The Fifth Fundamental Labour Right in EU Free Trade Agreements

This article examines the status of the right to a safe and healthy working environment (OHS) in European Union (EU) Free Trade Agreements (FTAs) by employing a comparative approach. It analyses OHS in EU FTAs using diachronic and synchronic methods and compares the EU's stance with the positions of the United States and Canada. The article determines that transnational labour governance relating to OHS is increasingly being streamlined as the EU has started linking trade concessions to binding OHS obligations. The convergence of the substantive coverage of labour obligations in FTAs has to date remained understudied. The European Commission has stressed that the described shift is due to the recognition of OHS as the fifth fundamental labour right in 2022. However, this article argues that there are also other motivations. The EU already started negotiating binding OHS obligations following the negotiation of the FTA with Canada (2014) and after the adoption of the 'Trade for All' strategy (2015) under pressure from advocacy networks. Such networks – who have long considered OHS as the next frontier in transnational labour governance – found an ally in EU-based workers experiencing wage erosion against the backdrop of retreating multilateralism and increased trade in global value chains.

1. Introduction

The International Labour Organisation (ILO) estimates that occupational accidents kill 380,000 people every year, while work-related diseases cause the death of 2.4 million more.[1] Significant risks are long working hours and exposure to particulate matter, gases and fumes at the workplace.[2] Despite more automatisation and scientific progress, new challenges – such as the rise of pesticide poisoning and the health impacts of nano-particles and other innovations – have increased health and safety risks.[3]

Free Trade Agreements have long been criticised for opening markets and liberalising trade without paying much attention to labour rights.[4] While neoliberal theory and practice argue that FTAs spark economic growth and create more jobs, the nature of such jobs has been questioned.[5] Workers are frequently doing microtasks in casual forms of low-paying labour where they are exposed to substantial health and safety risks. Vulnerable people are disproportionally represented in such jobs.[6]

This article aims to chronicle the status of OHS in the FTAs of the EU, which exercises the powers conferred by its Member States with regard to such agreements.[7] Thereto, it employs a comparative approach in two interconnected ways. First, it traces the status of OHS in EU FTAs using diachronic and synchronic comparative methods. Second, it

compares the EU's stance with the positions of its cross-Atlantic counterparts, the United States (US) and Canada.

While the literature on trade agreements generally agrees that the EU is converging towards the US position by becoming more assertive in enforcing labour obligations in FTAs,[8] the substantive coverage of labour issues has remained understudied. Against the backdrop of retreating multilateralism but increased trade in global value chains (GVCs) – which represent the 'international fragmentation of production' nowadays – it is important to also study the convergence or divergence of substantive issues.[9]

This article finds that the EU has until recently resisted explicitly linking trade concessions to OHS obligations in FTAs. The EU traditionally only included specific binding labour obligations relating to the four other fundamental labour rights in its FTAs. The exception is the Canada–EU Comprehensive and Economic Trade Agreement (CETA) of 2014.[10] However, the EU's approach has changed recently, with OHS featuring more prominently in the Trade and Cooperation Agreement with the UK (2020) and in various (proposed) texts of FTAs that have been developed since 2017.

The European Commission (Commission) has occasionally stressed that this change was due to the recognition of OHS as a fundamental right and principle at work in 2022.[11] Yet, this article demonstrates that the EU had already started focusing on OHS by 2017, following its CETA experience and after adopting the Trade for All strategy which contains an unprecedented number of references to GVCs, under pressure of advocacy networks.[12] This article demonstrates that, at that moment in time, the perceived interests of workers suffering wage erosion in the EU due to the rise of GVCs coincided with the perceived interests of transnational advocacy networks, which have long put forward OHS as the next frontier in transnational labour governance.

This article proceeds as follows. Part 2 of this article revisits the debates on a trade-labour linkage. It explains that even those scholars who consider social clauses as neoliberal window-dressing usually consider such linkage as a 'fait accompli' nowadays. Similarly, advocacy networks often do not reject but engage with FTAs as a source of 'strategic opportunity' to advance their ambitions. Part 3 introduces a conceptual framework to analyse the functions of transnational opportunity structures.[13] This framework is applied to OHS. This analysis allows us to understand why OHS rose to prominence on the agenda of transnational advocacy networks. The last paragraph of this part explains how 'hard' and 'soft' obligations are understood in this article. Part 4 discusses general human rights and labour rights clauses in EU FTAs that implicitly cover OHS. Part 5 assesses specific social clauses that relate to OHS in EU FTAs. The article determines that OHS has found a definite place in EU FTAs since 2017. Part 6 concludes the article.

2. Trade-labour linkage revisited

Trade and labour law have been linked to some extent since the 19th century.[14] There has been an attempt to decouple both domains in recent history by over-emphasising the opportunities that free trade can bring to development. Notably, Article 7 of the Havana Charter (1948) that accompanied the General Agreement on Tariffs and Trade (1947) contained a social clause linking trade and labour,[15] but it was ultimately not adopted mainly due to pressure from a part of the business community.[16] The Uruguay round (1986-1994) leading to the General Agreement on Tariffs and Trade (1994) marked the beginning of the resurgence of social clauses.[17] For example, in 1986 the US proposed 'toxic substances' to be

included in a multilateral social clause.[18] However, at the 1996 Singapore Ministerial Conference, most developing and emerging states opposed a social clause altogether.[19] There were fears of protectionism that would undercut competition from states that could produce with lower labour costs.

The World Trade Organization's (WTO) Singapore Declaration (1996) indicated that the ILO was the relevant international forum to deal with labour standards.[20] This declaration also stressed that labour standards may not be used for protectionist purposes and that the comparative advantage of countries, particularly low-wage countries, may in no way be questioned.[21] The ILO Declaration on Fundamental Principles and Rights at Work, adopted during the 86th session of the International Labour Conference in 1998, and the follow-up ILO Declaration on Social Justice for a Fair Globalization (2008), echo this anti-protectionist stance.[22]

The two ILO declarations furthermore explain that all ILO Members have to respect, promote and realise 'fundamental' principles and rights at work.[23] These universal obligations arise from the very fact of membership of the ILO and exist whether or not the Members have ratified the relevant conventions. In 1998, only the following four rights and principles – included in eight fundamental labour rights conventions – were recognised as fundamental by the ILO: the freedom of association and the effective recognition of collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. At the time, OHS was not recognised as a fundamental stand-alone principle and right at work in the ILO. Only the two fundamental labour rights conventions to abolish child labour contained references to OHS. They stated that work that is 'likely to harm the health, safety or morals' of persons under the age of 18 is hazardous.[24]

Yet, a social clause soon made its way back 'through the back door' in bi- and plurilateral trade agreements, again attracting contrasting reactions.[25] For example, Wouters and Ovádek argue that the retreat of multilateralism has opened the way for 'more normative "beyond trade" considerations'.[26] Peksen and Pollock find that whereas *de facto* globalisation is negatively associated with labour rights practices, social clauses in trade agreements are positively related to labour conditions.[27] However, others have been more critical of social clauses, claiming that, by their very nature, social clauses in trade agreements hide neoliberal interests behind normative ones. For example, Tham and Ewing write that social clauses in bi- and plurilateral agreements are 'faux regulation' that serves to legitimise market-like rules and 'fend off more frontal and direct challenges to the neoliberal project'.[28] Similarly, in their discussion of gender issues, Hannah, Roberts and Trommer write that 'any solutions that can gain traction need to fit with the [trade] orthodoxy'.[29] Nevertheless, even these critical voices usually recognise that such regulation is a 'fait accompli'.[30] Accordingly, there is 'quite literally nowhere to hide from the doctrine of free trade' in this world.[31] Other authors, therefore, engage with this fact and consider social clauses as 'complicating neoliberal visions of frictionless markets'.[32] Notably, Amengual and Bartley seek to study 'moral boundaries of markets', by investigating which advocacy frames resonate and legitimise state intervention for labour and environmental issues in transnational legal orderings.[33] An essential role in such framing is carried out by transnational advocacy networks (TANs). The next part of this article introduces a framework that clarifies how OHS rose to prominence due to successful framing by such networks.

3. Transnational opportunity structures

Advocacy networks have influenced and leveraged trade agreements as 'opportunity structures' or a 'repertoire of discursive strategies and symbolic frameworks'.[34] They engage in a cognitive transformation of legal norms and traditions to explain 'how existing relationships are unjust'.[35] The framing of existing relationships is a complex real-life process involving various network actors that does not follow a straightforward trajectory.[36] Transnational processes relating to labour rights are typically 'slow' and frequently not 'cooperative' at all because of conflicting interests and disagreements. Kay, a trade scholar, defines three constitutive elements to describe transnational opportunity structures: the constitution of transnational actors and interests; the definition and recognition of transnational rights; and the chance to adjudicate grievances at the transnational level. This part discusses these three functions and applies them to OHS. This allows us to understand why OHS became important in transnational labour governance.

