

Linkages of Trade, Environment and Labour in FTAs: Trends and Prospects

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I. Introduction

Trade-related issues such as market access and tariff elimination or reduction have been the main concerns of free trade agreements or FTAs since the early 2000s. With more attention recently given to the concept of sustainable development, however, a growing number of countries start to share a common understanding that global and concerted efforts for environmental and labour protection are crucial for sustainable growth. In this context more of the recent FTAs focus on non-trade concerns such as protection of the environment and workers. A leading example is the FTA between Korea and the EU (hereinafter referred to as the “Korea-EU FTA”). Ever since the Korea-EU FTA, the EU has included a chapter on “Trade and Sustainable Development” or “TSD” to extensively provide for environment and labour obligations in its bilateral trade agreements. Further, it is noteworthy that the U.S. and the EU have resorted to dispute settlement and enforcement mechanisms within their FTAs to ensure that their trade partners ef-

fectively implement environment and labour obligations at the domestic level. For instance, on December 17, 2018, the European Commission requested a consultation to Korea under the Korea-EU FTA on the grounds that the Korean government had not shown sufficient efforts in ratifying the remaining four of the eight fundamental ILO Conventions and thus acted inconsistently with the TSD Chapter of the same FTA. This is the first case that the EU has ever initiated a dispute settlement procedure under a TSD chapter. The Panel of Experts was composed on December 30, 2019, and the final report was recently published on January 25th, 2021.

Against this background, for consideration by the Korean government this Brief discusses the emerging trends of environmental and labour provisions in U.S. and EU trade agreements (with a special emphasis on the USMCA), particularly focusing on the aspect of ‘enforceability’ of such obligations.

II. Key Features of Environmental Provisions in U.S. and EU FTAs

Discussions on the linkage between trade and the environment first rose to the surface in the late 1980s. Now environmental issues are more frequently discussed as an essential element in a number of FTA negotiations.

The United States currently has 14 FTAs in force with 20 countries.¹ Its pre-NAFTA FTAs with Israel and Canada did not contain environmental provisions at all. It was since the NAFTA that the U.S. has more actively incorporated environment issues into its trade agreements. Virtually all of post-NAFTA FTAs by the U.S. contain environmental provisions. One of the main features of U.S. FTAs is their strong enforcement mechanism, which was first introduced in the North American Agreement on Environmental Cooperation (NAAEC)² and similarly repeated with minor variations in the following FTAs. In the case of the USMCA, through the Protocol of Amendment a significant improvement has been witnessed in terms of enforceability: (i) a presumption was added that a violation of USMCA's environmental obligations "affects trade or investment" between the Parties; (ii) four additional multilateral environmental agreements (MEAs) were included (to the previous three) for the Parties' obligation to ensure

their effective implementation; and (iii) the dispute settlement and enforcement mechanism applicable to the Environment Chapter was revised to prevent intentional panel blocking.

In the case of the EU, since the Korea-EU FTA a TSD chapter has been included in its subsequent trade agreements. As opposed to the U.S. approach which is based on robust enforceability and sanctions, EU FTAs tend to focus on consultation and dialogue between FTA partners. Consultation and the "Panel of Experts" under TSD chapters, a provision on non-application of an FTA Dispute Settlement mechanism to a TSD chapter, and establishment of Domestic Advisory Groups ("DAGs") and Civil Society Forum ("CSF") are examples of such tendency.

Table 1. Inclusion of a TSD chapter in EU FTAs

1	Korea-EU FTA (2015)
2	EU-Central America Association Agreement ((2013))
3	EU-CAN Trade Agreement ((2013))
4	EU-Georgia Association Agreement (2016)
5	EU-Moldova Association Agreement (2016)
6	EU-Ukraine DCFTA (2017)
7	EU-Canada CETA (2017)
8	EU-Armenia CEPA ((2018))
9	EU-Japan EPA (2019)
10	EU-Singapore FTA (2019)
11	EU-Vietnam FTA (2020)

Note: () means the year of entry into force, and (()) means provisional application of a treaty.

