

# Human rights and governance provisions in OECD country trade agreements with developing countries

*Iffat Idris*  
*University of Birmingham*  
*26 April 2017*

## Question

*Succinctly map and categorise the types of governance and human rights provisions in OECD country trade agreements (including preferential agreements) with developing countries, noting whether they are voluntary or conditional, and – if relevant - how they are monitored and enforced.*

## Contents

1. Overview
2. United States
3. Canada
4. Chile
5. Other bilateral trade agreements
6. Further information
7. References

*The K4D helpdesk service provides brief summaries of current research, evidence, and lessons learned. Helpdesk reports are not rigorous or systematic reviews; they are intended to provide an introduction to the most important evidence related to a research question. They draw on a rapid desk-based review of published literature and consultation with subject specialists.*

*Helpdesk reports are commissioned by the UK Department for International Development and other Government departments, but the views and opinions expressed do not necessarily reflect those of DFID, the UK Government, K4D or any other contributing organisation. For further information, please contact [helpdesk@k4d.info](mailto:helpdesk@k4d.info).*

- Formatted: Complex Script Font: Italic
- Formatted: Justified
- Formatted: Font: Italic, Complex Script Font: Italic
- Formatted: Complex Script Font: Italic
- Formatted: Font: Italic, Complex Script Font: Italic
- Formatted: Complex Script Font: Italic
- Formatted: Font: Italic, Complex Script Font: Italic
- Formatted: Justified
- Formatted: Complex Script Font: Italic
- Formatted: Justified
- Formatted: Font: Italic, Complex Script Font: Italic
- Formatted: Font: 14 pt, Bold, Complex Script Font: Not Bold
- Formatted: Justified

- Formatted: Complex Script Font: Italic
- Formatted: Font: Italic, Font color: Text 1, Complex Script Font: Italic
- Formatted: Complex Script Font: Italic
- Formatted: Font: Italic, Font color: Text 1, Complex Script Font: Italic

## 1. Overview

Trade agreements increasingly feature governance and human rights provisions. Countries taking the lead in this are the United States and Canada (the EU was not covered in this review). However, they tend to be selective in their provisions, focusing in particular on labour rights, transparency and anti-corruption, as well as public participation and intellectual property rights. Labour rights provisions in trade agreements are progressively moving from hortatory to mandatory, but sanctions and enforcement remain weak. Dispute resolution mechanisms are rarely triggered, and even in cases where economic sanctions could be applied this is not done: signing parties generally prefer to engage in dialogue to resolve labour disputes (ILO, 2016). Other governance provisions in trade agreements are usually less binding.

Formatted: Complex Script Font: 11 pt

Formatted: Justified

Time constraints meant it was not possible to conduct the primary research (analysis of individual country trade agreements) ideally required to respond to this query. Instead, the review drew on available literature on governance and human rights provisions in trade agreements. Much of the literature is on EU trade agreements; the review was able to find considerable material on the US, and some on Canada and Chile, but there was negligible analysis of these issues in the context of other bilateral agreements.

Key findings are as follows:

- United States – is a leader in promoting labour rights, transparency, due process and anti-corruption in trade agreements. Provisions have become more robust with each new ‘generation’ of trade agreements and anti-corruption measures are now considered to be best practice. As well as including capacity building to strengthen compliance, since 2009 the US has been more active in monitoring and enforcement. However, it has steered clear of promoting universal human rights in its trade agreements.
- Canada – has generally followed the US in progressively strengthening labour provisions in its trade agreements, as well as embedding transparency and anti-corruption measures. Labour rights chapters are legally binding and failure to comply could lead to fines, but others, e.g. for public participation, are weaker. Like the US, Canada has preferred to focus on specific rights rather than promoting universal human rights.
- Chile – differs from the US and Canada in not having a discernible pattern or trend with regard to labour rights provisions in its trade agreements. The specific provisions in each treaty depend on negotiations with the concerned partner. Overall, Chile has adopted cooperation as the main approach: its trading agreements tend to have ‘soft obligations’.
- Other bilateral trading agreements – A brief review of select countries’ trading agreements (notably New Zealand, Australia and Japan) revealed a general lack of stress on governance/human rights provisions. Labour rights tend to be the most commonly found.

Formatted: Justified

The literature clearly points to a growing trend to include governance/rights provisions in trade agreements. Nearly half of trade agreements with labour provisions date since 2008, and over 80 percent of agreements entering into force since 2013 include them (ILO, 2016: 22). Similarly, over 40 percent of trade agreements concluded since the millennium have incorporated anti-corruption and anti-bribery commitments not included in the WTO regime (Jenkins, 2017: 2).

Formatted: Complex Script Font: 11 pt

Formatted: Justified

Nonetheless, there is considerable scope to widen provisions and to strengthen enforcement. There were no references to gender in the literature.

## 2. United States

The United States currently has free trade agreements (FTAs) in force in twenty countries, eleven of which are in Latin America (Dewan & Ronconi, 2014: 3). The US does use the leverage of its huge market to push other countries to carry out governance improvements and strengthen human rights – but it promotes only *some* rights in its trade agreements (Aaronson, 2011).

