

Orbie, Jan; Van den Putte, Lore

Working Paper

Labour rights in Peru and the EU trade agreement: Compliance with the commitments under the sustainable development chapter

ÖFSE Working Paper, No. 58

Provided in Cooperation with:

Austrian Foundation for Development Research (ÖFSE), Vienna

Suggested Citation: Orbie, Jan; Van den Putte, Lore (2016) : Labour rights in Peru and the EU trade agreement: Compliance with the commitments under the sustainable development chapter, ÖFSE Working Paper, No. 58, Austrian Foundation for Development Research (ÖFSE), Vienna, <http://www.oefse.at/publikationen/working-papers/detail-working-paper/publication/show/Publication/Labour-rights-in-Peru-and-the-EU-trade-agreement/>

This Version is available at:

<https://hdl.handle.net/10419/145974>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.

Labour rights in Peru and the EU trade agreement

Compliance with the commitments under the sustainable development chapter

Vienna, August 2016

Jan Orbie and Lore Van den Putte
Centre for EU Studies (CEUS), Ghent University

Acknowledgements

First and foremost, we gratefully acknowledge financial support from 11.11.11., Coalition of the Flemish North-South Movement, which commissioned this study. Furthermore, the research has been made possible thanks to the Research Foundation Flanders that granted a PhD scholarship to Lore Van den Putte. Some insights also relate to a study on 'Labour Standards in TTIP' funded by the European Parliament's Employment and Social Affairs Committee. We would also like to thank numerous Peruvian and European interviewees who provided extremely valuable information and insights. The views expressed here are those of the authors.

The ÖFSE Working Paper Series has the objectives to publish original research and initiate debates on international development issues and policies. Authors include ÖFSE employees as well as external researchers. The views expressed in the working papers are those of the authors and do not necessarily reflect the views of ÖFSE. For interest in publishing an ÖFSE Working Paper please contact c.staritz@oefse.at

Download:

http://www.oefse.at/fileadmin/content/Downloads/Publikationen/Workingpaper/WP58_Peru_Study.pdf

IMPRINT

Austrian Foundation for Development Research – ÖFSE
A Austria, 1090 Vienna, Sensengasse 3, T +43 1 3174010, F -150
E office@oefse.at, I www.oefse.at, www.centrum3.at

Contents

Index of Tables	3
List of Abbreviations	3
Abstract	4
Executive Summary.....	5
Resumen Ejecutivo.....	7
Zusammenfassung	9
1. Introduction	11
1.1. Aim of the study	11
1.2. Peru and agriculture.....	12
1.3. Labour rights in Peru.....	13
1.4. Sustainable development and the EU trade agreement	13
2. Analytical Framework.....	14
2.1. Upholding ILO Core Labour Standards	14
2.2. Non-lowering domestic labour law	15
2.3. Promoting civil society dialogue	16
2.4. Summary: Conservative and flexible approach	18
3. Main Findings	19
3.1. Upholding ILO Core Labour Standards	19
3.2. Non-lowering domestic labour law	22
a) De facto weakening of labour inspection.....	23
b) De facto continuation of special (labour) regimes	24
c) De jure lowering of health and safety at work	25
d) Compliance with the trade agreement?.....	26
3.3. Promoting civil society dialogue	27
3.4. Summary	31
4. EU Policies and Recommendations	31
4.1. Investigating alleged shortcomings	31
4.2. Stronger push for civil society dialogue	32
4.3. Forging a more coherent EU approach	35
4.4. Future agreements: improvements outside the box.....	38
5. Conclusions	40
References	41
Authors	45

Index of Tables

Table 1:	Flexibility of civil society provisions: comparative analysis	17
Table 2:	Summary of compliance with domestic labour law commitment.....	27
Table 3:	Flexibility of civil society provisions: practical implications in Peru.....	30
Table 4:	Summary of main findings.....	31

List of Abbreviations

ADEX	Peruvian Association of Exporters
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
CLS	Core Labour Standards
CNTPE	Consejo Nacional de Trabajo y Promocion de Empleo (General Council of Labour and Promotion of Employment)
CSR	Corporate Social Responsibility
DAG	Domestic Advisory Group
EEAS	European External Action Service
EESC	European Economic and Social Committee
EU	European Union
HDI	Human Development Index
GDP	Gross Domestic Product
GSP	Generalised System of Preferences
ILO	International Labour Organisation
ITUC	International Trade Union Confederation
NGO	Non Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
RedGe	Red Peruana por una Globalización con Equidad
SUNAFIL	Superintendencia Nacional de Fiscalización Laboral
SIA	Sustainability Impact Assessment
TTIP	Transatlantic Trade and Investment Partnership

Abstract

European Union (EU) trade policy has become increasingly contested and politicised. Citizens and politicians have become more and more concerned about the human rights and sustainable development implications of free trade. The European Commission in its 'Trade for All' Strategy has recognized the need for a more value-based trade policy. In the same vein, the EU has included a chapter on Trade and Sustainable Development in recent free trade agreements. *However, there is still much uncertainty about the specifics of these legal commitments and about their implementation in practice. In this study, we aim to assess the labour rights commitments in the EU-Peru-Colombia agreement, with a specific focus on Peru and the agricultural sector.* Based on an analytical framework that summarises the labour-related commitments of the sustainable development Title into three categories – upholding ILO Core Labour Standards, non-lowering domestic labour law, and promoting civil society dialogue – we conclude that Peru has failed to comply in a number of areas. We also make recommendations for the EU and civil society and suggestions for more profound and systematic research.

Keywords: *Peru, labour, European Union, trade*

Executive Summary

This study shows that both the Peruvian authorities as well as the EU could put more efforts in making sure that the commitments on labour norms made in their trade agreement are complied with, and that civil society could play an important role in this regard.

European trade policy has become increasingly contested. In response to this the European Union (EU) in her most recent trade agreements includes a chapter on sustainable development, which contains labour and environmental provisions. This is among others the case for the EU-Peru-Colombia trade agreement that entered into force in 2013. While the agreement contains a chapter on sustainable development and while respect for labour norms in Peru is quite low in general terms, Peru's compliance with its engagements on labour norms in the agreement have not been investigated yet. We focus on the agricultural export sector within the broader context of labour rights.

In doing so we make an *analytical framework* which discerns *three commitments*: (1) upholding core labour standards of the International Labour Organisation, (2) not lowering domestic labour law, and (3) promoting dialogue with civil society.

An analysis of the *legal agreement* shows that these three commitments are formulated in a *conservative* and *flexible* manner. The commitments made in the EU-Peru-Colombia agreement are less far-reaching than in most other EU trade agreements, in particular when it comes to dialogue with civil society.

As concerns the *compliance with the agreement*, our interviews with stakeholders in the EU and Peru, relevant documents and secondary literature show that:

- 1) *With regard to the ILO core labour standards*, the Peruvian government doesn't succeed in promoting these nor in effectively implementing them. This is especially the case for trade union rights.
- 2) *With regard to domestic labour law*, there are indications of *de jure* or *de facto* lowering of (a) labour inspection, (b) special export regimes, and (c) health and safety at work.
 - a) The labour inspection agency (SUNAFIL) has *de facto* been weakened and copes with structural deficiencies.
 - b) The special export regime for certain agricultural products like asparagus (Law No 27360), which limits labour conditions for workers in this sector, will remain in place at least until 2021.
 - c) The legislation on health and safety at work was weakened in 2014.

Our study cannot demonstrate how fundamental the violations of the labour commitments under the trade agreement are, nor what the effects on trade and investments are.

- 3) *With regard to dialogue with civil society*, the Peruvian government fails to organise an effective domestic dialogue with a view to monitor the chapter on sustainable development. Consultations do not take place.

Based on these conclusions, and analysis of EU policy, we put forward the following recommendations:

- *Further systematic research is needed*, in consultation with among others the International Labour Organisation and civil society. This can also result in consultations between the EU and the Peruvian authorities.

- Despite difficulties, the EU could *act in a more proactive way to enhance dialogue with and among civil society* (in particular trade unions) in Peru. Current initiatives do not extend far enough. The recent Civil Society Roadmap can provide an important opportunity in this regard.
- *Coherence of EU policy can improve.* Institutional ownership to enhance labour norms via trade policy is quite limited as of now. The implementation of the chapter on sustainable development should be complemented by advanced cooperation in the social field. While budget is foreseen to achieve the latter goal, it is problematic that these budgets will phase out in 2020.
- *Corporate Social Responsibility* could be a way to make progress in the short run. Corporate Social Responsibility is (shortly) mentioned in the chapter on sustainable development and there is a consensus on its importance among the Parties as well as among the business world. Some pitfalls however exist. In no way could Corporate Social Responsibility replace the need for respect of (fundamental) labour rights.
- In future agreements the *EU should urge to undertake more specific reforms* before the entry into force of the agreement. Pre-ratification conditionality can be very effective.
- *Civil society organisations* can play an important role in monitoring and agenda-setting. In addition they could proactively stimulate dialogue with and among civil society in Peru, thereby exploiting the opportunities provided for by the agreement to the largest extent possible.

In general terms more comprehensive and systematic research is needed, including surveys with employers and employees, to document the situation at hand. This study shows that Peru's compliance with labour norms fails in several regards. The onus of proof lies with the governments and business world, as they are the strongest actors in this whole story. If the EU takes the commitments of the sustainable development chapter seriously, it should work more proactively in monitoring its compliance.

Resumen Ejecutivo

Este estudio demuestra que tanto el gobierno del Perú como la Unión Europea podrían hacer más para garantizar el cumplimiento de los compromisos que hicieron en su acuerdo comercial en materia de normas laborales, y que la sociedad civil puede desempeñar un papel importante.

La política comercial europea es cada vez más criticada. En respuesta a ello, la Unión Europea incorpora en sus acuerdos más recientes un capítulo sobre el desarrollo sostenible, incluyendo disposiciones laborales y ambientales. Este es el caso del acuerdo UE-Perú-Colombia, que entró en vigor en 2013. A pesar de que el acuerdo contiene un capítulo sobre el desarrollo sostenible y que el respeto de las normas laborales en Perú es generalmente muy baja, no se ha estudiado el cumplimiento de los compromisos laborales. Nos centramos en el sector agrícola de exportación, dentro del contexto más amplio de los derechos laborales.

Para ello hacemos *un marco analítico que distingue tres compromisos*: (1) el cumplimiento de las normas laborales fundamentales de las Organización Internacional del Trabajo, (2) la no reducción de la legislación laboral doméstica, y (3) fomentar el diálogo con la sociedad civil.

El análisis del acuerdo propio muestra una formulación conservadora y flexible de que estos tres compromisos. Los compromisos en el acuerdo UE-Perú-Colombia son de menor alcance en comparación con la mayoría de los otros acuerdos comerciales de la UE, especialmente en relación con el diálogo con la sociedad civil.

En cuanto al *cumplimiento con el acuerdo*, de las entrevistas con las partes interesadas en la UE y Perú, de documentos relevantes y de literatura secundaria, se desprende que:

- 1) *Con respecto a las normas fundamentales del trabajo de la Organización Internacional de Trabajo*, el gobierno peruano no logra estimularlas e implementarlas de manera efectiva. Esto se aplica en particular a los derechos sindicales.
- 2) *En cuanto a la legislación laboral doméstica*, hay indicios de reducción de jure o de facto sobre (a) la inspección del trabajo, (b) los regímenes especiales de exportación, y (c) la salud y la seguridad en el trabajo.
 - a) La Agencia para la Inspección del Trabajo (SUNAFIL) ha sido debilitado de facto y demuestra deficiencias estructurales.
 - b) El régimen especial de exportación de determinados productos agrícolas como los espárragos (Ley N° 27360), que restringe las condiciones sociales para los trabajadores empleados en el sector, seguirá aplicándose hasta al menos 2021.
 - c) La legislación sobre salud y seguridad en el trabajo ha sido reducida en 2014.

Nuestra investigación no puede demostrar hasta qué punto estas violaciones de los compromisos del tratado son fundamentales y cuál es su impacto en el comercio y la inversión desde la entrada en vigor del acuerdo comercial.

- 3) *En cuanto al diálogo con la sociedad civil*, el gobierno peruano se abstiene de organizar un diálogo nacional eficaz con el fin de supervisar el capítulo de desarrollo sostenible. Las consultas no tienen lugar.

Sobre la base de estas conclusiones y el análisis de la política de la UE, se llega a las siguientes recomendaciones:

- *Se requiere más investigación sistemática*, en consulta con, entre otros, la Organización Internacional de Trabajo y la sociedad civil. Esto también puede dar lugar a consultas entre la UE y el gobierno peruano.
- A pesar de las dificultades, la UE podría actuar más proactivamente para fomentar el diálogo con / entre la sociedad civil (especialmente sindicatos) en el Perú. Las iniciativas existentes aún no están llegando lo suficientemente lejos. La reciente Hoja de ruta de la Sociedad Civil puede ser una oportunidad importante.
- Puede mejorarse *la coherencia de las políticas de la UE*. Es limitada la institucionalidad para la promoción de los derechos laborales a través de la política comercial. La implementación del capítulo de desarrollo sostenible debe complementarse con una amplia cooperación en el ámbito social. Para este último pronto se liberarán fondos, pero el problema es que estos se terminan en el año 2020.
- *La Responsabilidad Social Empresarial* puede ser una forma de avanzar en el corto plazo: en el capítulo de desarrollo sostenible se menciona (brevemente) la Responsabilidad Social Empresarial y hay un consenso entre las partes y la comunidad empresarial sobre la importancia de esto. Sin embargo, hay también escollos. Así la Responsabilidad Social Empresarial no puede sustituir el cumplimiento de normas laborales (fundamentales).
- En los futuros acuerdos, *la UE debería insistir más en reformas específicas* que se implementan antes de que el acuerdo entre en vigor. La condicionalidad previa a la ratificación puede ser muy eficaz.
- Las organizaciones de la sociedad civil pueden jugar un papel importante en el seguimiento y la configuración de la agenda. También pueden promover de manera proactiva el diálogo entre la sociedad civil en/con el Perú y con ello aprovechar al máximo las oportunidades del acuerdo comercial.

En términos generales, para documentar la situación se necesita una investigación más amplia y sistemática, incluyendo encuestas a empleadores y trabajadores. Del estudio se desprende que el cumplimiento por el Perú de las normas laborales en diversas áreas es insuficiente. La carga de la prueba en contra parece residir en los gobiernos y el empresariado, ya que son los actores más fuertes en este contexto. Si la UE tome en serio los compromisos en el capítulo de desarrollo sostenible, debería proceder de manera más proactivo en la supervisión de su cumplimiento.

Zusammenfassung

Diese Studie zeigt, dass sowohl die Peruanische Regierung als auch die EU ihre Bemühungen verstärken könnten, die in ihren Handelsabkommen enthaltenen Verpflichtungen zum Thema Arbeitsnormen einzuhalten, und die Zivilgesellschaft in dieser Hinsicht eine wichtige Rolle spielen könnte.