The first function of transnational opportunity structures is the constitution of transnational interests and actors.[37] After coming together to discuss shared concerns, actors can acquire 'transnational' identities and interests. Over the years, various health and safety issues – including knowledge regarding dangerous materials (such as asbestos) and concerns regarding the exports of outdated unsafe industrial material from the global North to the global South – have been shared in TANs. Even when there was not yet much information regarding health and safety risks, labour and public health activists were already sharing their concerns across borders.[38] As a result, the ILO – accountable to trade unions as well as businesses – already reflected health and safety concerns in its Constitution of 1919. The Preamble of the Constitution stresses that 'the protection of the worker against sickness, disease and injury arising out of his employment' is 'urgently required'. The Declaration of Philadelphia (1944), annexed to the Constitution, sees furthering 'adequate protection for the life and health of workers in all occupations' as one of the 'solemn obligations' of the ILO.[39] Nowadays, OHS is the fifth most mentioned labour right in codes of conduct of corporations, after the four fundamental labour rights mentioned above.[40]

The second function of transnational opportunity structures is the definition and recognition of transnational rights.[41] This matter goes to the heart of the issues discussed in this article. Rights claims change over time.[42] Until the 1960s, the ILO issued various piecemeal OHS standards.[43] However, increased knowledge and concerted action were reflected in Article 7 of the International Covenant on Economic, Social and Cultural Rights (1966), which sets out that its signatories recognise the human right of everyone to the enjoyment of just and favourable conditions of work including healthy and safe working conditions.[44] In 1981, the ILO also adopted a comprehensive Occupational Safety and Health Convention 155.[45] In the remainder of this Part, the article discusses the status of OHS as a fundamental right and principle in the ILO, while Part 5 below chronicles the inclusion of OHS in bi- and plurilateral EU FTAs, comparing the EU's evolving stance with the approaches adopted by Canada and the US.

For a long period various actors called for the 'fundamental' status of OHS to be recognised. In 2002, Takala, the ILO Director of the In Focus Programme on Safety and Health, said that OHS should be recognised as a fundamental human right.[46] Similarly, Alston, in a 2004 article in the European Journal of International Law, warned that the four fundamental labour rights that were recognised should be joined by OHS.[47] This position has also been supported by various labour ministries, as well as at the World Congress on Safety and Health at Work in Seoul in 2008, organised by the ILO and the International Social

Security Association.[48] The European Parliament (Parliament) and the European Agency for Safety and Health at Work were the only EU institutions that signed this declaration. It was not until 2017 when the government of Malta, speaking on behalf of the EU and its Member States, requested to explore the suitability and feasibility of including OHS in the fundamental principles and rights at work.[49]

While there had been a suggestion to incorporate OHS for all workers into the core principles of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, this was ultimately discarded.[50] In its 2003 Global Strategy on Occupational Safety and Health, the ILO simply described OHS as 'a fundamental requirement for achieving the objectives of the Decent Work Agenda'.[51] The advancement of this agenda would help to provide the protection to casual workers that the labour contract traditionally granted,[52] but a stronger legal instrument to support this agenda was rejected.[53] The follow-up Declaration of 2008 stated that the commitments and efforts of the ILO and its Members should be based on four strategic objectives, through which the Decent Work Agenda is expressed.[54] One of the objectives explains that each party should develop and enhance measures of social protection that are sustainable and adapted to national circumstances, including healthy and safe working conditions. Ultimately, at the ILO's 100-year anniversary in 2019, a 27-member Global Commission, appointed to undertake an in-depth examination for the delivery of social justice, also recommended recognising OHS as a fundamental labour right.[55] The EU, alongside the Africa group, New Zealand and Norway, again supported the recognition of OHS as a fundamental labour right for all workers regardless of their contract or employment status.[56] Such calls were also echoed by a number of United Nations (UN) experts, including Alston, then UN Special Rapporteur on Extreme Poverty and Human Rights, and Tuncak, then UN Special Rapporteur on Human Rights and Toxic Wastes.[57] They asked the ILO to recognise OHS as a fundamental labour right to end 'the exploitation of workers who are forced to choose between a paycheque and their health'.[58] They were reportedly stirred into action by an employer representative who insisted that OHS was not a human right.[59] Employers organisations insisted that OHS was also not a fundamental right and tried to limit its scope to the promotion of OHS as an 'important foundation of decent work'.[60] In 2022, the ILO ultimately recognised OHS as a fundamental labour right by amending the 1998 and 2008 Declarations.[61] In addition, ILO Conventions 155 and 187 on OHS were identified as fundamental labour conventions.[62]

The third function of transnational opportunity structures is the potential adjudication of grievances.[63] The degree to which the enforcement of social clauses involves cooperative and coercive aspects has long been the subject of debate, often by comparing and contrasting the US and EU approaches.[64] This matter is outside the scope of this article. It suffices to draw attention to a related note on terminology here. Some of the literature (mainly in politics) finds that any instrument that cannot lead to a suspension in case of a violation is a 'soft' instrument.[65] Other literature (mainly in law) considers that the nature and precision of the legal obligation (and not the enforceability of an obligation) determines whether an instrument is 'soft' or 'hard'.[66] Mandatory provisions that are not enforceable with suspension can thus also be 'hard' obligations. From a legal point of view, they are not reduced to aspirational commitments. This article – in particular the analyses in Parts 4 and 5 below – takes the latter approach. This analysis requires a doctrinal analysis of language.[67]

4. General human rights and labour rights clauses

Before the treaty of Lisbon (2007) entered into force in 2009, trade policy was the reserved domain of the Commission and the Council of the EU (Council). It is established in the

literature that the Commission's Directorate General for Trade and the Council's Trade Policy Committee have embraced the principles of neoliberal globalisation, a stance deeply intertwined with the pivotal role of the single market in the process of European integration.[68] The expansion of social clauses in EU FTAs has been gradual, primarily driven by the influence wielded by the European Parliament, an institution that is more exposed to domestic pressures regarding the normative dimensions of international trade since the treaty of Lisbon.[69] Part 4 of this article explains how general social clauses in EU FTAs can function as transnational opportunity structures for OHS. Section A explains that OHS can fall under the human rights clauses. Section B shows that it can also fall under various labour rights clauses. Part 5 below will then explain that provisions specifically relating to OHS have found their way into FTAs after the adoption of the EU–Canada Comprehensive Economic and Trade Agreement of 2014, especially since 2017.

A. Human rights clauses

Since 1992, the EU has consistently embedded clauses related to human rights and democracy in its trade agreements, making adherence to these principles a prerequisite for the application of the agreement.[70] The centre-left governments in the Council at the time were an important driving force behind such clauses.[71] In 1995, the Commission confirmed this practice as an official policy.[72] The Parliament also supported this practice, while calling for a clear set of human rights (including labour rights) benchmarks to be established.[73] Nevertheless, the substantive coverage of human rights obligations in EU FTAs has not been clearly delineated. In theory, such clauses have the potential to cover a range of human rights, including OHS.

The formulation of human rights clauses has changed over time, and they are often already included in framework agreements concluded prior to the adoption of trade agreements.[74] They are usually considered as 'essential element' clauses that are coupled with non-execution clauses permitting the adoption of 'appropriate measures' including agreement suspension as a measure of last resort. The decision to suspend rests with the Council on the EU side, usually following discussions with established agreement organs.[75] Some clauses stipulate that punitive measures cease once the cause of disruption disappears.[76]

The limited implementation of human rights clauses has often been criticised. Notably, the Parliament identified a 'need to reinforce' human rights clauses 'to guarantee legal certainty'.[77] Thus far, conditionality has only been activated in reaction to severe and sudden deteriorations of the political situation in dependent partner states over which the EU holds significant economic leverage, involving political coups or other violations of democratic principles.[78]

B. Labour rights clauses

Prior to including labour clauses in its FTAs, the EU experimented with such clauses in its revised Generalised System of Preferences of 1994.[79] There were additional tariff reductions for states that ratified ILO conventions on freedom of association, collective bargaining and minimum working age. The subsequent acknowledgment of four fundamental labour rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work – discussed in Part 2 of this article – provided a catalyst for the EU to navigate away from the controversies surrounding social clauses in its FTAs. This declaration allowed the EU to showcase a discernible selectivity regarding the labour rights that it included in its social clause. Afterwards, the EU focused fully on fundamental labour rights.[80] The trade agreement with South Africa (1999) referred to the parties' recognition of the responsibility to guarantee the core labour rights, while the trade agreement with Chile (2002) referred to the importance of

promoting conventions with core labour standards.[81] This development has been dubbed the 'ILO-isation' of the EU's trade policy.[82] The selectivity on trade and labour was outlined by the Council and the Commission. The first sentence of the Conclusions of the Council on Trade and Labour (1999) reads: 'the EU should strongly support the protection of fundamental labour rights'. [83] Similarly, the Commission pledged to include specific provisions on the (four then recognised) fundamental labour standards in trade agreements in 2001.[84] This body held that the EU should seek to strengthen international and European instruments for promoting the universal application of these standards and reinforce global social governance through an integrated and multi-disciplinary approach, while firmly rejecting protectionist or sanction-based approaches. In 2006, the Commission announced that it would broaden its approach to include not only the fundamental labour standards but also the promotion of 'decent work' in the world.[85] This included, as noted in Part 2 of this article, OHS. In particular, the Cariforum States (Caribbean community states and the Dominican Republic) and the EU recognised 'the beneficial role that fundamental labour standards and decent work can have on economic efficiency' in their Economic Partnership Agreement (2008).[86]

Labour provisions in trade agreements increased following the entry into force of the Lisbon Treaty in 2009.[87] As noted, this treaty accorded greater influence to the Parliament. On the one hand, this treaty conferred upon it the authority to either approve or reject new trade agreements. [88] On the other hand, it gained the right to receive immediate and comprehensive information at every phase of trade negotiations.[89] The Parliament used this power to advance labour rights under pressure from advocacy networks.[90] This move has also been supported by the Commission and the Council.[91] Since 2011, all EU FTAs contain chapters dedicated to 'trade and sustainable development' (TSD) covering labour rights. The EU has to date successfully negotiated TSD chapters in thirteen FTAs.[92] All these chapters contain soft obligations, such as the recognition of the importance of considering scientific information (in some cases only with respect to measures that affect trade). [93] They also comprise a number of binding environmental and labour obligations that relate to OHS.

