

# Trade, Labour Markets and Health: A Prospective Policy Analysis of the Trans-Pacific Partnership

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[journals.sagepub.com/home/joh](http://journals.sagepub.com/home/joh)**Courtney McNamara<sup>1</sup> and Ronald Labonté<sup>2</sup>****Abstract**

Previous analyses indicate that there are a number of potentially serious health risks associated with the Trans-Pacific Partnership (TPP). The objective of this work is to provide further insight into the potential health impacts of the TPP by investigating labour market pathways. The impact of the TPP on employment and working conditions is a major point of contention in broader public debates. In public health literature, these factors are considered fundamental determinants of health, yet they are rarely addressed in analyses of trade and investment agreements. We therefore undertake a prospective policy analysis of the TPP through a content analysis of the agreement's Labour Chapter. Provisions of the Chapter are analyzed with reference to the health policy triangle and four main areas through which labour markets influence health: power relations, social policies, employment conditions and working conditions. Findings indicate that implementation of the TPP can have important impacts on health through labour market pathways. While the Labour Chapter is being presented by proponents of the agreement as a vehicle for improvement in labour standards, we find little evidence to support this view. Instead, we find several ways the TPP may weaken employment relations to the detriment of health.

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**Background**

In October 2015, accord was reached on the largest regional trade agreement in history, the Trans-Pacific Partnership (TPP). The TPP was negotiated behind closed doors for nearly 6 years and has only recently been released for public consideration. Subsequent to signing (which occurred in February 2016), and prior to entering into force, the agreement must first be ratified by some, or all, of the twelve negotiating nations: the U.S., Canada, Japan, Australia, Brunei, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. Although the election of Donald Trump as U.S. President, and that country's withdrawal from the TPP, effectively 'kills' the agreement in its present form, its contents are likely to resurface in other regional or bilateral trade and investment agreements and so warrant continued detailed scrutiny.

Using leaked drafts, several studies had already directed attention to the potential health impacts of the TPP. Gleeson and Friel argue that the TPP will impact health largely through two main pathways: first, by reducing access to medicines through increased protections on intellectual property rights; second, through investor-state dispute settlement (ISDS) provisions that 'could restrict the ability of governments to regulate industries that produce goods that contribute to the growing burden of non-communicable diseases, such as tobacco, alcohol, and highly processed foods' (p. 1508).<sup>1</sup> Other work has made essentially the same arguments in greater detail.<sup>2-7</sup> An analysis of the final accord suggests that most of these concerns are reflected in the final TPP text, albeit with a voluntary exclusion of investor-state suits over tobacco control policies which, while a public health victory, does not exclude TPP countries challenging each other over tobacco control measures, nor tobacco transnationals using other investment treaties to do the same.<sup>8,9</sup>

Other public health concerns remain. Of particular note are those related to labour market factors such as employment and working conditions, which are less explored in the public health literature on the TPP. These conditions are a major point of contention in broader public debates surrounding the trade deal, and in public health literature they are considered fundamental determinants of health.<sup>10,11</sup> This article therefore uses prospective policy analysis to provide insight into the potential health impacts of the Trans-Pacific Partnership with reference to labour market pathways. It is the first health policy analysis of a trade agreement which is specifically focused on employment and working conditions and predicts negative implications for health through a variety of labour market pathways.

## Methods

A popular strategy for examining policy, both retrospectively and prospectively, is to utilize content analysis. Content analysis provides a systematic approach to analyze the content of a policy according to a predetermined set of categories or issues. These categories provide a way of identifying relevant and meaningful passages of text. The determination of pertinent categories to take into account relates to the objectives of the work.

In the health field, it is common to utilize the ‘policy triangle’ for policy analysis.<sup>12,13</sup> The policy triangle is a framework that takes into account the various political aspects of policy making. In analyzing the content of policy, the policy triangle draws additional attention to the interaction of contextual factors, processes, and actors that should be systematically considered. For prospective policy analysis this facilitates a more holistic understanding of how a policy might play out once implemented.<sup>14</sup>

Trade can impact health through a range of labour market pathways related for example, to wages, working conditions, shifts in employment and economic security.<sup>15–19</sup> A framework by the Employment and Working Conditions Knowledge Network (EMCONET) of the World Health Organization’s Commission on the Social Determinants of Health, comprehensively outlines pathways to health via labour markets<sup>20</sup> and has been used in previous work linking trade to health via employment conditions.<sup>21</sup> Figures 1 and 2 illustrate this framework. At the micro-level (Figure 2), different categories of risk exposure are mediated by social mechanisms and influenced by various types of employment and working conditions. At the macro-level (Figure 1), the role of power relations and social policies are identified as shaping these more micro-level factors. While trade policies are not explicitly depicted within the framework, the authors identify them as central drivers of conditions both at the macro- and micro-level context.

