were regulatory in nature, projects held during that period (see [table 4.1](#)) were of limited effectiveness according to the official, who also described Guatemala as lacking "a proper development agenda inclusive of decent work". During the negotiations of CAFTA-DR, this led to Guatemalan officials failing to take note of the importance of the labour chapter, as well as of the opportunities and challenges that were to come with it. For this reason, the former official believed that engagement could have been approached differently on the part of the United States from the perspective of achieving meaningful changes for workers.

The first step could have consisted of an agreement on a development agenda, which could have preceded any trade negotiations. This would have allowed the Guatemalan Government to better understand the importance of decent work for sustainable development, and the role of labour inspections in achieving it. This gap contributed to the failure in implementing the Enforcement Plan, which the former official saw as doable in principle, but not without social dialogue and (financial) commitment on the part of the Guatemalan Government.

Furthermore, political instability remains a key challenge to Guatemala's labour compliance, reflected in frequent changes in the personnel of government agencies. As confirmed by both Guatemalan and USTR/USDOL officials, at the time of the dispute ministerial staff with technical competence would leave on

<sup>123</sup> See also: [Complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\), made by delegates to the 101st Session \(2012\) of the International Labour Conference under article 26 of the ILO Constitution.](#)

<sup>124</sup> The [US ILAB Findings on the Worst Forms of Child Labor](#) and the [USDOS Country Reports on Guatemala](#), dating back to 2000, contain annually updated information on resources allocated to the Guatemalan Ministry of Labour for labour inspections.

average every four years, following government changes. This would result in a loss of expertise and failure to properly assimilate lessons learned and good practices.

### **Stakeholder engagement**

The former Guatemalan official described social dialogue in Guatemala as marked by “deep scars”, notably decades of armed conflict which have undermined the role of trade unions, as well as by a general lack of trust, making it difficult for the social partners to productively sit at the same table and move forward, away from their historical positions.

Following the 2016 elections, the new government had been able to bring the social partners to the table in a context of complex social dialogue. In 2017, a new law was adopted, enabling labour inspectors to impose fines. As confirmed by US officials, the Guatemalan Government had engaged for that purpose with the social partners, as well as experts from the United States and the ILO, following the implementation of the technical cooperation project (2013–16) funded by the USDRL and administered by the ILO on “strengthening institutional capacity to protect fundamental rights at work” (see [table 4.1](#)). The new law represented an important step, given that the first attempt to adopt such a law in 2001 was subsequently blocked in 2004 by a decision of the Guatemalan Constitutional Court; by contrast, the law of 2017 remains in force. This movement then stopped with the following elections, when a government more resistant to labour reforms took office.

The former Guatemalan official spoke of a “lack of due diligence” on the part of both trading partners in terms of labour compliance at the negotiation stage. In particular, the role of the private sector and the functioning of social dialogue were “taken for granted” during negotiations. Given that social dialogue is key to achieving decent work outcomes, issues with the latter could have been addressed before negotiations, ideally as part of a development agenda for Guatemala. The former official argued that it is through this type of initiative, rather than through disputes, that meaningful change is achieved in countries with the type of political and economic history of Guatemala.

## **c. The dispute from the US perspective**

### **Government-to-government engagement**

From the beginning of a dispute, the United States engages with the trading partner country’s ministries of labour and trade. In the case of Guatemala, missions were organized between the two governments as well as with the social partners and local stakeholders.

These activities were coordinated by the USDOL, which is most likely to engage with the other party and prevent a dispute from escalating at the initial stages.

Once the responsibility is transferred to the USTR for enforcement through dispute settlement, the margin for dialogue and cooperation reduces.

For example, one US official noted that, between the start of proceedings and the delivery of the panel's final report, the USDOL still had a positive relationship with the Guatemalan Ministry of Labour. The official was even able to work with the Ministry directly in Guatemala for a few months before the panel's report was released, and to advise the Ministry on potential changes to the labour inspections system and other issues previously covered by the Enforcement Plan. Yet the relationship with the Ministry of Trade became more tense following the start of panel proceedings and remained so throughout.

