



The protection of labour rights in EU Bilateral Trade Agreements. A Case Study of the EU-Colombia Agreement

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I. Introduction

The European Union's guiding norms and principles are enshrined in EU primary law, most notably in the Lisbon Treaty. These core values include respect for human dignity, freedom and democracy, equality and the rule of law, human rights, and the commitment to preserve and improve the quality of the environment and the sustainable management of global natural resources (TEU, Art. 2). Article 21 of the Lisbon Treaty subscribes to these values, identifying them as 'general provisions on the Union's external action.' As such, any aspect of EU foreign policy, including notably trade, is required to consistently and coherently 'consolidate and support democracy, the rule of law, human rights and the principles of international law' (TEU, Art. 21, 2-b).

As the world's largest trading block, and the number one trade partner for over 80 countries, the EU's trade policies constitute an exceptionally powerful tool to contribute to the promotion and protection of human rights worldwide. Throughout its history, EU trade policy has continuously and increasingly sought to use this leverage to promote a normative agenda, though with mixed results so far. As Joris Larik (2015, p. 69) recently noted EU trade policy *'is certainly no end in itself, but a powerful means to higher ends' now prominently enshrined in the highest laws of the EU*.

Since 1995, EU bilateral and regional trade agreements have included human rights clauses, which make the application of the trade regime conditional upon a party's human rights performance and its respect for democratic principles. As an essential element of the agreement, the violation of a human rights clause allows the other party to take 'appropriate measures', including, 'as a measure of last resort', the suspension of the agreement (Bartels, 2005).² Over the past two decades, human rights clauses have been evoked on numerous occasions, though exclusively under the framework of the Cotonou Partnership Agreement with the ACP-Group.³

More recently, beginning with the 2008 EU-Cariforum Economic Partnership Agreement (EPA), EU trade agreements have begun to include Trade & Sustainable Development Chapters (SD chapters from hereon), which contain non-binding provisions on labour rights promotion, CSR and environmental protection. Sustainable Development chapters are now part of the 2008 EU-Cariforum EPA, the 2010 EU-Korea Agreement, and the 2012 EU-Central America and EU-Peru/Colombia agreements. Reportedly they will feature as a template for any future trade agreements with the EU including in the EU-US Transatlantic Trade and Investment Partnership (TTIP) currently under negotiation.

Legal scholars have commented extensively on the regulatory potential of these new provisions (Bartels, 2013; Velluti, 2015), highlighting their potential to contribute to the protection of human rights and environmental protection in third countries. However, the empirical evidence on the actual effects of

² Taking 'appropriate measures' must be in accordance with international law and priority must be given to measures that least disrupt the functioning of the agreement.

³ Since 1996 the 'essential elements clause' under the ACP agreement has been invoked 23 times to initiate a consultation procedure, see (Beke et al, 2014: 118).

these non-trade provisions is limited. With regard to labour rights in particular, a 2013 report by the International Labour Organisation (ILO) concluded that there is hardly any empirical evidence on the effects of integrating labour provisions in trade agreements (ILO, 2013; see also Campling et al. 2015). This paper aims to provide a first empirical step toward bridging this gap, by offering insights on the implementation of the labour provisions stipulated under the SD chapter of the EU – Colombia Trade Agreement.

This paper first discusses the scope and methodology. Subsequently, section three maps out the relevant labour provisions provided under the adopted agreement, as well as the key monitoring and enforcement mechanisms put in place to ensure their compliance. Section four then offers an assessment of labour rights protection in Colombia. Section five focuses on an assessment of the agreement to date, and identifies stakeholders' perceptions on the perceived changes observed in law, in practice and in relation to social dialogue.

II. Scope and methodology

The key objective of this case study is to gain a better understanding of what the integration of labour provisions in EU trade agreements entails in practice. How the practical application of such provisions and mechanisms play out in a given country context, and to assess the types of changes they can generate in the domestic regulatory and institutional environment. While focusing on one particular country-case and mainly focusing on one particular set of labour rights (freedom of association and collective bargaining), this study aims to contribute to the literature on the use of trade policy as a means to promote a normative agenda or non-trade objectives.

In an early contribution, Meunier and Nicolaïdis (2006) introduced the idea of governing *through* trade. This referred to the fact that the European Union uses market access power and its market size to 'export' its laws, standards, values and norms. When exercising power *through* trade, the EU uses the size of its domestic market as an asymmetric bargaining chip to 'force' domestic changes within the territory of its trading partner on issues such as good governance, environmental policy and human rights (see also Hafner-Burton, 2005; Zwagemakers, 2012). This concept was further elaborated by Chad Damro, who coined the idea of 'Market Power Europe' (MPE) (Damro, 2012). MPE posits that the Union should be seen as exercising power "*through the externalization of its social and economic agendas*" (Damro, 2015, p. 696).

Whether this governing through trade, in the case of bilateral trade agreements, is generating any effect is an outstanding question. Campling et al. (2015) propose in this context a research agenda to close this knowledge gap. We contribute to this effort by looking at what, if anything, happens after the conclusion of trade agreement in terms of labour rights protection. We focus on the EU-Colombia trade agreement as a case study for several reasons. Ever since the early 2000s, with domestic conflicts in a receding state, Colombia has witnessed increasing economic growth and the national government has embarked on a process of economic liberalisation, including in its trade relations with some of the

world's largest economies.⁴ A major concern in this context has been how increased trade openness affects labour rights. Both domestic and international organisations have repeatedly voiced concerns over Colombia's track record in this respect (Lizarazo et al., 2014: 831-834). Hence, it should come as no surprise that labour rights featured prominently during the negotiations of the EU-Colombia Trade Agreement. While labour rights featured as a crosscutting theme across the concerns voiced by the various public and private stakeholders involved, the protection of organised labour in itself proved an especially thorny issue in the agreement's adoption. Essentially, critical opponents feared that a trade agreement with the EU would render legitimacy to ongoing violations of labour rights and of human rights at large (Rettberg et al., 2014). In response to such concerns, the EP called upon both Colombia and Peru for a 'transparent and binding road map on human, environmental and labour rights', focusing in particular on the implementation of a legal and policy framework to guarantee freedom of association and the right to collective bargaining (EP, 2012a). Instead of establishing such a binding road map, Colombia presented to the EP 'a binding and transparent action plan on human, labour and environmental rights' which it was already implementing as part of its overall National Development Plan. As such, the plan does not contain any new commitments, though includes 'concrete, verifiable, ambitious and realistic goals' and is monitored directly by the President's Office (Republic of Colombia 2012).⁵ As a result, Colombia presents itself as a 'crucial-likely' case (Gerring, 2007, pp. 115-122) to analyse potential effects of a trade agreement.

