



Do trade agreements at international level have a negative impact on the labour standards?

por Denisa Meiroşu

Abstract. Trade Agreements have always been referred to as the engine of growth, employment and poverty reduction; at the same time, they have been also long criticized for the fact that they have adverse effects on the quality of jobs.

The paper argues that the key role in ensuring labour standards are complied with, stays with the relevant domestic institutions, and even when the internal legal, regulatory and administrative framework is strong, contextual factors (such as migration trends) that are unpredictable, difficult to regulate and not easy to monitor, may challenge the system in place.

It aims to demonstrate that the trade agreements themselves have limited influence on labour standards compliance, as reflected by relevant studies. Furthermore it presents a review of the 8 fundamental ILO standards ratified and enforced by Chile, the Latin American country with most free trade agreements to date¹: 24 agreements with 64 countries, to demonstrate that compliance with the recognised labour standards stays with the regulatory national system in place, and even though the global conventions are enforced, as in Chile's case, this will not automatically mean precarious work is eradicated.

I. Limited impact of the trade agreements on the labour standards as reflected by the Association Agreement EU – Chile

The broad market liberalisation and opening to international economy started in the 80s led to an economic growth that makes the Chilean case a neoliberal success. The Chilean export model is based on a massive extraction of minerals, agricultural products and exploitation of forests, which in the 90s accounted for 85% of Chile's export trade according to governmental data. Even today natural resources and commodities account for the largest export base of Chile.

Some argue that trade in general have a positive impact on employment, others suggest it has an adverse effect on the labour standards². While the former may be justifiable taking into consideration that in Chile the export of goods and services represented 45% of GDP in 2007, the effects on the labour standards is rather difficult to isolate. The conclusions of the studies carried out on a specific Association Agreement, the one between Chile and the EU, known at the time as the most complex Association Agreement of EU with third countries to that date³, bring further arguments in support of this idea.

¹ *La política comercial de Chile*, last accessed on 16 June 2016, available at http://eeas.europa.eu/delegations/chile/eu_chile/trade_relation/chile_political_relation/index_es.htm

² McMillan and Verduzco, 2011.

³ Maria J Garcia, Conference paper on European Foreign Policy, "Trade in EU Foreign Relations: The EU-Chile Free Trade Agreement", 2004.

The study carried out by Ergon Associates on *Trade And Labour: Making effective use of trade sustainability impact assessments and monitoring mechanisms* (2011) analysed⁴ eight labour market indicators, selected on practical grounds (data availability): number of jobs, income levels, type of contract, average duration of contract, training levels, accident reporting rate, proportion of women workers, proportion of indigenous people in the total labour force. Following quantitative and qualitative methods, the study concluded that there are four sectors that have been influenced by the implementation of the AA with EU: *salmon, wine, forestry, fruit*, indicating a “tentative evidence of a link between improved performance on employment indicators (quantity and quality) and increased trade with Europe”.

Further insights on the social impact are indicated in the *Evaluation of the economic impact of the trade pillar of the EU-Chile Association Agreement* (2012). The study reiterated that while some export sensitive sectors show higher employment indicators, the result cannot be attributed exclusively to EU – Chile AA, as the export volume from Chile to EU as compared to other continents/countries is not significant enough to be able to have a certain impact on the Chilean labour market. Moreover, according to the authors, this information may be biased due to the fact that immigrant labour force is deployed in particular in the sectors that are export performant, however, this particular group of workers is prone to labour rights abuses, including dissimulated work (in the form of temporary contracts or subcontracting) or simply informal work and therefore data to substantiate certain conclusions is not available. Hence, isolating the effects of the trade agreements on labour standards is not only difficult to measure but also not relevant in the debate on labour standards compliance, which, as the article argues, is more a domestic business.

In support of this idea, the following section presents a review of the fundamental labour conventions of the ILO enforced by Chile.

II. Review of the transposition into the national framework (Chilean labour Code and the complementary primary legislation) of the 8 fundamental ILO conventions

An ILO member since 1919, Chile ratified the 8 Fundamental Conventions of ILO out of 8, 2 Governance Conventions out of 4 and 53 Technical Conventions out of 177. In 2008, Chile started the implementation of the *Decent Work Country Programme*, proving Chile’s commitment to promote decent work as key element in the country’s development. Yet, transnational problems (human trafficking, forced labour or informal work in particular affecting illegal migrants) are challenges that require concerted efforts of all parties and stakeholders, especially in the current regional context, in particular illegal immigration; according to the government estimates, there were more than 300,000 undocumented immigrants at the end of 2017.