The EMCONET framework identifies several ways implementation of the TPP could potentially improve health. Positive pathways to health are predicted, for example, through improvement in labour rights or standards. Employment growth also has the potential to improve health if it improves peoples’ material resources. Negative pathways to health are also identifiable, for example if implementation leads to lower standards of working conditions or employment loss.

In this article, both the health policy triangle and the EMCONET framework are used to analyze passages of the final version of the TPP Labour Chapter. This Chapter has been praised by some for having stronger labour provisions than previous trade agreements and is often used by proponents of the agreement in an attempt to quell domestic concerns raised in relation to employment and working conditions (Since 2002, the U.S. has incorporated provisions on labour and environment in its bilateral/regional trade agreements, and was mandated in 2007 to ensure that these provisions are written

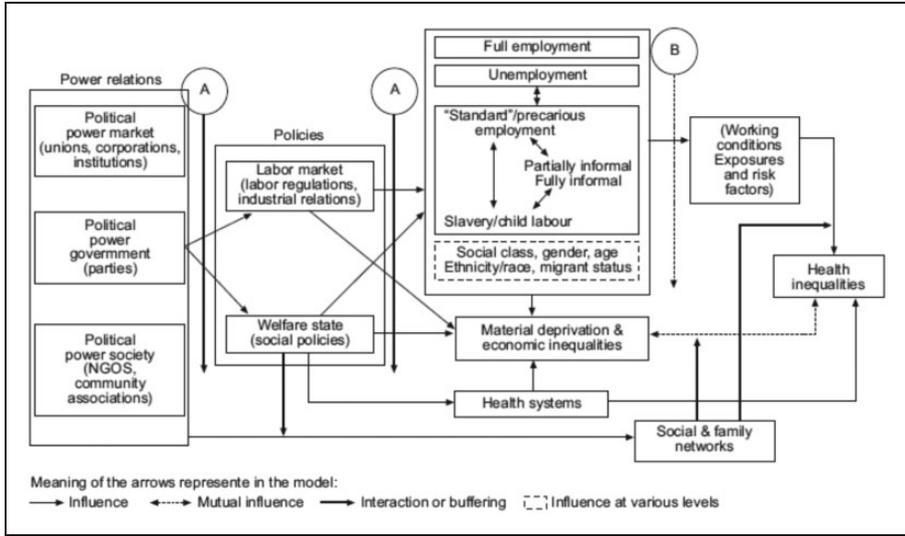


Figure 1. EMCONET macro-level framework.

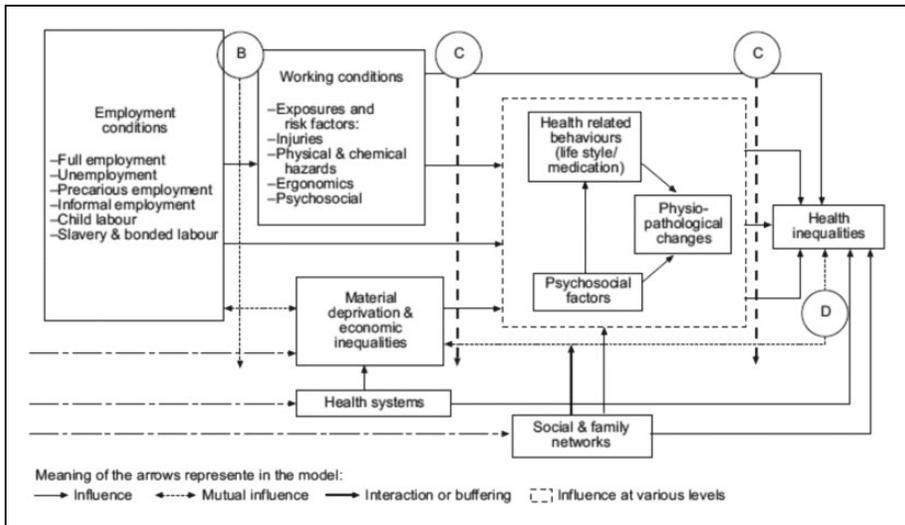


Figure 2. EMCONET micro-level framework.