Another US official compared the US–Guatemala relationship with the US–Mexico relationship under the respective trade agreements. In the relationship with Mexico, both parties were reported to feel a need for regular engagement – which did not exist with the timelines, structure and mandate that US officials had for Guatemala.

While only one USDOL official was temporarily stationed in Guatemala City, there are now five labour attachés permanently stationed in Mexico, and USTR representatives in Mexico City and in consulates. Furthermore, the level of engagement reached over a period of six years in the US–Guatemala labour dispute has already been replicated five times under the USMCA, through the RRLM (see [section 2.3](#)).

### **Stakeholder engagement**

During the US–Guatemala labour dispute, a twofold space existed for engagement of the social partners and civil society more broadly. The first space was created with the original submission that started the dispute: the social partners and broader civil society were asked to gather information to review the submission, particularly in the form of statements and depositions by workers, workers' representatives and other actors with first-hand experience of labour issues in Guatemala. The second space was created with the Enforcement Plan. Civil society and workers' organizations in Guatemala, as well as workers' representatives in the United States and internationally, were consulted to ensure that the provisions of the plan addressed the key concerns of Guatemalan workers, and were also involved in the monitoring and implementation of the plan.

The role of broader civil society, such as NGOs, is also of particular significance where issues are cross-cutting, such as labour-related violence in the case of Guatemala. Human rights organizations and others can bring a broader perspective on the issues at stake and help understand the far-reaching consequences of the particular incidents and allegations described in a submission.



The social partners in the United States maintain regular, direct contact with trade unions in Guatemala and other countries through entities like the Solidarity Center, an NGO based in the United States and aligned with AFL-CIO that conducts projects in 70 countries. Interviews confirmed that it is through this network that the US labour movement is able to pull out information relevant to disputes when requested by US agencies.

Interviews conducted for this report also emphasized that dialogue between US agencies and the social partners largely takes place in an informal manner: outside of the formal structures detailed in [section 3.2](#), informal engagement happens on an almost daily basis, having grown even more robust and regular with recent administrations.

#### d. Outcomes of the dispute

Guatemala still has projects to improve labour inspections, protect migrant workers and combat child labour (also through US grants), and marked struggles with freedom of association and social dialogue persist, as underlined by recurrent comments of the ILO's supervisory mechanism in this respect.<sup>125</sup> Interviews suggested that the ILO could play an important role in the post-dispute phase. Especially after the COVID-19 pandemic, the ILO could enhance discussions on this agenda, including through building trust among the social partners and activating decent work country programmes.

Alongside development cooperation, other cooperative activities under the trade agreement may be carried out bilaterally, including in partnership with the ILO, when objectives are aligned. According to one US official, formal mechanisms for bilateral cooperation in US trade agreements may be utilized more frequently and uniformly than they currently are to exchange best practices and discuss regional issues that might be similar across trading partners (as in Central American countries, for example). This is especially true given that the lists of cooperative activities contained in US agreements are not exhaustive and could be expanded to include additional areas of joint interest (see [section 2.2](#)).

In this sense, interviews confirmed the need for an approach to cooperation focused on the coherence of priorities among multiple trading partners. This also includes support from the ILO, which already exists for Guatemala and includes the comments of the ILO's supervisory mechanism<sup>126</sup> and the

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<sup>125</sup> See [Committee on the Application of Standards, Fourteenth setting, 6 June 2022](#) and [Twentieth setting, 10 June 2022](#).

<sup>126</sup> See [Committee on the Application of Standards, Fourteenth setting](#) and [Twentieth setting](#).

ongoing ILO technical cooperation programme.<sup>127</sup> A better understanding of the coherence between the ILO instruments and labour provisions in trade agreements, and improved coordination of country-level activities, could help to improve the synergies and relevance of development cooperation among the different trading partners.<sup>128</sup>

While cooperation remains at the centre of labour issues in trade agreements, the outcome of the US–Guatemala dispute determined, in the words of one US official, “the need for labour justice at a more rapid pace, for the sake of workers’ safety as well as of the quality of evidence”. An expression of this need can be found in the USMCA’s RRLM (see [section 2.3](#)), with its significantly shorter timeline as well as its reversal of the burden of proof: under the RRLM, a “denial of rights” is assumed to exist, and it is up to the defending party to prove that it does not exist. The RRLM was designed for the specific US–Mexico trade relationship, marked by high proximity and frequent engagement. As such, it should not be taken as a model easily transferable to other trade arrangements.

