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**Efficacy of Labour Provisions within Trade
Agreements: Case Studies of the U.S-Cambodia
Bilateral Trade Agreement and the Canada-United
States-Mexico Agreement**

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Abstract

Trade is increasingly being utilized to protect the environment and human rights. This article addresses the use of trade agreements to better labour rights and standards. This is done using two case studies. Firstly, the US – Cambodia Textile Agreement in partnership with the International Labour Organization is examined. Secondly, the Canada-United States-Mexico Agreement, one of the most recent Free Trade Agreements, which contains interesting labour provisions that set out to better the lives of workers. However, it is interesting to evaluate if such provisions are actually effective and if they impact the lives of the workers in the factories where goods are made.

Keywords: Cambodia, FTAs, ILO, labour provisions, Mexico

I. Introduction

Since 1919, the International Labour Organization (ILO) has worked with governments, companies, and employees to develop labour standards for all, and

some strides have been made since then¹. The ILO even launched a Labour Provisions in Trade Agreement Hub which showcases the labour provisions included in a total of 356 agreements². However, the background paper for the *World Development Report of 2013* suggests that not only are improvements in labour rights few and far between in some regions, but they appear to be generally in a worse state than in 1985³. The phenomenon can partially be explained by contextual elements of global labour governance. The combination of the liberalization of trade and the ever-growing influence of transnational non-state actors accentuates the need for a renewed approach to labour standards. The situation must be addressed as governments wanting to better these standards face difficulties regulating on certain aspects as they relate to actions performed outside of their borders and some governments are simply not willing to put in the necessary efforts⁴. In other words, non-state actors benefit from the liberalization of trade and, due to the transnational nature of their actions, national law is simply insufficient and ineffective to address transnational ignoring of labour standards. In response, the ILO and other actors of the international community started developing intergovernmental initiatives regarding transnational companies and private and voluntary initiatives⁵. A major problem with these initiatives is that they often lacked a major component to their success: incentivization⁶. In fact, incentives for the “recipient” state and transnational actors are essential to “strengthen effectiveness and increase commitment”⁷. The respect of labour rights ought to become an enticing investment for these actors.

A potential avenue to fulfill this need for an initiative that includes state and non-state actors is the inclusion of labour provisions within Free Trade Agreements (FTA). According to the ILO, FTAs have included this type of provisions and elements relating to labour since the 1990s⁸. The inclusion of labour dimensions within FTAs ranges from the implementation of norms into national laws and of dispute resolution mechanisms and the incentivization for companies to offer better working conditions for their employees⁹. The question at stake is then to determine if these measures are effective in changing the labour norms of workers within the states party to an FTA. This includes both government actions such as changes to national laws and regulations and the practices of non-state actors. The proposed hypothesis is that including different actors through provisions contained in FTAs increases the chances for effective change in labour norms in a given country. This is possible as incentives could lead to higher labour standards and help to implement the ILO’s standards. This also creates an incentive for businesses instead of only being directed to governments. Moreover, other than incentives, labour provisions in FTAs could facilitate the enforcement of pre-existing labour standards.

This article examines two FTAs that include labour provisions and determines whether these agreements were effective in implementing better labour standards and practices. The first section of this article explores the *U.S.-Cambodia Bilateral Textile Agreement*¹⁰. The second section will focus on the labour provisions contained within the *Canada-United States-Mexico Agreement*¹¹. Each section first presents the labour provisions contained within each agreement and, second, examines the impacts of the labour provisions and their general efficacy.

II. Methodology

This article sets out to determine the efficacy of the inclusion of labour provisions within FTAs. To determine the efficacy, a simplified version of the framework developed by Jonas Aissi, Rafael Peels, and Daniel Samaan will be used¹². This framework involves four elements which are:

- (i) considering labour provisions as a multifaceted "policy mix", consisting of several interrelated mechanisms and tools; (ii) differentiating between proximate (e.g. legal, institutional and political) and distant (mostly socio-economic) outcomes; (iii) considering attribution by examining the process of impact at different levels and, ultimately, how labour rights and working conditions are affected on the ground; and (iv) suggesting a mixed-method approach that combines qualitative and quantitative methods.¹³

The policy mix aspect is described as relating to "policy levers" that range from individual elements, national laws, regulations, incentives, and monitoring¹⁴. In terms of the differentiating of proximate and distant outcomes, it is important to note that proximate measures are measures that involve, for example, legal or regulatory reforms and are seen as being close to the acts of the government itself and, in turn, to the FTA¹⁵. Distant outcomes are impacts on the ground and, in this case, changes to the factories could be seen as distant outcomes¹⁶. The attribution process are addressed within this article, but it focuses mainly on the changes in conditions within the timeframe for which the FTA is applicable. This is important to note that other elements may have contributed to the changes in labour standards. The mixed-method approach simply refers to the importance of diversifying the types of data analysed to understand the impacts of labour provisions¹⁷. In sum, this will culminate in a three-part approach to the analysis of the effectiveness of the FTAs: firstly, a description of the policy mix; secondly, an analysis of the distant and proximate outcomes that takes into account the different types of data and attribution processes; and, thirdly, a reminder of the contextual elements that may have influenced the success, or lack thereof, of the labour provisions.

