Change and Continuity from NAFTA to NAFTA: Policy Feedbacks and the Design of Labor Provisions in Preferential Trade Agreements

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Work in progress

Abstract

How is change in the design of labor provisions in present-day trade agreements affected by past trade agreements? To start answering that question, this article revisits the puzzling US history of linking trade and labor in its preferential trade agreements (PTAs). Although the labor clauses of US PTAs usually include the possibility of sanctions/fines and although those clauses gained legal strength over the years (*de jure* change), as of the writing of this article sanctions and fines have never been triggered in result of a breach of the labor provisions of US PTAs (*de facto* continuity). That is likely to change with the US-Mexico-Canada (USMCA) deal. I here argue that the policy feedback literature can offer valuable elements to start making sense of that pattern of change and continuity. To be more precise, I argue that NAFTA created an endogenous trigger of *de jure* changes while also creating a bias toward *de facto* continuity in labor provisions in US PTAs. USMCA's strong labor provisions can be plausibly placed as the culmination of that endogenous process of change/continuity and not just the result of a break vis-à-vis a previous institutional path. This article has implications to the literature on the design of non-trade issues (NTIs) in PTAs.

Introduction

The promotion of worker rights in preferential trade agreements (PTAs) is a widespread trend (ILO 2013) that has been gaining growing scholarly attention in recent years. Because of the growing importance of labor provisions in assuring the legitimacy of PTA negotiations (Bastiaens and Postnikov 2019) and because PTAs may be "the best and only politically viable way to keep the global trading system open" (Mansfield and Milner 2018, 29) given the paralysis of the World Trade Organization (WTO), the study of trade-labor linkage in bilateral deals is of growing relevance to global trade governance. In response, the literature has been fleshing out the conditions under which the design of labor provisions in PTAs change over the

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years. The development of large PTA datasets allowed the literature to reassert the cross-case relevance of interests, institutions (Postnikov and Bastiaens 2020; Raess, Dür, and Sari 2018; Kerremans and Martins Gistelinck 2009; Lechner 2016) and diffusion/network effects (Milewicz et al. 2018; Postnikov and Bastiaens 2019) in explaining labor provisions in bilateral agreements, hand in hand with a broader literature on the design of PTAs (Baccini, Dür, and Haftel 2015; Kucik 2015; Baccini, Dür, and Elsig 2015; Hicks and Kim 2015; Allee and Elsig 2016). The literature has also been calling researchers' attention to the path dependence in the design of economic agreements (Allee and Elsig 2019; Claussen 2018; Victor and Coben 2005; Alschner and Skougarevskiy 2016). However, it is very difficult to find works on how existing trade policies and their implementation affect change in the design of future trade policies (and the non-trade issues therein), particularly when it comes to non-trade issues (NTIs). Still, as labor provisions in PTAs become widespread and as countries gather experience in implementing and enforcing those clauses, the feedback effects of previous trade policies tend to become ever more important when searching for a minimally sufficient explanation to *change* in the design of PTAs over the years. In the EU, for instance, experience surrounding the negotiation and implementation of the labor provisions of the EU-Korea PTA and the EU-Colombia PTA can be plausibly associated with a stronger push for sanctions in the trade and sustainable development chapter of more recent EU PTAs (ETUC 2018; Agence Europe 2012). This paper starts filling the gap illustrated above by revisiting the US' recent history of linking trade and labor in its PTAs.

The US is chosen as a case for a few important reasons. Because of its large bargaining leverage, because it is a vanguard promoter of labor provisions in PTAs and a hub from where provisions are copied/imitated by other countries (Baccini, Dür, and Haftel 2015), the US is an influential case (Seawright and Gerring 2008). In turn, the US now has a vast experience in implementing the labor provisions of its PTAs and therefore is an appropriate candidate to start exploring the implications of the policy feedback theory in explaining change in the design of NTIs in trade deals. In addition, the US case has certain counterintuitive characteristics which cannot be fully accounted for by the existing literature. Labor provisions in the trade deals negotiated by the US have undergone changes in their design, with an increase in their legal strength being observable over the years (*de jure* change). However, even if the labor chapters of US PTAs introduce the possibility of sanctions and fines in case of violations, so far sanctions/fines have never been triggered and implemented in practice (*de facto* continuity) (See Table 1). That is likely to change. In December 2019, Canada, US and Mexico agreed to a protocol amending, among other provisions, the labor chapter of the United States-Mexico-

Canada (USMCA) deal. With that amendment, the labor chapter of the USMCA seemingly remedies important enforcement shortcomings of previous PTAs (see i.e. Claussen 2019). How to account for that pattern of change/continuity? More specifically, what triggers *de jure* change and *de facto* continuity? When are *de jure* changes more likely to also trigger *de facto* changes?

Some authors, such as Claussen (2018) and Allee and Elsig (2019) underscore that PTA provisions are marked by a high degree of similarity. However, despite the similarity of labor provisions in US PTAs, even small changes in language matter when it comes to the legalization of labor provisions (i.e. a party shall "*strive* to ensure", as opposed to "shall ensure" respect to ILO Conventions). As such, even if the labor provisions of US PTAs are mostly copied from previous PTAs, those provisions have progressively added legal strength over the years (See Table 1). Other authors, in turn, make sense of the legal changes through which labor provisions in PTAs have been passing through in recent decades (Lechner 2016; Postnikov 2020) but do not explain why US promotes *de jure* "hard" labor provisions in its PTAs while those provisions are *de facto* "soft" (centered on cooperative initiatives) (De Ville, Orbie, and Van den Putte 2016; Putte and Orbie 2015; Oehri 2017). I argue that the policy feedback literature can offer an integrative explanation that (1) accounts for the US *de jure/de facto* puzzle (continuity *and* change), therefore going beyond explaining continuity *or* change; and an explanation that (2) bridges an important gap in the literature, namely the lack of emphasis on the implementation of previous PTAs as a source of change in the design of future PTAs.

Table 1. Status of labor provisions in US PTAs

PTA	***De jure* provisions**	***De jure* variation vis-à-vis previous PTAs**	***De facto* enforcement**
NAFTA (1993)	Introduction of "hard" enforcement of labor provisions	Strengthened	Cooperative
US-Jordan (2001)	Normal dispute settlement	Strengthened	Cooperative
US-Chile (2003)	Modified dispute settlement (weaker than US-Jordan)	Weakened	Cooperative
May 10 (2007)	Normal dispute settlement	Strengthened	Cooperative

USMCA (2019)	Normal dispute settlement with clarification of language and institutional mechanisms	Strengthened	Cooperative and Sanctions (?)