Die Europäische Handelspolitik ist zunehmend umstritten geworden. In Reaktion darauf hat die Europäische Union (EU) in ihren jüngsten Handelsabkommen ein Kapitel zur nachhaltigen Entwicklung aufgenommen, welches Bestimmungen zu den Themen Arbeits- und Umweltschutz enthält. Dies ist unter anderem der Fall für das EU-Peru-Kolumbien Handelsabkommen, das im Jahr 2013 in Kraft getreten ist. Während das Abkommen ein Kapitel zur nachhaltigen Entwicklung enthält und obwohl die Achtung von Arbeitsnormen in Peru allgemein recht gering ist, ist die Einhaltung der Verpflichtungen zu Arbeitsnormen durch Peru im Rahmen des Abkommens bislang nicht untersucht worden. Wir konzentrieren uns in unserer Untersuchung auf den landwirtschaftlichen Exportsektor im breiteren Kontext von Arbeitsnormen.

Dabei verwenden wir einen analytischen Rahmen der drei Verpflichtungen unterscheidet: (1) Einhaltung der Kernarbeitsnormen der Internationalen Arbeitsorganisation (ILO), (2) Nicht-Absenkung des heimischen Arbeitsrechts, und (3) Förderung des Dialogs mit der Zivilgesellschaft.

Eine Analyse des Rechtstexts des Abkommens zeigt dass diese drei Verpflichtungen in einer konservativen und flexiblen Art formuliert sind. Die Verpflichtungen im EU-Peru-Kolumbien Abkommen sind weniger weitreichend als in den meisten anderen EU Handelsabkommen, insbesondere im Hinblick auf den Bereich des Dialogs mit der Zivilgesellschaft.

Im Hinblick auf die Einhaltung des Abkommens zeigen unsere Interviews mit Stakeholdern in der EU und Peru, sowie die Prüfung von relevanten Dokumenten und von Sekundärliteratur, dass

- 1) Im Hinblick auf die ILO Kernarbeitsnormen, die Peruanische Regierung weder erfolgreich in deren Förderung noch auch in deren Umsetzung ist. Das ist besonders für Gewerkschaftsrechte der Fall.
- 2) Im Hinblick auf das nationale Arbeitsrecht, es Hinweise auf eine de-jure oder de-facto Absenkung von (a) Arbeitsinspektionen, (b) Export Sonderregime und (c) Gesundheits- und Sicherheitsbedingungen am Arbeitsplatz gibt:
 - a) Das Arbeitsinspektorat (SUNAFIL) wurde de-facto geschwächt und kämpft mit strukturellen Problemen.
 - b) das Export-Sonderregime für bestimmte landwirtschaftliche Produkte wie Spargel (Gesetz Nr. 27360), das Arbeitsrechte für ArbeiterInnen in diesem Sektor beschränkt, wird zumindest bis 2021 in Kraft bleiben.
 - c) Die Gesetzgebung zu Gesundheit und Sicherheit am Arbeitsplatz wurde im Jahr 2014 abgeschwächt.

Unsere Studie kann allerdings nicht zeigen wie schwerwiegend die Verletzungen der arbeitsrechtlichen Verpflichtungen des Handelsabkommens sind, noch auch welche Effekte dies auf Handel und Investitionen hat.

- 3) Im Hinblick auf den Dialog mit der Zivilgesellschaft, die Peruanische Regierung es verabsäumt einen effektiven Dialog zu organisieren, der ein Monitoring zur Umsetzung des Kapitels zur nachhaltigen Entwicklung ermöglicht. Es finden keinerlei Konsultationen dazu statt.

Auf Basis dieser Schlussfolgerungen und der Analyse der EU Politik kommen wir zu den folgenden Empfehlungen:

- Weitere systematische Forschung ist nötig, unter anderem in Konsultation mit der Internationalen Arbeitsorganisation und der Zivilgesellschaft. Dies kann auch Konsultationen zwischen der EU und der Peruanischen Regierung einschließen.
- Trotz Schwierigkeiten könnte die EU den Dialog mit und zwischen der Zivilgesellschaft (besonders Gewerkschaften) in Peru fördern. Bestehende Initiativen gehen diesbezüglich nicht weit genug. Die jüngste Civil Society Roadmap könnte eine günstige Gelegenheit dazu bieten.
- Die Kohärenz der EU Politik kann verbessert werden. Zurzeit ist die institutionelle Ownership zur Förderung von Arbeitsnormen im Rahmen der Handelspolitik begrenzt. Die Implementierung des Kapitels zu Nachhaltiger Entwicklung sollte daher von einer verstärkten Kooperation im gesellschaftlichen Bereich ergänzt werden. Während dafür finanzielle Mittel vorgesehen sind, ist es problematisch, dass diese Budgets im Jahr 2020 auslaufen werden.
- Unternehmensverantwortung (CSR) könnte ein Mittel sein um kurzfristig Fortschritte zu machen. CSR wird (kurz) im Kapitel zu nachhaltiger Entwicklung erwähnt und es besteht Konsens über ihre Bedeutung zwischen den Vertragsparteien als auch im Unternehmenssektor. Es bestehen jedoch auch Tücken. So darf CSR keinesfalls die Notwendigkeit zur Einhaltung (fundamentaler) Arbeitsrechte ersetzen.
- In zukünftigen Abkommen sollte die EU den Druck zur Umsetzung spezifischer Reformen vor Inkrafttreten des Abkommens erhöhen. Die Maßnahme einer Vor-Ratifikationskonditionalität kann sehr effektiv sein.
- Zivilgesellschaftliche Organisationen können eine wichtige Rolle im Monitoring und dem Agenda-Setting spielen. Zusätzlich könnten sie pro-aktiv den Dialog mit und zwischen der Zivilgesellschaft in Peru stimulieren, und damit den durch das Abkommen vorgegebenen Spielraum größtmöglich ausreizen.

Darüber hinaus ist umfassende und systematische Forschung nötig, einschließlich Umfragen mit Arbeitgeber- und ArbeitnehmerInnen, um die Lage vor Ort zu dokumentieren. Diese Studie zeigt dass die Peruanische Einhaltung von Arbeitsnormen in mehrerlei Hinsicht versagt. Die Beweislast liegt hier bei den Regierungen und den Unternehmen, sind sie doch die stärksten Akteure in diesem Feld. Wenn die EU die Verpflichtungen des Nachhaltigkeitskapitels in ihren Handelsabkommen ernst nimmt, sollte sie pro-aktiver Maßnahmen zum Monitoring von dessen Umsetzung ergreifen.

1. Introduction

1.1. Aim of the study

European Union (EU) trade policy has become increasingly contested and politicised. Citizens and politicians have become more and more concerned about the human rights and sustainable development implications of free trade. The European Commission in its 'Trade for All' Strategy has recognized the need for a more value-based trade policy. In the same vein, the EU has included a chapter on Trade and Sustainable Development in recent free trade agreements. However, there is still much uncertainty about the specifics of these legal commitments and about their implementation in practice. In this study, we aim to assess the labour rights commitments in the EU-Peru-Colombia agreement, with a specific focus on Peru and the agricultural sector.

The **first aim** of this Working Paper is to assess the **compliance** of Peru with the commitments made under the sustainable development chapter of the EU-Peru-Colombia trade agreement.

- a) With **commitments**, we refer to the Sustainable Development Title of the EU-Peru-Colombia agreement that entered into force in 2013.
- b) Specifically, we examine the commitments on **labour rights** (law and practice), with a focus on the agricultural sector and on recent evolutions.

The **second aim** is to suggest **recommendations** for stakeholders involved (EU policy-makers, NGOs and trade unions in Peru and the EU). In this regard, we consider what the Parties to the agreement (Peru and the EU) and civil society (including trade unions) from both sides could do, are doing, or should be doing under the agreement.¹

The **third aim is** to suggest areas for **further research and investigation**. While this study cannot derive systematic and generalisable results on all aspects of labour rights in the agricultural sector in Peru, because of practical, methodological and budgetary constraints, we do identify a number of issues that beg for close monitoring and follow-up examination.

Academic research on the EU's inclusion of labour norms in trade has expanded in recent years (see among others Marx et al. 2015). Most studies focus on the *design* of the EU's trade-labour linkage, thereby often comparing it to the trade-labour linkage of the US (Campling et al. 2014; International Institute for Labour Studies 2013, 2016; Vogt 2014 2015). In here a distinction is often made between a 'soft' EU approach and a 'hard' US approach as the former does not include sanctions in case the labour commitments are violated. Research on the *impact* of the EU's trade-labour linkage however is scarce (for exceptions see among others Campling et al. forthcoming; Ebert 2015; Oehri 2015a, 2015b; Van den Putte 2016). These studies suggest that despite the EU's soft approach, the trade-labour linkage can have a positive indirect impact on the labour situation in third countries. Studies addressing the *compliance* of third countries with the trade-labour linkage are arguably even more exceptional. When assessing compliance the focus in academic research as well as in public debate lies on countries where labour violations attract international media attention, such as Colombia (Brando et al. 2015).

¹ Thus, the aim is not to examine the impact of the trade agreement on the social situation in Peru. This would be almost impossible to assess in the short term. Even the impact of the agreement on trade flows has been limited, as can be seen from the most recent implementation reports of the European Commission (European Commission 2014; European Commission 2016b).

Methodologically, the study is based on data from secondary literature, analysis of the trade agreement, ongoing research at the Centre for EU Studies at Ghent University, and most importantly a field visit to Lima and Trujillo between February 27 – March 8, 2016. Between February and April 2016 about 40 semi-structured interviews were undertaken with officials from the EU, Peru and some EU member states, employers and business associations, exporters, academics, NGO representatives, activists, trade unionists, and workers. Interviews were also held with officials and stakeholders in Brussels. We also attended the 3rd EU Domestic Advisory Group (DAG) meeting of the EU-Peru-Colombia agreement on 7 April 2016. We do not reveal the names of interviewees².

1.2. Peru and agriculture

During the negotiation, ratification and implementation phases of the agreement, most of the debate in the EU concerning the labour and human rights dimension of the agreement has focused on Colombia. Despite being somewhat ‘in the shadow’ of Colombia, international indicators and our preliminary research suggests that **significant problems with labour rights** exist in Peru (see below).

Furthermore, we are interested in Peru because of a **complaint made under the US-Peru agreement** concerning labour rights violations in the agricultural and textile export sectors in this country (The International Labor Rights Forum 2015)³. This obviously raises the question whether similar complaint or monitoring mechanisms exist under the EU agreement, and more generally, how the EU should/could address possible violations of social commitments made under the agreement.

Since Peru does not export much textile to the EU market⁴, we focus mostly on **agriculture**. Even compared to the US market, Peru has exported a large amount of its agricultural products to the EU market (e.g. asparagus, grapes, avocados⁵). The agricultural export sector has been one of the main drivers of Peru’s growing economy in the last decade in terms of the amount of companies, export volume and jobs (International Commission of Jurists 2014: 12-13; CEPAL/OIT/FAO 2012a: 199). Between 2000 and 2015 this sector has known an annual growth rate of 16 % and in 2014 the sector accounted for about 5,000 mio US dollars (Mincetur 2015). In 2014 the agricultural sector as a whole represented 5.3 % of the national Gross Domestic Product (GDP) (IESI 2016: 14) and the majority of formal workers in Peru is employed in the agricultural export sector (CEPAL/OIT/FAO 2012b: 267). According to the former Peruvian Minister of Trade, Magali Silva, the success of the agro export sector as the motor of Peru’s economy can be attributed to the shared vision in both the public and private sector about how the sector should develop as well as to the large amount of free trade agreements concluded by Peru (Mincetur 2015a).

The agricultural sector promotion law (Law No 27360, see also below) seems to be paramount in this story. This law was enacted in 2000 to promote private investment, increase competitiveness and productivity of the sector by diminishing labour costs and granting tax exemptions to companies (CEPAL/OIT/FAO 2012: 228). The first article of the law, concerning the overall objective, states that the primary interest of the law is the

² We do this for deontological reasons, because several interviewees have asked not to reveal their names or institutions. In addition, for the purpose of this report, extensive referencing to interviews would hinder the readability of the Working Paper. If our interviewees have given permission to do so, we can provide names upon request. When necessary quotations from Spanish have been translated into English.

³ More information about the current status of the complaint procedure can be found on the website of the US Department of Labour: <https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions>.

⁴ In 2014 Peruvian textile and clothes exported to the EU counted for only 127 mio Euro (European Commission 2016c: 5). Agricultural food products accounted for a value of 2,274 mio Euro.

⁵ Peruvian export of asparagus to the EU accounted for a total value in 2014 of 246 mil US dollars. Avocados accounted for a value of 165,866 and fresh grapes for a value of 163,316 (Ministerio de Comercio Exterior y Turismo de Peru 2015).

investment and development of the agricultural sector. While this study has an explicit focus on this agricultural export sector, we also consider the broader context and evolution of labour rights in Peru.

1.3. Labour rights in Peru

Peru's value on the Human Development Index (HDI) for 2014 was 0.734 – which put the country in the high human development category – positioning it at 84 out of 188 countries and territories (UNDP 2015). Between 1980 and 2014, Peru's HDI value increased from 0.577 to 0.734, an increase of 27.2 % or an average annual increase of about 0.71 %. GDP growth was 2.4 % in 2014 (World Bank n.d.).

As recognised by the European Commission, some progress has been made regarding social policy. In 2015 a social pension was set up for the elderly and for people with disabilities (at least for the poorest people), and public funding for social programmes has increased in recent years (European Commission 2016a: 251). However, problems concerning the implementation of core labour rights have also been identified, as will be elaborated below.

The labour rights situation in Peru displays three characteristics.

- First, the level of **informality** is very high. However, the country has known a decline in the percentage of workers working in the informal sector compared to the total amount of employment (excluding the agricultural sector) (FORLAC 2014). While in 2004 about 75 % of the workers were informal, this has decreased to a little more than 68 % in 2012. This improvement can be explained by economic growth and institutional factors. There is less informality in the agricultural sector, which is instead characterised by temporary contracts (see below).
- Second, the labour law is highly **fragmented**. While Peru has an elaborate labour code, legislation is dispersed resulting in almost 40 different labour regulations applying to different kinds of work (OECD 2015: 87-89; Verbeek 2014). While the country once had a highly regulated labour market, two flexibilisation rounds (one in 1991-1992 and another one in 1995-1996) deteriorated working conditions. This also applies to agriculture, with the agricultural sector promotion law (see below).
- Third, there are serious shortcomings with the **core labour standards (CLS)**. While Peru has ratified the eight fundamental conventions of the International Labour Organisation (ILO) on trade union rights, child labour, forced labour, and non-discrimination, concerns have been raised regarding the implementation. This also seems to apply to the agricultural sector, where unionisation is particularly low (see below).

Peru currently has twelve bilateral trade agreements of which four contain a labour component (with the US, the EU, Canada and Korea). As discussed before, not much is known about how these labour provisions in trade agreements could improve labour rights.

