

The Trans-Pacific Partnership: A Progressive Deal for Workers?

Valentina Bellomo

Following years of secretive negotiations, at the end of 2015 an agreement on the contents of the Trans-Pacific Partnership was finally reached. The Pact includes specific provisions to ensure that the signatory countries uphold basic labour rights. But do the progressive provisions actually provide workers with tools to claim better wages and labour conditions?

2010, A summit with leaders of the (then) negotiating states of the Trans-Pacific Strategic Economic Partnership Agreement (TPP). PC: Gobierno de Chile, Wikipedia.



Following years of secretive negotiations and contentious protests by civil society opponents, at the end of 2015 an agreement on the contents of the Trans-Pacific Partnership (TPP) was finally reached, with the long-awaited text released a few days later. Initially seen as the expansion of a previous deal signed in 2006 by four countries—the Trans-Pacific Strategic Economic Agreement between Brunei, Chile, New Zealand and Singapore—the TPP has expanded to a group of twelve signatories that range from the biggest economies in the Pacific area (United States, Australia, and New Zealand) to key Asian economies (Japan and Singapore), not to mention some newly emerging countries that were not involved in previous agreements (Malaysia and Vietnam). If ratified, the pact will create the largest free trade zone in the world, representing about 37.5% of the **global industrial output**.

Besides the economic and geo-strategic implications of the agreement, the long negotiation process has been characterised by a public relations campaign centred on the ‘progressive’ nature of the Partnership and the positive effect that it will likely have on the lives of 800 million people. According to this view, the TPP is rewriting the rules of global trade from a socially progressive and worker-friendly angle. In pursuing the double mission of protecting existing jobs and creating new employment opportunities, the TPP has included specific provisions to ensure the signatory countries uphold basic rights and principles on wage levels and labour conditions. But is it possible to look at the TPP as the cumulated result of expanded social and labour provisions in free trade pacts over the last decade? Do the progressive provisions provide benefits for workers and tools with which they can demand better wages and conditions? How do unions in both developed and emerging signatory countries see the TPP?

Progressive Labour Provisions?

The birth of an official discourse that connects trade and labour can be dated back to 1998, when the International Labour Organization (ILO) issued the Declaration on Fundamental Principles and Rights at Work. This document highlighted a nucleus of core labour rights and bound all ILO member states to uphold them when engaged in bilateral or multilateral economic cooperation. Since then, a growing number of trade agreements—including the North-America Free Trade Agreement (NAFTA), the US-Dominican Republic-Central America Free Trade Agreement (US-CAFTA), and the previous version of the TPP—have incorporated labour-related provisions, often referring directly to the ILO Declaration. Still, in spite of this nexus between trade and labour, there remain several doubts about the effectiveness of free trade agreements as instruments to



Workers in a Chinese factory in Wuxi.
PC: Robert Scoble.

promote social reforms and ensure the respect of minimum labour standards.

In this sense, the TPP does not really represent a step further. Almost two decades after the ILO Declaration, the new partnership still refers to a series of very general principles and rights included in such a document (e.g. the freedom of association, the right to collective bargaining, the prohibition of child labour, the abolition of any sort of workplace discrimination), ignoring the huge progress that the ILO has made in the meantime in terms of Conventions, guidelines, and other documents that have considerably expanded the notion of international labour standards as legal instruments. Furthermore, the reference to the 1998 Declaration is even more incongruous if we consider that four signatory countries never ratified the ILO Convention 87 on freedom of association, for example.

As the International Trade Union Confederation (ITUC) has recently pointed out in a **poignant critical document**, due to several conceptual and linguistic weaknesses, the TPP still provides a notion of ‘acceptable labour conditions’ that neither expands previous definitions, nor is based, for example, on the strict enforcement of the national legislation of each country, blurring the boundary between rights, principles and laws. Although the labour chapter is complemented by three bilateral agreements (the so-called ‘Labour Consistency Plans’) between United States and Vietnam, Malaysia and Brunei—the three countries required to adopt the most substantial reforms—great uncertainty remains about the effectiveness of such provisions.