The review below presents in a table format the ILO fundamental Convention ratified, the way it is transposed at national level, and the challenges encountered.

ILO Conventions	Chilean Labour Code ⁵ / Primary legislation
1. ILO Convention nº 87, Freedom of Association and Protection of the Right to Organise	Article 212 of the Labour Code grants the right to create unions without prior authorisations; Article 19 no. 16 of the Constitution and Article 214 of the Labour Code establish the freedom to join, not join or leave a union whenever it is deemed appropriate. Collective bargaining agreements, in case not reached, can call for strikes. A labour reform proposal has been recently
2. ILO Convention nº 98, Right to Organise and Collective Bargaining	

⁴ Data series from 2000-2006, in order to avoid the conclusions are biased by the effects of the financial crises of 2008.

⁵Gerardo Otero A., María Dolores Echeverría F., Macarena López M., Juan Pablo Cabezón “Labour and Employment Compliance in Chile”, part of International Labour and Employment Compliance Handbook, edited by O. Salvador del Rey and Rober J.Mignin, published by Kluwer Law International, 2013.

introduced in the Chilean Congress and if passed, will increase the power of the unions.

1. ILO Convention n° 87, Freedom of Association and Protection of the Right to Organise Convention

The Chilean law ensures the right of workers to form and join unions without prior authorisation, with the exception of the police and military sectors. The same law provides the right to strike, with some exception that are mentioned below, protects collective bargaining, only at company level, and protects the unions from practices that are oriented against them.

The right to strike is conferred but with some conditions and exceptions; striking is allowed provided that the absolute majority of workers approve the strike; while striking is forbidden for the employees in private service companies (water/electricity/health care) and for the agricultural workers during the harvest season. Even though the law does not allow it, strikes of health care personnel or public sector personnel have been organised in Chile. According to NGOs and trade unions, freedom of association is respected and financial penalties for law violation are enforced, even though decisions in favour of workers can be sometimes challenging, e.g., the legal entity cannot be located⁶.

2. ILO Convention n° 98, Right to Organise and Collective Bargaining Convention

Collective bargaining is allowed, with the exception of public institutions, the institutions whose employees are unable to strike and employees of the agricultural sector who, most of the time are contracted for a definite amount of time – temporary contract or subcontracted - and are not eligible for collective bargaining. The use of temporary contracts/subcontracting is a typical practice especially in the agriculture sector, to increase the workforce but without granting the rights, e.g., collective bargaining. According to OECD⁷ data of 2013, there were 351,000 people (male and female 15+) employed with temporary work contract.

ILO Conventions	Chilean Labour Code⁸ / Primary legislation
3. ILO Convention n° 29, Forced Labour	Law 20507, in 2011, of the Criminal Code criminalises all forms of trafficking in persons, including trafficking for forced labour purposes and the smuggling of migrants.
4. ILO Convention n° 105, Abolition of Forced Labour	

3. ILO Convention n° 29, Forced Labour Convention

4. ILO Convention n° 105, Abolition of Forced Labour Convention

The report on *Trafficking in Persons* released in 2012, by the U.S. State Department, identifies Chile as “a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labour”. According to the report, the problem of trafficking is not only confined between the borders, it is a transnational and international problem. The document notes that much of the trafficking in persons that occurs in Chile is confined within national borders, it also involves persons, including children, from neighbouring countries and China who are attracted

⁶ *Ibidem*.

⁷ OECD data <http://stats.oecd.org/>

⁸ Gerardo Otero A., María Dolores Echeverría F., Macarena López M., Juan Pablo Cabezón “Labour and Employment Compliance in Chile” part of International Labour and Employment Compliance Handbook, edited by O.Salvador del Rey and Rober J.Mignin, published by Kluwer Law International, 2013.

to Chile by fraudulent job offers and then constrained to prostitution or involuntary servitude in agriculture, mining and domestic work.

