



Enforceability of Labour Clauses in Free Trade Agreements: A Comparative Analysis of EU and US Models from a Latin American Perspective

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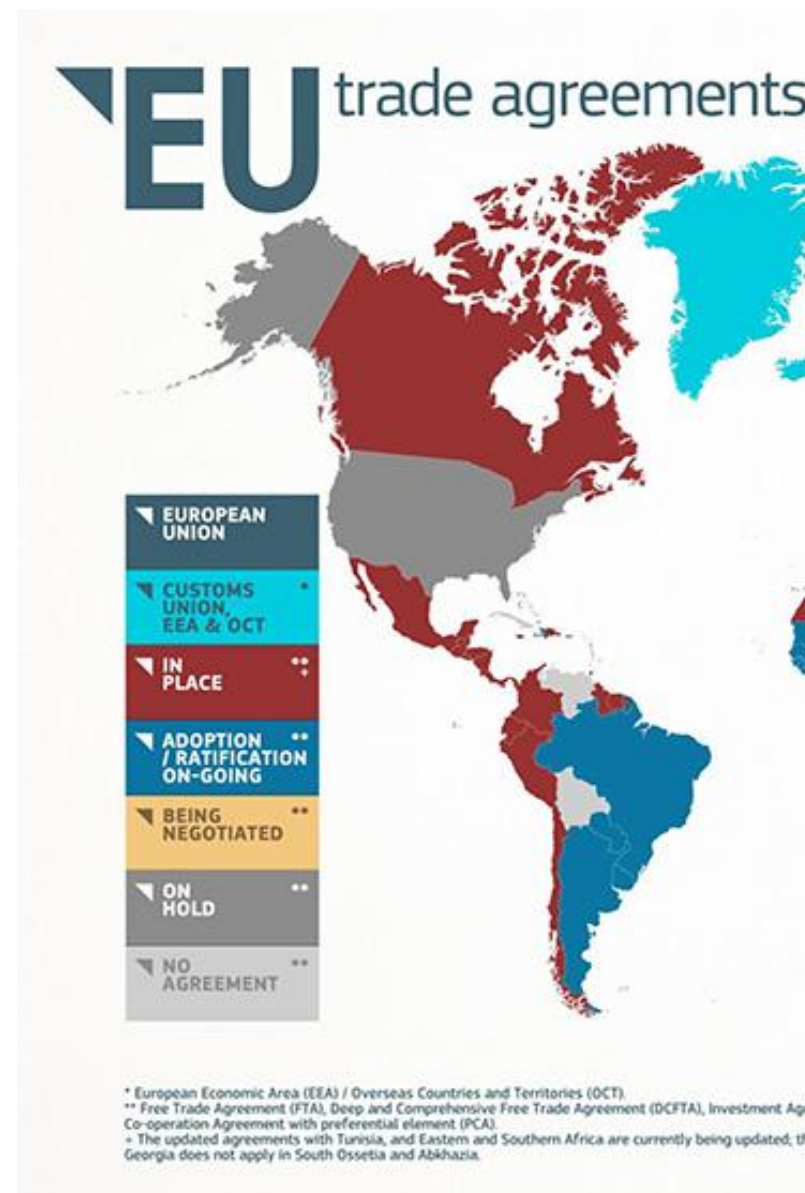
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Conclusion

- Trade–labour nexus → long-debated in global governance
- Countries rejected labour clauses in ITO and WTO
- Global South countries in 1996 Ministerial Conference in Singapore:
labour clauses = disguised protectionism + way to undermine their national sovereignty and economic competitiveness
- ILO as the international organization to deal with labour matters
- EU & US pursue labour – trade nexus in FTAs



US trade agreements



1. How do EU (SEP) and US (RRM) mechanisms differ in their legal frameworks and procedural accessibility to enforce FTA labour clauses?
2. How have the EU and US mechanisms operated in practice in relation to Latin American trade partners?

