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LABOUR RIGHTS AS HUMAN RIGHTS: EVALUATING THE POLICY  
COHERENCE OF USA, EU AND AUSTRALIA THROUGH TRADE  
AGREEMENTS AND THEIR PARTICIPATION IN THE UNIVERSAL  
PERIODIC REVIEW

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*The purpose of this study is to find policy coherence, or lack thereof, in the labour provisions contained in the Free Trade Agreements (FTAs) of the United States of America, the European Union and Australia when compared to their interactions in the Universal Periodic Review (UPR) Sessions with their trade partners and to the official trio of UPR documents made available during these sessions. Over the past decade these countries have entered into various free trade agreements with developing and developed countries alike. However, it is their trade agreements with developing countries that are of particular interest.*

*This study was conducted in order to ascertain how these leading actors approach labour clauses in their FTAs. First, the labour provisions and social clauses of these trade agreements were analysed. Second, the participation of these actors and their dialogue with their FTA partners in UPR Sessions were assessed along with the reports compiled by the United Nations (UN entities and relevant stakeholders for use during these sessions). Lastly, these two analyses were deconstructed under the prism of labour rights as a subset of human rights in order to evaluate policy coherence of the main actors.*

*The core findings of this study are that the USA and Australia lack a clear direction in their policy while approaching UPR sessions. Their recommendations during these sessions tend to be misaligned with that of the official UPR reports. USA tends to make generalised recommendations while not targeting specific areas of labour rights. Australia lacks labour provisions in most of its FTAs, thus*

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*making it harder to evaluate its policy. While the European Union (EU) does make detailed recommendations to its trade partners and maintains consistency with the official reports, there is still scope for involving the major members of the EU in dialogue.*

*It is the recommendation of this study that these countries, particularly the USA, EU and Australia, align their recommendations during UPR sessions with the official reports in order to present a coherent and unified front in combating labour rights violations. The study suggests that one way of tracking progress would be to develop a quantitative human rights index that records and ranks countries based on their commitment to human and labour rights.*

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## I. INTRODUCTION

### A. *Labour Rights as Human Rights*

At the outset, it is important to define labour rights. One definition of labour rights is the rights and entitlements bestowed upon a person due to their status as a worker.<sup>1</sup> These can be individual or collective rights and entitlements.<sup>2</sup> The International Labour Organisation (ILO), a specialised agency of the United Nations and a leading international organisation in support of workers' rights and labour standards, issued a Declaration in 1998, titled the *Declaration on Fundamental Principles and Rights at Work and its Follow-up* (ILO Declaration), calling for its Member States to respect and promote the underlying principles of the Declaration which form the basis of the ILO's core conventions.<sup>3</sup> These principles are divided into four categories:

- Freedom of association and effective recognition of the right to collective bargaining;
- Elimination of all forms of forced and compulsory labour;
- Effective abolition of child labour; and
- Elimination of discrimination in respect of employment and occupation.<sup>4</sup>

Importantly, the Declaration commits the Member States of the ILO to respect the abovementioned principles whether or not they have ratified the specific Conventions.

Further, the Universal Declaration of Human Rights (UDHR),<sup>5</sup> issued by the United Nations, also enshrines labour rights within human rights. Specifically, Article 23 of the UDHR which propounds, amongst other things, that people should enjoy the right to work, equal pay for equal work and the right to form and join trade unions, and Article 24, which limits working hours to a reasonable amount. While it is

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<sup>1</sup> Virginia Mantovalou, *Are Labour Rights Human Rights?*, 3 EUR. LAB. L. J. 151 (2012).

<sup>2</sup> *Id.*

<sup>3</sup> International Labour Organisation, ILO Declaration on Fundamental Principles and Rights at Work, June 18, 1998, 37 I.L.M. 1237 (1998).

<sup>4</sup> *Id.*, art. 2.

<sup>5</sup> Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217 (III) A, U.N. Doc. A/RES/3/217A.

acknowledged that the UDHR is not a binding document, it can be considered as a highly influential and cornerstone agreement on human rights.<sup>6</sup>

The European Convention on Human Rights (ECHR),<sup>7</sup> has also adopted this stance. Articles 4 and 11 of the ECHR deal with issues of labour, although admittedly they are not covered to the same extent as in the ILO Declaration. Further, support for labour rights to be classified under human rights can be seen in the International Covenant on Civil and Political Rights (ICCPR),<sup>8</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>9</sup> conventions that seek to further separate labour rights as economic or social rights and civil or political rights.

Hence, the incorporation of labour issues into international human rights instruments points to the increasingly popular school of thought that labour rights should now be viewed under the prism of human rights. Indeed, in the absence of an international labour court, this seems the best way to enforce labour rights. When viewed separately from human rights, the value and importance of decent working conditions and basic employment rights as a measure of a fair standard of living is diluted.

#### *B. The Role of ILO and its Conventions in Free Trade Agreements*

Since this paper is concerned with the analysis of labour rights as a subset of human rights, it merits a discussion of the ILO and its core labour conventions. Trade agreements such as FTAs and RTAs have led to the liberalisation of trade around the world. The reduction in tariffs and technical barriers and the increase in imports and exports have led to growth in global trade. However, as trade has become increasingly liberalised, there has also been a growing focus on the labour aspect of these agreements.<sup>10</sup>

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<sup>6</sup> Zachary Elkins et al., *Getting to Rights: Treaty Ratification, Constitutional Convergence and Human Rights Practice*, 54 HARV. INT'L L.J. 61, 63 (2013).

<sup>7</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

<sup>8</sup> International Covenant on Civil and Political Rights, art. VIII, Dec. 16, 1966, 999 UNTS 171.

<sup>9</sup> International Covenant on Economic, Social and Cultural Rights, arts. VI, VII & VIII, Dec. 16, 1966, 999 UNTS 3.

<sup>10</sup> See, e.g., Jordi Agusti-Panareda et al., *Labour Provisions in Free Trade Agreements: Fostering their Consistency with the ILO Standards System* (Mar. 2014), [http://www.ilo.org/wcmsp5/groups/public/-dgreports/-inst/documents/genericdocument/wcms\\_237940.pdf](http://www.ilo.org/wcmsp5/groups/public/-dgreports/-inst/documents/genericdocument/wcms_237940.pdf).

Essentially, labour provisions in trade agreements are inserted so that basic human and labour rights are not compromised for the sake of economic growth, since the link between trade and labour can no longer be overlooked. This is where the principles promulgated by the ILO play a key role. Recent trends in labour provisions reveal references to the commitment of the Parties to the ILO and the ILO Declaration.<sup>11</sup> References are also made to the fundamental conventions of the ILO. These fundamental conventions are listed below:<sup>12</sup>

- C87 – *Freedom of Association and Protection of the Right to Organise Convention (1948)*
- C98 – *Right to Organise and Collective Bargaining Convention (1949)*
- C29 – *Forced Labour Convention (1930)*
- C105 – *Abolition of Forced Labour Convention (1957)*
- C138 – *Minimum Age Convention (1973)*
- C182 – *Worst Forms of Child Labour Convention (1999)*
- C100 – *Equal Remuneration Convention (1951)*
- C111 – *Discrimination (Employment and Occupation) Convention (1958)*

A table illustrating which of the above conventions have been ratified by the countries under analysis is included in the appendix.<sup>13</sup>

Additionally, and interestingly so, the FTA texts of the EU, for example the KOR-EU FTA,<sup>14</sup> and the EU-CARIFORUM EPA,<sup>15</sup> also make reference to the following frameworks:

- *Decent Work Agenda 1999* (ILO)
- *Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work 2006* (UN)

These frameworks are not present in the trade agreements of the USA or those of Australia, highlighting a different approach to labour rights and provisions in their

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<sup>11</sup> See, e.g., European Union-South Korea Free Trade Agreement, EU-S. Kor., art. 13.4, Oct. 15, 2009, O.J. (L 127); United States-Colombia Free Trade Agreement, U.S.-Colom., art. 17.2, Nov. 22, 2006; United States-South Korea Free Trade Agreement, U.S.-S. Kor., art. 19.2, June 30, 2007, 46 I.L.M. 642.

<sup>12</sup> INTERNATIONAL LABOUR OFFICE, THE ILO'S FUNDAMENTAL CONVENTIONS 8 (1st ed. 2002).

<sup>13</sup> See *infra* Table 2.

<sup>14</sup> EU-South Korea FTA, *supra* note 11.

<sup>15</sup> EU-CARIFORUM Economic Partnership Agreement, Oct. 30, 2008, OJ L289/1/3.

trade agreements. These frameworks provide a basis for the implementation, monitoring and evaluation of labour rights within FTAs. However, in the absence of an international labour court, the onus falls on member countries to follow through on their obligations and commitments. Even though the ILO has enforcement mechanisms in place in its Constitution,<sup>16</sup> these still remain non-binding. For example, if the government of a member country chooses not to accept the recommendations of the Commission of Inquiry, it can then choose to refer the complaint against them to the International Court of Justice.<sup>17</sup>

Thus, the bulk of the responsibility to enforce the ILO's conventions and to protect labour rights, falls on member countries and their domestic courts. Yet this should not affect the ILO's role as a gatekeeper of labour rights. Indeed, the tripartite structure of its organisation reflects its commitment towards improving the quality of labour standards globally, as it seeks to include employees, employers and governments in its decision-making process.

### C. *Why these Actors?*

The USA and the EU are major actors in the global trade scene. In 2014, the World Trade Organisation (WTO) ranked USA as first in merchandise imports, as well as in commercial services imports and exports.<sup>18</sup> Further, WTO reported that USA's merchandise imports accounted for 12.64% of the world's total merchandise imports, while their commercial services exports accounted for 13.92% of the world's total exports in commercial services.<sup>19</sup>

Similarly, in 2014, the WTO ranked the EU as first in commercial services imports and exports (excluding intra-EU trade).<sup>20</sup> The EU's commercial services imports and exports accounted for 20.09% and 26.20% of the world's imports and exports respectively.<sup>21</sup> However, for the purposes of this study, only nine member countries

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<sup>16</sup> See, e.g., Constitution of the International Labour Organisation, arts. 24, 26, 33, Apr. 1, 1919, 15 UNTS 40.

<sup>17</sup> *Id.*, art. 29(2).

<sup>18</sup> *Trade Profiles*, WTO, <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=US>.

<sup>19</sup> *Id.*

<sup>20</sup> *Trade Profiles*, WTO, <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=E28>.

<sup>21</sup> *Id.*

of the EU were chosen for analysis among the twenty eight member countries: The data for these countries is presented in a tabulated form below:

Country	Rank in World Merchandise Export (2014) <sup>22</sup>	Rank in World Commercial Services Export (2014) <sup>23</sup>	Total Exports Value (2014, Millions \$USD) <sup>24</sup>	Number of recommendations made during first 24 UPR sessions (April 2008 – February 2016) <sup>25</sup>	% of Total Recommendations (Global total of 52,282 in first 24 sessions) <sup>26</sup>
Austria	27	21	244, 297	883	1.69
Belgium	13	12	593, 463	639	1.22
France	6	3	849, 694	1,624	3.11
Germany	3	4	1, 773, 838	913	1.75
Italy	8	13	644, 600	838	1.6
The Netherlands	5	6	858, 714	856	1.64
Spain	18	10	458, 571	1,515	2.9
Sweden	30	19	241, 030	699	1.34
United Kingdom	10	2	843, 058	979	1.87

*Table 1.1: Trade and UPR statistics of the EU9.*

The reason for choosing only these nine EU member countries is that these particular countries contribute quite significantly to the EU's total trade as is evident from the above table.<sup>27</sup> This is further evident in the table included in the appendix, showing percentage contributions of these nine countries to total EU trade.<sup>28</sup> Moreover, the UPR sessions do not group the member countries of the EU as a single supranational organisation. Instead, each country is reviewed individually. It

<sup>22</sup> *Trade Profiles*, WTO, <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=AT,BE,FR,DE,IT,NL,ES,SE,GB>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Statistics of Recommendations*, UPR INFO, <http://www.upr-info.org/database/statistics/>.

<sup>26</sup> *Id.*

<sup>27</sup> See *infra* Table 1.1.

<sup>28</sup> See *infra* Table 1.

is evident that these nine countries are quite active in these UPR sessions, with France leading the way with the most recommendations made. Hence, for the sake of simplicity, this analysis will be restricted to these nine member countries.<sup>29</sup>

Arguably, the more interesting inclusion in this study is Australia. There are several factors that justify Australia's inclusion, including its geographical location. An overview of the USA's and EU's current FTAs will reveal that they do not comprehensively cover the Asia-Pacific region and consequently do not present a clear picture of trade in that region. By including Australia's FTAs in the analysis, the study is extended to cover a more holistic idea of Asia-Pacific trade.

It can be argued, however, that China would merit inclusion in this study above Australia. After all, China's FTAs are comparable to those of Australia with both countries having FTAs with ASEAN, New Zealand and Singapore. Furthermore, its performance in global trade has been better than that of Australia, as evidenced by its WTO ranking of second place in merchandise imports and first in merchandise exports in 2014.<sup>30</sup> Notwithstanding China's superior trade performance, Australia's inclusion can be justified on the basis that the International Monetary Fund (IMF) classifies Australia as an 'advanced economy',<sup>31</sup> whereas China is classified as a 'developing economy'.<sup>32</sup> The parameters for this classification include unemployment, employment and real GDP per capita. Furthermore, the World Bank, using the Atlas method, lists Australia as a high income OECD country, with a GNI per capita of \$64, 540 USD,<sup>33</sup> and China as an upper-middle-income country with a GNI per capita of \$7, 400 USD.<sup>34</sup> Therefore, despite China's superior trade performance, these criteria highlight the fact that Australia is considered a "North" country or a developed country while China is still viewed as a "South" or emerging economy.

The inclusion of Australia over China presents a clearer picture of trade flow from developed countries to developing countries in the Asia-Pacific region. This is thematically consistent with the trade agreements of the USA and EU. Given their elevated positions of influence and development, it also assists analyses of how developed countries help raise labour standards in their less developed trading

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<sup>29</sup> Henceforth, these countries shall be referred to as the 'EU9' in order to avoid confusion. All references made to the EU trade statistics will be those of the EU9 unless stated otherwise.

<sup>30</sup> *Trade Profiles*, WTO, <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=CN>.

<sup>31</sup> IMF, WORLD ECONOMIC OUTLOOK: ADJUSTING TO LOWER COMMODITY PRICES 148 (Oct. 6, 2015), <https://www.imf.org/external/pubs/ft/weo/2015/02/pdf/text.pdf>.

<sup>32</sup> *Id.*, at 150.

<sup>33</sup> *Open Data*, WORLD BANK, <http://data.worldbank.org/country/australia>.

<sup>34</sup> *Open Data*, WORLD BANK, <http://data.worldbank.org/country/china>.



partners through various methods such as trade incentives and/or penalties, capacity building and exchange of knowledge.

It must be noted that USA, EU and Australia have more trading partners and agreements than those covered by this study. However, this is a pilot study covering most of the major FTAs of USA, EU and Australia. It is reasoned that the chosen trading partners is sufficient to form a cogent and logical conclusion as to the policy coherence of these actors, whilst also adhering to the motif of this study as being one that explores labour policies between developed and developing countries.

The region most noticeably omitted from this study is the African region. Indeed, Morocco and Egypt are covered by this study but it is acknowledged that this is inadequate to present an accurate picture of trade flows and labour conditions in the African region. Nor does this study claim to produce an accurate characterisation of trade in that region. The justification behind this is that there are far more FTAs involving USA, EU and Australia than African states. That is not to say that trade agreements covering the African region do not merit discussion. RTAs such as the Common Market for Eastern and Southern Africa (COMESA) remain important to the African community. Instead, as mentioned before, this study is more focused on the analysis of “North-South” agreements.

In relation to mega regional trade agreements such as the Trans-Pacific Partnership (TPP), and the Transatlantic Trade and Investment Partnership (TTIP), it is acknowledged that these agreements will certainly impact the trade policies, and any resultant labour policies, of the partner countries. The TPP covers a total of twelve countries – Australia, Canada, Japan, Malaysia, Brunei Darussalam, Viet Nam, Singapore, New Zealand, USA, Chile, Mexico and Peru. Of these twelve countries, nine are already covered by this study. Further, the TPP also contains chapters on Labour and Cooperation and Capacity Building. However, this particular study is more focused on those trade agreements that are already in force so as to assess and evaluate their effect on labour standards within the signatory countries. Since the TPP has been signed but not yet ratified by the TPP member countries, it is not included in this study. Still, it remains an interesting topic of research for future studies.

Similarly, the TTIP, which is a partnership between the EU and USA, is still undergoing negotiations. As the text of the agreement has not yet been finalised, it would be premature to discuss it in this study.

Below is a matrix explaining the FTAs or RTAs that will be the focus of analysis of this paper:



trends, or lack thereof, in the construction of said provisions. Invariably, this includes a discussion of conditional provisions and promotional provisions and their varying effectiveness, but not to the same degree as in previous studies. The crux of this approach is to compare the differences in form and function of the various labour provisions in the trade agreements.

Second, an assessment on the labour provisions of the trade agreements and their varying degrees of effectiveness is important in order to set the context and framework to analyse the labour policy coherence of the USA, EU and Australia. This assessment will be analysed alongside the participation of said actors in the UPR process and the trio of official reports (National report, UN report and Stakeholders' report) made available during these sessions as well as voluntary pledges of partner countries so as to reach a logical and concise conclusion. Thus, an assessment on the effectiveness of the labour provisions contained in the trade agreements is necessary.

Third, previous studies have tended to focus heavily on the trade agreements of the USA and EU. Along with these actors, Australia will also be the subject of analysis in this study. Being one of the few developed economies in the Asia-Pacific region, it will be interesting to evaluate the impact of its trade agreements in that region. As such, the lack of research conducted on key Australian trade agreements necessitates its inclusion in this study, especially given that the China-Australia Free Trade Agreement (ChAFTA) has recently entered into force.<sup>37</sup> Assessing trade agreements of Australia will also lend an element of novelty to this research.

#### *B. Free Trade Agreements of the United States of America*

The trade agreements of the USA were analysed by breaking down their structure in order to identify trends or notable features in their construction. To that end, a word cloud of the text of the labour provisions of the USA's trade agreements with its selected partner countries, created using Wordle™,<sup>38</sup> is shown below. Note that the word cloud and thus the resulting analysis do not consider the Israel FTA as that particular trade agreement does not include labour provisions.

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<sup>37</sup> As of Dec. 20, 2015.

<sup>38</sup> WORDLE, <http://www.wordle.net/> (last visited June 5, 2015).



Certain words were subsequently omitted from this word cloud so as to give a more definitive idea of the construction of the labour provisions inserted in these trade agreements. These words (in order) were 'Party', 'Parties', 'Article', 'may', 'including', and 'Chapter'. Further, the top 3 keywords to appear on the word cloud were 'labor' (453), 'cooperation' (104) and 'laws' (94).

However, one limitation of using Wordle™ is that it does not take into account the different instances in which the same word appears. For example, the word 'labor' appears in different cases such as 'labor', 'Labor' and 'LABOR'. In order to obtain an aggregate count of such occurrences, the textual analysis provided by Voyant Tools,<sup>39</sup> had to be used. Thus, an aggregate count of 493 times of the word 'labor' takes into account all instances of that word in the labour provisions (including any annexes relating to these provisions) of the USA's trade agreements. Note that for the purposes of this study, the English version of the word 'labour' will be generally used. However, since the USA's trade agreements use the American version, i.e., 'labor', and not the English version, i.e., 'labour', the American version will only be used in this study when it appears in official texts.

A visual representation is included in the appendix that illustrates the occurrences of the top keywords by individual agreement.<sup>40</sup> This is presented in a chronological

<sup>39</sup> VOYANT TOOLS, <http://voyant-tools.org/> (last visited June 5, 2015).

<sup>40</sup> See *infra* Graph 1.

order so as to identify trends, if any, in the usage of these keywords over time with the years marked on the graph signifying the year the agreement entered into force. However, that graph only shows a raw count of the keywords over time. To put this into context, a better illustration would be to present the frequency of keywords as a percentage of the actual text of the labour provisions.<sup>41</sup> Note that the percentage is the frequency of keywords in relation to the labour provisions, including relevant annexes, of the trade agreement, and not the full text of the trade agreement.

As evident from the second graph, the use of the word 'labor' has been relatively constant in all trade agreements. The exception to this is the Jordan agreement, which shows a higher occurrence of the word 'labor' as well as the word 'laws'. However, the articles on labour and working conditions in the trade agreements that followed the Jordan agreement were far more comprehensive than their counterpart in the Jordan agreement. Therefore, this statistic, and indeed the entire second graph itself, should not be considered in isolation, as it can be misleading. Further, the only trade agreement to not include cooperation in its text is the Cambodia agreement, hinting at a lack of capacity building between the two countries. The main purpose behind the Cambodia agreement was to facilitate trade in textiles between USA and Cambodia, rather than a broader reduction in tariffs and trade barriers.

The three keywords highlight the USA's approach to its trade agreements. The frequency of the word 'labor' is hardly surprising given that the trade agreements have an entire chapter dedicated to this topic. Furthermore, the frequency of the word 'labor' indicates that USA has taken a firm stance regarding labour rights and working conditions in its trade agreements. From having only an article covering labour issues in the Jordan and Cambodia agreements to having entire chapters dedicated to the same topic in later agreements, there is evidence of a paradigm shift as labour rights and working conditions become more pervasive in USA's trade agreements over time.

Possible explanations for this are that the link between trade policy and labour issues started to gain momentum and the downsides of globalisation could no longer be ignored. There was a growing concern that, in order to remain competitive, producers in developing countries would produce low-cost goods by compromising on working conditions and labour rights, leading to a "race to the bottom" in relation to such rights.<sup>42</sup>

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<sup>41</sup> See *infra* Graph 2.

<sup>42</sup> Bolle, *supra* note 35 at 2.

It is interesting to note that in USA's agreements with Chile and the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), an article relating to labour roster for overseeing the enforcement of local labour laws has been included.<sup>43</sup> This would explain a higher raw count of the word 'labor' in these agreements whilst also pointing to recognition of problems associated with the effective implementation of labour laws. The roster provides a platform through which panellists with technical knowledge and expertise oversee governmental disputes relating to trade and labour laws. In the case of the CAFTA-DR agreements, this roster follows concerns on labour issues by many entities including the United States' Labor Advisory Committee (LAC) and the International Labor Rights Forum (ILRF) as well as the White Paper, a report written by the Vice Ministers of the CAFTA-DR countries outlining issues in implementing labour laws.<sup>44</sup>

Another interesting observation is that every USA trade agreement makes reference to the obligations of the Parties as members of the ILO and its commitments pursuant to the ILO Declaration, yet this is taken one step further in the agreements with Colombia and the Republic of Korea. Noticeably, these particular agreements, which are also coincidentally the latest set of USA trade agreements to come into force, also stipulate the incorporation of the core principles of the ILO, as propounded in the ILO Declaration, into domestic laws.<sup>45</sup> They do not, however, commit the Parties into incorporating the specific conventions relating to these core principles, but only the broader principles themselves. Whether this represents a new approach to labour rights or merely a specifically tailored trade agreement will become clearer in the future when the next generation of USA's trade agreements enter into force.<sup>46</sup>

An increasingly noticeable theme of USA's trade agreements is the inclusion of labour provisions as "conditional provisions", referred to so due to some conditional elements inserted in these provisions. Such provisions penalise the partners for failing to comply with or enforce the provisions of the trade agreements. This conditionality can then be further classified as either "pre-ratification conditionality"

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<sup>43</sup> U.S.-Chile Free Trade Agreement, U.S.-Chile, art 18.7, June 6, 2003, 42 I.L.M. 1026; Central American-Dominican Republic-United States Free Trade Agreement, art 16.7, Aug. 5, 2004, 43 I.L.M. 514.

<sup>44</sup> Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic, *The Labor Dimension in Central America and the Dominican Republic - Building on Progress: Strengthening Compliance and Enhancing Capacity*, (Apr., 2005).

<sup>45</sup> US-Korea FTA, *supra* note 11, art 19.2; US-Colombia TPA, *supra* note 11, art. 17.2.

<sup>46</sup> *See, e.g.*, United States-Panama Trade Promotion Agreement, U.S.-Pan., art 16.2, June 28, 2007; United States-Peru Trade Promotion Agreement, U.S.-Peru, art 17.2, Apr. 12, 2006.

or “post-ratification conditionality”.<sup>47</sup> Pre-ratification conditionality seeks to address shortcomings in labour laws and standards of partner countries before the trade agreement is ratified so as to raise the minimum requirement of working conditions and labour rights. Post-ratification conditionality is mainly associated with any complaint or dispute settlement mechanisms that may be included in the trade agreements, leading to possible trade sanctions or monetary penalties for non-compliance.<sup>48</sup>

However, such provisions are not uniformly present in all of USA’s trade agreements. Indeed, only the trade agreements with Morocco, Bahrain and Colombia had conditions prior to ratification. In the case of Morocco, when the Labor Advisory Committee advised the Congress of the USA to not ratify the trade agreement, citing inadequacies in Moroccan labour laws,<sup>49</sup> it led to reform in labour law that had been stalled for over twenty years.<sup>50</sup> The reform enforced, among other things, a raised minimum working age of fifteen years and a reduction in weekly working hours to forty four hours.<sup>51</sup>

Additionally, the trade agreements of the USA also include an obligation, requiring its partners to ‘not fail to effectively enforce (their national) labor laws’,<sup>52</sup> while also requiring its partners to not facilitate trade or investment through the weakening of labour laws. Again, this seems to point to USA’s uncompromising attitude towards labour rights in its trading partners. Thus the usage of the word ‘laws’ can be understood as the USA seeking to ensure that certain standards are complied with if their partners are to benefit from the trade agreement. The ILO has cited the

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<sup>47</sup> ILO, SOCIAL DIMENSIONS OF FREE TRADE AGREEMENTS, ISBN 978-92- 9-251028- 2 (NOV. 6, 2013),.