Bronckers and Gruni analysed social clauses in the EU's TSD chapters, concluding that there are two categories of binding labour obligations.[94] Both categories are relevant to OHS. On the one hand, there are obligations with an international focus in the TSD chapters of EU FTAs. There are three types of international obligations.[95] First, there are obligations regarding the ratification of international labour and environmental conventions. [96] In particular in respect of labour standards, FTAs may mandate the parties to ratify specific international conventions (if they have not yet done so).[97] For example, the EU agreement in principle with Mercosur (Argentina, Brazil, Paraguay and Uruguay) determines that 'Each Party shall make *continued and sustained efforts* towards ratifying the fundamental ILO Conventions, Protocols and other relevant ILO Conventions to which it is not yet Party and that are classified as up-to-date by the ILO'.[98] This can be interpreted as an obligation to ratify the various ILO Conventions that contain references to OHS, including ILO Conventions 155 and 187. An ad-hoc Panel of Experts interpreted that 'tangible' continued and sustained efforts may be interrupted in a similar obligation in the FTA between the EU and the Republic of Korea (EU–Korea FTA) following a 2019 complaint by the EU.[99] The Panel considered the EU to be too impatient to enforce the ratification obligation of Article 13.4.3 EU–Korea FTA, when the Republic of Korea had just announced its plans to submit bills for ratification of three fundamental ILO Conventions to the National Assembly (after the Republic of Korea previously considered that this would be conditional upon the amendment of domestic legislation).[100] Commentators have regretted that the Panel did not

require a clear timeframe.[101] But, most ratification obligations in FTAs use more aspirational and less legally binding language than the language used in both the EU–new FTA in principle and the EU–Korea FTA. Notably, the EU–Japan Economic Partnership Agreement stresses that parties shall make continued and sustained efforts to pursue ratification of 'the fundamental ILO Conventions and other ILO Conventions *which each Party considers appropriate to ratify*'.[102] Second, there are obligations 'to effectively implement the multilateral labour and environmental conventions which they did ratify'.[103] This can be interpreted as an obligation to implement ratified conventions that contain references to OHS. Third, there are obligations to respect, promote and realise fundamental labour principles, 'even if a Party has not ratified the convention that elaborates on a particular principle'.[104] For FTAs adopted before June 2022, when OHS was recognised as 'fundamental', this category of obligations does not relate to OHS but they can, as detailed in the next paragraph, have an indirect impact on OHS. There were considerable – but legally largely unfounded – concerns that the recognition of OHS as a fundamental labour right would have an impact on any obligations relating to 'fundamental principles and rights at work' or 'core labour standards' in bi- and plurilateral trade agreements.[105] To exclude any doubts that an evolutive or dynamic interpretation would create new obligations relating to OHS, it was explicitly stated that existing trade and investment agreements between States would not be affected in any unintended manner.[106] On the other hand, there are TSD obligations that relate to existing domestic legislation in EU FTAs.[107] Each party keeps its right to determine its levels of labour and environmental protection in domestic laws and policies, as long as they are consistent with its international commitments. However, each party is obliged to uphold the level of domestic labour and environmental protection. This is expressed in two ways. First, the parties shall not fail to enforce their laws. This enforcement clause normally implies a sustained or recurring course of action or inaction. Second, the parties shall not weaken or reduce the achieved protection in their laws. This non-regression clause is usually characterised as a waiver or derogation from labour or environmental laws. Both obligations are conditioned on intended or actual effects on trade and investment between the parties. Clearly, both obligations relate to laws that protect OHS.

The analysis in this section focuses exclusively on general human rights and labour rights clauses in FTAs. It is useful to note, nevertheless, that the EU has tried to advance OHS via multiple other transnational channels before adopting clauses specifically relating to OHS (as discussed in Part 5 below). Two examples can usefully illustrate this point. First, the TSD provisions in EU FTAs have led to some innovations in the advancement of OHS indirectly. When the fundamental trade union rights are better protected, OHS is better protected. Workers 'stand little chance' of defending OHS without trade union rights.[108] For example, I determined in case studies in the floriculture and semiconductor industries that workers find strength in numbers when it comes to defending a healthy and safe workplace.[109] Notably, trade unions are better placed than individual workers to demand that information about toxic substances and diseases is available, accessible and accurate, as outlined in principle 10 of the 'Principles on Human Rights and the Protection of Workers from Exposure to Toxic Substances' authored by Tuncak.[110] For example, workers in industries with higher levels of unionisation can rely to a larger extent on union approval before new chemicals are introduced into manufacturing processes.[111] Stakeholders in institutionalised stakeholder mechanisms – such as members of the EU Domestic Advisory Groups that monitor labour and environmental provisions in FTAs – have also explicitly linked the freedom of association to OHS.[112] Second, measures to slow down ecological destruction appeared in connection with hazards for workers. Regulation relating to OHS in the EU has affected regulatory development in other states. Biedenkopf demonstrated, for

example, that the EU Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals had effects on policy and legal developments in the Republic of Korea.[113] The South Korean Act on the Registration and Evaluation of Chemicals (2013) was amended in 2018 to mirror the EU's Regulation more closely. These developments allow authorities in the EU and the Republic of Korea to share and compare chemical data and the results of risks assessments for OHS.[114]

5. Clauses specifically relating to OHS

Part 5 of this article traces the emergence of specific social clauses that relate to OHS in EU FTAs. It argues that OHS has found a place in EU FTAs in recent years. Section A explains that the EU built upon its experience of negotiating the Canada–EU CETA in 2014. Canada has referred to OHS obligations since the North American Agreement on Labour Cooperation (1993). Section B determines that the Commission committed to OHS commitments in FTAs following its Trade for All strategy of 2015 and its Framework on Health and Safety Strategy (2014-2020). In an era marked by geopolitical tensions and the expansion of GVCs, the concerns of workers in sectors vulnerable to import competition converged with the longstanding efforts relating to OHS of transnational advocacy networks.

A. CETA (2014)

Chapter 23 of CETA was the first TSD chapter in an EU FTA to contain specific binding OHS obligations. Three provisions need to be discussed. First, Article 23.3.3 CETA requires that each of the parties '*shall ensure* that its labour law and practices *embody and provide protection* for working conditions that respect the health and safety of workers'.[115] This is a hard obligation.[116] It is, amongst others, required to formulate 'policies that promote basic principles aimed at preventing accidents and injuries that arise out of or in the course of work and that are aimed at developing a preventative safety and health culture where the principle of prevention is accorded the highest priority'.[117] If the measures may affect trade or investment between the parties, then each party 'shall take into account existing relevant and technical information and related international standards, guidelines or recommendations'.[118] But 'in case of existing or potential hazards or conditions that could reasonably be expected to cause injury or illness to a natural person, a Party shall not use the lack of full scientific certainty as a reason to postpone' adopting measures.[119] Furthermore, Article 23.3.2 CETA explains that each party shall ensure that its labour law and practices promote OHS, including the prevention of occupational injury or illness and compensation in cases of such injury or illness. This article refers to the ILO Decent Work Agenda and the 2008 ILO Declaration. While this article is part of a legally binding agreement, it is open to discussion whether this is a hard obligation. It is difficult to determine 'how much the state is promoting or trying to promote these initiatives'.[120] Finally, article 23.5.1.a CETA sets out that each party shall promote compliance with and shall effectively enforce its labour law, including by maintaining a system of labour inspection and providing access to justice remedies. It is again open to discussion whether 'promotion' can be considered as a hard obligation.

From the Canadian perspective, it can be observed that OHS has been included much longer in its FTAs. Notably, the North American Agreement on Labour Cooperation (NAALC) (1993), the labour side agreement to the North America Agreement between Canada, Mexico and the United States, already paid attention to OHS as part of a social clause.[121] There were particular concerns that hard-fought OHS laws in Canada would be lowered by this agreement.[122] Pressured by US President George H.W. Bush, then contender Bill Clinton was also forced to take a position on a social clause in 1992.[123]

As a result, eleven guiding labour principles were included in NAALC.[124] These principles were understood as 'a frame of reference', 'a paradigm' and 'a mindset'.[125] They were separated from their ILO Conventions. This is perhaps unsurprising as the US has traditionally been reluctant to empower the independent ILO.[126] Compensation and prevention of occupational injuries and illnesses were included in the eleven principles. The particular importance of OHS in NAALC is evidenced by the fact that this is one of the only three principles that was enforceable by sanctions, alongside child labour and minimum wage technical labour standards.[127] Any party could bring a complaint against another party for not effectively enforcing its own OHS, child labour and minimum wage laws, where the failure is trade-related and is covered by mutually-recognised labour laws.