Yet interviews highlighted the persistence of certain changes to US trade policy. For example, when US trade agreements started incorporating the “adopt and maintain standard” policy as part of the previously discussed “May 10th deal”, the country’s Government and stakeholders were described as aware that such a standard would become the norm, with specific political forces refusing to vote for agreements lacking this standard.



<sup>127</sup> See [“Annual report on the implementation of the ILO technical cooperation programme “Strengthening the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards”](#)”.

<sup>128</sup> See also: ILO, [Studies on Growth with Equity: Assessment of Labour Provisions in Trade and Investment Arrangements](#), 2016, pp. 178–182.

## ► 5.3. The Canada–Colombia labour dispute

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### 5.3.1. Chronology of the dispute

The Canada–Colombia Free Trade Agreement was signed in 2008 and entered into force in 2011. It belongs to an older generation of Canadian trade agreements that include labour provisions both in the core text of the agreement, in the form of a short labour chapter, and in a parallel agreement known as the Labour Cooperation Agreement (LCA) (ILO 2016; 2019c).

#### **Public communication and review: 20 May 2016 to 21 February 2017**

On 20 May 2016, a public communication<sup>129</sup> was received by the Canadian NAO. The communication included information on labour violations in two companies, an extractive company and a sugar-producing and processing company. These violations were attributed to inadequate legal protection for fundamental labour rights and failure to effectively enforce existing labour laws. On 15 July 2016, the communication was accepted for review by the Canadian NAO. During the review process, NAO officials visited Colombia on two occasions to assess the extent to which the allegations contained in the public communication constituted violations of the LCA. In January 2017, the Canadian NAO published a report recognizing violations of the LCA and providing a list of recommendations, divided into four areas, to the Colombian Government.<sup>130</sup>

#### **Ministerial consultations: 22 February 2017 to 22 May 2018**

On 22 February 2017, the Canadian Ministry of Labour sent a communication to its Colombian counterpart expressing concerns related to the findings of the report and requesting ministerial consultations pursuant to Article 12 of the LCA, with the goal of developing an Action Plan. In the context of these ministerial consultations, Canadian and Colombian officials from the respective ministries of labour held three online meetings (13 March 2017, 30 June 2017 and 18 August 2017) and three in-person meetings (16 July 2017 in Bogotá, 26–27 October 2017 in Washington, DC and 21–22 December 2017 in Ottawa).

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129 Government of Canada, “[Public communication CAN 2016–1 \(Colombia\)](#)”.

130 Government of Canada, “[Review of public communication CAN 2016–1](#)”.

**Action Plan: 23 May 2018–ongoing**

On 23 May 2018, the Canadian and Colombian Governments signed an Action Plan to be implemented within three years (2018–21). Through the Action Plan, the Colombian Government committed to “consolidating its efforts on labour matters” with reference to the four general recommendations, and the Canadian Government committed to acting as a “strategic partner”.<sup>131</sup> As such, it is important to note that, in this case, the stage of formal dispute settlement has not been reached.

**5.3.2. Interviews****a. Overview of the Canadian approach to implementation**

Interviews conducted for the study illustrated the Canadian approach as relying on the “strength” of its trade agreements, measured in terms of enforceability by means of sanctions.

While both the EU and the United States hold significant sway in the negotiation of trade agreements due to the size of their economies and markets, Canada holds maximum leverage after the agreement has entered into force, as it does not possess the same market power as the EU and the United States to generate pressure during negotiations. Once negotiations conclude, the resulting agreement ideally contains sanctions, which then provide Canada with additional leverage. A Canadian official noted that Canada walked away from “many negotiations” as a result of a potential trading partner country not accepting labour provisions.