<sup>48</sup> *Id.*, at 43.

<sup>49</sup> LABOR ADVISORY COMM. FOR TRADE NEGOTIATIONS AND TRADE POLICY, U.S. TRADE REP., REPORT TO THE PRESIDENT, THE CONGRESS AND THE UNITED STATES TRADE REPRESENTATIVE ON THE U.S.-MOROCCO FREE TRADE AGREEMENT 5 (Apr. 6, 2004), [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Morocco\\_FTA/Reports/asset\\_upload\\_file809\\_3122.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Morocco_FTA/Reports/asset_upload_file809_3122.pdf).

<sup>50</sup> *Morocco FTA Leads to Progress on Labor Reform*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (June 23, 2004), [https://ustr.gov/archive/Document\\_Library/Fact\\_Sheets/2004/Morocco\\_FTA\\_Leads\\_to\\_Progress\\_on\\_Labor\\_Reform.html](https://ustr.gov/archive/Document_Library/Fact_Sheets/2004/Morocco_FTA_Leads_to_Progress_on_Labor_Reform.html).

<sup>51</sup> *Id.*

<sup>52</sup> *See, e.g.*, United States-Morocco Free Trade Agreement, U.S.-Morocco, art 16.2, June 15, 2004, 44 I.L.M. 544 (2005).

growing voice of civil societies and the United States Labor Advisory Council as a reason for this change.<sup>53</sup>

However, it would be incorrect to characterise labour provisions in USA's trade agreements as purely conditional. Indeed, the labour provisions also provide for cooperation and capacity-building programs (except in case of Cambodia), pointing to a plan to increase awareness and improve labour rights through dialogue and shared technical knowledge including promoting respect for the principles propounded in the ILO Declaration.<sup>54</sup>

This is apparent in the change in construction of labour provisions over time. Using the Jordan agreement as a point of reference, this particular agreement does not provide for a cooperation mechanism for dealing specifically with issues of labour rights. Instead, a joint committee overlooks the overall administration of the agreement, including labour issues.<sup>55</sup> The Cambodia Bilateral Textile Agreement, which predates the Jordan FTA, does not mention a labour cooperation mechanism. Rather, a broader consultation process has been included in this particular agreement, which stipulates that the two governments shall conduct no less than two consultations each year to discuss labour standards.<sup>56</sup> The agreements following the Jordan agreement, however, mark an evolution as they stipulate the designation of a national contact point within its labour ministry as well as the set-up of a bilateral 'Labour Cooperation Mechanism'. The purpose of the contact point is to coordinate cooperation activities between parties on labour issues, including overseeing the Labour Cooperation Mechanism. Hence, the rise in the frequency of the word 'cooperation' is indicative of this changing attitude.

In order to better understand the effect of these trade agreements on the imports and exports between the USA and its partners, statistics demonstrating trade flow between the two parties were analysed.<sup>57</sup> As shown, the graphs cover trade in goods from the year 2000 to the present, with the exception of Cambodia. The start date of the trade agreements with each partner has also been noted in the corresponding graph, in order to show the effects, if any, of the trade agreements on import and export values.

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<sup>53</sup> ILO, *supra* note 47 at 36.

<sup>54</sup> *See, e.g.*, United States-Bahrain Free Trade Agreement, U.S.-Bahr., art. 15.5, Sep. 14, 2004, 44 I.L.M. 544 (2005); U.S.-Colombia FTA, *supra* note 11, art. 17.6.

<sup>55</sup> *See* United States-Jordan Free Trade Agreement, U.S.-Jordan, art. 6(5), Oct. 24, 2000, 41 I.L.M. 63 (2002).

<sup>56</sup> *See*, United States-Cambodia Bilateral Textile Agreement, U.S.-Cambodia, art. 10(C), Jan. 1, 1999.

<sup>57</sup> *See infra* Graphs 3 to 14.



These statistics were taken from the UN Comtrade website,<sup>58</sup> and were calculated using the Harmonized System (HS) method of classification of goods. The HS system was used in this study in order to maintain consistency, since the USA trade agreements make references to this system in their classification of goods.

However, upon observation, no clear trend was apparent in these statistics, with the exception of a fall in numbers in 2009, which can be attributed to the Global Financial Crisis. Consequently, peaks in numbers in 2011 are indicative of the USA's recovery from this crisis. Consider the graph representing trade between the USA and the Dominican Republic as an example.<sup>59</sup> This graph shows a general growth in export numbers for the USA since the agreement came into force. However such a deduction cannot be made for every agreement as they all show varying trends. This evidences the unique nature of each agreement, shaped by various factors including, but not limited to, national economic policies, geographical location and robustness of domestic markets.

Notwithstanding the inclusion of trade flow statistics, the effects on trade flows of trade agreements between partner countries does not fall within the scope of this study and thus shall not be discussed in detail. Nevertheless, it remains a substantive area of research for future studies.

### *C. Free Trade Agreements of the European Union*

Below is a word cloud of the labour provisions of the EU's trade agreements with its partner countries, created using Wordle™.

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<sup>58</sup> UN COMTRADE DATABASE, <http://comtrade.un.org/data/> (last visited June 11, 2015).

<sup>59</sup> See *infra* Graph 12.



closely matched in numbers. Interestingly, the top keyword in the EU's labour provisions is 'development' which is an accurate, though not a determinative, indicator of the EU's approach to labour provisions in its trade agreements. A remarkable trend that is evident from the two graphs is that up until 2008, 'social' was the dominant word in labour provisions. The word 'development' only became more prominent after 2008 and, in fact, the word 'trade' did not even feature in labour provisions until 2008.

A significant factor contributing to the prominence of the word 'development' post-2008 can be attributed to the EU's commitment towards promoting the principles expounded in the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work (2006).<sup>62</sup> This commitment is evident through the mention of, and explicit affirmation of their commitment to, the Ministerial Declaration in the Caribbean Forum (CARIFORUM),<sup>63</sup> Republic of Korea,<sup>64</sup> Colombia,<sup>65</sup> and the Central America Association trade agreements.<sup>66</sup>

Further, the top keyword in the Ministerial Declaration is 'development', being featured forty eight times in themes such as sustainable development and the Millennium Development Goals. As a result, the concept of sustainable development also became more prominent in the EU's trade agreements post-2008, featuring significantly in the agreements with Colombia and the Central America Association. The Colombia<sup>67</sup> and Republic of Korea<sup>68</sup> agreements even mention the Johannesburg Plan of Implementation on Sustainable Development of 2002. For these reasons, the surge of the word 'development' post-2008 can be explained.

Indeed the increase in prominence of the word 'development' post-2008 and the word 'social' pre-2008 can be used to accurately characterise the labour provisions in the EU's trade agreements. Two differences between EU's trade agreements and those of the USA are evident – first, whereas the USA's trade agreements included chapters plainly labelled 'Labor', the EU's labour provisions can be more accurately described as 'social dialogue' provisions. This links to the second key difference –

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<sup>62</sup> ESCOR, Ministerial Declaration on Generating Full and Productive Employment and Decent Work for All (Nov., 2006).

<sup>63</sup> See EU-CARIFORUM Agreement, *supra* note 15, art. 191.

<sup>64</sup> See EU-South Korea FTA, *supra* note 11, art. 13.1.

<sup>65</sup> See European Union-Colombia Free Trade Agreement, EU-Colom., art. 267, June 26, 2012.

<sup>66</sup> See European Union-Central America Free Trade Agreement, art. 284, 15 Dec., 2012, O.J. (L 346).

<sup>67</sup> See EU-Colombia FTA, *supra* note 65.

<sup>68</sup> See EU-South Korea FTA, *supra* note 11.

whereas the labour provisions in the USA's agreements were termed 'conditional provisions', a better description of the same provisions is found in the EU's agreements, referred to as 'promotional provisions'.

As opposed to conditional provisions, promotional provisions focus more on dialogue, cooperation and capacity building between the parties,<sup>69</sup> without the pressure of economic or monetary sanctions. Such cooperative activities are complemented by binding or non-binding commitments to international and national labour standards. These provisions also seek to monitor the commitment of the parties to such standards. Hence the term 'promotional' is apposite, as it seeks to promote labour rights and fair working conditions through dialogue and sharing of knowledge rather than sanctions. Such provisions are a feature of trade agreements of the EU as well as 'South-South' agreements, which are, however, outside the scope of this study.

Herein lies another difference between the approaches of the EU and the USA to labour issues in trade agreements – whereas the USA insists upon a streamlined and technical approach whilst advocating for the strengthening of domestic labour laws and their effective implementation in partner countries, the EU prefers a broader, more conceptual approach to labour issues seeking to share knowledge and commit to international and national labour standards. Indeed, the EU has become more attuned to its commitment to sustainable development and the Millennium Development Goals after the 2006 Ministerial Declaration and therefore has taken a more holistic approach to labour rights. Essentially, these are two varying schools of thought working towards the same goal.

As for the emergence of the word 'trade', this can again be attributed to the resolve of the EU to sustainable development. The links between trade and labour policy can no longer be denied and the EU approaches the topic of trade as a contributor to sustainable development. To that end, labour and environmental issues dealt with in these agreements are done so with the view that sound labour and environmental policies are crucial to the promotion of sustainable trade.

As with the USA, statistics demonstrating trade flow between the EU and its partners were analysed.<sup>70</sup> Again, the graphs cover trade in goods from the year 2000 to the present and show the start date of the trade agreements with each partner in order to show the effects, if any, of the trade agreements on import and export values.

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<sup>69</sup> ILO, *supra* note 47 at 70.

<sup>70</sup> *See infra* Graphs 17 to 27.

These statistics were taken from the Eurostat website,<sup>71</sup> and were calculated using the HS method of classification of goods. As before, the reason for using this system to calculate trade in goods is due to the fact that the EU trade agreements make references to this system in their classification of goods and thus for the sake of consistency the HS method was used to calculate the following statistics.

However, like with the USA's trade statistics, no evident pattern was noticeable in these statistics, with the exception of a fall in numbers in 2009, which can be attributed to the Global Financial Crisis. Usually, the entry into force of trade agreements is followed by a rise in export numbers for the EU, barring the economic disruption in 2009, although this trend does not hold true for all its trade agreements.

#### *D. Free Trade Agreements of Australia*

Interestingly, very few of Australia's FTAs that are currently in force include labour provisions or provisions relating to social dialogue regarding working conditions. Consequently, it is not possible to carry out a similar analysis of Australian trade agreements as previously done with the USA and the EU. Of the trade agreements of Australia currently in force, only the agreements with USA, Chile, Malaysia and Republic of Korea make mention of labour issues.

In the case of the Australia-USA FTA, the inclusion of a labour chapter can be mainly attributed to USA. Being in a more prominent position in terms of trade and given its commitment to implementation of labour laws, it can be assumed that the inclusion of a labour chapter was upon the insistence of USA. As discussed before, USA regularly includes labour provisions in its trade agreements, as evident in previous and subsequent agreements, and this is no different. As such the inclusion of the labour chapter in the Australia-U.S.A. FTA can be considered an abnormality in the trend of Australian trade agreements.

In the case of Malaysia, the inclusion of labour provisions is not explicit. There has only been a confirmation of agreement to consider the inclusion of such provisions at a later date, even though the agreement has been in force since January 1, 2013. In an exchange of side letters between Australia and Malaysia, both parties agreed to consider including labour provisions in the text of the agreement no later than two years after the agreement came into force, or at a later mutually agreed date. In the side letters, it was also discussed that the insertion of labour provisions in the

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<sup>71</sup> *International Trade Data*, EUROSTAT, <http://ec.europa.eu/eurostat/web/international-trade/data> (last visited June 20, 2015).

Agreement would distract the involvement of both parties in the TPP negotiations, and thus would be more appropriate at a later time.<sup>72</sup>

In relation to the Chile agreement, the agreement does not itself contain a chapter on labour provisions. Instead, it is included under a wider ambit in a chapter labelled 'Cooperation'.<sup>73</sup> Under this chapter, the parties agree to cooperate on issues of labour for mutual benefit with the ILO Declaration as a point of reference in cooperative activities. The chapter also stipulates the designation of a national contact point to facilitate cooperative activities relating to labour. Such feeble labour provisions hardly provide comfort to those seeking to protect their rights as workers and advocating for fair working conditions. The Australian Department of Foreign Affairs and Trade (DFAT) itself admits that this chapter does not commit the parties to any particular initiative and any cooperation will be done so through existing agreements.<sup>74</sup> Neglecting labour issues in trade agreements could prove harmful to Australia's reputation and position in the global trade scene. As the concepts of sustainable development and labour rights become more and more globally pervasive, Australia must ensure that it remains competitive or else risk being left behind.

Interestingly, however, Australia's seemingly indifferent attitude towards labour issues in its trade agreements has not deterred other countries from entering into agreements with Australia. In the case of the Republic of Korea, the agreement between the two countries came into effect on 12<sup>th</sup> December, 2014. In what is a remarkable break in trend, this agreement includes a chapter dedicated to labour. Curiously, this chapter thematically resembles the chapter on labour between the USA and the Republic of Korea, with the Australian agreement also stipulating for the incorporation of the core principles in the ILO Declaration into domestic laws. The chapter also establishes national contact points and an ad hoc committee to facilitate discussions on labour issues. However, the chapter also explicitly denies dispute settlement as a recourse meaning that commitments to labour standards remain purely voluntary and without enforcement.<sup>75</sup>

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<sup>72</sup> Department of Foreign Affairs and Trade: Malaysia-Australia FTA, <http://dfat.gov.au/trade/agreements/mafta/Pages/side-letter-labour-australia-malaysia.aspx> (last visited June 15, 2015).

<sup>73</sup> See Australia-Chile Free Trade Agreement, Austl.-Chile, July 30, 2008 [2009] ATS 5.

<sup>74</sup> *Australia-Chile FTA: Summary of key obligations*, DEPARTMENT OF FOREIGN AFFAIRS AND TRADE, <http://dfat.gov.au/trade/agreements/aclfta/fta-information/Pages/summary-of-key-obligations.aspx> (last visited June 15, 2015).

<sup>75</sup> See Australia-Korea Free Trade Agreement, Austl.-S. Kor., art. 17.6, Apr. 8, 2014, [2014] ATS 43.

The trade agreements with Japan,<sup>76</sup> and China,<sup>77</sup> do not include labour provisions, not even as an obligatory side note in cooperative activities. Thus, it remains to be seen whether the Republic of Korea agreement will remain an atypical agreement or inspire a new generation of Australian trade agreements, although considering the subsequent Japanese and Chinese agreements, the former is more likely.

As stated previously, statistics demonstrating trade flow between Australia and its partners were analysed.<sup>78</sup> These statistics were taken from the UN Comtrade website and were calculated using the HS method of classification of goods, so as to maintain consistency with the Australian trade agreements, which make references to the Harmonised System.

The trade statistics between Australia and New Zealand are only included from 2000 to 2014, even though the trade agreement was signed in 1983. One trend to note is that from the entry into force of trade agreements, the import values of Australia have shown a general increase.

### III. PARTICIPATION OF ACTORS IN THE UNIVERSAL PERIODIC REVIEW

#### A. *Brief History and Mechanisms of the Universal Periodic Review*

The UPR is a consequence of the UN General Assembly Resolution 60/251 in 2006, which created the Human Rights Council and instructed the Council to engage in a universal periodic review of the 193 member countries of the UN on their human rights obligations.<sup>79</sup> These obligations and commitments are based on several instruments such as the UN Declaration, the Universal Declaration of Human Rights (UDHR) and any other instrument to which the country under review may be a party. The first cycle started in 2008 and concluded in 2011. The second cycle is in progress, as of November 2016, having started in 2012 and stipulated to be concluded with the 26<sup>th</sup> Session scheduled for November.

Each year, three sessions are held with a total of sixteen, now fourteen, countries being reviewed in each session. At the start of each review, the country being reviewed presents its National Report, one of the three main documents. Following

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<sup>76</sup> Japan-Australia Economic Partnership Agreement, Japan-Austr., July 8, 2014, [2015] ATS 2.

<sup>77</sup> China-Australia Free Trade Agreement, China-Austrl., June 17, 2015, [2015] ATS 15.

<sup>78</sup> See *infra* Graphs 28 to 34.

<sup>79</sup> *Basic facts about the UPR*, OFFICE OF THE UNITED STATES HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (last visited Apr. 20, 2015).

this, other countries make comments and recommendations via dialogue on human rights situations within the country being reviewed, with each country being allocated a specific amount of time for dialogue. These sessions are overseen by a troika, or a group of three selected countries that assist during the review session and act as rapporteurs. This troika is selected via a drawing of lots among members of the Human Rights Council and usually represent different regional groups.<sup>80</sup> Importantly, the review is based on the National Report, a report compiled by the Office of the High Commissioner for Human Rights (OHCHR) containing information from treaty bodies, Special Procedures and the UN agencies and a report compiled by stakeholders such as non-governmental organisations and civil society organisations.

At the end of the review session, the troika, with the help of the country, under review prepares a summary. This summary is initially adopted at a Working Group Session held a few days after the review session, and subsequently. Following this initial adoption, it is then adopted via consensus at a plenary session of the Human Rights Council, usually held a few months later, during which NGOs are also allowed to participate.

#### *B. USA's Participation in the Universal Periodic Review*

In order to extract information on UPR sessions, documents from the OHCHR website were used.<sup>81</sup> These documents included the outcome of each review session and the reports prepared by the UN entities such as Special Procedures and treaty bodies and relevant stakeholders such as national human rights institutions and NGOs. Further, the database and statistics provided by UPR Info, a non-governmental organisation, were also used.<sup>82</sup> This organisation is focused on providing tools to the various actors that participate in the UPR sessions in order to increase awareness and transparency.

The reason why the UPR sessions were chosen over the sessions of the Human Rights Council is that the UPR sessions allow for the better monitoring of country-to-country dynamic and dialogue. In the period between April 2008 and February 2016, covering the first twenty four sessions of the UPR, the USA made the tenth highest number of recommendations. Its total recommendations of 955 accounted

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<sup>80</sup> *Id.*

<sup>81</sup> OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/Pages/Home.aspx> (last visited July 6, 2015).

<sup>82</sup> UPR INFO, <http://www.upr-info.org/en> (last visited October 23, 2016).



for 1.83% of the 52,282 recommendations made in that period.<sup>83</sup> Thus, at first glance, the USA would appear to be a regular participant in the UPR sessions.

However, the focus of the UPR analysis is the interactions of the USA with its trading partners, specifically its dialogue involving labour rights. Strikingly, the USA has only made twelve recommendations to its trade agreement partners on labour issues in the first twenty four sessions of the UPR with all recommendations being made in the second cycle (2012 – 2016) except to Cambodia. The country receiving the most recommendations has been Cambodia (three), followed by Colombia and Guatemala (two), while Bahrain, the Dominican Republic, Israel, Jordan and Honduras received one each.

These recommendations are presented below:

Country under Review	Cycle number, Date of Review	Recommendation by USA <sup>84</sup>
Bahrain	2, May 21, 2012	<ul style="list-style-type: none"> <li>• <i>Review convictions, commute sentences, or drop charges for all persons who engaged in non-violent political expression.</i></li> </ul>
Cambodia	1, December 1, 2009	<ul style="list-style-type: none"> <li>• <i>Establish labour courts in an effort to guarantee respect for worker rights and to provide legal and efficient solutions to labour disputes, and revise the law on trade unions.</i></li> <li>• <i>Reinforce relevant institutional capacity to maximize the implementation of its five-year plan 2006-2012 for the elimination of the worst forms of child labour.</i></li> <li>• <i>Take all necessary measures to ensure that the trade union rights of workers in Cambodia are fully respected and that trade</i></li> </ul>

<sup>83</sup> UPR INFO STATISTICS OF RECOMMENDATIONS, <https://www.upr-info.org/database/statistics/> (last visited October 23, 2016).

<sup>84</sup> *Database of Recommendations*, UPR INFO, <http://www.upr-info.org/database/> (last visited June 22, 2015).

		<i>unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives.</i>
Colombia	2, April 23, 2013	<ul style="list-style-type: none"> <li>• <i>Promptly investigate and prosecute perpetrators of threats, extortion, and attacks on human rights defenders, vulnerable individuals, unionists, and potential beneficiaries of the Victims' Law.</i></li> <li>• <i>Strengthen the enforcement of labour laws, especially by increasing training for labour inspectors to enable more thorough investigations of alleged violations, and ensuring timely collection of fines.</i></li> </ul>
Dominican Republic	2, February 5, 2014	<ul style="list-style-type: none"> <li>• <i>Strengthen labour law enforcement by providing training to labour inspectors and conducting outreach campaigns to inform workers of their internationally recognized worker rights.</i></li> </ul>
Guatemala	2, October 24, 2012	<ul style="list-style-type: none"> <li>• <i>Complete the transfer of capacity from the International Commission against Impunity in Guatemala to Guatemalan institutions and protect those made most vulnerable to crimes because of impunity, including judges, witnesses, prosecutors, human and labour rights defenders, journalists, and trafficked persons.</i></li> <li>• <i>Provide the necessary resources, personnel and authority to the Ministry of Labour to effectively enforce Guatemalan labour law,</i></li> </ul>

		<i>and comply with internationally recognized worker rights.</i>
Honduras	2, May 8, 2015	<ul style="list-style-type: none"> <li>• <i>Continue strengthening government capacity to effectively investigate and prosecute all crimes, including labor law violations.</i></li> </ul>
Israel	2, October 29, 2013	<ul style="list-style-type: none"> <li>• <i>Implement previous commitments to increase state resources allocated to Arab Israeli and Bedonin communities, especially for education, and ensure equal access to education, housing, healthcare and employment for individuals in these communities.</i></li> </ul>
Jordan	2, October 24, 2013	<ul style="list-style-type: none"> <li>• <i>Strengthen labour protections for all workers in Jordan, with special emphasis on migrants, children, and domestic workers.</i></li> </ul>

**Table 2.1: USA's UPR Recommendations.**

A total of twelve labour related recommendations over twenty four sessions is a surprisingly low return. Granted, it could be hypothetically true that the states receiving recommendations have implemented changes in labour laws and policy using their own initiative thus not attracting numerous recommendations from the USA. However, given the reservations of the LAC toward some of the USA's trade agreements, it can be concluded that this is not the case. For example, the LAC noted in its report on the US-Korea FTA poor labour conditions in South Korea, including mistreatment of trade unions by authorities. Taking into account labour and other factors, the LAC recommended that the FTA should not be enforced.<sup>85</sup> Similarly, in its report on the US-Colombia FTA, the LAC criticised Colombia for not complying with ILO's core labour standards and noted shortcomings in

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<sup>85</sup> LABOR ADVISORY COMM. FOR TRADE NEGOTIATIONS AND TRADE POLICY, U.S. TRADE REP., REPORT TO THE PRESIDENT, THE CONGRESS AND THE UNITED STATES TRADE REPRESENTATIVE ON THE U.S.-KOREA FREE TRADE AGREEMENT 9 (Apr. 27, 2007), <https://ustr.gov/sites/default/files/uploads/agreements/morocco/pdfs/LAC%20Report%20for%20Korea.pdf>.

Colombian labour law such as restrictions on freedom of association, right to join a trade union, bargain collectively and the right to strike.<sup>86</sup>

UPR Info's methodology for analysing recommendation actions indicates that the USA's recommendations tend to call for fairly specific action. This methodology involves analysing the first verb in the context of the entire recommendation and subsequently ranking the recommendation from a scale of one to five, one being minimal action recommended and five being specific action recommended.<sup>87</sup> Using this model of analysis, the USA's recommendations all rank at either four or five, with one exception; its recommendation to Bahrain was ranked at three.

One shortcoming of this methodology is that, since it analyses the verbs in each recommendation, it only classifies specificity in terms of what the country under recommendation is being recommended to do. Thus, it analyses how strongly worded each recommendation is. It does not always, however, take into account which specific areas need to be targeted. It is acknowledged that this model also classifies recommendations based on themes such as labour, freedom of association and assembly, migrants and such. However, such a classification system is broad and thematic and as such captures a wide ambit of issues.

For example, some recommendations directed by the USA to the Dominican Republic and Guatemala discuss 'internationally recognised worker rights'. These recommendations do not explicitly state any instrument or convention in relation to these rights and yet, they are ranked at five and four respectively under the theme of "Labour". On the contrary, other recommendations, for example to Cambodia, refer to specific areas of action such as worst forms of child labour and are only ranked at four. Therefore, even though UPR Info provides a multi-layered framework with which to analyse UPR recommendations, it should still be complemented with individual analysis for best results.