1.4. Sustainable development and the EU trade agreement

Recent EU trade agreements contain a **separate Chapter or Title on 'Trade and Sustainable Development'** where the Parties pledge to respect a number of social and environmental principles. This resonates with a growing concern that trade agreements should not only promote economic interests but that these should also take broader values into account. This has become even more important since the Lisbon Treaty has increased the European Parliament's power in the ratification of EU trade agreements and since the

unprecedented level of contestation against trade agreements in the context of the trade negotiations with the US (the Transatlantic Trade and Investment Partnership or TTIP). Given the attractiveness of the vast European market to exporters all over the world, it seems only logical that the EU would be using its ‘market power’ (Damro 2012) to promote sustainable development and human rights.⁶

Although some fear that the EU may (mis)use ethical concerns for protectionist purposes, there are no indications that this has been the case. Quite the contrary: most critics would assert that the EU has been too ‘soft’ in promoting sustainable development through its trade leverage (Velluti 2015; Vogt 2015). The EU does indeed prefer a **‘promotional’ or ‘cooperative’ approach** to the trade-labour linkage. The Parties’ compliance with social and environmental principles will be discussed within and between civil society groups from both sides. Moreover, government consultations can take place in case of violation, which could ultimately result in the creation of a Panel of Experts. However, no sanctions are foreseen if the conclusions of this panel are not followed up. In contrast to the US-Peru agreement, **trade or financial sanctions are not foreseen.**

Thus, whereas the agreement provides a ‘window of opportunity’ to discuss the Parties’ compliance with labour rights and environmental protection, it might equally be seen as ‘window dressing’ for the purpose of legitimising the free trade agreement. In order to assess the flaws and merits of the EU’s so-called soft approach, we should not only consider the legal provisions but also the political practice. Taking into account that this agreement only entered into force on March 1, 2013, it is only possible to draw provisional conclusions.

In order to assess the compliance of Peru with the sustainable development Title of the trade agreement with the EU, we need to clarify what exactly the Parties have committed to when it comes to labour rights. This will be elaborated in the next section.

2. Analytical Framework

In order to assess Peru’s compliance with the labour rights commitments under the sustainable development Title, we need to specify what exactly the agreement stipulates in this regard. Despite several ambiguities in the legal text of the agreement, we can discern **three basic commitments**: (1) upholding ILO CLS, (2) not lowering domestic labour law, and (3) promoting civil society dialogue. Below we will specify each of these commitments with reference to the legal text of the agreement. These constitute our framework for the subsequent evaluation of the compliance.

2.1. Upholding ILO Core Labour Standards

First, the parties commit to complying with the CLS of the ILO. It concerns four internationally recognised principles: (1) the freedom of association and the effective recognition of the right to collective bargaining, (2) the elimination of forced or compulsory labour, (3) the abolition of child labour, and (4) the elimination of discrimination in respect of employment and occupation.

In 1998 the ILO members identified these four categories of labour rights or principles that are ‘core’ and universal (Novitz/Fenwick 2010; Langille 2005). Each category corresponds to two ILO Conventions, respectively (1) Conventions No. 87 and 98, (2) Conventions No. 29

⁶ In the Lisbon Treaty the EU commits itself to conduct its common commercial policy in the context of the principles and objectives of the Union’s external action (art. 207(1) TFEU). These include sustainable development, free and fair trade and the protection of human rights (art. 3(5) TEU). The ‘Trade for all’ strategy emphasizes “responsible” and “value-based” trade policy (European Commission 2015).

and 105, (3) Conventions No. 138 and 182, and (4) Conventions No. 100 and 111. By virtue of their ILO membership, countries commit themselves to respect and promote these rights, even if they have not ratified the corresponding Conventions.

In the sustainable development chapter of the EU-Peru-Colombia trade agreement, each Party commits itself to ‘the promotion and effective implementation in its laws and practice and in its whole territory’ (Art. 269.3) of these ILO CLS. The agreement does not explicitly stipulate that ratification of the eight ILO Conventions is necessary. Although this is less relevant here since Peru (and all EU member states) have already ratified these conventions, it still constitutes a weakening of legal commitments compared to the previous trade regime Peru was part of, the Generalised System of Preferences Plus (GSP+). Peru could use the EU’s GSP+ system for its exports to the European market before the free trade agreement (with a transitional period until January 2016). This system included a social conditionality system that required the “ratification and effective implementation” of all core conventions.

The Title on sustainable development also emphasises the Parties’ national sovereignty to regulate in the social field. Each Party has the “sovereign right [...] to establish its domestic policies and priorities on sustainable development, and its own levels of environmental and labour protection”. However, it is added that this should still be “consistent with” the abovementioned ILO CLS (Art. 268).

2.2. Non-lowering domestic labour law

Second, the Parties make a strong commitment not to *de jure* or *de facto* lower the level of protection provided in the labour law, at least not in a way that would foster trade or investment. Although it is not stated in such terms, this concerns a guarantee against ‘social dumping’. Social dumping occurs when a government weakens its labour protection in order to increase its international competitiveness.

The obligation to “upholding levels of protection” is written down very clearly in Art 277. It states that “no Party shall *waive or otherwise derogate from* its environmental and labour laws in a manner that reduces the protection afforded in those laws, to encourage trade or investment” (Art. 277.1, italics added), and that “A Party shall *not fail to effectively enforce* its environmental and labour laws through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties” (Art. 277.2, italics added).

As the italics in the quotations show, it is clear that this commitment concerns not only the legal level of protection, but also the practical enforcement or any other forms of derogation to the level of protection that the law seeks to establish. In short, we notice both a *de jure* and *de facto* commitment.

While this broadens the scope of this commitment, there is also a limitation in that there needs to be an impact of the non-lowering on trade and investment. The difficulty is not only that one has to prove that there has been a weakening of labour standards, but also that this has been done *in a way that trade and/or investment have been encouraged*. Both the intentionality behind such measures and their economic impact on trade and investment are difficult to demonstrate.

Again, it is added that the Parties have the right to regulate in this area. They have “the right [...] to a reasonable exercise of discretion with regard to decisions on resource allocation relating to investigation, control and enforcement of domestic [...] labour regulations and standards, while not undermining the fulfilment of the obligations undertaken under this Title” (Art. 277.3) and “Nothing in this Title shall be construed to empower the authorities of a

Party to undertake labour [...] law enforcement activities in the territory of another Party” (Art. 277.4). These provisions aim to establish limitations against international interference into the domestic regulation and application of labour rights.

In addition to these two commitments, there is also a brief provision on ensuring high levels of labour protection. Art. 268 contains a statement that each party “shall strive to ensure that its relevant laws and policies provide for and encourage high levels of [...] labour protection”. This is a general commitment at the level of intentions rather than results.

2.3. Promoting civil society dialogue

Third, civil society meetings should take place in order to discuss and monitor these commitments on sustainable development. These meetings should be organized at two levels: domestically (within each Party) and internationally (involving civil society from each Party).

The promotion of civil society dialogue constitutes a relatively new and unique element of the EU’s approach to promoting the trade-labour linkage. It fits within the view that soft and cooperative mechanisms are more legitimate and more effective in the long run. Such dialogues serve to monitor the implementation of the Sustainable Development Title. More generally, it also aims to give a voice to members of civil society that may be well informed of violations of labour rights but that are marginalised within the domestic sphere. As such it could be said that the civil society performs both a technical function (improved monitoring of the agreement) and a political function (democracy and human rights) (see Orbie/Martens/Van den Putte 2016).

The **domestic** mechanisms of each party (see Art. 281) should “have a balanced representation”. Their task seems to extend beyond merely discussing the implementation of the Sustainable Development Title: they “may submit opinions and recommendations on the implementation of this Title, including on their own initiatives”. Such a domestic mechanism is often called a Domestic Advisory Group (DAG).

The **international** mechanism will take place in the context of the annual meeting of the Parties’ Sub-committee on Trade and Sustainable Development, which is the intergovernmental body that oversees the implementation of this Title. The same stakeholders as in the domestic mechanism should be given the opportunity to participate in these sessions. It concerns open meetings in which also the public at large can attend. The purpose is “to carry out a dialogue” between civil society on the one hand and the governments on the other hand on the implementation of the Sustainable Development Title.

Again, as with the two previous commitments, there is a **significant degree of flexibility for governments**. The articles on civil society involvement are written in a way that leaves much discretion for each of the Parties, thereby limiting the leeway for the civil society forums. A **comparative analysis** with the other EU trade agreements makes clear that the civil society provisions in the EU-Peru-Colombia agreement are even more constrained than in most other agreements⁷.

⁷ This evaluation is the result of a joint study of the authors together with Myriam Oehri (University of Lucerne) and Deborah Martens (Ghent University).

Table 1: Flexibility of civil society provisions: comparative analysis

EU-Peru-Colombia Agreement	Other agreements
Opinions/recommendations “through the respective internal channels of the Parties”; “constitution and consultation [...] in accordance with domestic law”	Not applicable (all other agreements)
Nothing on ‘independence’ members	“Independent” (all other agreements)
Possibly existing “committees or groups”	Creation of DAG (Korea)
When existing groups: nothing on strengthening	Strengthening existing mechanisms (Central-America)
No clear linkage domestic and transnational meetings	Linkage (most agreements)
DAG communications cannot be requested in context of consultations	DAG communications can be requested (e.g. Korea)
If government consultations: no interaction with domestic mechanism	One-way or two-way interaction
Panel of Experts should not seek advice from civil society forums	Panel of Experts should/may seek advice (most agreements)

There are at least eight issues where the agreement with Peru is more constrained (see also Table 1):

- First, the constitution and consultation of domestic civil society mechanisms is to take place in accordance with domestic law (art. 281), which provides a lot of leeway to the governments on how to organise the domestic mechanism. Contrary to other agreements, the provisions in the EU-Peru-Colombia agreement stipulate that the possible opinions and recommendations should happen “through the respective internal channels of the Parties”, and that their “constitution and consultation ... shall be in accordance with domestic law”.
- Second, in contrast to for example the EU-Korea agreement (art. 13.12(4)), it is not necessary to establish new domestic mechanisms for the purpose of the trade agreement (art. 281). Thus, there is no need to set up a separate mechanism to follow up on the labour (and environmental) provisions of the EU trade agreement.
- Third, while the use of an existing mechanism as such would not be problematic *per se*, it would probably function more effectively if the agreement would stipulate, like is the case in the EU-Central America agreement that when existing mechanisms are used for the domestic monitoring function, that these need to have the “opportunity to reinforce and develop their activities” with a view to this new task (footnote 45 in art. 294(4)).
- Fourth, and again in contrast to the EU-Central America agreement (art. 291(5)), the provisions for the domestic civil society mechanism do not specify that members need to be “independent” (art. 281).
- Fifth, and in contrast with several other agreements, the provisions in the EU-Peru-Colombia agreement do not provide for a clear link between the domestic and the transnational mechanism. The domestic mechanism is constructed in such a way that

this remains a purely domestic matter. Thus, the work of the Peruvian and Colombian DAG do not automatically feed into the transnational meetings.

- Sixth, contrary to for example the EU-Korea agreement (art. 13.14(1)), the agreement does not mention that one Party “may request consultations with the other Party regarding any matter of mutual interest arising under this Chapter, including the communications of the Domestic Advisory Group(s)”.
- Seventh, contrary to several other agreements, there is no provision that (in case of a dispute) the DAG interacts with the government consultations.
- Eighth, there is no provisions stating that in case of a dispute the Panel of Experts can or should seek the advice from the civil society mechanisms as is the case for example in the Korea agreement (art. 13.15(1)).

As will become clear below (see Table 3), these flexibilities in the legal provisions of the agreement are **not merely theoretical**. The first six already have clear practical implications for the (non-)functioning of the civil society mechanisms in Peru. The seventh and eighth have not yet been relevant because of the absence of a formal dispute under the sustainable development chapter.

2.4. Summary: Conservative and flexible approach

Based on this analysis, we can conclude that the commitments in the sustainable development Title are

- a) **conservative**, in the sense that they mostly aim to maintain the current situation (e.g. on domestic labour law and civil society mechanisms); no specific and additional labour reforms are required, nor is it necessary to establish a new civil society dialogue
- b) **flexible**, in the sense that there is much leeway for the governments when it comes to labour protection at the domestic level and the functioning of the civil society mechanisms

Specifically, on (1) upholding CLS and (2) non-lowering domestic labour law: there is a significant degree of flexibility for governments, provided that (i) domestic labour protection is consistent with the CLS of the ILO, and (ii) a reduced de jure or de facto level of protection does not serve to foster trade or investment. On (3) promoting civil society dialogue: there is a significant degree of flexibility for governments, provided that (i) a domestic committee or group should exist, (ii) it should be consulted by its government, and (iii) the same stakeholders should be given the opportunity to participate in the transnational meeting.

This lenient approach is also illustrated in the provision that “flexible, voluntary, and incentive-based mechanisms” will be encouraged to promote the coherence between trade and sustainable development (Art. 271.4). Furthermore, the Parties agree “to promote best business practices related to corporate social responsibility” (Art. 271.3).

When observers and academics characterize the EU’s approach as being ‘soft’, they usually refer to the absence of sanctions (Campling et al. 2014; Horn/Mavroidis/Sapir 2009; International Institute for Labour Studies 2016, 2013; Vogt 2014). However, this analysis shows that, even when we leave the sanctions debate aside, the EU is being soft in the commitments negotiated with third parties. What this implies in practice, will be addressed in the next section.

3. Main Findings

3.1. Upholding ILO Core Labour Standards

Peru has ratified the eight ILO Core Conventions. However, **serious shortcomings can be noticed when it comes to the “implementation in practice”**, as requested in Art. 269.3 (see above).

Reports and indicators from international institutions show that practices of **child labour, forced labour, discrimination, as well as violations of trade union rights**, continue to exist in Peru; and this is also the case in the agricultural sector. In Peru 33.5 % of children aged five to 14 are engaged in child labour (UNDP 2015; UNICEF n.d.). Most of them work in the agricultural sector or on the street. An estimated 0.218 % of the population in Peru is in modern slavery (Walk Free Foundation 2014). Female participation in the labour market is 68.2 % compared to 84.4 % for men (UNDP 2015). 22.3 % of parliamentary seats are occupied by women and 56.3 % of adult women have reached a secondary level of education (or higher), compared to 66.1 % for men.

Interestingly, these shortcomings were already reported by the European Commission. In its assessment report on the GSP+ scheme, the Commission analyses Peru's compliance with the eight conventions, partly relying on the findings of the ILO expert bodies (European Commission 2016a). It concludes that “Peru has been taking several steps and has made some progress in implementing the ILO core labour standards”, in particular regarding forced labour and child labour. However, it also finds that “Peru faces problems in practically implementing and enforcing the fundamental conventions” and that “stronger efforts are required” (European Commission 2016a: 260). Also Mujica argues that although there have been improvements in the national policies on child labour and forced labour, there continue to be problems in practice (Mujica 2015: 8-10).