Accordingly, the goal of labour provisions in Canada’s trade agreements lies in going beyond the multilateral commitments set forth by the ILO. As the ILO sets a minimum floor of obligations for its Member States, “labour provisions should add to ILO obligations rather than repeat them”, in the words of a Canadian official.

At the same time, Canada recognizes that labour provisions, especially when accompanied by sanctions, “ask a lot out of countries”, low-to-middle-income ones in particular. These countries take a significant risk in terms of potential disputes when entering agreements with a significant number of binding labour commitments. Therefore, the Canadian approach strives to offset these countries’ risk by offering support and cooperation to achieve agreed labour commitments (for more information, see [Chapter 4](#)).

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<sup>131</sup> Government of Canada, Action Plan.

## b. The dispute from the Colombian perspective

Interviews emphasized that all points under the Action Plan were elaborated in a concerted manner by the two Governments. According to one Colombian official, this was the reason behind Colombia's full commitment to the Action Plan, without reservations.

In 2022, two Canadian cooperation projects were active in Colombia (see [table 4.2](#)). The first project, implemented by the ILO, aimed to promote workplace compliance and strengthen the institutional capacity of the social partners, following up on the implementation of the Action Plan.<sup>132</sup> The second project consisted of a study produced by the University of Ottawa under point 1.5 of the Action Plan, analysing challenges related to the effective exercise of the rights to freedom of association and collective bargaining in Colombia.<sup>133</sup>

Colombia delivered a report on the progress in the implementation of the Action Plan in March 2021. The report indicates progress in terms of advancing inspections, reducing subcontracting, and other aspects of the plan. Yet other aspects of the plan, including point 1.5, are still delayed.

The Colombian official noted that, while Colombia complies with each point of the Action Plan, some actions will require extended time, as efforts have been hampered by the COVID-19 pandemic, both in Colombia and in Canada. Extensions will be agreed with the Canadian Government in the course of upcoming conversations between the points of contact, which constitute the normal avenue for dialogue between the Colombian and Canadian Governments.

## c. The dispute from the Canadian perspective

### Government-to-government engagement

At the beginning of the dispute, the Canadian and Colombian Governments engaged in a continuous exchange of information, which contributed to the latter perceiving that its concerns with regard to difficulties in labour enforcement and legislative change were taken into account by the former. This translated into an Action Plan where the Colombian Government answered each recommendation made in the original report by the Canadian Government, point by point. Negotiations pertaining to the content of the Action Plan reached the presidential office in Colombia, as Canada was requesting substantial changes in domestic labour laws as well as in inspection and enforcement practices.

<sup>132</sup> ILO, "[Institutional Strengthening for Promoting Compliance with National Legislation in Colombia](#)".

<sup>133</sup> Yves Le Bouthillier, Mario Torres and Nelson Arturo Ovalle Díaz, [Building Constructive and Sound Labour Relations in Colombia – A contribution towards the improvement of labour practices in Colombia](#), 2022, University of Ottawa.

One of the reasons behind Colombia's full commitment to the Action Plan lies in the concerted decision of the Canadian Government and of its Ministry of Labour to allocate new funds for technical cooperation projects in the context of the Action Plan, as well as to redirect a significant portion of internal funds within the budget of the Ministry of Labour to cooperation. According to a Canadian official, for a number of years up to 2022, almost half of the funds available to the Canadian Ministry of Labour for cooperation under its trade agreements were allocated to Colombia. Between 2011 and 2022, 1,998,104 Canadian dollars were allocated to cooperation under the Canada–Colombia Free Trade Agreement (see [table 4.2](#)).

The type of cooperation involved in the Action Plan was different from the programmes usually implemented by the Canadian Ministry of Labour as it involved a rapid shift in focus and in resource allocation. Interviews maintained that this would be standard operating practice for Canada in future disputes.

Finally, while the dialogue between the Canadian and Colombian Governments became more formal as a result of the dispute, it remains regular, with Colombia producing reports and communications to Canada. Furthermore, the social partners and civil society more broadly in Canada are kept informed of developments in an informal yet frequent manner.