Additionally, vaguely worded phrases such as 'internationally recognised worker rights' pose a problem. To which international instruments does USA refer to when it discusses 'internationally recognised worker rights'? Does it refer to the eight core conventions of the ILO, of which it has only ratified two? Or does it refer to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which it has signed but not ratified? Giving more explicit recommendations to its partners

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<sup>86</sup> LABOR ADVISORY COMM. FOR TRADE NEGOTIATIONS AND TRADE POLICY, U.S. TRADE REP., REPORT TO THE PRESIDENT, THE CONGRESS AND THE UNITED STATES TRADE REPRESENTATIVE ON THE U.S.-COLOMBIA FREE TRADE AGREEMENT 8 (Oct. 6, 2004), <https://ustr.gov/sites/default/files/uploads/agreements/morocco/pdfs/LAC%20Report%20for%20Colombia.pdf>.

<sup>87</sup> See *infra* Annex 1.

will ensure that its partners are better able to identify areas of improvement and subsequently allocate resources more efficiently to these areas.

Interestingly, all twelve of the USA's recommendations have been accepted by its partners. UPR Info classifies responses as either "Accepted" or "Noted", based on the wording of the response of the country under recommendation. A recommendation is classified as "Accepted" if the response includes clear use of the word 'accept'. When this is not clear in the response, it is classified as "Noted".<sup>88</sup> More information on this methodology is included in the appendix.

A 100% acceptance rate from the USA's partners points to the fact that they recognise room for improvement and are committed towards improvement in the area of labour rights, be it generally or specifically, in part or wholly. This also reaffirms the UPR process as a forum for dialogue and constructive criticism rather than a "naming and shaming" exercise.

### C. The EU's Participation in the Universal Periodic Review

As stated previously, only nine countries of the EU will be considered in this section as the UPR sessions review each country individually, including the EU countries. These nine countries have been listed in previous sections.

In the period between April 2008 and February 2016, covering the first twenty four sessions of the UPR, the EU9 made a total of 8,946 recommendations, accounting for 17.11% of the 52,282 recommendations made in that period. In the same time period, France made the most recommendations out of every country in the world (1624) followed closely by Spain (1515). Hence, it is a fair assessment that the EU9 have been quite active in the UPR sessions.

When analysed more closely on the interactions of the EU9 with their partners on dialogue involving labour rights, the EU9 block made twenty seven recommendations during the first twenty four sessions. Again, this return is lower than that expected from state actors who are usually quite vocal in these sessions.

Country under Review	Reviewing Country	Cycle number, Date of Review	Recommendation by Reviewing Country <sup>89</sup>
Chile	France	2, January 28, 2014	<ul style="list-style-type: none"> <li>• Continue with initiatives to promote women's rights,</li> </ul>

<sup>88</sup> See *infra* Annex 2.

<sup>89</sup> UPR INFO, *supra* note 25.

			<i>particularly in connection with equal pay and the disbursement of retirement pensions.</i>
Colombia	France	1, December 10, 2008	<ul style="list-style-type: none"> <li>• <i>Recognize and guarantee the legitimacy of the work of human rights defenders, as of that of trade unions workers and journalists, ensure their protection and that violations of their rights are prosecuted.</i></li> </ul>
Dominican Republic	France	<p>First recommendation: 1, December 1, 2009</p> <p>Second recommendation: 2, February 5, 2014</p>	<ul style="list-style-type: none"> <li>• <i>Create an independent national human rights institution in conformity with the Paris Principles.*</i></li> <li>• <i>Ensure compliance of the Ombudsman's institution with the Paris Principles.</i></li> </ul>
El Salvador	Germany Italy Netherlands UK	<p>Germany, UK: 1, February 9, 2010</p> <p>Italy, Netherlands: 2, October 27, 2014</p>	<ul style="list-style-type: none"> <li>• <i>Adopt efficient measures to stop child labour, especially in cases in which children work in a hazardous environment (Germany).</i></li> <li>• <i>Promote measures aimed at preventing child labour and violence against children, in compliance with the ILO conventions and</i></li> </ul>

			<p><i>the other relevant international instruments (<b>Italy</b>).</i></p> <ul style="list-style-type: none"> <li>• <i>Adopt measures to further the enjoyment of economic, social and cultural rights by indigenous peoples (<b>Italy</b>).</i></li> <li>• <i>Take measures to ensure equal treatment of women in social and professional areas (<b>Netherlands</b>).</i></li> <li>• <i>Identify concrete measures to combat social and cultural attitudes leading to discrimination and to specifically promote the sexual and reproductive rights of women and girls to work towards equality of pay and conditions for women in the workplace to reduce discrimination against people with HIV-AIDS and to increase the inclusion of lesbian, gay, bisexual and transgender people in the public and private sectors (<b>UK</b>).</i></li> </ul>
<p>Egypt</p>	<p>France Germany Spain</p>	<p>2, November 5, 2014</p>	<ul style="list-style-type: none"> <li>• <i>Respect the free exercise of the associations defending human rights, ensure that the</i></li> </ul>

			<p><i>Egyptian legislation complies with the International Covenant on Civil and Political Rights, and guarantee the right to freedom of association (France).</i></p> <ul style="list-style-type: none"> <li>• <i>Protect the freedom of association, in accordance with the Egyptian Constitution, by adopting a new NGO law fully in line with international standards and best practices, including on foreign funding (Germany).</i></li> <li>• <i>Reorient the new NGO law to allow the full exercise of the right to freedom of association for both domestic and international organizations, with autonomy and without risk for their continuity (Spain).</i></li> </ul>
Guatemala	Italy	2, October 24, 2012	<ul style="list-style-type: none"> <li>• <i>Strengthen its efforts to eradicate child labour, improving coordination among the numerous national institutions dealing with the rights of the child.</i></li> </ul>



<p>Honduras</p>	<p>Austria</p>	<p>1, November 4, 2010</p>	<ul style="list-style-type: none"> <li>• Enact comprehensive anti-discrimination legislation to effectively protect the human rights of persons belonging to indigenous minorities and Afro-Honduran peoples and of lesbian, gay, bisexual and transgender persons, in particular with regard to violence against such persons and their access to the labour market.</li> </ul>
<p>Israel</p>	<p>Belgium France Spain UK</p>	<p>France, UK: 1, December 4, 2008  Belgium, Spain: 2, October 29, 2013</p>	<ul style="list-style-type: none"> <li>• Ensure the enjoyment of economic, social and cultural rights in equal conditions for minorities, particularly their right to work and to education (<b>Belgium</b>).</li> <li>• Ensure best protection of human rights and follow-up to the implementation of international instruments* (<b>France</b>).</li> <li>• Resume full cooperation with the Human Rights Council and with OHCHR (<b>Spain</b>).</li> <li>• Take action to ensure that Palestinians are fully able to enjoy</li> </ul>

			<i>their economic, social and cultural rights* (UK).</i>
Jordan	France Spain	First France Recommendation: 1, February 11, 2009  Second France Recommendation, Spain: 2, October 24, 2013	<ul style="list-style-type: none"> <li>• Implement all possible efforts to combat ill-treatment against foreign workers and to offer, through the Labour Code, adequate protection to all workers in Jordan (<b>France</b>).</li> <li>• Ensure through the Labour Code, as well as in practice, the protection of the rights of all workers in Jordan, regardless of their origin (<b>France</b>).</li> <li>• Ensure that the legislation and the State respect articles 19 and 21 of International Covenant on Civil and Political Rights, which guarantee freedom of expression and freedom of association and assembly (<b>Spain</b>).</li> </ul>
Morocco	Netherlands Spain Sweden	Netherlands: 1, April 8, 2008  Spain, Sweden: 2, May 2, 2012	<ul style="list-style-type: none"> <li>• Continue the harmonization of domestic law with regard to its international obligations on human rights (<b>Netherlands</b>).</li> </ul>

			<ul style="list-style-type: none"> <li>• Take measures to ensure the adequate protection of human rights in the Western Sahara in light of the reported cases of enforced disappearances, torture and ill-treatment, restrictions on freedom of expression, association and assembly by Moroccan security forces (<b>Spain</b>).</li> <li>• Take immediate steps to implement the new Constitution's provision that international human rights are to be fully respected, including press freedom, freedom of expression, assembly and association (<b>Sweden</b>).</li> </ul>
Republic of Korea	Belgium Spain	2, October 25, 2012	<ul style="list-style-type: none"> <li>• Increase governmental efforts to ensure that women, in particular single mothers, can have access, as men do, without any discrimination, to employment, equal pay and matrimonial rights, especially following an</li> </ul>

			<p><i>inheritance or a divorce (Belgium).</i></p> <ul style="list-style-type: none"> <li>• <i>Strengthen the national human rights institution and strengthen its independence* (Spain).</i></li> <li>• <i>Fight against all forms of discrimination and abuse of migrant workers, particularly women (Spain).</i></li> </ul>
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**Table 2.2: EU's UPR Recommendations.**

**\* = Noted**

Unsurprisingly, the top countries to issue recommendations were France and Spain. The bulk of the EU9's recommendations were ranked at 4 in terms of specificity of recommendation, although it ranged from 2-5. Prima facie, this would indicate that the EU9 tend to make broader recommendations to their partners than the USA, reflecting their approach to trade agreements. This, however, does not paint the full picture due to reasons explained earlier. For example, France's recommendation to Chile to promote women's rights is quite explicit as it singles out equal pay and retirement pensions as key areas of improvement, yet this recommendation is ranked at 2 due to its wording. As mentioned before, these recommendations require close analysis alongside the use of UPR Info's model in order to gauge the depth of dialogue between countries.

The problem present in USA's recommendations also persists to some extent in the EU9's recommendations. References to international instruments and obligations are made yet they do not explicitly state as to which instruments are to be implemented. Further, there have been recommendations that are not directly linked to labour rights but to human rights in general, such as France's recommendation to the Dominican Republic to create an independent national human rights institution. Such recommendations can be seen as a way of encouraging a robust framework for the enforcement of human rights and consequently labour rights.

Another point to note is that not all of the EU9's recommendations have been accepted by their partners. Out of the twenty seven recommendations, four were "Noted" with Israel having "Noted" two recommendations. Interestingly, these four

recommendations tended to be general in nature, referring to strengthening human rights institutions and implementing international instruments.

*D. Australia's Participation in the Universal Periodic Review*

Even though Australia's trade agreements do not generally include labour provisions, its UPR participation will still be considered. It is entirely possible that Australia uses a public platform such as the UPR sessions to critique its trading partners' labour policy instead of mechanisms such as dispute settlement via trade agreements.

In the period between April 2008 and February 2016, covering the first twenty four sessions of the UPR, Australia made the sixteenth highest number of recommendations with a total of 863, accounting for 1.65% of the 52,282 recommendations made in that period. Interestingly, it has made fewer recommendations within this time period than less developed countries such as Mexico (1,191), Brazil (1,023) and Algeria (965) and ranks only five spots above Egypt (803).<sup>90</sup>

Further, Australia has only made nine recommendations to its trade partners on labour issues in the first nineteen sessions of the UPR. The countries which received the most recommendations have been Chile and Cambodia with two each

Country under Review	Cycle number, Date of Review	Recommendation by Australia <sup>91</sup>
Brunei Darussalam	1, December 8, 2009	<ul style="list-style-type: none"> <li>• Consider potential areas of expansion for the National Council on Social Issues to enable it to further promote respect for fundamental rights and freedoms for all Brunei Darussalam's citizens.</li> </ul>
Cambodia	2, January 28, 2014	<ul style="list-style-type: none"> <li>• Establish an independent national human rights institution, consistent with the Paris Principles.</li> <li>• Ensure full respect, in law and in practice, for the freedom of peaceful assembly and of association, consistent with international law.</li> </ul>

<sup>90</sup> UPR INFO, *supra* note 25.

<sup>91</sup> UPR INFO, *supra* note 25.

Chile	2, January 28, 2014	<ul style="list-style-type: none"> <li>• <i>Ensure that the National Institute for Human Rights continues to accord with the Paris Principles and is sufficiently resourced to further advance human rights in Chile.</i></li> <li>• <i>Facilitate early passage of related legislation and ensure prompt preparation and implementation of the national human rights action plan.</i></li> </ul>
Indonesia	2, May 23, 2012	<ul style="list-style-type: none"> <li>• <i>Continue to increase human rights transparency by improving the access of local and international media organisations, engagement with the Office of the High Commissioner for Human Rights, the International Committee of the Red Cross and other relevant international organizations throughout Indonesia.</i></li> </ul>
New Zealand	2, January 27, 2014	<ul style="list-style-type: none"> <li>• <i>Continue to address inequalities affecting human rights in the areas of health, education, employment and income that disproportionately affect Maori and other minority groups.</i></li> </ul>
Republic of Korea	2, October 25, 2012	<ul style="list-style-type: none"> <li>• <i>Take steps to ensure that bodies entrusted with overseeing the protection of rights, such as the National Human Rights Commission, are fully mandated and resourced.</i></li> </ul>
Viet Nam	2, February 5, 2014	<ul style="list-style-type: none"> <li>• <i>Enact laws to provide for and regulate freedom of assembly and peaceful demonstration in line with ICCPR.</i></li> </ul>

**Table 2.3: Australia's UPR Recommendations.**

As with the USA and the EU9, Australia's return of nine recommendations is also quite low. Additionally, almost all of its recommendations have been made during the second cycle of the UPR process, hinting at a lack of presence during the first cycle.

Further, most of its recommendations are directed at four members of the ASEAN, reflecting recognition of labour issues in these countries. Yet the lack of depth and absence of recommendations to the rest of the ASEAN members are more telling observations. Again, with similarities to the USA, these recommendations tend to be more general than specific in nature with very scant reference to international instruments.

#### IV. EVALUATING POLICY COHERENCE

##### A. Policy Coherence of the USA

In evaluating the USA’s policy coherence, it is first important to look at any issues arising under its trade agreements. It has been established in Part 1.2 of this study that USA required of Morocco, Bahrain and Colombia an improvement in its labour laws and implementation as a condition of ratification of the trade agreement with USA. Instances of improvement in their labour laws have also been noted.

However, there is little evidence of the use of complaint and dispute settlement mechanisms, previously characterised as post-ratification conditionality, in other trade agreements. Under the trade agreements with post-ratification conditionality covered by this study, only four complaints were filed with three arising from the CAFTA-DR agreement and one from the Bahrain agreement. These complaints have been tabulated below:

Country under Review	Date of Complaint	Filed by	Issues involved	Action taken	Findings
Honduras (CAFTA-DR)	March 26, 2012	AFL-CIO, 26 Honduran unions and civil society organisations	Right of association, right to organise and bargain collectively, acceptable conditions of work, worst forms of child labour and minimum age of employment of children	Reviewed by O’TLA, report issued containing recommendations to Honduran Government and USA’s Secretary of Labor	Labour law violations, ineffective enforcement of laws, USA’s Department of Labor should review progress within twelve months of issue of report

					(February 2015).
Dominican Republic (CAFTA-DR)	December 22, 2011	Father Christopher Hartley	Acceptable conditions of work, worst forms of child labour, minimum age of employment of children and forced labour	Reviewed by O'TLA, report issued containing recommendations to the Government of the Dominican Republic	Violations of labour law, concerns in the sugar sector relating to freedom of association, right to organise and collective bargaining, Department of Labor to review progress six months and twelve months after issue of report (September 2013).



Guatemala (CAFTA-DR)	April 23, 2008	AFL-CIO, 6 Guatemalan worker organisations	Freedom of association, right to collective bargaining, acceptable conditions of work, violence against trade union leaders	Reviewed by OTLA, report issued containing recommendations to the Guatemalan Government. Enforcement Plan signed by both parties in April 2013 to enforce labour laws. Failure to do so eventually led to establishment of arbitrary panel. In dispute settlement since September 2014	Problems with enforcement of court orders, violence against trade unionists, weak enforcement of labour laws.
Bahrain (U.S. – Bahrain FTA)	April 21, 2011	AFL-CIO, General Federation of Bahrain Trade Unions	Right of association, non-discrimination against trade unionists	Reviewed by OTLA, report issued containing recommendations. USA requested labour consultations with Bahrain in 2013. Consultations held as recently as June 2014	Targeting of trade unionists and leaders, prosecutions of unionists for organising strikes, religious discrimination against Shia employees.

**Table 3.1: Complaints under USA trade agreements. Source: ILAB**

As evident from the above table, very few complaints have arisen under the USA's trade agreements, with the most serious case being that of Guatemala. One reason for a dearth in complaints is that these trade agreements have only been in force for a relatively short period of time. It is conceivable that, in due course of time, more complaints will arise.

In order to compare these complaints with dialogue from the UPR sessions, information from the national reports as well as reports from the UN entities and

stakeholders addressing human rights issues, including labour issues, are presented below. This information was taken from the documents as made available on the OHCHR website. Further, voluntary pledges made by the USA's trade partners during the UPR sessions are also presented below, as a way of comparing depth and scope of dialogue. These were taken from the second cycle of the UPR, unless noted otherwise. A list of all the UN entities and stakeholders to contribute to these reports is included in the appendix.<sup>92</sup>

Country	National Report <sup>93</sup>	Report compiled by UN <sup>94</sup>	Report compiled by stakeholders <sup>95</sup>	Voluntary pledges during UPR Sessions <sup>96</sup>
Bahrain	<ul style="list-style-type: none"> <li>• Referral of a new draft labour law to the legislative authority, including a chapter on the labour of domestic workers</li> <li>• Held a workshop on labour inspection jointly with ILO, focusing on occupational health and safety standards</li> <li>• Amendment to legislation to allow trade unions to form a trade union federation</li> </ul>	<ul style="list-style-type: none"> <li>• The prohibition on discrimination in all areas of employment</li> <li>• Abolition of child labour and enforcement of sanctions for violations of law</li> <li>• Prohibit children under 18 in undertaking hazardous work</li> <li>• Inclusion of domestic, casual and agricultural</li> </ul>	<ul style="list-style-type: none"> <li>• Promote gender equality through a reassessment of labour legislation</li> <li>• Ensure labour legislation matches international standards</li> <li>• Reported illegal dismissal of workers and prosecution of trade union leaders, including criminal prosecution</li> </ul>	

<sup>92</sup> See *infra* Annex 3.

<sup>93</sup> *Universal Periodic Review Documentation*, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx> (last visited July 2, 2015).

<sup>94</sup> *Id.*

<sup>95</sup> See *supra* note 67.

<sup>96</sup> *Id.*

		<p>workers in labour legislation</p> <ul style="list-style-type: none"> <li>• Concern for the substandard working conditions for female domestic migrant workers</li> <li>• Expedite the adoption of the draft Labour Code</li> </ul>		
<p>Cambodia</p>	<ul style="list-style-type: none"> <li>• Support for the formation and participation of individuals in trade unions</li> <li>• Support for the rights of union activists</li> <li>• Drafting of the Law on Labor Court</li> <li>• Law on Trade Unions in under review</li> <li>• Creation of an Action Plan to combat child labour</li> <li>• Ministry of Labor and Vocational Training plans to abolish child labour by 2016</li> <li>• Improving the safety of working children between ages fifteen to eighteen</li> <li>• Development of labour market information</li> <li>• Establishment of a national committee to tackle issues such as labour exploitation</li> <li>• Use of legislation to battle discrimination against disabled</li> </ul>	<ul style="list-style-type: none"> <li>• Concern that around 250,000 children were being subjected to worst forms of child labour</li> <li>• Further concern that thousands of domestic child workers were being subjected to conditions comparable to slavery</li> <li>• Implement the national plan combating child labour</li> <li>• Ensure rights of trade union members are protected</li> <li>• Allow trade unions to</li> </ul>	<ul style="list-style-type: none"> <li>• Reports of detainees being subjected to forced labour</li> <li>• Prosecute all employers in violation of labour legislation</li> <li>• Concern about migrant workers abroad being subjected to long working hours and forced labour, amongst other things</li> <li>• Stop persecution of labour organisers</li> <li>• Desist from interfering in the affairs of</li> </ul>	

	<p>people in terms of employment</p>	<p>conduct business without threat of intimidation</p>	<p>trade union organisations and prevent companies from doing the same</p> <ul style="list-style-type: none"> <li>• Ensure that workers enjoy a safe working environment</li> <li>• Concerns about exploitative labour conditions in relation to economic land concessions</li> <li>• Concerns about increasing violence against trade union activists</li> <li>• Noted progress in abolishing child labour, yet Government should still increase its efforts</li> <li>• Ensure the right to strike, as they are often broken up violently</li> <li>• Noted that restrictive legislation continued to hamper freedom of assembly and association</li> </ul>	
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<p>Chile</p>	<ul style="list-style-type: none"> <li>• Implemented measures to increase female partnership in trade unions</li> <li>• Encouraging women to join the labour force</li> <li>• Helping women overcome barriers to access labour market and provide more career opportunities</li> <li>• Engagement in efforts to combat worst forms of child labour with the help of an inter-sectoral panel</li> <li>• Guarantee of labour rights to all migrants, regardless of their migratory status</li> <li>• Entry into force of legislation defining discrimination, including discrimination on the grounds of participation in trade union organisations</li> </ul>	<ul style="list-style-type: none"> <li>• Concern at the low participation of females in the labour market, especially of migrant and indigenous workers</li> <li>• Particular concern at the wage gap between men and women</li> <li>• Concern for the dangerous and abusive working conditions faced by domestic workers, especially migrant women</li> <li>• Enact bill no. 8292-13 stipulating the maximum weekly hours of work for domestic workers</li> </ul>	<ul style="list-style-type: none"> <li>• Ratify ILO Convention no. 189 on domestic workers</li> <li>• Noted that the definition of trafficking and smuggling of human beings under the Anti-Discrimination Act had been extended to include forced labour</li> <li>• Lack of policy for abolishing child labour</li> <li>• Implement a child labour intervention network</li> <li>• Prepare a report on child labour using reliable figures</li> <li>• Right to strike not manifest in Constitution</li> <li>• Unionisation in public sectors not legally recognised</li> <li>• Implement recommendations by the ILO Committee of Experts on the Application of Conventions</li> </ul>	
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			<p>and Recommendations on amending labour legislation and Constitution to include right to strike</p> <ul style="list-style-type: none"> <li>• Noted that disabled people faced discrimination in relation to enjoyment of labour rights</li> <li>• Repeal Act no. 18,600 which allows for the employment of people with mental disabilities without covering labour rights</li> <li>• Noted the increase in wage gap following the adoption of Act no. 20,348 establishing equal pay for men and women</li> <li>• Unfavourable working conditions in the agricultural export sector regarding seasonal work</li> </ul>	
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			<ul style="list-style-type: none"> <li>• Lack of protection for female domestic workers</li> <li>• Amend the working hours, rest entitlements and pay structure of female domestic workers in labour legislation</li> <li>• Ensure full support for the right of association and assembly</li> </ul>	
<p>Colombia</p>	<ul style="list-style-type: none"> <li>• Policy to combat child labour is manifest in the National Strategy for the Prevention and Elimination of the Worst Forms of Child Labour</li> <li>• Inter-sectoral Workers Human Rights Committee seeks to protect trade union activities</li> <li>• Implementation of policies to protect and guarantee trade union freedom</li> <li>• Increase in budget allocation for the protection of trade unionists</li> <li>• In 2011, the scope of protection to trade unionists was extended to include those attempting to set up a trade union and to former trade</li> </ul>	<ul style="list-style-type: none"> <li>• Difference in rate of participation of women in the labour market, unemployment rate and average monthly pay</li> <li>• Trafficking of women and girls for labour exploitation</li> <li>• Concern at threats and violence against trade unionists</li> <li>• Take steps to deal with violence against trade union</li> </ul>	<ul style="list-style-type: none"> <li>• Rise in child labour since 2009</li> <li>• Implement a policy to eliminate child labour</li> <li>• A culture of granting impunity for violence against trade unionists has led to a fall in union membership and violations of labour rights</li> <li>• Reported that Colombia was the most</li> </ul>	<ul style="list-style-type: none"> <li>• Continue with the implementation of the recommendations of the OHCHR office in Colombia</li> <li>• To bring child labour indices down to 5.1% by 2015</li> <li>• To foster a culture in which it is easier for human rights defenders,</li> </ul>