This framework will allow for a more holistic view of implementation. However, this article does not set out to determine the overall effectiveness of labour provisions

within FTAs. Rather, it determines the effectiveness of the two FTAs examined. These FTAs were selected for several reasons. Primarily, it was essential to find FTAs that included labour provisions and there was an assessment of the availability of data to analyse the impacts of the provisions. Nonetheless, some of the data was only available in Spanish. This information was not considered. Moreover, both of these FTAs were innovative and leading the way in their own right in terms of the type of labour provisions included within them. This will be further developed in what follows.

This article is based on a review of the literature in the fields of law and economics and based on news articles, surveys, and reports from international organizations. Yet, this is not an exhaustive review of all business practices, national laws and regulations of countries party to the FTAs in question.

III. Discussion

1. Labour Provisions in the Context of the U.S.-Cambodia Bilateral Trade Agreement

The *U.S.-Cambodia Bilateral Textile Agreement* was an FTA¹⁸ concluded in January 1999¹⁹. The textile industry in Cambodia represented about 75% of the exports of the country and most factories are owned by individuals that are not Cambodian rather those simply “seeking low-wage employment markets”²⁰. Thus, the agreement touches upon an industry that is, on the one hand, significant in Cambodia and, on the other hand, motivate by cost-cutting measures. In the case of Cambodia, there was a strong drive to achieve better working conditions for factory workers and a labour code was passed in 1996 to foster this intention²¹. This code provided several necessary changes and improved labour standards. However, there was a greater issue at stake and this issue was enforcement. The enforcement was the responsibility of the Cambodian Bureau of Labour Inspection, which was underfunded, and corruption was also a problem as bribes were offered and reported cases could “result in trouble with [...] superiors, or worse”²². As a result, violations of labour standards were occurring with little to no repercussions for the employers. These violations include paying less than the minimum wage, retaliation against employees after protests regarding violations of the right to freedom of association, and many health and safety standard violations²³.

a. The Labour Provisions within the U.S.-Cambodia Bilateral Trade Agreement

The *U.S.-Cambodia Bilateral Textile Agreement* contains labour dimensions. It was the first time that a labour standard provision was included in a trade agreement negotiated by the United States²⁴. The provision reads as follows:

Cambodia shall support the implementation of a program to improve the working conditions in the textile and apparel sector, including internationally recognized core labor standards, through the application of Cambodian labor law [...] The Government of the United States will make a determination [...] whether working conditions in the Cambodia textile and apparel sector substantially comply with such labor law and standards.²⁵

In sum, this provision addresses not only the international labour standards in existence but, also, the implementation of a program to enforce these rules. This program was quite interesting for the Cambodian government as it filled a gap between the labour standards within their laws and the labour standards *de facto*. The United States, in exchange for the creation of this program and confirmation of “substantial compliance with Cambodian labor law and internationally recognized labor standards”, could increase the import quotas for Cambodian textiles²⁶. At the time of the conclusion of the FTA, Cambodia was “subject to significant quantitative restrictions” by the United States²⁷. Thus, the potential for increase in import quotas creates a certain incentive for the Cambodian government to conform to the standards and to implement this program. It was agreed that the program would be financed by Cambodia, the United States, and the Garment Manufacturers Association of Cambodia. The ILO would be responsible for its development and implementation²⁸.

Although the beneficiary of the program was Cambodia, it was mainly the United States and the ILO that developed several proposals that lead to the fourth and final project proposal²⁹. The final project sets, as the standard, both international rights of workers and Cambodian labour laws³⁰. This program had two elements. Firstly, the ILO created an “independent external monitoring program”³¹. Secondly, the ILO worked on capacity building to ensure that Cambodia resolves the enforcement issues it faced in the first place³². Thus, the program does not only monitor the situation during the period in which it runs but allows Cambodia to enforce their national standards and international standards in the future. The program, named the Better Factories Cambodia (BFC) programme, ran past the lifetime of the FTA and was quite broad as it was directed to all exporting apparel factories³³. The broad nature of the program is explained by the fact that exporting factories needed to participate in this initiative to obtain an export licence³⁴. In turn, this creates an incentive for factories to conform to the labour standards needed to obtain the necessary accreditation.