into the agreements themselves and not appended as side letters or understandings.<sup>22</sup> Some observers believe such provisions are intended more to limit domestic opposition to new trade and investment agreements than to ensure protection of labour rights and the environment.<sup>23</sup> While labour

representatives had some access to TPP negotiations in the U.S. via a Labour Advisory Committee (LAC), 85% of trade advisors have been reported to work directly for private industries or their trade groups.<sup>24</sup> Moreover, the LAC's access to the TPP text and influence in negotiations has been characterized as nominal, with the group strongly opposing the TPP in a report to Congress.<sup>25</sup> Other Chapters of the accord can also influence labour market conditions, primarily by changing the competitive landscape of various industrial sectors. The focus of this analysis however, is on the Labour Chapter since it is this text which is meant to limit the negative and facilitate, in part, the positive social impacts of such changes. While some within the international trade literature argue that improvements in labour standards, or health more generally, arise from economic gains, in this work we set these potential pathways aside. This is because the purported economic gains of the TPP are estimated to result in a small cumulative gains. The U.S. for example, is expected to be the largest beneficiary of the TPP with an increase of 0.5% in GDP by 2030.<sup>26</sup> This has been indicated to imply "an increase in the annual growth rate of 0.036 percentage points...[and] means that if the economy was projected to grow by 2.2% a year in a baseline scenario, it will instead grow at a 2.236% rate with the TPP".<sup>27</sup> (The model used in this study, in common with most econometric modeling used to forecast growth effects of trade and investment liberalisation, assumes full employment, i.e., that any workers in sectors displaced through global competition would be absorbed in other sectors with no impact on wages. Evidence suggests that this is rarely if ever the case, with other studies of the TPP's economic impacts using different economic models or assumptions predicting both lower rates of growth and higher rates of within-country wage and income inequality.<sup>28</sup>)

In addition to the health policy triangle and EMCONET framework, international literature focused on identifying the social impact of current trade policies is also used to further consider the potential health implications of the TPP via labour market pathways.

## Data Analysis

Text of the TPP Labour Chapter<sup>29</sup> was analyzed in reference to the four main categories of the EMCONET framework: power relations, social policies, employment conditions and working conditions. Power relations refer to the distribution of power among economic actors (e.g. organized labour, governments and business/corporate actors) and political institutions, where power can be understood as the capacity to exert influence over others' decisions, according to one's own interest. Power relations influence health by shaping employment conditions such as labour standards, occupational health, safety regulations and union protections. Corporate actors for

example, can influence health by using their power to delay, weaken or overturn laws and regulations.<sup>20</sup>

Social policies relate specifically to labour market and welfare state policies. Whereas welfare state policies determine the extent to which people are able to maintain their livelihood outside of the labour market (e.g. through unemployment insurance when they are unemployed), and hence their ability to purchase many of the prerequisites for health, labour market policies involve employment-related regulations such as workers' freedom to join a union and collectively bargain, which can increase their ability to negotiate better wages and benefits.<sup>20</sup> Previous work has found that social policies can both mediate and influence the type of health related pathways resulting from trade processes.<sup>21</sup> Social policies can mediate pathways to health, for instance, by influencing the type of social protection available to workers losing their employment. Social policies can also influence the type of health-related pathways resulting from trade by shaping factors such as the type of employment contracts through which firms hire workers.

Employment conditions concern how work is organized. Six main employment conditions are identified by the EMCONET framework: full employment, unemployment, precarious employment, informal employment, child labour and slavery and bonded labour. Working conditions by contrast refer to the general physical and psychosocial conditions at work and include exposure to risk factors, injuries, physical and chemical hazards, ergonomics and psychosocial conditions.

The policy content of the Labour Chapter was analyzed with respect to each of these EMCONET categories, alongside a consideration of the remaining components of the health policy triangle (i.e. actors, contexts and processes). In terms of actors, it is the public at large and various categories of workers which stand to be most affected, health-wise, by resulting changes in labour markets if the TPP is implemented. An even larger range of actors however, has a political and/or economic stake in the TPP. This includes multinational corporations, national governments, and state and international institutions. How power is distributed among these different actors in the TPP has relevance for health, as captured by the concept of power relations in the EMCONET framework.