### Labour rights

Labour has been a major focus of US efforts to strengthen rights through its trade agreements, motivated in large part by US labour unions and their allies in Congress (Aaronson, 2011). The US has FTAs with labour rights provisions with 19 countries (Aaronson, 2017: 3). Trade and labour rights were first linked in US policy in the Generalised System of Preferences Act and then in the 1988 Omnibus Trade and Competitiveness Act authorising US participation in the Uruguay Round of multilateral trade talks, which included workers' rights (Dewan & Roncini, 2014). Following these, labour provisions in US trade agreements evolved in four stages:

- a) Labour rights provisions as side agreement – this was the pattern seen in the North American Free Trade Agreement (NAFTA) between the US, Canada and Mexico. Labour was not included in the main agreement, but in a subsequent complementary accord, the North American Agreement on Labour Cooperation (NAALC). The NAALC makes no reference to international labour standards and establishes no minimum labour standards. It simply calls on each party to *ensure that its labour laws and regulations provide for high labour standards* (Dewan & Roncini, 2014: 4). With regard to enforcement, only a single provision<sup>1</sup> of the NAALC could be the subject of dispute settlement; moreover, dispute settlement processes and sanctions for NAALC violations were far weaker than those for NAFTA.<sup>2</sup>
- b) Labour rights provisions as chapter in trade agreement – this was seen in the US-Chile FTA which came into force in 2004. It included a 'robust labour chapter', subscribed to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, called on each party to *strive to ensure* such labour principles were recognised and protected by its domestic law, and stipulated penalties for violation of labour regulations in the agreement (fines to be paid into a fund dedicated to remedying the alleged violation). Note that dispute settlement provisions applied to the entire labour chapter. The US-Jordan FTA had similar provisions, while the Dominican Republic-Central America FTA (CAFTA-DR) signed in 2004 went further by emphasising capacity building so as to enhance compliance with labour laws.
- c) 'Adopt, maintain and enforce' labour standards – bipartisan Congressional agreement on 10 May 2007 to strengthen social provisions in future trade agreements ushered in the next phase, as seen in US FTAs with Peru, Colombia, Panama and South Korea. Parties were now expected to 'adopt and maintain' in their laws and practices the fundamental labour rights as stated in the ILO Declaration: 'workers must have the right to organise, to

---

<sup>1</sup> The obligation to effectively enforce parties' own occupational safety and health, child labour and minimum wage technical labour standards.

<sup>2</sup> For example, a violation of the NAALC could generally only be remedied through the imposition of an annual monetary assessment (a fine) subject to a cap, whereas violations of NAFTA could be subject to broad "suspension of concessions" (imposition of tariffs on the violating party's exports) until the violating party came into compliance (USTR, 2015a: 51).

Formatted: Justified

Formatted: Complex Script Font: Italic

Formatted: Complex Script Font: Italic

Formatted: Complex Script Font: Italic

Formatted: Space Before: 0 pt

Formatted: Font: 10 pt

Formatted: Font: 10 pt

bargain collectively, to be free from forced labour and child labour and to be free from discrimination in employment' (USTR, 2015a: 51). Failure to implement these fundamental rights would mean the country could be held accountable through dispute settlement processes set out in the agreement.

- d) Labour action plan – seen in the US-Colombia FTA (further revised under the Obama Administration) which came into force in 2012, labour provisions were again put in a side accord rather than embedded in the agreement. However, as well as stipulating measures to be taken by the Colombian government to significantly improve labour rights, the Labour Action Plan included target dates for these. 'This was the first time US Congressional approval of the agreement and its maintenance were contingent on achieving specific benchmarks' (Dewan & Roncini, 2014: 8).

Labour provisions in the current (fourth generation) US free trade agreements can be summed up as follows (ILO, 2016: 50-51):

- 1998 ILO Declaration (obligation to ensure that such labour principles and internationally recognized labour rights are protected in domestic law);
- Effective enforcement of labour laws (excluding non-discrimination);
- Non-derogation clause prohibiting derogation from domestic laws in order to encourage trade and investment;
- Internationally recognised labour rights and acceptable work conditions (minimum wages, hours, and occupational safety and health); and
- Procedural guarantees (access to impartial and independent tribunals; fair, equitable and transparent proceedings; remedies to ensure enforcement).

The Trans-Pacific Partnership (TPP) Agreement was negotiated over seven years by the Obama administration and partner countries<sup>3</sup>, but dropped by the incoming Trump administration. The TPP went even further in promoting labour rights with, for example, provisions to eliminate forced labour in partner countries, discourage import of goods produced by forced/child labour from other countries (even non-TPP), extend labour protection to export processing zones, and ensure effective remedies for labour law violations (USTR, 2015b).

In 2009 the Obama administration signalled that it would more proactively monitor labour violations under FTAs and, if these were not remedied, would bring the issue to a trade dispute. Aaronson (2011: 442) asserts that this new policy 'elevated labour rights'. Bartels (2014: 14) notes that, since the introduction of provisions to 'adopt, maintain and enforce' labour standards, trade agreements 'have generated a number of formal complaints leading in some cases to improvements in labour conditions'. Dewan and Roncini (2014) assessed the impact of labour provisions in US FTAs with Latin American and Caribbean countries. Overall they found that trade agreements promoted better enforcement of existing labour laws with, for example, increased labour inspections. But this effect was not seen with NAFTA which, as noted above, had the weakest labour rights provisions. Dewan and Roncini conclude that the kinds of provisions included in trade agreements matter: 'Robust provisions can provide the appropriate incentives, oversight and capacity building assistance to garner the necessary political will and bolster a country's ability to effectively enforce its labour laws' (2014: 17).