We will focus on **trade union rights**, as covered under ILO Conventions 87 and 98 on freedom of association and collective bargaining. First, the situation seems to be particularly problematic in this area. There is no clear evidence of any progress when it comes to trade union rights – on the contrary (see below). Second, as ‘process rights’ these can create an enabling environment to protect labour rights. Through the empowerment of workers, improvements in ‘outcome rights’ such as child labour can be expected (Lieberwitz 2006; Barrientos/Smith 2007). Third, the representation of ‘labour’ is explicitly mentioned under the treaty provision on civil society dialogue (unlike e.g. children rights or gender/feminist organisations).

Peru gets score four⁸ in the 2014 Global Rights Index by the International Trade Union Confederation (ITUC), which stands for a country where systematic violations are reported (ITUC 2014). In such countries the government and/or companies continuously threat workers’ fundamental rights by serious efforts to crush the collective voice of workers. Relying on ILO reports, also the European Commission made a critical evaluation of trade union rights in Peru (see Box).

⁸ The ITUC Global Rights Index categorizes country data on the violation of ILO Conventions 87 and 98, thus violations of the right to freedom of association, the right to collective bargaining and the right to strike. The data used are based on a review of recent legislation and surveys in which ITUC-affiliates in 161 countries report on violence in practice. The index ranges from score 1 (irregular violation of rights) until 5+ (no guarantee of rights due to the breakdown of the rule of law).

Freedom of association and collective bargaining (Conventions 87 and 98)

While examining the implementation of the Freedom of Association and Collective Bargaining Conventions, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR, hereinafter referred to as Committee of Experts) made several recommendations in its 2013 report. Peru was recommended to amend the legislation with respect to the majority required to call a strike; ensure that authority to declare a strike unlawful lies not with the government but with an independent body (a point made several times by the Committee on Freedom of Association (CFA)); and ensure that federations and confederations of public servants may join confederations of workers of other professions.

In addition to comments made by the Committee of Experts, the CFA examined several containing allegations on acts of anti-union discrimination and obstacles to bargain collectively at a sectorial level.

As regards implementation and enforcement, the Committee of Experts noted an excessive duration of judicial proceedings examining complaints against trade union discrimination or interference.

Source: European Commission 2016: 257

Our interviews with workers and trade union representatives in Lima and Trujillo confirmed these obstacles to strike, to join a trade union, to bargain collectively, and to take legal action against trade union discrimination, also in the agricultural sector. For example, several interviewees mentioned that some workers did not receive a new contract because they were affiliated to a trade union, and that some were forced to de-unionise in order to see their contract renewed. They also mentioned practices whereby union representatives are framed to engage in fraudulent practices in order to damage their credibility. Further violations of trade union rights are the alleged practices of 'black lists' of trade unionists, which makes it almost impossible for dismissed workers to find another job.

While we cannot draw generalised conclusions based on our interviews, these instances confirm practices that have also been documented in other reports (International Commission of Jurists 2014; FOS 2015). For example, the general survey of the ITUC mentions several anti-union practices in agricultural export companies in 2014 with violent repression and detainment of workers at CAMPOSOL and the sacking of a newly elected trade union leader at TALSA (ITUC n.d.).

How can these alleged violations be explained, and what is the government's responsibility in this regard? Interviewees often point to the widespread use of **temporal contracts**. There has also been a complaint submitted by Peruvian trade unions to the ILO CFA on the use of temporal contracts (allegedly some people have been employed for more than 15 years on short-term contracts), resulting in a CFA request to the Peruvian government to examine "a way of ensuring that the systematic use of short-term temporary contracts in the non-traditional export sector does not become in practice an obstacle to the exercise of trade union rights" (Case No 2675, Report No 357, 2010). Temporal contracts are allowed under law 728 (the law for labour contracts and dismissals), which applies to all sectors (including agriculture). Specifically for the agricultural sector, there is the special law for the promotion of agricultural export products, Law No 27360, under which workers enjoy only half of the benefits of workers under the general labour law, cutting their benefits in half (see below). Temporal contracts are allowed to accommodate with the specificities of seasonal labour in agriculture. However, several sources posit that this possibility has been used beyond this original rationale. Large agricultural export companies cultivate several products all year round and employ the same labourers for these different products. In practice, however, the majority (more than 70 % according to Mujica 2015: 11; but up to 95 % in several companies according to other sources) of workers in the agricultural sector are employed on temporal

contracts of three months. As confirmed by a Peruvian labour lawyer, this constitutes an **illegal application of the law on temporal contracts**.

At the end of his mandate (July 2016) former Peruvian president Humala tried to reach a compromise among unions and the business community on labour reforms. One of the ideas was to foresee preferential hiring for employees working for a long period of time for the same employer in exchange for an expansion of the non-traditional export sector. This initiative was meant to address the report by the US Department of Labour in response to the complaint filed in July 2015. Negotiations were not concluded and it remains to be seen how Humala's successor, Kuczynski, will address the issues raised in the US report (Inside US Trade 2016a, 2016b).

Given the weakness of trade unions and workers vis-à-vis the employers and a lack of knowledge of workers on their rights, misuse of temporal contracts has continued to exist. In turn, the use of temporal contracts makes it more difficult for workers to organize themselves. In addition, it appears that Collective Labour Agreements are not bargained at the sectorial level in the agricultural sector (only the construction sector has such an agreement): Collective Labour Agreements are only concluded at the company level and often relate to the unionized members only.

A more fundamental explanation relates to the **strong anti-union climate** in Peru. This goes back to historical episodes of political violence and economic calamity in the 1980s that have been linked to trade union activities, and to the subsequent repressive reactions during President Fujimori's tenure (1990-2000). Fujimori took drastic measures to control the inflation and to strengthen the fight against subversion. In this context the flexibilisation of employment took place and the capacities for collective action were restricted. With the coming into power of Toledo in 2001, some positive developments took place for the trade unions. Among others social dialogue was fostered with the re-installment of the 'Consejo Nacional de Trabajo y Promocion de Empleo' (or General Council of Labour and Promotion of Employment) (CNTPE, hereafter: National Council). While this institution managed to get some output between 2001 and 2005, it has become marginalised in the previous decade (see below).

The anti-union climate has continued until today. With the slowdown of economic growth and government efforts for further flexibilisation of labour, there are few prospects for unions to become an important actor in society. This makes it difficult to find political support to implement the ILO Conventions 87 and 98. According to Mujica (2015: 10), **the government (referring to the Humala government, 2011-2016) lacks the capacity and willingness** to address this issue. He emphasises that this is not a problem of individual cases of violations of trade union rights, but that there has been a systematic policy behind the violations by the Peruvian governments. According to a European NGO representative with long expertise in labour rights in Peru, the situation for trade unions has even **worsened in recent years**.

Trade unions are also looked upon conspicuously by the employers and businessmen that we interviewed. They emphasise first and foremost that there is full employment in the agricultural export sector in Peru, which is seen as an important social achievement. They also mention the necessity to work with temporal contracts given the specificities of the sector. In addition, initiatives taken in the area of **Corporate Social Responsibility (CSR)** are strongly emphasised. It concerns activities that are aimed at improving the general working environment such as Christmas parties, birthday parties and football games, but also childcare, holidays for children and free medical assistance. When asking about trade union rights, we received either a dry and brief statement that everyone has the right join a trade union, or incomprehension about which constructive role unions might possibly play in the company.

In addition to the above-mentioned factors, we can also point to the (neoliberal) economic model, the individualisation of society, the enormous informality of the labour market, the unions' lack of credibility, and the absence of real left powers to align with. On top of this, the labour movement also suffers from internal divisions. This could be witnessed in the agricultural sector in Trujillo and also in the representation of the unions in Lima.

As a result of all these factors, it may not be surprising that the level of **unionisation is extremely low** in Peru. Peruvian unions never recuperated their status of the pre-Fujimori era. They are very weak and cannot be categorized as an important political force (Gil Piedra/Grompone Velásquez 2014; Sulmont Samain 2006). Trade union density was 4.2 % in 2012 (ILO n.d.). The figures are even lower in agriculture. In 2010 of 98,467 unionised people in the private sector only 2,651 concerned workers in the agricultural sector. So while unionization is already very low at the national level, it is even lower in the agricultural sector which only represents 2.69 % of all unionised people in Peru (RedGe 2012: 24)⁹. In 2010 about 1.4-1.7 % of workers in the agricultural sector were unionised. These are the figures of three major agricultural exporters in the region of Trujillo: TALSA: 65 unionised out of 4,000 labourers (1.63 %), Virú: 150-180 unionised out of 8,000 labourers (1.88-2.25 %), CAMPOSOL 400 unionised out of 15,000 employers (2.67 %). In the Ica region there used to be twelve trade unions, whereas now there are only two organisations that could be considered as trade unions.

In the agricultural export sector, it should be noticed that CAMPOSOL has recently (December 2015) negotiated a collective labour agreement¹⁰. This agreement deals among others with economic benefits, labour conditions, health, CSR and union aspects. However, trade union representatives at Camposol state that in practice the social situation at Camposol is not better than at other agricultural export companies.

The commitment of the Peruvian government to “the promotion and effective implementation in its laws *and practice*” (Art. 269.3, italics added) of the internationally recognised CLS seems to be failing in Peru. Focusing on freedom of association and collective bargaining and on the agricultural export sector, our anecdotal evidence confirms constraints and violations that were also reported by other sources. At the very least, they illustrate the need for further and systematic investigation.

This should be seen against the background of the widespread use of temporary contracts and the anti-unionisation climate in Peru. The marginalised role of trade unions may be all the more problematic considering the weak powers of labour inspection. As will be elaborated in the next section, this also relates to a limited political will by the Peruvian government.

3.2. Non-lowering domestic labour law

There are serious indications that the **level of labour protection has been lowered** in Peru since the entry into force of the trade agreement with the EU. Specifically, we point to three instances where it may be argued that the *de jure* or *de facto* labour protection has been lowered:

- a) *De facto* weakening of labour inspection
- b) *De facto* continuation of special (labour) regimes
- c) *De jure* lowering of health and safety at work
- d) Compliance with the trade agreement?

⁹ It should be noted that in 2008 97,337 people were unionised of which 2,367 in the agricultural sector (2.43 %) (RedGe 2012: 24).

¹⁰ The name is ‘Convenio colectivo celebrado entre SITECASA y CAMPOSOL S.A. Periodo 2015-2018’.

While our research suggests that such lowering has taken place, it remains difficult to ascertain (i) how fundamental this has been (in terms of impact on workers), and (ii) whether this has an (intended) impact on trade or investment.

a) **De facto weakening of labour inspection**

A clear instance of *de facto* lowering concerns the **labour inspection**. While Peru has one of the most regulated labour markets in the world, it is one of the countries in the world with the lowest level of compliance with labour regulation (OECD 2015: 87). Although a new inspection agency, named SUNAFIL (Superintendencia Nacional de Fiscalización Laboral), was created in 2012, there is a widespread consensus among interviewees that this agency has not functioned. Since it started functioning on April 1, 2014 at least four structural problems can be identified:

- **Underfunding:** As emphasised by an ILO official, the resources of SUNAFIL are “ridiculously low”. A labour lawyer stressed that the amount of underfunding is “amazing”. According to ILO calculations there should be 200.000 labour inspectors in Peru whereas there are currently only about 500 (SUNAFIL has 394 inspectors nationwide of which 227 are spread over nine regions (US Department of State 2015: 33)¹¹ – thus, only 0.25 % of the necessary number of labour inspectors. The US Department of Labour recently requested Peru to establish SUNAFIL offices in all regions as soon as possible (Department of Labor 2016: 19). According to Mujica in some regions there is only one labour inspector, and in the region of La Libertad there would be only nine inspectors although this is a major agricultural export region where more than 80,000 companies are active (Mujica 2015: 14).
- **Lack of independence from government:** SUNAFIL does not function autonomously from the Peruvian government and its Ministry of Labour. The idea behind its creation was to make labour inspection more independent. However, according to an expert in labour law, the labour inspectors that were previously based at the Ministry of Labour “only changed the shirt” and in practice “nothing has changed except the logo”. According to a former official of this ministry, in 2014 the government deliberately changed the management of SUNAFIL in order to enhance its grip on the agency (“if we cannot eliminate them we are going to control them”). As a result of the continuing efforts of the government to control SUNAFIL, four different directors have been appointed since its creation, and the agency is suffering from a leadership and credibility problem.
- **Lack of independence from companies:** One interviewee also castigated that in some cases labour inspectors are dependent on companies for their daily work, giving the example of an inspector who needed to rely on car transport provided by the company by lack of own means of transport. Lack of fuel and transport, having to pay for transportation and being denied access to businesses is a general problem for inspectors in Peru (US Department of Labor 2014: 4). According to one interviewee, some labour inspectors have been hired by the companies that they previously needed to inspect, a prospect that obviously damages the (perceived) independence of the labour inspectors.
- **Limited sanctioning power:** In the context of the creation of SUNAFIL, a law was passed provided that henceforth a “preventive approach” would be taken to promoting labour rights in Peru. Instead of sanctioning companies that do not comply with the labour law, the idea is to work on corrective measures that would be more effective in the long run. In case SUNAFIL finds an employer to be in violation of labour law, this employer has three years to prevent and correct violations (US Department of State

¹¹ In addition the Ministry of Labour and regional governments have 88 inspectors.

2014: 38). At the same time, the new law has weakened the criminal responsibilities of employers for accidents at the workplace. Criminal penalties are limited to “those cases where employers have ‘deliberately’ violated safety and health laws and where labor authorities have previously notified employers who have chosen not to adopt measures in response to a repeated infraction” (US Department of State 2015: 34; see also below on the new health and safety law).

- **Lack of authority:** Linked to the previous factors, SUNAFIL has lacked the authority to effectively function as an inspection agency. According to Mujica, quoting figures from the Peruvian Ministry of Labour, the number of breaches in the form of an obstruction of the labour inspection has increased since 2010 and constitutes about one third of the total number of breaches (Mujica 2015: 13).

Again, the problems with labour inspection seem to be recognised by the European Commission in its GSP+ report. It states that

*‘The institutional framework of labour inspections, one of the most important pillars in the defence of labour rights in the country, **has been weakening.**’*
(European Commission 2016: 257, bold added)

The report points to the insufficient budget, a lack of leadership continuity, and, interestingly, new economic measures by the government “that have limited the capacity for action of labour inspection” (European Commission 2016: 257). Also an ILO official confirmed that, “while the goal of the creation of SUNAFIL was to have a better labour inspection, **in practice it has become worse** because of a lack of resources”.

Only one interviewee from the business perspective argued that labour inspection in Peru is extremely strong. This is however a dissonant voice, even among those interviewee who are generally more balanced when assessing the social situation in Peru. The creation of an independent labour inspection agency was an election promise of President Humala, and can be seen in light of the improvements of the labour law requested by the US in order for the US-Peru trade agreement to get approval in the US Congress. There are strong indications that **it has been an empty shell and that it has de facto weakened labour inspection.**

b) De facto continuation of special (labour) regimes

Second, the continuation of the **Agricultural Sector Promotion Law** (Law No 27360) and the blocking of the project for a unified labour law might be seen as going against the commitments in the Sustainable Development Title.