The context component of the policy triangle draws attention to the fact that the TPP can produce varying health impacts depending on the systemic circumstances within which it is implemented. The interregional scope of the TPP includes countries with a wide range of social, economic and political systems. A provision which stipulates a certain level of labour standards may have greater implications for a country that has yet to implement such a level of standards, in contrast to a country which has regulations already meeting or exceeding that level. Likewise, the impact of shifts in employment will likely depend, in part, on the context of countries' existing programmes of social protection.<sup>21</sup>

The final component of the policy triangle, ‘processes’, highlights the importance of taking into account how policies are formulated, implemented and evaluated, as these considerations can also have important implications for health. For example, the potential health impacts of the TPP may depend on whether provisions are phased in, allow for revisions, or are subject to public consideration or enforcement procedures.

Each of the components of the health policy triangle and EMCONET framework were systematically considered against each of the Labour Chapter’s provisions and are discussed in the results. Because the components within these frameworks are so integrally intertwined, we present our findings in narrative form.

## Results

### *Provisions of the TPP Labour Chapter*

The TPP Labour Chapter is comprised of 15 sections which are summarized in an Additional File. The provisions of these sections deal with the basic nature and implementation of included labour rights and standards, as well as the enforcement, monitoring and promotion of these standards.

At the heart of the Labour Chapter are the provisions related to labour rights laid out in Article 19.3. The first of these provisions specifies that signatory countries “shall adopt and maintain in its statutes and regulations...rights as stated in the ILO Declaration” (19.3.1), specifically those related to freedom of association, collective bargaining, the elimination of slave and child labour and the elimination of employment discrimination. The second of these provisions specifies that signatory countries “shall adopt and maintain statutes and regulations...governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health” (19.3.2).

Four other Articles (19.4, 19.6, 19.7 and 19.10), deal more generally with the implementation of labour rights and standards. Through Article 19.4, signatory countries acknowledge that “it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party’s labour laws” and thus countries “shall [not] waive or otherwise derogate from... its statutes or regulations” (in relation to 19.3.1 or 19.2.2), including within “a special trade or customs area, such as an export processing zone or foreign trade zone” (19.4.b). With respect to Article 19.6, each signatory country “recognizes the goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour” and “shall...discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour”. Through

Article 19.7, signatory countries “shall endeavor to encourage enterprises to voluntarily adopt corporate social responsibility initiatives on labour issues that have been endorsed or are supported by that Party”. Finally, through Article 19.10, signatory countries “recognize the importance of cooperation as a mechanism for effective implementation of [the] Chapter, to enhance opportunities to improve labour standards and to further advance common commitments regarding labour matters, including workers’ wellbeing and quality of life and the principles and rights stated in the ILO Declaration” (19.10.1). Outlined in this Article are a range of potential areas of cooperation (see Additional File 1), alongside suggested activities to address these areas such as workshops, seminars, collaborative research, and knowledge exchange.

The remaining provisions of the Chapter have relevance to the monitoring, enforcement and promotion of specified labour standards. Article 19.12 sets up a Labour Council, composed of senior governmental officials, to “consider matters related to [the] Chapter”, to guide decisions about labour cooperation and to undertake reviews of implementation issues. Each signatory country must also designate a ‘contact point’ to facilitate communication about labour matters both between Parties to the agreement and between the Parties and the public (Article 19.13). The processes for these communications are further specified across Articles 19.11, 19.14 and 19.15.

Finally, signatory countries are restricted from using a claim of insufficient resources to excuse their failure to enforce labour laws (19.5), are required to promote public awareness of their labour laws and must ensure workers have access to “fair, equitable and transparent” tribunals for their enforcement (19.18). Obligations laid out in the Labour Chapter are subject to the Accord’s dispute settlement mechanisms, which means that trade sanctions and/or penalties can be imposed in cases of violation (19.15).