	<p>unionists facing threats due to their union activities</p> <ul style="list-style-type: none"> <li>• Periodic meetings organised with the main trade unions</li> <li>• Decline in violence against trade unionists</li> <li>• Incentivising employment of women who have been victims of violence</li> </ul>	<p>leaders and convict those responsible for such acts</p>	<p>dangerous country in the world for trade unionists</p> <ul style="list-style-type: none"> <li>• Increased number of attacks against trade unionists</li> <li>• Take more measures to protect trade unionists at risk</li> <li>• Gender inequalities in relation to employment conditions, job opportunities and income</li> </ul>	<p>reporters and trade unionists to operate</p> <ul style="list-style-type: none"> <li>• Will establish mechanisms to monitor the recommendations agreed on during the UPR process</li> </ul>
Dominican Republic	<ul style="list-style-type: none"> <li>• Establishment of the Department of Labour Integration and Training to ensure the inclusion of disabled persons in regular or protected employment systems</li> <li>• Implementation of a plan to abolish child labour by 2020 and its worst forms by 2015</li> <li>• Manifestation of gender equality in the Constitution of 2010, including in terms of domestic labour and equal pay</li> <li>• Release of the First National Survey on Immigrants in the Dominican Republic with a view to develop policies for immigrants in areas such as labour</li> <li>• Establishment of the Labour Migration Unit to help abolish violations of labour rights of migrants</li> </ul>	<ul style="list-style-type: none"> <li>• Discrimination in the labour market against people with HIV/AIDS</li> <li>• Concern at child labour, particularly in the domestic and agricultural sectors</li> <li>• Prevent forced labour of women</li> <li>• Ensure trade union freedom</li> <li>• Increase number of labour inspections</li> <li>• Concern at the fact that disabled people faced barriers in</li> </ul>	<ul style="list-style-type: none"> <li>• Guarantee labour rights for migrant employees in rural and domestic sectors regardless of their migrant status</li> <li>• Discrimination against the LGBTTI community in the labour sector</li> <li>• Exclusion of disabled people from the labour market</li> <li>• Labour exploitation of</li> </ul>	<ul style="list-style-type: none"> <li>• The Dominican Republic further reiterated its commitment to addressing specific issues in which it had recognized difficulties, such as violence against women, the situation of children</li> </ul>



		<p>relation to labour services</p> <ul style="list-style-type: none"> <li>• Concern at the gender wage gap</li> <li>• Unsuitable working conditions in export-processing zones, especially for women</li> </ul>	<p>migrant workers, including forced labour</p> <ul style="list-style-type: none"> <li>• Concern at high female unemployment</li> <li>• Racial discrimination in the employment sector</li> </ul>	<p>and child labour.</p>
<p>El Salvador</p>	<ul style="list-style-type: none"> <li>• Abolishment of child labour and protection of adolescent workers through the Child and Adolescent Protection Act</li> <li>• The National Committee on the Elimination of the Worst Forms of Child Labour is currently devising a plan to combat worst forms of child labour</li> <li>• Implementation of project to eliminate child labour via economic empowerment and social inclusion</li> <li>• Campaigns to raise awareness on migrants' rights for employers</li> </ul>	<ul style="list-style-type: none"> <li>• High levels of unemployment</li> <li>• Decent work opportunities not favoured under current economic circumstances</li> <li>• Guarantee equal pay for men and women</li> <li>• Combat violations of labour standards in <i>maquilas</i> and private homes</li> <li>• Concern at the restrictions on right to strike</li> <li>• Increase in child labour amongst children aged five to seventeen</li> </ul>	<ul style="list-style-type: none"> <li>• High level of child labour in rural areas</li> <li>• Not enough attention being paid to domestic labour undertaken by girls</li> <li>• Instances of workers being fired due to their affiliations with trade unions</li> <li>• Dismissals of trade union leaders</li> <li>• Since El Salvador ratified ILO conventions 87 and 98, there had been an upturn in the use of</li> </ul>	

		<ul style="list-style-type: none"> <li>• Ensure that workers in the informal sector are guaranteed basic labour rights</li> </ul>	collective bargaining as a way of employing workers	
Guatemala	<ul style="list-style-type: none"> <li>• Reorganisation of the Public Prosecution Service to include a unit for crimes against trade unionists</li> </ul>	<ul style="list-style-type: none"> <li>• Reassess legislation to combat discrimination</li> <li>• Abolish child labour</li> <li>• Reports of workers being paid below the legal minimum wage</li> <li>• Lack of efficient resource allocation resulting in failure to monitor labour practices</li> <li>• Concern about the dire working conditions of women in the <i>maquiladora</i> industry</li> <li>• Guarantee access to labour benefits for women workers in the informal, domestic and agricultural sectors</li> <li>• Ensure that legislation</li> </ul>	<ul style="list-style-type: none"> <li>• Non-compliance with labour laws</li> <li>• Women employed in the <i>maquiladora</i> industry subjected to working conditions comparable to slavery</li> <li>• Protection of <i>maquila</i> workers not manifest in legislation</li> </ul>	<ul style="list-style-type: none"> <li>• Redesign the human rights institutional system of Guatemala</li> </ul>

		<p>provides protection to women working in the <i>maquiladora</i> industry</p> <ul style="list-style-type: none"> <li>• Reinforce the capacity of the Labour Inspectorate</li> </ul>		
Honduras	<ul style="list-style-type: none"> <li>• Adoption of the Roadmap for the Prevention and Eradication of the Worst Forms of Child Labour in 2011, with the overall goal to abolish child labour by 2020</li> </ul>	<ul style="list-style-type: none"> <li>• Reassess gaps in legislation that legitimise exceptions to the minimum age for child labour</li> <li>• Current examinations by ILO against violation of freedom of association</li> <li>• Overrepresentation of women in low-paid, part-time and insecure work</li> <li>• Article 536 of the Labour Code hampers the right to collective bargaining</li> </ul>	<ul style="list-style-type: none"> <li>• Honduran legislation is undermining labour rights</li> <li>• Not all workers in the private sector being paid the minimum wage</li> <li>• Discrimination against women in the workplace, particularly in the <i>maquilas</i></li> <li>• Support the labour rights of indigenous and tribal people</li> </ul>	
Israel	<ul style="list-style-type: none"> <li>• Designation of 90 positions in Civil Service to disabled people to ensure better integration</li> </ul>	<ul style="list-style-type: none"> <li>• Barriers faced by Arab Israeli people in gaining employment</li> </ul>	<ul style="list-style-type: none"> <li>• Abolish policies that hamper the right to work of Palestinians</li> </ul>	

		<ul style="list-style-type: none"> <li>• Support equal pay for equal work</li> </ul>	<ul style="list-style-type: none"> <li>• Support equal enjoyment of work for Arab people</li> <li>• Strengthen efforts to achieve equality in Arab women's access to employment</li> <li>• Release individuals held for their non-violent expression of rights to association</li> </ul>	
Jordan	<ul style="list-style-type: none"> <li>• Amendments to Labour Code to strengthen equality</li> <li>• Devised a national plan for the elimination of child labour</li> <li>• Designing of a project to eliminate child labour through education</li> <li>• Increase in the visits by the Ministry of Labour Inspectorate to ensure compliance with labour rights in the workplace</li> </ul>	<ul style="list-style-type: none"> <li>• Discrimination against non-Jordanian workers with respect to minimum wage</li> <li>• Concern at the exploitation of female migrant workers</li> <li>• Ineffective implementation of Labour Code in relation to migrant workers</li> <li>• Remove children from the labour market</li> <li>• Combat violence against female migrant</li> </ul>	<ul style="list-style-type: none"> <li>• Amend labour legislation as it currently allows the Tripartite Commission to select which professions can form trade unions</li> <li>• Concern about the pervasiveness of child labour</li> <li>• Collective bargaining is restricted to trade unions recognised under the Law on Labour</li> <li>• Restrictions on the right to freedom of association</li> </ul>	

		domestic workers	<ul style="list-style-type: none"> <li>• Low participation of women in the labour market</li> <li>• Gender wage gap in the private sector</li> </ul>	
Morocco	<ul style="list-style-type: none"> <li>• Immigration of foreign workers is regulated by the Labour Code</li> <li>• Reforms undertaken to expand the scope of individual and collective freedoms and right to freedom of association</li> </ul>	<ul style="list-style-type: none"> <li>• Grant prison officials, lighthouse workers and water and forestry workers the right to organise and to participate in collective bargaining</li> <li>• Noted that refugees did not have proper access to the labour market</li> </ul>	<ul style="list-style-type: none"> <li>• Labour law was not in line with international standards</li> <li>• Growth of temporary, low-wage labour</li> <li>• Exploitation and discrimination against women in the labour market</li> <li>• Barriers to trade union freedoms</li> <li>• Combat differences in minimum wage paid to different categories of workers</li> <li>• Noted violations of the freedom of association</li> </ul>	
Republic of Korea	<ul style="list-style-type: none"> <li>• Committed to guaranteeing freedom of association</li> <li>• Migrant workers who entered the country pursuant to the Employment Permit System are granted the same protection as Korean workers</li> </ul>	<ul style="list-style-type: none"> <li>• Promote employment amongst women</li> <li>• Concern that migrant workers are</li> </ul>	<ul style="list-style-type: none"> <li>• Low employment rate of women</li> <li>• Abolish restrictions on labour mobility</li> </ul>	

	<p>under the Labor Standards Act and other labour legislation</p>	<p>being subjected to exploitation, discrimination and unpaid wages</p> <ul style="list-style-type: none"> <li>• Trade union rights not sufficiently guaranteed</li> <li>• Ensure that the minimum wage is enforced</li> <li>• Concern about the barriers faced by women in the employment sector</li> <li>• Insufficient number of labour inspectors</li> </ul>	<p>of migrant workers</p> <ul style="list-style-type: none"> <li>• Removed barriers preventing migrant workers from joining trade unions</li> <li>• Investigate labour abuses in Korean fishing vessels</li> </ul>	
<p>Singapore*</p>	<ul style="list-style-type: none"> <li>• Tripartism is the basis for Singapore’s successful labour relations</li> <li>• Employment Act protects both foreign and local workers</li> <li>• Gap in female employment has narrowed over the decade</li> <li>• Amendment of the Employment Act to change minimum working age for children in line with the ILO Minimum Age Convention</li> </ul>	<ul style="list-style-type: none"> <li>• Reassess the protection given to foreign women domestic workers</li> <li>• Concern about the wage gap between men and women</li> <li>• Adopt legislation allowing equal pay for equal work</li> </ul>	<ul style="list-style-type: none"> <li>• Restriction of the right to organise and collectively bargain in key areas</li> <li>• Registrar of Trade Unions allowed to refuse or cancel registration of unions</li> <li>• Prepare a more comprehensive plan to allow disabled people to find employment</li> <li>• Include migrant domestic</li> </ul>	

			workers under the Employment Act or separate legislation	
			<ul style="list-style-type: none"> <li>• No safety net in terms of minimum wage or unemployment benefits</li> </ul>	

**Table 3.2: Trio of reports and voluntary pledges of USA’s trade partners.**

\* = First cycle

The annual Country Reports on Human Rights Practices as issued by the USA’s Department of State,<sup>97</sup> can be also used to evaluate policy coherence. These annual reports explain the human rights situation on the ground in countries around the world and identify room for improvement, in relation to the UDHR and other international instruments. These can then be compared to the dialogue between the USA and its partner countries during the UPR sessions as well as the use of dispute settlement mechanisms in its trade agreements.

In Guatemala’s case, the USA recommended that it divert more resources to the Guatemalan Ministry of Labour in order to better enforce labour laws, reflecting its perspective on the ineffective enforcement of freedom of association and collective bargaining and lack of enforcement of penalties in its 2012 report.<sup>98</sup> Interestingly, the 2012 report also noted the Guatemalan government’s continued failure to enforce labour laws as stipulated under the CAFTA-DR trade agreement. This same issue was also noted in the 2010 and 2011 reports and subsequently in the 2013 and 2014 reports. The 2013 report also referred to the use of the Enforcement Plan as signed by both parties as a way to strengthen the enforcement of labour laws,<sup>99</sup> while

<sup>97</sup> *Human Rights Reports*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/j/drl/rls/hrrpt/> (last visited July 3, 2015).

<sup>98</sup> *Country Reports on Human Rights Practices for 2012: Secretary’s Preface*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/j/drl/rls/hrrpt/2012humanrightsreport/index.htm#wrapper> (last visited July 2, 2015).

<sup>99</sup> *Country Reports on Human Rights Practices for 2013: Secretary’s Preface*, U.S. DEPARTMENT OF STATE,

the 2014 report noted the ILO's finding of noncompliance with court orders in relation to labour cases.<sup>100</sup>

In relation to these issues, USA made recommendations to Guatemala in the second cycle of the UPR process, but not in the first cycle. These recommendations involved protection of labour rights defenders against violence and providing the Ministry of Labour with resources to effectively enforce domestic labour laws. Admittedly, Guatemala was reviewed in May 2008 during the first cycle while the complaint was only filed a month previously. It would have been premature of the USA to make recommendations in the first cycle without having conducted further research.

Yet, given the gravity of the situation regarding enforcement of labour laws in Guatemala, the USA could have made more specific or more strongly worded recommendations. For instance, it could have recommended to Guatemala to implement the Enforcement Plan agreed upon by both parties, thereby addressing the issue in a more personalised manner. Instead, it chose to only suggest that Guatemala provide its Ministry of Labour with resources and personnel so as to better enforce domestic labour laws and internationally recognised worker rights. Explicit instructions regarding areas of focus would have been far more constructive to the Guatemalan context.

This is made even more apparent when compared with the reports of the UN entities and third party stakeholders. These reports targeted certain areas of labour legislation and standards that needed to be addressed. For instance, the stakeholders' report claimed that that women employed in the *maquiladora* industries were subjected to working conditions comparable to slavery. This stance was reiterated in the UN report of Guatemala, citing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as the authority voicing this concern and calling for access to labour benefits for women workers in the informal and agricultural sectors. Further, this report identified other areas of concern such as paying salary to workers below that of the legal minimum wage and child labour. This contrasts greatly with the USA's generalised approach.

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<http://www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm#wrapper> (last visited July 2, 2015).

<sup>100</sup> *Country Reports on Human Rights Practices for 2014: Secretary's Preface*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (last visited July 3, 2015).



In the case of Bahrain, the USA noted in its 2011 country report<sup>101</sup> that freedom of association and right to collective bargaining were limited and that the law was not applied consistently in dealing with such cases. It also revealed that the right to collective bargaining was not protected by law and that the government was involved in anti-union discrimination, including dismissal of workers without due process, for involvement in union activities. Discrimination against Shia workers was also mentioned. Similar concerns were subsequently made clear in 2012 as well.

Nevertheless, the USA's dialogue with Bahrain in the UPR sessions is a poor reflection of these issues. Its suggestion to Bahrain to re-evaluate convictions and charges against those involved in non-violent political expression does not adequately capture the gravity of the issues manifest in Bahrain's labour framework. Additionally, the USA does not explicitly recognise collective bargaining and freedom of association as problem areas in relation to labour rights, and instead chose to include them under an umbrella term, i.e., "non-violent political expression". Significantly, it makes no mention of the discrimination faced by the Shia workers.

Again, when compared to the reports submitted by the UN entities and relevant stakeholders, there is a clear lack of depth in the USA's recommendations. These entities and stakeholders are included in a list in the appendix. The stakeholders' report has called for Bahrain to promote gender equality through a reassessment of labour legislation while also noting instances of illegal dismissal of workers and persecution of trade union leaders. The prohibition on discrimination in all areas of employment was reiterated in the UN report, as well as calling for the abolition of child labour and the inclusion of agricultural workers in labour legislation, amongst other issues. Again, such particularity is missing from the USA's recommendations.

Equally glaring are the USA's UPR recommendations to the Dominican Republic and Honduras. As seen from the table, there is enough substance in the complaints to merit serious dialogue between these parties. It is a source of frustration that the USA has again chosen to take a lenient approach to these issues in the UPR sessions. These sessions provide a forum for countries to make constructive criticism on human rights records on the ground and allow for meaningful progress in the field. Notwithstanding the advantages this provides, the USA has yet to make full use of its potential in regards to tackling labour issues in its trade partners.

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<sup>101</sup> *Country Reports on Human Rights Practices for 2011: Bahrain*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/j/drl/rls/hrrpt/2011/humanrightsreport/index.htm?dliid=186421#wrapper> (last visited July 4, 2015).

As before, the USA has opted to use vague phrases such as “internationally recognised worker rights” and “labour law violations” towards the Dominican Republic and Honduras, respectively. These are not an accurate depiction of the labour tensions that have arisen under the CAFTA-DR trade agreement. It does not adequately address the weak implementation of specific labour rights such as freedom of association, the right to organise and collective bargaining in these countries.

It would be more constructive had the USA mentioned, or suggested enforcement of, the Office of Trade and Labor Affairs (OTLA)’s specific recommendations during their UPR dialogue. Instead, it has resorted to broad recommendations in terms of which violations and areas of labour rights need to be remedied. The fact that these recommendations were made a significant period of time after the filing of the complaints does not paint the USA in positive light.

#### *B. Policy Coherence of the EU*

A notable omission from the list of countries to receive recommendations from the USA is Morocco, which was required to strengthen its labour laws as a condition for entering into a trade agreement with the USA. Even though it marked an improvement in Morocco’s labour framework, it cannot be inferred that this pre-ratification conditionality provided the solution to all of Morocco’s problems. The USA’s annual report of Morocco noted incidences of forced child labour and the limited scope of the right to collective bargaining in 2011 and 2012, yet these issues were not brought up by the USA when Morocco was reviewed during the second UPR cycle in 2012. Neither did the USA make any mention of labour issues in the first cycle.

It is surprising that the USA chose not to discuss these issues during the UPR sessions as the same issues that were reported in Morocco’s Country Report were also reported by the UN entities and civil society organisations. This is evidence of a misalignment of the USA’s UPR dialogue with the official reports that are presented for each country’s review. As such, this is also an indication of a lack of coherence in policy.

Further, the USA’s ratification record of the ILO’s core conventions must also be assessed. The USA has only ratified two out of eight core conventions of the ILO, hardly a favourable reflection upon a leading actor in the trade scene and one advocating for the protection of labour rights. Granted, the ILO Declaration precludes the ratification of its core conventions as a condition to upholding the principles propounded in the Declaration. Even so, this should not deter from the fact that the USA has made note of violation of labour rights in its trade partner countries, yet has itself not ratified all eight core conventions. This precludes the

USA from complying with the conventions' technical requirements. Interestingly, even the likes of Guatemala, Honduras and the Dominican Republic have ratified all of the eight core conventions.

As established before, a common feature of the EU's trade agreements is the inclusion of "promotional provisions" in social dialogue and labour chapters. These focus more on technical assistance and exchange of information and less on sanctions. As noted by the ILO, under such provisions, no consultations on disputes relating to labour provisions have become apparent. Other disputes such as taxation on certain goods and safeguard measures have arisen, yet, none relate to labour. Due to the scant amount of evidence, it is then difficult to compare the EU's dialogue in the UPR sessions with the complaints that have arisen under their trade agreements, as was done with the USA.

One reason for the lack of evidence on the usage of these promotional provisions is that they focus on cooperation, thereby having a natural preference to engage in dialogue in the event of disagreement on labour provisions. Consequently, any issues that are under trade agreements do not become immediately obvious as they can be remedied via sharing of knowledge and capacity building. This can be contrasted with the approach the USA has taken with Bahrain and Guatemala, which is more focused on formal consultations and arbitral panels, possibly leading to sanctions.

As with the USA, information from the national reports, reports from the UN entities and stakeholders addressing labour issues are presented below. This information was taken from the official documents as made available on the OHCHR website. Voluntary pledges made by the EU's trade partners during the UPR sessions are also presented below. These were taken from the second cycle of UPR, unless noted otherwise.

<b>Country</b>	<b>National Report<sup>102</sup></b>	<b>Report compiled by UN<sup>103</sup></b>	<b>Report compiled by stakeholders<sup>104</sup></b>	<b>Voluntary pledges during UPR Sessions<sup>105</sup></b>
Chile	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>
Colombia	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>

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<sup>102</sup> *See supra* note 67.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

Dominican Republic	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>
Egypt	<ul style="list-style-type: none"> <li>• Set up centres for working children to combat child labour</li> <li>• Establishment of women's committees in trade unions to support rights of women and children</li> <li>• New Constitution codifies right to strike peacefully</li> </ul>	<ul style="list-style-type: none"> <li>• Equal opportunities for women in the labour market</li> <li>• Protect migrant domestic workers, particularly female domestic workers</li> <li>• Concern about the amount of informal workers without substantial safeguards</li> <li>• Amend Labour Code to bring it in line with ILO Convention No. 182</li> <li>• Reported that migrants were subjected to forced labour</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to provide equality for women in labour market</li> <li>• Failure to provide suitable working conditions</li> <li>• Noted that strikes continued in relation to poor working conditions</li> <li>• Recognise independent labour unions via legislation</li> </ul>	
El Salvador	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>
Guatemala	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>
Honduras	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>
Israel	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>

Jordan	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>
Morocco	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>

**Table 3.3: Trio of reports and voluntary pledges of EU's trade partners.**

An interesting feature of the EU9's labour dialogue during the UPR sessions is that, from the list included in part 2.3, Germany, the Netherlands, Austria and Sweden have contributed less to labour dialogue with their trade partners than other members of the EU9. Others such as France, Spain and Italy have been far more vocal. This is surprising given that Germany is the EU's top contributor in terms of trade and thus is expected to have a greater presence in labour dialogues with other countries.

Further, the recommendations of the EU9 have tended to be specific in nature when compared to those of the USA and Australia, explicitly pointing out which areas of labour rights need to be remedied in the labour frameworks of their trade partners. This could possibly be a result of dialogue, capacity building and exchange of information through the promotional provisions in the trade agreements, which facilitate identification of problematic areas in labour rights. As a result, the EU's approach to dialogue over labour rights is likely to prove more fruitful than the USA's approach, although this is still conjecture and yet to be proven.

Additionally, the EU9's recommendations tended to be more in line with the reporting of the UN entities and civil society organisations, possibly owing to the more detailed nature of its recommendations. For example, France's recommendation to Chile about protecting women's rights in the workforce and ensuring equal pay was also noted by civil society organisations. Another example is the UK's recommendations to Israel to ensure that Palestinians enjoy their economic, social and cultural rights, which was also recommended by civil society organisations to reduce barriers faced by Palestinians in relation to the right to work. Nevertheless, when the volume of information on labour issues contained in these reports is compared to that of the EU9's recommendations, it still does not compare.

Still, a criticism can be made that not all EU9 members engaged in dialogue equally, with France and Spain picking up the slack. All members of EU9 need to engage in dialogue in a constructive manner so as to best represent the views of the EU in the UPR sessions. As such, with only a few countries engaging in meaningful dialogue, there is a lack of depth and variety in the recommendations made. Further, even though the EU9's recommendations are more aligned with the report of the UN entities and civil society organisations, still more can be done to further harmonise

their recommendations with these reports so as to present a unified front in dealing with labour rights in their partner countries, as a comparison between the recommendations made by the EU9 to their trading partners and those made by UN entities and civil society would evidence. For example, a range of recommendations have been made to Chile and Colombia by these entities,<sup>106</sup> whereas only one recommendation has been made to Chile and Columbia each by the EU9 (i.e., by France).<sup>107</sup> To some degree, this is to be expected; after all, these entities have more time and/or resources to allocate towards research on labour issues in these countries whereas the EU9 are only afforded a few minutes during UPR sessions. Still, given that France and Spain make the majority of recommendations, it can be argued that the rest of EU9 should follow suit and make best use of the UPR sessions to bring labour issues to the fore in their partner countries.

A new feature of the EU's trade agreements is the acknowledgement of the commitment towards corporate social responsibility stipulated in the OECD Guidelines for Multinational Enterprises.<sup>108</sup> Whether this feature will set the trend in a new generation of EU trade agreements remains to be seen. Importantly, these guidelines incorporate business ethics and corporate social responsibility into business practices and oblige enterprises to uphold labour standards such as abolition of child labour, right to join trade unions, non-discrimination of employees, elimination of compulsory labour and so on. These guidelines also stipulate the establishment of a national contact point for handling of inquiries and help in the resolution of problems. This mirrors the USA's approach to dispute settlement, though these guidelines still encourage exchange of information and seeking advice from stakeholders in order to come to a resolution, which the USA has not been practicing.

### *C. Policy Coherence of Australia*

Due to a lack of comprehensive labour provisions in Australia's trade agreements, it is difficult to evaluate the coherence of its policy when analysed alongside its participation in the UPR process. It is one of the few major actors in the trade arena to not include labour provisions in its trade agreements. An explanation for this, given by the Productivity Commission, is that the Australian Government prefers a

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<sup>106</sup> See Table 3.2.

<sup>107</sup> See Table 2.2.

<sup>108</sup> See, e.g., European Union-Vietnam Free Trade Agreement, EU-Viet., ch. 15, art. 9, Dec. 2, 2015 (final text signed but not in force).

case-by-case approach to this issue,<sup>109</sup> having included such provisions only in agreements with the USA, Chile and the Republic of Korea.

There has been strong backlash to this approach from the Australian Fair Trade and Investment Network and the Australian Council of Trade Unions, which have been lobbying for the inclusion of labour provisions in Australia’s trade agreements, citing the need to abide by standards set by the UN and the ILO in order to encourage sustainable development in its trading partners.<sup>110</sup> Further, the USA, EU and New Zealand were mentioned as exemplar parties.<sup>111</sup> However the Productivity Commission noted in its report that the ramifications of a country’s labour standards are felt mainly by its own citizens. It also presented the view that trade liberalisation and financial assistance were more likely to improve living standards.<sup>112</sup>

That, in itself, points to a lack of coherence in policy. Whilst Australia chooses to be vocal during the UPR sessions about labour issues with its trading partners, it does not wish to include labour provisions in its trade agreements. Labour provisions, as well as the cooperation mechanisms in these provisions, provide a tailored and personalised approach to dealing with labour issues in partner countries. By sharing information about their point in development and experiences in elevating labour rights in their countries, Australia will improve its understanding of the success of labour frameworks and subsequently understanding of trade in its partner countries.