Canadian and US FTAs have continued to attach particular importance to OHS. Concluded two years after the adoption of the ILO Declaration of 1998, the agreement between the US and Jordan left out references to NAALC's eleven labour principles but contained binding obligations, including enforcement and non-regression clauses, relating to 'internationally recognized labor rights'.[128] Such rights included acceptable work conditions with respect to OHS, hours of work and minimum wages, and three of the four fundamental labour rights, excluding the anti-discrimination standard.[129] The new trade agreement between Canada, Mexico and the US (2020) also treats OHS like the (other) fundamental labour rights, excluding the anti-discrimination standard.[130] The US trade agreements with various states – including Australia, Bahrain, Chile, Morocco, Oman and Panama – contain binding obligations that explicitly refer to OHS.[131] Similarly, Canada paid attention to OHS in the labour side agreements that it negotiated in parallel with its FTAs with Colombia and Peru.[132] These agreements determine, amongst others, that the parties shall ensure that their statutes and regulation, and practices thereunder, embody and provide protection for 'internationally recognised labour principles and rights', covering the four fundamental rights, acceptable conditions of work with respect to OHS, hours of work, minimum wages, and providing migrant workers with the same legal protections as the party's nationals in respect of working conditions. The mega-regional Comprehensive and Progressive Agreement for Trans-Pacific Partnership (2018) to which Canada is a party contains binding obligations relating to OHS, including the obligation to maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to OHS, hours of work and minimum wages.[133] Canada's labour side agreements with Honduras, Jordan, Panama and the FTA with the Republic of Korea contain even more specific binding provisions relating to prevention of and compensation for occupational injuries and illnesses.[134] For example, the last mentioned agreement provides that each party shall ensure that its labour law embodies and provides protection for a limited number of 'principles concerning' 'internationally recognised labour rights', covering the four fundamental labour rights, the prevention and compensation of occupational injuries and illnesses, acceptable minimum employment standards, and non-discrimination in respect of working conditions of migrant workers.[135] This obligation stretches much further than similar obligations in FTAs negotiated by the EU.

B. Further developments since 2015

Following significant protests by advocacy networks regarding the impact of the EU's trade liberalisation in CETA and the then proposed Transatlantic Trade and Investment Agreement with the US (TTIP), the Commission said that it would 'become more responsible' in its Trade for All strategy (2015).[136] This strategy was 'welcomed' by both the Parliament and the Council.[137]

While the Trade for All strategy has been criticised for its limited innovations,[138] this strategy was a 'quite radical departure' from previous trade strategies because of its emphasis on responsibility in GVCs.[139] There was growing recognition of the leverage of certain 'lead' companies over their suppliers all over the world, and especially in the global South.[140] Accordingly, heavy pressure in the form of pricing and production speed can shift competitive pressures down the chain. Lead companies can exploit the comparative advantage offered by operating in several locations along their value chains.[141]

The Commission's Trade for All strategy as well as its 2018 follow-up non-paper with a set of 15 actions to be taken to revamp the TSD chapters also attach unprecedented significance to OHS.[142] To begin with, the strategy pledged that trade liberalisation has to go 'hand in hand with social justice, respect for human rights, high labour and environmental standards, and health and safety protection'.[143] The Commission said that it would 'prioritise' OHS (alongside the four other fundamental labour rights) in the implementation of FTAs.[144] Specific commitments regarding OHS were made in relation to the TTIP. The Commission held that this agreement – which was later terminated by the Donald Trump Administration – should contain far-reaching commitments on ensuring high levels of OHS and decent working conditions in accordance with the ILO Decent Work Agenda.[145] This statement echoed a request by the Parliament, which stressed that OHS 'should take a more prominent place as part of the decent work agenda' in future EU trade agreements with third countries following the collapse of the Rana Plaza factory in Savar, Bangladesh in 2015.[146]

Furthermore, the Commission proposed to separately 'identify, consider and address priorities' for each trade partner in relation to sustainable development in the 2018 non-paper.[147] It noted that this involved moving on from a one-size fits all approach regarding labour and environmental obligations, but OHS would get a particular role in all FTAs.[148] The Commission promised that the EU will include commitments on effective occupational health and safety and labour inspection systems in line with international standards in its FTAs.[149] This commitment followed after a group of scholars based in Belgium, Germany and the UK criticised a previous non-paper of the Commission for not referring to a number of labour standards.[150] They singled out OHS, alongside standards relating to living wage, hours of work, migrant workers' rights, social protection and informal work.

The Commission's Framework on Health and Safety Strategy contains similar promises. The 2014-2020 Framework was the first edition of this Strategy that aimed to 'contribute to implementing the sustainable development chapter of EU free-trade and investment agreements regarding [OHS] and working conditions'.[151] In the 2021-2027 edition of this Strategy, the Commission said that it is essential to ensure that OHS standards are properly taken into account as part of binding commitments on labour and social standards.[152]

There are five reasons why OHS has occupied a more prominent place in the Commission's discourse since the mid-2010s. First, provisions in trade agreements are path-dependent and influenced by formulations in earlier agreements.[153] The Commission built upon its CETA experience when it promised to include effective OHS and safety and labour inspections systems in its FTAs.[154] Path-dependency is often inspired by efficiency-driven motivations, such as reducing negotiation and drafting costs, and incorporating accumulated knowledge.[155]

Second, as explained in Part 3 of this article, the framing of OHS as a transnational governance issue by advocacy networks has been a long time coming. As Meunier and Czesana aptly write, 'as time progressed', and '"low hanging fruit" issues had been addressed in international trade agreements' it was time for other issues to be looked at.[156] After the four other fundamental labour rights had found their way into FTAs, it was thus time for the Commission to pay attention to OHS in FTAs.

Third, the concerns of TANs regarding OHS received support from an unexpected source. The interests of those TANs seeking to link labour and trade coincided with those in the home market wishing to limit foreign competition and negative external impacts. Traditionally these allies were companies in import-competing sectors.[157] However, nowadays these allies are blue-collar workers in a wider variety of sectors in capital-abundant economies.[158] GVCs made the position of these workers vulnerable to import competition, resulting in job losses as well as anti-trade class-based sentiments.[159] Such sentiments prompted an additional justification for labour clauses in FTAs.[160] Such clauses can help prevent other states from dominating in GVCs through lower production costs due to less rigorous standards to protect their workers.[161] The European Parliament underscored this analysis when it called on the Commission to study the impact of the rise of GVCs. In its 'forward-looking and innovative future strategy for trade and investment' of 2016 the Parliament held that 'the weak enforcement of existing labour laws and occupational safety standards' creates 'unfair competition' in expanded and opaque GVCs.[162]

Fourth, OHS obligations have a heightened relevance in the Commission's recent geo-politicised agenda.[163] The Commission quickly became geopoliticised due to fears of the rise of China and increased economic nationalism following Brexit, speeded up by the COVID-19 pandemic laying bare GVC disruption and coordinated export controls following the war in Ukraine.[164] The term 'geopoliticisation' denotes 'a rhetorical and ideational shift away from principles of liberal institutionalism' towards identifying and mitigating security vulnerabilities in open markets.[165] The geopolitical turn in trade relations implies that trade is influenced by geography, like proximity.[166] Yet, it also concerns 'ideological' proximity or 'like-mindedness' when engaging in GVCs or TANs.[167] FTAs are a strong tool to shape interdependencies in allies to reduce the influence of third-party rivals in geopolitical thinking.[168] Subscribing to a shared OHS vision pioneered by the US and Canada can strengthen the EU's geopolitical and geo-economic position.[169] The Commission stressed its intention to resume bilateral cooperation with the US under a revisited and updated joint OHS agenda, and to launch new collaborations, in particular with Canada.[170] Furthermore, the EU emphasised its commitment to strengthen engagement with partner countries, regional and international organisations and other international fora to raise OHS standards globally.[171] Strengthening ILO standards on OHS that have long been supported by these countries can ultimately reduce any regulatory competition in future negotiations in which the EU participates.[172]

A fifth motivation was added in 2022, following the recognition of OHS as a fundamental labour right. The Commission stressed that the TSD chapters in its trade agreements should 'reflect' the recognition of OHS as a fundamental labour right in its 2022 Communication on the power of trade partnerships 'together for green and just economic growth'.[173] The main innovation in this communication is the strengthened enforcement using trade sanctions as a measure of last resort for violations of fundamental labour rights and the Paris Agreement on Climate Change (2015).[174] The proposed sanctions for violations of fundamental labour rights thus also include sanctions for the violation of OHS.

The shift towards OHS is noticeable in the EU's negotiations with some countries. For example, the proposed language in the future EU–Indonesia FTA (2019) and the EU–Mercosur Agreement in principle (2019) refers to OHS. The EU's proposal notes that particular attention shall be paid by each party to developing and enhancing measures for OHS, compensation in case of occupational injury or illness, and to prevention (as defined in the relevant ILO Conventions and other international commitments).[175] The proposed language for the agreement with Indonesia also explicitly refers to 'prevention of occupational injury or illness'. According to both agreements, particular attention shall also be paid to labour inspection, in particular through effective implementation of relevant ILO standards on labour inspection aimed at securing the enforcement of legal provisions relating to working conditions and the protection of workers.[176]

Furthermore, the EU–UK Trade and Cooperation agreement (2020) contains various obligations in order to maintain a level playing field across the UK and the EU after Brexit.[177] Two chapters are particularly relevant for labour rights. Chapter 6 on labour and social standards contains domestic enforcement and non-regression clauses that explicitly refer to the fundamental labour rights, occupational health and safety standards and a number of other rights.[178] The enforcement provision draws inspiration particularly from Article 23.5.a CETA.[179] Each Party shall have in place and maintain systems for effective domestic enforcement and labour inspections. Chapter 8 on 'other instruments for trade and sustainable development' contains a provision that is similar to Article 23.3.2 CETA. It provides that the parties shall continue to promote, through their laws and practices, the ILO Decent Work Agenda, in particular with regard to health and safety at work, including the prevention of occupational injury or illness and compensation in cases of such injury or illness.[180]

