

# Labour Provisions in Free Trade Agreements: “Rebalancing Globalization”?

Anne Posthuma

International Institute for Labour Studies,  
ILO Geneva

# Structure of the Presentation

- Key features of labour provisions in trade agreements globally
- Evolution of labour provisions in FTAs in the Americas (US, Canada, bilateral, regional)
- Issues and challenges for consideration

# Rationale for ILS Research on Labour Provisions in FTAs

- The social and labor dimensions of the global economy must be strengthened
- What is the current status of labour provisions in bilateral and regional trade agreements (prevalence, content, implementation)?
  - No multilateral agreement on labor and trade
- Mapping exercise using WTO Regional Trade Agreement Information System (to Nov. 2009)
  - Phase One of ILS/ILO research project on 'Labor and Globalization'

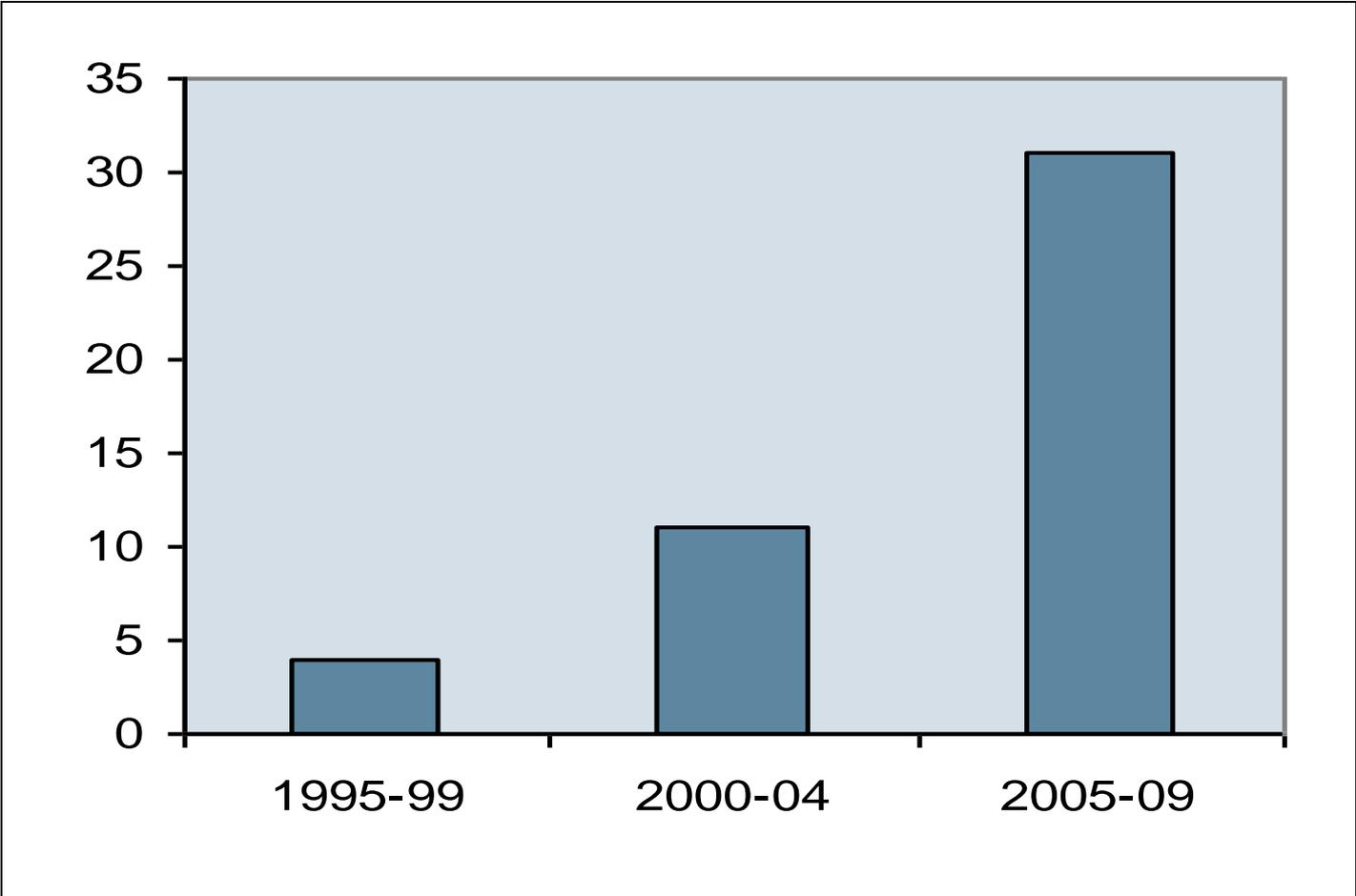
# High-Level Discussion Has Shifted Since the 1990s