To do so, we start from the agreement and look into the key labour rights covered under the agreement (section 3). Next, we try to assess the effects on two accounts. First of all, did the trade agreement result in any legal reforms (*de jure* effects). One could expect that the trade agreement to trigger legislative reforms as a (genuine or false) signal to the other party in the agreement that the provisions in the agreements are followed up (Simmons, 2009). Second, we focus on effects on the ground or *in practice*. It could very well be the case that a country has an elaborate legislative framework and hence does not need to implement any legislative changes but that its legal labour law framework is not enforced (see for example Berliner et al. 2015; Marx et al. 2015). In this context the agreement can be expected to contribute to closing the enforcement gap. As section 4 details, in the case of Colombia there is a very significant enforcement or compliance gap. Sure, given the relative recent nature of the agreement (entry into force in August 2013) and the fact many domestic and international factors influence the protection of labour rights (Marx & Soares, 2015) one cannot isolate the effect of one trade agreement on the protection of labour rights. However, one can assess which actions are taken in the follow up to

⁴ Colombia currently has fifteen trade agreements in force. This includes trade agreements with Nicaragua (partial agreement) 1980, Canada 1993, Mexico 1995, CARICOM (partial agreement) 1998, Cuba (complementary preferential agreement) 2001, Mercosur 2005, Chile and Guatemala 2009, El Salvador and Honduras 2010, EFTA and Canada 2011, the USA, Venezuela (partial agreement) 2012 and the EU 2013. Another five trade agreements have been signed but are not applied yet (these include the Pacific Alliance, Costa Rica, Israel, Panama and South Korea). Meanwhile three trade negotiations are ongoing, notably with Turkey, Japan, and the multilateral TiSA agreement (MCIT, 2014).

⁵ More information on the run up to the EU-Colombia Trade Agreement, and the role of labour issues in that regard can be found in Brando et al. (2015).

the agreement and what the assessment of these actions is by actors and stakeholders involved in the process in terms of expected results. In other words, one can analyse the perceptions of the key-stakeholders on the effectiveness of the trade agreement concerning the protection of labour rights. In this paper we focus on the latter.

The findings presented are based on a set of complementary primary and secondary sources and over 30 semi-structured interviews with a wide range of stakeholders in both Brussels and Bogotá. Drawing from the views of trade union representatives, officials in the executive branches of the EU and Colombian administrations, private sector umbrella organisations, development NGOs, as well as a select number of trade and labour experts in academia and in the international organisations represented in Colombia, this paper aims to provide a nuanced and comprehensive account of the various perceptions on the use, effectiveness and the credibility of the labour provisions provided under the trade agreement.

III. Key provisions for labour protection

Article 1 of the EU-Colombia Free Trade Agreement contains the standard essential elements clause (also referred to as the human rights clause) that has been an integral part of EU trade agreements since 1995. It argues that respect for democratic principles, the rule of law and fundamental human rights – as laid down in the Universal Declaration of Human Rights – should underpin both the domestic and international policies of the parties, constituting an ‘essential element’ of the trade agreement (EU-CO/PE 2012: Art. 1). These essential elements are positive obligations, whose implementation may, if necessary, require active state intervention. According to Article 8(1), each party should take ‘any necessary measure’ to ensure an adequate implementation of the obligations under the agreement. As such, besides acting in alignment with the said principles under Article 1, both contracting parties are thus bound to ensure that these rights are respected within their jurisdiction (Bartels, 2005: 147-149).

As specified under Article 8 of the Agreement, any violation of the Human Rights clause enables the other party to immediately take ‘appropriate measures’. (EU-CO/PE 2012: Art. 8). Content-wise, the universal human rights covered under the essential elements clause include civil, political, economic and social rights, including labour standards. In theory, any violation of core labour standards, either by one of the parties or in their jurisprudence, thus provides ground to evoke the appropriate measures provided under Article 8 of the agreement – that is however, only if the violation results from the implementation of the agreement itself, a link which may be hard to establish.

There is no dedicated monitoring mechanism to track compliance with the human rights clause, nor a subcommittee dedicated to human rights, as created for various other thematic and technical issues

under the agreement (Art. 15).⁶ Given the lack of a specialised human rights subcommittee, it appears that human rights and democracy issues would fall under the auspices of the agreement's main organ, the Trade Committee. The latter comprises of representatives of all three signatory parties and excludes any civil society participation. The Trade Committee's mandate is to supervise, facilitate and evaluate the application of the agreement, as well as to supervise the work of the specialised subcommittees (Art. 12). A study commissioned by the INTA Committee on the EU trade agreement with Colombia and Peru found it 'self-evidently inappropriate for the main organ of the agreement, entitled "Trade Committee", to have the primary competence to deal with issues arising under the human rights clause'. Until the ratification of the EU-Andean Political Dialogue and Cooperation Agreement (2003) enters into force, however, the Trade Committee seems to constitute the primary institutional mechanism to monitor the human rights provisions (Stevens et al., 2012: 49).⁷

In addition to the standard essential elements clause, bilateral and regional trade agreements include so-called Trade and Sustainable Development Chapters (hereafter Sustainability chapters). Under the EU-Colombia agreement, the sustainability chapter (Title IX) offers extensive provisions on labour (Art. 269), bio-diversity (Art. 272), trade in forest products (Art. 273), fisheries (Art. 274), Climate Change (Art. 275), migrant workers (Art. 276), regulatory protection (277), as well as trade favouring sustainable development (Art. 271), including the promotion of best business practices in terms of Corporate Social Responsibility (CSR). As such, the chapter provides two types of provisions. First and foremost, the chapter consist of a set of minimum obligations to comply with multilateral standards and international law, e.g. on labour, biological diversity. Second, a number of provisions under Article 277 require the parties not to reduce their levels of protection in their respective environmental and labour laws in order to encourage trade or investment. Further to this commitment, the agreement obliges both parties to effectively enforce their domestic environmental and labour laws 'through a sustained or recurring course of action or inaction'. Finally, Article 279 of the Sustainability chapter notes that each party will commit itself to monitor, review and 'assess the impact of the implementation of this Agreement on labour and environment, as it deems appropriate, through its respective domestic and participative processes' (Art. 279).