The special export regime for agriculture already exists since 2000, and it was renewed in 2006 until the end of 2021. As stated before, the primary objective of the law was the investment and development of the agricultural sector. The labour movement criticizes the law for the flexibility that it provides to employers in the agricultural sector compared to the general labour law (e.g. decreasing by half the holidays, longer working hours and lower compensation for unfair dismissal) (CEPAL/OIT/FAO 2012b: 289).

Several sources also indicate that the law is no longer necessary, since its original objective has already been reached in the first ten years of its functioning (International Commission of Jurists 2014: 9). Indeed, the purpose of the agricultural export law was to provide opportunities to Peruvian producers to integrate in the international economy. According to the International Commission of Jurists, the law provides “highly flexible contract systems that favour investment but at the same time promote precarious employment and discourage

the formation of trade unions” (International Commission of Jurists 2014). It further states that

“it is evident that the aim of the regime established by Law No. 27360, Law for the Promotion of the Agriculture Sector, is to encourage investment and promote the growth of the agro-export economic activity. To this end, it establishes a legal labour regime that reduces the levels of protection in comparison with those enjoyed by workers subject to the general labour regime in Peru.” (International Commission of Jurists 2014: 35)

Precisely for this reason, a labour lawyer also posited that the law is not fair: it provides fewer benefits for the same work, only to lower the labour cost for companies. The law was also challenged before the Constitutional Court in Peru, which however confirmed its legality (CEPA/OIT/FAO 2012b: 286; International Commission of Jurists 2014: 11-12).

Over the past 15 years the Peruvian labour law has become so fragmented that “the exception has become the rule”. The general labour law has become hollowed out and, according to one interviewee, applies to only about ten % of the employees. In 2013 about seven % of all formally employed workers in Peru were working under the agricultural export law (Mujica 2015: 6). There have been **several attempts to streamline the agricultural export law, alongside other exceptional regimes, into one General Labour Law**. Soon after the re-installment of the CNTPE in 2001, attempts were already made to come to a unified labour law (Ministerio de Trabajo Peru n.d.). In 2011 new attempts were undertaken. While in 2012 there was allegedly a consensus on about 90 % of the articles, there is no political will from the government and even opposition from the employers’ side to approve this project (Fernandez-Maldonado Mujica 2015: 153; Plades 2014: 14). While the employers’ side aimed to continue the discussion in the CNTPE, the labour groups wanted the Peruvian government to resolve outstanding issues.

It remains to be seen whether the agricultural export law will be extended again after 2021, something which two interviewees mentioned as a likely scenario. Meanwhile, the Peruvian Association of Exporters (ADEX) has requested the prolongation of Law No 27360 until 2041, something for which the new president already expressed its support (Perú 21 2016). Labour reform doesn’t seem to be one of the priorities of the current president (Inside US Trade 2016a).

c) De jure lowering of health and safety at work

Third, **revision of the law on safety and health at work** constitutes a clear example of a *de jure* weakening of labour law in Peru. Notably, this has happened since the entry into force of the trade agreement. In 2011, a law on **safety and health at work** was approved (Law No 29783). It was considered to be a progressive law that had been elaborated with input from the labour movement. However, the new law was considered to bring along too many implementation costs for companies that lobbied for its modification. It was thus modified in July 2014 (Law No 30222), only shortly after it entered into force (in April 2014). It was changed on several points, such as the frequency with which medical checks need to take place (originally on an annual basis, every two years in the new law except for high-risk jobs), and the need for reallocation within the same company following an industrial accident (originally required, now only when there is a vacancy, which then in practice rarely happens). Importantly, as mentioned above, also the criminal responsibility of employers in the case of accidents at the workplace was lowered, making it less likely that accidents will lead to sanctions. Instead, the new law opts for a ‘preventive approach’. This is an important aspect because only in the construction sector there are one and two casualties every

month. In addition the modification of the law was passed without submitting it to tripartite dialogue (Plades 2014: 14).

Whereas it seems clear that these modifications have weakened the level of labour protection, evaluations of the nature of these changes vary from being “rather small” (according to a labour lawyer) to being “(very) significant” (according to NGOs and the labour movement). Trade unionists in the agricultural export sector state that the new law is not known or at least not applied by employers.

It should also be noticed that Peru has a very high level of **informal labour**. About 70-80 % of the labour market is informal. As a result, even the existing law only applies to 20-30 % of the workers. However, this does not apply to the agricultural sector where most workers have a formal contract.

Similar to the creation of SUNAFIL, the original law on safety and health was an electoral promise of former president President Humala (2011-2016). Again, however, his centre-left government proved unable or unwilling to implement the initiative. In the same context, it should be noticed that more progressive members of the ministry were dismissed and that a new Minister of Labour, who was considered to be closer to the business community, was installed. Because the economic and the political elite in Peru are closely interwoven, it becomes difficult even for centre-left politicians to create and enforce regulations and institutions that improve labour rights. This is further reinforced by the anti-union climate in Peru and the general Atlanticist, free trade orientation that has characterized the country in the previous years.

One interesting exception was the initiative for further flexibilisation for young workers, the ‘Ley Pulpin’, which aimed to reduce labour costs for young workers while at the same time cutting their benefits (such as wages and holidays) (OECD 2015: 89). After strong protest from especially young people around January 2015, the government had to withdraw the law. This is an example of how the lowering of domestic labour law has successfully been resisted. Observers note however that public support for trade union rights or health and safety at work in agriculture or construction is much less outspoken.

d) Compliance with the trade agreement?

Whereas deficiencies in the law and practice of labour rights in Peru clearly exist, it is more difficult to assess the compliance with the EU-Peru-Colombia trade agreement.

In the cases of (a) labour inspection and (c) safety and health, there has been a *de facto* and/or *de jure* lowering of the protection of labour rights. However, it is difficult to ascertain whether this has (intended to) encourage trade or investment (with the EU).

According to the European Commission’s recent implementation report, Peruvian export to the EU market has not increased significantly. However it is almost impossible to determine whether a well-functioning labour inspection agency and/or the maintenance of the original safety and health law would have resulted in even less export to the EU. This could only be ascertained through a deeper economic investigation over a longer time span. Although in both cases business interests have clearly impacted upon the decision-making process, it is also difficult to know if the reforms were intended to stimulate external trade or attract foreign investment.

In the case of (b) the special agricultural sector promotion law, it is clear that a flexible labour regime has been established in order to stimulate export competitiveness. However, this system predates the entry into force of the trade agreement with the EU.

One might argue that the Peruvian government has violated the spirit of the non-lowering provision, since also in recent years it has continued to resist the discontinuation of the current regime and the unification of the labour law. However, this would probably be a too flexible reading of the treaty commitments, taking into account that the Sustainable Development Title also puts much emphasis on the sovereign rights of the governments. Moreover, there has not been a consensus on all the aspects of this project within the National Council. An interesting test case for the compliance with the EU trade agreement will be whether the special agricultural law will be extended beyond 2021. If this happens to be the case, one may convincingly argue that Peru fails to meet its commitment under the Trade and Sustainable Development Title. From 2022 onwards, the default situation is that the special regime no longer applies to agricultural export. Therefore, if the law would be extended beyond 2021, this arguably constitutes a downward derogation from the general labour law in order to foster the country's international competitiveness in agricultural products.

Table 2: Summary of compliance with domestic labour law commitment

	Lowering since 2013	Encouraging trade/investment
a. Labour inspection	Yes (<i>de facto</i>)	?
b. Special regimes	No (check 2021)	Yes
c. Health and safety	Yes (<i>de jure</i>)	?

3.3. Promoting civil society dialogue

The Peruvian government has **apparently failed to (a) task an existing group or committee that can effectively perform the domestic monitoring role** provided under the agreement, to **(b) consult this group or committee** on the implementation of the Sustainable Development Title, and to **(c) provide the opportunity for stakeholders to participate in the transnational mechanism**. This should be seen against the context of a general unwillingness to include civil society actors in the discussions on the implementation of the trade agreement.

In general relations between employers and employees in Peru are quite conflictuous. Some argue that in general mass communication in Peru the positions of the unions are seen as “populist”, “non-viable”, “anachronistic” or “confined to a labour aristocracy”, while proposals coming from the business side are labeled as “rational”, “technical” and aimed at improving the “competitiveness of the country” (Fernandez-Maldonado Mujica 2015: 160, translated from Spanish).

As mentioned above, the trade agreement provides that each Party “shall consult domestic labour and environment or sustainable development committees or groups, or create such committees or groups when they do not exist” (Art. 281). **The Peruvian government has**

opted not to create a new group but instead to consult existing committees. In the area of labour rights, it concerns the National Council (see before)¹².

This decision does not go against the letter of the agreement, which also provides that “the constitution and consultation of such committees or groups [...] shall be in accordance with domestic law” (Art. 281). However, in practice two serious problems emerge.

(a) the domestic mechanism does not effectively exist since it does not function in practice. There seems to be a general consensus among our interviews with (former) members of the National Council that it does not work effectively (RedGe n.d.). One civil society actor said that it is an ineffective space where “you should send issues you don’t want to succeed”. This was also confirmed by an ILO representative who called the National Council “little effective, irregular and more consultative than deliberative”. There have been episodes in which the unions withdrew their participation because of the mechanism’s lack of effectiveness. The National Council seems to be paralysed in the last two or three years. Several interviewees indicated they do not know whether it has been convening again regularly or not. In sum, as the National Council does not function effectively, **it cannot perform the tasks that are intended to be performed according to the trade agreement.**

What is important for the purpose of this evaluation **is not only that the Peruvian government has tasked the monitoring of the Sustainable Development Title to a domestic body that is not effectively working, but also that the government is directly or indirectly responsible for this not effective functioning.**

- On the one hand, interviewees indicate that the recommendations made by the National Council are consistently ignored by the government. The government and parliament have also passed laws without its consultation. Even the trade agreement with the EU was not discussed at the National Council (it was sent directly to the parliament for ratification). Some members have withdrawn from the National Council as an act of criticism against this state of affairs. Some unionists argue it only exists to give Peru an international image of social dialogue and is only there for photo opportunities.
- On the other hand, the autonomous functioning of this committee seems to be jeopardised by involvement of government officials in the meetings. Interviewees complain that they are always discussing issues under the observation of the authorities. The National Council is even chaired by the Ministry of Labour¹³. Its convocation depends on the will of the minister of labour. This obviously provides considerable agenda setting power to the government, thereby jeopardizing the independence of the Council. Recently the European Economic and Social Committee (EESC) lamented the presence of government representatives in the meetings as going against the nature of such mechanisms to be civil society bodies (EESC 2016). This presence is however not contrary to the letter of the agreement. Contrary to e.g. the EU agreement with Central America (Art. 294(4-5)), the provisions on the domestic civil society mechanism do not specify that the members need to be “independent” (see Table 1). However, it seems that the government does have a responsibility in the non-functioning of the National Council, indirectly by not consulting it and not taking its advice into account, and directly through its chairmanship. In addition, because of the

¹² Apart from this Council the Peruvian government selected three additional forums to discuss the implementation of the labour provisions. These are the National Council on Health and Safety at Work, the National Commission on Forced Labour and National Committee on Child Labour. As the National Council is the main tripartite body for social dialogue in Peru, our investigation mostly focused on the functioning of this body.

¹³ A list of the presidents of the National Council can be found here: <http://www2.trabajo.gob.pe/cntpe/organizacion/presidente/>. A quick glimpse on the list shows that since 2000 the Minister of Labour stays has remained in office for only about one year.

many changes of labour ministers in recent years, one could question the stability of the National Council in general.

(b) it is unlikely that the members of the National Council are being consulted on the implementation of the trade agreement. Not only is the National Council largely ineffective, it is extremely doubtful that the implementation of the sustainable development chapter is discussed in this forum. From our interviews we have not found indications on such consultation. In fact, the **members of the Council that we interviewed are not aware that, since the entry into force of the trade agreement with the EU, they are tasked with the monitoring of the Sustainable Development Title.** For example, a representative of a major union in the agricultural sector was surprised to hear that the Council was also supposed to play a role related to the EU-Peru-Colombia trade agreement. Several members of the EU DAG also confirmed that their partners in Peru are not aware of a domestic mechanism (meeting April 7, 2016). The EESC recently also lamented the fact that the Peruvian mechanism has never met to discuss the sustainable development aspects of the trade agreement with the EU (EESC 2016). Interviewees in Peru are sometimes aware of the transnational meetings, but they do not know that there is also a domestic component to the civil society involvement under the EU treaty.

Taking all this into account, it is not surprising that the National Council has ostensibly not submitted any “opinions” or “recommendations” on the implementation of the Sustainable Development Title, a possibility that is provided in the agreement (Art. 281). The only coordinated initiative from civil society about the implementation of the Sustainable Development Title that we are aware of, concerns a letter written by RedGe (Red Peruana por una Globalización con Equidad) and signed by 13 civil society organisations, directed towards the Head of the EU Delegation in Lima (RedGe 2015) (see also below). While the authors of the letter are clearly aware of the transnational civil society meeting that takes place in the context of the Sub-Committee on Sustainable Development, it does not make mention of the domestic mechanism.

The non-functioning of the Peruvian DAG has been lamented by its EU counterpart. The EU DAG sent a letter to the Peruvian government asking more information about the composition of the Peruvian (and Colombian) DAG so that the European DAG could contact its counterparts to coordinate (Iuliano 2015). There has not been an official reply to this letter, but the Peruvian government has made it clear that issues related to social dialogue concern a purely internal Peruvian matter. This was also made clear to us by a representative of the Peruvian Ministry of Trade. Also the EU Delegation in Lima confirmed that, when requesting more information about the domestic civil society mechanism, such as the frequency of its meetings, the participating members, the agenda etc, the Peruvian government replies that “this is not your business”.

It is correct that the treaty does not require the Peruvian government to provide this information. However, our interviews indicate that consultation has not taken place, which goes against the letter of Art. 281.

In addition to the domestic mechanism, there is **(c) also a problem with the commitment to allow domestic stakeholders the opportunity to participate in the transnational sessions.** Peruvian civil society has been underrepresented in transnational civil society meetings. For now two transnational civil society meetings have taken place in the context of the annual meeting of the Sub-Committee on Trade and Sustainable Development: the first one in February 2014 in Lima and the second one in June 2015 in Bogotá. The 2014 meeting is generally seen as substandard or even “terrible” as it was more a debriefing about the trade agreement than a true dialogue and as there was a delay of the meeting of the Sub-Committee with more than three hours there was no time for the governments to

really listen to civil society. In addition the translation was very bad. One of the main union federations indicated that he was informed about the meeting only two or three days before, which of course hampered effective preparation. The second meeting in Bogotá was already evaluated as more substantial by some observers. Nonetheless, at the last meeting, no members of Peruvian civil society were present. Their absence relates to various factors including their lack of capacity, limited budgets, and other priorities; yet it seems clear that the Peruvian government has not facilitated their involvement in any way. Several of our interviewees from Peruvian civil society as well as some members of the EU DAG confirmed that **there had not been announcements by the authorities in Peru in relation to the transnational meeting.**

This may be less problematic for representatives of some business sectors than for not for profit organisations such as trade unions, as the former have alternative channels for dialogue with the EU through (sectoral) consultative mechanisms under the agreement.