Finally, obligations were also added to the EU–Chile Interim Trade Agreement and the EU–New Zealand FTA, both signed in 2023.[181] The first obligation was already in the EU's proposed texts of these agreements (2018; 2019).[182] The exact formulation in the EU–New Zealand agreement reads: 'Consistent with its commitments under the ILO, each Party shall: (a) adopt and implement measures and policies regarding occupational health and safety, including compensation in case of occupational injury or illness; (b) maintain an effective labour inspection system'.[183] A similar provision was in the EU's proposed texts for the Australia–EU FTA of 2019, as well as more recent proposed texts of the EU–India FTA of 2022 and the EU–Thailand FTA of 2023.[184] A second obligation was added at a later point in the EU–Chile Interim Trade Agreement. Each Party shall respect, promote and effectively implement the fundamental ILO Conventions, explicitly listing all five core labour standards including 'a safe and healthy working environment'.[185] The formulation indicates that this provision was added after the recognition of OHS as a fundamental labour right. This pronouncement was then also added to the EU's proposed texts of FTAs with India and Thailand.[186] Yet, at the first meeting of the Trade Committee in the EU–New Zealand agreement, it was added that respect, promotion and effective implementation 'may' be added as an obligation.[187]

The Commission said that the emphasis on OHS in the EU–New Zealand FTA was directly set in motion by the ILO's decision to add OHS to the fundamental principles and rights at work in 2022.[188] This discourse seems to be endorsed by the European Parliament which stressed that it 'welcomes' the fact that the 'EU and New Zealand have agreed to reflect the ILO's recent decision to add occupational health and safety to core labour standards, where appropriate' in 2023.[189] The Commission also claimed in a 2021 Staff

Working Document that the fact that 'OHS [was] not one of the *fundamental* principles and rights at work [was] seen by some as an obstacle to ensuring a more active approach to push for implementation' in its trade agreements.[190] The analysis above demonstrates, however, that there were various other reasons at play too. This discourse is reminiscent of the past 'ILO-isation' of FTAs – discussed in Section B of Part 4 above – in which the recognition of four labour rights helped the EU to move on from the debate on the desirability of social clauses.

This discourse makes it easier for the Commission to defend a consistent approach towards OHS. This is important as two FTAs – negotiated after the Trade for All strategy but before the recognition of OHS as a fundamental labour right – do not contain such strong language relating to OHS. First, the FTA between the EU and Viet Nam of 2019 does not contain specific binding obligations relating to OHS.[191] The European Ombudsman has concluded that the Commission's failure for not conducting a specific human rights impact assessment was a case of maladministration.[192] Navasartian Documents how the Parliament gave its consent for the conclusion of FTA despite its concerns on human rights in Viet Nam.[193] Second, the EU–Mexico Association Agreement in principle (2018) simply notes that the parties shall promote decent work as provided by the 2008 ILO Declaration including OHS.[194] It further notes that particular attention shall be paid by each party to developing and enhancing measures for OHS and maintaining an effective labour inspection system, but only 'according to national conditions and priorities'.[195] According to Hart, the Parliament did 'not make substantive comments' on the contents of this agreement.[196]

Despite these developments, the sincerity of the EU in including OHS in FTAs remains debatable. This brings us back to the discussion introduced in Part 2 of this article. On the one hand, it can be argued that 'modern trade agreements are transitioning from instruments of liberalisation to instruments of regulation'.[197] On the other hand, the inclusion of OHS in some FTAs can be understood to be yet another normative instrument to safeguard the EU's neoliberal interests. Such developments can be considered a symptom of the EU's apologetic approach to protect 'the neoliberal core'.[198] Similarly, Adriaensen and Potsnikov note that 'one can question the extent to which such conditionality reflects (geo-)strategic objectives or rather an act of normative window dressing of domestic protectionist preferences'.[199] Accordingly, the changed OHS discourse is merely a way to justify the liberal view that seeks to negotiate more FTAs. Normative values continue to be embedded in and subjugated to a neoliberal logic.[200] Regardless, transnational advocacy networks may consider such critiques agnostically and simply consider the described developments as new opportunities to advance their long-standing agenda on OHS.[201]

6. Conclusion

This article chronicled the EU's approach to the right to occupational health and safety in its free trade agreements. The evolution of labour clauses in EU trade agreements reflects a progressive commitment to this right. This article demonstrated that the EU started focusing on OHS before the recognition of OHS as a fundamental labour right by the ILO in 2022. A key milestone was the inclusion of OHS-related obligations in FTAs such as the EU–Canada Comprehensive Economic and Trade Agreement, which set a precedent for subsequent agreements. The EU's Trade for All strategy (2015) announced the prominent place that OHS would take in EU FTAs, inspired by the aligned interests of advocacy networks who have long sought to create transnational opportunities to advance OHS and workers in the EU who perceive unprecedented pressure in global value chains. It is also in the EU's geopolitical interests to converge with the approaches of Canada and the US, two states that have

consistently treated OHS at least as important as three of the four other fundamental labour rights in their FTAs over the years. However, the sincerity of the EU's OHS commitments remains a subject of debate, with questions about whether they reflect genuine normative concerns or merely serve as window dressing for protectionist agendas. Despite such criticism, the inclusion of OHS provisions in EU trade agreements can represent a transnational opportunity structure for advocacy networks. Overall, the journey of OHS in EU FTAs highlights the dynamic and convergent nature of transnational labour governance.

[1] ILO, 'ILO Head Calls for Global Coalition on Safety and Health at Work' (2017) <https://web.archive.org/web/20231210235948/www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_573118/lang--en/index.htm>.
[2] ILO, 'WHO/ILO Joint Estimates of the Work-related Burden of Disease and Injury, 2000-2016' (2021) <https://web.archive.org/web/20240320000747/https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_819788.pdf>, 11.
[3] UN General Assembly (UNGA), 'Protection of the Rights of Workers Exposed to Hazardous Substances and Wastes' (23 September 2019) UN Doc A/HRC/42/L.27, para 5.
[4] Andreas Dür and Dirk De Bièvre, 'Inclusion Without Influence? NGOs in European Trade Policy' (2007) 27(1) *Journal of Public Policy* 79.
[5] Mary Beth Mills, 'Gendered Division in Labor' in Lisa Disch and Mary Hawkesworth (eds), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press 2016) 286; anonymised.
[6] Suzanne Bergeron. 'Formal, Informal and Care Economies' in Lisa Disch and Mary Hawkesworth (eds), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press 2016) 197. For an example, see anonymised.
[7] Article 207 of Consolidated Version of the Treaty on the Functioning of the European Union (2008) (TFEU).
[8] Adrian Smith, James Harrison, Liam Campling et al, *Free Trade Agreements and Global Labour Governance* (London: Routledge 2021), 7. E.g. Marco Bronckers and Giovanni Gruni, 'Retooling the Sustainability Standards in EU Trade Agreements' (2021) 24(1) Journal of International Economic Law, 25-51; Marva Corley-Coulibaly, Gaia Grasselli and Ira Postolachi, 'Implementation of Labour Provisions under Canadian, European Union and United States Trade Agreements' in Marva Corley Coulibaly, Franz Christian Ebert and Pelin Sekerler Richiardi (eds), *Integrating Trade and Decent Work Vol. 2* (Geneva: International Labour Office 2023), 29-68; James Harrison, 'Trade Agreements and Sustainability: Exploring the Potential of Global Value Chain (GVC) Obligations' (2023) 26(2) Journal of International Economic Law; Gracia Marín Durán, 'Sustainable Development Chapters in EU Free Trade Agreements: Emerging Compliance Issues' (2020) 57(4) Common Market Law Review, 1031-1068.
[9] Ferdi De Ville, 'Global Value Chains and EU-East Asia Trade: An Antidote for Geo-economic competition?' in Johan Adriaensen and Evgeny Postnikov (eds), *A Geo-Economic Turn in Trade Policy?* (London: Palgrave Macmillan 2022), 74.
[10] Canada–EU Comprehensive and Economic Trade Agreement (2014) (CETA).
[11] E.g. Commission, 'Staff Working Document accompanying the EU strategic Framework on Health and Safety at Work 2021-2027' (28 June 2021) SWD(2021)148final, 39.
[12] De Ville (n 9) 87; Commission, 'Trade for All: Towards a More Responsible Trade and Investment Policy' (2015) <https://web.archive.org/web/20230116121710/https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf>, 5.
[13] Tamara Kay, 'Legal Transnationalism: The Relationship Between Transnational Social Movement Building and International Law' (2011) 36(2) Law & Social Inquiry, 419-454.
[14] Smith (n 8) 16 referring to Abolition Act (1807) of the British Empire.
[15] Emilie Hafner-Burton, *Forced to Be Good Why Trade Agreements Boost Human Rights* (Ithaca: Cornell University Press 2009), 23.
[16] Beth Baltzan, 'COVID-19 and the End of Laissez-Faire Globalization' (2020) <https://web.archive.org/web/20240603075809/https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/64c2c73e1f89b30a823b76fd/1690486590514/_End+of+Laissez+Faire+Globalization+final.pdf>,2.
[17] Sophie Meunier and Rozalie Czesana, 'From Back Rooms to the Street? A Research Agenda for Explaining Variation in the Public Salience of Trade Policy-Making in Europe' (2019) 26(12) Journal of European Public Policy, 1852-1853
[18] Steve Charnovitz, 'Reforming the WTO to Better Promote Social Justice' in Brian Langille and Anne Trebilcock (eds), *Social Justice and the World of Work: Possible Global Futures Essays in Honour of Francis Maupain* (Oxford: Hart Publishing 2023), 195.
[19] Sarah Joseph, *Blame it on the WTO* (Oxford: Oxford University Press 2011), 132; Stefano Saluzzo, 'The Best Interests of the Child in International Trade Policies: Some Remarks on Child Labour and Trade' (2022) 89 Questions of International Law, 55.
[20] WTO, Singapore Ministerial Declaration (18 December 1996) WT/MIN(96)/DEC/W, 4.
[21] Ibid.
[22] ILO, Declaration on Fundamental Principles and Rights at Work (86th International Labour Conference (ILC) session Geneva 18 June 1998), para 5; ILO, Declaration on Social Justice for a Fair Globalization (97th ILC session Geneva 10 June 2008), 11.
[23] ILO 1998, ibid, para 2; ILO 2008, ibid, 6-7.
[24] Article 3(1) and (3) ILO, Convention C138: Minimum Age Convention (1973); Article 3(d) ILO, Convention C182: Worst Forms of Child Labour Convention (1999).
[25] Ole Elgström, 'Outsiders' Perceptions of the European Union in International Trade Negotiations' (2007) 45(4) Journal of Common Market Studies, 959.
[26] Jan Wouters and Michal Ovádek, *The European Union and Human Rights* (Oxford: Oxford University Press 2021), 648.
[27] Dursun Peksen and Jacob Pollock, 'Economic Globalization and Labor Rights: A Disaggregated Analysis' (2021) 22 Human Rights Review, 294.
[28] Joo-Cheng Tham and K D Ewing, 'Labour Provisions in Trade Agreements' (2020) 15 International Organizations Law Review, 159.
[29] Erin Hannah, Adrienne Roberts and Silke Trommer, 'Gender in Global Trade: Transforming or Reproducing Trade Orthodoxy' (2022) 29(4) Review of International Political Economy, 1373.
[30] Smith (n 8) 3; Tham and Ewing (n 28) 155.
[31] Sara Dillon, 'Child Labour and the Global Economy: Abolition or Acceptance?' 84(2) Nordic Journal of International Law (2015), 300.
[32] Matthew Amengual and Tim Bartley, 'Global Markets, Corporate Assurances, and the Legitimacy of State Intervention: Perceptions of Distant Labor and Environmental Problems' (2022) 87(3) American Sociological Review, 407.
[33] Ibid 384.
[34] Kay (n 13) 422; Michael McCann, *Rights at Work: Pay Equity and the Politics of Legal Mobilization* (Chicago: University of Chicago Press 1994), 282.
[35] Michael McCann, 'Law and Social Movements: Contemporary Perspectives' (2006) 2 Annual Review of Law and Social Science, 25-26.
[36] Tamara Kay and R.L. Evans, *Trade Battles: Activism and the Politicization of International Trade Policy* (Oxford: Oxford University Press 2018), 68.
[37] Kay (n 13) 16-17.
[38] Kay (n 36) 56.
[39] Declaration of Philadelphia (1944), para III(g).
[40] Sarah Vandenbroucke, Jaroslaw Kantorowicz and Yvonne Erkens, 'Decoding Supplier Codes of Conduct with Content and Text as Data Approaches' (2024) 31(1) Corporate Social Responsibility and Environmental Mangement, 478.