My argument is that the high degree of polarization during the negotiation and ratification of the North America Free Trade Agreement (NAFTA) required the introduction of sanctions in the labor provisions of US PTAs as a window-dressing provision (possibility of enforcement *de jure* but not *de facto*) for the US administration to avoid a stalemate. That, however, led to an "incoherent policy" (Jacobs and Weaver 2015) which triggered an endogenous, self-undermining feedback process. At the same time, however, the template of labor provisions set by NAFTA accrued certain concentrated benefits to key constituents, triggering self-reinforcing feedbacks. I argue that the self-reinforcing feedbacks are responsible for the absence of *de facto* enforcement of labor provisions in US PTAs over the years. However, I also argue that those positive feedbacks were *progressively* eroded over the years, leading to a shift in the balance between self-undermining and self-reinforcing feedbacks in favor of the former. That shifting balance can be plausibly linked to the progressive *de jure* changes of labor provisions in US PTAs. My argument has important implications for understanding the labor provisions of the new USMCA. While Claussen (2018) underscores that US negotiators in the Trump administration managed to break the path dependence of previous agreements during the negotiation of the USMCA, my argument suggests that, by means of a slow but steady process of change, the path dependence of the US template of labor provisions in PTAs has been progressively eroded since the very moment the first NAFTA started being implemented. In that regard, USMCA's stronger labor clauses can be plausibly placed as the result of an endogenous process of stepwise change rather than the result of a full-on break vis-à-vis previous institutional paths. Overall, I conclude that the feedback theory can have a prominent future in explaining change and continuity in the design of (NTIs in) PTAs.

To assess the plausibility of my argument, I present a historical narrative of trade-labor linkage in US PTAs between 1993 and 2019. I approach historical narratives as the "presentation of results", in the way indicated by Büthe (2002). In other words, "I focus on narratives … to present the results of [my] empirical analysis, providing information about actors, institutions, events and relationships in a 'single but coherent story, although with subplots' (Stone 1987, 74) to provide empirical support for a theoretical argument" (Büthe 2002, 482). That approach allows the exploration of the temporality of events over relatively

long periods of time and is particularly suitable for exploring processes of stepwise change. Following Büthe's advice, the beginning and end of my narrative are defined by the distinctive process of trade-labor linkage triggered by NAFTA (1993), which culminates in the approval of the USMCA protocol of amendment by the US Congress (2019). This paper can contribute to the existing PTA design literature by presenting new pathways of change in the content of trade agreements. Increased politicization of trade deals around the globe may lead to an increased judicialization of labor provisions in PTAs so as to assure the feasibility of new trade agreements (Postnikov and Bastiaens 2019), including by allowing sanctions as a last resort mechanism of dispute settlement. In that regard, the counterintuitive US case can also potentially shed light on future developments in the domain of trade-labor linkage, offering a prologue to the politics of the design of NTIs in the PTAs of other trade actors in years to come, including the EU. By emphasizing stepwise changes in design, this paper also puts in perspective the role of anti-establishment governments in breaking institutional paths in trade policy. The remainder of the paper is organized as follows: firstly, I present the analytical framework and my empirical expectations. I then proceed to the empirical exploration of the US history of trade-labor linkage. I conclude with a discussion of the findings, the implications of my analysis and avenues for further research.

Self-Reinforcing, Self-Undermining Policy Feedback and Trade-Labor Linkage

Broadly speaking, policy feedback simply refers to how policies affect politics over time (Béland 2010). The concept of policy feedback has often been associated with the historical institutionalist literature when explaining the reproduction of institutions and has also been employed in the field of international political economy (Newman and Posner 2016) to explain continuity. However, many authors have underscored that feedbacks are not always self-reinforcing (Béland 2010; Weaver 2010; Jacobs and Weaver 2015; Béland and Schlager 2019; Pierson 1993; Patashnik and Zelizer 2013). That includes the recent historical institutional literature that seeks to bridge some of the gaps left behind by path dependence explanations (by i.e. paying more attention to gradual sources of change) (Mahoney and Thelen 2009; Falleti 2009). Pierson's (1993) seminal piece underscores that policies can affect interest group formation and mobilization over the years, creating triggers of endogenous change over time. It can also serve as incentives (positive or negative) for political elites and for the mass public. For instance, Erikson and Stoker (2011) show how Vietnam's policy of selecting young men to fight in the Vietnam War based on a lottery system created incentives for a change in individuals' political attitudes. Policies can also serve as sources of information and meaning,

by triggering policy learning and by offering new information for the mass public. Skogstad (2017), for instance, shows how interpretive and informational feedbacks explain the retrenchment of the EU biofuels policy. Recent works have built upon Pierson's piece to further advance how policies generate ideational and resource feedbacks in different issue areas (Jacobs and Weaver 2015; Weaver 2010; Oberlander and Weaver 2015). They reiterate that policy feedback can bear effects on policymakers, on the mass public and on interest groups (Béland and Schlager 2019; Béland 2010; Jacobs and Weaver 2015). Except under specific situations, the mass public is not so much interested in trade politics (Guisinger 2009; Rasmussen, Carroll, and Lowery 2014). Interest group politics, in turn, is quite prevalent in the relation between non-trade issues and trade agreements in the US and beyond (Lechner 2016; Raess, Dür, and Sari 2018). In turn, interest groups are proven to have an influence in the design of labor provisions of US PTAs, in part because the USTR and the US Congress are highly responsive to the demands of their constituents (Postnikov 2020). As such, the case of trade-labor linkage in the US is particularly interesting to understand the feedback effects of policies on the incentives faced by US interest groups to mobilize in favor or against change[2].