In the previous section, we already pointed out that the commitments under the EU-Peru-Colombia agreement are conservative and flexible, even compared to similar provisions in other EU agreements. Based on this analysis, Table 3 summarises the specific implications of these restrictive provisions.

Table 3: Flexibility of civil society provisions: practical implications in Peru

EU-Peru-Colombia Agreement	Practical implications in Peru
Opinions/recommendations “through the respective internal channels of the Parties”; “constitution and consultation [...] in accordance with domestic law”	No information on opinions and recommendations from the Peru DAG (if they exist: only internal)
Possibly existing “committees or groups”	Existing mechanism is used, although it does not effectively function
When existing groups: nothing on strengthening	No guarantees that existing mechanism is adapted or strengthened for new task; labour movement participants of domestic mechanism are not aware of their task under the EU agreement
Nothing on “independence” members	Ministry of Labour attends and even chairs the meetings
No clear linkage domestic and transnational meetings	Civil society is unaware of possible linkages between domestic and transnational meetings; EU DAG or EU institutions do not have the right to be informed about the meetings of the Peruvian DAG
DAG communications cannot be requested	Lack of information about the Peru DAG much to the frustration of EU DAG and European Commission
If government consultations: no interaction with domestic mechanism	Not applicable (government consultations not yet initiated)
Panel of Experts should not seek advice from civil society forums	Not applicable (no formal disputes)

However, even if the commitment regarding civil society involvement is formulated cautiously in the trade agreement, it seems that **even this minimal commitment has not been met** by the Peruvian government. The apparent non-functioning of the National Council and absence of consultation by the Peruvian government, clearly go against the obligation to “Dialogue with Civil Society” as established in Art. 282. It also seems that stakeholders are not provided the opportunity to participate in the transnational meetings. As a result of these deficiencies, civil society members are unaware of their tasks under the EU-Peru-Colombia trade agreement.

3.4. Summary

Based on this analysis, we can conclude that there are several shortcomings in Peru’s compliance with the labour rights commitments in the EU trade agreement. Although the latter are formulated in a rather conservative and flexible way, it still seems that there are problems with the implementation of the three commitments, as is summarised in Table 4.

Table 4: Summary of main findings

Commitment	Finding
1. Upholding ILO CLS	Serious shortcomings with implementation of ILO Core Conventions, in particular No. 87 and No. 98
2. Non-lowering domestic labour law	<i>De jure</i> or <i>de facto</i> labour protection has been lowered, however unclear link with trade and/or investment; also lowering of labour protection for trade purposes, but predating the agreement
3. Promoting civil society dialogue	Even minimal commitment not met: failed to (a) task a domestic mechanism that can effectively perform the monitoring role, (b) to consult this group, and (c) to provide opportunities to participate in the transnational meetings

4. EU Policies and Recommendations

This part provides a summary of the EU’s approach to the labour situation in Peru under the trade agreement. At the same time, it gives a number of recommendations on what the EU or other relevant actors could or should be doing. Whereas many more recommendations could be given relating to the sustainable development chapter and the social impact of trade agreements more generally, we mostly limit ourselves to issues that are directly relevant to the shortcomings identified in the previous section. These recommendations build on earlier work of the authors as well as on recommendations made by people involved (EESC 2016; De Ville/Orbie/Van den Putte 2016; Van den Putte 2016; Van den Putte et al. 2015).

4.1. Investigating alleged shortcomings

The analysis above suggests that there are shortcomings in the observation with labour rights commitments in Peru. These should be taken seriously and investigated more systematically by the EU. In doing so, the existing GSP+ report (European Commission 2016a), in which the shortcomings in implementing the fundamental ILO Conventions are clearly listed, would be a useful starting point. Unfortunately, however, it seems that the monitoring of implementation of the core labour rights conventions is less thorough than

under the previous GSP+ system. The European Commission's implementation report of the EU-Peru-Colombia trade agreement remains relatively shallow when it comes to the sustainable development chapter. Implementation reports should be more profound and extensive than the current Sustainability Impact Assessments (SIAs), including case studies in specific sectors such as agriculture. This should involve workers, employers and other stakeholders (see recommendation 2), as well as competent international institutions such as the ILO.

Most importantly, extensive field research in Peru would be necessary in order to draw generalisable conclusions.

For the EU, investigations may lead to conclusions that form the basis for government consultations, as provided for in Art. 283.

4.2. Stronger push for civil society dialogue

Civil society dialogue is, **potentially, a crucial aspect of the EU approach to the trade-labour linkage**. Civil society involvement may improve the quality of monitoring of alleged shortcomings (functional purpose) and contribute to democratic governance by giving a voice to marginalised groups (political purpose) (Orbie/Martens/Van den Putte 2016).

There are clearly several **obstacles** in the context of the trade agreement with Peru. First, the treaty provisions are relatively constraining (see above, Table 1). Second, given these legal constraints and the absence of sanctions, there are less incentives for civil society to devote their scarce resources to the monitoring of the EU trade agreement. This is all the more so for trade unions that work on limited resources. Third, the Peruvian government is reluctant (not to say hostile) towards civil society involvement. Again, this is even stronger when it comes to trade unions, given the anti-union climate in the country. As a result of these three factors, the Peruvian government is strictly speaking not obliged to keep its EU counterpart (and the EU in general) informed of its domestic meetings nor of the membership of these mechanisms. Fourth, civil society within Peru is not always well organized. Again, this is all the more so for the labour movement in the agricultural sector, which suffers from several weaknesses. Fifth, the EU rightly does not want to come across as being “neocolonial” in the partnership and aims to respect national sovereignty.

Despite these constraints, there is more that the EU could do in order to push for stronger civil society involvement. Specifically, it could push more for obtaining information on the civil society meetings under Art. 281, in order to make sure that Peru fulfills its treaty obligation to have an effective domestic mechanism of civil society. So far, however, it seems that the EU has been extremely (too) careful.

- **First, the EU could press more during the dialogue within the Sub-Committee on Trade and Sustainable Development.** A bolder approach would be desirable. So far discussions on labour rights shortcomings have been relatively friendly. Officials from both the Peruvian and the EU side confirmed that (a) “of course” discussions on the sustainable development chapter take place in a relatively constructive atmosphere, (b) heavy debates similar to what happens in the market access, intellectual property, (phyto)sanitary standards or government procurement do not take place, and (c) the meetings are more of a “good news show” (EU source) whereby each partner provides a lists of its recent accomplishments in the area of sustainable development, but it does not go much beyond “information sharing on whatever we are doing” (both sources; this also reflects from the Joint Statement of the meeting, see Sub-Committee on Trade and Sustainable Development 2014, 2015).

- **Second, the EU could more proactively reach out to Peruvian civil society in general and trade union representatives in particular.** Interviews consistently confirm that these organisations are rather unaware of the provisions under the EU treaty, especially on the domestic civil society mechanism. Inspiration could be drawn from the EU Delegation in Colombia which at the end of 2015 held a session on the EU-Peru-Colombia agreement with local civil society. During this meeting also the functioning of the civil society mechanisms were discussed and civil society organisations provided input for a more effective functioning. Also in Peru there is a clear interest with several organisations to engage more with the EU on these issues. Even if they usually deplore that, unlike the US agreement, sanctions are not foreseen, our research also shows that, compared to the US, the EU's motives in the trade-labour linkage are considered to be less self-interested and it is also considered to have a better "social model". This widespread perception amongst labour representatives potentially provides some soft power to the EU – however this is a power resource that remains underutilised (Van den Putte/Orbie/Bossuyt unpublished).
- **Third, also beyond the trade sphere the EU has leverage towards the Peruvian government.** For example, there is the process on Peru's accession to the Organisation for Economic Cooperation and Development (OECD). The EU has an institutional overweight within this Paris-based institution and could flex more its muscles in the context of the membership negotiations. Another example relates to the already concluded negotiations about a visa waiver agreement where the EU could have used its leverage more as it was a very important issue for Peru. In addition, the annual sessions of the ILO in June, which brings together labour, employer and governmental representatives in Geneva, provides an opportunity to engage in tripartite discussions with the legitimate Peruvian representatives. Finally, there is the political dialogue between the EU and Peru, both at the bilateral and at the bi-regional level. It seems that European Commission officials responsible for the implementation of the Sustainable Development Title are not aware of whether and how issues related to this title could be discussed at the political dialogue. These alternative channels for EU influence do not seem to be employed in order to promote the sustainable development objectives.

Specifically, there was one initiative by Peruvian civil society that does not seem to have been followed-up by the EU. On June 17, 2015 there was a letter signed by 13 Peruvian civil society organizations and coordinated by RedGe directed towards Mrs Irene Horejs, Head of the EU Delegation in Lima. The 2.5 page letter enumerates a number of problems in the implementation of labour and environmental commitments made in the EU agreement (RedGe 2015). The complaints are well documented with specific references to Peruvian legislation and with detailed annexes. The letter was written at the time of the meeting of the Sub-Committee on Trade and Sustainable Development in Bogotá (June 16-17, 2015). However, the letter was not discussed at this meeting. Moreover, the EU Delegation did not officially reply to RedGe and other signatory organisations. It remains to be seen whether the letter and its content will be scheduled at the next meeting of the Sub-Committee in October 2016.

The EU Delegation complains about a lack of proactivity from the labour movement in Peru. This may be somewhat correct, yet it should be seen in the context of their marginalised position and limited capacities (see above). At the same time, it seems that also the EU could act in a more proactive way when involving the trade union movement. The EU clearly disposes of more resources to do so. Notwithstanding the legal and political difficulties, more could be done than is the case at present.

To be sure, there have been a **number of (as yet limited) initiatives** from the EU side. For example, there was an information session by the EU Delegation towards civil society. It

seems that this information has not reached out to the labour representatives that we interviewed. Also, there is the suggestion made by the EU Delegation in Lima that Peruvian civil society organisations, when writing opinions or recommendations to their government, could put the EU 'cc' in their communication. This would indeed be a practical way out of the treaty provisions, which, as explained above, keep the dialogue within the domestic sphere. A more ambitious initiative would be for the EU to take the lead in organising a civil society meeting in Lima (e.g. in the Delegation building). A Commission official suggested that the creation of such additional groups would not go against the treaty Art. 281, which refers to "committees or groups" (plural). Thus, the EU might foster a 'shadow' domestic civil society dialogue.

The recently started initiative of the **Civil Society Roadmap** for Peru provides a promising avenue in this regard. Since 2014 the EU Delegations in third countries have been developing country roadmaps, which serve as a strategic framework for the engagement of the EU with civil society within the country. The cooperation section at the EU Delegation in Lima has elaborated the Roadmap and is currently in the process of implementing it. Interestingly a first meeting with Peruvian civil society organizations (early 2016) showed that **'trade' is for all consulted NGOs a priority topic** (EU Delegation in Peru 2014). As such, the roadmap exercise could provide an alternative mechanism for 'domestic' civil society dialogue within Peru. It is also interesting to notice that several trade union representatives were present at this meeting.

These would be practical ways to involve civil society and to be informed about their views on sustainable development issues in Peru. Moreover, as the roadmaps are done in cooperation with the member states, and as they concern the EU's overall involvement, they would possibly also help to deal with the problems of vertical and horizontal coherence in the EU's approach (see next recommendation). However, it would not provide a sustainable alternative to a Peruvian DAG. As the Peruvian government would not officially recognise it, it would have a problem of legitimacy. It would further foster the criticism of neo-colonial interference, without solving the problem of the lack of an official counterpart to the EU DAG. Such solutions might even give the impression that civil society involvement under the trade agreement is not problematic, thereby continuing the effective non-compliance with the EU treaty. It does not seem too difficult for the EU institutions (including the DAG) and European civil society organisations working on Peru to reach out to partner organizations in Peru. In fact, in the run-up to the transnational meetings they have quite successfully mobilised in order to guarantee a significant attendance from civil society. However, this does not solve the problem of the lack of an official interlocutor from Peruvian civil society, as provided under the trade agreement. As such the practical measures mentioned above can be **temporary solution, but not an alternative for the creation of a veritable domestic civil society mechanism.**

This problem seems to be increasingly recognised by EU policymakers that are involved in the relationship with Peru. At the most recent EU DAG, both the European External Action Service (EEAS) and the European Commission representatives indicated that it would be logical that at least the Peruvian government provides the EU DAG with the membership list of the National Council. They also suggested that this request may be taken up to a higher political level. Adequate knowledge about the composition of the Peruvian DAG would constitute a first step towards gaining more information about (a) whether effective meetings take place, (b) whether the groups or committees are consulted on the sustainable development title, (c) whether participation in the transnational meetings is facilitated, and thus whether this treaty commitment is effectively implemented. One additional avenue to be explored is the involvement of the monitoring groups for a particular country or region within the **European Parliament** in the domestic and transnational civil society meetings. This

would not only add additional expertise to the civil society meetings, but at the same time it could enhance the legitimacy of these mechanisms as third country governments seem to be more in favor of involving elected representatives in the monitoring process rather than NGOs or unions.

Apart from that, European civil society organisations could use the transnational meeting when it takes place in Brussels (end 2016) as an opportunity to foster cooperation with their Peruvian (and Colombian) counterparts. In the margin of the civil society meeting they could for example organise a **workshop** dedicated to the sustainable development chapter. These could serve to clarify the opportunities provided by this chapter, which remain unknown to many members of civil society, and to push for joint actions by the Parties. Such a workshop should also foster contacts with members of the European Parliament and EESC members. Ultimately these additional meetings could result in specific recommendations towards the parties on how to make sure the implementation of the trade agreement contributes to more respect for labour rights.

In summary, serious involvement of civil society would require a more persistent and continuous effort from the EU institutions, including a bolder approach towards the Peruvian government. Ideally this would allow for a quasi-permanent formal and informal dialogue, in between the annual and formal meetings. This would not be unsimilar to other trade-related areas such as government procurement or market access where *ad hoc* meetings (through the EU Delegation and/or by videoconferencing) seem to take place on a weekly basis when an implementation problem arises. However, this would require a mentality shift with some EU officials, not least within DG Trade where ‘sustainable development’ seems to be still often considered as ‘the odd one out’ in the trade agreements.