Following the tables presented for the USA and EU9, information from reports during the UPR sessions is presented below. Information is from the second cycle of the UPR, unless noted otherwise.

Country under Review	National Report <sup>113</sup>	Report compiled by UN <sup>114</sup>	Report compiled by stakeholders <sup>115</sup>	Voluntary pledges during UPR sessions <sup>116</sup>
Brunei Darussalam	<ul style="list-style-type: none"> <li>Ratified the minimum age convention</li> </ul>	<ul style="list-style-type: none"> <li>Adopt a list explaining the types of work that are</li> </ul>		

<sup>109</sup> AUSTRALIAN GOVERNMENT PRODUCTIVITY COMMISSION, BILATERAL AND REGIONAL TRADE AGREEMENTS 278 (2010).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*, at 279.

<sup>113</sup> *See supra* note 67.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

	<ul style="list-style-type: none"> <li>• Introduced licensing requirements for recruitment agencies to combat labour trafficking</li> <li>• Held campaigns to raise awareness about labour laws</li> </ul>	<p>hazardous for those under eighteen</p> <ul style="list-style-type: none"> <li>• Ensure that migrant child workers were protected from worst forms of child labour</li> </ul>		
Cambodia	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>
Chile	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>
Indonesia	<ul style="list-style-type: none"> <li>• Regional dialogue involving issues such as migrant workers have been held between government officials and NGOs</li> </ul>	<ul style="list-style-type: none"> <li>• Make sure that women do not face discrimination in terms of family allowances and employment benefits</li> <li>• Concern at the conditions faced by migrant workers, particularly women, including forced labour</li> <li>• Concern over sanctions such as compulsory labour for engaging in peaceful strikes</li> </ul>	<ul style="list-style-type: none"> <li>• Labour legislation excluded domestic workers from access to basic rights</li> <li>• Instances of forced labour for domestic workers</li> <li>• Enact Bill on Domestic Workers</li> <li>• Cases of migrant workers facing abuse abroad</li> <li>• Develop a plan to combat problems faced by migrant workers, especially domestic workers</li> </ul>	



<p>Laos</p>	<ul style="list-style-type: none"> <li>• Amended the Law on Labour after the first cycle review</li> <li>• Implementation of the National Plan of Action on the elimination of the worst forms of child labour</li> <li>• Illegal migration of Lao people to neighbouring countries for work is still a problem</li> <li>• National legal framework to enforce freedoms such as Law on Trade Unions</li> </ul>	<ul style="list-style-type: none"> <li>• Make sure children were not employed in detrimental situations</li> <li>• Concerns that the country was being used to traffic people for the purposes of forced labour</li> <li>• Concern that Prime Minister's Decree on International Non-Governmental Organisations hampered the enjoyment of freedom of association</li> </ul>	<ul style="list-style-type: none"> <li>• Violation of the right to freedom of association in law and practice</li> <li>• Concerns that thousands of youth become victims of slave labour</li> <li>• Forced labour was manifest in human trafficking</li> <li>• Reassess laws restricting freedom of association</li> </ul>	
<p>Malaysia</p>	<ul style="list-style-type: none"> <li>• Focus on increasing women's participation in the labour market</li> <li>• Amendment of legislation to include labour trafficking within the definition of trafficking in persons</li> <li>• Foreign workers enjoy rights under domestic laws such as the Trade Union Act</li> </ul>	<ul style="list-style-type: none"> <li>• Implementation of the Trade Union Act had resulted in violations of right to organise and bargain collectively</li> <li>• No clear policy for domestic workers to form and join associations</li> <li>• Migrant children and child domestic workers amongst those most susceptible</li> </ul>	<ul style="list-style-type: none"> <li>• Amendments to Employment Act 1955 compromised protection of workers</li> <li>• Concern that legislation places barriers on migrant workers on their rights to freedom of association and collective bargaining</li> <li>• Concern that legislation discriminates</li> </ul>	<ul style="list-style-type: none"> <li>• Malaysia remains committed to enhance worker protection including through:             <ol style="list-style-type: none"> <li>a. enhancing maternity protection,</li> <li>b. mandatory requirement for payment of wages into bank accounts,</li> <li>c. increasing minimum retirement age to 60 years, and</li> <li>d. implementation of bilateral</li> </ol> </li> </ul>

		<p>to worst forms of child labour</p> <ul style="list-style-type: none"> <li>• Enforce legislation protecting migrant workers from discrimination</li> </ul>	<p>against migrant workers and domestic workers</p> <ul style="list-style-type: none"> <li>• Migrant workers working in conditions comparable to bonded labour</li> </ul>	<p>arrangements with labour source countries</p>
Myanmar*	<ul style="list-style-type: none"> <li>• Promotion and protection of rights of workers, in line with international standards</li> <li>• Abolishing forced labour via strong political will</li> <li>• Workshops conducted with the ILO to raise awareness about forced labour</li> <li>• Reassessment of existing labour laws and drafting of new labour legislation</li> <li>• Drafting of Trade Unions Law in line with international standards</li> <li>• Ongoing dialogue about labour rights and migrant workers' rights</li> </ul>	<ul style="list-style-type: none"> <li>• Stop interference with legitimate trade union activities</li> <li>• Make sure women receive equal opportunities in the labour market</li> <li>• Seek technical cooperation on issues such as child labour from the ILO</li> <li>• Prevent harassment of trade unionists</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to recognise safe working conditions stipulated in legislation</li> <li>• Noted that the Government refused registration of independent trade unions, notwithstanding ratification of ILO convention no. 87</li> <li>• Fully cooperate with ILO to eliminate forced labour</li> </ul>	

<p>New Zealand</p>	<ul style="list-style-type: none"> <li>• Ministry of Women's Affairs promote female participation in the labour market and reduce gender wage gap</li> <li>• Migrant workers face instances of exploitation</li> </ul>	<ul style="list-style-type: none"> <li>• Concern that children aged fifteen to eighteen are engaged in hazardous work</li> <li>• Introduce a statutory cap on work hours</li> <li>• Investigate violations of labour law</li> </ul>	<ul style="list-style-type: none"> <li>• Seek ILO's advice on the legality of proposed changes to legislation in 2013</li> <li>• Combat age-based wage discrimination</li> <li>• Develop a national strategy to support migrant workers</li> </ul>	
<p>Philippines</p>	<ul style="list-style-type: none"> <li>• Promotion of migrant workers' rights at the 19<sup>th</sup> ASEAN Summit</li> <li>• Engagement of the military in mechanisms aimed at preventing violations of workers' rights</li> <li>• Expedious resolution to instances of assassination of labour leaders and trade union activists</li> </ul>	<ul style="list-style-type: none"> <li>• Target unemployment and underemployment by focusing on youth and unskilled workers</li> <li>• Concern at the low level of minimum wages</li> <li>• Ensure that children working in the agriculture sector below the minimum age were protected by ILO convention no. 138</li> <li>• Concern at the high volume of workers aged between 5-14</li> <li>• Strengthen efforts to combat child labour</li> </ul>	<ul style="list-style-type: none"> <li>• Discrimination against LGBT persons in the labour market</li> <li>• Minimum wage below that of decent standard of living</li> <li>• High volume of child workers between ages five and seventeen</li> </ul>	
<p>Republic of Korea</p>	<p><i>See Table 3.2</i></p>	<p><i>See Table 3.2</i></p>	<p><i>See Table 3.2</i></p>	<p><i>See Table 3.2</i></p>

Thailand*	<ul style="list-style-type: none"> <li>• Efforts to harmonise national legislation with ILO conventions no. 87 and no. 98</li> <li>• Ministry of Labour is responsible for protecting overseas workers from being exploited</li> <li>• Establishment of a National Committee to combat worst forms of child labour</li> <li>• Need to reinforce the work of labour inspectors</li> <li>• Migrant workers with proper registration and work permits allowed same rights as Thai workers</li> <li>• Dissemination of information to protect the rights of migrant workers</li> </ul>	<ul style="list-style-type: none"> <li>• Noted that migrant workers are unable to set up their own trade unions</li> <li>• Effectively enforce domestic labour laws</li> <li>• Include children working in the informal sector in the Labour Protection Act</li> <li>• Improve the labour inspection system</li> </ul>	<ul style="list-style-type: none"> <li>• Discrimination against unskilled workers in the labour market</li> <li>• Strengthen rights for groups such as migrant workers and child labourers</li> <li>• Problems associated with illegal migrant workers for labour exploitation</li> </ul>	<ul style="list-style-type: none"> <li>• Thailand will enhance human rights protection for migrant workers and will redouble its efforts to prevent human trafficking, especially through enhancing the labour inspection system</li> </ul>
Singapore	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>	<i>See Table 3.2</i>

<p>Viet Nam</p>	<ul style="list-style-type: none"> <li>• Participated in ASEAN forum relating to cooperation in the area of migrant workers</li> <li>• Dissemination of information in order to protect rights of migrant workers</li> <li>• Enhancing existing labour legislation in order to create more jobs</li> </ul>	<ul style="list-style-type: none"> <li>• Revised Labour Code excludes workers without contracts</li> <li>• Groups such as women, ethnic minorities and disabled people faced barriers to accessing labour market</li> <li>• Labour Code does not adequately prevent sexual harassment</li> <li>• Women and children at most risk for being trafficked for labour exploitation</li> <li>• Concern about the pervasiveness of child labour</li> <li>• Harmonise national laws with ILO convention no. 138</li> </ul>	<ul style="list-style-type: none"> <li>• Restrictions on the right to freedom of association and to collective bargaining</li> <li>• Recognise the right to freely establish and join trade unions</li> <li>• Strengthen the labour inspection system</li> <li>• Combat impunity of labour export companies engaged in labour trafficking</li> </ul>	<ul style="list-style-type: none"> <li>• Paying due attention to preventing and combating trafficking in women and children, strengthening education and information on the elimination of discrimination against the victims of trafficking and job and income generation for them, finding solution to the issues of child labour</li> </ul>
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**Table 3.4: Trio of reports and voluntary pledges of Australia’s trade partners.**

\* = First cycle

The majority of Australia’s recommendations during the UPR sessions were directed at the ASEAN countries, of which almost all are developing countries, save Singapore. It is evident that there is room for improvement in these countries regarding enforcement of labour standards, given the detailed nature of the reports emanating from these countries. When studied, the UN and civil society reports highlight a myriad of labour issues in these countries. Even the voluntary pledges demonstrate self-awareness to tackle issues relating to labour rights.

Yet, when these reports are compared with the recommendations made by Australia, a distinct lack of depth and detail is apparent in Australia's UPR dialogue. The trio of reports presented during the UPR sessions clearly propound which areas of labour and workers' rights need to be addressed. Still, Australia has chosen to make broad recommendations or, in some cases, no recommendations at all. This misalignment with the official reports, together with the lack of labour provisions in its trade agreements, points to a lack of policy coherence. Australia needs to align its UPR dialogue with the issues prevalent in these reports so as to help its trade partners counter labour issues in the best possible manner.

For example, Australia's recommendation to Brunei Darussalam expresses the promotion of fundamental rights and freedoms, yet from the report compiled by the UN entities, it is quite apparent that specific and more pressing issues relating to child labour need to be addressed.

Further, it would be far more advantageous to these countries, as well as to Australia, to include social dialogue provisions in trade agreements. If "South-South" agreements are able to include labour provisions, then there is no reason for Australia to not follow suit.

Through social dialogue provisions, Australia will be able to share its experiences in relation to labour rights and standards with its trading partners allowing for mutual cooperation and understanding between these parties. Capacity building, exchange of information and institutional dialogue to identify urgent areas of focus will prove to be far more constructive in the improvement of labour frameworks in partner countries than making a few recommendations once every four years.

That is not to say that dialogue about labour rights should only be channelled through trade agreements. Ideally, a holistic approach should be taken. This should involve institutional dialogue and capacity building through trade agreements for a personalised approach complemented by a vocal presence on the global stage during the UPR sessions for a broader, more voluntary approach so that partner countries are held accountable to not only their trade partners, but also to every other country in the world in a bid to improve labour rights on the ground.

#### *D. Recommendations*

Given its findings, it is the recommendation of this study that all three actors, namely the USA, EU and Australia, could be more vocal about issues relating to enforcement of labour rights in their FTA partner countries and adopt a coherent policy in dealing with such problems. Further, it could serve these actors and their trading partners well if they made more effort to align their recommendations with the information presented in the official UPR reports. However, this can be justified on the basis that countries are allocated a limited amount of time within which to

speak during UPR sessions and as such need to prioritise their recommendations. This prioritisation could be influenced by a number of other factors, be they political, economic, diplomatic or otherwise.

Whilst it is acknowledged that the USA has taken steps under its trade agreements to deal with specific issues in partner countries, its approach and level of commitment is not apparent in its dialogue with the same partner countries during the UPR sessions. It is recommended that the USA make full use of the UPR forum to facilitate change in labour standards in their partner countries by adopting a similar attitude towards labour issues in these sessions as it does in its trade agreements. The USA should also make a more concerted effort to incorporate the findings presented in the official UPR reports in its recommendations so as to clarify which issues need addressing. This would be in the best interests of its trade partners, as well as that of the USA.

In Australia's case, it could adopt a more congruent approach in including labour provisions in its trade agreements rather than adopt an ad hoc approach. Labour rights, as a subset of human rights, can no longer be ignored on the global and domestic level, whether it is linked to trade or otherwise. Adopting a consistent approach complemented by a strong presence during the UPR sessions will allow its partner countries to evolve its labour standards in the best possible way. This is particularly important given Australia's geographical location, as it is surrounded by many developing countries in the Asia-Pacific region. Like the USA, it needs to align its recommendations during the UPR sessions with the issues presented in the official reports. This will lend a high degree of coherence to its policy on tackling labour issues in partner countries.

While the EU's approach is not perfect in itself, it is exemplary. It encourages dialogue and capacity building with its partner countries and promotes labour rights through international instruments such as the ILO Declaration while maintaining a presence during the UPR sessions. Evidence also shows that it makes an effort to reiterate the issues on labour rights presented in the official reports in its dialogue with partner countries. Even then, more can be done on this front. Additionally, key members of the EU such as Germany, the Netherlands and the UK need to be more vocal about labour rights during such sessions so as to present a unified policy of the EU in dealing with labour rights.

One way of measuring a country's commitment to labour rights would be to develop a formal, quantitative human rights index to be adopted universally. The current UPR system has no way of depicting how much progress a country has made since its previous review in a quantitative manner. It remains a voluntary and qualitative process thereby making it difficult to gauge developments made by each country.

If the basic premise, as propounded before, that labour rights are a subset of human rights is to be accepted, then such a human rights index could then include further classifications such as labour rights, political rights, humanitarian rights and so on. Of course, these would have to be universally approved or at least enjoy the support of most countries. It is acknowledged that some rights may overlap within these subsets and as such these subsets, and the rights contained within them, would require clear definitions.

Accordingly, countries could be ranked on their commitment towards human rights in general, as well as towards certain subsets of human rights, using various indicators to produce a quantitative result. These indices could then be adopted for use in the UPR sessions to better gauge improvements in human rights records of each country. Another solution would be to include these indices in trade agreements as targets that the parties to the agreement must achieve within an agreed period of time. Failure to do so could result in sanctions, if the USA's approach is taken, or dialogue as to how to best achieve these targets, if the EU's approach is preferred. Such a ranking system could potentially encourage countries to perform better on the global stage through the UPR sessions as well as through their trade agreements, resulting in mutually beneficial results.

An example of such an approach is provided by Maplecroft, a risk and strategic consulting company based in the UK. It illustrates human rights risks in one hundred and ninety eight countries using interactive maps and indices for thirty eight human rights categories. These categories cover four themes: human security, labour rights and protection, civil and political rights and access to remedy. An example of such an interactive map, depicting Human Rights Risk, is included in the appendix.<sup>117</sup>

## V. CONCLUSION

The growing influence and importance of labour rights cannot, and should not, be underestimated. Increasingly, labour rights are seen as a subset of human rights thereby strengthening their importance even further.

This study was undertaken to evaluate the policy coherence of the USA, EU and Australia by comparing the provisions present in their trade agreement pertaining to labour with their participation in the UPR sessions alongside the trio of official reports made available for these sessions. By comparing these separate avenues of labour dialogue, the policy coherence, or lack thereof, of these three actors was evaluated.

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<sup>117</sup> See *infra* Map 1.



The USA's approach to trade agreements is technical and conditional, although it would be wrong to characterise it in purely these terms. It also provides for cooperation and capacity building yet there is a strong focus on dispute settlement mechanisms and even sanctions in the event of non-compliance with minimum labour standards. On the other hand, the EU prefers a conceptual approach to labour provisions by encouraging technical cooperation, dialogue and sharing of information between parties so as to best identify areas of labour rights that need to be remedied. In Australia's case, a paucity of labour related provisions in its trade agreements is evident. Its case-by-case approach is unique, though not exemplary. It'd be in Australia's best interests to follow the approaches of the USA or the EU or a combination of both.

Further, there is a clear lack of policy coherence on behalf of the USA and Australia as their UPR dialogue does not always align with the information presented in the official UPR reports. Though time constraints in these sessions are a factor, this should not deter these actors from taking these reports into consideration in their recommendations so as to best engage in dialogue that addresses the unique problems faced by its trade partners. This would be preferred to a broad and generalised approach.

In the EU's case, it can be concluded that it makes more of an effort to incorporate the findings of these reports into its recommendations, though this is only the tip of the iceberg. Further, and more importantly, influential members of the EU, such as Germany and the Netherlands, need to be more vocal during these sessions, so as to present a unified and coherent EU policy in relation to labour rights. As such, having one member more vocal than the other presents an inaccurate and disproportionate view of the EU policy.

Interestingly, another difference in the approach between the USA and the EU is their attitude towards dispute settlement. While the EU agreements stipulate the need for labour consultations and dialogue as a means of overcoming disagreements, the USA takes a more strict approach as it allows for the establishment of an arbitrary panel, as seen with the Guatemala case. However, it must be noted that this is as far as a complaint under a trade agreement of the USA or the EU has come. No sanctions have yet been placed. As a supplement to arbitration, the USA also provides opportunities for conciliation, mediation and labour consultations.

Finally, it will be interesting to observe whether these trends will continue when the UPR embarks upon its third cycle. It is hoped that, in that time period, these actors would make concerted efforts to establish coherence in their policy towards labour rights. After all, the influence of these actors is vital to bringing about improvement in labour rights situations around the world.

## Appendix

Country	% contribution to total extra-EU28 exports (2014)	% contribution to total extra-EU28 imports (2014)
Germany	28%	18.7%
United Kingdom	13.3%	14.4%
The Netherlands	7.2%	14.2%
Italy	10.6%	9.1%
France	10.2%	9.6%
Belgium	6.1%	7%
Spain	5.2%	6.9%
Sweden	3%	2.3%
Austria	2.4%	1.9%
<b>TOTAL</b>	<b>86%</b>	<b>84.1%</b>

*Table 1: Percentage contribution of EU9 to total EU trade. Source: Eurostat*

## Ratifications of ILO Conventions by Countries

Country	C87	C98	C29	C105	C138	C182	C100	C111
USA	N	N	N	Y	N	Y	N	N
Germany	Y	Y	Y	Y	Y**	Y	Y	Y
Netherlands	Y	Y	Y	Y	Y**	Y	Y	Y
France	Y	Y	Y	Y	Y**	Y	Y	Y

UK	Y	Y	Y	Y	Y**	Y	Y	Y
Italy	Y	Y	Y	Y	Y**	Y	Y	Y
Belgium	Y	Y	Y	Y	Y**	Y	Y	Y
Spain	Y	Y	Y	Y	Y**	Y	Y	Y
Austria	Y	Y	Y	Y	Y**	Y	Y	Y
Sweden	Y	Y	Y	Y	Y**	Y	Y	Y
Bahrain	N	N	Y	Y	Y**	Y	N	Y
Colombia	Y	Y	Y	Y	Y**	Y	Y	Y
Dominican Republic	Y	Y	Y	Y	Y**	Y	Y	Y
Egypt	Y	Y	Y	Y	Y**	Y	Y	Y
El Salvador	Y	Y	Y	Y	Y**	Y	Y	Y

Guatemala	Y	Y	Y	Y	Y**	Y	Y	Y
Honduras	Y	Y	Y	Y	Y**	Y	Y	Y
Israel	Y	Y	Y	Y	Y**	Y	Y	Y
Jordan	N	Y	Y	Y	Y**	Y	Y	Y
Morocco	N	Y	Y	Y	Y**	Y	Y	Y
Cambodia	Y	Y	Y	Y	Y**	Y	Y	Y
Singapore	N	Y	Y	Y***	Y**	Y	Y	N
Chile	Y	Y	Y	Y	Y**	Y	Y	Y
Australia	Y	Y	Y	Y	N	Y	Y	Y
Korea	N	N	N	N	Y**	Y	Y	Y

*Table 2: Ratifications of core ILO conventions by countries. Source: ILO website*

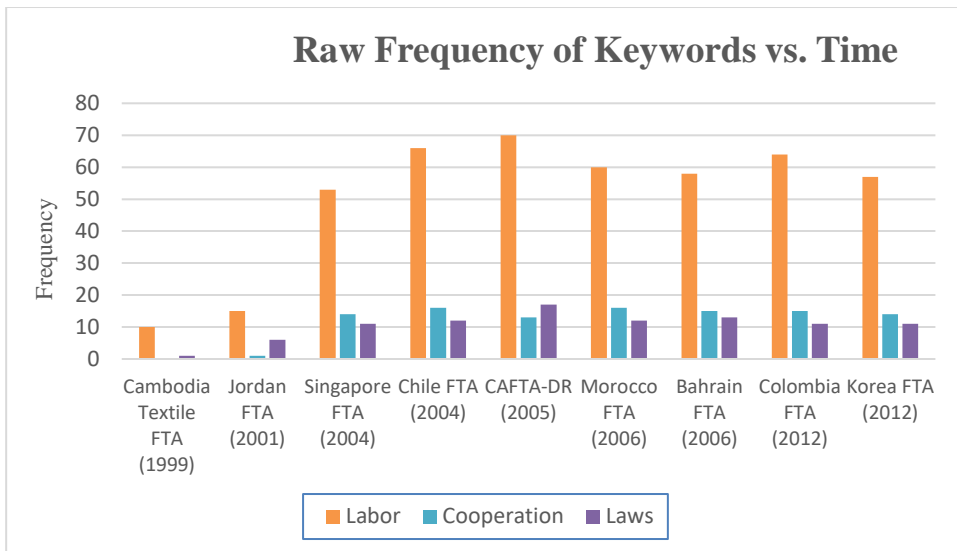
Y = RATIFIED

N = NOT RATIFIED

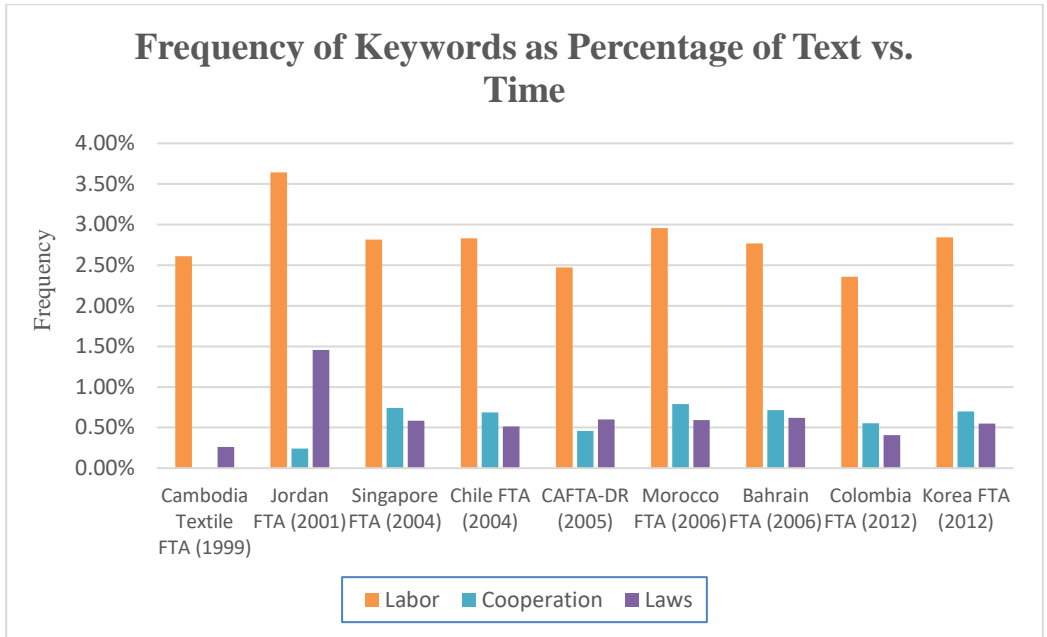
\*\* = WITH SPECIFICATIONS

\*\*\* = DENOUNCED

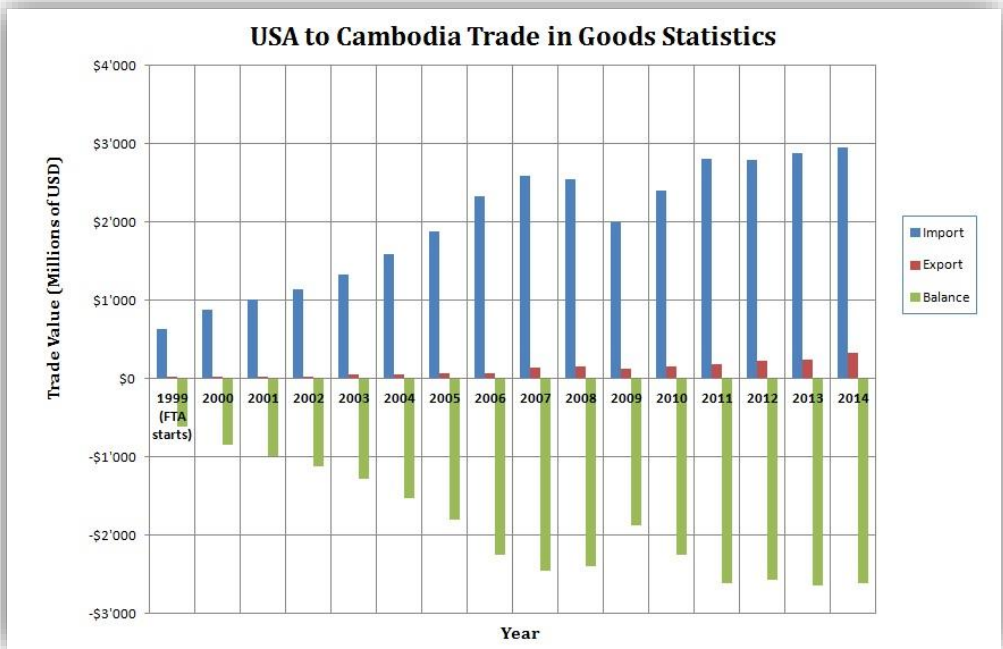
- C87 – *Freedom of Association and Protection of the Right to Organise Convention (1948)*
- C98 – *Right to Organise and Collective Bargaining Convention (1949)*
- C29 – *Forced Labour Convention (1930)*
- C105 – *Abolition of Forced Labour Convention (1957)*
- C138 – *Minimum Age Convention (1973)*
- C182 – *Worst Forms of Child Labour Convention (1999)*
- C100 – *Equal Remuneration Convention (1951)*
- C111 – *Discrimination (Employment and Occupation) Convention (1958)*