### **Stakeholder engagement**

In Canada, a formal procedure exists for dialogue with stakeholders prior to trade negotiations. During public consultations (see [section 3.3.1](#)), the Canadian Government issues a notice for comments from broader civil society and the social partners. The current Canadian Government was characterized as taking a progressive stance on labour issues, as well as scaling up informal engagement with the social partners. For example, while the previous government relied on comments on trade negotiations submitted electronically by the social partners, the present government has initiated more personal communications, frequently sharing information with trade unions and inviting them to the negotiating table.

This evolution is also evidenced by the fact that, even though the original public communication under the Canada–Colombia Free Trade Agreement only concerned labour violations by two companies in Colombia, the Canadian Government accepted the complaint, and extended the investigation to cover systemic violations, reflecting the broader situation of labour issues in Colombia.

The social partners also played a crucial role in the creation of the Action Plan by providing information through the original public communication and based on their years-long experience of field work. This enabled the Canadian Government to share almost every communication received from the Colombian Government with the social partners. Interviews with the Canadian social partners, however, highlighted that the assessment of these documents,

as well as further communication with Colombian officials, is complex, notably due to language barriers.

During missions to trading partner countries, Canadian officials engage with the local social partners, NGOs, experts and academics, both in formal meetings and informally. Priority is given to engaging with actors with knowledge on labour matters, regardless of whether they have been invited to formal meetings or not.

Under the Canada–Colombia Free Trade Agreement, during the review process of the public communication as well as during ministerial consultations, the Canadian Government extensively consulted with Colombian trade unions in an informal manner. This was made possible by the collaboration of Canadian trade unions, and it also allowed the Canadian Government to persuade Colombian trade unions to accept the Action Plan, to the point where the Canadian Labour Congress (the submitter of the original public communication) and Colombian trade unions issued a joint statement approving the Action Plan.

Three interviewees noted that the Canadian social partners flew to Colombia in February 2020 to meet with stakeholders and officials from the Colombian Ministry of Labour, and were scheduled to return in November 2020, although this was cancelled due to the COVID-19 pandemic. They also reported that, in August 2021, a virtual session was organized to inform a Colombian audience of how the Canadian labour system (Ministry of Labour, labour courts, trade union registration and so on) works and to discuss whether some of its aspects could be transferred to the Colombian system. Officials and stakeholders from both countries brought their expertise to the session.<sup>134</sup>

#### **d. Outcomes of the dispute**

According to one Colombian official, Colombia now recognizes as an “important added value” the application of criteria of representativeness for trade union registration, which Canada applies, as well as the creation of a quasi-judicial body to decide on trade union registration and receive complaints on unfair labour practices.

Key lessons learned from engaging with Canada have been identified in the value of “joint work, cooperation and social dialogue”, and in the importance that “companies investing in countries like Colombia continue observing the same standards that they observe in their home country”, with reference to international labour standards.

According to one Canadian official, the dispute has so far confirmed two advantages of stakeholder engagement. Firstly, that stakeholders represent “an invaluable source of underground expertise”, which greatly helps governments

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<sup>134</sup> Unfortunately, no electronic record of these sessions could be located.

in their tasks. Secondly, that when stakeholders are invited to the table during the negotiation or implementation of a trade agreement, governments obtain not only their knowledge and contributions but also their buy-in, which limits “unrealistic demands”. To reap these benefits, governments should seek synergies with stakeholders, involving them in the actual resolution of issues regardless of the existence of formal mechanisms.

From Canada’s perspective, the Canada–Colombia labour dispute should be seen by trading partner countries as proof that, where there is political will to address labour issues, Canada will always favour the cooperative way, including by providing resources to labour ministries of potentially violating trading partners.