<sup>3</sup> Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, the United States and Vietnam.

Formatted: Complex Script Font: +Body CS (Arial), 11 pt

Formatted: Justified

Formatted: Font: (Default) +Body (Arial), Complex Script Font: +Body CS (Arial)

Formatted: Complex Script Font: +Body CS (Arial), 11 pt

Formatted: Font: (Default) +Body (Arial), Complex Script Font: +Body CS (Arial)

Formatted: Complex Script Font: +Body CS (Arial), 11 pt

Formatted: Complex Script Font: +Body CS (Arial), 11 pt

Formatted: Font: (Default) +Body (Arial), Complex Script Font: +Body CS (Arial)

Formatted: Complex Script Font: +Body CS (Arial), 11 pt

Formatted: Font: (Default) +Body (Arial), Complex Script Font: +Body CS (Arial)

Formatted: Complex Script Font: +Body CS (Arial), 11 pt

Formatted: Font: (Default) +Body (Arial), Complex Script Font: +Body CS (Arial)

Formatted: Justified

Formatted: Justified

Formatted: Complex Script Font: +Body CS (Arial), 11 pt

Formatted: Font: (Default) +Body (Arial), Complex Script Font: +Body CS (Arial)

## ▲ Transparency, due process and anti-corruption ▲

The US has long promoted transparency and due process in trade agreements, on the basis that 'transparency is the starting point for ensuring the efficiency, and ultimately the stability of a rules-based environment for goods crossing the border' (Aaronson, 2011: 443). It is also driven by concerns to level the playing field for US firms operating in markets with significant bribery risks yet subject to the Foreign Corrupt Practices Act (FCPA) (Jenkins, 2017: 7). The US has pioneered the approach of embedding transparency and anti-corruption measures into its trade agreements (Jenkins, 2017: 1). Jenkins comments that this 'indicates that the fight against corruption is considered by the US to be an important means of strengthening the trade policy transparency agenda' (2017: 6).

Provisions for transparency and due process are embedded in the transparency, anti-corruption and regulatory processes sections of the 2002 Trade Promotion Act (TPA). All US preferential trade agreements (PTAs) approved since 2002 contain a chapter on transparency. These transparency chapters are cross-cutting, extending transparency obligations to all policy areas of the trade agreement in question (Jenkins, 2017: 6). Aaronson (2011) notes that transparency provisions are generally worded in the language of human rights and require governments to publish, in advance, laws, rules, procedures and regulations affecting trade. They also contain sections on review and appeal. She points out that, while not intended to promote human rights as such, 'they may have human rights spillovers' (ibid: 443).

It is standard practice for US trade agreements to include specific anti-corruption and anti-bribery commitments in the transparency chapters, thereby going beyond WTO rules (Jenkins, 2017). Indeed, anti-corruption provisions in US trade agreements are considered to be best practice and cover a range of issues (Jenkins, 2017: 6-7):

- Adherence to and implementation of international conventions on anti-corruption and bribery; ▲
- National legislation defining both active and passive bribery as a criminal offence; ▲
- Sanctions and procedures to enforce criminal penalties; ▲
- In jurisdictions where criminal responsibility is not applicable to firms, the existence of dissuasive non-criminal sanctions (such as fines or debarment) for engaging in corrupt activity; and ▲
- Whistle-blower protection. ▲

Debarment can be particularly effective in the context of government procurement. The procurement chapter of the US-Colombia trade agreement requires each party to maintain procedures to declare firms that have engaged in fraud or illegal actions in relation to procurement ineligible from participation in procurement processes 'indefinitely or for a stated period of time' (Jenkins, 2017: 7). The planned TPP similarly stated that countries 'may include' procedures rendering suppliers that have engaged in fraud ineligible for future contracts (ibid). However, Jenkins notes there is little evidence that such provisions have been used in practice (ibid).

▲ The WTO's Governance Procurement Agreement (GPA) commits signatories to open part of their public procurement market to foreign operators. It mentions the need for transparency and anti-corruption in its preamble, and encourages procurement bodies to conduct procurement in a transparent fashion in order to avoid conflicts of interest and corrupt behaviour (Jenkins, 2017: 5-

Formatted: Complex Script Font: 14 pt, Bold

Formatted: Font: 14 pt, Bold, Font color: Text 1, Complex Script Font: 14 pt, Bold

Formatted: Justified

Formatted: Justified

Formatted: Font: 10.5 pt, Complex Script Font: 10.5

Formatted: Font: 10.5 pt, Complex Script Font: 10.5 pt

Formatted: Justified

Formatted: Complex Script Font: 11 pt

6). The US includes 'GPA equivalent' measures in all its trade agreements, e.g. a provision on ensuring integrity in all its trade agreements (ibid: 8).

## Public participation

Unlike transparency and due process, US efforts to promote public participation are relatively recent. Public participation provisions were included in the environmental side agreements to NAFTA in 1992 (Aaronson, 2011). But the real push for enhancing public participation provisions came under the George W. Bush administration. 'Administration officials believed that trade agreements could act as an incentive for democracy in the Middle East and might also cement democracy in Latin American nations such as Colombia and El Salvador that had experienced conflict' (ibid: 443). The hope was that making countries more democratic and accountable to their people would make them stable (ibid), and that enabling citizens in partner countries to comment on public policies and trade agreements with the US would gain public support for those agreements (ibid; Aaronson, 2017: 5).