The literature on policy feedback underscores that pressure for change or for continuity reflects the balance between self-reinforcing and self-undermining feedback effects (Daugbjerg and Kay 2020; Weaver 2010). In other words, when a policy activates forces for change more than it activates forces for continuity, we should expect a self-undermining effect (although that may not be a sufficient condition for policy change). When will such balance shift? Across different policies, it is possible to find certain issues that raise more sunk costs than others, therefore exerting greater self-reinforcing feedback (Allee and Elsig 2019; Skogstad 2017). Jacobs and Weaver (2015) also affirm that self-reinforcing effects occurs when the flow of concentrated benefits to the constituency strengthen organizations capable of defending the benefit stream. On the other hand, incoherent policies are likely to be more subject to self-undermining feedbacks. They may create expectations as to their implementation that cannot be fully met by the policymakers. Incoherent policies are more likely in contexts marked by institutional fragmentation, when actors enacting those policies are facing short-run electoral pressures or because the policies are socially ambitious interventions (Jacobs and Weaver 2015). In particular, incoherent policies may increase the perception of concentrated losses to

[2] I assume, in this paper, that policymakers cannot push for their own individual preferences in contexts of strong institutional control of the bureaucracy. In those contexts, their policy positions reflect the preferences of their constituents. I also assume that individuals only experience diffuse costs and benefits in trade policy. Finally, I assume that policymakers respect to the balance of mobilization or the expected balance of mobilization of its domestic constituents.

certain groups, which may in turn lead to the strengthening of constituents seeking policy change (Oberlander and Weaver 2015). As policymaking in democracies are made based on compromise, foreshortened time horizons create limitations during a policy's implementation. However, policymakers are generally under electoral pressure and that will not always lead to incoherent policies. Still, it is plausible to affirm that in contexts marked by political polarization, the policymaker is more likely to enact incoherent policies given the need to placate constituents with very divergent preferences. The US history of trade-labor linkage can help illustrate this argument as domestic preferences were polarized during the NAFTA negotiation and ratification.

The extent to which policies impose concentrated benefits or costs on certain policy actors also depends on those actors' policy preferences. For firms and multinationals, if sanctions are triggered to enforce labor provisions in PTAs, that can increase their variable costs and reduce their international competitiveness (Lechner 2016)[3]. The threat of sanctions can also lead to defection by PTA partners, depriving exporters and multinationals of key channels for exports and investments abroad. In turn, the literature on lobbying has underscored that firms mobilize more easily as they anticipate concentrated losses from being shut out of foreign markets (Dür 2010). As such, exporters and multinationals tend to reject the possibility of *de facto* enforcement a PTA's labor provisions if those provisions include the possibility of sanctions. If a policy is seen as limiting the *de facto* enforcement of sanctions while achieving the necessary compromise to avoid foreign discrimination, exporters and multinationals reap concentrated benefits associated with that policy and push for its continuity. They will be against further change to the extent that they fear that those changes will lead to *de facto* enforcement of the labor provisions in the agreement. For other groups (NGOs and labor unions in particular), in turn, stronger labor provisions in PTAs can be an alternative to keep neoliberal trade in check (Raess, Dür, and Sari 2018) in view of the growing realization that globalization cannot be stopped (Bieler 2007; Robinson 2000). However, those groups expect labor provisions to be enforced; as such, the *de jure* but not *de facto* possibility of strong labor provisions in PTAs can indicate to them that the government only pays lip service to workers' rights. It seems plausible to affirm that once a benefit is conceded to a given actor, the perception of that benefit being retracted can *per se* lead to concentrated costs. Thus, if sanctions

[3] When sanctions are not part of the equation, the presence of labor provisions in PTAs will generally not impose concentrated costs on exporters and multinationals, who may even benefit from using labor provisions in PTAs to mitigate coordination problems or negative externalities (Baccini and Koenig-Archibugi 2014; Chauffour and Maur 2011; Kim 2012).

are present *de jure* but are not *de facto* enforced over the years, groups in favor of stronger labor provisions in PTAs may experience concentrated costs, as the absence of enforcement can point to the inability of policymakers to uphold a previous commitment.

The situation described above can put the government in a very difficult situation as forces of continuity and forces of change, with often polarized preferences, battle in response to a previous policy. However, Oberlander and Weaver (2015) indicate that feedback effects vary in terms of their direction and how strong they are over the years. When, in trade policy, will feedback effects change their intensity and/or their direction? As I indicated above, exporters and multinationals experience concentrated costs if they suffer or fear suffering foreign discrimination. To the extent that an existing template of labor provisions in PTAs achieve such a degree of domestic contention that it can singlehandedly hinder the approval of new trade agreements, it seems plausible to affirm that groups fearful of foreign discrimination will find fewer incentives to push for the continuity of that template (i.e. NAFTA's *de jure* only sanctions). As self-reinforcing effects are weakened, we may see the appropriate context for policy change. Another source of self-undermining effects are policy failures (May 2015). To the extent that a policy considered to be incoherent persists over the years and its implementation is consistently considered to be faulty, the longer it stays in place the greater the self-undermining feedback effect it may have. For one, implementation failures can trigger the mobilization of constituents by imposing concentrated costs on them. However, those failures may also trigger policymakers to promote changes in anticipation to the negative reactions of their constituents, especially if previous experience suggests that constituents that are unhappy with the policy at hand have a demonstrated ability to mobilize and potentially put to question the country's ability to negotiate and ratify new trade agreements.

Bearing the above in mind, it seems logical to hypothesize that stepwise changes in the design of labor provisions in PTAs will take place after trade policy deadlocks or after "close calls", during which time opposition against change is more likely to recede. Those deadlocks, in turn, should be causally linked to the template created by a previous PTA. I expect to find the position of multinationals and exporters to progressively relax *during and after* those deadlocks. If such deadlocks or "close calls" do not take place, it is unlikely that groups against the possibility of sanctions will relax their opposition against new policy changes.

The literature on gradual change institutionalism, with which the policy feedback theory is often associated, underscores that gradual changes will eventually transform the core characteristics of an institution (Falleti 2009; Mahoney and Thelen 2009). When it comes to the *de facto* and the *de jure* labor provisions in PTAs, even if policies change ever so incrementally,

at some point additional *de jure* layers will lead to a shift in the core of the policy. In trade-labor linkage, I find it plausible to consider that such "tipping point" is located after labor provisions already reached a high level of legal strength. When the scope of those provisions, their bindingness and the dispute settlement mechanisms are *de jure* strong, further changes may lead to a more fundamental change in the institution. A high preexisting level of legalization of labor provisions in PTAs is an important condition for changes to take place but not a necessary one. Even when labor provisions are not highly legalized, it may be that change agents are able to benefit from the ambiguity of the rules guiding the implementation of a given policy so as to introduce *de facto* changes (Mahoney and Thelen 2009). As such, *de facto* changes can take place even without *de jure* changes. A high preexisting level of legalization can, however, be part of a sufficient explanation to *de jure* changes that also lead to *de facto* changes in the design of labor provisions in PTAs. Based on the elements provided by the literature, it is possible to derive a few empirically observable implications pertaining both to the outcomes of policy change and to the mechanism behind those outcomes in the field of trade-labor linkage.