Yet trade agreements represent just one avenue for international pressure to be applied with respect to labour rights. In the case of Colombia, interviewees suggested that the Inter-American Conference of Ministers of Labour might constitute another potential avenue, with its growing role in linking trade and labour policy and promoting support of international labour standards across the Americas. The ILO is involved in the Conference through its office in Lima as well as through the participation of its Director-General.<sup>135</sup> Additional avenues were also identified in multilateral platforms, such as the ILO or the OECD,<sup>136</sup> which provide stakeholders with the possibility of lodging complaints and labour officials with more leverage to pressure central governments on labour issues. Therefore, governments on both sides of a potential dispute could look to multilateral platforms and institutions for support, including through the ILO’s Decent Work Programmes.<sup>137</sup>

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135 ILO, “[ILO warns of a recovery with high unemployment and worrying informality in Latin America and the Caribbean](#)”, 24 September 2021. This press release gives more information on the ILO’s involvement in the 21st Inter-American Conference of Ministers of Labour.

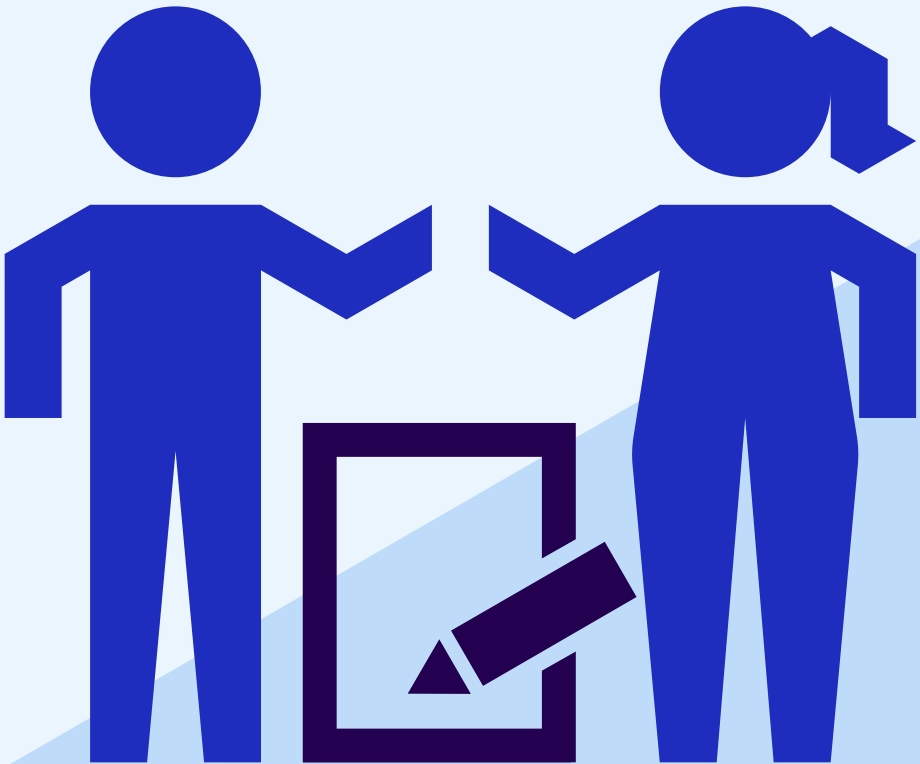
136 Joseph Wilde-Ramsing, “[SOMO assists Colombian coal miners and unions with OECD Guidelines complaint to defend workers’ rights](#)”, SOMO, 28 August 2016. The article is an example of a complaint under the OECD concerning alleged abuses of workers’ rights in Colombia.

137 ILO, “[Decent Work Country Programmes \(DWCPs\)](#)”.



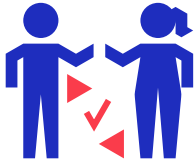


6.



# Lessons learned and concluding remarks

**W**hat emerges from this study is that stakeholders, including governments and the social partners, have used trade agreements as a tool to promote labour objectives and address deficiencies in labour rights and working conditions. This is done through various means, such as dialogue, cooperation, submission of complaints on alleged labour violations and dispute settlement. More importantly, stakeholders have drawn lessons from experiences of disputes, which have helped to shape the design and implementation of labour provisions going forward, including the modalities of engagement within and between stakeholders. The lessons learned can be grouped into three areas.