As with labour rights, there were different models for public participation provisions in US trade agreements. The most extensive was developed after demands from Democrat Senator Max Baucus in 2004 to put public participation provisions directly in trade agreements and to have benchmarks and 'ways to measure progress over time', including finding ways to encourage objective monitoring and scrutiny by the public (Aaronson, 2011: 443). The 2004 Dominica Republic-Central America (CAFTA-DR) FTA followed this model: all parties agreed to set up a mechanism and secretariat enabling the general public to submit petitions in relation to the labour and environmental provisions in the trade agreement. The same model was followed in FTAs with Colombia, Korea, Panama and Peru (ibid: 444). In these each party commits to promoting public awareness of its labour laws including by '(a) ensuring that information related to its labour laws and enforcement and compliance procedures is publicly available; and (b) encouraging education of the public regarding its labour laws' (Aaronson, 2011: 444).

Aaronson points out that including participation provisions in trade agreements 'cannot magically stimulate democracy' but she concedes that 'these provisions might push partner governments to allow more public participation and could gradually teach citizens how to engage and challenge policy makers' (ibid: 444). She notes that since signing FTAs with the US, Chile, the Dominican Republic, Jordan, Kuwait, Mexico and Morocco have set up channels through which civil society groups can comment on trade policies (ibid).

## Intellectual property rights

Protection of intellectual property rights (IPR) has been a significant feature of US trade agreements, again based on Congress' perception of this as a top priority. Policy makers have a long-standing belief that the US' economic future depends on its global dominance of software, biotechnology, entertainment and other creative industries (Aaronson, 2011). 'The United States is by far the most assertive country in defending intellectual property rights within the context of trade policies and agreements' (ibid: 444). Provisions include enforcement of IPR, seizure of counterfeit goods, and pursuit of criminal enterprises involved in piracy and counterfeiting (ibid).

However, critics and human rights activists argue that enforcement of IPR by the US undermines the ability of citizens in partner countries to access affordable medicine or protect indigenous knowledge (passed down through familiar and cultural ties but not protected under domestic law). The former has caused particular controversy: medicines are expensive for those in

Formatted: Complex Script Font: 14 pt, Bold

Formatted: Font: 14 pt, Bold, Font color: Text 1, Complex Script Font: 14 pt, Bold

Formatted: Justified

Formatted: Justified

Formatted: Complex Script Font: 14 pt, Bold

Formatted: Justified

Formatted: Font: 14 pt, Bold, Font color: Text 1, Complex Script Font: 14 pt, Bold

Formatted: Justified

developing countries, and IPR enforcement prevents the development of generic brands. US policy makers are increasingly sensitive to public concerns about the costs of IPR protection. Since 2004 US trade agreements include a letter signed by both partner countries, stating the IPR provisions of the agreement 'do not affect a Party's ability to take necessary measures to protect public health' (Aaronson, 2011: 444). However, Aaronson notes that the letter 'does not make it clear that governments can breach IPR obligations in order to ensure that their citizens have access to affordable medicines' (ibid).

### Broader human rights

As seen, provisions for promotion of rights in US trade agreements are narrowly focused on specific rights, notably labour rights. They do not seek to promote broader universal human rights. This neglect can be traced back to Congress, which sets the objectives for trade policy-making 'but has not made the advancement of human rights through trade agreements a top priority' (Aaronson, 2011: 442). The 2002 Trade Promotion Act (TPA), for example, which grants the president 'fast track' authority to negotiate trade agreements, does not include the words 'human rights'. Another factor is the authority for trade policy making being divided between legislative and executive branches (ibid: 441).

Aaronson (2011: 444) criticises the US for ignoring 'the internationally accepted notion that human rights are universal and indivisible'. She argues that the US 'is essentially saying to its partner nations: make the rights we value top priorities' (ibid). In doing so, she says the US is insensitive to other cultures, which could have different human rights priorities. And while its strategy could lead trade partners to promote some rights, 'it is unlikely to inspire these governments to devote more resources to human rights in general' (ibid).

Aaronson cites the example of the US-Colombia FTA to highlight the inadequacies of taking a narrow approach to rights in trade agreements. The US-Colombia FTA includes provisions for labour rights. However, the problems with labour in Colombia are part of a wider problem of impunity, weak governance and corruption and the FTA is not designed to address these wider governance issues.

### 3. Canada

Canada has 11 free trade agreements in force, a further three signed, and exploratory discussions/negotiations for FTAs underway with some dozen partners.<sup>4</sup> Agreements in force are with Chile, Costa Rica, Colombia, EFTA, Israel, Jordan, Panama, Peru, South Korea and the US, in addition to NAFTA. Canada sees trade agreements as a means to 'foster a commitment to human rights, freedom, democracy and the rule of law' (Aaronson, 2011: 435). However, like the United States, it has tended to focus on specific rights in its trade agreements.