For labour in particular, Article 269 commits the contracting parties to promote and implement 'in its laws and practice, and in its whole territory' the ILO's four core labour standards as stipulated in its contains. This includes i) freedom of association and the effective recognition of the right to collective bargaining; ii) the elimination of all forms of forced or compulsory labour; iii) the abolition of child labour; and iv) the elimination of discrimination in employment and occupation. In addition to the aforementioned regulatory protection provisions under Article 277, Article 269 reinstates that 'labour standards should not be used for protectionist trade purposes'. In terms of content, it is worth noting

⁶ Such subcommittees on human rights and democracy can be set up on an ad hoc basis, as happened for the first time under the EU-Moroccan Association Agreement, see: Association Council Decision No 1/2003 [2003] OJ L79/14, Annex 1.

that the coverage of labour conventions under Title IX of the agreement is less comprehensive than under Article 8 of the GSP+ scheme, which previously applied to Colombia. Taking into account the labour rights covered under the essential elements clause however, all international conventions on labour rights apply equally under the current agreement. Either way, the ILO standards mentioned under Article 269 add nothing substantively new since they are already binding on the parties given their membership of the ILO. In addition, as mentioned above, the labour rights protected under the sustainability chapter are already covered under the essential elements clause (Bartels, 2012: 14). Title IX is, therefore, not to be perceived as a conditioning force, yet rather as a formal reaffirmation by the parties to uphold these labour standards within their own territory. The chapter is explicit in this regard, leaving the responsibility of protecting labour standards to each party's domestic sovereignty.

In terms of monitoring, the obligations under the sustainability chapter are covered by a range of organs provided under the agreement. Most importantly, a Sub-committee on Trade and Sustainable Development is established, which operates under its own rules of procedure and meets 'as necessary'. The sub-committee reports to the Trade Committee and can suggest recommendations to improve the implementation of the provisions under Title IX. Most importantly, the Sub-committee is mandated to assess, 'when it deems it appropriate', the impact of the implementation of the agreement on labour and the environment. While pre-empt of any civil society participation, the Sub-committee should promote transparency and public participation. Accordingly, its decisions and reports are to be made public, 'unless the Sub-committee decides otherwise', and its proceedings should 'consider inputs, comments or views from the public'. Article 282 of the agreement stipulates in this regard that the Sub-Committee should convene once a year, 'unless otherwise agreed by the Parties', a session with Civil Society Organisations (CSOs) and 'the public at large' and enter into a dialogue on matters related to the implementation of the Sustainability Chapter.

Accompanying the government-to-government meetings by the Sub-committee, Title IX provides two separate but interrelated civil society mechanisms, notably domestic unilateral advisory groups and a bilateral CSO forum that is organised back to back with the Sub-committee. The former includes domestic mechanisms, under which each party is bound to consult domestic labour and environment or sustainable development committees or groups, or create such forums if they do not exist (Art. 281). In the case of Colombia, an existing CSO-grouping was designated to serve as Domestic Advisory Group. Stipulations regarding the constitution and consultation procedures for these groups are to be in accordance with national law but should guarantee a balanced representation of relevant interests. With regard to the latter, bilateral meetings with CSO, Title IX foresees parallel meetings between the designate Sub-committee, CSOs and 'the public at large'.

Beyond monitoring and dialogue, Title IX does not provide binding unilateral enforcement mechanisms, nor can violations arising from the sustainable development obligations be addressed through the normal dispute settlement procedures established under Title XII of the agreement. If disputes were to arrive, one party can request the other for a governmental consultation, and if deemed necessary it can ask for the Sub-committee to convene to consider the matter (Art. 283). If a bilateral consultation cannot resolve the matter in a mutually satisfactory way, the complaining party may forward its grievances to a Group of Experts. Such a Group is then mandated to assess and provide a report on

whether or not one of the parties has indeed failed to comply with the obligations formulated in the chapter, as well as formulate *non-binding* recommendations to resolve the matter (Art. 284-285).

IV. Labour protection in Colombia: policy and practice

In order to assess how the above-described provisions ‘land’ in a given country context, we need to look at the current state of affairs. Before analysing stakeholders’ perceptions of the above-mentioned monitoring mechanisms, we discuss Colombia’s legal-institutional framework for labour protection and its implementation in practice. Such a mapping exercise of Colombia’s labour rights situation then allows us not only to identify outstanding challenges and structural deficiencies, but it also provides us with the necessary contextual background for an adequate assessment of the effectiveness of the tools and mechanisms provided under the trade agreement.

A. Legal framework for labour protection

Colombia’s legal and institutional framework for labour protection has become increasingly comprehensive over the past two decades. Dating back to the Constitution of 1886, labour contracts were considered as a lease between two contracting parties. In 1950 a Substantive Labour Code was consolidated to protect a set of fundamental labour standards, establishing labour law as a separate branch in the Colombian legislative system. Furthermore, it is worth noting that Colombian labour legislation has developed on a needs basis, through ad hoc revisions and amendments in response to contemporary labour issues. As such, the latest version of the Code was adopted in 2011 (Jaramillo Jassir 2010: 63-7). The most important reform of the Code took place in 1990, when Law 50 introduced basic standards to protect workers’ rights as a specified vulnerable group. Before that, Colombian labour legislation focused exclusively on the contractual relations between employers and employees. The main objective of Law 50 was to further develop labour stability, emphasizing the ‘primacy of reality’ over formal documents. In theory, this implies that laws are made as open as possible in order to ensure that basic worker’s rights would have primacy over contractual issues between employers and their employees (Barona and Betancourt, 2010: 253-255). As such, Law 50 aimed to protect a number of fundamental labour rights and to avoid abusive service contracts. In practice, however, critics have argued that such openness to interpretation, and the lack of specific policies to protect vulnerable social groups, has created loopholes in the legal framework for labour protection (Garay 1998: 227-228).

Labour rights as defined under the Code were reaffirmed and established as constitutional by the National Constitution of 1991. It anchored the constitutional primacy of international labour treaties, allowing the judicial system to overrule any law, decree, or administrative act as unconstitutional if considered inconsistent with these conventions. Subsequently, in 1993, Law 100 defined the basis for a social security system, establishing workers’ entitlement to health services, pensions, and risk management as intrinsic aspects of any labour contract.

Regarding the protection of the core ILO conventions, Colombian law recognizes and protects freedom of association and collective bargaining (FACB) rights through three key legal documents: the National Constitution of 1991 (Articles 25, 39, 53, 55 and 56), the Substantive Labour Code (Articles 8, 12, 353-358) and the Procedural Code of Labour and Social Security, established in 1948, and recently reformed

in 2001. Following recent pressures from both the ILO as well as from prospective trade partners like the US and Canada, Colombia has embarked on a substantive reform process to enhance labour protection. Most notably, in 2011 it has re-established a separate Ministry of Labour, which before had been unified with the Ministry of Social Security and Health into one sole Ministry of Social Protection in 2003. Furthermore, the government has put forward reforms to address the misuse of cooperative associations and temporary contract services, and has established a system of criminal penalties for employers who evade their FACB obligations (USDL 2011: 3, 16-7; MRE, 2014). Currently, the Colombian government identifies the following three priority areas for enhanced labour protection: i) the protection of FACB rights; ii) fighting abusive forms of outsourcing and subcontracting; and iii) the mitigation (and eradication) of violence against labour activists (MRE, 2014).