The monitoring conducted by the ILO in the context of the BFC was quite extensive and regular. The monitoring teams were set to visit each factory around six times yearly and these teams developed a check list of 156 indicators to verify upon each visit³⁵. These indicators were primarily based on standards set out in the Cambodian Labour Code and therefore ranged from wages to freedom of association³⁶. The ILO then provided summary reports three times a year using the information collected during the monitoring efforts. The BFC qualifies as a private compliance initiative (PCI)³⁷. This categorization can be explained by the fact that the certification process is managed by the government, but it impacts companies, and the monitoring is done by organizations³⁸. This initiative being a public-private partnership of sorts is the basis of this categorization. The impact is twofold. Generally, PCIs motivate compliance as the public actors put in place measures to pressure the private actors into respecting labour standards as sanctions are imposed and, in turn, companies create private monitoring to avoid said sanctions³⁹. In theory, this creates a framework in which private actors not only respect labour standards, but make sure they are applied within their factories.

b. The Impacts of the Labour Provisions within the U.S. Cambodia Bilateral Trade Agreement

Theoretically, the labour provisions within the U.S.-*Cambodia Bilateral Textile Agreement* incentivise the respect of international and Cambodian labour standards. However, to determine efficacy and, in turn, the impacts of the labour provisions, several factors must be considered.

Firstly, an assessment of the policy mix must be made to determine if several interrelated mechanisms and tools were put into place by the FTA. In this case, only two measures were put in place, on the one hand, the monitoring programming and, on the other, capacity building ensuring Cambodia's ability to enforce national labour laws⁴⁰. These relate primarily to the second type of lever as it relates to economic incentives through import quotas and suspension of export licenses for factories that do not respect labour standards and do not allow monitoring of labour practices within their factories. The FTA, by itself, does not include many levers. Although it must be noted that the presence of monitoring, capacity building, and sanctions reflect a certain level of mixing of policies⁴¹. On the flip side, the effectiveness of these measures must be taken into account whilst considering the legislative changes to the labour code, regulation changes, and other elements that came prior to the conclusion of the FTA or that were simply unrelated⁴². Inclusion of provisions that demanded changes to regulations, which constitutes an example of the first type of lever, could

have contributed to the changes in the labour conditions of Cambodian factory workers in the textile industry. However, the fact that these changes were made prior to the conclusion of the FTA within the labour code also explains why these levers may not have been needed. Their inclusion within the FTA would not have been useful as the problem with labour standards in Cambodia was not linked to the inaction of the state in setting them, but a difficulty in the monitoring and enforcing which is what the program created by the FTA developed more extensively⁴³. In sum, the FTA may not have utilized a large number of policy levers, but the context did not warrant certain of these levers being pulled. Nonetheless, the effectiveness of the labour provisions within the FTA will be “evaluated relative to this mix of activated policy levers”⁴⁴.

Secondly, the distinction between proximate and distant outcomes is also important to note⁴⁵. Although proximate outcomes are important and relevant, the end goal is typically to create distant outcomes as it directly impacts the individuals that are to be protected by labour standards⁴⁶. The effectiveness can be determined by how the proximate outcomes lead to distant outcomes although it is not the only avenue to achieve this type of outcome⁴⁷. In this case, as aforementioned, there were no policy levers relating directly to the changes in regulations, thus, rendering the possibility of proximate outcomes low to non-existent. The only true proximate outcome was the fact that exportation licenses were made conditional on the compliance with labour standards verified by the BFC visits⁴⁸. This certainly contributed to the success of the more distant outcomes, but did not, in and of itself, trigger a massive change in compliance, The visits had to occur. In terms of more distant outcomes, the BFC went from monitoring a little over 100 factories in 2001⁴⁹ to 548 factories in 2018⁵⁰. The latter figure represents the covering of over 600 000 workers⁵¹. It is important to note that the publication of the reports emanating from the BFC created an unforeseen outcome. In fact, “[r]eputation-sensitive buyers sourcing from Cambodian suppliers could access compliance reports online and choose business partners on the basis of their labour standards’ records”⁵². In sum, the fact there were several months between the first and last visit of the year created a situation where a factory could readjust to make sure their compliance report was in order so as to do business with these buyers⁵³. Moreover, it is important to understand that the goal of the BFC visits were primarily to detect non-compliance and aid factories in rectifying the issues detected⁵⁴. Thus, in theory, these visits should have triggered a distant outcome as they work directly with factories to better the labour standards on the ground and, in reality, it did. The visits triggered an increase in compliance with most labour standards⁵⁵. Notably, wages, reduction of overtime, and internal regulations showed an increase of

at least 5% within the timespan of five BFC visits⁵⁶. This was encouraging as some elements such as the changes in apparel prices would have negatively impacted labour standards without the BFC⁵⁷. However, this rise in compliance seems to have hit a plateau as stated in the 2018 annual report⁵⁸. Nonetheless, this information must be coupled with the fact that, regardless of external factors that should have slowed down compliance, “[w]orking conditions improved dramatically during the last ten years of the BFC program”⁵⁹. Thus, the BFC program that was created following the provisions included within the FTA was a success at accomplishing higher compliance levels with the Cambodian labour standards.