### Labour rights

Aaronson (2017: 3) reports that Canada has seven FTAs in force with labour provisions, the most recent being with South Korea in 2015. Labour rights provisions have progressively

<sup>4</sup> <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=eng>

Formatted: Complex Script Font: 14 pt, Bold

Formatted: Font: 14 pt, Bold, Font color: Text 1, Complex Script Font: 14 pt, Bold

Formatted: Justified

Formatted: Justified

Formatted: Complex Script Font: 14 pt, Bold

Formatted: Justified

Formatted: Font: 14 pt, Bold, Font color: Text 1, Complex Script Font: 14 pt, Bold

Formatted: Justified

strengthened in Canada's FTAs. Thus the FTA with Israel had no social clause, and those with Chile and Costa Rica had limited provisions similar to the NAFTA model, but subsequent agreements have been more robust on labour rights. In doing so, Canada has been influenced by the increased focus on labour rights in US trade agreements (Bartels, 2014). Indeed, labour provisions in Canadian FTAs have evolved in a similar four/five stage process to that seen in the US (ILO, 2016). Recent Canadian trade agreements include the following provisions (compiled from Aaronson, 2011: 436; Bartels, 2014: 14-15; ILO, 2016: 51):

- An obligation to implement ILO principles, including core labour rights as well as acceptable minimum employment standards and non-discrimination in respect of working conditions for migrant workers - Decent Work agenda;
- Specific provisions pertaining to prevention of and compensation for occupational injuries and illnesses;
- A binding non-derogation clause, prohibiting derogation from domestic laws in order to encourage trade and investment;
- Formal dispute settlement with monetary sanctions for violations of core labour rights or a persistent failure to comply with domestic laws on all labour matters;
- Requirements for signatories to educate and involve their publics regarding their rights under labour law; and
- An obligation to ensure citizens have access to administrative or tribunal proceedings, and procedural guarantees to ensure these are fair, equitable and transparent.

The stress on educating citizens stems from apparent consensus among Canadian policy-makers 'that by educating foreign workers as to their rights, these workers are more likely to use these rights' (Aaronson, 2011: 436).

Labour provisions used to not be included in the main body of trade agreements (due to the division of powers in the areas of environmental and labour regulation in the Canadian constitution), but in side agreements called labour cooperation agreements (Aaronson, 2011). However, the most recent agreements with Korea and with the EU include labour rights in a separate chapter in the agreements themselves (Bartels, 2014).

The labour rights chapters are legally binding, and failure to comply with the provisions in them could lead to fines. While Canada's FTAs with Panama, Peru and Colombia impose a cap of USD 15 million on any fines, the FTA with Jordan places no limitation on the fine that can be imposed, but this must be paid into a special labour fund (Bartels, 2014: 15).

### ▲ Transparency, due process and anti-corruption ▲

Provisions for due process and transparency are included in specific chapters in Canadian trade agreements. Following the US example, Canada has started to embed anti-corruption measures into trade agreements (Jenkins, 2017: 6).

### ▲ Political participation ▲

There are several references to political participation in recent Canadian trade agreements (ibid). The transparency chapter in these makes it obligatory for signatories 'to include regulations guaranteeing public participation, public comment, and the ability to challenge relevant regulations' (Aaronson, 2011: 437). These provisions stem from recognition among Canadian

Formatted: Complex Script Font: 14 pt, Bold

Formatted: Font: 14 pt, Bold, Font color: Text 1, Complex Script Font: 14 pt, Bold

Formatted: Justified

Formatted: Justified

Formatted: Complex Script Font: 14 pt, Bold

Formatted: Justified

Formatted: Font: 14 pt, Bold, Font color: Text 1, Complex Script Font: 14 pt, Bold

Formatted: Justified

policy-makers that good governance cannot be imposed by outsiders: 'The public, both in Canada and in Canada's trade partners, must be informed about and involved in the development of rules if these rules are to be perceived as even-handed and effective' (ibid). However, Aaronson notes that, while the language in the agreements is binding, it is also relatively weak, and calls on parties 'to strive to cooperate', 'endeavour to engage' and 'encourage education of the public' (ibid: 437).

### Culture and indigenous rights

Canadian trade agreements also have provisions to maintain the cultural heritage of the Canadian people and ensure they do not affect Canada's ability to determine Canadian cultural policies. Cultural industries are defined as 'persons engaged in the publication, distribution, or sale of books, magazines, periodicals, newspapers, music, films and videos, and so on' (Aaronson, 2011: 437). In the context of the environment, Canadian trade agreements commit parties 'to respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities' (ibid), although Aaronson points out that these provisions are 'aspirational, non-binding, and non-disputable' (ibid).

- Formatted: Complex Script Font: 14 pt, Bold
- Formatted: Justified
- Formatted: Font: 14 pt, Bold, Font color: Text 1, Complex Script Font: 14 pt, Bold
- Formatted: Justified

### Broader human rights

A broad commitment to human rights underlies Canada's trade agreements. The preambles of recent agreements with EFTA, Jordan, Peru and Colombia refer to human rights objectives and cite the Universal Declaration on Human Rights, as well as labour rights, cultural participation and protection of human rights and freedoms (Aaronson, 2011: 436). Still, chapters in the agreements focus on a number of specific rights and, as in the case of the United States, this narrow approach has come under criticism. 'One may argue that by focusing on labour rights and not other human rights, the US and Canada may, without intent, convey that certain human rights are more important than other human rights or that human rights are divisible, which is not how they are understood in international law' (Aaronson, 2017: 3-4).

- Formatted: Complex Script Font: 14 pt, Bold
- Formatted: Justified
- Formatted: Font: 14 pt, Bold, Font color: Text 1, Complex Script Font: 14 pt, Bold
- Formatted: Justified

Canadian NGOs working on issues of development and human rights have demanded that Canada carry out human rights impact assessments before signing trade agreements with countries and that these assessments should be carried out by international human rights organisations. In response to this pressure, the Canada-Colombia FTA did include agreement to perform yearly human rights impact assessments, and in doing so, Canada became the first nation to require such assessments with future trade agreements (Aaronson, 2011). However, as of March 2011, Canada had still not carried out any such assessment, nor provided the public with information about how it would do so at home and abroad (ibid).