B. Practical enforcement of labour legislation

While the legal-institutional framework for labour protection in Colombia is arguably well developed, reality in practice raises questions about its enforcement. The following section aims to assess in how far the legal framework outlined above has effectively translated into a more adequate protection of labour rights in practice. We do so by focusing on two specific rights namely the freedom of association and the right to collective bargaining (FACB).

In its accountability report of 2014, the Colombian Ministry of Labour presented a brief overview of the government's achievements in FACB rights protection (MINT, 2014a: 16-7, 22-3). In relation to freedom of association, it notes that 791 trade unions were established in the period 2012-2013, representing a 48% increase compared to the 536 unions created between 2010-2011 (MINT, 2014a: 23; 2014b: 14). The report further notes that the number of labour contracts between employers and labour unions rose from 114 (between 2010-2011) to 1582 (between 2012-2013), and that registration procedures for new trade unions became less restrictive (MINT, 2014b: 15). In contrast, according to NGO reports, the percentage of unionised labour has fallen from 10% since the beginning of the 1980s to 4.4% in 2010.⁸ Moreover, according to US Department of Labour, within this group of unionised workers only 1.2% is covered by collective bargaining agreements (USDL, 2011: 16; JFC, 2015).

In order to elaborate more systematically the protection of FACB rights, we collected additional data on FACB rights (drawing from Marx et al., 2015). We do so by building on the work done by David Kucera and Layna Mosley. Kucera (2001, 2002) developed a new indicator which specifically aimed to capture the degree to which two specific core labour conventions are protected, namely ILO convention 87 (Freedom of Association and the Protection of the Right to Organise Convention) and ILO convention 98 (Right to Organise and Collective Bargaining). Mosley (2011) used this indicator to develop a time series, from 1985 to 2002, on the protection of freedom of association and collective bargaining. We build on this by expanding the time-series until 2012 for which data is available. The index of freedom of association and collective bargaining (FACB) is based on 37 evaluation criteria and considers both *de jure* -protection in law- and *de facto* -protection in practice- violations of these two labour rights. The coding of the index is based on a content analysis of three distinct sources: i) the annual Human Rights Reports

⁸ It must be noted that these reports span till 2010, while the governmental reports on the increase of unionised labour emphasize the change *after* 2011.

by the U.S. State Department⁹; ii) the ILO Freedom of Association cases and ILO Supervising Reports¹⁰¹¹; and iii) the International Trade Union Confederation’s (ITUC) Annual Reports on the Violation of Trade Union Rights.¹² These sources are then used to code a 37 category-coding template based on the two respective labour rights at hand. A detailed description of the coding methodology is provided in Annex 3.

Figure 1 below shows the overall trend in the protection of FACB rights (full line), the protection in law (dotted line) and the protection in practice (striped line). A higher score (10 or close to 10) refers to a better labour rights situation, with fewer FACB violations. A lower score indicates more (severe) violations. In other words, an upward trend indicates an improvement in the protection of FACB rights, a downward trend then obviously reflects a deterioration. In order to further refine the analysis a distinction is made between two groups of categories. A first category covers violations in law while a second one covers violations in practice. The categories covering violations in law regard the incorporation of labour rights (derived from ILO conventions 87 and 98) into domestic law. The situation in practice is measured by the remaining practice-categories, covering issues such as the number of union members fired for labour activism or an employer limiting the agenda in collective bargaining.

Figure 1. Trends in FACB protection in law and practice (1985-2012)

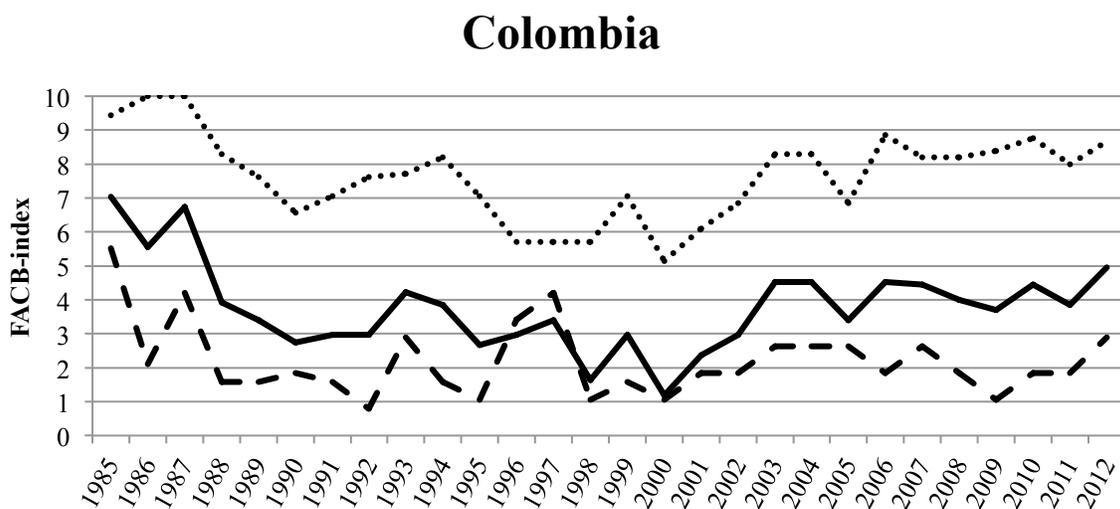


Figure 1 clearly shows that, despite slight improvements since 2000, overall there has been little progress in the overall protection of FACB rights over time. Indeed, compared to the early stages of the applied timeframe, the current situation reflects a significant deterioration in both the legal protection

⁹ <http://www.state.gov/j/drl/rls/hrrpt/>

¹⁰ <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20030:0::NO::>

¹¹ <http://www.ilo.org/dyn/normlex/en/f?p=1000:11000:0::NO::>

¹² The ITUC’s sources were gathered with the help of the ITUC itself: 2003 and 2004 were available in a paper format only, 2006, 2007 and 2013 were available online, and the others were sent to us as pdf-files.

and in practice. Interestingly also, the figure confirms the existence of a compliance gap given the significant difference between the protection of FACB rights in law (dotted line) and in practice (striped line). This compliance gap might be explained by several interrelated factors.

A first reason might be the increasing number of Colombians working in the informal sector. According to Justice For Colombia (JFC, 2015), no less than an estimated eleven million people - out of Colombia's 18 million total workforce - are employed in the informal economy and thus lack the protection of any formal legal framework. Moreover, within the remaining seven million who do enjoy formal employment, only four million people work under permanent contracts, leaving the remaining three million working in temporary service contracts. The ILO has argued in this regard that the perceived drop in unionisation has to do with anti-unionist discrimination at company level (ILO, 2011).