As incidence of the cases was on the rise, Chile enacted Law 20.570, in 2011, criminalising human trafficking for sexual and labour purposes. Ever since Chile has put a lot of effort and has achieved a great progress in combating human trafficking, now ranking in the top tier of 188 countries that are preventing/prosecuting forced labour or commercial sex⁹. Worthy to note that since 2004 Chile is a member of the *UN initiative The Global Compact Network*, a call to companies to harmonise their strategies and operations with the international principles on labour, environment, human rights, anti-corruption.

Despite effective enforcement of the law, tough penalties, holistic approach to trafficking, forced labour continue to occur, as Chile is an attractive destination amongst the many difficulties the region faces.

ILO Conventions	Chilean Labour Code¹⁰ / Primary legislation
5. ILO Convention n° 138, Minimum Age	According to the labour code, child labour is forbidden; the minimum age for employment is 18; adolescents between 15-18 years old could however be employed with parents' consent and according to the conditions stipulated by the law, e.g., max of 30 hours per week and conditioned by school attendance;
6. ILO Convention n° 182, Worst Forms of Child Labour	In addition, children under the age of 18 cannot be employed in hazardous activities, and those above 18 can work in mining provided special health checks allows them to. A special Child Labour Task Force was created to maintain a registry of cases where children are victims of exploitation. Interinstitutional collaboration, with the National Tourism Service was enforced: strict norms for preventing sexual exploitation of children were introduced in the standards for hotel certification.

5. ILO Convention n° 138, Minimum Age Convention

6. ILO Convention n° 182, Worst Forms of Child Labour Convention

The minimum age for employment stipulated by the Chilean law is 18; children between 15 – 18 years old may as well work however on the condition that parents allow it and they attend school. By no means work performed by children aged 15 -18 should pose a threat to the child's development or health and should not exceed 30 hours per week. Monitoring of the formal requests are carried out by inspection officers.

Despite the enforcement of the legal provisions, the incidence of cases of children's labour law violation remains a problem, especially since it mainly occurs in the informal sector which obviously is not regulated. The sectors in which higher numbers of violation occurred are agriculture, construction, industrial manufacturing, hotels and restaurants¹¹. The Labour Directorate reported 219,000 minors in child labour situations, most of them between 15-17, in rural areas and in the informal economy and agriculture, with 718 cases of work in dangerous conditions, according

⁹ US Department of State, Trafficking in Person Report, June 2014.

¹⁰Gerardo Otero A., María Dolores Echeverría F., Macarena López M., Juan Pablo Cabezón "Labour and Employment Compliance in Chile" part of International Labour and Employment Compliance Handbook, edited by O.Salvador del Rey and Rober J.Mignin, published by Kluwer Law International, 2013.

¹¹ US Department of State, Country Report on Human Rights Practices, Chile, 2013.

to the Country Report on Human Rights Practices 2013¹². Commercial sexual exploitation of children as well as the use of children in the production, sale and transport of drugs (situation encountered especially at the border with Peru and Bolivia) are still a problem, according to the same report¹³.

ILO Conventions	Chilean Labour Code ¹⁴ / Primary legislation
7. ILO Convention n° 100, Equal Remuneration	Antidiscrimination Law 2012 enforced. Art 62 bis of the Chilean Labour Code stipulates equal
8. ILO Convention n° 111, Discrimination (Employment and Occupation)	remuneration for men and women. Law 20.422 on equal opportunities and social inclusion of people with disabilities passed in 2010. The Labour code also stipulates prohibition of discrimination in the work place related to age, race, sexual orientation, religion, pregnancy, nationality, marital status etc.

7. ILO Convention n° 100, Equal Remuneration Convention

8. ILO Convention n° 111, Discrimination (Employment and Occupation) Convention

Female labour-force participation increased significantly in Chile, but it remains still low (Table 5 Labour force female as % of total labour force); there are some other groups such as youth and minorities, older workers and immigrants¹⁵ that face difficulties to access the labour market and they work more often in the informal sector or in low paid jobs.

According to OECD¹⁶ data, female workers working full-time earn on average 16% less than males employed in similar positions. Also, women are over-represented in the informal jobs, as compared to men, which lead to lower salaries, lower retirement benefits, as they rarely have complete contributory period, and greater risk of poverty.