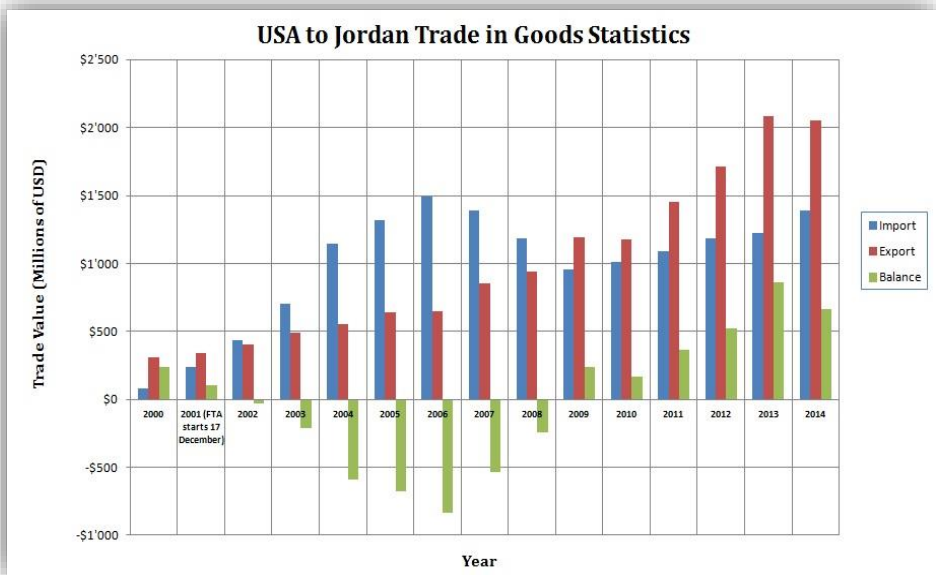
*Graph 1 : Raw Frequency of Keywords in Labour Provisions of USA FTAs vs. Time*



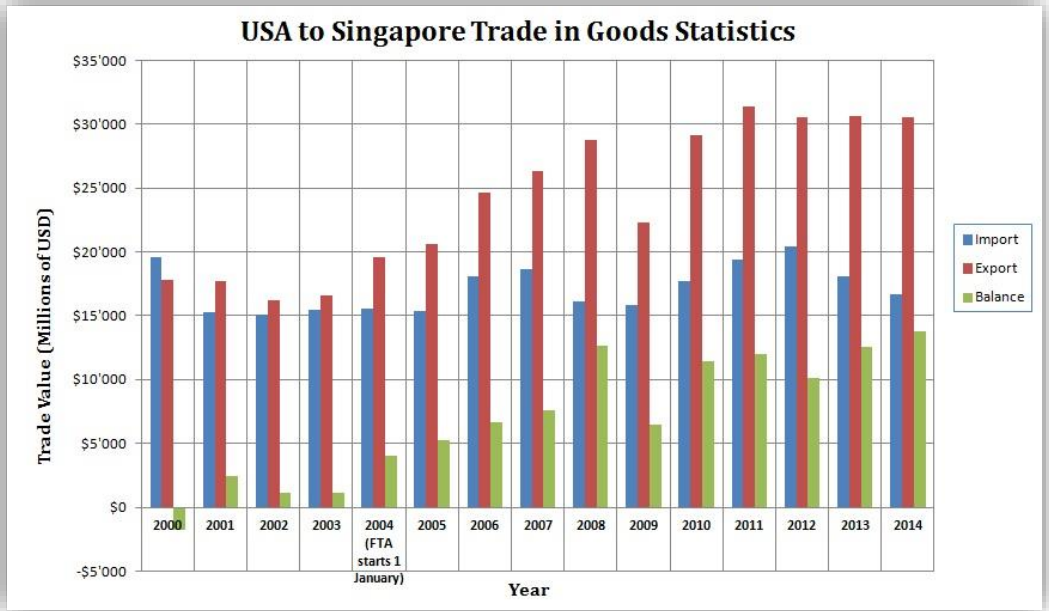
*Graph 2: Frequency of Keywords as Percentage of Text in Labour Provisions of USA FTAs vs. Time*



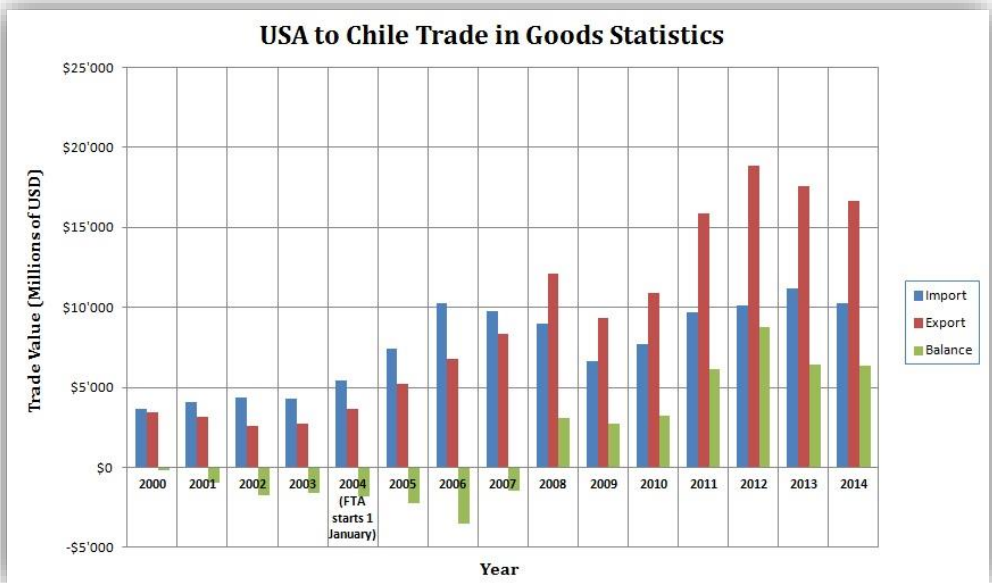
Graph 3: USA to Cambodia Trade in Goods. Source: UN Comtrade



Graph 4: USA to Jordan Trade in Goods. Source UN Comtrade

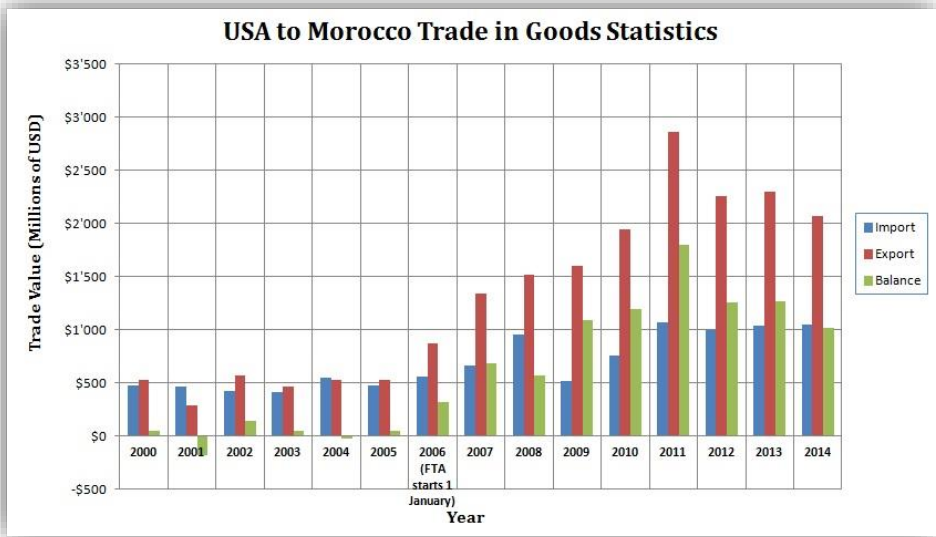


Graph 5: USA to Chile Trade in Goods. Source UN Comtrade

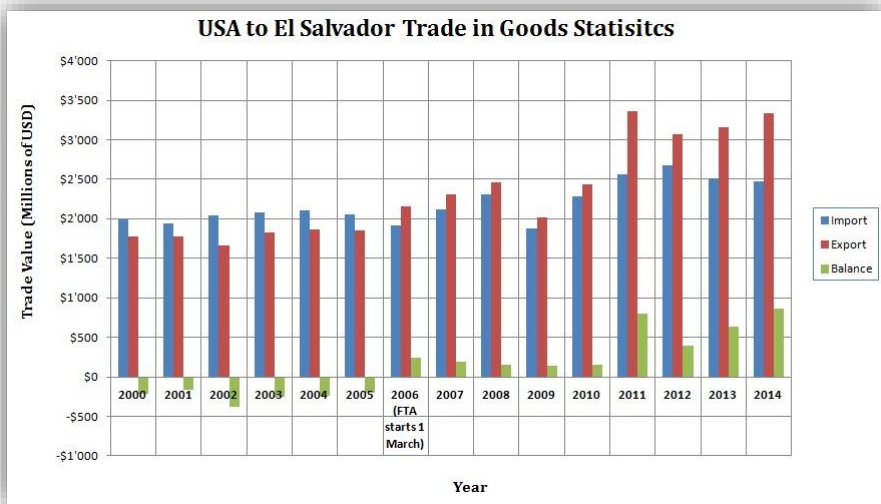




Graph 6: USA to Chile Trade in Goods. Source UN Comtrade

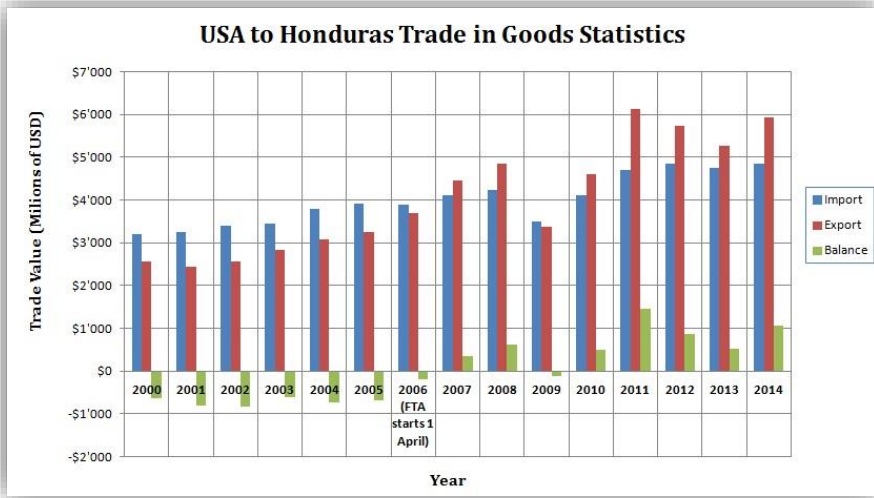


Graph 7: USA to Morocco

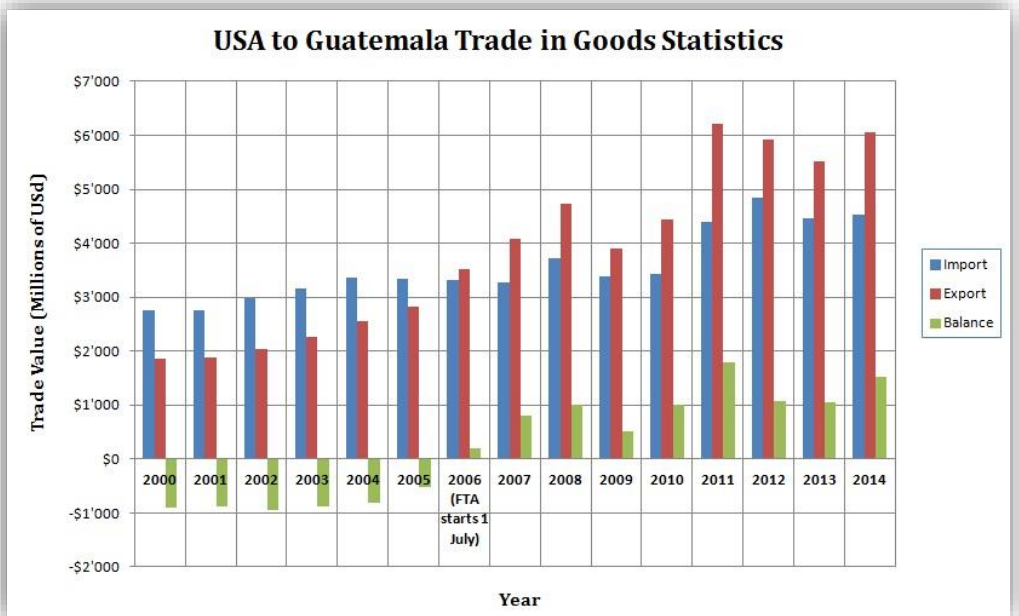


Trade in Goods. Source UN Comtrade

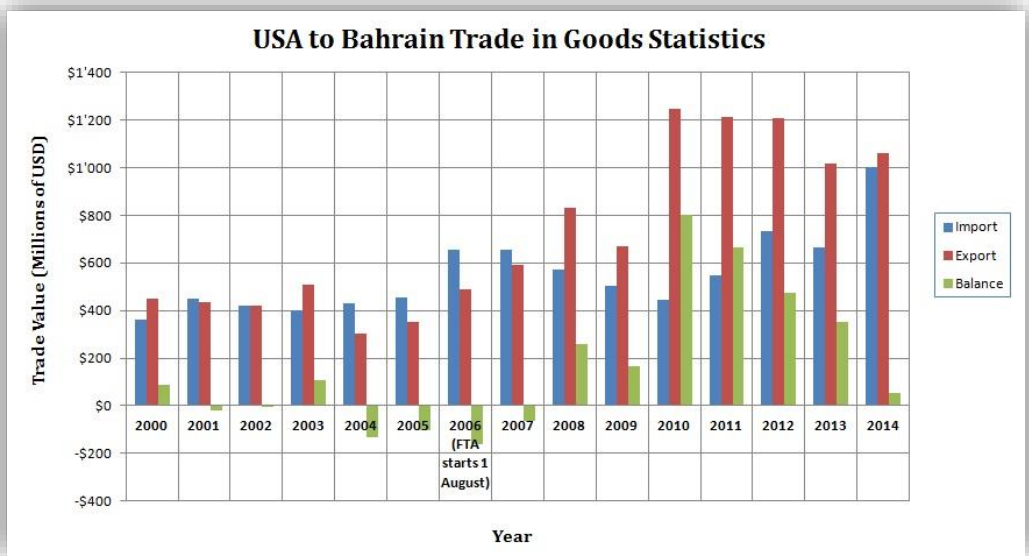
*Graph 8: USA to El Salvador Trade in Goods. Source UN Comtrade*



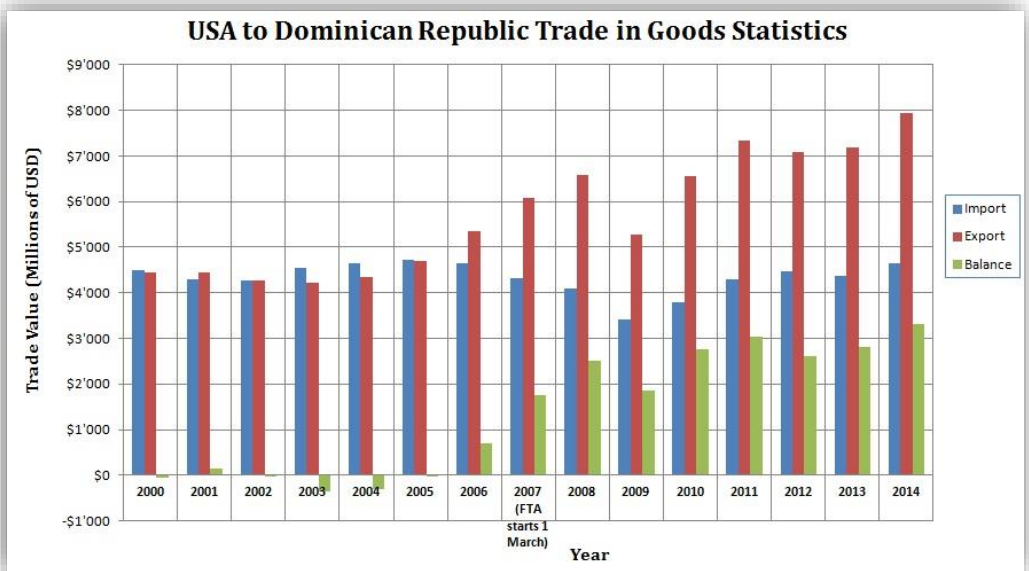
*Graph 9: USA to Guatemala Trade in Goods. Source UN Comtrade*



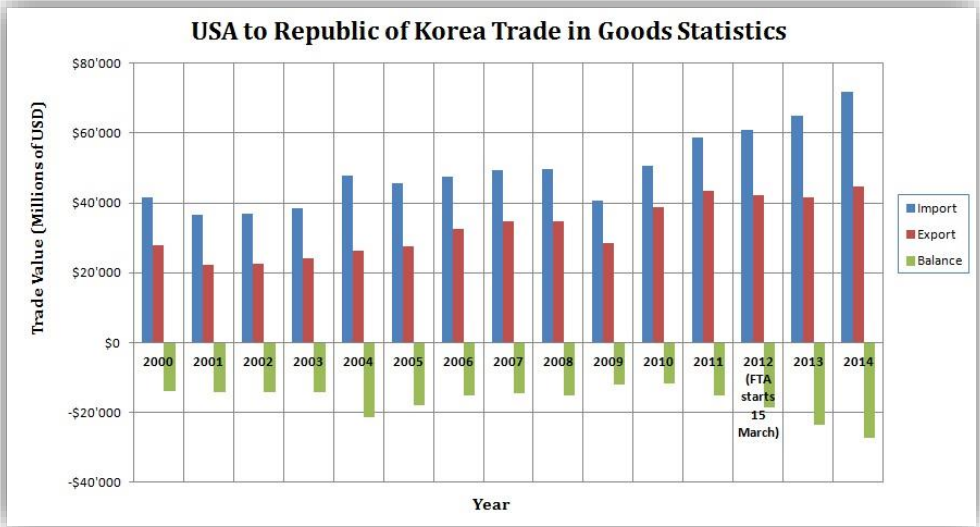
Graph 10: USA to Guatemala Trade in Goods. Source UN Comtrade



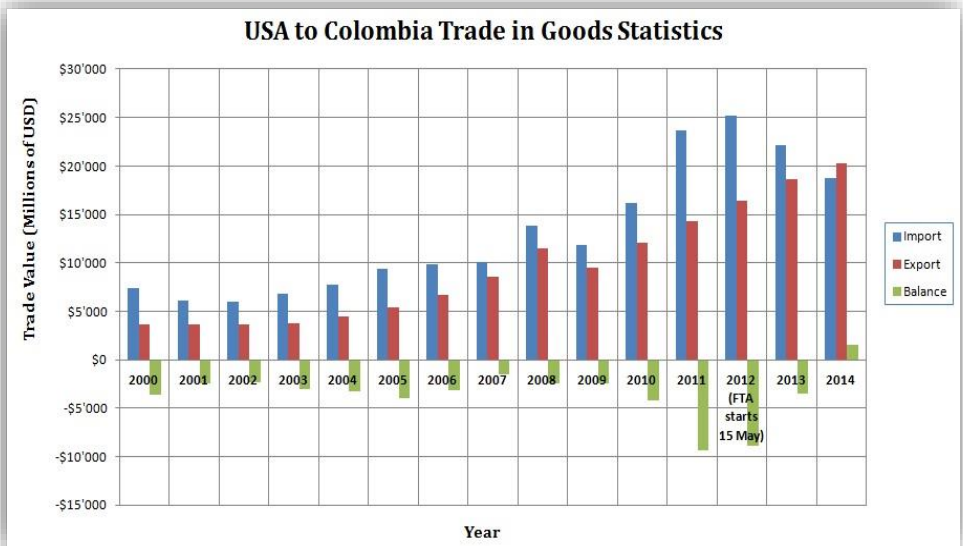
Graph 11: USA to Bahrain Trade in Goods. Source UN Comtrade



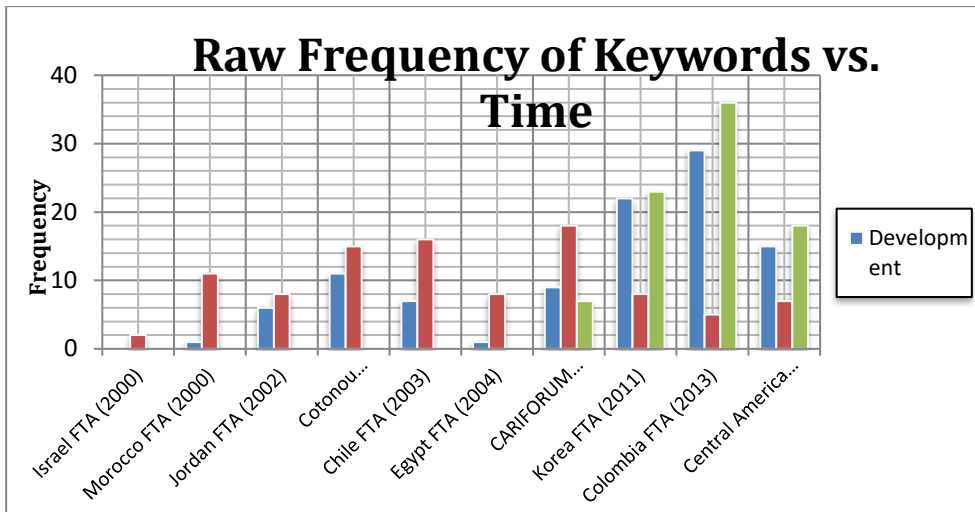
*Graph 12: USA to Dominican Republic Trade in Goods. Source UN Comtrade*



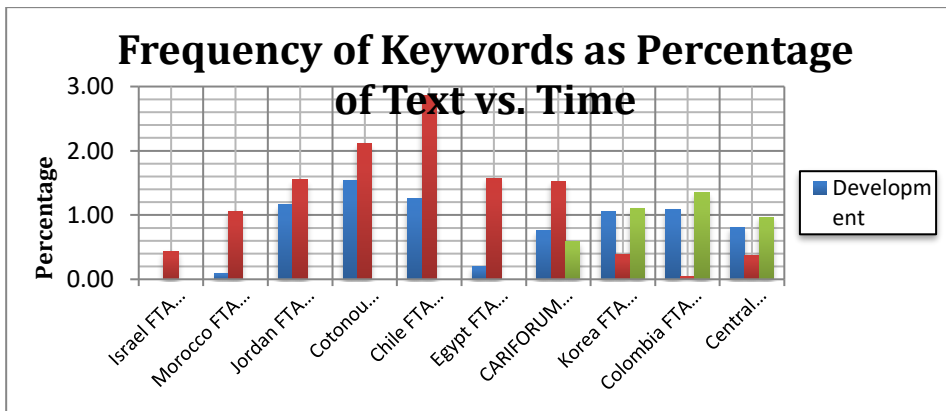
*Graph 13: USA to Republic of Korea Trade in Goods. Source UN Comtrade*