A second explanation refers to the lack of governmental commitment to address discriminatory practices and allow legal loopholes. Such legal loopholes relate to certain contracting practices, which allow employers to 'legally' circumvent the standing labour legislation, in particular with regard to freedom of association and collective bargaining. This practices include:

- **Associated work cooperatives** or *Cooperativas de Trabajo Asociado* (CTA) allow workers to be part of self-governed and autonomous enterprises. As such, they are legally considered as associated partners rather than as employees. CTA members are not allowed to form unions, neither to bargain collectively vis-à-vis their associate-employer. The Colombian government has put forward provisions and criteria aimed at ensuring that CTAs are not used as a vehicle to bypass labour standards, yet both the ILO and the US Department of Labour agree that the existing restrictions are inadequate to ensure this (USDL 2011: 7-8; ILO 2011; ENS 2015: 4-8)
- **Collective pacts** are allowed under Colombia's Substantive Labour Code and constitute contract agreements between non-union workers and their employers, yet tend to be used to subvert collective bargaining. Through separate, non-union agreements, employers have managed to avoid the labour standards demanded by unions, and to convince workers to leave their unions in order to get a better contract (CGT 2015: 10-11). The ILO has explicitly stated in this regard that 'collective accords with non-unionized workers should only be possible in the absence of trade unions' (ILO 2014). Colombian union leaders however argue that these type of pacts are still in use as a means to subvert their capacity to collective bargaining (ENS 2014: 30, 32, 34-38). It is worth noting however that actual collective bargaining in Colombia is a rather marginal phenomenon since formalised agreements between unions and employer cover only 1.2% of all workers (USDL 2011: 12; ILO 2011).
- **Temporary service agencies**, or *Empresas de Servicios Temporales* (EST) foresee in the ad hoc, short-term labour requirements of businesses. As in most countries, Colombia regulates and limits the use and the renewal of temporary contracts, yet they are used extensively.

Finally, violence against labour activists constitutes a third factor generating a compliance gap. While violence as such has diminished considerably in recent years, the problem of impunity and threats remains rampant. Impunity, in particular, was identified as a structural problem in Colombia by the UN Human Rights Council (HRC, 2013: 11), and the government's struggle to address these threats has led some to argue that violence against organised labour has not decreased, yet simply 'transformed its

manifestations' (Oidhaco, 2014: 10). The Colombian government has made concrete institutional steps to address these issues, including the creation of a specialised Labour section to the Human Rights Unit of the Prosecutors Office in 2006. The special section is mandated to investigate and prosecute exclusively violent crimes against labour activists. Furthermore, since 2009, Colombian law expanded the coverage of labour-related crimes, including threats, and allowed for more stringent punitive measures against them (USDL, 2011: 4; 21, 25). Despite these legal and institutional measures, nearly 1.000 threats against unionists have been recorded since 2011, while six labour activists have disappeared (ENS, 2014: 62; AFL-CIO, 2014: 7). Moreover, the impunity of these violations remains at 86.8% for murders and at 99.9% for threats (AFL-CIO, 2014: 7; ENS 2014: 63; Oidhaco, 2014: 10). The US Government Accountability Office notes in this regard that, while numbers of homicides on labour activists have dropped, threats to possible unionists have increased and constitute a strong deterrent for workers to unionize (GAO, 2014: 55). A 2011 ILO mission to Colombia confirmed that despite an overall decrease in violence against organised labour, the impunity toward offenders and threats against unionists have not been addressed in practice (ILO, 2011: 2-3).

While Colombia has established a fairly robust legal and institutional framework to protect labour rights, the practice on the ground shows that compliance with this system is problematic. The lack of enforcement of its well-developed legal-institutional framework is a well-known weakness among stakeholders. Discussing this compliance gap, many interviewees in Bogotá pointed to a lack of governmental capacity to implement and monitor its legislation. The perception is that this has partially to do with the geography of the country. Colombia is a large country in size with a challenging geography to monitor compliance with labour law. In addition, labour rights are but one of many human rights challenges in Colombia, noting that the country is still in on-going peace talks with the *Fuerzas Armadas Revolucionarias de Colombia* (FARC). Resources to enforce legislation are very limited and any government agency working on labour, human rights or justice-issues at large is chronically overburdened.

V. Assessment of the effects of the trade agreement

Having outlined a descriptive overview of the labour provisions under the trade agreement, following with an assessment of labour in law and practice in Colombia, we now turn to an analysis of how various stakeholders perceive the agreement's potential to contribute to improving labour protection in Colombia. As mentioned in the introductory sections, we do so based on twenty-seven semi-structured interviews, conducted in both Bogotá and Brussels, with a wide range of stakeholders and observers. This includes NGOs, labour unions and academia on both sides of the agreement, Colombian officials from the Ministries of Trade, Industry and Tourism (from hereafter the Ministry of Trade) and the Ministry of Labour, EU MS officials, as well as third country delegates, officials from the EU Delegation, and representatives from international organisations such as the UN Office of the High Commissioner on Human Rights.¹³ Based on these interviews, a number of concrete criticisms of the agreement's institutional mechanisms and their monitoring and enforcement are set out below.

¹³ See Annex 1 for the full list of interviewees.

A. On monitoring and enforcement

As discussed in Section III, an intergovernmental sub-committee on Trade and Sustainable Development monitors the labour and environmental commitments provided in the agreement. The Sub-Committee has so far met twice, once in Lima in February 2014 and once in Bogotá in June 2015. Judicial means and dispute-settlement provisions to enforce the agreements implementation are provided for, first by way of bilateral consultations, and secondly through the establishment of a Panel of Experts. Yet, none of the provisions in the Sustainability Chapter are bound by a binding unilateral enforcement mechanism, nor can violations arising from the obligations under the sustainability chapter be addressed through the normal dispute settlement mechanism established under Title XII of the agreement¹⁴.

Most interviewees found the labour provisions under the sustainability chapter to lack the appropriate monitoring and enforcement mechanisms to usefully and credibly contribute to improvements in Colombia's labour situation. While the agreement does provide laudable commitments to international standards, non-state actors argued that, as long as these commitments cannot be properly enforced through more stringent monitoring and enforcement mechanisms, they risk adding just another layer of legal-institutional commitments without being of any practical use. Some interviewees therefore deemed the sustainability chapter to be little more than lofty words, or even a 'half-hearted exercise by the EU to tick the box on its treaty obligations'. Many perceived the current sanctioning mechanisms to be weaker than those provided for under the former GSP+ regime. Indeed, while GSP+ allowed the EU to withdraw trade preferences in case of systematic violations of ILO standards, the sustainability chapter does not provide any such sanctioning measures, nor does it provide a binding mechanism for dispute settlement.