Table 2. Empirical observations and mechanisms

Outcome Observation	**Necessary or sufficient?**	**Mechanism behind change**	**Necessary condition for feedback mechanism to hold**
De jure changes in the design of labor provisions in PTAs take place after trade policy deadlocks	Not necessary, but can be part of a sufficient explanation	Groups in favor of continuity relax their position (sometimes only temporarily) after policy deadlocks, shifting the balance of mobilization in favor of change.	Grievance vis-à-vis a previous trade policy (i.e. NAFTA) is a plausible explanation for trade deadlock (by incentivizing the mobilization of critics).
De jure changes in the design of labor provisions in PTAs occur after	Not necessary, but can be part of a sufficient explanation	Policymakers introduce *de jure* changes in anticipation to the negative reactions of the policy failure on	Implementation failure can be plausibly linked to incoherence and

implementation failures		domestic interests. Such change takes place after the position of groups in favor of continuity is relaxed	limits of a previous template.
De jure changes that are also *de facto* changes take place after labor provisions in PTAs are already highly legalized	Not necessary, but can be part of a sufficient explanation	Previous *de jure* changes elevate the degree of legalization of labor provisions in PTAs, leading further *de jure* changes to affect *de facto* enforcement	Previous *de jure* changes can be plausibly linked to the feedback effects of a previous template of trade-labor linkage

The Narrative: US Policy Change from NAFTA to NAFTA

NAFTA and the Responses to the 1997 Fast-Track Fiasco[4] *(1993-2004)*

The introduction of references to labor and environment during NAFTA's negotiation is explained by Mayer (2002, 98) as the result of "the eleventh-hour demand by the United States for labor and environment side agreements in the NAFTA … reflected new domestic politics of trade that differed considerably from the historical norm". NAFTA marked at the onset of a "new politics of trade" (Destler and Balint 1999), triggering the mobilization of societal actors that had not generally paid attention to trade before. And although Clinton criticized NAFTA, he was very much wary of backing away from it (Mayer 2002). Therefore, when he came to power, he favored stronger labor and environmental provisions instead of opposing the deal altogether. And while in 1991 and 1992 sanctions were not really part of the plan, the United States Trade Representative (USTR) soon realized that a treaty without labor provisions would not clear the US Congress. During a cabinet meeting in 1993, US negotiators decided to press for the inclusion of sanctions in the side agreements (Mayer 2002). Exporters and multinationals radically opposed that decision. A letter signed by major US exporters indicated that the "use of trade sanctions as a remedy for environmental [and labor] violations could evolve into a new set of non-tariff barriers" (Workman 1993). Despite the opposition

[4] Fast-track is an instrument voted by the US Congress that allows the USTR to negotiate trade agreements that are subject to a yes or no vote in Congress, without the possibility of amendments.

against the link between trade and labor, US exporters and multinationals ended up supporting NAFTA and acquiescing to its side agreements on trade and environment. Why?

NAFTA' side agreement on labor introduced the language "a Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties". That formula repeated itself until the recent USMCA negotiations. It is fully plausible to argue that US multinationals and exporters only acquiesced to NAFTA's side agreements to the extent that sanctions in the agreement were hard to trigger. According to a statement, "the Chamber chose not to actively oppose the NAALC because, on balance, the agreement emphasized cooperative measures likely to help the NAFTA partners over adversarial processes that could ultimately divide the partners" (Karesh 2004, 2). NAFTA's side agreements introduced a cumbersome process that also served to reassure US trade partners fearful of being at the mercy of a strong dispute settlement mechanism. During the last stages of the negotiations, the Mexican chief trade negotiator assured the Mexican Congress that the proposed process for triggering sanctions in case of labor violations was "so exceedingly long" that it was "very improbable that the stage of sanctions could be reached" (US House of Representatives 1993, 68). In result, according to some "the real purpose of the labor and environmental side agreements was to provide political cover for Democrats to support NAFTA so that they would not incur the wrath of labor unions and environmental NGOs" (Hufbauer and Goodrich 2004, 46). By means of *de jure* strong but *de facto* weak enforcement, the USTR found some slack to finish the negotiations and Clinton obtained a victory in Congress despite the polarization surrounding NAFTA's negotiation.

Although the introduction of *de jure* sanctions allowed for a temporary increase in the autonomy of the USTR, the approval of NAFTA crystalized an unstable compromise. According to Kimberly Elliot, "the side agreement on labor and environment, while helpful in securing NAFTA's passage, ultimately contributed to later stalemate by solidifying positions on both sides of the trade policy debate" (Elliott 2000, 106). The fast-track fiasco of 1997 helps further underscore that instability. After NAFTA, exporters and multinationals wanted to limit exposure to the uncertainty created by linking trade and labor. According to the National Association of Manufacturers (NAM), "the matter that is of most pressing concern to US manufacturers is the use of trade sanctions to enforce non-trade provisions or agreements … While the enforcement mechanisms in the NAFTA side agreements have been characterized as minimal, a precedent has been set*"* (US House of Representatives 1997, 148). The NAM representative continued: "It is our strong recommendation that the fast track legislative

package includes some guiding language suggesting the inappropriate nature of using unilateral sanctions for non-trade purposes" (US House of Representatives 1997, 148).

In turn, while during the NAFTA debate representatives of labor unions already understood that NAFTA's side deals were weak, by 1997 that perspective had been confirmed. As indicated by David Smith, then Director of Public Policy of the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO), during a talk show back in 1997, "the labor and environmental side agreements, Ray, were designed not to work. They haven't" (Suarez 1997). By the end of 1997, there were already nine cases filed under NAALC, none of them leading to sanctions. And although NAALC is arguably better than no-NAALC (Singh and Adams 2001), the fact that NAFTA's labor provisions were not enforced was seen by labor advocates as a policy failure. Submissions by labor unions during the 1994-1997 review of NAALC indeed corroborates that affirmation (Compa and Brooks 2019). To make matters worse, in the beginning of 1997, a leaked memorandum indicated that the administration had the intention of leaving labor provisions out of the 1997 fast-track negotiations (Inside US Trade 1997). By possibly leaving out a trade negotiation objective requiring linkage between trade and labor in US PTAs, representative Richard Gephardt (D-MI) considered that "the President's [Clinton] present request for fast-track is a step backward, in my view, from what we had in 1991 with President Bush" (US House of Representatives 1997, 11). In conjunction, the elements above underscored to critics that the US was backing down on past commitments by not pushing for enforceable labor provisions in the 1997 fast-track. As indicated during 1997 AFL-CIO's Annual Convention, "the AFL-CIO and its affiliated unions will vigorously oppose granting fast-track … unless the legislation clearly states that only trade agreements containing enforceable labor rights and environmental standards in their core will receive fast-track treatment" (AFL-CIO 1997). As that was not the case, fast-track became a "referendum" on NAFTA (Bardwell 2000).