4.3. Forging a more coherent EU approach

The foreign policy system of the EU is notorious for its institutional compartmentalisation.¹⁴ Despite the creation of the European External Action Service (EEAS) and increased coordination within the Commission, foreign policy coherence continues to be particularly challenging for the EU. The **promotion of labour rights in third countries** is no exception, as it **risks falling between the cracks of at least four institutional compartments**: the Commission’s DG Trade (sustainable development title of the agreement), DG Devco (cooperation on social development, Civil Society Roadmap), DG Employment and Social Affairs (international unit, including relations with the ILO), and the EEAS (human rights and political dialogue). Each of these institutions holds different ideas and interests in relation to the promotion of labour rights. Within DG Trade the promotion of labour rights is still often considered as a less relevant non-trade issue, while trade liberalization will ultimately generate the growth necessary for social progress. Its capacity and expertise on labour rights is also limited, both in Brussels and in the Delegations.

It remains to be seen if the increased coordination efforts in Brussels and in the EU Delegations will continue to impede a more proactive approach to the trade-labour linkage under Commissioner Malmström whose ‘Trade for All’ strategy clearly puts more emphasis on ethical trading issues. While DG Devco disposes of considerable budgets, it has been less inclined to prioritise issues such as labour rights. Here the dominant paradigm has been to prioritise economic development as the catalyst for growth and (ultimately) social development. The DG Employment and Social Affairs’ capacity in international affairs is relatively limited, whereas the EEAS is less familiar with socio-economic issues. **Overall,**

¹⁴ This is the case for every country’s foreign policy system, but given its peculiar nature it is probably even more so for the EU. The EU also emphasizes the difficulties in dealing with different ministries within Peru. In addition, Peruvian trade officials confirmed that the coordination of both labour and environmental issues under the sustainable development title poses them with additional coordination challenges than when these issues would be dealt with in separate chapters.

sufficient coordination mechanisms exist within the EU; however, it remains a challenging exercise to promote crosscutting issues such as labour rights. In order to effectively promote labour rights, a coordinated and consistent approach across these different institutional *filières* would be necessary. It would strengthen the EU's impact and legitimacy.

Similar issues have been identified in relation to the EU's approach to promoting labour rights through the trade agreement with Peru. It is clear that labour rights do not constitute the core expertise of the officials at the trade section of the EU delegation, nor are they well informed about the labour movement and its representatives. This is not surprising given that in general in the delegations of countries like Peru or Colombia only two or three people deal with the implementation of the trade agreement as a whole. An interviewee at the trade section also emphasised that the commitments made under the sustainable development chapter are "non-trade issues", thereby suggesting that these should not be core to their activities. 'Real' trade issues such as market access, government procurement and (phyto)sanitary standards are more of a priority.

At the cooperation section, there is more expertise in civil society involvement (and to some extent the labour movement), but their activities are not directly related to the implementation of the Sustainable Development Title. The cooperation section confirmed that so far there has not been any EU aid related to the implementation of the labour commitments. This strongly contrasts with US budget for labour issues in Peru which have focused on combatting child labour, forced labour and the protection of vulnerable workers in the mining, agricultural and textile sectors amounting to almost USD 25,000,000. However, there are a **number of opportunities that may strengthen the coherence between the EU trade, social and development realms** in Peru. "Fostering sustainable trade and investment" has been identified as one of the two sectors for EU intervention in 2014-2017 (EEAS/EuropeAid 2014). In total an indicative amount of 9.9 million euro has been allocated for this. One specific objective is "To integrate the sustainable development aspects in the design and implementation of trade-related policies and regulations", which is described as follows:

"The EU will focus on strengthening the capacities of institutions and the business sector to effectively improve labour conditions and to integrate aspects of environmental protection into production and trade-related policies. This implies in particular the effective implementation of ILO Core Conventions and general improvement of labour standards, including strengthened social dialogue involving various sectors of civil society. Furthermore, the programme will assist the application of policies to promote gender equality within enterprises, particularly in the field of wage and salary policies." (EEAS/EuropeAid 2014: 9)

An indicator for measuring success is the "Number of labour inspectors trained in the international labour standards per year" (EEAS/EuropeAid 2014: 17). This would seem to meet one of the shortcomings identified in the previous section (problems with labour inspection). However, there has been a delay in the implementation, which was originally scheduled in 2015. The EU Delegation seems to be waiting until the new Peruvian government is fully operational before a call for projects will be issued, which could then be implemented from 2017 onwards.¹⁵ Nonetheless, at the last EU DAG meeting the European Commission informed the members they would probably support a project on labour conflict resolution. In any case, the impact of this funding is going to be limited in time. An EU trade official called it a "one shot", as EU aid to Peru is going to phase out in 2020. While the

¹⁵ The Peruvian Ministry of Trade informed us that they sent a list of proposals for cooperation to the EU, but that they have not made a selection.

phasing out may seem logical from a development cooperation perspective, it will make it more difficult for the EU to engage in a comprehensive approach to promoting (trade-related) labour rights. An alternative suggested at the EU Delegation in Lima is the Partnership Instrument. However this instrument is aimed to promote “the EU’s core interests” and it remains to be seen whether labour rights in Peru can be defined as such.

Another potential avenue for a more coherent approach is the **Civil Society Roadmap**. As mentioned above, with this initiative the EU reaches out to civil society organisations, including trade unions. Since trade has been identified as a core concern by the organisations involved, it seems likely that the commitments made under the Sustainable Development Title will also be discussed in future activities under the Civil Society Roadmap for Peru. In addition to improving ‘horizontal’ coherence between the trade and development spheres, this initiative could also improve ‘vertical’ coherence with the EU member states. Indeed, the Roadmap aims to coordinate EU member state activities in relation to civil society activities. Whereas the EU member states are not very active when it comes to promoting labour rights in Peru (EEAS/EuropeAid 2014: 15), most of them are interested in working with civil society.

Furthermore, it would be important to **align with other international partners**. In this area, the ILO would be a particularly important partner for the EU. The ILO could complement the limited expertise and capacities on labour rights, and it could also contribute to the implementation of projects. In addition, collaboration with the US could be desirable. The respectively ‘soft’ and ‘hard’ approach of the EU and the US to the trade-labour linkage might even be complementary, and this is something that could be explored when negotiating the labour provisions in TTIP (De Ville/Orbie/Van den Putte 2016: 42-43).

Finally, an underutilised but potentially fruitful area for the EU to make progress in promoting labour rights is **Corporate Social Responsibility (CSR)**. There are several reasons why CSR could be part of a more coherent EU approach. First, it is mentioned in the Sustainable Development Title of the trade agreement which makes two references to promoting CSR: “The Parties agree to promote best business practices related to corporate social responsibility” (Art. 271.3) and “the importance of [...] cooperation activities [...] in areas of mutual interest, such as [...] exchange of information and experiences related to the promotion and implementation of good practices of corporate social responsibility” (Art. 286). Although the references are relatively brief and promotional, there seems to be a commitment from both Parties in this area. Second, our interviews do indeed confirm that there is a clear willingness from the Peruvian government as well as from business to do more on CSR. Producers, exporters and importers emphasize the demands from supermarkets and consumers in Europe to engage in socially responsible behaviour. There also seems to be a perception that European consumers are more demanding when it comes to labour standards than North American consumers. While the US government may be more demanding than the EU when it comes to the trade-labour linkage, it seems that European consumers are more concerned about working conditions than North-American consumers when it comes to ‘fair trade’ labels and certificates. Third, the promotion of CSR does not necessarily require large amounts of aid budgets. This is important because, as mentioned above, official aid to Peru will be phasing out. Thus, CSR opens up a new avenue for cooperation in the post-aid era. Fourth, CSR requires a good social dialogue between employers and employees, and as such could be a more concrete topic on which civil society dialogue could be fostered (cf previous recommendation). At the same time, it is compatible with the EU’s preference for a soft and cooperative approach. Fifth, given the growing importance of multinational (including many European) companies in the global

supply chain, it is all the more logical to emphasise business' ethical responsibilities¹⁶. In this regard one important precedent should be noticed. In 2013 companies including Nike and New Balance expressed their concern to then President Humala that the law for non-traditional export constitutes an obstacle for the correct application of their Codes of Conduct (Crean et al. 2013).

For all these reasons, CSR constitutes one of the labour rights related issues where a possible ground for cooperation exists (see also Peels et al. 2016). For example, more work could be done on the **promotion of labels and certificates that promote labour rights**. While all major agricultural exporters make use of labels and certificates, there is a large variety in the extent to which these include labour rights and other social commitments (Schuster/Maertens 2015) **However, there are also pitfalls in promoting CSR**. In the absence of a strong governmental commitment to labour rights, CSR may (intentionally or unintentionally) serve to divert the responsibility from the public to the private sector. Moreover, there is a real danger that labels and certificates have more impact on the companies' public relations than on the workers' rights. Also in our research on the agricultural export sector in Peru, we witnessed how CSR-related activities can serve to convince outsiders about the social wellbeing of the employers, even if the information provided seems in manifest contradiction with the accounts from workers in the same companies. It also became clear that trade union representatives are critical (not to say hostile) about existing labels and certifications because these would allegedly not consider the workers' situation on the ground and/or neglect the importance of trade union's rights. There is a risk that CSR facilitates a leap backwards from a system where the *workers' social rights* are promoted to a one where a paternalistic concern to *take care of workers* is reigning.

Therefore, it would be important to monitor under which conditions CSR does indeed constitute progress for labour rights, and indeed focus on 'best practices' as envisaged in the trade agreement.

All in all, even when taking into account the flaws of the current trade agreement, the agreement does provide for quite some opportunities to promote sustainable development principles including labour rights. However, these are currently underutilized (see also Van den Putte et al. 2015). As discussed, the trade agreement and specific cooperation projects are not aligned (yet), and the intended role for civil society mechanisms has not yet materialised. An increasing number of academic studies suggest that the trade-labour linkage can be effective in terms of improving workers' rights, provided that the cooperative aspects are seriously elaborated. In other words, even without taking into account coercive measures (sanctions), a more coherent approach can improve labour rights. Therefore, the EU should be exploiting its cooperative approach to a fuller extent.

4.4. Future agreements: improvements outside the box

Importantly, the recommendations above can be implemented within the current legal framework. Indeed, it is not necessary to renegotiate the trade agreement's Sustainable Development Title in order to monitor and investigate more closely, support civil society dialogues, and foster a coherent approach. However, our analysis also confirmed that, **in order to guarantee that the Sustainable Development Title effectively contributes to improved labour rights, changes of the legal framework would be desirable.**

¹⁶ In 2013 the EU's Foreign Direct Investment stock in Peru was EUR 7,678 billion (European Commission 2016b).

We have shown that the relevant provisions in the EU-Peru-Colombia agreement are conservative and flexible. A more progressive and rigid approach would have been to request the Peruvian government, in the context of the negotiation and implementation of the trade agreement, to make tangible progress on labour rights. Specifically, the EU could have asked for (1) the establishment of a general labour law, (2) the revision of the agricultural export law, (3) the improvement of the labour inspection agency (SUNAFIL), (4) the establishment of a domestic civil society dialogue (or the strengthening of an existing committee). For each of these issues, which have proven to be problematic from a labour rights perspective, a **roadmap with quantitative or qualitative indicators** could have been discussed. Such pre-ratification conditionality has proven to be successful in other instances already, especially in trade agreements concluded by the US (Vogt 2015).

With hindsight, it has been a missed opportunity not to combine the EU's 'market power' with its 'normative power'. **Such a more progressive, rigid and 'tailor made' approach requires a profound knowledge of the labour rights situation in a third country and a serious commitment to trade and sustainable development impact assessments in collaboration with the third government and civil society.** Even if it would not be possible to renegotiate the trade agreement with Peru, this suggestion could be taken into account for future negotiations, such as Ecuador's accession to the trade agreement, or the renegotiation of the EU-Mexico agreement.

Another suggestion would be to include a '**social safeguard clause**' in new trade agreements. As argued by Rodrik, this would broaden the legitimate reasons under which a safeguard clause can be used from hurting domestic industry as in traditional safeguard clauses towards hurting social concerns (Rodrik 1997: 83). This could be invoked when liberalisation as such has unforeseen negative social consequences. Procedural rules could be established to make sure that this is only used when a broad and legitimate public support exists (extending beyond protectionist interests). For instance, this option could be considered for TTIP (De Ville/Orbie/Van den Putte 2016: 49).

When labour rights commitments under the trade agreement are seriously and systematically violated, **sanctions should also be possible as a 'last resort'** after the cooperative approach has failed. There should not be a contradiction between cooperation and (ultimately) sanctioning, as the 'stick' of sanctions. The latter should rather be seen as a way of leveraging the cooperative approach. Assessments leading to sanctions should also be in line with the activities of the ILO. In this regard, the EU could learn from the experience with GSP+ conditionality. The dispute settlement mechanism can be structured so as to make sanctions the ultimate instrument that should encourage parties to seek amicable solutions in earlier phases of enforcement. In the annex of a previous study we set out how such a dispute settlement mechanism could look like (see De Ville/Orbie/Van den Putte 2016).

It should be noticed that these are moderate proposals, compared to the more radical suggestion to entirely withdraw from free trade agreements. If the above-mentioned or other suggestions cannot avoid that EU markets are flooded with products that are likely to have involved serious violations of core labour rights, and if it cannot be proven that free trade agreements contribute to increased social welfare for all parties involved, there may well be legitimate reasons for de-globalisation.

5. Conclusions

This study has identified **various shortcomings in Peru's compliance with the labour rights commitments** in the trade agreement with the EU. On each of the three major commitments made in the Sustainable Development Title – upholding ILO CLS, non-lowering domestic labour rights, and promoting civil society dialogue – problems could be identified. At the same time, the Working Paper has shown that the EU could do more in order to proactively monitor and address these issues. Labour rights are clearly not a priority for neither party to the agreement, whereas labour representatives are in a marginalised position.

The free trade agreement does provide a **number of opportunities for improvement of sustainable development principles in general and for the promotion of labour rights in particular**. At the very least, they provide a setting for monitoring, naming and shaming, and deliberation on compliance with these principles. As one former EU official who was closely involved in this process argued, “without the free trade agreement, they would immediately send us back home when we start discussing these issues”. However, it is an understatement to say that these opportunities are currently underutilized. In this regard, we have formulated a number of recommendations that are relatively feasible, provided that the necessary political will is present.

More elaborate, systematic research, including surveys with employers and employees, is necessary to document the situation of labour rights. Given the anti-union climate in Peru, as well as practical limitations, drawing generalisable conclusions is difficult. However, our evaluation does confirm findings from other reports. Stakeholders from business and government could not provide incontestable proof against the alleged shortcomings of this report. In fact, some business organisations were even reluctant to engage in an interview on this topic. The burden of proof seems to lie with the latter, since these are the strongest actors in this story. If the EU is serious about the commitments in the sustainable development chapter of the trade agreement, then it should act more proactively in monitoring the Parties' compliance.