- Formatted: Complex Script Font: 11 pt

Given their narrow focus on specific rights, and the weak nature of many of the provisions relating to participation, transparency, indigenous rights, etc., as well as the lack of human rights impact assessments, 'many Canadian NGOs see Canada's PTAs as opaque, ineffective at improving governance, and undemocratic' (Aaronson, 2011: 437).

- Formatted: Complex Script Font: 11 pt
- Formatted: Complex Script Font: 11 pt

## 4. Chile

Chile has free trade agreements with several countries, including Colombia, Panama, Peru, Turkey, China, Hong Kong, Singapore, Canada and the US, as well as the EU.

## Labour rights

While the US and Canada have seen a progressive strengthening of provisions for labour rights in their free trade agreements, Chile has taken a country-specific approach – whereby provisions in each agreement depend on negotiations with that trading partner – making it hard to generalise. However, a number of common provisions in all agreements can be identified (ILO, 2016: 52-53):

- Cooperation is the main approach, through cooperative activities such as exchanges of information, cooperation in regional and multilateral forums, seminars and dialogues and private sector cooperation;
- Particular topics are named as targets of cooperation in different agreements, e.g. decent work, working conditions, fundamental principles and rights at work, social dialogue, labour inspections; and
- All agreements provide for some institutional mechanism to facilitate implementation.

Key provisions in individual agreements are as follows (ILO, 2016: 53-56):

- a) Chile-China FTA (2006) – no explicit reference to international labour standards or to other ILO instruments, but the parties undertake a general obligation to cooperation in particular labour issues including decent work and security; dispute resolution mechanism in form of consultations;
- b) Chile-Peru (2009) - parties reaffirm their commitment both to the 1998 ILO Declaration and as ILO members; coverage includes protection of migrant workers in accordance with the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families; there is an obligation for effective enforcement of labour laws; no provision for consultations to solve disputes; provides for civil society participation to identify areas and activities for cooperation;
- c) Chile-Panama (2008) and Chile-Colombia (2009) – as above, except for migration, and include a consultation mechanism to solve disputes;
- d) Chile-Turkey (2011) – as Chile-Peru FTA, except for migration, and no provision for civil society involvement; the general dispute settlement mechanism of the agreement can be applied to labour matters but no monetary or trade sanctions are provided for; and
- e) Chile-Thailand (2015) – does not include references to the ILO or its instruments, but the parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing labour laws and protections.

Overall, labour provisions in Chile's trade agreements are 'soft obligations' (Bartels, 2014: 15).

## Transparency and anti-corruption

Chile (and other states such as Japan and South Korea) has started to include passages on corruption in its trade agreements. The provisions acknowledge the importance of measures to curb corruption and pledge to prevent corruption in international trade deals, but tend to be much less specific than the measures included in US trade agreements (Jenkins, 2017: 6).

## 5. Other bilateral trade agreements

### New Zealand

New Zealand has free trade agreements with many countries in the region: Australia, China, Taiwan, Singapore, Malaysia, Hong Kong, South Korea and Thailand; as well as a number of multilateral and regional agreements. A review of 'agreement highlights' on the Ministry of Foreign Affairs and Trade (MFAT) website<sup>5</sup> shows a focus strongly on trade issues. However, a number of agreements are accompanied by separate memoranda/arrangements on labour and no mention was found of other governance/rights issues such as transparency or anti-corruption.

The main features of the New Zealand-Thailand FTA, for example, relate to tariffs and quotas, simpler rules of origin, easier trading, improved investment environment and dispute settlement. However, there is a separate Arrangement on Labour (as well as one on the environment) under which both countries agree to ensure that their labour (and environmental) laws, regulations, policies and practices are in harmony with relevant international obligations. Similarly, as part of the 2008 NZ-China FTA, the two countries signed a Labour Memorandum of Understanding, which provides a forum for both countries to work together in a practical way to promote sound labour policies and practices.

### Australia

Australia has bilateral trade agreements in force with New Zealand, the United States, Thailand, China, Japan, Chile, Malaysia, South Korea and Singapore. The Department of Foreign Affairs and Trade (DFAT) website lists 'key interests and benefits' of each agreement. As with New Zealand, the focus is very much on trade. The Thailand-Australia FTA, for example, is described as eliminating tariffs and quotas, liberalising trade in services, increasing Australian investors' access to Thailand and ensuring investment protection, and facilitating entry of Australian business people to Thailand.<sup>6</sup> There is no mention of provisions for labour rights, transparency, anti-corruption or other aspects of governance/human rights. Bartels (2014: 19) asserts that 'some developed countries, such as Australia and Japan, are still reluctant to connect trade with what at one time were considered to be "non-trade" issues'.

### Japan

Japan has 14 bilateral trade agreements in force, referred to as economic partnership agreements (EPAs), mostly with countries in the Asia-Pacific region but also with some Latin American countries (Mexico, Peru, Chile) and Switzerland. The focus of these is on trade issues, though transparency and corruption do feature to varying extents.