At the end of 1997, the fast-track authority was derailed after an unprecedented lobbying effort by labor unions and their allies (Destler and Balint 1999; Shoch 2001) and despite strong support from Clinton close to the vote (Orszag, Orszag, and Tyson 2002). Lobbying efforts by unions and NGOs included strong grassroots mobilization, TV ads, demonstrations and multiple letters to Congress (Orszag, Orszag, and Tyson 2002). NGOs that had previously supported NAFTA united forces with labor unions – AFL-CIO in particular – to lobby against fast-track. Some might argue that opposition against fast-track was justified by the economic consequences of NAFTA. However, Bardwell's work illustrate that district-level job losses is

not a statistically significant predictor of support for fast-track in the case of the Democrat party, while PAC (Political Action Committee) contribution from labor is (Bardwell 2000).

The fast-track fiasco sent a strong signal to exporters. By 2000, the approval of the Canada-Chile agreement, the growing difficulties associated with advancing the Free Trade Agreement of the Americas (FTAA) and the consolidation of Mercosur underscored the need for new US trade initiatives to be implemented. As mentioned by a representative from the business coalition America Leads on Trade, "while our exports to Latin American countries will face significant tariffs … trade among Latin American countries … is becoming more open due to their own trade agreements" (US House of Representatives 1997, 60). In other words, fear of foreign discrimination was on the rise. It does not seem by chance that the position of recalcitrant exporters/multinationals started changing during that period. In 1999 and 2000 the National Foreign Trade Council (NFTC) already underscored that "it is prepared to sit down with members of this Committee, the Administration, and others to engage in a meaningful dialogue that will move the process forward on those [labor and environmental] issues" (US House of Representatives 2000, 99). A clear demonstration that US exporters and multinationals were slowly but surely changing their position on trade-labor linkage came in February and March of 2001. By then, some major US firms, fearing that trade would reach another deadlock, demonstrated *some* willingness to discuss the inclusion of strong labor provisions in US PTAs. According to a representative from General Electrics, "one issue that will be critical in building a political consensus for this [Chile] agreement will be the way that labor and environmental issues are addressed" (Inside US Trade 2001). In other words, there is a clear association between labor provisions and the prospects of new US trade initiatives being approved, as I would have expected after a policy failure of the magnitude of the 1997 fast-track fiasco. In 2001, representatives from Caterpillar and from McGraw-Hill supported the US-Jordan PTA – which contained stronger labor provisions than NAFTA – as a necessary concession to avoid a potential trade deadlock (Inside US Trade 2001).

After the fast-track fiasco of 1997, there was some opening for the introduction of changes in the design of labor provisions in US PTAs. Those changes came by means of the US-Jordan PTA, which offered concessions on the labor front that exporters and multinationals were not yet ready to accept. In a statement dated November 2000 the US Chamber of Commerce made it clear that it would "oppose the inclusion of unnecessary non-trade provisions" in the PTA (US Chamber of Commerce 2000). The Chamber claimed that linking trade to labor would slow the trade liberalization process (Inside US Trade 2000b), particularly after the Clinton government announced its intent to include labor provisions along the lines of

the US-Jordan PTA in the US-Chile deal. Back in December 2000, a series of US corporations such as the Emergency Committee for American Trade (ECAT), Caterpillar, General Motors and the Business Roundtable also urged the Clinton and Bush administrations not to use the US-Jordan PTA as a model in future deals (Inside US Trade 2000a). In response, Bush indicated his opposition against including labor provisions in the Chile agreement during his presidential campaign (Investor's Business Daily 2001). And indeed, the US-Chile PTA stepped back vis-à-vis the language used in the US-Jordan PTA, particularly in what regards the possibility of a normal dispute settlement potentially leading to sanctions in case of alleged breach of labor provisions. All in all, however, the years stretching from 1993 to 2002 are well aligned with my expectations. US exporters and multinationals did relax *some* of their opposition to trade-labor linkage, but not enough to accept the provisions in the US-Jordan PTA, which can in turn be plausibly argued to be a concession by Clinton after the fast-track fiasco (Shoch 2001). As a matter of fact, in July 2001, a side letter sent by Robert Zoellick to the Jordan government stated that the US government would not apply the dispute settlement procedures (Human Rights Watch 2008). On the one hand, that letter reassured exporters and multinationals that sanctions in the design of US labor provisions were only enforceable *de jure* but not *de facto*. On the other, it served to further underscore to NGOs and labor unions that the government was not willing to uphold previous commitments on labor provisions in PTAs.

Responding to CAFTA-DR and Introducing New De Jure *Changes (2005-2017).*

After the approval of the US-Chile PTA. the USTR Labor Advisory Committee, composed mostly of US unions, criticized the Chile, Singapore, Australia, Morocco, Oman and Bahrain PTAs, affirming that they constituted a "big step backwards from the Jordan FTA" (LAC 2008). AFL-CIO's Resolution opposing CAFTA underscored that it "represents a major step back from the US-Jordan Free Trade Agreement, which AFL-CIO endorsed" (AFL-CIO 2005). Although those were relatively small agreements, the efforts of the Bush government to finish trade deals that went a step back vis-à-vis the US-Jordan PTA would eventually become politically unsustainable, especially because those deals were approved back-to-back[5]. In result, discontent over Bush's trade policy accumulated during the first years of his government. In that context, the negotiation and ratification of CAFTA-DR, which was salient on its own, gained even more attention by labor advocates. CAFTA-DR was often compared to NAFTA by critics. The minutes of the AFL-CIO Congress of 1995, 1997, 1999 and 2001 all refer to

[5] Interview, April 2020.

NAFTA's experience. The 2005 Congress proceedings did not steer away from that pattern, with the term "NAFTA" appearing 21 times. The proceeding also underscored that CAFTA-DR represented a step back vis-à-vis the Jordan PTA (AFL-CIO 2005, 135). It is therefore plausible that CAFTA's similarity to NAFTA have helped catalyze AFL-CIO's lobbying effort. In turn, while during the NAFTA fight the administration did manage to create a division within the environmental community which helped give legitimacy to NAFTA's ratification efforts (Mayer 2002), US NGOs and labor unions were now more strongly united. During a hearing at the US Senate Finance Committee in 2001, a representative of the Defenders of Wildlife – which had previously supported NAFTA – , affirmed that "it was the experience under NAFTA and that approach to dealing with labor and environmental agreement that has turned the environmental community now to the position where … there is at least near-unanimous in its views [*sic*] that they will never again agree to an approach that is a NAFTA-like approach" (US Senate Finance Committee 2001, 41).