Amended to the Labour Chapter are three side agreements between the U.S. and Malaysia, the U.S. and Brunei and the U.S. and Vietnam.<sup>29</sup> These agreements detail specific changes that must be made to these countries’ labour laws before the countries are allowed to export to the U.S. under the terms of the TPP. The changes are meant to bring the legislation of the countries in line with the provisions of the Chapter, although some requirements respond to other specific labour issues. For example, specific to the Malaysia agreement is a provision which prohibits employers from keeping a migrant worker’s passport. Brunei is required to indicate in its labour law, occupations which are hazardous and thus prohibited for those younger than 18. The side agreement with Vietnam requires that the country both remove its ban on independent unions and afford these independent unions the same rights as those affiliated with the government. Vietnam, however, is granted a 5-year window to implement a specific provision which would allow independent unions to affiliate with each other to form more extensive coalitions.

### *TPP Labour Chapter and Employment Relations*

The relevance of the Labour Chapter to the major areas of the EMCONET framework can be viewed from different angles. From one perspective, the labour standards provisions can be viewed as potentially significant, in relation both to the power of workers and to the institution of international labour standards more generally.

With respect to the latter, explicit reference to the ILO Declaration and acceptable conditions of work might, at minimum, establish the normative importance of labour rights as an institution. In regards to the former, the requirement that labour standards be “adopted and maintained” is what, in large part, establishes the potential significance of these provisions for the power of workers. Thus far, only Chile and Peru have ratified all 8 of the ILO Fundamental Conventions (Table 1),<sup>30</sup> although serious shortcomings with the implementation of these standards have been noted.<sup>31</sup> Only Australia, Chile, Peru and Japan have ratified the two Fundamental Conventions related specifically to workers’ right to organize (No. 87) and collectively bargain (No. 98), central components of the power of workers. The changes to labour laws required by the side agreements to the Chapter are also significant as they respond to specific labour issues in Malaysia, Brunei and Vietnam.

The requirement that labour standards be “adopted and maintained”, and its potential significance for workers, is perhaps bolstered by separate articles of the Labour Chapter which deal with public awareness (19.8), enforcement (19.4, 19.5 and 19.15) and labour cooperation (19.10). Together these articles may be argued to increase the power of workers by respectively promoting knowledge of, ‘giving teeth’ to, and encouraging the effective implementation of the obligations associated with labour rights.

With gains in workers’ power, and a boost to the institutional power of labour standards, the EMCONET framework predicts positive knock-on effects for labour market policies, employment and working conditions and ultimately, health. A more nuanced analysis however, which considers more fully the components of the health policy triangle, reveals problematic positions and gives rise to an alternative perspective about the health significance of these provisions.

It is first important to consider that the labour standards countries must uphold in reference to the ILO Declaration are distinct from the ILO Core Conventions. The main distinguishing feature between the ILO Declaration and the Core Conventions is that whereas the former refer to recognized principles “that should (somehow) be respected”, the latter “spell out these principles in concrete and specific rules”.<sup>32(p5)</sup> Furthermore, ratification of an ILO Core Convention entails a legal obligation to implement these rules as well as reporting requirements. A main concern here is that reference to the ILO Declaration serves merely as a reaffirmation of countries’ membership in the

**Table 1.** Ratification of Fundamental ILO Conventions Among TPP Negotiating Countries.

	Freedom of Association and Protection of the Right to Organise		Right to Organise and Collective Bargaining		Abolition of Forced Labour		Minimum Age of Child Labour		Worst Forms of Child Labour		Equal Remuneration		Discrimination (Employment and Occupation)	
	Convention, 1948 (No. 87)	Convention, 1949 (No. 98)	Convention, 1930 (No. 29)	Convention, 1957 (No. 105)	Convention, 1957 (No. 105)	Convention, 1973 (No. 138)	Convention, 1999 (No. 182)	Convention, 1951 (No. 100)	Convention, 1958 (No. 111)					
Australia	X	X	X	X	X		X	X	X	X			X	
Brunei						X								
Canada	X		X	X	X		X	X	X	X		X	X	
Chile	X	X	X	X	X		X	X	X	X		X	X	
Japan	X	X	X	X	X		X	X	X	X		X		
Malaysia						X	X	X	X	X				
Mexico	X		X	X	X	X	X	X	X	X		X	X	
New Zealand													X	
Peru	X	X	X	X	X		X	X	X	X		X	X	
Singapore						X	X	X	X	X		X		
United States														
Vietnam			X	X	X	X	X	X	X	X		X	X	

Source: ILO NORMLEX Information System on International Labour Standards: Ratifications of fundamental conventions, 2016. Available from: <http://www.ilo.org/dyn/normlex/en>