In response to such criticism, EU officials stressed that, contrary to the GSP+ scheme, the trade agreement in place constitutes a partnership between equals, rather than a preferential market access

¹⁴ EU officials were keen to note that, in addition to the monitoring mechanisms provided under the trade agreement, the EU has made justice and human rights one of the key thematic areas for its political and development cooperation with Colombia. On the ground, the EUD since late 2012 chairs a Human Rights Working Group (HRWG), which conveys both the political and development section of the Delegation, together with the EU MSs. The purpose of the HRWG is to collectively follow up and analyse the human rights situation in Colombia, as well as to coordinate EU interventions and share information on each party's respective projects. Priority issues under the EU Human Rights Strategy in Colombia reportedly include the promotion of children's and women's rights, addressing legal impunity, the protection of indigenous groups and ethnic minorities, as well as the protection of human rights defenders (HRD). While labour rights are thus not a priority area of the EU Human Rights Strategy in Colombia, the protection of labour activists constitutes a significant part of the EU's efforts to protect HRDs. It is worth noting however, that despite commitments to focus on human rights as a thematic priority area, the EUD in Bogotá has been struck by significant budget cuts, which have gravely diminished the Delegation's human resources in the area of human rights protection. The EU also maintains an annual Human Rights Dialogue with Colombia. Established in September 2012, this bilateral mechanism for formal dialogue aims to bring together high-ranking officials of the EU External Action Service (EEAS) and the Colombian Ministry of Foreign Affairs. While the main objective of the Dialogue is to exchange views on human rights issues and thematic priorities for cooperation in that regard, these meetings should in theory also touch upon trade-related human rights issues following the implementation of the EU-Colombia trade agreement (EU-CO, 2012). So far, however, none of the Human Rights Dialogues have directly addressed labour issues as such, let alone in the context of the trade agreement (EEAS, 2014 and EEAS, 2015).

regime. The trade agreement is therefore different in nature and spirit, most notably when it comes to conditionality and the monitoring of compliance. Essentially, the responsibility to monitor compliance with labour provisions is the exclusive competence of the respective parties, each for its own constituency. There is thus no obligation or mandate for the EU to monitor developments in, or compliance with, labour protection in Colombia. Moreover, EU officials stressed that trade is too blunt a tool anyway to adequately enforce labour rights, and that the labour provisions in the agreement are there to indicate a mutual concern among two contracting parties – as well as to contribute to a commercial level playing field for Colombian exports - rather than as a policing tool to regulate or address violations.

On the Colombian side however, the current approach raises several critical questions. First of all, a number of interviewees, including officials within the relevant ministries, indicated that Colombia's responsibility to monitor compliance with international labour standards would require capacity support and training since it does not have any experience, and lacks the know-how, to effectively monitor labour protection, particularly since the labour provisions under the agreement are of such a general nature.

Secondly, interviewees also voiced concerns about the role of the Ministry of Trade as the designated representative to the Sustainability sub-committee. Officials within the ministries noted in this regard that, while the Ministry of Trade is in charge of the implementation of the overall trade agreement with the EU, it is not necessarily the best-placed agency within the Colombian government to discuss labour (and environmental) issues. Moreover, and despite coordination and burden-sharing efforts, interviewees noted that information flows across ministries had not always been adequately guaranteed of an optimal involvement of, and input from, labour experts from the relevant services. Interestingly, similar issues were raised on the EU-side, where the sectional organisation of the delegation would sometimes hamper a straightforward coordination on trade-related human rights issues.

Thirdly, and in a similar vein, Colombian government officials noted that technical input to and from the EU currently go through the Ministry of Trade's mediation, while there are no formal channels for the Ministry of Labour to interact with their EU counterparts directly. Government officials noted in this regard that the US-Colombia Free Trade Agreement does provide such direct involvement, facilitating the Ministry of Labour to liaise and cooperate directly with the US Department of Labour on the Labour Action Plan (LAP) linked to – though not part of– the 2012 US-Colombia Trade Agreement. Officials from the Colombian Ministry of Labour claimed to be in contact with MEPs, MS government officials and European trade union federations to discuss the impact of the trade agreement as well as the aforementioned roadmap, yet so far there has been no direct contact with Commission services at DG Employment or DG Trade.

Fourth and finally, it was argued that the Sub-Committee was set up in a rather top-down manner and that formal annual meetings among government representatives could hardly constitute a credible monitoring mechanism without full transparency and an adequate and regular involvement of civil society. In accordance with Article 282 of the Trade Agreement, the Sub-Committee is required to meet with CSOs at an open session. Indeed, during the first meeting of the Sub-Committee, organised in Lima

in February 2014, the three parties discussed *inter alia* procedural matters, including the rules of procedure for such an open session. The latter rules of procedure state that the parties should ‘provide for an inclusive representation of the relevant interests among participants [...], including by promoting a balanced attendance of economic, environmental and social stakeholders, and by ensuring the Chairs [...] maintain a balanced allocation of speaking time among these interests’. The procedure further stipulates that the agenda of the open session *may* include a dedicated slot for CSO members ‘to present updates on their activities’ (EU-CO/PE 2014). Following the first open session of the Sub-Committee (in Lima, February 2014), interviewees argued that CSO involvement had been severely limited. First and foremost, due to a lack of resources and without support from neither the EU nor the Colombian government, Colombian union representatives had not been able to make it to Lima. Secondly, CSO representatives who did attend the open session complained that they had not been given the chance to take part in the discussions actively. Besides limited participation, many observers noted that the joint statements made available in the aftermath of the Sub-Committee meeting, offered little more than a summary of procedural decisions and a repetition of general commitments regarding the implementation of the Sustainability chapter (EU-CO/PE 2014).

A second Sub-Committee meeting, organised in Bogotá in June 2015, did slightly better in this regard though, overall, public information about the contents of these meetings remains of a general nature. With regard to labour matters, Colombia reportedly ‘emphasised activities carried out to strengthen labour inspections, collection of fines, actions against inappropriate intermediary practices, social dialogue with mechanisms such as the Committee on Resolution of Conflicts (CETCOIT), collective bargaining in the public sector, protection of trade union leaders and the fight against impunity’ (EU-CO/PE 2015). While these indeed constitute the key challenges for labour protection in the country, little is shared about concrete initiatives that are supposed to address them, or how far the Colombian government has made progress in this direction. More interestingly perhaps, are the cooperation activities in areas of mutual interest under Article 286 of the agreement. According to the joint statement about the June meeting in Bogotá, a ‘preliminary interest was indicated’ to cooperate on the following labour topics: CSR and the supply chain for the mining sector, best practices in labour inspection, mobilisation from informal to formal work, the prevention and eradication of child and forced labour, the prevention and resolution of labour conflicts, as well as mechanisms to measure labour and environmental impacts of the implementation of the Agreement. Particularly the latter issue of impact assessment is an interesting and promising indication, since it seems to respond to requests in that direction voiced by both MEPs, as well as by the Colombian government (EP, 2012b).