Despite the lobbying efforts of US unions and NGOs, CAFTA-DR was approved, but only by a two-vote margin. In response to the approval of the agreement, labor unions – not exclusively, but in particular – strongly organized to punish Democrats and Republicans who voted for the deal. In February 2006, the AFL-CIO had already indicated it would spend US$ 40 million during the midterm elections (Greenhouse 2006), making the 2006 midterm PAC AFL-CIO's largest ever. The collective action of unions was not limited to campaign financing, however. Demonstrations also took place in many states later that year. According to data compiled by the National Republican Congressional Committee (NRCC), in July 2006 as many as 24 Democrat and labor-allied interest groups launched political activity in 82 congressional districts represented by House Republicans (The Hill 2006). When the 2006 elections finally took place, the Democrats obtained a solid victory, sometimes referred to as the "Democratic sweep". In total, there was a net gain of 28 seats in the new Congress, 27 in the House and 1 in the Senate. As declared by Charles Rangel (D-NY) in January 2007, "vital to our electoral success was our ability to take a vocal stand against the Administration's misguided trade agenda …" (The Nation 2007). There is a clear connection between the CAFTA defeat and the "Democratic sweep" in 2006. Labor lobbying, and in particular the increased weight of labor's PAC, seems to be the main factor linking CAFTA to the 2006 election results, despite the relatively low salience of trade to the general US public (Guisinger 2009).

Influenced by the strong advocacy from labor unions and given that the Democrats won back House majority in November 2006, Democrats sought a more "activist" approach to trade policy (Inside US Trade 2006). The discussion of new directions to trade policy was seen as the

only way to avoid a potential trade stalemate and to obtain bipartisan support to the deals that were close to completion by 2006, including the US-Korea and US-Peru PTAs [6]. For that motive, Chris Wenk, from NAM, affirmed in January 2007 that "labor is really the prize, the main issue, and groups like NAM, we acknowledge that there are going to be discussions on that. We accept that" (Ackley 2007). NAM's declaration shows a clear change of hearts vis-à-vis its position back in 1997. As the administration negotiated changes in the design of labor provisions in US agreements with Democrats (later called May 10 agreement), a former government official who participated in the negotiations mentioned that they did not expect much litigation linked to the provisions present in the instrument[7]. Again, there seems to have been an explicit intent in making sure that sanctions would hardly be triggered. In that regard, a crucial element that served to avoid imposing disproportionately high costs on exporters during the May 10 negotiations was the fact that the bipartisan agreement only referred to the 1998 ILO Declaration on the Fundamental Principals and Rights at Work. Those references were vague and would not commit the US to ratifying ILO Conventions, one of the biggest fears of exporters and multinationals. As pointed out by the NAM "we are not seeking to raise the bar and incorporate the ILO conventions, but the [1998 ILO's] Declaration we have already signed - this is a critical distinction" (Inside US Trade 2007). A former US government official corroborated that the references to the ILO Declaration were a way to sell the May 10 agreement to exporters, an option that would also offer a "way out" whenever necessary[8].

The template created by the so-called May 10 agreement included normal dispute settlement provisions applied to the labor chapters. It also expanded the number of provisions subject to dispute settlement. However, it *did not* change the core of the labor chapters in US trade agreements, epitomized by the language "a party shall not fail to enforce its own labor laws in a manner affecting trade". The May 10 template was applied the US-Korea deal and to the PTAs that followed. Because of the bargaining power of the US vis-à-vis its trade partners, the changes introduced by the May 10 deal ended up making their way to the final PTA texts. In turn, ever since the first years of implementation of the May 10 agreement, labor unions and human rights organizations seem to have noticed that the improvements introduced would not suffice to lead to actual enforcement. That is attested by a report prepared by HRW and published in 2008, which underscores the limits of the May 10 agreement (Human Rights Watch 2008). The May 10 agreement elevated the degree of legalization of labor provisions in

[6] Interview, March 2020; Interview, August 2020; Interview, September 2020; Interview, October 2020.
[7] Interview, April 2020.
[8] Interview, October 2019.

US PTAs to an unprecedented level. Still, the prospects of *de facto* enforcement were low. That may justify the stronger push for a pre-ratification conditionality (ILO 2013), particularly by means of the creation of a labor action plan in the framework of the US-Colombia PTA. But even that did not suffice. In the Colombia-US PTA negotiations, for instance, AFL-CIO and others considered that early ratification of the deal diluted the leverage of the action plan (US House of Representatives 2013). Still, the action plan did provide incentives for the improvement of Colombian labor laws (USTR 2016) and therefore was not a full policy failure.

The criticisms toward the Colombian PTA and the time-consuming process of dispute settlement of labor clauses in US PTAs led AFL-CIO's Richard Trumka to consider the need for a "New Direction" in the US trade policy, going beyond the May 10 agreement: "we need enforcement, because no rule makes a difference if it can't be enforced" (AFL-CIO 2014). Later on, in March 2015, Trumka pointed out that "while the 'May 10' agreement between President Bush and House Democrats was a significant step forward, even this advance has been unable to address the serious labor rights violations in Colombia, even in the context of a U.S. administration committed to labor rights enforcement" (AFL-CIO 2015). In addition, a 2015 report by the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) considered that, "we now have years of experience with labor rights language in trade agreements. The model has failed. Even the improvements made in the 'May 10' labor provisions fall far short" (LAC 2015). Some critics also considered that TPP introduced imprecise language vis-à-vis the May 10 deal, further limiting the potential *de facto* effect of that agreement (Public Citizen 2015). That renewed experience-based perspective toward the push for labor clauses in PTAs is also found in AFL-CIO's Conference Proceedings of 2013: "we know that despite our efforts, these trade agreements pay only lip service to our labor rights" (AFL-CIO 2013). New information regarding the limits of pre-ratification conditionality in Guatemala and Honduras increased that bank of experience (AFL-CIO 2015). As such, from 2013 on, the formulation of agreements with "enforceable" labor provisions started being considered a "wrong measuring stick". The important question had then become "whether there are sufficient provisions to provide confidence that they will be enforced" (US Senate 2016).