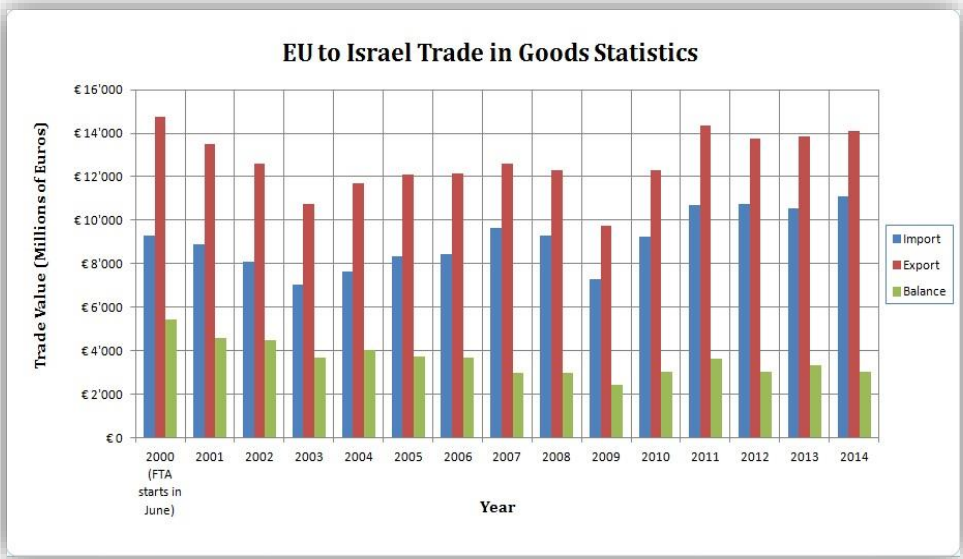
*Graph 14: USA to Colombia Trade in Goods. Source UN Comtrade*



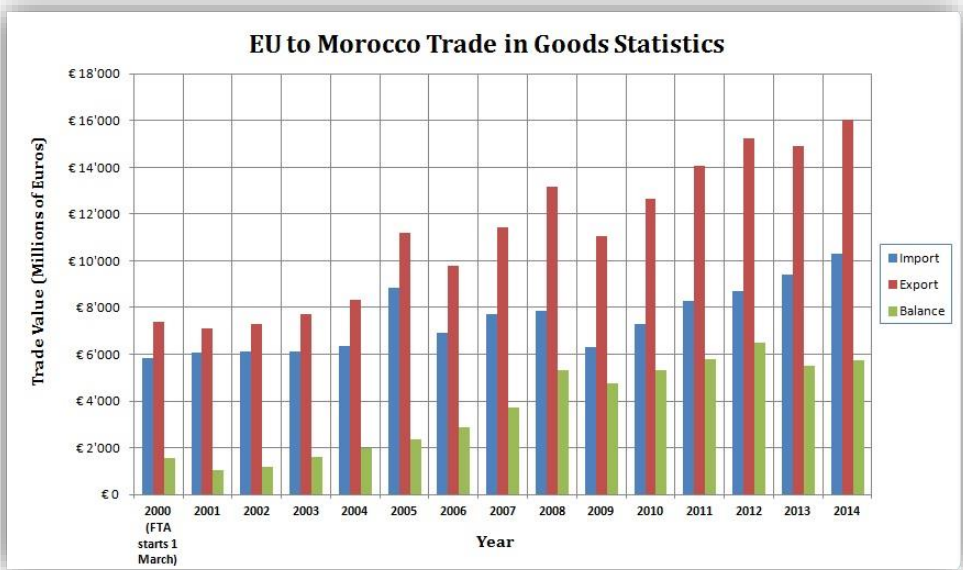
Graph 15: Raw Frequency of Keywords in Labour Provisions of EU FTAs vs. Time



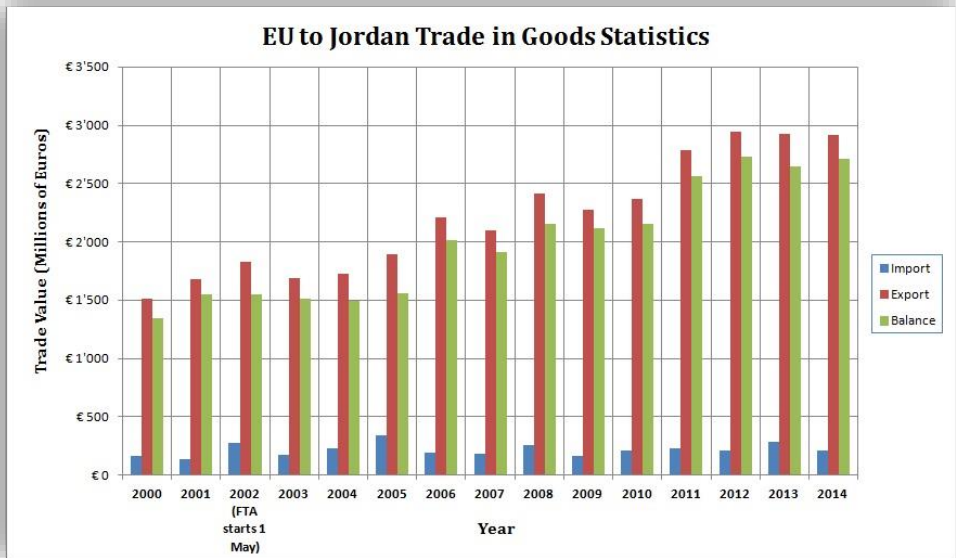
Graph 16: Frequency of Keywords as Percentage of text of Labour Provisions of EU FTAs vs. Time



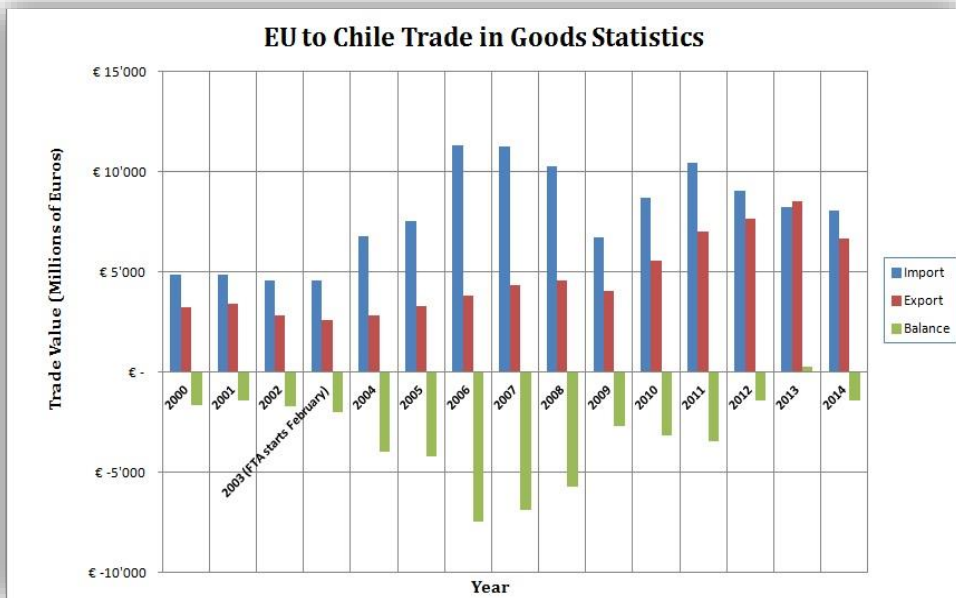
Graph 17: EU to Israel Trade in Goods. Source: Eurostat



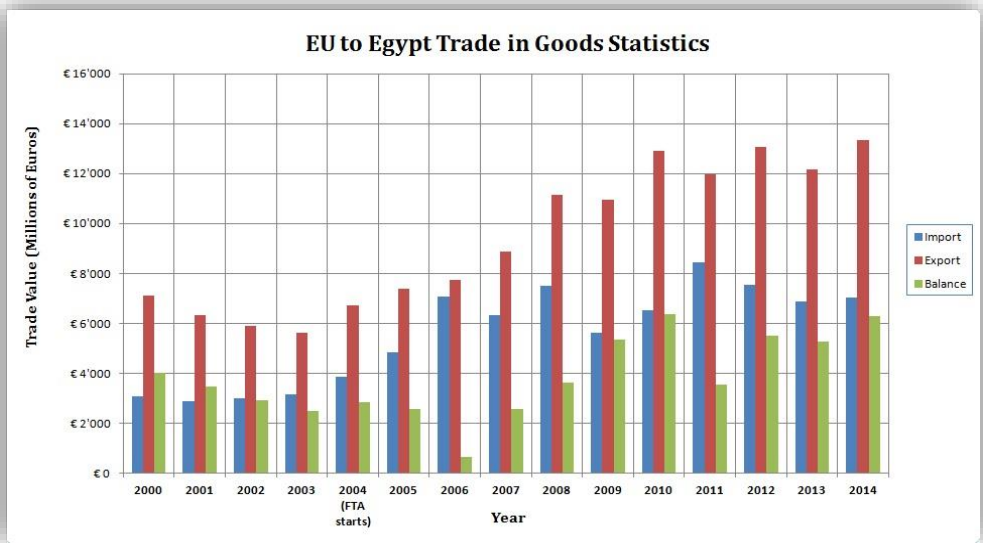
Graph 18: EU to Morocco Trade in Goods. Source: Eurostat



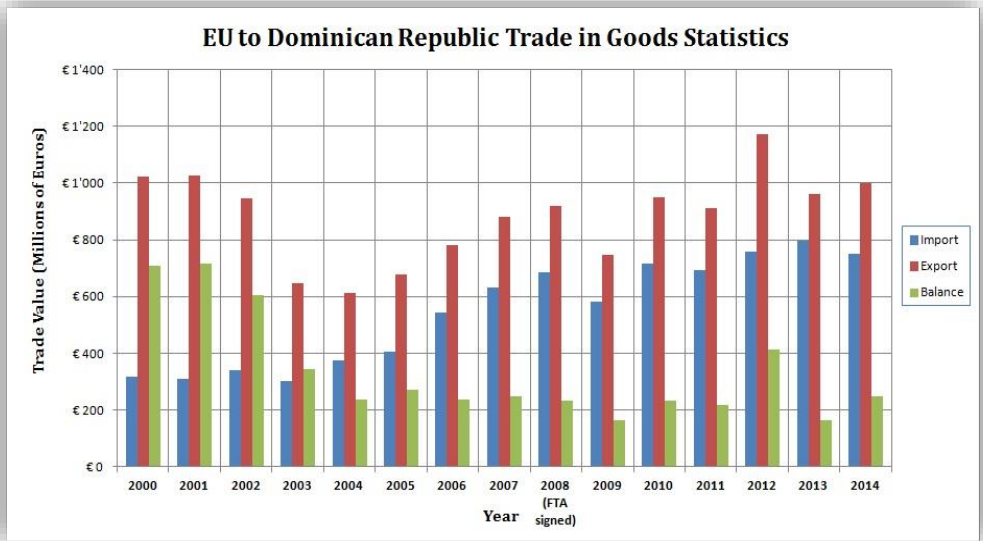
Graph 19: EU to Jordan Trade in Goods. Source: Eurostat



Graph 20: EU to Chile Trade in Goods. Source: Eurostat

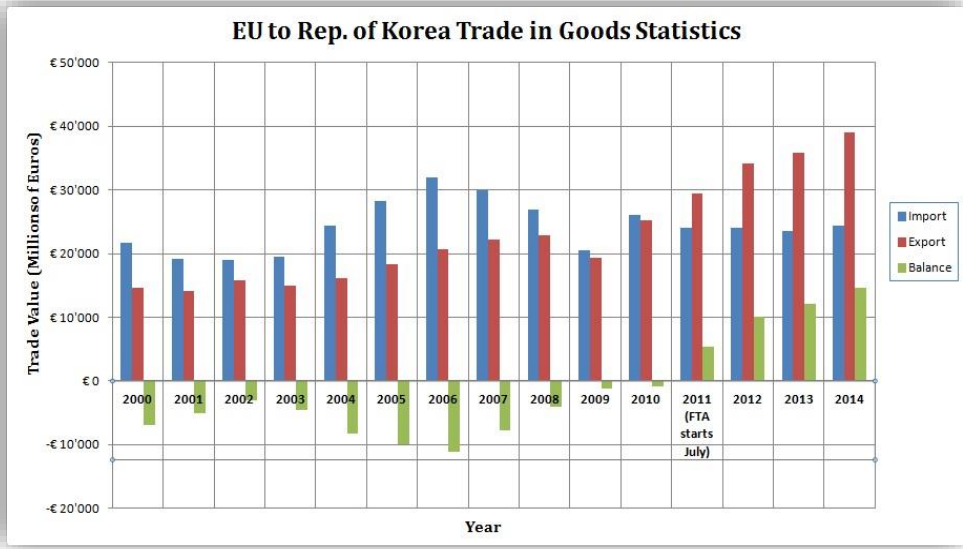


Graph 21: EU to Egypt Trade in Goods. Source: Eurostat

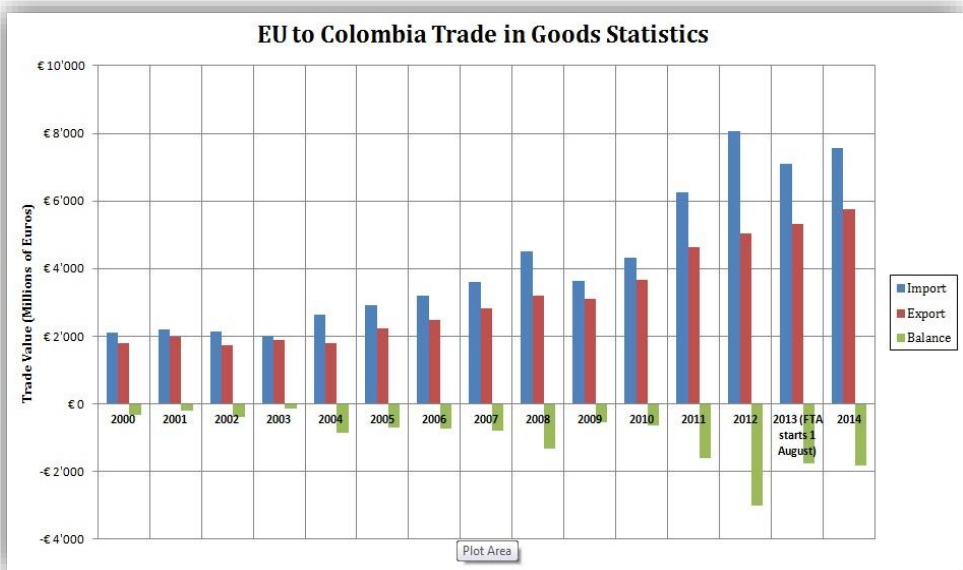


Graph 22: EU to Dominican Republic Trade in Goods. Source: Eurostat

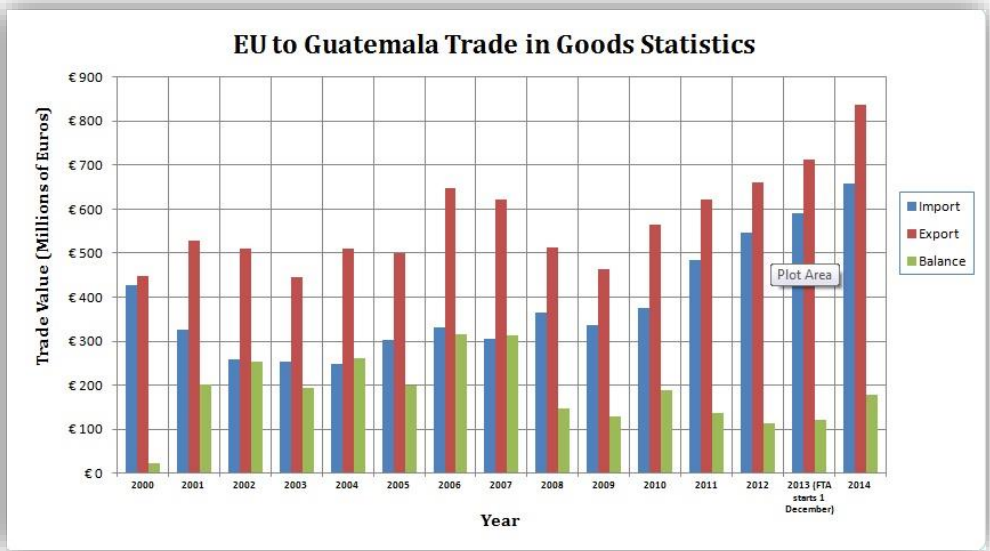




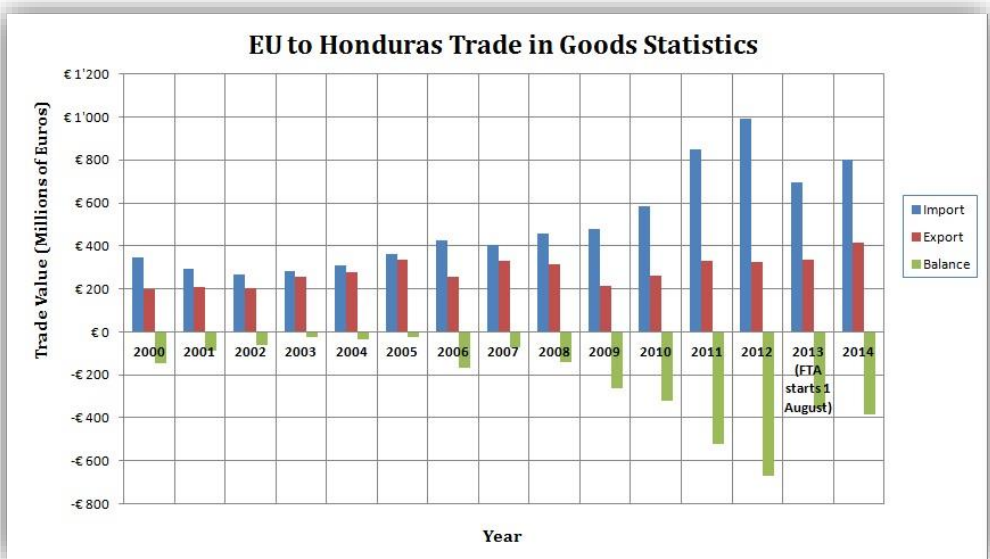
Graph 23: EU to Republic of Korea Trade in Goods. Source: Eurostat



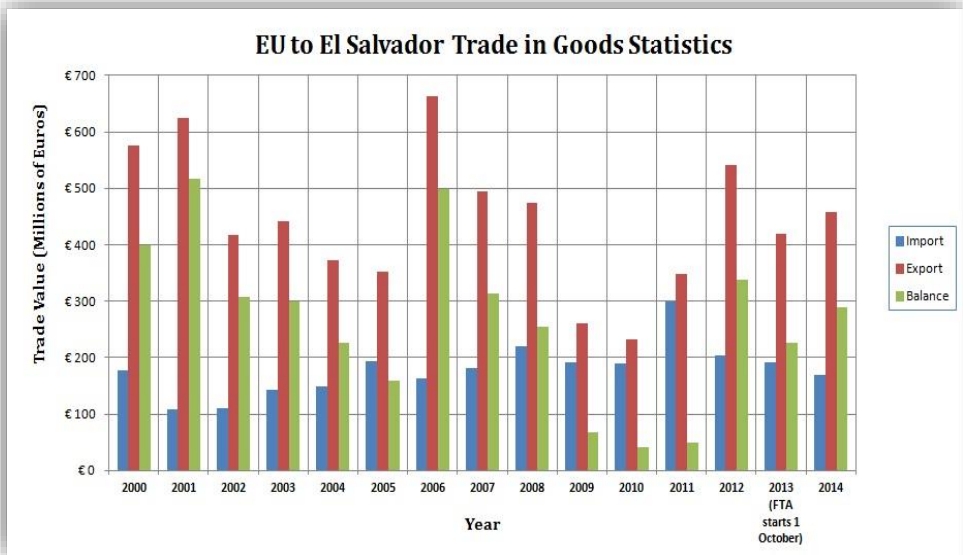
Graph 24: EU to Colombia Trade in Goods. Source: Eurostat



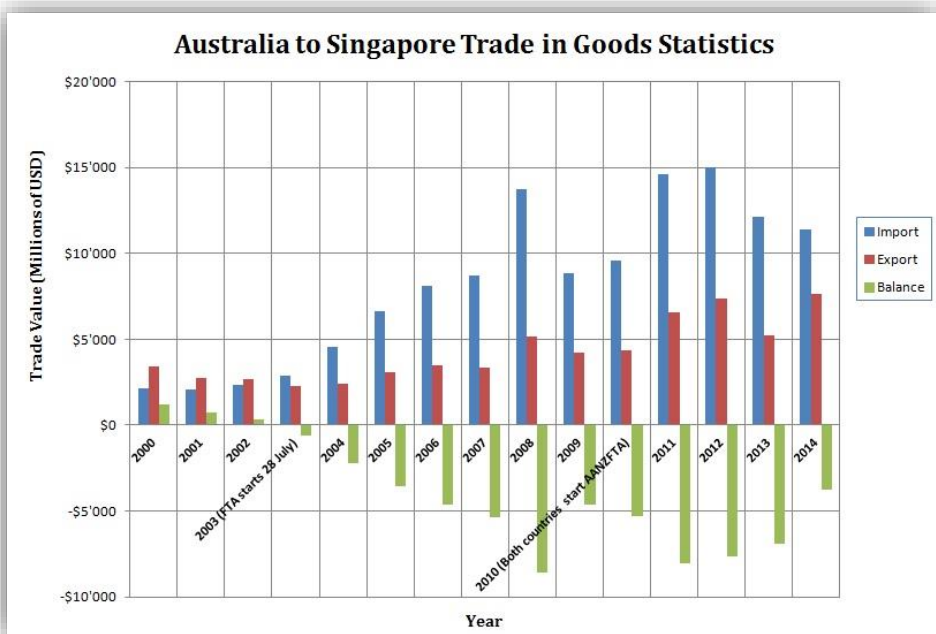
Graph 25: EU to Guatemala Trade in Goods. Source: Eurostat



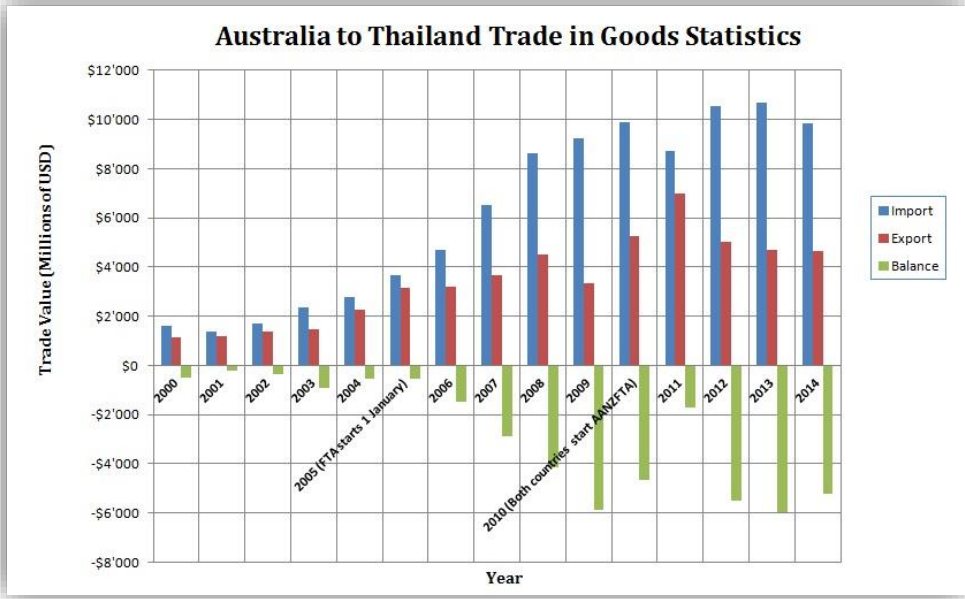
Graph 26: EU to Honduras Trade in Goods. Source: Eurostat