Thirdly, although it was a success, certain qualifications must be raised. This situation was extremely peculiar in the sense that the United States opened their market to Cambodian factories in exchange for the implementation of this programme. Although this worked in this case, there were several elements that may have contributed to its success that were not necessarily linked directly to the provisions of the FTA. This was an industry-specific initiative within a country that was already trying to elevate these standards. Therefore, this type of initiative may not work without the proper policy levers when the levers were left dormant prior to the conclusion of an FTA. Moreover, there were certain elements that were not necessarily better after the implementation of the FTA. These were the use of chemicals, temperature, and machine safety⁶⁰. The proposed explanation is that these elements were too costly⁶¹. This further proves this idea of incentives being needed and said incentives need to be high enough to trigger effective change.

In sum, the *U.S.-Cambodia Bilateral Textile Agreement* contains labour provisions that put in place a programme that responded to the basic needs of the Cambodian government with regards to implementation and enforcement of norms they had already put into place. This was a success in most areas although other areas remain unimpacted by these incentives and monitoring. Although, generally, the FTA attained its primary goal of bettering the standards on the ground and ensuring some type of aid to enforce the established standards. Nonetheless, this success story must be seen as it truly is. A cocktail of different circumstances the were connected to the FTA and some were not connected to the FTA. Therefore, on its own, this is not necessarily a perfect blueprint to follow. Each situation will require certain levers to be pulled and others that can be left untouched. Regardless, it is an example of the power that may be wielded by involving the government, the international organizations, and the businesses both by helping factories and by allowing buyers to make better choices to respect labour rights.

2. Labour Provisions in the Context of CUSMA

Canada-United States-Mexico Agreement (CUSMA) is an FTA that was originally signed in November 2018 between Canada, the United States of America, and Mexico⁶². Its predecessor, the *North American Free Trade Agreement* (NAFTA), was the first-time labour provisions had made their way into an FTA⁶³. The reasoning behind the inclusion of labour provisions in United States FTAs is “to help ensure that countries not derogate from labor laws to attract trade and investment and that liberalized trade does not give a competitive advantage to developing countries due to a lack of adequate standards”⁶⁴. Although NAFTA contained several relevant elements with regards to labour, the practices of inclusion of these standards has evolved since the date of entry for NAFTA in 1994⁶⁵. Thus, CUSMA has changed certain elements especially in matters which relate to dispute resolution and the strengthening of already existing provisions⁶⁶. Moreover, this FTA was the first to include a labour value content which requires a certain level of minimum payment for a part of the production of a good⁶⁷. For this reason, it is interesting to look into the different labour provisions contained in *CUSMA*.

a. The Labour Provisions within CUSMA

CUSMA is a massive FTA in terms of content containing 34 chapters and 12 side letters⁶⁸. The FTA includes provisions that “requires parties to not only enforce their own laws, but also to adopt and maintain specific laws related to the ILO Declaration”⁶⁹. This notion is essential because, as seen with the Cambodian example, adopting laws and enforcing them are two different challenges. This obligation of the parties relates to adopting and maintaining laws, promoting compliance by monitoring, and ensuring that there are no derogations from legislation that is in force⁷⁰. Not only should countries party to the FTA not allow labour standards transgressions, but the importations of goods must be free of “goods made by forced labour” and they must ensure “commitments related to violence against workers, migrant worker protections, and workplace discrimination”⁷¹. As it relates to the differences between *NAFTA* and *CUSMA*, the latter obligation is the only new element⁷².

More specifically, Annex 23-A of *CUSMA* binds Mexico to create laws prior to the entry in force of the agreement⁷³. This legislative action related to forced labour, protection of unions, and impartiality of unions and independence of labour courts⁷⁴. This places Mexico in a particular situation as they had to act between the signature and the entry into force of the agreement to avoid delays of said entry. In 2019, the

Mexican government adopted these labour laws and changed their constitution to enforce and implement these reforms⁷⁵. In turn, Mexico demanded certain amendments to the original text of the agreement such as the creation of implementation committees and resolving a problem in which a government would refuse to select panelists in dispute settlements to block the process⁷⁶.