- **Singapore Declaration (1996)** – “...the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question”
- **ILO Declaration (1998)** – requires ILO member States to comply with and promote the Core Labour Standards (regardless of ratification of Fundamental Conventions).
- **Declaration on Social Justice for a Fair Globalization (2008)** – “...the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage...”

# Rising Use of Labour Provisions in FTAs

- Labour provisions in trade agreements have increased over the last 15 years
- Rising percentage observed in period 2005-2009 (31%), as compared with two previous periods 1995-99 (4%) and 2000-04 (12%)
- Driving forces: US and Canadian FTAs
- Emerging South-South trend

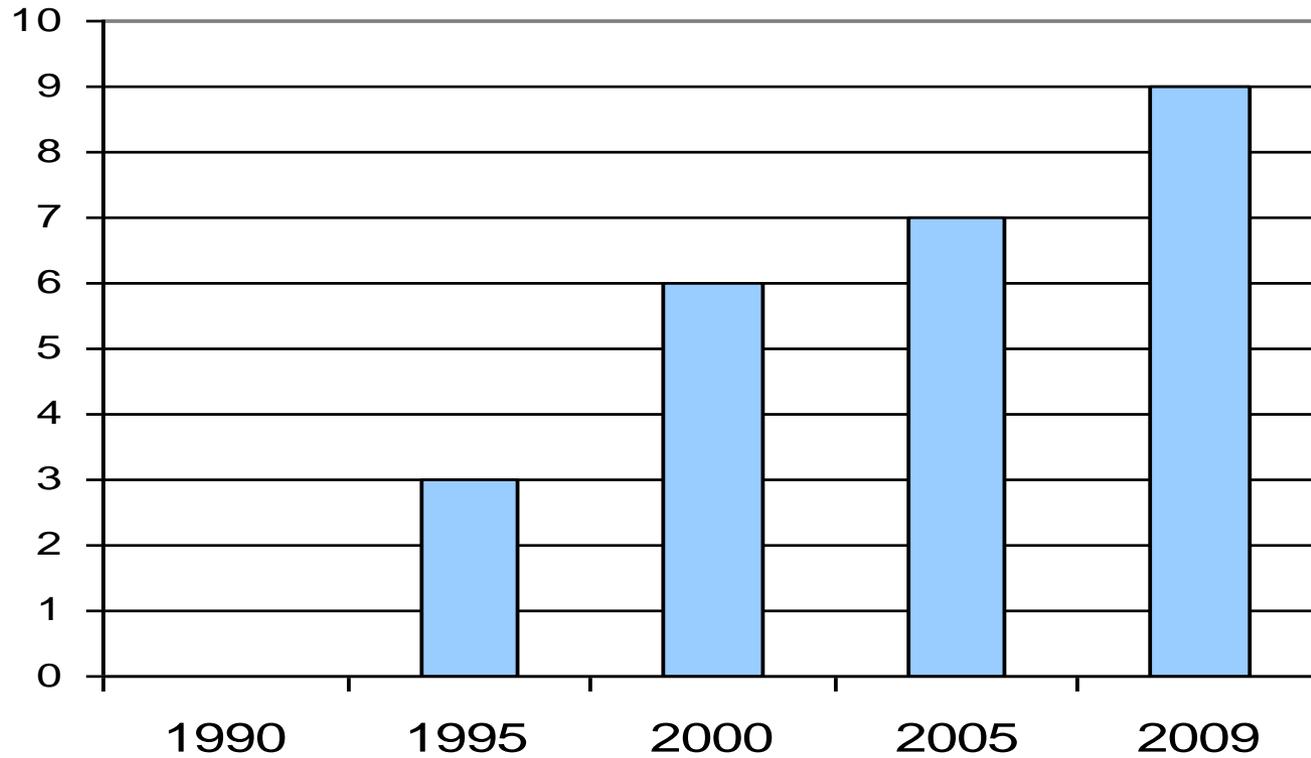
# Share of trade agreements with labour provisions (of total FTAs entering into force world-wide), 1995-2009