- **Philosophy:** Cooperative, “European social model”, EU normative power
- **Mechanisms:**
 - Substantive: ILO standards, Decent Work Agenda
 - Procedural: dialogue, transparency, review
 - Institutional: Committees, DAGs, Civil Society Forums, Panels of Experts
- **New Tool (2020):** Single Entry Point (SEP)
 - Centralized complaint mechanism
 - Only **EU-based stakeholders** can file
 - Commission reviews the complaint and decides how to move forward

- **Philosophy:** Coercive, sanctions-backed
- **Tools:**
 - Pre-ratification reforms (Colombia, Peru)
 - Binding dispute settlement → fines, sanctions
 - **USMCA Rapid Response Mechanism (RRM) (2019, entry into force 2020):**
 - Facility-specific
 - Covers Freedom Of Association & collective bargaining
 - Trade penalties → denial of tariff preferences
 - “Any person” of a Party can file BUT *de iuris* and *de facto* restricted to complaints against Mexico (Footnote 2 of Annex 31-A)

05 | Comparative Synthesis

| Criterion | EU (SEP) | US (RRM) |
|---------------------------|---|---|
| Legal basis | Admin. tool (not treaty-based) | Treaty-based (USMCA) |
| Access | EU stakeholders only | Open to any person of a Party* |
| Scope | System-wide (TSD, GSP, labour) 1. Market access 2. Non-compliance with TSD (incl. labour provisions) 3. GSP matters. | Facility-specific denial of Rights: 1. Freedom Of Association 2. Collective Bargain |
| Enforcement | Soft law, dialogue | Hard sanctions, tariff suspensions |
| Time limits (early stage) | No fixed deadlines. Commission commits to follow-up/feedback. | 10 days for respondent to say if it will review; 45 days to attempt remediation; Complainant may delay customs liquidation during review. |
| Escalation | Referral to DAGs, Civil Society Forum, TSD Committee, or a Panel of Experts. | If disagreement, panel verification within 30 days after receipt of the request for determination. |
| Remedies | Recommendations | Monetary penalties, denial of entry |
| Cases since its creation | 1* (published) | 27 |

Case Study 1: Colombia–Peru Complaint (SEP, 2022)

- Filed by CNV Internationaal (NL) on behalf of local unions
- Mining sector (Peru public company | Colombia multinational company)
- Allegations: subcontracting, unequal pay, refusal to bargain
- **Follow-up:** technical cooperation programs (Peru); no resolution in Colombia (3+ years)
- **Critiques:**
 - Slow
 - Diffuse outcomes, no concrete solution for the trade union that complaint
 - Limited access (EU-based filer only)
 - No inclusion of workers on the procedure after filing was done.



Con huelga mineros de Andaychagua exigen a empresa Volcan diálogo para aumento salarial y otros beneficios

La minera Volcan incumple una sentencia judicial que a inicios de diciembre de 2023 le ordenó iniciar el trato directo con un sindicato de trabajadores de su unidad Andaychagua, para la negociación colectiva.



List of technical cooperation activities to implement the labour rights commitments taken by Peru under the FTA

1. **Labour Formalization** (economic incentives, review & systematize policies, coordinate with regional governments, workshops, reports & conclusions to guide implementation)
2. **Labour Inspection** (policy tools to strengthen inspection system (SIT), diagnostic report: identify gaps (management, finance, HR, regulations))
3. **Child Labour** (protocol, monitoring platform, specialized survey)
4. **Forced Labour** (study barriers faced by public institutions in applying the Intersectoral Protocol against Forced Labour (PICTF), Interviews with key actors and deliver report with findings and recommendations.)
5. **Freedom of Association** (Diagnostic, review laws, data, and regional/international best practices. Coordinate with unions, ILO, EU, and public institutions. Develop & launch an App with tools for union organization and leadership.)
6. **Social Dialogue** (Strengthen Peru's National Council for Labour and Employment Promotion, workshops, proposal for modernization + new internal regulation.)

Case Study 2: GM Silao, Mexico (RRM 2021)

- **Facility:** General Motors (GM) facility in Silao, Guanajuato, one of the largest automotive plants in Mexico.
- **Issue:** Workers faced intimidation, irregular voting to endorse collective bargain agreement
- US Trade Representative filed complaint → RRM triggered
- **Remediation:** new supervised vote, independent union elected
- **Outcome:** tangible + rapid improvements in 6 months (April 2021 – August 2021)
- **Critiques:** sovereignty, bypass of national institutions



- **US model:** Quick results, but intrusive & sovereignty concerns
- **EU model:** Inclusive, but slow and limited effectiveness
- **Shared problems:**
 - Workers' voices marginal in procedures
 - Responsibility shifted to Latin American states, not multinationals
 - Both reinforce asymmetries in global trade governance
- **Hybrid model?**
 - EU's dialogue + US's credible enforcement
 - Include workers' voices systematically
 - Extend accountability to multinational corporations
- How to shift Latin American countries role as actors not subjects of enforcement of labour rights in FTAs?



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