Other than specific measures to be taken by Mexico, the FTA covers many different labour standards such as freedom of association, abolition of child labour, and safety and health concerns at work⁷⁷. It is broader than the *U.S.-Cambodia Bilateral Textile Agreement* in both the standards it covers, as the Cambodian example related exclusively to implementation and enforcement, and broader in terms of the industries covered as it does not only cover the textile industry. On top of the wider coverage, *CUSMA* contains provisions relating to the consultation processes, enforceability and remedies⁷⁸. It creates a complex and well-rounded dispute settlement system to resolve issues. In terms of consultations, there is the creation of a council on labour that meets regularly and, notably, investigates the current legislation of countries party to the agreement and offers guidance and recommendations⁷⁹. In relation to enforceability, there is a recourse to the dispute settlement provisions that can be used in a variety of situations as it is not limited to failures to enforce existing national laws or failures in terms of health and safety⁸⁰. This means that the access to the dispute settlement system is simple in that it applies to a wide range of situations, thus, covering situations that would not have been covered by NAFTA⁸¹. In terms of remedies, there can be trade sanctions, monetary assessments, and the possibility of suspension of tariff benefits⁸².

Furthermore, and more novel, there was a labour value content provision within the FTA. Put simply, this provision, relating to the automobile industry, requires that “40% of the content of passenger vehicles and 45% of the content of light trucks and heavy trucks shall be made in manufacturing plants in North America with a production wage rate that is at least U.S.\$16/hour” to be able to benefit from the tariffs provided in the agreement⁸³. However, it is not that simple. There are certain limits placed on the division of manufacturing, technology, and assembly in terms of the percentages that may or may not come from factories with a lower hourly wage⁸⁴. This provision was strongly criticized by the Mexican side of the agreement as they benefited from competitive costs of production in the industry thanks to the lower wages⁸⁵. This last provision resembles the Cambodian example in many aspects. The governments decided to offer an incentive for companies to offer better labour conditions, here a higher wage rate. Again, the onus falls on the companies to act and the governments will offer a financial incentive to act in the manner they wish.

In sum, in the case of *CUSMA*, it went above the idea of simply enforcing and implementing existing standards. It was the development of a new kind of provision that place the factories in a place where they get to choose their business practice and live with the consequences of their choices. It is a balance between the benefits of low-cost labour versus the savings arising from not paying tariffs.. Additionally, a dispute resolution system is set up to treat breaches of standards established by the ILO and by *CUSMA*. Moreover, Mexico was targeted from the get-go as the more problematic country in terms of labour laws and the putting in place of national laws can be mainly attributed to the agreement.

b. The Impacts of the Labour Provisions

CUSMA is a fairly recent FTA. The agreement entered into force on July 1, 2020⁸⁶. This means that it has only been in force for a little over a year at the time of writing. Thus, this section looks into the impacts it has already had, the reaction from the private sector, and the provisions that have been made with regards to the impact, again through the eye of the aforementioned framework.

Firstly, the policy mix here may seem a little more extensive than that of the Cambodian example. In terms of changes to domestic regulations, the lever used was a labour reform that Mexico had to undergo prior to the entry into force of the agreement. This lever was not pulled in the Cambodian context because of the fact that reforms had already been done. Therefore, this is simply a different context. In terms of levers relating to the economic incentives and monitoring, the labour value content provision paired with the dispute settlement system allows for a more well-rounded use of different levers. The Government of Mexico must enforce laws, the private sector must decide if the incentive is interesting enough to cause a shift in practices, and the dispute settlement allows for a way to enforce the rights protected both under the agreement and the corresponding national laws and regulations.

Secondly, there is much to take into account with regards to proximate and distant outcomes. As it relates to the Mexican law reform, it is essential to note that although laws have been enacted, the states that needed these reforms the most have the application of the reforms postponed. In fact, the application of these reforms is in some cases postponed until 2022 and even 2023⁸⁷. Changes to legislation is an example of a proximate outcome and can be a relevant change. However, because of the postponement, it is difficult to establish the impact of these measures to distance outcomes such as better labour standards in factories themselves. Nonetheless, when the reforms come into effect, it will create and ensure several labour standards such as the protection of collective bargaining and a gradual rise in hourly wages more