B. Civil society involvement

Like most recent EU trade agreements, the one with Colombia provides two separate but interlinked mechanisms for civil society to monitor the implementation of the labour and environmental provisions under Chapter 9. The first of these mechanisms is a domestic advisory group (DAG), which includes labour, environmental and business representatives. The second is transnational in the sense that it brings together CSO representatives from both sides of the agreement to jointly discuss sustainability issues during an annual ‘Civil Society Dialogue’, organised back to back to the meeting of the Sub-Committee on Trade and Sustainable Development.

Whereas most interviewees acknowledged that mechanisms like the DAG offer a potential forum to raise labour issues, both domestically as well as vis-à-vis the EU, experiences with similar forums for social dialogue made most of the interviewed non-state actors rather sceptical. Common concerns in this regard revolved around a lack of outreach and inclusiveness to different types of NGOs, an overall lack of transparency and insufficient accountability from the Colombian authorities. While Colombian and EU officials were keen to point out several, recently established forums for multi-stakeholder social dialogue, notably the Sub-commission of International Affairs and the Tripartite Commission for Conflict Resolution for ILO Complaints (CETCOIT), labour unions and NGOs indicated mixed feelings about these mechanisms and identified several shortcomings in need of improvement.¹⁵ Trade unions have argued for instance that the tripartite social dialogue mechanisms put forward by the Colombian government have not been sufficiently inclusive to ensure that something of relevance comes out of them, especially because of its lack of independence from governmental structures, which restrict the potential free and non-coerced expression of all the parties involved (CUT 2014: 4-7; CGT 2015: 15). A European labour representative argued in this regard that Colombian labour activists are rightfully sceptical and less likely to engage with ‘these types of dialogue mechanisms’, given past experiences.

Since the setup of the respective DAGs was part of the first Sub-Committee meeting in February 2014, domestic CSO mechanisms had to be established afterward. In the case of Colombia, the decision was made to use an existing domestic forum for social dialogue to assume the role of DAG under the trade agreement. Notably, the governmental representatives for the Sub-Committee on T&SD convene civil society and the public at large to discuss the issues arising from the implementation of Title IX of the Agreement. This summon is open to all who wish to attend (upon prior registration) (MCIT, 2015). It was thus not until the second Sub-Committee meeting in June 2015, that a first Civil Society Dialogue could take place. In the absence of the Peruvian DAG however, only the DAGs from Colombia and the EU met to discuss their mandate and future cooperation. In a joint statement, they requested that

the Parties adopt all appropriate measures to strengthen the capacities of the Domestic Advisory Groups to enable as many individuals as possible to attend the annual meetings (joint meetings of the DAGs and the open session with the Sub-Committee on Trade and Sustainable Development), as well as the capacities of civil society to participate fully in monitoring the implementation of the Agreement (DAG 2015).

To do so, members of the Civil Society Dialogue suggested a number of measures ‘to be taken before the next meeting’ in Brussels in 2016. These included financial support, the use of modern media - notably video conferencing – and the right to prior information. The latter seemed particularly pressing

¹⁵ The two institutions mentioned above are branches of the National Commission on Concertation of Wage and Labour Policies (CPCPSL) within the Ministry of Labour. Both include members of government, trade unions, pensioners unions and business guilds (MINT 2015). The CETCOIT is intended as a body where labour disputes can be settled domestically before they are taken to the ILO (Colombian Embassy, 2012). There are three members for each of the three sectors of the tripartite (government, unions, and guilds), and they are in charge of studying the conflicts that arise in relation to ILO Conventions No. 87 and 98 and intervene in these conflicts before they are submitted to the ILO (MINT 2015). The Tripartite Sub-commission of International Affairs on Labour was created in 2012 as well and functions as a bridge between the Colombian government and the transnational organizations and conferences dealing with labour issues. It is the institution responsible for answering to the ILO (MINT 2015).

since neither the Peruvian, nor the Colombian government had responded to letters of their DAG's chair, neither had they shared information about their respective domestic mechanisms, which would have greatly facilitated contact among the two DAGs prior to the meeting in Bogotá. Finally, the joint statement of the EU and Colombian DAGs requests 'that the governments of Colombia and Peru reconsider the composition and rules of operation of civil society groups which would serve as their respective Domestic Advisory Groups'. It was noted that these rules and composition should have been established in consultation with the relevant CSOs in order to allow the DAGs to effectively fulfil their mandates under the Agreement.

C. Identified shortcomings

While perhaps too early to discuss the functioning of the monitoring and CSO mechanisms under the EU-Colombia Agreement, many of the concerns outlined above seem to echo similar criticisms about the effectiveness and added value of similar sustainability chapters under the new generation of EU trade agreements. With regard to the functioning of the monitoring and enforcement mechanism provided under the Agreement, there seems to be a lack of close monitoring and follow up on the implementation and enforcement of the labour provisions – particularly since labour rights as such are not part of the EU's Human Rights Strategy with Colombia. This contrasts to the US approach in the US-Colombia trade agreement. First of all, the US uses the procedure of relatively high-level quarterly visits from the US administration to meet and discuss with their Colombian counterparts. Secondly, while sanctioning and hard conditionality are by no means ideal instruments to foster increasing recognition of labour rights protection, experience from the US-Colombia Agreement shows that, from time to time, it is a necessary tool 'to get their [the Colombian government] attention'.¹⁶ Hence, a binding bilateral dispute-settlement mechanism, like the one provided under Title XII of the EU-Colombia Trade Agreement could include the provisions under the Sustainability Chapter – effectively elevating labour and environmental provisions to the level of those provisions constituting, or consistent with, the adequate application and interpretation of the Agreement.

At the level of the EU Delegation in Colombia, the follow on the sustainable development chapter of the agreement could be strengthened. In order to achieve this the EU Human Rights Focal Point could collaborate more closely with the Trade and Development sections at the Delegation. The US approach offers a noteworthy example in this respect. Since late April 2015, an attaché of the US Department of Labour has been seconded to the US embassy to Bogotá, whose sole responsibility it is to monitor the implementation of the Labour Action Plan that was linked to – though not part of – the 2012 US-Colombia Trade deal.

Concerning, CSO engagement, we identify three critical concerns. First of all, there seems to be an overall lack of accountability of both Colombian government agencies and of the EU towards the domestic and transnational CSO mechanisms. Essentially, how DG Trade on the EU side, and the respective ministries on the Colombia side have to deal with input from CSO is unclear since the Trade Agreement is rather vague in this regard. Article 280 (7) simply states that 'the Sub-Committee shall be

¹⁶ Several interviewees observed a decreasing willingness on the Colombian side to implement and safeguard labour regulation once the trade agreement with the US had been signed.

open to receive and consider inputs, comments or views from the public on matters related to this Title'. With regard to the Domestic Mechanisms, Article 281 then adds, equally broad, that 'procedures for the constitution and consultation of such committees or groups [...], shall be in accordance with domestic law' (Art. 281). Similarly, how CSO mechanisms at national and transnational level can formally ask one of the Parties to enter into bilateral consultations, in case of labour violations related to the implementation of the Trade Agreement for instance, is unclear as well. Essentially, civil society and 'the public at large' are considered as secondary parties to the trade agreement. The inputs they provide, through the appropriate channels, are welcome, though in no way can the governmental Parties be held accountable to act upon them.