The analysis carried out by Lovell Jarvis and Esperanza Vera-Toscano on *Adjustment in a Market for Female Agricultural Workers* (2014)¹⁷ confirmed the variation of wages by more than 50% between peak and slack seasons, situation which affects in a lesser extent the male labour force participation; another aspect analysed by was the labour force participation fluctuation which concluded that the rate of female employment is lower than men's and it fluctuates, women facing unemployment especially in the slack season.

Wage wise, the same study points out to the fact that female workers are generally paid a piece rate when employed (especially in the peak season) which is 12% more per day than wage workers gain during the same period; however, the piece rate has also downsides; as soon as the peak season is gone, female workers are mostly unemployed.

¹² *Ibidem*.

¹³ *Ibidem*.

¹⁴ Gerardo Otero A., María Dolores Echeverría F., Macarena López M., Juan Pablo Cabezón "Labour and Employment Compliance in Chile", part of International Labour and Employment Compliance Handbook, edited by O. Salvador del Rey and Rober J. Mignin, published by Kluwer Law International, 2013.

¹⁵ Caldera Sánchez, A., "Policies for Making the Chilean Labour Market More Inclusive", OECD Economics Department Working Papers, No. 1117, OECD Publishing (2014).

¹⁶ OECD data <http://stats.oecd.org/>

¹⁷ Lovell Jarvis and Esperanza Vera-Toscano, "Adjustment in a Market for Female Agricultural Workers", American Journal of Agricultural Economics Vol. 86, No. 1, pp. 254-266, Published by: Oxford University Press (Feb., 2004).

Discrimination in employment of persons with disabilities or indigenous people; according to the *Country Report on Human Rights Practices 2015*¹⁸, persons with disabilities account for 7.6% of the working age population, yet, only 0.5% are employed. Article 22 of the Labour Code establishes the conditions in relation to “normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave” that must be applied to all sectors, including for domestic workers. The Labour Code regulates also the alternative to indefinite labour contract, such as temporary work contract and subcontracting, however, the same provisions include exceptions to the rules, which constitute very often one of the windows for contractors to elude the social security obligations towards their employees.

The Labour Code stipulates the minimum conditions of work for all occupations, including domestic servants. Occupational health and safety standards are also established and according to the law they are applicable to all sectors of activity. Mining and diving have a specific regulatory framework. The law does not regulate the informal sector. In the informal economy all those rights are violated often, and even though the law establishes fines for noncompliance with the legal provisions, abuses still occur¹⁹. The immigrant workers are one of the most vulnerable groups when it comes to exploitative working conditions²⁰. Even though according to the law, workers have the possibility to remove themselves from exploitative situations, or situations that endanger their health or safety while enjoying protection from the authorities, these situations are unlikely to occur due to a lack of awareness on workers’ rights or the fear of losing their job.

III. Conclusions

Chile enforced all the fundamental conventions of ILO, and a decade ago it started to pay attention to aspects not fully regulated by domestic laws: types of contracts eluding social security payments, such as subcontracting and temporary work, low participation of women and youth on the labour market and discrimination of certain minority groups on the labour market.

Without any doubt there are still areas where further commitment from the Chilean state is needed, especially in what concerns the transnational challenges, in particular illegal migrants, who are one of the most vulnerable on the labour market.

However, as stated previously, trade agreements were not the cause for the cases of labour standards noncompliance or challenges highlighted above. Trade agreements are a system of exchange managed by rules and institutions that reflect political choices at local, regional, or global level. In Chile’s case the trading system is a faithful reflection of the neoliberal ideology embraced decades ago.

From a labour standards point of view, the Chilean commitment to enforce the internationally recognised labour standards served to consolidate Chile’s leader position in global trade. Yet, their enforcement does not guarantee full compliance with the labour standards at local level, due to factors that are not entirely under the control of the relevant labour institutions (e.g. illegal migrants) or simply because there is room to avoid the rules.

In conclusion, labour standards enforcement is a local business, requiring exhaustive and clear legal provisions, strong institutions to implement and monitor their compliance. Against a solid national framework of this kind, the trade agreements can only reinforce the importance of their compliance.

¹⁸US Department of State, *Country Report on Human Rights Practices, Chile, 2013*.

¹⁹ *Ibidem*.

²⁰ *Ibidem*.

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Denisa Meiroşu

SNSPA (National School of Political and Administrative Studies), Doctoral School, Political Sciences
denisa.meirosu@gmail.com