generally and not only within the automobile industry⁸⁸. As it relates to the dispute resolution system and the rapid response mechanisms, it is important to note that generally corporations can sue the government, but the workers do not typically benefit from any such right⁸⁹. The rapid response mechanism allows, in theory, for a quick and effective process for collective bargaining and labour-organizing groups and it allows for sanction directly against the companies⁹⁰. Moreover, this also relates to the “need to educate their Mexican managers in the first place to obey the law and not interfere with workers’ organizing rights”⁹¹. This interrelatedness comes from the fact that companies will be liable for not respecting labour standards. As it relates to the labour value content provision, several elements must be explored. First and foremost, this provision is believed to be a measure to slow down outsourcing from the US to Mexico⁹². When looking at the average hourly wages in the automobile industry, this makes sense as, in 2016, Canada and the United States already offer over US \$30 and their counterpart, Mexico, only offers US \$3.91⁹³. Therefore, the US \$16 floor set by *CUSMA* seems to discourage outsourcing to Mexico. Moreover, with regards to the provision, it is important to note that only approximately 40% of automobiles made in North America would benefit from the provision. Thus, a lot of work needs to be done if manufacturers wish to benefit from the clause. This is the context in which this provision sits with regards to the automobile industry. The actual impact seems to be unclear at the moment, but scholars and surveys offer insight. On the one hand, scholars tend to see this provision as one affecting mainly the consumers as this will trigger a rise in consumer prices and companies will have to adjust if they wish to perform this switch in business practices⁹⁴. On the other hand, this will allow for an increase of the wages of Mexican workers and prevent some outsourcing. These involve fairly distant outcomes as they relate to business practices and how they will affect not only the consumer, but the worker as well. Furthermore, it is important to, in the absence of evidence of concrete changes that have already occurred, note the reaction of the automotive companies. A 2019 survey was conducted to take the pulse of automotive executives⁹⁵. Seventy-eight percent of respondents thought that *CUSMA* would have “a positive impact” on the market over the long-term⁹⁶. Moreover, 63% of them also predicted an increase in the cost of production⁹⁷. This ties into the idea that consumer prices may also be on the rise as a result, but only 58% of respondents believed that it would lead to an increase in price for the customer⁹⁸. These elements are relevant as they are considered by the companies when deciding if they should modify their practices based on this incentive⁹⁹. Furthermore, certain statistics speak to the intention, or lack thereof, of the respondents with regards to actually changing the practices. In fact, 73% of respondents believe that there will be

an increase in the cost of labour in the near future and 78% wish to find North American suppliers in the near future¹⁰⁰. These numbers show that there is at least some shift that is contemplated by the companies especially the latter figure as it could relate to the fact North American suppliers would respect the floor set out in the labour value content provision. Moreover, this would also relate to reducing outsourcing in general which was one of the issues cited¹⁰¹. In sum, although it has not yet been implemented into practice, it is an avenue that is contemplated and that would create distant outcomes as it would change to wages of employees, although almost exclusively in Mexico.

Thirdly, it is essential to remember the context in which this FTA is to evaluate its efficacy. In fact, it is difficult to evaluate the actual impacts this FTA has had already. However, there is some evidence that suggests that companies are interested in taking advantage of the incentive provisions associated with labour value content. However, in light of how new this agreement is and the impacts of COVID-19 in which “employers are still trying to assess and mitigate labor costs arising due to COVID-19”, it is difficult to see progress in terms of wages as priorities were established based on different objectives when the pandemic struck¹⁰². Thus, it is too early to determine whether this FTA will in fact help, but there are some encouraging indicators and there are a lot of interconnected elements between governments, workers, customers, and companies with regards to labour standards in *CUSMA*.

IV Conclusion

The two FTAs presented show promise in the inclusion of labour provisions especially when paired with incentives for companies so that the ones in charge have a reason to treat their employees with care and dignity. PCI in FTAs as voluntary mechanisms with an incentive seem to, in the two examples chosen, lead to some changes. However, the two examples also show that two different contexts require very different levers to be pulled. Moreover, they also show how provisions can be used in very different ways. In the Cambodian example, it was used to better enforce laws that were already existing, and it created a situation where buyers were taking into account compliance when purchasing goods. In the case of *CUSMA*, it impacts not only the workers, but customers and business practices such as discouraging outsourcing. This shows how impactful these measures can be but, also, how important it is to look into the potential impacts to avoid unpleasant and unforeseen outcomes.

In sum, although very narrow in terms of field of application, the Cambodian agreement was a success in the sense that it accomplished what it had set out to do:

help enforce and monitor labour rights in the textile industry. Applying the same test to *CUSMA*, the answer would be quite different in the sense that one of the main provisions, the labour value content, was intended, not primarily to help workers, but to prevent outsourcing. It might be effective in that sense, but it is rather soon to determine the actual effectiveness of the labour provisions in *CUSMA*. Thus, it is impossible to extend the proposed hypothesis, but one thing can be said: incentives did trigger change or will to change both by the governments and the non-state actors.

Although the inclusion of labour dimensions has been used for decades, the two examples presented show that they can take many forms and respond to many needs within the work force. More importantly, both of these FTAs exist because of a very important condition, the will of the governments. The creation, and eventually the effectiveness of FTAs, “has crucially depended on the political will of the countries concerned”¹⁰³. Thus, it would be difficult to conclude that this would be a viable tool for the worst violators of labour rights such as Bangladesh, India and Zimbabwe¹⁰⁴. The success of labour rights seems then conditional of the will of the government to act. When it does want to act, the ILO will be there to help them as seen in the Cambodia example. Regardless, incentives and putting the powers of the state, the companies, and the international organization together seems to create a set of circumstances that allows for the betterment of labour standards, but these are two examples, and it would be relevant to look into FTAs more generally to determine a formula for success. Said formula would have to be quite flexible.