Secondly, there is a perceived lack of formal coordination, information sharing and allocated resources to allow these CSO mechanisms to effectively fulfil their mandates. While annual meetings are useful, the Parties should enable them, in every way, to set up a more regular dialogue, to construct an agenda based on issues of mutual concern, well ahead of their physical meetings. Similarly, it was considered vital for the usefulness of the CSO mechanisms, that the Parties disclose any relevant information in order to allow for a meaningful debate, among the DAGs as well as vis-à-vis the Sub-Committee.

Finally, when it comes to assessing the impact of the Agreement, there seems to be a lack of clarity about what this entails concretely. First, According to Article 279 of the Sustainability chapter, each Party has to monitor, review and 'assess the impact of the implementation of this Agreement on labour and environment, as it deems appropriate, through its respective domestic and participative processes' (Art. 279). Each party is thus obliged to monitor and assess the impact of the trade agreement on its domestic labour and environmental situation. In addition, Article 280 on the Sustainability Chapter's institutional and monitoring mechanisms, clearly stipulates that, in order to 'carry out the follow-up of this Title', the Sub-Committee is required to 'assess, when it deems it appropriate, the impact of the implementation of this Agreement'. While DG Trade releases annual implementation reports to brief the Council and the EP on the progress made against the different chapters of the Agreement, little is known about the impact of the trade agreement, let alone its impact on the labour situation.

In March 2014, a delegation of the EP's International Trade Committee (INTA) visited Peru and Colombia to assess the process of implementation of the Trade Agreement, focusing in particular on the commitments on sustainable development. During their visit, the INTA members reportedly observed that 'while the purely trade provisions seemed to have been implemented correctly, further progress on the commitments [...] in terms of labour rights and social dialogue was needed'. The MEPs further concluded that it was evident that 'the Commission has not (yet) developed a proper mechanism to monitor the implementation of the Trade and Sustainable Development Chapter' (EP, 2014). The lack of clarity on the development of a proper impact assessment of the Agreement is particularly problematic given the lack of a proper ex-ante impact assessment of the final Agreement as it was implemented.¹⁷ At

¹⁷ Already during the negotiations with the Andean bloc, DG Trade commissioned a Sustainability Impact Assessment (SIA) of the likely economic, social and environmental impacts of a potential multi-party trade deal between the EU and its Member States (MS), and the remaining three Andean countries Colombia, Ecuador and Peru. While the economic benefits of the EU-Colombia trade deal were subjected to an additional impact assessment once Ecuador dropped out of the negotiations (Francois et al., 2012), no full-fledged SIA was

the time of writing there was no indication that the Commission had initiated some type of impact assessment procedure.

VI. Conclusion

While observers generally perceive the EU's normative approach to international trade as a welcome and laudable commitment to a more sustainable global trade agenda, how to concretely give shape to this commitment in a meaningful, tangible, manner, is still up for discussion. Roughly eight years after the Cariforum EPA introduced the concept of so-called Sustainability Chapters, an increasing number of stakeholders have started questioning their implementation, their added value and, more fundamentally, their impact on the labour and environmental situation in the partner countries at hand. As such, the European Parliament, a wide array of civil society organisations and a small number of EU MSs, have indicated that there is a need for more stringent rules on trade and sustainability, particularly when it comes to the monitoring and enforcement of the provisions (on labour and environmental standards) under the respective Sustainability Chapters.

The aim of this paper is to contribute to this discussion, first, by offering a comprehensive account of the implementation process so far, of the labour provisions under the EU-Colombia Trade Agreement, and focusing in particular on the protection of freedom of assembly and the right to collective bargaining. Secondly, by offering an assessment of Colombia's labour situation, *de jure* and in practice, as well as a critical analysis of stakeholders' perceptions of the provisions under the Sustainability Chapter. Building on this twofold approach, this final section outlines a selection of critical observations regarding the use and usefulness of the EU's soft conditionality approach as interpreted under the EU-Colombia trade agreement.

A vast majority of the stakeholders consulted in Brussels and Bogotá considered the EU labour rights language in the agreement to be too broad to be meaningful or credible. Essentially, labour provisions were not formulated in a Specific Measurable Achievable Relevant and Time-bound (SMART) way, which hampers their monitoring and progress tracking, allowing for interpretative and/or broad reporting. The perceived lack of an adequate monitoring and enforcement framework further adds to the broadly shared feeling among stakeholders that the EU's approach to normative commitments through soft conditionality constitutes little more than 'window dressing', or even, as one correspondent called it, 'a box-ticking exercise on treaty obligations'. While not all interviewees voiced such radical criticism, most agreed that, since the labour provisions under the agreement are ratified by both parties under international conventions, their reference in the Sustainability Chapter adds little in terms of hard law. This is particularly relevant since Colombia has in fact developed a full-fledged legal-institutional

conducted on the potential effects of the trade agreement as it was adopted in its final form. Moreover, the social dimension of the initial 2009 SIA focused exclusively on the provisional agreement's potential impact on i) poverty and inequality; and ii) health and education. Labour rights as such are part of a rather generic section on baseline conditions, though does not offer any insights on the potential impact of the agreement (EC, 2009: 52-54). Moreover, the lack of a comprehensive impact assessment of the trade deal's potential effects on Colombia labour situation goes against both the Commission's general policy on Integrated Impact Assessments (IIA) and DG Trade's guidelines on Trade Sustainability Impact Assessments (TSIA).

framework for labour protection, though suffers from a significant compliance gap when it comes to enforcing this regulatory framework in practice.

Rather than incentivising legislative or institutional reform, the added value of the labour provisions under the Trade Agreement are thus, in theory, to be found in the provisions for i) monitoring and enforcement; ii) CSO inclusion; and iii) cooperation activities. Ideally, the EU's market power as an important trade actor, and the institutional monitoring and cooperation provisions under the Trade Agreement, would allow the EU to meaningfully pressurise and support the Colombian government to enhance the enforcement of their domestic labour legislation. Based on an analysis of stakeholders' perceptions however, questions rise about the usefulness of a rigidly formalistic and top-down annual monitoring mechanism, designed to monitor compliance with international labour standards which are *de jure* already in place. The absence of a binding enforcement mechanism, and the lack of adequate engagement with CSOs, further hamper the Agreement's overall credibility when it comes to following up on, and contributing to, a better compliance with labour provisions in practice.

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