

STRENGTHENING GLOBAL GOVERNANCE FOR HUMAN RIGHTS THROUGH NEW-ERA FTAS: BEYOND TRADE-RELATED ASPECTS?

*Jia-Jhen (Zac) Liao**

ABSTRACT

How to bridge the gap between trade regimes and human rights regimes has long been hotly debated in the international law community. From the perspective of global governance for human rights, linking human rights obligations in FTAs, compared to “soft” human rights treaties, is believed to be a more effective way to achieve compliance with human rights norms. Especially, the evolution of labor provisions in the United States (hereinafter “U.S.”) FTAs and “essential elements clauses” in European Union (hereinafter “EU”) FTAs signify two prominent but entirely different approaches to promoting human rights through FTAs.

However, the approaches adopted by the U.S. and EU in their recent FTAs become a bit unclear regarding their purposes and application. Especially, the U.S. approach to labor provisions seems to deviate from its original purpose and trade-related nature while the EU approach establishes a double-layered mechanism of human rights obligations and creates an image of insincere commitments to promoting human rights. These developments cast

* LL.M., Division of Public Law, College of Law, National Taiwan University (Taiwan). The author can be reached at: zacsomeliao@gmail.com. I would like to give my special thanks to Professor Tsai-yu Lin of National Taiwan University, and Mao-wei Lo doctoral candidate at Stanford Law School, both of whom provided me with invaluable suggestion for the draft of this Article. Besides, I also would like to express my sincere gratitude to Professor Wen-Chen Chang of National Taiwan University for carefully guiding me when I wrote my master thesis, which lays the basis for this Article.

doubt on the feasibility of current U.S. and EU approaches to serve as ideal models for the growing number of FTAs in the contemporary era.

Based on the lesson learned from the U.S. and EU experience, this article establishes a policy guideline for human rights obligations in new-era FTAs, in which two kinds of human rights obligations would be considered legitimate to be linked in FTAs. The first one is the concrete obligations addressing specific human rights concerns arising from FTAs, which should be definitely trade-related and narrowly tailored to the human rights concerns raised in the pursuit of free trade. The second one is the general obligations promoting overall human rights without necessary trade-related aspects. It is primarily to provoke far-reaching and lasting changes in the political and economic systems of trading partners. The approach adopted in the EU–Canada SPA may serve as a preferred model for this kind of obligation in new-era FTAs. The functions of the two kinds of obligations proposed by this article are mutually supported and should be supplemented by parallel mechanisms to ensure their compliance.

The policy guideline proposed by the article is far from a comprehensive one regarding how to frame human rights obligations in future FTAs. Despite that, it is sure to shed light on the future discussion about the possible ways to bridge the gap between trade and human rights regimes through new-era FTAs.

KEYWORDS: *trade and human rights, human rights obligation, labor provision, essential elements clause, FTA, European Union, United States*