Source: Compiled by authors based on European Commission, "Negotiations and agreements - Implementing EU agreements", available at: <https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/> [last visited on Feb. 22, 2021]

¹ U.S.-Australia FTA, U.S.-Bahrain FTA, CAFTA-DR, U.S.-Chile FTA, U.S.-Colombia TPA, U.S.-Israel FTA, U.S.-Jordan FTA, Korea-U.S. FTA, U.S.-Morocco FTA, U.S.-Oman FTA, U.S.-Panama TPA, U.S.-Peru TPA, US-Singapore FTA, and USMCA. See Office of the United States Trade Representative, "Free Trade Agreements," available at: [https://ustr.gov/trade-agreements/free-trade-](https://ustr.gov/trade-agreements/free-trade)

[agreements](#) [last visited on Feb. 22, 2021]

² Technically speaking, it was through the NAAEC (which was a separate treaty from the NAFTA *per se*), that the environment obligations were formally incorporated as a part of the NAFTA.

III. Key Features of Labour Provisions in U.S. and EU FTAs

Inclusion of labour provisions in trade agreements has long been a very controversial and sensitive issue, particularly in FTAs between developed and developing countries. While developed countries point out poor working conditions in developing countries and argue for stricter labour protection, developing countries criticize such provisions for being a disguised protectionism. With the two sides long failing to reconcile their disagreement, it remained impossible to reach a consensus on the trade-labour linkage at the multilateral level.

Amid a deadlock in multilateral negotiations and an ever-increasing proliferation of bilateral trade agreements, FTAs have begun to be understood as a relatively convenient path in that consent is needed only between a select few countries for conclusion of such agreements. In 1995 when the WTO was launched there were few FTAs with any labour provisions. In 2000, 12 of such agreements were witnessed, and this number grew to 67 by 2014. The U.S. and the EU have been the major proponents for the trade-labour linkage. Ever since NAFTA the United States has included labour standards in almost all of its FTAs. One of the main features the U.S. FTAs have is their strong enforcement mechanism, which was first introduced in the North American Agreement on Labor Cooperation (NAALC) and repeated only with minor changes in the following FTAs. Chapter 23 of the USMCA is particularly noteworthy in that (i) it introduced a presumption that a violation

of USMCA's labour obligations "affects trade or investment" between the Parties; (ii) the dispute settlement mechanism was revised to prevent panel blocking and to ensure effectiveness; and (iii) the Facility-Specific Rapid Response Labour Mechanism (RRLM) was established to provide a more streamlined dispute settlement process for labour disputes under the USMCA. Further, Annex 23-A of the Labour Chapter commits Mexico to reform its federal labour law. All of the aforementioned features can be interpreted as a novel and ground-breaking approach to enhance enforceability of FTA labour standards.

In the case of the EU, labour provisions were first introduced in the Association Agreement with Israel, and a comprehensive labour chapter was later adopted for the first time in the EU-CARIFORUM EPA. Through the Korea-EU FTA, the EU first introduced the concept of "TSD" and since then has used it as a standardized template for subsequent FTA negotiations. A total of 10 bilateral trade agreements as shown in Table 1 have shared provisions and format identical or similar to those of the Korea-EU FTA, only with minor variations. Some major components include (i) incorporation by reference (IBR) of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up to provide for commitments to respect, promote and realize fundamental labour principles and rights at work; (ii) "continued and sustained efforts" for ratification of fundamental ILO Conventions; (iii) establishment of the TSD Committee, (iv) the composition of domestic advisory groups or "DAGs", and (v)

a separate dispute settlement mechanism including the Group of Experts applicable only to matters arising under TSD chapters.

IV. The Effect of Strengthened Environmental and Labour Provisions in FTAs

For an explanation of the rationale and impacts of strengthened environmental and labour provisions in FTAs, three aspects including (i) inherent limitations of the multi-lateral agreement system, (ii) the need for leveling the playing field, and (iii) domestic politics should be focused upon. Theoretically, in line with Maggi (2016),³ when a trade agreement is linked with new issues of non-trade character, it can broaden the scope of negotiation and lead to higher chances of concluding an agreement with increased social welfare. Also, empirically speaking, introduction of environmental and dispute settlement provisions in FTAs shows a tendency of increasing trade between FTA partners among 196 countries between 1995 and 2015. Notably, developing countries, by accepting enhanced environmental and labour obligations, can increase their exports.