# New Trends: South-South Arrangements

- A rising number of trade agreements between developing countries and emerging economies contain labour provisions (9 identified)
- All involve promotional labour provisions, with a focus upon information sharing, cooperation, exchange of expertise, capacity-building
  - Except one (Taiwan, China – Nicaragua, 2009)

# South-South FTAs with Labour Provisions



# Features of Labour Provisions Globally

- Among countries that insist upon labour provisions, there is diversity in:
  - normative content
  - legally binding character
  - emphasis upon conditionality, cooperation and capacity-building
- How have these provisions evolved over time, at the global level?

# Normative content:

## Coherence with ILO Instruments

- Approx. 60% of RTAs with labour provisions make specific reference to the ILO Conventions, or Core Labour Standards of the 1998 Declaration
- Other ILO Labour Conventions also mentioned

# Binding or Non-Binding Character

- Within the trade agreement itself
  - Depending upon strength of provision
- Or, in a side agreement (usually non-binding)

# Typology: Approaches in Labour Provisions

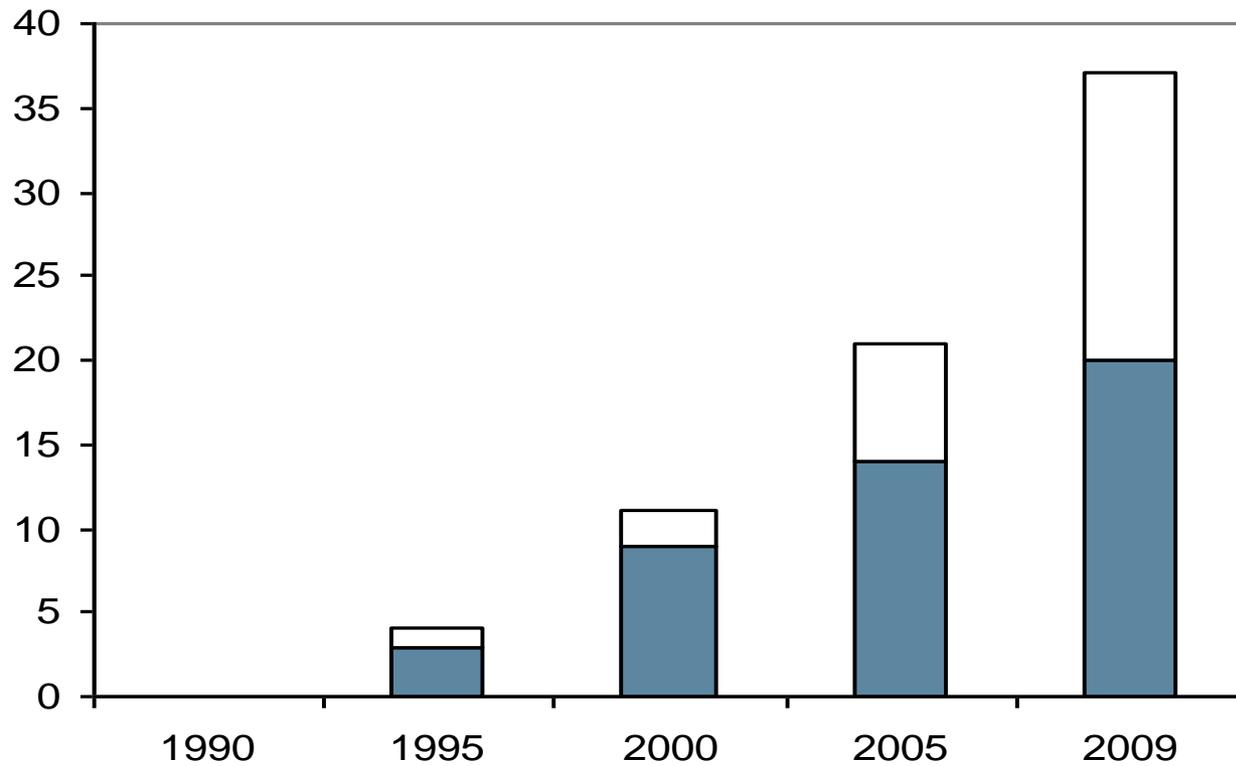
Conditional Approaches		Promotional Approaches	
<b>Sanctions-Based</b>	<b>Incentives-Based</b>	<b>Cooperation-Based</b>	<b>Supervision-Based</b>
<i>Technical Assistance</i>	<i>Technical Assistance</i>	<i>Dialogue, Information Exchange</i>	<i>Annual Reports</i>
<i>No Technical Assistance</i>	<i>No Technical Assistance</i>	<i>Capacity Building</i>	<i>Complaints Mechanism</i>