First, there is scepticism over the feasibility of pressuring governments to adopt major labour reforms in short timeframes. From this point of view, the **recent upgrade** of Malaysia in the annual human trafficking ranking published by the US State Department appeared more as a preventive measure aimed at finalising the TPP, rather than as a reflection of

actual improvement. Similarly, when the text of the TPP was finally released, many advocates of the labour-trade nexus were disappointed by the language adopted in some labour-related clauses, for instance in the general commitment to simply ‘discourage’ the importation of goods produced by forced labour.

Second, the system for dispute settlement is equally unsatisfactory. Unlike general commercial disputes—which can be reported to international bodies such as the WTO—the reiterated absence of labour provisions referring to specific ILO conventions means that violations will not be reported to ILO supervisory bodies, leaving the signatory governments full discretionary powers to file against each other for violating the TPP labour contents and then to resolve the matter through an internal consultation and, if necessary, arbitration panel. This mechanism therefore continues to exclude third parties, such as individuals, trade unions, and NGOs from reporting cases of non-compliance with the labour provisions included in the TPP.

Besides the impossibility to directly address corporate misconducts, the TPP does not prescribe an automatic suspension of the trade benefits in the event of verified violations, allowing the parties found guilty to pay monetary compensations instead. It is highly unlikely that such penalties will hold any dissuasive power against this kind of misconduct.

All these elements coincide to curtail the efficacy of the TPP’s labour provisions, which do not depart significantly from those incorporated in the thirteen free trade agreements concluded between the US and other countries since 1993. Even when considering the three over-emphasised labour consistency plans, it is impossible to overlook the well-documented cases of other TPP signatories—Peru, Colombia, and Mexico—that were involved in previous trade agreements and failed to comply with the labour provisions without ever incurring in any

serious sanctions. The historical record does not evoke feelings of optimism.

Responses from the Unions

The unions in the countries involved in the TPP have not remained silent. The American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) has focused **its criticism** on the Investor-State Dispute Settlement (ISDS) mechanism, probably the most serious hindrance to the improvement of labour standards within the scope of the TPP. The ISDS, in fact, would eventually allow foreign corporations to sue host-countries whenever they feel that new laws, regulations or judicial rulings compromise their economic advantage. General improvements in labour conditions, as increases in minimum wages, are very likely to fall into this category.

Similar concerns were raised not only by global unions like ITUC, but also by several national and sub-national unions. For instance, in Canada, UNIFOR, the largest private-sector union, repeatedly highlighted the **tremendous impact** in terms of job losses in the auto industry that the deal is likely to produce when imports from Japan will grow as an effect of tariff annulments, while unions in the public-sector pointed out the **possible consequences** of the TPP in fast-tracking privatisation in a country well known for its universal, publicly-funded social programs.

A much more interesting picture emerges when looking at the types of dissent expressed by the most vulnerable partners. In Vietnam, generally presented as the **'big winner'** of the TPP, a group of independent labour leaders sent a **letter to the US Congress** in which they stressed the importance of putting the TPP on hold until all the labour-related conditions have been met. In Malaysia, instead, there is a clear fracture between

labour representatives supporting the TPP. On the one hand, the Congress of Unions of Employees in the Public and Civil Services (CUEPACS) has expressed **deep concern** only for the clause that allows foreigners to hold posts in Malaysian unions, whereas the grassroots coalition formed by Malaysian NGOs and student unions has staged **sit-ins and protests** against the agreement.

For those concerned with labour rights globally, it is necessary to question any claim of the TPP's transformative power, especially in countries with existing serious labour violations. Even worse, the possibility that vague and unenforceable labour provisions could actually obstruct or even delay the adoption and the enforcement of internationally recognized labour rights in domestic legislations cannot be discounted as a purely incidental risk anymore, but must be seen as a real threat for labour movements worldwide.

Valentina Bellomo

Valentina Bellomo is a PhD from Ca'Foscari University of Venice. Her research focuses on the institutional and labour innovations occurring within Chinese industrial districts. In 2011, she took an internship at the ILO Beijing Office. Between 2013 and 2014, she was a visiting student at Beijing University, where she investigated the link between localized labour practices and regional development trends.