## 6. Further information

Labour rights provisions in FTAs - For details of US engagement on labour rights in individual country FTAs, including provisions in the agreements and progress on implementation and enforcement, see *Standing up for Workers: Promoting Labour Rights through Trade* (USTR, 2015a). For details of labour rights provisions in trade and investment agreements by a range of

<sup>5</sup> <https://www.mfat.govt.nz/en/trade/free-trade-agreements/about-free-trade-agreements/>

<sup>6</sup> <http://dfat.gov.au/trade/agreements/tafta/Pages/thailand-australia-fta.aspx>

Formatted: Complex Script Font: +Body CS (Arial), 11 pt

countries and entities, notably the US, Canada and the EU, see *Assessment of Labour Rights in Trade and Investment Agreements* (ILO, 2016). The study looked at 260 trade agreements reported to the WTO, and includes case study analysis of Bangladesh, Cambodia, Central America, the Dominican Republic and South Korea.

Formatted: Complex Script Font: Italic

Database of all PTA provisions - The World Bank (Hofman, Osnaga & Ruta, 2017) has a rigorous database on the content of preferential trade agreements. Covering 279 agreements signed between 1958 and 2015, it looks at 52 provisions including the legal enforceability of each provision. Human rights provisions were included in less than 30 agreements and legally enforceable in only a handful; numbers for anti-corruption measures were slightly higher (ibid: 11).

Impact - The review came across some papers looking at the impact of governance/rights provisions in trade agreements. Dewan and Roncini (2014) look at whether free trade agreements signed between the United States and Latin American countries in the preceding decade produced higher enforcement of labour regulations. Others relate to EU trade agreements, e.g. with Myanmar, Colombia, African and Caribbean countries.

Wider effects - Aaronson (2017) looks at the governance spillovers of labour provisions in free trade agreements, e.g. empowerment of workers and other citizens, promotion of wage and income equality which is conducive to development, social cohesion and democracy. Other relevant papers include:

- Hafner-Burton, E. (2005). 'Trading Human Rights: How Preferential Trade Agreements Influence Government Repression.' *International Organization*, 59 (3): 593-629;
- Ferrantino, M. J. (2006). 'Policy Anchors: Do Free Trade Agreements and WTO Accessions Serve as Vehicles for Developing Country Policy Reform?' US International Trade Commission, Office of Economics, Working Paper No. 2006-04-A;
- Aaronson, S. A. & Abouharb, R. (2011). 'Unexpected Bedfellows: The GATT, the WTO and Some Democratic Rights.' *International Studies Quarterly*, June 2011;
- Aaronson, S. A. (2007). 'Sleeping in Slowly: How Human Rights are Penetrating the WTO.' *World Trade Review*, 6:3, 413-449;
- R. O. Keohane et al (2009). 'Democracy-Enhancing Multilateralism.' *International Organization*, 63, 1-31.

Formatted: Complex Script Font: Italic

Formatted: Complex Script Font: 12 pt

Formatted: Complex Script Font: Not Bold, Italic

Formatted: Font: (Default) +Body (Arial), 10.5 pt, Complex Script Font: Cambria, 10.5 pt

Formatted: Space Before: 10 pt

Formatted: Complex Script Font: Not Bold

Formatted: Space After: 0 pt, Line spacing: single

Formatted: Complex Script Font: Not Bold

Formatted: Complex Script Font: Not Bold

Formatted: Complex Script Font: Cambria-Bold, French (France)

Formatted: French (France)

Formatted: Complex Script Font: Italic

Formatted: French (France)

Formatted: French (France)

## 7. References

Aaronson, S. A. (2011). 'Human Rights'. <http://siteresources.worldbank.org/INTRANETTRADE/Resources/C21.pdf>

Aaronson, S. A. (2017). *Governance Spillovers of Labour Provisions in Free Trade Agreements*. <https://www2.gwu.edu/~iiep/assets/docs/papers/2017WP/AaronsonIIEPWP2017-2.pdf>

Amnesty International, 2006. *Human Rights, Trade and Investment Matters*. <https://www.amnestyusa.org/sites/default/files/pdfs/hrtradeinvestmentmatters.pdf>

Bartels, L. (2014). *Social Issues in Regional Trade Agreements Labour, Environment and Human Rights*. University of Cambridge, Faculty of Law, Legal Studies Research Paper Series, Paper 57. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2463246](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2463246)

Dewan, S. & Ronconi, L. (2014). *US Free Trade Agreements and Enforcement of Labor Law in Latin America*. Inter-American Development Bank (IDB).  
<https://www.econstor.eu/bitstream/10419/115497/1/IDB-WP-543.pdf>

Formatted: Complex Script Font: Italic

Harrison, J. (2013). *Human Rights Impact Assessments of Free Trade Agreements: What is the state of the art?* Warwick University.