# Conditional and Promotional Clauses

- Conditional clauses (46%)
  - Sanctions (for example, US and Canadian FTAs, EU General System of Preferences)
  - Including fines and supervision
- Promotional clauses (54%)
  - Involving qualitative elements, such as cooperation, capacity-building

# Evolution: Conditional Clauses

## Promotional Clauses



# Evolution of US and Canadian FTAs

## ‘Two-Pronged Approach’

Involves multiple, mutually-reinforcing elements

1) Strengthened normative content, more comprehensive clauses

Reference to ILO norms

- 1998 Declaration
- Core Labour Standards
- Selected Conventions (Conv. 182)

## 2) Enforcement mechanism

### Fines in the case of non-compliance

- Paid into a special fund, for remediation of labor rights problems

### Exceptions, in some cases:

- Canada and Costa Rica (2002)
- US and Peru (2009)

- Dispute settlement mechanism
  - Resolution of non-compliance through consultation, social dialogue, reviews, and technical assistance (rather than imposition of sanctions)

### 3) Strengthened terminology

- ‘Ensure respect of Core Labor Standards’  
(versus *‘Strive to ensure’*)
- Enforcement of national labour law
- Cannot weaken labor law to attract trade and investment

## 4) Promotional activities: Cooperation, Technical Assistance, Capacity-Building

### Enhancing institutional capacities

- **US-Chile Trade Agreement** involves skills and procedures for application of labor law
- **Canada-Chile Agreement on Labor Cooperation**
  - Workshops, conferences, information exchange, research on application of labor standards
- **Canada-Costa Rica Labor Side Agreement**
  - Technical assistance to strengthen labor inspection and dispute settlement system

- CAFTA-DR: US\$20 million per year since 2006 for capacity-building in labor standards
  - Action plans
  - Monitoring by the ILO to verify progress toward goals of the White Paper
  - 5 Areas: (i) Strengthen Labor Ministries; (ii) Improve labor system and legal advice to workers; (iii) Reduce discrimination in the *maquilas*; (iv) Combat child labour; (v) Strengthen culture of compliance with labor norms

- **Taiwan-Nicaragua Trade Agreement (2008)**
  - Labour Affairs Committee
- **Australia-Chile Trade Agreement (2009)**
  - National Contact Point
- **Chile-Colombia Trade Agreement (2009)**
  - National Contact Points, High-Level Meetings

# Evolution of LAC Bilateral FTAs

- Mixed patterns (no single pattern or trend emerging)
- Cooperation on labour issues common across countries identified
- Growing reference to the 1998 Declaration
- Related with clauses on:
  - commitment to minimum labour standards
  - not weakening labour laws to attract investment and trade

- Institutions for dispute settlement and consultation mechanisms
  - **Taiwan-Nicaragua Trade Agreement (2008)**  
Labour Affairs Committee
  - **Australia-Chile Trade Agreement (2009)**  
National Contact Point
  - **Chile-Colombia Trade Agreement (2009)**  
National Contact Points, High-Level Meetings

## Diversity in Location of Labor Provisions

- Labor provisions as a side agreement or MoU
  - Chile-China Trade Agreement, and Trans-Pacific Partnership Agreement
- Labor provisions in the body of the text
  - Taiwan-Nicaragua Trade Agreement

## Diversity in Conditional Strength of Labor Provisions

- Commitment to minimum labour standards sometimes phrased as political objectives, not concrete obligation
- Taiwan-Nicaragua Trade Agreement
  - Labour provisions subject to regular dispute settlement mechanism
  - Could involve suspension of trade benefits, but difficult to prove economic disadvantage caused