References

- Barrientos, Stephanie/Smith, Sally (2007): Do Workers Benefit from Ethical Trade? Assessing Codes of Labour Practice in Global Production Systems. In: *Third World Quarterly*, 28/4, 713-729.
- Brando, Nicolás/Hachez, Nicolas/Lein, Brecht/Marx, Axel (2015): Assessing the impact of EU trade and development policies on human rights. <http://www.fp7-frame.eu/wp-content/uploads/2015/08/FRAME-Deliverable-9.2-Submitted-30-June-2015.pdf> (24.8.2016)
- Campling, Liam/Harrison, James/Richardson, Ben/Smith, Adrian (forthcoming): Working Beyond the Border? A New Research Agenda for the Evaluation of Labour Standards in EU Trade Agreements. In: *International Labour Review*.
- Campling, Liam/Harrison, James/Richardson, Ben/Smith, Adrian (2014): Working Beyond the Border? A New Research Agenda for the Evaluation of Labour Standards in EU Trade Agreements. In: *Legal Studies Research Paper*, University of Warwick School of Law, 3.
- CEPAL/OIT/FAO (2012a): Empleo y condiciones de trabajo de mujeres temporeras agrícolas. <http://www.fao.org/3/a-as122s.pdf> (12.8.2016).
- CEPAL/OIT/FAO (2012b): Políticas de mercado de trabajo y pobreza rural en América Latina. <http://www.fao.org/3/a-i2644s.pdf> (12.8.2016).
- Crean, Kevin/Kelley, Christine/Gorman, Monica/Settlemier, Sharla, Steiner, Melanie/Marsom, Phil (2013): Letter to President Humala. <https://wilfredosanguineti.files.wordpress.com/2013/03/carta-presidente-ollanta-humala-4-marzo-20131.pdf> (12.8.2016).
- Damro, Chad (2012): Market Power Europe. In: *Journal of European Public Policy*, 19/5, 682-699.
- De Ville, Ferdi/Orbie, Jan/Van den Putte, Lore (2016): TTIP and labour standards. European Parliament - Directorate General for Internal Policies - Policy Department A: Economic and Scientific Policy. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578992/IPOL_STU\(2016\)578992_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578992/IPOL_STU(2016)578992_EN.pdf) (1.8.2016).
- Ebert, Franz C. (2015): Labour Provisions in EU Trade Agreements: What Potential for Labour Standards-Related Capacity Building? In: *International Labour Review*. Accepted for publication.
- EEAS/EuropeAid (2014): Multiannual Indicative Programme (2014-2017): Peru. https://eeas.europa.eu/peru/docs/mip-2014-2017_en.pdf (1.8.2016).
- EESC (2016): Briefing of the EESC secretariat on the functioning of Domestic Advisory mechanisms in EU Trade Agreements. On file with the author.
- EU Delegation in Peru (2014): Peru - Hojas de Ruta de la UE Para el Compromiso con la Sociedad Civil en los Paises Socios 2014-2017.
- European Commission (2016a): The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015. (SWD(2016) 8 final).
- European Commission (2016b): Second Annual Report on the Implementation of the EU-Colombia/Peru Trade Agreement. (COM(2016) 58 final).

European Commission (2016c): European Union, Trade in Goods with Peru. http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113435.pdf (15.8.2016).

European Commission (2015): Trade for All. Towards a more responsible trade and investment policy. http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf (1.8.2016).

European Commission. (2014): Annual Report on the Implementation of the EU-Colombia/Peru Trade Agreement. <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-718-EN-F1-1.PDF> (15.8.2016).

Fernandez-Maldonado Mujica, Enrique (2015): Peru: de la Ley General del Trabajo al Regimen Laboral 'Pulpin'. Apuntes para una aproximacion al proceso laboral (2000-2014). CENDES, 32/89, 141-171.

FORLAC (2014): Evolución del empleo informal en Perú: 2004 – 2012 Notas sobre formalizacion. http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_245621.pdf (15.8.2016).

FOS (2015): Trabajadores de la agroindustria: registro de casos para el tribunal ético del Perú. On file with the author.

Gil Piedra, Rodrigo/Grompone Velásquez, Alvaro (2014): Sindicalismo y política en el Perú: una breve aproximación en perspectiva comparada. Serie de Documentos de Trabajo, 2. Lima.

Horn, Henrik/Mavroidis, Petros C./Sapir, André (2009): Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements. In: Bruegel Blueprint Series, 7.

IESI (2016): Estudio de la cadena productiva de la agroexportación y relaciones laborales hacia el mercado noruego. https://www.iesiperu.org.pe/index.php?option=com_content&view=category&layout=blog&id=45&Itemid=121&limitstart=8 (12.8.2016).

Inside US Trade (2016a): Questions Linger On Incoming Peruvian President's Stance on Labor Law Reforms. July 27, 2016.

Inside US Trade (2016b): Negotiations on Peruvian Labor Reform to Continue Under New President. July 28, 2016.

International Institute for Labour Studies (2016): Assessment of Labour Provisions in Trade and Investment Arrangements. Geneva. http://www.ilo.ch/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_498944.pdf (12.08.2016).

International Institute for Labour Studies (2013): Social Dimensions of Free Trade Agreements. Geneva. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_228965.pdf (12.08.2016).

ILO (n.d.): Trade union density rate Peru. <http://goo.gl/BhgDv4> (29.4.2016).

International Commission of Jurists (2014): Social Rights and Special Regimes for Export Promotion: The Case of the Agriculture for Export in Peru. <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/11/Peru-Social-Rights-for-Export-Promotion-Publications-thematic-report-2014-ENG.pdf> (15.8.2016).

ITUC (2014): ITUC Global Rights Index: The World's Worst Countries for Workers. http://www.ituc-csi.org/IMG/pdf/survey_ra_2014_eng_v2.pdf (29.4.2016).

ITUC (n.d.): Survey of violations of trade union rights. <http://survey.ituc-csi.org/Peru.html?lang=en#tabs-3> (29.4.2016).

- Iuliano, Giuseppe (2015): Letter of the president of the EU DAG for the EU-Peru-Colombia trade agreement to the co-presidents of the Subcommittee on Trade and Sustainable Development. On file with the author.
- Langille, Brian A. (2005): Core Labour Rights - The True Story (Reply to Alston). In: *The European Journal of International Law*, 16/3, 409-437.
- Lieberwitz, Risa L. (2006): Linking Trade and Labor Standards: Prioritizing the Right of Association. In: *Cornell International Law Journal*, 39/3, 641-653.
- Marx, Axel/Wouters, Jan/Rayp, Glenn/Beke, Laura (eds.) (2015): *Global Governance of Labour Rights. Assessing the Effectiveness of Transnational Public and Private Policy Initiatives*. Cheltenham.
- Mincetur (2015a): Ministra Magali Silva sostiene que la agroexportación peruana ha crecido 16% promedio anual en los últimos 15 años. <http://ww2.mincetur.gob.pe/ministra-magali-silva-sostiene-que-la-agroexportacion-peruana-ha-crecido-16-promedio-anual-en-los-ultimos-15-anos-2/> (15.8.2016).
- Ministerio de Comercio Exterior y Turismo de Peru (2015): Reporte de Comercio Bilateral Peru-Union Europea (UE-28). http://www.acuerdoscomerciales.gob.pe/images/stories/Reporte_bilateral/europa/RCB-I_TRI-2015/union_europea_UE_28_1_tri_15.pdf (15.8.2016).
- Ministerio de Trabajo Peru (n.d.): Ley General de Trabajo. <http://www.mintra.gob.pe/portalinclusivo/mostrarContenido.php?id=656&tip=655> (15.8.2016).
- Mujica, Javier (2015): Incumplimiento de las obligaciones contraídas en materia laboral en el Acuerdo de Cooperación Comercial celebrado entre la Unión Europea y Colombia y Perú. Annex of the letter by RedGe to the EU ambassador in Peru. On file with the author.
- Novitz, Tonia/Fenwick, Collin (2010): The Application of Human Rights Discourse to Labour Relations: Translation of Theory into Practice. In: Novitz, Tonia/Fenwick, Collin (eds.): *Human Rights at Work: Perspectives on Law and Regulation*. Oxford, 1-40.
- OECD (2015): *Multi-dimensional Review of Peru: Volume I. Initial Assessment*. Paris: OECD Publishing. <http://www.oecd.org/dev/multi-dimensional-review-of-peru-9789264243279-en.htm> (15.8.2016).
- Oehri, Myriam (2015a): Comparing US and EU Labor Governance 'Near and Far' - Hierarchy vs Network? In: *Journal of European Public Policy*, 22/5, 731-749.
- Oehri, Myriam (2015b): US and EU Labor Governance in the Dominican Republic: Contrasting the DR-CAFTA and the CARIFORUM-EPA De Jure and De Facto. In: *Bulletin for Comparative Labour Relations*, 89, 93-112.
- Orbie, Jan/Martens, Deborah/Van den Putte, Lore (2016): Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation. In: *CLEER Papers*, 3. <http://www.asser.nl/cleer/publications/cleer-papers/cleer-paper-20163-orbie-martens-van-den-putte/> (24.8.2016).
- Peels, Rafael/Echevarria, Elizabeth/Aissi, Jonas/Schneider, Anselm (2016): *Corporate Social Responsibility in International Trade and Investment Agreements: Implications for States, Business and Workers*. Geneva, ILO Research Paper No. 13. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_476193.pdf (15.8.2016).

Peru 21 (2016): ADEX pide reformas para el sector agroexportador.
<http://peru21.pe/economia/adex-pide-reformas-sector-agroexportador-2242634> (15.8.2016).

PLADES (2014): La agenda laboral pendiente del TLC Perú-Estados Unidos: Cuando la competitividad se base en la reducción de los derechos laborales.
<https://www.iesiperu.org.pe/documentos/publicaciones/TLC%20EEUU%20PERU.pdf> (15.8.2016).

Postnikov, Evgeny/Bastiaens, Ida (2014): Does dialogue work? The effectiveness of labor standards in EU preferential trade agreements. In: Journal of European Public Policy, 21/6, 923-940.

RedGe (2015): Carta a la Senora Embajadora Irene Horejs de la Unión Europea en el Peru. On file with the author.

RedGe (2012): Derechos laborales y empleo en la agroexportación.
<http://www.redge.org.pe/node/1427> (15.8.2016).

RedGe (n.d.): TLC con la UE no garantiza proteccion de Derechos Laborales TLC Peru/Colombia-UE: Analisis de temas sensibles. On file with the author.

Rodrik, Dani (1997): Has globalization gone too far? Washington.

Schuster, Monica/Maertens, Miet (2015): Worker Empowerment through Private Standards. Evidence from the Peruvian Horticultural Export Sector. Leuven, Bioeconomics Working Paper, 7.

Sub-Committee on Trade and Sustainable Development (2015): Joint statement. Bogota.
http://www.eesc.europa.eu/resources/docs/en_joint-statement-of-the-tsd-sub-committee.pdf (1.8.2016).

Sub-Committee on Trade and Sustainable Development (2014): Joint statement. Lima.
http://trade.ec.europa.eu/doclib/docs/2014/february/tradoc_152200.pdf (1.8.2016).

Sulmont Samain, Denis (2006): La concertacion socio-laboral en el Peru.
<http://www.ggt.uqam.ca/spip.php?article851&lang=fr> (1.8.2016).

The International Labor Rights Forum (2015): Public Submission to the Office of Trade and Labor Affairs (OTLA) under chapters 17 (labor) and 21 (dispute settlement) of the Trade Promotion Agreement between the United States and Peru.

UNDP (2015): Human Development Report Peru.
http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/PER.pdf (15.8.2016).

UNICEF (n.d.): UNICEF Data: Monitoring the Situation of Children and Women: Peru.
<http://data.unicef.org/countries/PER>. (15.8.2016).

US Department of Labor (2016): Public Report of Review of U.S. Submission 2015-01 (Peru).
https://www.dol.gov/ilab/reports/pdf/Public_Report_of_Review_of_US_Submission_2015-01.pdf (15.8.2016).

US Department of Labor (2014): Peru 2014 Findings on the Worst Forms of Child Labor.
<http://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/peru.pdf> (15.8.2016).

US Department of State (2015): Peru 2015 Human Rights Report.
<http://www.state.gov/documents/organization/253247.pdf> (15.8.2016).

US Department of State (2014): Peru 2014 Human Rights Report.
<http://www.state.gov/documents/organization/236922.pdf> (15.8.2016).

Van den Putte, Lore (unpublished): The European Union's Trade-Labour Linkage: Beyond the 'Soft' Approach? Doctoral dissertation at Ghent University.

Van den Putte, Lore/Orbie, Jan/Bossuyt, Fabienne/Martens, Deborah/De Ville, Ferdi (2015): What social face of the new EU trade agreements? Beyond the “soft” approach. Brussels, ETUI Policy Brief. <http://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/What-social-face-of-the-new-EU-trade-agreements-Beyond-the-soft-approach> (1.8.2016); for a Spanish translation see <http://revistas.flacsoandes.edu.ec/mundosplurales/article/view/2320/1477> (1.8.2016).

Van den Putte, Lore/Orbie, Jan/Bossuyt, Fabienne (unpublished). The US' and EU's Trade-Labour Linkage in Peru and Colombia: What Does it Mean for Domestic Stakeholders?

Velluti, Samantha (2015): The EU's Social Dimension and its External Trade Relations. In: Marx, Axel/Wouters, Jan/Rayp, Glenn/Beke, Laura (eds.): Global Governance of Labour Rights: Assessing the Effectiveness of Transnational Public and Private Policy Initiatives. Cheltenham, 42-62.

Verbeek, Bart-Jaap (2014): Globalisation and Exploitation in Peru: Strategic Selectivities and the Defeat of Labour in the US-Peru Trade Promotion Agreement. In: Global Labour Journal, 5/2, 212-232.

Vogt, Jeffrey (2015): The evolution of labor rights and trade - A transatlantic comparison and lessons for the Transatlantic Trade and Investment Partnership. In: Journal of International Economic Law, 18/4, 827-860.

Vogt, Jeffrey (2014): Trade and Investment Arrangements and Labor Rights. In: Blecher, Lara Jill/Kaymar Stafford, Nancy/ Bellamy, Gretchen (eds.): Corporate Responsibility for Human Rights Impacts: New Expectations and Paradigms. Chicago, 121-176.

Walk Free Foundation (2014): The Global Slavery Index 2014. <http://www.globalslaveryindex.org> (15.8.2016).

World Bank (n.d.): Data Peru. http://data.worldbank.org/country/peru#cp_wdi (15.8.2016).

Authors

Jan Orbie is an Associate Professor at the Department of Political Science and Director of the Centre for EU Studies at Ghent University. He has published widely on the European Union's external relations, including the social dimension (see www.eu-sdg.ugent.be).

Lore Van den Putte is a PhD fellow at the Centre for EU Studies at the Department of Political Science at Ghent University. Her research focuses on three themes: labour norms in EU and US trade agreements with Peru, Colombia and Korea, civil society mechanisms in EU trade agreements and the role of the European Parliament in trade policy (see also www.eu-sdg.ugent.be).