Formatted: Complex Script Font: Italic

[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=13&cad=rja&uact=8&ved=0ahUKEwizq8bhrqjTAhVD7BQKHSpFAQQ4ChAWCC4wAg&url=http%3A%2F%2Fwww2.warwick.ac.uk%2Ffac%2Fsoc%2Flaw%2Fresearch%2Fcentres%2Fchrp-old%2Fengagement%2Fhqualityimpact%2Fvienna\\_trade\\_hria\\_paper.doc&usq=AFQjCNFYI\\_vf\\_tdBvotcQhoMv8z0ulw7GMA&sig2=4NFAr\\_w\\_kw5s3DoNnJqm\\_A&bvm=bv.152479541,d.d24](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=13&cad=rja&uact=8&ved=0ahUKEwizq8bhrqjTAhVD7BQKHSpFAQQ4ChAWCC4wAg&url=http%3A%2F%2Fwww2.warwick.ac.uk%2Ffac%2Fsoc%2Flaw%2Fresearch%2Fcentres%2Fchrp-old%2Fengagement%2Fhqualityimpact%2Fvienna_trade_hria_paper.doc&usq=AFQjCNFYI_vf_tdBvotcQhoMv8z0ulw7GMA&sig2=4NFAr_w_kw5s3DoNnJqm_A&bvm=bv.152479541,d.d24)

Hofman, S., Osnago, A. & Ruta, M. (2017). 'Horizontal Depth: A New Database on Content of Preferential Trade Agreements'. World Bank.  
<https://openknowledge.worldbank.org/bitstream/handle/10986/26148/WPS7981.pdf?sequence=1&isAllowed=y>

ILO (2016). *Assessment of Labour Provisions in Trade and Investment Arrangements*. International Labour Organisation. [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_498944.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_498944.pdf)

Formatted: Complex Script Font: Italic

Field Code Changed

Ioannides, I. 2017. *Effects of Human Rights Clauses in EU-Mexico Global Agreement and EU-Chile Association Agreement: Ex-Post Impact Assessment*. European Parliamentary Research Service.  
[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/558764/EPRS\\_STU\(2017\)558764\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/558764/EPRS_STU(2017)558764_EN.pdf)

Formatted: Complex Script Font: Not Bold

Formatted: Space After: 0 pt, Line spacing: single

Jenkins, M. (2017). *Anti-Corruption and Transparency Provisions in Trade Agreements*. Transparency International. [https://www.transparency.org/files/content/corruptionqas/Anti-corruption\\_and\\_transparency\\_provisions\\_in\\_trade\\_agreements\\_2017.pdf](https://www.transparency.org/files/content/corruptionqas/Anti-corruption_and_transparency_provisions_in_trade_agreements_2017.pdf)

Formatted: Complex Script Font: Italic

Mann, H. (2008). *International Investment Agreements, Business and Human Rights: Key Issues and Opportunities*. OECD Global Forum on International Investment.  
<http://www.oecd.org/investment/globalforum/40311282.pdf>

Formatted: Complex Script Font: Italic

Marx, Lein and Brando (2016). 'The protection of labour rights in EU Bilateral Trade Agreements. A Case Study of the EU-Colombia Agreement'.  
[http://www.oefse.at/fileadmin/content/Downloads/tradeconference/MarxBrechtBrando\\_Labour\\_Rights\\_in\\_EU-Colombia\\_Agreement.pdf](http://www.oefse.at/fileadmin/content/Downloads/tradeconference/MarxBrechtBrando_Labour_Rights_in_EU-Colombia_Agreement.pdf)

Formatted: Space After: 0 pt, Line spacing: single

Formatted: Complex Script Font: Not Bold

USTR (2015a). *Standing up for Workers: Promoting Labour Rights through Trade*. US Representative of Trade, Department of Labour.  
<https://ustr.gov/sites/default/files/USTR%20DOL%20Trade%20-%20Labor%20Report%20-%20Final.pdf>

Formatted: Complex Script Font: Italic

USTR (2015b). *Summary of the Trans-Pacific Partnership Agreement*. US Representative of Trade, Department of Labour. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>

Formatted: Complex Script Font: Italic

Formatted: Complex Script Font: Italic

## Key websites

- International Labour Organisation: <http://www.ilo.org/global/lang--en/index.htm>
- United States Trade Representative (USTR): <https://ustr.gov/trade-agreements>
- FRAME Fostering Human Rights Among European Policies: <http://www.fp7-frame.eu/>

## Suggested citation

Idris, I. (2017). *Human rights and governance provisions in EU and OECD country trade agreements with developing countries*. K4D Helpdesk Report 103. Brighton, UK: Institute of Development Studies.

## About this report

*This report is based on five days of desk-based research. The K4D research helpdesk provides rapid syntheses of a selection of recent relevant literature and international expert thinking in response to specific questions relating to international development. For any enquiries, contact [helpdesk@k4d.info](mailto:helpdesk@k4d.info).*

*K4D services are provided by a consortium of leading organisations working in international development, led by the Institute of Development Studies (IDS), with Education Development Trust, Itad, University of Leeds Nuffield Centre for International Health and Development, Liverpool School of Tropical Medicine (LSTM), University of Birmingham International Development Department (IDD) and the University of Manchester Humanitarian and Conflict Response Institute (HCRI).*

*This report was prepared for the UK Government's Department for International Development (DFID) and its partners in support of pro-poor programmes. It is licensed for non-commercial purposes only. K4D cannot be held responsible for errors or any consequences arising from the use of information contained in this report. Any views and opinions expressed do not necessarily reflect those of DFID, K4D or any other contributing organisation. © DFID - Crown copyright 2017.*



Formatted: Justified

Formatted: French (France)

Formatted: Justified

Field Code Changed

Formatted: Justified

Formatted: Justified

Formatted: English (United States)

Formatted: Justified

Formatted: Justified

Formatted: Complex Script Font: 9 pt

Formatted: Hyperlink, Font: Not Italic, English (United Kingdom)

Formatted: Justified