# LAC Regional Trade Agreements

- Conceived not just as FTA, but as basis for regional economic integration
- No sanctions
- Social counter-weight to regional integration (but not integral part of the trade policy)
- Reference to 1998 Declaration and Core Labour Standards
- Framework for labour cooperation & monitoring provided

- Labour provisions added to Regional Trade Agreements over 1990s

### **CARICOM**

- Charter of Civil Society for the Community of 1995
- Declaration of Labor, Industrial Relations Principles, 1998

### **Agreement on the Andean Community**

- Andean Instrument on Occupational Safety and Health (1999, revised 2004)
- Technical assistance through a Labour Committee

### **MERCOSUR**

- Social-Labour Declaration (1998)

# Mercosur

- Tripartite Commissions, at national level
- Social-Labor Commission, at regional level
  - Develops programs and action plans for promotion, monitoring of implementation
- Annual Report presented to the Commissions
- Social-Labour Declaration has been a platform for social dialogue
  - e.g. international framework agreement between Volkswagen and local trade unions

# Summary: Trends and Evolution in the Americas

- No single pattern, experience with labour provisions is mixed
- Overall, trends toward:
  - Reference to ILO norms
  - Commitment to minimum labour standards
  - Enforcement of national law
  - Consultative mechanism
  - Clause to not weaken labour law to attract investment and trade

- Strengthened monetary fines
- Widespread coordination and cooperation activities
- Evolution depends largely upon trade partner
  - Within body of the FTA, versus a memorandum of understanding
  - “Shall respect”, versus “Strive to ensure”
- Whether is bilateral or regional integration agreement

# Issues and Challenges: Coordination

- Proliferation of FTAs requires compliance with labour provisions of varying character and content
- Usually no legal conflict between provisions
  - But overlapping obligations may weaken coherence of the framework of international labour law
  - Complicates national-level implementation (e.g. reporting requirements)
- Multiple stakeholders at different levels play a relevant role
- **Potential to create synergies for countries subject to various labour provisions**

# Issues and Challenges: Normative Content

- Scope exists for greater alignment with ILO Conventions
- Is useful to reference 1998 Declaration
- Reference to Fundamental Conventions would involve the supervisory mechanism
  - body of jurisprudence, broader framework of labour norms

# Application: Direct and Indirect Impact

- Conditionality has a role. Sanctions effective especially where political will is lacking:
  - Market dependence of the country
  - Type of government
  - Type labour standards involved
  - Technical capacity of the country to remedy problems

- Promotional activities and capacity-building have a role, especially where capacity is lacking:
  - Ensure effective compliance and sustainability
  - Cooperation activities
    - NAFTA: workshops, conferences
    - CAFTA: shift to technical and financial assistance to build State capacity
    - Bilateral and regional FTAs: cooperation on labour issues
- **How to improve and build on good progress?**

# Issues: Role of Positive Incentives

## **US-Cambodia Textile Agreement (not a FTA)**

- shows effective Impact of positive incentives**
- Positive Incentive-based labour provisions:
  - Compliance with labour standards, rewarded with increased quotas to US market (repeated tranches for compliance was an element of success)
  - Industry-wide incentives for employers
  - Credible monitoring of working conditions, by ILO
  - Technical assistance to build capacity and involvement of public and private actors
  - Multi-faceted approach
- Outcome: Improved labour conditions (although challenges do remain...)

# Measurement of Impact or Effectiveness

- Difficulty to formulate reliable indicators to gather data and assess impact, on a regular basis, across countries
- Analysis and understanding of impact and causality is difficult with existing data
- Constrains the ability to derive policy lessons
- **Interest to know more about successful experiences to document, derive lessons learned**

# Economic Crisis and Changing Trade Patterns

- Reduced consumption in the US
  - “Substitution effect” for low-cost goods
  - Outsourcing to cut costs
- Competition to attract new foreign investment
- Emerging economies are growing consumer markets
- Greater South-South and intra-regional trade
- **With rising South-South FTAs, what will be their approach to labour provisions?**

# Looking Forward: Considerations

- Integrated and multi-faceted approach in design of labour provisions, can enhance application
  - Strengthened normative content
  - Capacity-building and cooperation on labour issues
- Potential to integrate positive incentives (lessons from Cambodia)
- Development aid (e.g. US and Canadian FTAs)
  - Aid for Trade