As I mentioned above, although the US-Colombia PTA was much criticized, it did not suffice in itself to trigger substantive changes in the design of labor provisions in US PTAs. The US-Guatemala dispute in the framework of CAFTA-DR, in turn, strongly reasserted that further changes were necessary to enforce labor provisions in US PTAs. It provided the ultimate proof that the labor provisions of US PTAs were "designed to fail". The US formally launched the dispute in 2010, but AFL-CIO's complaints date back to 2008. The arbitral panel was

composed in 2012 and a report was only released in 2017. Although the report recognized the pitfalls regarding Guatemala's upholding of its own labor laws, it stopped short of determining that labor violations were "in a manner affecting trade" and in a "sustained and recurrent manner" (ICTSD 2017). After the decision, the jurisprudence created by the process served as further reassurance that sanctions would not be easily enforced. A representative of the labor community affirmed that they were somehow surprised when the US lost the case, given the vast amount of evidence of labor violations by Guatemala[9]. In result, the defeat in the US-Guatemala case can be directly associated with the push for stronger labor provisions in USMCA[10]. The failure of the dispute settlement during the Guatemala case made the existing provisions - with a "core" that dates all the way back to NAFTA's "a party shall not fail to enforce … in a manner affecting trade" – difficult to defend. Not only were they exceedingly long to trigger and to come to a conclusion, but provisions were also too vague.

In sum, it is plausible to affirm that Bush's trade agenda, criticized for stepping back vis-a-vis previous US commitments on trade-labor linkage, gave incentives for labor advocates to lobby for a change in the composition of the House during the 2006 midterm elections. To avoid policy defeats, the administration ended up conceding to promoters of strong trade-labor linkage, but not without once more reassuring exporters and multinationals that sanctions would be hard to trigger. After the May 10 deal, the expanding bank of experiences of labor advocates and their allies guided their push for a "new direction" on trade policy, with the US-Guatemala case being the utmost catalyzer of demands for stronger enforcement mechanisms. Those findings are in line with my expectations. For one, it is possible to notice that the May 10 agreement was a direct response to CAFTA-DR, which in turn was at least to a great extent salient due to its NAFTA-like format. After the near defeat of CAFTA-DR, exporters and multinationals did relax their position, as they had already done, although only to a certain extent, after the fast-track fiasco. After the May 10 agreement, the labor provisions of US PTAs were already highly judicialized. Given (1) the (near) trade deadlocks caused at least to an important extent due to the failings of previous agreements when it comes to worker rights, (2) the unequivocal policy failure triggered by the US-Guatemala case and (3) the already high level of judicialization of labor provisions in US agreements, further *de jure* changes might not be feasible unless they also triggered some sort of *de facto* enforcement.

The USMCA: Path-Breaking?

[9] Interview, April 2020.
[10] Interview, April 2020; Interview, May 2020.

The USMCA was signed in November 2018. However, in December 2019, US, Mexico and Canada agreed on a protocol of amendment related to labor, environment and dispute settlement. With the amendment, USMCA's labor provisions introduced important changes vis-à-vis previous agreements. Most notably, it introduced a Rapid Respond Mechanism to tackle the very long process involved in labor dispute settlement. It also shifted the burden of proof of labor violations. As part of USMCA, a panel shall presume that a labor violation affects trade unless proven otherwise (Congressional Research Service 2020). It also added rules to avoid panel blocking. In many ways, it would seem plausible to consider that US negotiators managed to break the path dependence created by NAFTA (Claussen 2019). However, when placed as part of the path illustrated above, the USMCA can also be plausibly seen as the culmination of a process of change, or a voluminous layer added to previous trade agreements, rather than a full-on rupture. For one, USMCA provisions are not inconsistent with the path of change in US labor provisions in PTAs and to an important extent reflect long-held demands by US NGOs and labor unions. As I also indicated above, after the May 10 agreement the consensus was that labor provisions in US PTAs were already strong *de jure,* the issue being how to enforce them[11]. As such, it is plausible to affirm that the feasibility of new trade initiatives depended on *de jure* and *de facto* changes in the labor provisions of US PTAs, not least because US labor unions had developed a large bank of experience of what works and what does not when it comes to enforcement, particularly after the Guatemala failure[12].

On the other hand, the preexisting path of continuity was not broken in some key respects. Business associations such as the Business Roundtable and US Chamber of Commerce, traditionally against trade-labor linkage, were hesitant regarding the mechanisms of enforcement of the labor provisions of the deal. Still, they ended up supporting the new NAFTA or acquiescing to it (Beattie 2020). Why? First, despite the groundbreaking nature of USMCA's labor dispute settlement, references to the 1998 ILO Declaration rather than to ILO Conventions remain, as wished by exporters and multinationals during the May 10 negotiations. In addition, the agreement defines that Mexico can only launch a case against the US when there is an enforced order by the National Labor Relations Board (NLRB). However, NLRB cases can take years to be processed. For instance, the average age of cases of alleged unfair labor practices in 2009 was 963 days, 1028 days in 2008, 829 in 2007, 1517 in 2006, according to NRLB annual reports[13]. A declaration by Senator McCornell summarizes it all: "the bottom

[11] Interview, October 2019.
[12] Interview, April 2020.
[13] https://www.nlrb.gov/reports/agency-performance-reports/historical-reports/annual-reports

line is, for a U.S. company, the labor standards that are established are the ones we already have in our law. For Mexico or Canada to file an objection to us potentially not following that agreement is simply after there has been a U.S. law processed, which would involve the National Labor Relations Board and our existing law, *so it really shouldn't affect us at all"* (Portman 2019 italics added). In other words, in the case of complaints against the US, the "exhaustion of remedies" principle applies[14]. Besides, because the Rapid Response Mechanism only affects "covered facilities", agriculture, a very sensitive sector due to alleged violation against migrants in the US (i.e. Los Angeles Times 2017), would be left out of the dispute settlement. In other words, USMCA has reassurances aimed at limiting the extent to which policymakers would impose concentrated costs on multinationals and exporters by potentially giving foreign partners a backdoor to change US labor laws, in line with the path established by previous agreements.