[41] Kay (n 13) 17-18.
[42] Kadija van der Straaten, Rajneesh Narula and Elisa Giuliani, 'The Multinational Enterprise, Development and the Inequality of Opportunities: A Research Agenda' (2023) 54 Journal of International Business Studies, 1625
[43] Lee Swepston, 'The International Labor Organization: Human Rights to Health and Safety at Work' in Benjamin Mason Meier and Lawrence Gostin (eds), *Human Rights in Global Health: Rights-Based Governance for a Globalizing World* (Oxford: Oxford University Press 2018), 208.
[44] For further references to relevant international and regional legal frameworks see George Politakis, 'The Recognition of Occupational Safety and Health as a Fundamental Principle and Right at Work' (2023) 72(1) International and Comparative Law Quarterly, 6-7.
[45] ILO, Convention C155: Occupational Health and Safety Convention (1981).
[46] Jukka Takala, 'Life and Health are Fundamental Rights for Workers' in *Health and Safety at Work: A Trade Union Priority* (Geneva: ILO 2002), 1.
[47] Philip Alston, 'Core Labour Standards' and the Transformation of the International Labour Rights Regime' (2004) 15(3) European Journal of International Law, 504. See also Jeffrey Hilgert, 'A New Frontier for Industrial Relations: Workplace Health and Safety as a Human Rights' in Lance Compa and James Gross (eds), *Human Rights in Labor and Employment Relations: International and Domestic Perspectives* (Cornell: Cornell University Press 2009), 43; Tonia Novitz, 'Labour Standards and Trade: Need We Choose Between "Human Rights" and "Sustainable Development' in Henner Gïtt (ed), *Labour Standards in International Economic Law* (Cham: Springer 2018), 115.
[48] Seoul Declaration on Safety and Health at Work (XVIIIth World Congress on Safety and Health at Work Seoul 29 June 2008). See also Istanbul Declaration on Safety and Health at Work (XIXth World Congress on Safety and Health at Work Istanbul 11 September 2011). The latter declaration has only been signed by labour ministries.
[49] ILO, Provisional Record Sixth Item on the Agenda: A Recurrent Discussion on the Strategic Objective of Fundamental Principles and Rights at Work (108th ILC session Geneva 7 August 2017) 11-2(Rev.), 331.
[50] Isabelle Daugareilh, 'The Future of Health and Safety at Work as a Fundamental Principle and Right – Will it Meet ISO and UN Challenges?' in Brian Langille and Anne Trebilcock (eds), *Social Justice and the World of Work: Possible Global Futures Essays in Honour of Francis Maupain* (Oxford: Hart Publishing 2023), 295
[51] ILO, 'Global Strategy on Occupational Safety and Health' (2003) <https://web.archive.org/web/20240531132457/https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@safework/documents/policy/wcms_107535.pdf>, para 1.
[52] Bergeron (n 6) 200.
[53] Paul van der Heijden, 'The ILO Stumbling Towards its Centenary Anniversary' (2017) 15 International Organizations Law Review, 207.
[54] ILO Declaration 2008 (n 22) 9-11.
[55] Global Commission on the Future of Work, *Work for a Brighter Future* (Geneva: ILO 2019), 39.
[56] ILO, Provisional Record Fourth Item on the Agenda: ILO Centenary Outcome Document (108th ILC session Geneva June 2019) 6B(Rev.), 989, 1005, 1009 and 1010.
[57] UNGA, Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes, Principles on Human Rights and the Protection of Workers from Exposure to Toxic Substances (17 July 2015) UN Doc A/HRC/42/41, para 13; UN Office of the High Commissioner for Human Rights (OHCHR), 'UN Experts Urge ILO to Back Safe and Healthy Work Conditions as a 'Fundamental' Right' (2019) <https://web.archive.org/web/20220301224601/https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24695&LangID=E>.
[58] OHCHR ibid.
[59] ILO 2019 (n 56) 986; UNGA (n 57) 13.
[60] ILO 2019 (n 56) 986.
[61] ILO, Resolution on the Inclusion of a Safe and Healthy Working Environment in the ILO's Framework of Fundamental Principles and Rights at Work (10 June 2022) ILC.110/Resolution I, 1.
[62] ILO (n 45); ILO, Convention C187: Promotional Framework for Occupational Safety and Health Convention (2006).
[63] Kay (n 13) 18.
[64] See sources in (n 8).
[65] E.g. Smith (n 8) 141; Jan Orbie, 'EU Trade Policy Meets Geopolitics: What about Trade Justice?' (2021) 26(2) European Foreign Affairs Review, 198.
[66] E.g. Bronckers (n 8); Lorand Bartels, 'Human Rights, Labour Standards and Environmental Standards in CETA' in Stefan Griller, Walter Obwexer and Erich Vranes (eds), *Mega-Regional Trade Agreements: CETA, TTIP and TiSA: New Orientations for EU External Economic Relations* (Oxford: Oxford University Press 2017); Gracia Marin Durán, 'The EU's Evolving Approach to Environmental Sustainability in Free Trade Agreements' in Ramses Wessel (ed), EU External Relations Law and Sustainability (Amsterdam: Asser Press 2023).
[67] Terry Hutchinson, 'Doctrinal Research' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd ed, London: Routledge 2017), 15.
[68] Sarah Bauerle Danzman and Sophie Meunier, 'The EU's Geoeconomic Turn: From Policy Laggard to Institutional Innovator' (2024) Journal of Common Market Studies, 2; Axel Marx and Guillaume van der Loo, 'Transparency in EU Trade Policy: A Comprehensive Assessment of Current Achievements' (2021) 9(1) Politics and Governance, 263.
[69] Wouters (n 26) 649.
[70] Ibid 667-668.
[71] Lore Van den Putte and Jan Orbie, 'EU Bilateral Trade Agreements and the Surprising Rise of Labour Provisions' (2015) 31(3) International Journal of Comparative Labour Law, 264.
[72] Commission, 'Resolution on the Communication from the Commission on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries' (28 October 1996) COM(95)0216 - C4-0197/95, 4.
[73] E.g. European Parliament, 'Human Rights in the World in 2009 and EU Policy on the Matter. Resolution. (16 December 2010) P7_TA(2010)0489, para 108-110.
[74] Katarina Schwarz, Ergul Celiksoy, Joanna Smetek et al, 'External Policy Tools to Address Modern Slavery and Forced Labour' (2022) EP/EXPO/DROI/FWC/2019-01/LOT6/R/09, 63.
[75] Article 218(9) TFEU.
[76] Wouters (n 26) 669.
[77] European Parliament, 'EU Flagship Initiative on the Garment Sector. Resolution.' (27 April 2017) P8_TA(2017)0196, para 29.
[78] Bartels (n 66) 210.
[79] Smith (n 8) 30.