Endnotes

¹ “About the ILO”, online: *International Labour Organization* <<https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>>.

² “Labour Provision in Trade Agreements Hub”, online: *International Labour Organization* <<https://www.ilo.org/LPhub/>>.

³ Margaret Levi et al, *Aligning Rights and Interests: Why, When, and How to Uphold Labor Standards*, (Washington, D.C.: World Development Report 2013: Jobs Background paper, 2012) at 7.

⁴ Frank Hendrickx et al, “The Architecture of Global Labour Governance” (2016) 155:3 *Int'l Lab Rev* 339 at 340–42.

⁵ *Ibid* at 345–47.

⁶ *Ibid* at 352.

⁷ *Ibid*.

⁸ “Free Trade Agreements and Labour Rights”, online: *International Labour Organization* <<https://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/lang--en/index.htm>>.

⁹ *Ibid*.

¹⁰ *Agreement Relating to Trade in Cotton, Wool, Man-made Fiber, Non-Cotton Vegetable Fiber and Silk Blend Textiles and Textile Products Between the Government of the United States of America and the Royal Government of Cambodia*, online: <<http://www.tcc.mac.doc.gov/cgi-bin/doi.cgi?204:64:189233445:25>>.

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- ¹¹ *Canada-United States-Mexico Agreement*, online: <<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/toc-tdm.aspx?lang=eng>>.
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- ¹³ *Ibid* at 673.
- ¹⁴ *Ibid* at 675.
- ¹⁵ *Ibid*.
- ¹⁶ *Ibid*.
- ¹⁷ *Ibid*.
- ¹⁸ The term Free Trade Agreement here is used in a larger sense as it is a sectoral agreement. Sectoral agreements are not FTAs under the World Trade Organization law as they do not apply to substantially all trade as provided by article XXIV 8(a)(i) GATT. See *General Agreement on Tariffs and Trade 1994, Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, 1869 UNTS 426 (entered into force 1 January 1995). This was possible at the time for Cambodia as it was not a Member of the World Trade Organization.
- ¹⁹ Kevin Kolben, "Trade, Monitoring, and the ILO: Working to Improve Conditions in Cambodia's Garment Factories" (2004) 7 *Yale Hum Rts & Dev LJ* 79 at 80.
- ²⁰ *Ibid* at 82.
- ²¹ *Ibid* at 83.
- ²² John A Hall, "Human Rights and the Garment Industry in Contemporary Cambodia" (2000) 36:1 *Stan J Int'l L* 119 at 125–27.
- ²³ Kolben, *supra* note 19 at 83–85.
- ²⁴ *Ibid*.
- ²⁵ *Agreement Relating to Trade in Cotton, Wool, Man-made Fiber, Non-Cotton Vegetable Fiber and Silk Blend Textiles and Textile Products Between the Government of the United States of America and the Royal Government of Cambodia*, art 10, cited in Kolben, *supra* note 19 at 90.
- ²⁶ Note that Cambodia has since joined the World Trade Organization and this practice would therefore no longer be possible.
- ²⁷ International Institute for Labour Studies, *Studies on Growth with Equity: Social Dimensions of Free Trade Agreements* (International Labour Organization: Geneva) at 102.
- ²⁸ Kolben, *supra* note 19 at 90–91.
- ²⁹ *Ibid* at 90–106.
- ³⁰ *Ibid* at 101.
- ³¹ *Ibid*.
- ³² *Ibid* at 100–01.
- ³³ International Institute for Labour Studies, *supra* note 27 at 102
- ³⁴ *Ibid*.
- ³⁵ Kolben, *supra* note 19 at 101–02.
- ³⁶ *Ibid*.
- ³⁷ International Labour Organization, International Labour Office, *Labour inspection and private compliance initiatives: Trends and issues*, MEPCI/2013, online: ILO <www.ilo.org>.
- ³⁸ *Ibid*.
- ³⁹ *Ibid* at 22.
- ⁴⁰ See *above* at 5-6.
- ⁴¹ Aissi, Peels & Samaan, *supra* note.
- ⁴² See *above* at 4-6.
- ⁴³ See *above* at 4-6.
- ⁴⁴ Aissi, Rafael Peels & Daniel Samaan, *supra* note 12 at 675.
- ⁴⁵ *Ibid* at 675–76.
- ⁴⁶ *Ibid*.