## ▶ 6.1. Streamlining monitoring and dispute settlement through time-bound procedural guidelines

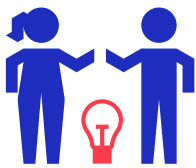
### **a. In the case of the EU, the submission process has been modified in an effort to increase stakeholder access and government accountability**

In terms of submission procedures, there is increasing similarity in the way submissions are received and reviewed by Canada, the EU and the United States. The EU represents an interesting case in this sense. In the past, complaints under TSD chapters were submitted either to the European Commission by the DAGs or through DAG-to-DAG joint dialogue. In November 2020, the EU established the SEP as an online mechanism allowing a broader group of individuals to directly submit complaints on violations of labour obligations (as well as environmental and market access obligations). The SEP provides guidance to stakeholders interested in submitting a complaint, with the goal of boosting the public's willingness to prepare and submit complaints relating to labour violations. Furthermore, the SEP seeks to establish specific criteria for submissions and provide the European Commission with a more solid basis for enforcement from the outset, with the goal of ensuring the timeliness of the review process. Presently, one complaint on labour violations has been submitted through the SEP.

### **b. In the case of the United States and Canada, the complaint mechanism and the timeline for disputes have been revised under the USMCA**

In the case of US and Canada trade agreements, the USMCA (2020) is of particular interest as it shows several procedural developments that can be considered as direct evolutions from the timeline and outcome of the US–Guatemala labour dispute. One development in particular is the RRLM (see [sections 2.3](#) and [5.1.2.d](#)). Additionally, while OTLA has served as the formal point for receipt and review of complaints on labour violations (similarly to the Canadian NAO), the USMCA has introduced the Interagency Labor Committee, tasked with the receipt and review of petitions and information pursuant to the

agreement's labour chapter and to the RRLM.<sup>138</sup> Finally, the USMCA also shows developments – including substantial and procedural ones – at the text level, stemming from the outcome of the US–Guatemala dispute. The expression “in a manner affecting trade” has been clarified in Article 23.5.1 footnote 11 of the USMCA, with the addition of language which significantly broadens the strict interpretation of the term previously given by the panel in the US–Guatemala dispute. Furthermore, Article 23.5.1 footnote 12 establishes that “a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise”.



## ▶ 6.2. Creating more opportunities for meaningful social dialogue

### a. The social dialogue model influences engagement both within and between countries

Differences in the frequency and modalities of dialogue under a trade agreement can be traced back to differences in the model of social dialogue adopted (implicitly or explicitly) by each country. Such models are historically governed by economic, cultural, social and political influences. In countries with a relatively short history of meaningful social dialogue, and/or where resource ownership is polarized, relations between employers' and workers' representatives, and between them and the government, tend to be more tense than in countries where social dialogue has a longer institutional history. These differences may impact the effectiveness of the institutional mechanisms for stakeholder engagement introduced under trade agreements.

Desk research and interviews suggest that there are both challenges and benefits to exposing stakeholders to a different model of social dialogue. In the short term, the effectiveness of bodies for monitoring and cooperation might be reduced, including from the perspective of preventing labour disputes. Issues of representation and difficulties in transferring information between government and the social partners might also be observed. In the long term,

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<sup>138</sup> USTR, “[Interagency Labor Committee for Monitoring and Enforcement Procedural Guidelines for Petitions Pursuant to the USMCA](#)”, 2020. The Committee operates in accordance with separate procedural guidelines, set out in this notice. Interestingly, stakeholders were formally asked to provide comments on the draft guidelines.

however, the social partners and civil society more broadly might appreciate the introduction of an institutionalized space for conversations, particularly where such opportunities are otherwise absent or inadequate at the domestic level.

### **b. Dialogue structures are pivotal to the promotion of and compliance with labour commitments**

European Union trade agreements show a high level of institutionalized engagement between government officials on one side, and the social partners and broader civil society on the other. This is evident in the frequent and regular meetings of the DAGs, CSF and CTSD, and in the regular publication of records of these meetings. While informal dialogue still takes place outside of these formal structures, it appears that the focus remains on the latter, especially in terms of transparency of information exchanges and relevant outcomes.