[80] Jean-Marc Siroën, 'Labour Provisions in Preferential Trade Agreements: Current Practice and Outlook' (2013) 152(1) International Labour Review, 91-93.
[81] Article 86.2 Trade Development and Cooperation Agreement EU–South Africa (1999); Article 44.1 Chile–EU Association Agreement (2002).
[82] Van den Putte (n 71) 268; Orbie, Vos and Taverniers, 'EU Trade Policy and a Social Clause: A Question of Competences?' (2005) 3 Politique Européenne, 168.
[83] Council, Conclusions on Trade and Labour cited in Commission Communication on Promoting Fundamental Labor Standards and Improving Social Governance in the Context of Globalisation (18 July 2001) COM(2001)416final, 24.
[84] Commission, ibid, 18.
[85] Commission, Communication on Promoting Decent Work for All: The EU Contribution to the Implementation of the Decent Work Agenda in the World (24 May 2006) COM(2006)249final, 2.
[86] Article 191.3 Economic Partnership Agreement between the Cariforum States and the European Community (2008).
[87] Articles 9 and 207(1) TFEU.
[88] Article 218(6)(a)(v) TFEU.
[89] Articles 218(10) and 207(3) TFEU.
[90] Daniela Sicurelli, 'The EU as a Promotor of Human Rights in Bilateral Trade Agreements: The Case of the Negotiations with Vietnam' (2015) 11(2) Journal of Contemporary European Research, 242.
[91] Lore van den Putte, Ferdi De Ville and Jan Orbie, 'The European Parliament as an International Actor in Trade' in Stelios Stavridis and Daniela Irrera (eds), *The European Parliament and its International Relations* (London: Routledge 2015), 63.
[92] Commission, 'Free Trade Agreements' <https://web.archive.org/web/20240525192434/https://trade.ec.europa.eu/access-to-markets/en/content/free-trade-agreements>.
[93] E.g. Article 356.3 Trade and Cooperation Agreement between the EU and the European Atomic Energy Community, on the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (2021) (EU–UK Trade and Cooperation Agreement); Article 13.11 FTA between the EU and the Socialist Republic of Viet Nam (EU–Viet Nam FTA) (2020). See Ionel Zamfir, 'Labour Rights in EU Trade Agreements Towards Stronger Enforcement' (2022) <https://web.archive.org/web/20230222010420/https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698800/EPRS_BRI(2022)698800_EN.pdf>, 8.
[94] Bronckers (n 8) 25.
[95] Ibid, 26-32.
[96] Ibid, 26.
[97] Ibid.
[98] Article 4.4 Trade and Sustainable Development Chapter, Association Agreement between EU and Mercosur in Principle (2019) (EU–Mercosur Association Agreement in Principle) (emphasis added).
[99] Article 13.4.3 FTA between the EU and its Member States, of the one part, and the Republic of Korea (2010) (EU–Korea FTA); Panel of Experts, 'Proceeding Constituted under Article 13.15 of the EU-Korea Free Trade Agreement' (2021) <https://web.archive.org/web/20220803111905/https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc_159358.pdf>, paras 270 and 273; anonymised.
[100] Anonymised.
[101] Orbie (n 65) 199; Eline Blot, Antoine Oger and James Harrison, 'Enhancing Sustainability in EU Free Trade Agreements: The Case for a Holistic Approach Policy Report' (2022) Institute for European Environmental Policy, 25.
[102] Article 16.3.3 EU–Japan Economic Partnership Agreement (2018) (EU–Japan EPA) (emphasis added).
[103] Bronckers (n 8) 28. In article 292.3 EU–Ukraine Association Agreement (2014) such obligations are limited to fundamental and priority conventions. Two out of four priority conventions relate to labour inspection: Labour Inspection Convention, 1947 (No 81) and Labour Inspection (Agriculture) Convention, 1969 (No 129).
[104] Bronckers (n 8) 28 (emphasis omitted).
[105] For a discussion, see Politakis (n 44) 11-12 and 16-17
[106] ILO (n 61) 5. Part 5.B below discusses that the EU-Chile Interim Trade Agreement (2023) was the first to explicitly refer to the obligation to respect, promote and realise OHS.
[107] Bronckers (n 8) 30.
[108] UNGA (n 57) commentary to principle 10.
[109] Anonymised; Anonymised; anonymised; anonymised.
[110] UNGA (n 57) principle 10.
[111] Anonymised.
[112] E.g. Plataforma Europa Perú, 'Complaint against the Peruvian Government for Failing to Fulfil its Labour and Environmental Commitments under the Trade Agreement between Peru and the European Union' (2017) <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=12295> accessed 3 January 2021, 3.
[113] Parliament and Council Regulation 1907/2006 Registration, Evaluation, Authorisation and Restriction of Chemicals [2006] OJ L 396; Katja Biedenkopf, 'Assessing Possibilities for Enhanced EU–South Korea Cooperation on Chemical Regulation' in Axel Marx, Jan Wouters, Woosik Moon et al (eds), *EU–Korea Relations in a Changing World* (Leuven: Leuven Centre for Global Governance Studies 2013) 167.
[114] Biedenkopf ibid 187-188.
[115] (emphasis added)
[116] Bartels (n 66) 204.
[117] Article 23.3.3 CETA.
[118] Ibid.
[119] Ibid.
[120] Cf Rafael Peels, Elizabeth Echeverria, Jonas Aissi et al, 'Corporate Social Responsibility in International Trade and Investment Agreements' (2016) <https://web.archive.org/web/20240603075706/https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@inst/documents/publication/wcms_476193.pdf>, 15.
[121] North America FTA, 1992; North American Agreement on Labor Cooperation, 1993 (NAALC).
[122] Cathy Walker, 'NAFTA and Occupational Health: A Canadian Perspective' (1997) 18(3) Journal of Public Health Policy, 327.
[123] Greg Anderson, *Did Labour Norms Save the NAFTA?: Sort of, Accidentally, Depends* (2023) 57(3) Journal of World Trade 512; Tamara Kay, *NAFTA and the Politics of Labor Transnationalism* (Cambridge: Cambridge University Press 2012), 104.