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- ⁴⁷ *Ibid* at 676.
- ⁴⁸ International Institute for Labour Studies, *supra* note 27 at 182.
- ⁴⁹ Raymond Robertson, *Apparel Wages Before and After Better Factories Cambodia*, (Geneva: Better Work Discussion Paper Series: No. 3, 2011).
- ⁵⁰ International Labour Organization, *Annual Report 2018: An Industry and Compliance Review*, (Geneva: Better Factories Cambodia: An Industry and Compliance Review, 2018).
- ⁵¹ *Ibid* at 7.
- ⁵² International Institute for Labour Studies, *supra* note 27 at 183.
- ⁵³ *Ibid*.
- ⁵⁴ Robertson, *supra* note 49 at 25.
- ⁵⁵ *Ibid* at 32.
- ⁵⁶ *Ibid*.
- ⁵⁷ *Ibid* at 34.
- ⁵⁸ International Labour Organization, *supra* note 50 at 42.
- ⁵⁹ Robertson, *supra* note 49 at 33.
- ⁶⁰ *Ibid* at 30.
- ⁶¹ *Ibid*.
- ⁶² United States of America, Congressional Research Service, *NAFTA and the United States-Mexico-Canada Agreement (USMCA)*, (Summary), by M. Angeles Villarreal and Ian F. Fergusson, (Congressional Research Service, 2020) at 1.
- ⁶³ *Ibid* at 32.
- ⁶⁴ *Ibid*.
- ⁶⁵ *Ibid*.
- ⁶⁶ *Ibid*.
- ⁶⁷ Francisco E. Compos Ortiz, “L Labor Regimes and Free Trade in North America: From the North American Free Trade Agreement to the United States–Mexico–Canada Agreement” (2019) 10:2 Latin American Policy 268 at 269 and 277.
- ⁶⁸ Congressional Research Service, *supra* note.
- ⁶⁹ *Ibid* at 32.
- ⁷⁰ *Ibid*.
- ⁷¹ *Ibid*.
- ⁷² *Ibid*.
- ⁷³ *Ibid* at 33.
- ⁷⁴ *Ibid*.
- ⁷⁵ *Ibid*.
- ⁷⁶ *Ibid*.
- ⁷⁷ Compos Ortiz, *supra* note 67 at 274–75.
- ⁷⁸ *Ibid*.
- ⁷⁹ *Ibid*.
- ⁸⁰ *Ibid*.
- ⁸¹ *Ibid*.
- ⁸² *Ibid*.
- ⁸³ *Ibid* at 277.
- ⁸⁴ *Ibid*.
- ⁸⁵ *Ibid*.
- ⁸⁶ “A new Canada-United States-Mexico Agreement”, online: *Government of Canada* <<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/index.aspx?lang=eng>>.
- ⁸⁷ Daniel Rangel & Lori Wallach, “Implementation of Mexico’s USMCA-Required New Labor Justice: The Spearhead of Mexico’s Development Still Needs Sharpening”, *Public Citizen Global Trade Watch* (May 2021), online: <www.citizen.org/wp-content/uploads/2021.05.26-New-Labor-Justice-System-Report.pdf>.

⁸⁸ Álvaro Santos, “Symposium on Transnational Futures of International Labor Law: Reimagining Trade Agreements for Workers: Lessons from the USMCA” (2019) *AJIL Unbound* 407 at 411.

⁸⁹ *Ibid.*

⁹⁰ Dinah Wisenberg Brin, “US-Mexico-Canada Agreement Introduces Labor Changes” (29 July 2020), online: *Society for Human Resource Management* <<https://www.shrm.org/resourcesandtools/hr-topics/global-hr/pages/usmca-introduces-labor-changes.aspx>>.

⁹¹ *Ibid.*

⁹² Cristoph Scherrer, “Novel Labour-related Clauses in a Trade Agreement: From NAFTA to USMCA” (2020) 11:3 *Global Labour Journal* 291 at 299.

⁹³ “Is USMCA a tipping point for Canada’s auto sector? Trade changes are creating new opportunities to revisit your strategy”, online: *pwc* <<https://www.pwc.com/ca/en/industries/automotive/is-usmca-a-tipping-point-for-canadas-auto-sector.html>>.

⁹⁴ Santos, *supra* note 88 at 411.

⁹⁵ Gabrielle Jasinski, “LevaData Survey: 63 Percent of Automotive Executives Believe Production Costs Will Increase Due to USMCA” (2019), online: *Business Wire* <<https://www.businesswire.com/news/home/20190110005101/en/LevaData-Survey-63-Percent-of-Automotive-Executives-Believe-Production-Costs-Will-Increase-Due-to-USMCA>>.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² Wisenberg Brin, *supra* note 90.

¹⁰³ International Institute for Labour Studies. *supra* note 27 at 4

¹⁰⁴ International Trade Union Confederation, *2020 ITUC Global Rights Index: The World’s Worst Countries for Workers*, (2020).