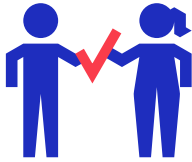
By contrast, while Canada and the United States also rely on formal structures for social dialogue under trade agreements, these structures (with the exception of public consultations) appear to be activated rather infrequently, with less transparency in terms of record-keeping. Yet the submission records and respective case studies underscored high levels of informal dialogue on a regular basis between government officials and the social partners, on all matters of compliance with labour commitments. This aspect does not emerge as clearly from the written records, and this should be taken into consideration when defining the centrality of both formal and informal structures for social dialogue.

### **c. More opportunities for early engagement with stakeholders are possible as well as desirable**

The first space for social dialogue exists even before the text of labour provisions is finalized, during negotiations of trade agreements. Workers' and employers' representatives in Canada, the EU and the United States appear to be engaged at the negotiation stage. Although challenges still exist, such engagement enables the social partners and broader civil society to bring their technical expertise to the table. In turn, this helps governments to identify potential challenges and areas for cooperation, as well as to obtain stakeholders' buy-in to the labour commitments and institutional mechanisms that will be included in the trade agreement.

However, the interviews highlight that already engaging in social dialogue at the negotiation stage might not constitute general practice in some trading partner countries. In the case of the Republic of Korea, for example, the social partners reported that they were not involved during negotiations, and they identified areas where their expertise would have contributed to a better understanding of the labour commitments that were requested from the Government of the Republic of Korea. This seems to suggest that

more opportunities for early engagement with stakeholders are possible as well as desirable.



## ▶ 6.3. Recognizing the significance of shared commitments among trading partners

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### a. Cooperation remains a primary avenue towards compliance with labour commitments

Evidence from desk research and the three case studies emphasizes the importance of shared commitments, on the part of the respective trading partners, to provide political and financial resources to address non-compliance with labour commitments. For example, the US–Guatemala labour dispute, with its six years of government-to-government dialogue and US-backed cooperation activities, reinforced the belief among many US officials and stakeholders that, in the absence of political will on the part of the defending government, financial resources should be curtailed and the move to an enforcement posture should be taken sooner. In the case of the EU–Republic of Korea labour dispute, the EU indeed moved forward with the dispute even in the face of actions by the defending government towards compliance (domestic motions for the ratification of ILO fundamental Conventions), as it considered the outcome of such actions to be politically uncertain.

Attention to the political will of the defending party does not contradict addressing non-compliance with labour commitments through dialogue and cooperation, without resorting to dispute settlement. Dispute settlement procedures have been consistently recognized during research and characterized across interviews as a tool of last resort, to be applied only when dialogue and cooperation fail to deliver improvements towards compliance. Coherently, consultative and cooperative mechanisms for engagement and support (both technical and financial) are important, as a means of de-escalating disputes and addressing labour challenges. These mechanisms may be activated both during dispute settlement, as in the case of the Canada–Colombia Action Plan, and after the dispute has concluded, as in the case of the US-funded cooperation projects that are still ongoing in Guatemala.

### **b. More coherence in cooperation could better target specific gaps**

Development cooperation plays a key role, especially in areas where shortcomings exist at the domestic level in terms of labour rights and working conditions. Development cooperation projects may be implemented to address specific challenges identified by a submission, through government-to-government dialogue under monitoring mechanisms, or earlier at the negotiation stage (such as in Canada and US trade agreements). In EU trade agreements, cooperation projects are similarly established to support the implementation of international labour standards, with special attention to the ratification of ILO fundamental Conventions.

The current situation suggests that there is a need to strengthen coherence among the many activities that take place in the context of labour provisions in trade agreements. Frequently, cooperation projects are conducted with the assistance of the ILO, and the coordination of development cooperation across donor countries could improve effectiveness as well as accountability on the part of the recipient country (ILO 2016). Furthermore, as proven by regular references found in documents pertaining to the US–Guatemala and EU–Republic of Korea labour disputes, comments from the ILO’s supervisory mechanism are used to identify gaps in labour rights, which cooperation under trade agreements could contribute to address. Indeed, the ILO has a unique position as an authoritative third party on international labour standards<sup>139</sup> due to its capacity to bring together tripartite constituents to engage in social dialogue.

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<sup>139</sup> See, for example, ILO (2022), section E.







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