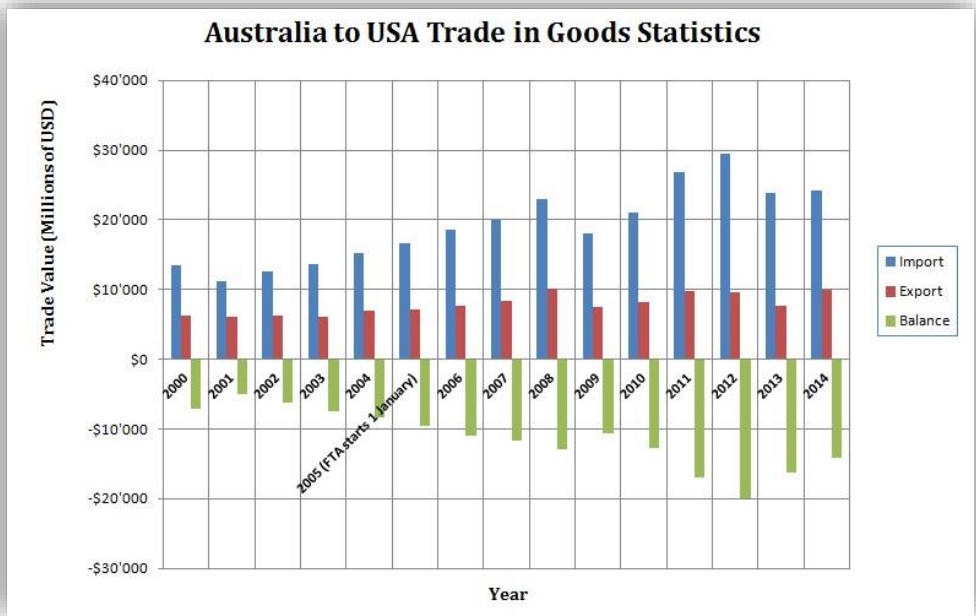
Graph 27: EU to El Salvador Trade in Goods. Source: Eurostat



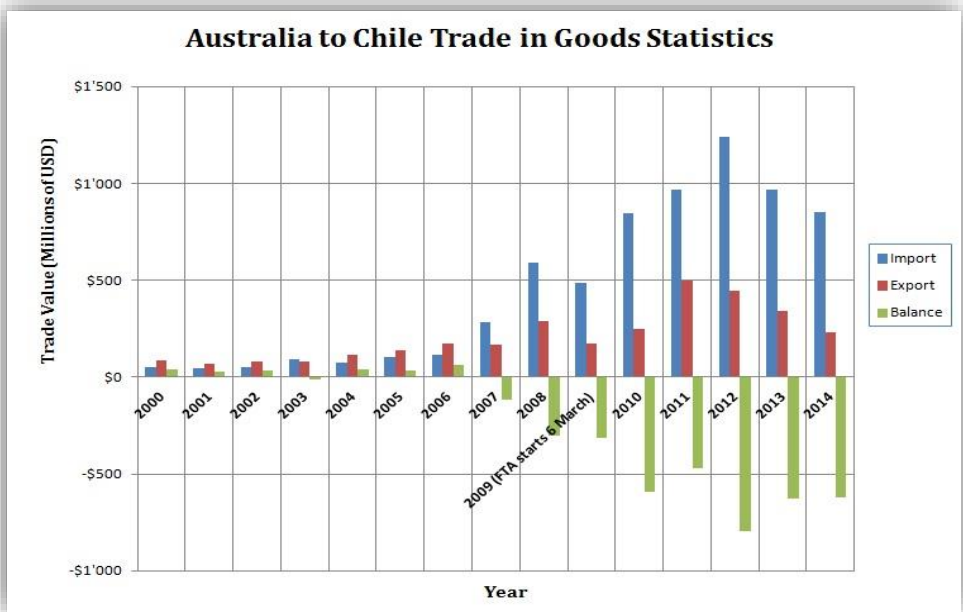
*Graph 28: Australia to Singapore Trade in Goods. Source: UN Comtrade*



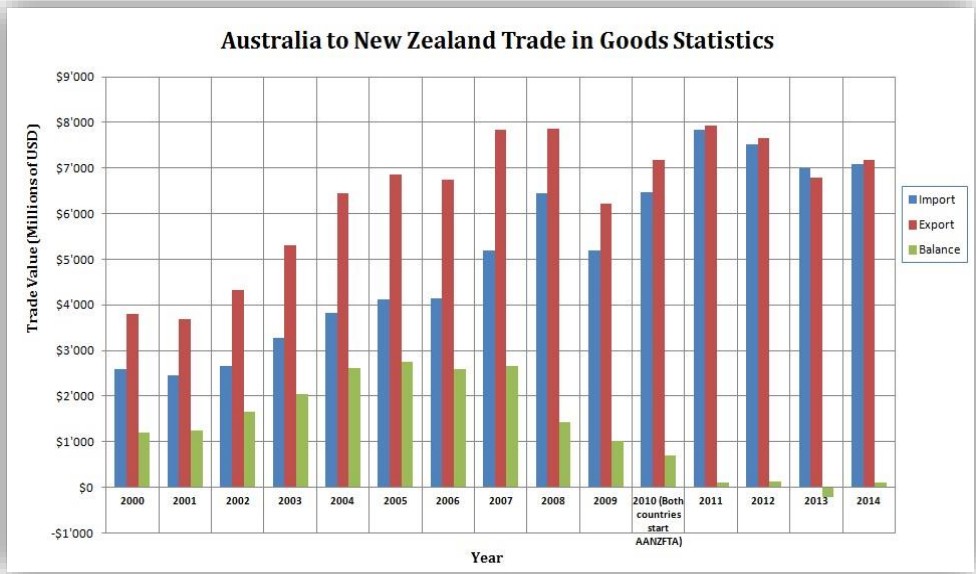
*Graph 29: Australia to Thailand Trade in Goods. Source: UN Comtrade*



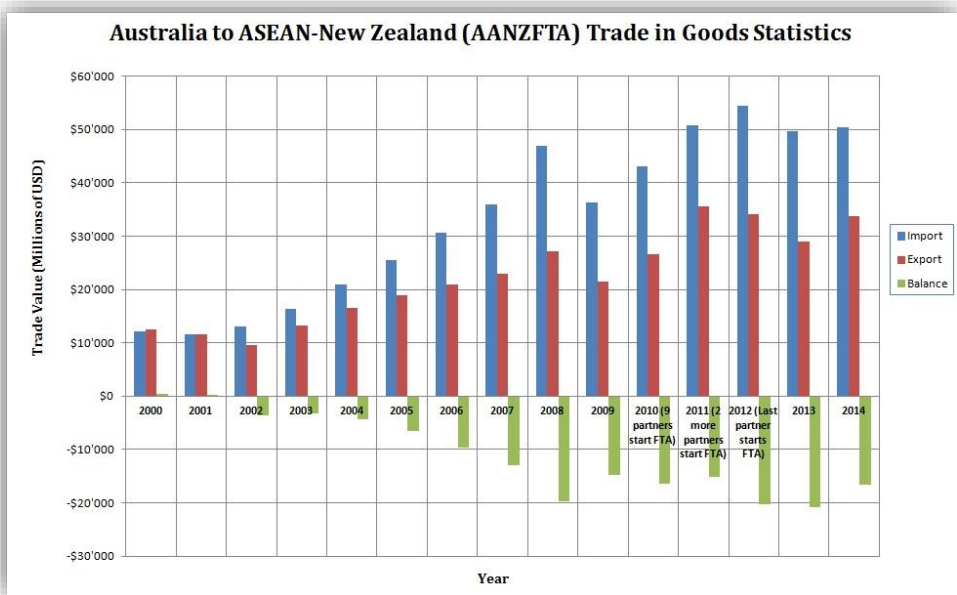
Graph 30: Australia to USA Trade in Goods. Source: UN Comtrade



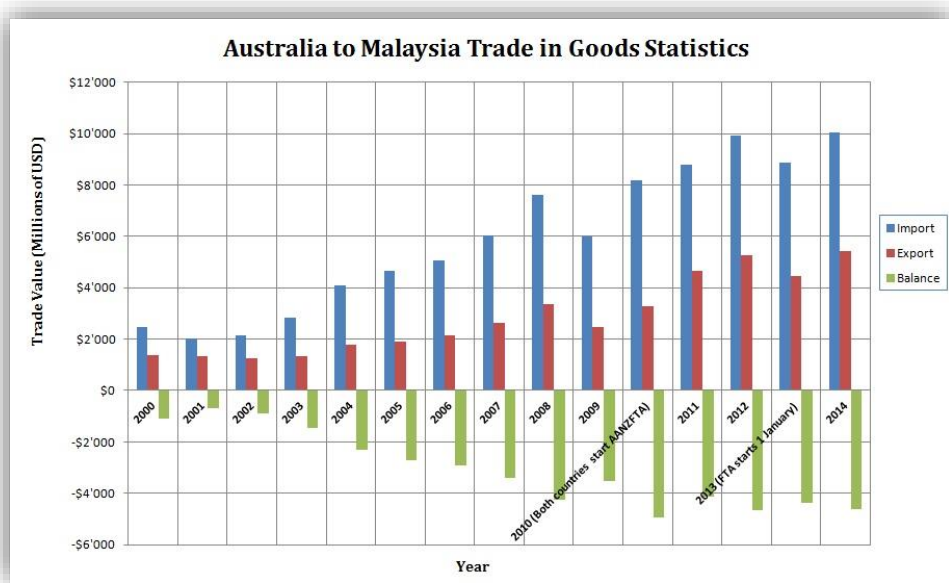
*Graph 31: Australia to Chile Trade in Goods. Source: UN Comtrade*



*Graph 32: Australia to New Zealand Trade in Goods. Source: UN Comtrade*



**Graph 33: Australia – New Zealand – ASEAN Trade in Goods. Source: UN Comtrade**



**Graph 34: Australia to Malaysia Trade in Goods. Source: UN Comtrade**

**Annex 1: UPR Info’s Database**

(Taken directly from *UPR Info*, accessible at: [http://www.upr-info.org/database/files/Database\\_Action\\_Category.pdf](http://www.upr-info.org/database/files/Database_Action_Category.pdf))

**Action category**

The Action Category is a unique feature of UPR Info’s Database of UPR Recommendations. Developed by Professor Edward R. McMahon of the University of Vermont (US) with the support of UPR Info, it creates a new approach to recommendations by looking into the action requested.

This new and exclusive feature analyses the first verb and the overall action contained in the recommendation and ranks it on a scale from 1 (minimal action) to 5 (specific action).

**1. Categories**

**Rank 1** Recommendation directed at non-SuR (States under Review) states, or calling upon the SuR to request technical assistance, or share information (Example of verbs: call on, seek, share).

**Rank 2** Recommendation emphasizing continuity (Example of verbs: continue, maintain, persevere, persist, pursue).

**Rank 3** Recommendation to consider change (Example of verbs: analyse, consider, envisage envision, examine, explore, reflect upon, revise, review, study).

**Rank 4** Recommendation of action that contains a general element (Example of verbs: accelerate, address, encourage, engage with, ensure, guarantee, intensify, promote, speed up, strengthen, take action, take measures or steps towards).

**Rank 5** Recommendation of specific action (Example of verbs: conduct, develop, eliminate, establish, investigate, undertake as well as legal verbs: abolish, accede, adopt, amend. implement, enforce, ratify).

## 2. Principles

When there is a perfectly even rationale for two different actions in a recommendation, emphasis is generally placed on the first action.

When a recommendation starts with two verbs, the second one is privileged. Ex: “Continue and strengthen...” -> category 4.

When a recommendation starts with a general action but then provide examples of specific actions, it is considered as category 5. Ex: “Improve women’s rights by amending the family code”.

*UPR Info, October 2014*

### *Disclaimer*

The action level coding for each recommendation was done by Prof. McMahon with the support of UPR Info blindly i.e. without reference to the SuR or recommending state. This obviated the possibility of coder bias entering into the coding decision.

## **Annex 2: UPR Info’s Database (Methodology Responses to Recommendations)**

(Taken directly from *UPR Info*, accessible at: [http://www.upr-info.org/database/files/Database\\_Methodology\\_Responses\\_to\\_recommendations.pdf](http://www.upr-info.org/database/files/Database_Methodology_Responses_to_recommendations.pdf))

This document presents the methodology followed to process our documents “Responses to recommendations and pledges” and how we classify a recommendation as “Accepted” or “Noted”. Please kindly note that UPR Info's methodology changed as of UPR Working Group session 17 in 2014 in order to be consistent with the new wording of the Reports of the Working Group and Resolution 5/1 §32:



*Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations [...] will be noted.*

According to the practice and the rule, State cannot reject recommendations at the UPR and all recommendations that are not accepted or not responded to are now considered as “Noted”.

### **1.1. 2RPs**

Our documents "2RPs" (standing for “Responses to recommendations and voluntary pledges”), list all recommendations as contained in the Report of the Working Group. The paragraph headers as written in the report, below which recommendations are listed in groups according to the response given, are also included. Where the response to the recommendation (as indicated by the colour key and letter code) does not correspond to its paragraph header, this indicates that the response has been subsequently changed by the State under Review (SuR). Changes to responses made during the adoption in plenary will appear in this document if and when they occur.

Responses to recommendations evolved drastically over the first cycle, and States under Review created new categories of responses to recommendations, which included “Accepted in Part”, “Accepted in principle” “Noted” and “Already implemented or in the process of implementation.” These categories have been included within the two main classifications abovementioned, “accepted” and “noted”.

### **1.2. Categories of response**

#### **Accepted:**

A recommendation is considered as “Accepted” when the SuR clearly uses the word “accept”. On the other hand, remarks made by the SuR that appear, but are not clearly expressed as an acceptance to a recommendation are considered as “Noted”. When a recommendation is accepted in part, we consider it as noted. However, when the part accepted and the part not accepted are clearly explained, the recommendation is split into two recommendations, one accepted and one noted. In case the official response is not clear, we rely on the classification of the Office of the High Commissioner for Human Rights.

When a recommendation is accepted in principle, we also consider it as noted.

#### **Noted (1):**

All recommendations that are not clearly identified as “Accepted” are considered “Noted”.

**Noted (2):**

A recommendation is considered as “Noted” when the SuR clearly uses the word “reject” or similar expressions such as “does not enjoy its support”, “does not accept”, “is not in a position to accept”.

**Pending:**

A recommendation is considered as “Pending” when no response is given by the SuR during the review. The SuR has then until the adoption of the report during the Human Rights Council plenary session to provide its final response. After that time, a pending recommendation which remains unaddressed is considered as "Noted".

*UPR Info, October 2014*

***Disclaimer***

The positions on recommendations contained in each of our documents “2RPs” are decided by UPR Info, and are based on United Nations documents and the webcasts. They are made under the sole responsibility of UPR Info.

**Annex 3: List of UN Entities and Stakeholders to contribute to official UPR reports**

(Taken directly from OHCHR Website, accessible at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>)

### **UN Entities**

UNESCO  
UNHCR  
UNCT  
UN Women Egypt Country Office  
UNAIDS  
UNDP  
UNFPA  
UNICEF  
ILO  
OSRSG

### **Stakeholders**

ACCIONGAY  
Action Network Human Rights  
Advocates for Public Interest Law  
AFD International  
Afro Asian People's Solidarity Organization  
Agrupación de Familiares de Detenidos Desaparecidos  
Amnesty International  
Aliansi Masyarakat Adat Nusantara  
Alianza por la Niñez Colombiana  
Alkarama  
Alliance for Democracy in Laos  
Alliance for Reform and Democracy in Asia  
Alliance for the Advancement of Peoples Rights  
All India Peace & Solidarity Organisation  
Arakan Project  
ARTICLE 19  
ASEAN Parliamentarians for Human Rights  
Asian Legal Resource Centre  
Assistant Association for Political Prisoners  
Association "Comunità Papa Giovanni XXIII"  
Asociacion de Jueces por la Democracia  
Association Démocratique des Femmes du Maroc  
The Association for the Support of Vietnamese Handicapped and Orphans  
Association Marocaine des Droits Humains

Asociación Gremial Regional de Ex Funcionarios de ENAMI  
Association pour le droit de vote de chiliens et les droits civiques au Chili  
Australian Council for International Development  
Bagong Alyansang Makabayan  
Bahrain Human Rights Watch Society  
Bangladesh Peace Council  
Bar Council Malaysia  
Beneficiaries Advocacy Federation of New Zealand  
The Becket Fund  
Bloc 8406  
Boat People SOS, Inc.  
Cambodian Labour Confederation  
Cambodian League for the Promotion and Defense of Human Rights  
Cambodian NGO Committee on CEDAW  
CAODAISM  
CARE International  
CCS Disability Action  
Center for Justice and International Law  
Center for Military Human Rights Korea  
Centre for Community Development and Social Work  
Centre for Independent Journalism Malaysia  
Centro de Estudios para la Democracia  
Centro de Prevención, Tratamiento y Rehabilitación de Víctimas de la Tortura y sus Familiares  
Centro por la Justicia y el Derecho International  
ChangeMakers Refugee Forum  
ChildFund Australia  
Child Poverty Action Group (Aotearoa New Zealand)  
Child Rights Network  
Children's Rehabilitation Center  
Chin Human Rights Organisation  
China Society for Human Rights Studies  
Chinese People's Association for Peace and Disarmament  
Christian Solidarity Worldwide  
Circulo Emancipador de Mujeres y Niñas con Discapacidad de Chile  
Coalition to Abolish Modern-day Slavery in Asia  
Colectiva Mujeres en Resistencia  
Collectif Autisme Maroc  
Collectif pour la promotion des droits des personnes  
Comité de coordination des familles des disparus au Maroc  
Comisión de Observadores de Derechos Humanos Casa memoria Jose Domingo  
Cañas Fundacion 1367  
Commission on Human Rights of the Philippines

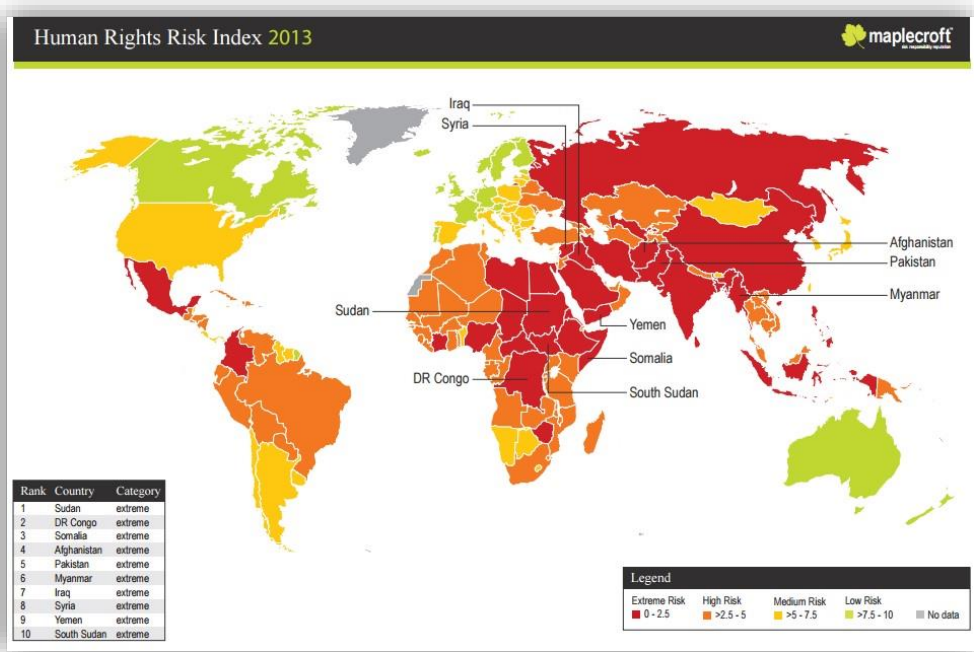
Committee for Free and Fair Election in Cambodia  
Committee for the Defence of the Right to Self-Determination for the People of Western Sahara  
Committee for Solidarity of Vietnamese Catholics  
Commonwealth Human Rights Initiative  
Company Daughters Charity  
Condau Parishioners Association  
Congregation of Our Lady of Charity of the Good Shepherd  
Congrès Mondial Amazigh  
Congress of World Hmong People  
Conscience and Peace Tax International  
Cooperation Committee for Cambodia  
Disabled Persons Assembly NZ Inc.  
Dingwall Trust  
Earth Rights International  
Economic Social and Cultural Rights  
ECPAT International  
Equal Rights Trust  
EnGende Rights  
European Association of Jehovah's Christian Witness  
European Centre for Law and Justice  
Fédération de la Ligue Démocratique des Droits des Femmes  
FIAN International  
Foundation Myrna Mack  
Franciscans International  
Freedom Now  
Fonction 8  
Front Line Defenders  
Fundacion salud vida y accion social savia  
Fundación Servicio Jesuita a Migrantes  
GenderBridge Inc.  
The Glenn Inquiry  
Grey Power Federation  
Gulf European Centre for Human Rights  
Global Initiative to End All Corporal Punishment for Children  
Habitat International Coalition  
Harm Reduction International  
Human Rights Commission of Malaysia  
Human Rights Development Foundation  
Human Rights First  
Human Rights Implementation Centre  
Human Rights Watch

IBON Foundation  
 INDIGENOUS  
 Indonesian National Human Rights Commission  
 Institute Human Rights Business  
 Ir Amim  
 Islamic Human Rights Commission  
 The Israeli Committee against House Demolitions  
 Institute for Human Rights and Business  
 Institute for Studies of Society, Economy and Environment  
 Instituto de Estudios de la Mujer "Norma Virginia Guirola de Herrera" CEMUJER  
 Inter-American Commission on Human Rights-Organization of American States  
 Inter-American Court of Human Rights  
 Internal Displacement Monitoring Centre  
 International Bar Association Human Rights Institute  
 International Center for Transitional Justice  
 International Commission of Jurists  
 International Fellowship of Reconciliation  
 The International Foundation for the Protection of Human Rights Defenders  
 International Human Rights Clinic  
 International Presentation Association of the Sisters of the Presentation of the Blessed Virgin Mary  
 International Publishers Association  
 International Service for Human Rights  
 Intersex Trust of New Zealand  
 It's Our Future NZ  
 Jubilee Campaign  
 Justice Peace Foundation  
 Kalipunannngma Katutubong Mamamayanng Pilipinas  
 Karen Human Rights Group  
 Khmers Kampuchea-Krom Federation  
 Marist International Solidarity Foundation  
 Khmer Kampuchea Krom for Human Rights and Development Association  
 Kirikiriroa Human Rights Network  
 Komnas Perempuan  
 Korean Bar Association  
 Korean Family Preservation Network  
 Korean House for International Solidarity  
 Lao Front for National Construction  
 Lao People's Revolutionary Youth Union  
 Lawyers for Lawyers  
 Ligue Marocaine pour la Citoyenneté et les Droits Humains  
 Mecanismo Nacional de Prevención y Comité Nacional de Prevención Contra la Tortura y Otros Tratos Crueles, Inhumanos o Degradantes Honduras  
 Médiateur pour la démocratie et les Droits de l'Homme

Mental Health Foundation of New Zealand  
Minority Rights Group International  
Moro Christian Peoples Alliance  
Mossawa Center the Advocacy Center for Arab Citizens of Israel  
Mouvement contre le racisme et pour l'amitié entre les peuples  
The National Center for Human Rights – Jordan  
National Council Churches Philippines  
National Human Rights Commission of Korea  
National Human Rights Commission of Thailand  
National Network of Indochina Activists  
National Union of Peoples Lawyers  
Nazra for Feminist Studies  
Neelusha Memon  
Negev Coexistence Forum for Civil Equality  
New Zealand Council of Christian Social Services  
New Zealand Law Society  
New Zealand Nurses Organisation  
Ngati Huarere ki Whangapoua Trust  
NGO Education Partnership  
NGO Monitor  
Norwegian Bar Association  
NZEI Te Riu Roa  
Observatoire amazigh des droits et des libertés  
Observatorio de los Derechos Humanos de los Pueblos Indígenas de Honduras  
Open Doors  
Open Society Justice Initiative  
Orchid Project  
Organisation for Defending Victims of Violence  
Organization for the Empowerment of Singaporeans  
Palestinian Centre for Human Rights  
Pax Christi International  
PeaceTrees Vietnam  
PEN International  
People Like Us  
Promotion of Church Peoples Response  
Protection International  
Ramen to Project for Rights Defenders  
Red de Trabajadoras Sexuales de Honduras  
Red Internacional de Derechos Humanos  
REDRESS  
Reporters sans frontières  
Reporters without Borders International

Réseau Amazighe pour la Citoyenneté  
Ruawaipu Iwi Te Tiriti Claims Settlement Authority  
Sahmakum Teang Tnaut  
Save the children  
Singapore Anti-Death Penalty Campaign  
Singaporeans for Democracy  
Singapore Institute of International Affairs  
Society for Threatened People  
Southeast Asia Initiatives for Community Empowerment  
Te Runanga o Te Rarawa  
Think Centre  
United Caodai Tayninh Holy See Overseas  
United Farmers Workers Organization  
Unrepresented Nations and Peoples Organization  
Vietnam Association of the Elderly  
Vietnam Association for Victims of Agent Orange/Dioxin  
Vietnam Buddhist Sangha  
Veterans for Peace Chapter 160, Vietnam  
Vietnam Interfaith Confederation  
VIETNAM RED CROSS SOCIETY  
Vietnamese Physicians Association of the Free World  
Vietnam Peace Committee  
Vietnam Peace and Development Foundation  
Vietnam Veterans Peace Initiative  
Vietnam Women's Union  
VIVAT International  
William J. Clinton Foundation in Vietnam  
Women's Legal and Human Rights Bureau Inc.  
Women's Union of Lao PDR  
Working Group for an Asean Human Rights Mechanism  
World Alliance for Citizen Participation  
World Coalition against the Death Penalty  
World Organisation for Early Childhood  
World Peace Council





Map 1: Human Rights Risk Index. Source: Maplecroft