Although the effects of the USMCA are yet to be seen, USMCA's language makes it highly plausible that its labor provisions will be enforced not only *de jure* but also *de facto*. It seems fair to acknowledge that US negotiators, and in particular Robert Lighthizer[15], had an extremely important role in crafting the instruments necessary to forge a compromise. However, it is ill-advised to disconnect the supply side from the effects of the original NAFTA on the demand side over the years, and to disconnect the demand side from the progressive erosion of NAFTA's path dependence. Even if Robert Lighthizer exercised a good deal of entrepreneurship before groups against USMCA fully mobilized to potentially derail the deal, policy entrepreneurship can be necessary to assure risk minimization (Kerremans 2006). That is fully consistent with my empirical expectations. The 1997 fast-track fiasco and CAFTA's close call in 2005 offered strong incentives for exporters and multinationals to relax their opposition to enforceable labor provisions in PTAs, as they were fearful that trade deadlocks could lead to foreign discrimination. As exporters and multinationals relaxed their opposition against labor provisions in PTAs, the self-reinforcing effects of NAFTA's side agreements waned. At the same time, NAFTA's self-undermining effects carried on, incentivizing further changes either in response to reactive mobilization or in the form of anticipated reactions. And while change via anticipated reactions can be problematic when constituents have strong opposing preferences, given that any change in one direction can impose concentrated costs on key constituents, as exporters and multinationals relaxed their opposition policy failures (i.e. US-Guatemala dispute) incentivized US policymakers to introduce further *de jure* changes in

[14] Interview, April 2020.
[15] Interview, November 2020.

anticipation of the negative reactions of their constituents. That seems, in turn, a plausible explanation to Lighthizer's proactiveness and entrepreneurship during the negotiations of USMCA's protocol of amendment.

Conclusion

How is change in the design of labor provisions in present-day trade agreements affected by past trade agreements? As labor provisions in PTAs become more widespread by the day and as countries accumulate experience in the implementation of the non-trade provisions of their trade agreements, the relation between design and implementation of trade deals is likely to bear growing relevance from the perspective of international trade and labor governance. The United States is a case in point. It has followed a puzzling path when promoting labor provisions in its preferential trade agreements. It allows the *de jure* introduction of sanctions but has never enforced them *de facto.* The USMCA is likely to change that path. In seeking to make sense of that pattern of change and continuity, I argued that the literature on policy feedback can be useful when accounting for how existing policies can affect interest group activity over the years. I claimed that the template of labor provisions in US PTAs created by NAFTA's side agreements ended up leading to an "incoherent policy" given the polarization of the US trade policy constituents. In result, NAFTA triggered self-reinforcing and self-undermining feedback effects that led to stepwise policy change. As such changes accumulated, I find it plausible to consider that the USMCA is not a full-on break vis-à-vis previous institutional paths in US trade policy but rather a culmination of existing processes of stepwise change. I presented empirical evidence consistent with that claim.

There are a few key rival explanations to my argument. For one, some might argue that NAFTA was not the *cause* of endogenous policy and institutional changes. Instead, references to NAFTA may have been used instrumentally, to conceal preexisting causes and justify a certain course of action. After all, groups may choose to focus on certain experiences that reinforce their preexisting preferences and political positions (Levy 1994). In that regard, it can be particularly difficult to flesh out the causal role of experience and of feedback effects; however, one of the possible strategies for overcoming that constraint, according to Levy (1994, 308) is to investigate whether "expressions of beliefs made in private deviate from those made in public" and whether "individuals from different political cultures and with different national interests make similar inferences from experience". As for the former, references to NAFTA's experience are consistent across the personal interviews conducted as part of this research, Conference proceedings, hearings and public statements. Those sources allow for triangulation

indicating that beliefs (or preferences) vis-à-vis NAFTA are not context specific. As for the latter, both NGOs that had supported NAFTA and those who had opposed it came to the same conclusion that a "NAFTA-like" approach should be avoided (see above declaration by a representative of the Defenders of the Wildlife). Data triangulation therefore reinforces the plausibility of a policy feedback explanation to trade-labor linkage in the US over the years.

The second explanation is centered on party competition and not so much on interest group politics: Democrats may have introduced changes to "nag" Republicans. However, parties compete on many different fronts and trade generally has relatively low public salience. As such, the extent to which certain issues become salient to parties depends to a great extent on the degree to which those issues are activated by interest groups. Finally, it may also be that the labor provisions in the USMCA are sufficiently explained by the rise of Trump as an anti-establishment president. I showed that the changes introduced in the USMCA, although by all means very relevant, can be plausibly explained by an approach centered on stepwise, layered changes resulting from feedback effects. I showed that it is plausible to consider that neither Trump nor his negotiators were responsible for breaking with a previous institutional path. While the NAFTA did create a strong path dependence, it also created – since its very onset – strong self-undermining forces. Therefore, the path generated by NAFTA has been progressively eroded ever since it was approved and started being implemented. Because policy feedback is often *not* a sufficient condition for changes to take place (Oberlander and Weaver 2015), the US electoral system and the rise of the Trump government may have contributed to the changes observed in the US. However, considering the evidence presented, I find it difficult to ignore the key role of the feedback effects of NAFTA when offering a minimally sufficient explanation to the patterns of change and continuity observed. This conclusion helps apply nuance to the intuition that anti-establishment governments can represent a rupture vis-à-vis previous institutional paths in trade policy.

All in all, this paper further reinforces the link between "incoherent policies" or "ambiguous compromises" and endogenous processes of institutional change, a connection often made by policy feedback and some historical institutionalist scholars. The empirical results of my study apply first and foremost to the US context. They are relevant on their own to the extent that the US is an influential case (Seawright and Gerring 2008). However, my analysis can also have implications to other promoters of labor rights in PTAs, such as the European Union. Future agreements may require the inclusion of *de jure* sanctions as a necessary condition for new trade initiatives to be approved. In those cases, the dichotomy between *de jure* and *de facto* enforcement – as well as its consequences – may no longer be

limited to the US context. The US case may therefore offer a prologue to the future politics of the design of labor provisions in PTAs. My study also suggests that the growing literature on the design of dispute settlement mechanisms in PTAs (Allee and Elsig 2019; Postnikov and Bastiaens 2020; Hicks and Kim 2015) can profit from factoring in the impact of implementation experience as an endogenous trigger of design change, therefore complementing the role of i.e. diffusion mechanisms and the characteristics of PTA partners (Lechner 2016) and going beyond the use of policy feedback as an explanation for policy and institutional reproduction. Faced with the widespread push for stronger labor provisions in PTAs in regions such as Europe and the Asia-Pacific, the growing legal strength of labor clauses in trade deals and the growing bank of experiences associated with the enforcement of labor clauses (Campling et al. 2016), further research can profit from exploring the connection between *de facto* outcomes and *de jure* PTA provisions in contexts other than the US.

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