[124] Article 49.1 and Annex 1 NAALC; Mary Jane Bolle, 'Overview of Labour Enforcement Issues in Free Trade Agreements' (2016) <https://web.archive.org/web/20211009164510/https://sgp.fas.org/crs/misc/RS22823.pdf>, 3.
[125] Kay (n 123) 17 and 116.
[126] Smith (n 8) 27-28.
[127] Articles 27 and 29 NAALC.
[128] Article 6 Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area (2000).
[129] Ibid.
[130] Article 23.1 Agreement between the United States of America, the United Mexican States, and Canada (2020).
[131] Article 18 Australia–United States FTA (2004); Article 15 Bahrain–United States FTA (2004); Article 18 Chile–United States FTA (2003); Article 16 Morocco–United States FTA (2004); Article 16 Agreement between the Government of the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area (2006); Article 16 Panama–United States Trade Promotion Agreement (2007).
[132] Article 1 Canada–Colombia Agreement on Labour Cooperation (2008); Article 1 Canada–Peru Agreement on Labour Cooperation (2008).
[133] Article 19 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (2018).
[134] Article 1 Agreement on Labour Cooperation Canada–Hashemite Kingdom of Jordan (2009); Article 1 Agreement on Labour Cooperation Canada–the Republic of Honduras (2013); Article 1 Agreement on Labour Cooperation Canada–Republic of Panama, 2010; Article 18.2 FTA Canada–Republic of Korea (2014) (Canada–Korea FTA).
[135] Article 18.2 Canada–Korea FTA.
[136] Commission (n 12) 5; Marx and van der Loo (n 68) 262; Alasdair Young, 'Two Wrongs Make a Right? The Politicization of Trade Policy and European Trade Strategy' (2019) 26(12) Journal of European Public Policy, 1886.
[137] Young ibid 1885 referring to Parliament, 'A Forward-looking and Innovative Future Strategy for Trade and Investment. Resolution.' (5 July 2016) P8_TA(2016)0299 para 1; Council, EU's Trade and Investment Policy Council Conclusions (27 November 2015) 14708/15.
[138] E.g. Lotte Drieghe and Diana Potjomkina, 'EU's Value-based Approach in Trade Policy: (Free) Trade for All?' 5(1) Global Affairs (2019), 63.
[139] De Ville (n 9) 87.
[140] Claire Bright, Axel Marx, Nina Pineau et al, 'Toward a Corporate Duty for Lead Companies to Respect Human Rights in Their Value Chains' (2020) 22(4) Business and Politics, 668
[141] Ibid.
[142] Commission (n 12); Commission, 'Non-paper of the Commission Services: Feedback and Way Forward on Improving the Implementation and Enforcement of Trade and Sustainable Development Chapters in EU Free Trade Agreements' (2018) <https://web.archive.org/web/20220120052620/https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf>.
[143] Commission (n 12) 22.
[144] Ibid, 24.
[145] Ibid.
[146] European Parliament, Second Anniversary of the Rana Plaza Building Collapse and Progress of the Bangladesh Sustainability Compact. Resolution.' (29 April 2015) P8_TA(2015)0175, para 24.
[147] Commission 2018 (n 142) 7.
[148] Ibid, 11.
[149] Ibid.
[150] Commission, 'Non-paper of the Commission Services: Trade and Sustainable Development (TSD) Chapters in EU Free Trade Agreements (FTAs)' (2017) <https://web.archive.org/web/20220423200707/https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf>; Mirela Barbu, Liam Campling, Franz Ebert et al, 'A Response to the Non-Paper of the European Commission on Trade and Sustainable Development (TSD) Chapters in EU Free Trade Agreements' (2017) <https://web.archive.org/web/20221208231354/https://www.qmul.ac.uk/geog/media/geography/docs/research/working-beyond-the-border/A-Response-to-the-Nonpaper-26.09.17.pdf>, 6.
[151] Commission, 'Communication on an EU Strategic Framework on Health and Safety at Work 2014-2020' (6 June 2014) COM(2014)332final,12.
[152] Commission, 'Communication EU Strategic Framework on Health and Safety at Work 2021-2027' (28 June 2021) COM(2021)323final, 20. See also Commission (n 11) 38.
[153] Van den Putte (n 71) 279; Thomas Schoenbaum, 'The Biden Administration's Trade Policy: Promise and Reality' (2023) 24 German Law Journal, p. 104-105.
[154] Commission 2018 (n 142) 11.
[155] Claire Peacock, Karolina Milewicz and Duncan Snidal, 'Boilerplate in International Trade Agreements' (2019) 63(4) International Studies Quarterly 923.
[156] Meunier (n 17) 1853.
[157] De Ville (n 9) 85.
[158] Anderson (n 123) 526; Jagdish Bhagwati, Pravin Krishna and Francisco Rivera-Batiz, 'Protectionist Myths' in Can Erbil and Francisco Rivera-Batiz (eds) *Encyclopedia of International Economics and Global Trade: International Trade and Commercial Policies* (Singapore: World Scientific Publishers 2020), 44.
[159] Meunier (n 17) 1854; Ari Van Assche and Byron Gangnes, 'Global Value Chains and the Fragmentation of Trade Policy Coalitions' (2019) 26(1) Transnational Corporations, 32 and 40.
[160] Young (n 136) 1893.
[161] Ibid.
[162] Parliament (n 137) paras 11 and 24.
[163] De Ville (n 9) 87-88; Orbie (n 65) 198; Sophie Meunier and Kalypso Nicolaidis, 'The Geopoliticization of European Trade and Investment Policy' (2019) 57 Journal of Common Market Studies, 103; Guri Rosén and Sophie Meunier, 'Economic Security and the Politics of Trade and Investment Policy in Europe' (2023) 11(4) Politics and Governance 124; Mark Wu, 'China's Rise and the Growing Doubts over Trade Multilateralism' in Meredith Crowley (ed), *Trade War - The Clash of Economic Systems Endangering Global Prosperity* (London: Centre for Economic Policy Research Press 2019), 105.
[164] Orbie (n 65) 198; Bauerle Danzman (n 68) 1-2 and 11-15; María García, 'Implementation of EU Trade Agreements Under an Assertive, Open, and Sustainable Trade Policy' (2023) 11(4) Politics and Governance, 212.

[165] Bauerle Danzman (n 68) 2.
[166] Meunier (n 163) 107; Johan Adriaensen and Evgeny Postnikov, 'Geo-Economic Motives and the Negotiation of Free Trade Agreements: Introduction' in Johan Adriaensen and Evgeny Postnikov (eds), *A Geo-Economic Turn in Trade Policy?* (London: Palgrave Macmillan 2022), 7.
[167] Adriaensen ibid.
[168] Ibid; De Ville (n 9) 8; Marie-Bénédicte Dembour and Neil Stammers, 'Free Trade, Protectionism, Neoliberalism: Tensions and Continuities' (2018) 6(2) London Review of International Law, 170.
[169] Adriaensen (n 166) 16.
[170] Commission (n 152) 20-21.
[171] Ibid.
[172] Ibid. See e.g. for other international norms, anonymised; anonymised.
[173] Commission, 'Communication on the Power of Trade Partnerships: Together for Green and Just Economic Growth' (22 June 2022) COM(2022)409final, 3
[174] Marco Bronckers, 'The EU's Inconsistent Approach Towards Sustainability Treaties: Due Diligence Legislation v. Trade Policy' (2022) EJIL:Talk!.
[175] Article X.3.8.a EU, Proposed text for the EU–Indonesia FTA (2017); Article 4.10.a TSD Chapter EU–Mercosur Association Agreement in Principle.
[176] Article X.3.8.c EU, Proposed text for the EU–Indonesia FTA (2017); Article 4.10.a.c TSD Chapter EU–Mercosur Association Agreement in Principle. Both texts set out that each party shall promote decent work as provided by the 2008 ILO Declaration including OHS (Articles X.3.7 and X.10.2.a of the former agreement and Article 12.1.a. of the latter agreement).
[177] Article 386.1 etc EU–UK Trade and Cooperation Agreement (2020). See K.D. Ewing, 'The EU-UK Trade and Cooperation Agreement: Implications for ILO Standards and the European Charter in the United Kingdom' (2021) 32(2) King's Law Journal 306.
[178] Articles 387 and 388 EU–UK Trade and Cooperation Agreement. See also European Commission 'Statement by Michel Barnier following Round 8 of Negotiations for a New Partnership Between the European Union and the United Kingdom' (10 September 2020) <https://web.archive.org/web/20211024012226/https://ec.europa.eu/commission/presscorner/detail/en/statement_20_1612>; European Parliament, 'Recommendations on the Negotiations for a new Partnership with the United Kingdom of Great Britain and Northern Ireland' (14 December 2017) P9_TA-9-2020-0152, para 42.
[179] Article 388 EU–UK Trade and Cooperation Agreement.
[180] Article 399.6 ibid.
[181] EU–Chile Interim Trade Agreement (2023); EU–New Zealand FTA (2023).
[182] EU, Proposed texts for the Chile–EU Modernised Association Agreement (2018), Article 3.7; EU, Proposed texts for the New Zealand–EU FTA (2019), Article X.3.8.
[183] Article 19.3.9 EU–New Zealand FTA. In Article 26.16.7 EU–Chile Interim Trade Agreement 'compensation in case of occupational injury or illness' is not included.
[184] EU, Proposed texts for the Australia–EU FTA (2019), Article X.3.8; EU, Proposed texts for the EU–India FTA (2022), Article X.3.8; EU, Proposed texts for the EU–Thailand FTA (2023), Article XX.3.2.
[185] Article 26.16.4. EU–Chile Interim Trade Agreement.
[186] EU, Proposed texts for the EU–India FTA, Article X.3.2; EU, Proposed texts for the EU–Thailand FTA, Article XX.3.2.
[187] Article 19.3.4 EU-New Zealand FTA.
[188] European Commission, 'The EU-New Zealand Agreement Explained' <https://web.archive.org/web/20240329192555/https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/agreement-explained_en>.
[189] European Parliament, 'Non-legislative Resolution on the Draft Council Decision, on behalf of the Union, on the Conclusion of the Free Trade Agreement between the European Union and New Zealand' (22 November 2023) P9_TA(2023)0418, para 4.
[190] Commission (n 11) 39 (emphasis added). The Commission did not clarify to which actors it referred with 'some'.
[191] Free Trade Agreement Between the European Union and the Socialist Republic of Viet Nam (2019), 566; Areg Navasartian, 'EU-Vietnam Free Trade Agreement: Insights on the Substantial and Procedural Guarantees for Labour Protection in Vietnam' (2020) 5(1) European Papers, 566.
[192] European Ombudsman, Decision European Commission's Failure to Carry Out a Prior Human Rights Impact Assessment of the EU-Vietnam Free Trade Agreement (2016) 1409/2014/MHZ. (The author of this article does not understand the gender-biased name of this EU body.)
[193] Navasartian (n 191) 563. E.g. European Parliament, 'Freedom of Expression in Vietnam. Resolution.' (14 December 2017) P8_TA(2017)0496.
[194] Article 10.2.a EU–Mexico Association Agreement in Principle (2018).
[195] Article 3.8 ibid.
[196] Nina Hart, 'A "Legal Eccentricity": The European Parliament, its Non-binding Resolution, and the Legitimacy of the EU's Trade Agreements' (2020) 5(2) University of Bologna Law Review, 357.
[197] Smith (n 8) 150.
[198] Thomas Jacobs and Jan Orbie, 'Discourse Theory as a Novel Approach for Critical Research on EU Trade Policy' in Didier Bigo, Thomas Diez, Evangelos Fanoulis et al (eds), *The Routledge Handbook of Critical European Studies* (London: Routledge 2021) (e-book).
[199] Adriaensen (n 166) 10.
[200] De Ville (n 9) 87-88; Orbie (n 65) 198; Young (n 136).
[201] Philip Paiement, 'Transnational Sustainability Governance and the Law' in Peer Zumbansen (ed), *The Oxford Handbook of Transnational Law* (Oxford: Oxford University Press 2022), 824.