Table 2. FTA Effects on Developing Country's Trade with Developed Country

Dependent-Variable->	Export Value	Export Value
Type of provisions->	Enforcement	Dispute Settlement
Env. provision	0.082**(2.49)	0.058*(1.94)
Labour provision	0.086(1.57)	0.097*(1.93)
N	523643	523643

Note: Numbers in parentheses are t values
(*** P < 0.01, ** P < 0.05, * P < 0.1).

Year, Country pair effects are controlled.

Source: Author's PPML fixed effect model estimation.

Further, based on the authors' estimation, strengthened environmental and labour provisions in FTAs between a developing country and a developed one led to realizing social targets. Developing countries saw a reduction in greenhouse gas emission per capita and a positive improvement to an indicator on the level of workers' right protection (smaller index meaning better conditions) after concluding enhanced FTAs.

Table 3. Effects on Env. and Labour Conditions

	GHG emission (t+1)	Labour Right Index (t+1)
FTA	0.142***(0.51)	0.034(0.03)
Strengthened Provision	-0.192***(0.04)	-0.151***(0.02)
GDP	-0.016***(0.00)	2.16***(0.00)
GDP ²	2.7E-5***(5E-6)	1.43***(1E-6)
N	116880	82368

Note: Numbers in parentheses are standard errors
(*** P < 0.01, ** P < 0.05, * P < 0.1).

Year, Country pair effects are controlled.

Source: Author's fixed effect model estimation.

³ Maggi, Giovanni. 2016. "Issue Linkage." Handbook of Commercial Policy.

V. Prospects and Implications for Korea

It is highly expected that the U.S. and the EU will seek to further strengthen environmental and labour standards in their FTAs. The EU is slowly but surely moving towards ensuring its FTA partners' compliance with such obligations, and is considering multiple options to enhance enforceability of its TSD chapters. In this sense this Brief suggests that the Korean government pay close attention to any future developments regarding the EU's newly created Chief Trade Enforcement Officer or "CTEO" system and the EU Trade Enforcement Regulation,⁴ in relation to the recently announced dispute settlement report by the Group of Experts under the Korea-EU FTA regarding Korea's non-ratification of fundamental ILO Conventions.

In the case of the U.S., as President Biden mentioned during the presidential campaign, where possible, his administration would attempt to use its FTAs as a leverage for addressing climate change issues pursuant to the Paris Agreement. In this vein, given that TPA-2015 expires on July 1, 2021, the Con-

gress could reauthorize Trade Promotion Authority and allow a certain level of discretion to the Biden administration to discuss climate change in future FTA (re-)negotiations.

Lastly, this Brief calls for a discreet approach when it comes to drafting and agreeing to FTA obligations on effective domestic implementation of MEAs, ILO conventions, or international rules on any other non-trade concerns in Korea's future FTAs (re-)negotiations. Further, as both the U.S. and the EU emphasize the need for full and effective implementation of their FTAs, for the environmental and labour obligations Korea already accepted, it is required that a monitoring system be established or otherwise improved to ensure Korea's effective and 'convincing' implementation of such obligations to avoid unnecessary disagreement with its FTA partners. **KIEP**

⁴ For instance, it was recently revised on February 12, 2021 to "upgrade the EU's enforcement" by enabling the EU to adopt countermeasures when the other party to a dispute intentionally blocks WTO/FTA dispute settlement. See Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules, available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32021R0167>> [last visited

on Feb. 23, 2021]

Potential further amendments targeted at enforcement of FTA environmental and labour obligations could affect Korea *if* disagreement should arise between Korea and the EU with respect to Korea's compliance with the rulings of the Group of Experts – which this author stresses is rather hypothetical at this point, given that the Korean Parliament ratified three fundamental ILO Conventions on February 26, 2021, regardless of the rulings of the Panel of Experts report.