ILO without providing any incentive or obligation to ratify and implement the eight corresponding Core Conventions. All negotiating countries of the TPP are already members of the ILO; in this regard, the Labour Chapter changes nothing. Again, Table 1 illustrates the many Core Conventions currently unratified by these countries. Supporting the concern that countries have little reason to ratify these Conventions is the fact that the U.S. has signed separate trade agreements with Peru (2009), Colombia (2012), Panama (2012) and South Korea (2012), each of which also references adherence to the ILO Declaration.<sup>33</sup> Thus far however, the U.S. has ratified only two of the eight Fundamental Conventions and neither of those related to workers' right to organize and collectively bargain.

It is also important to consider that although the Chapter's side agreements require Malaysia, Brunei and Vietnam to amend their labour laws in important ways, they do not require ratification of any of the Conventions. Further, if the countries fail to make any of the specified amendments this only hypothetically affects their direct exports to the U.S., not their exports to any other TPP country (nor possible indirect exports to the U.S. through these countries). Whether trade benefits are withheld depends on the political will of the U.S. Government. The implementation of the US-Colombia Free Trade Agreement was similarly pre-conditioned on Colombia making changes to its labour laws; however, observers note that little has been achieved to secure workers' and particularly unionists' rights.<sup>34</sup>

A related concern is that reference to the ILO Declaration can result in weak and elastic interpretations of labour rights. This in turn can limit the institutional power of both labour standards and the ILO itself.<sup>35</sup> This follows from the consideration that the Declaration, unlike the Core Conventions, references broad and undefined fundamental rights. This means that signatory countries (and dispute settlement panels) may find potentially divergent, and an inadequate range of, domestic measures satisfactory in meeting minimum labour standards.<sup>35</sup>

Together these considerations challenge the perspective which sees the Labour Chapter as potentially improving labour policies, along with employment and working conditions. Moreover, although the article on public awareness (19.8) uses forceful language ('shall promote'), knowing the labour laws in one's countries is not the same as those laws being fully compliant with ILO Conventions. The enforcement article (19.5) similarly states that 'no Party shall fail to enforce its labour laws' (which may not be adequately protective of workers' rights and health, on which more below) but only if failure to do so affects trade and investment between TPP members and not compliance with the laws *per se*.

Further consideration of the provisions related to the labour standards specified in the Chapter and their implementation also challenges the idea that the Chapter might improve the main components of the EMCONET framework.

To begin with, while each signatory country “shall adopt and maintain statutes and regulations . . . governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health” (19.3.2), a footnote to this provision establishes that the acceptability of these working conditions is to be determined by each individual country. Levels of conditions like minimum wages cannot be universally set across an economically diverse set of countries. However, without reference to guidelines for establishing such standards, for example, the ILO Decent Work Agenda,<sup>36</sup> this provision appears to be primarily ornamental in nature.

Article 19.6, which deals with forced, compulsory or child labour, seems similarly ornamental. Provisions in this Article merely call on parties to ‘recognize’ the ‘goal of eliminating forced [and child] labour’ and to ‘discourage’ the importation of goods made under these circumstances ‘through initiatives it considers appropriate’. These essentially toothless provisions are quite different from enforceable commitments to prohibit production of and trade in such goods.

Provisions related to labour cooperation (Article 19.10) raise additional implementation concerns. Similar language is also contained in other free trade agreements, such as the North American Free Trade Agreement (NAFTA) which came in to force in 1994. In relation to NAFTA, this text is acknowledged to have resulted in an initial ‘burst of activity’ but this active period consisted of one-time discussions, was not extensive or sustained, and resulted in little in terms of capacity-building or improvement in labour law enforcement.<sup>37(p23)</sup> In terms of a more recent trade agreement, the US-Peru Trade Promotion Agreement, two labour cooperation meetings have taken place since the Agreement was implemented in 2009, the first in 2010 and the second in 2014. Official statements from these meetings reference continued commitment to cooperation and acknowledge discussions over implementation issues. However, there is little evidence that these discussions have translated into concrete changes.<sup>38,39</sup> It thus seems reasonable to question the impact of such text in the TPP Labour Chapter.

Moreover, it is the Labour Council, established via Article 19.2, which is tasked with guiding decisions in relation to the cooperation principles. The Council is mandated to meet within 1 year after the agreement comes into force, but afterwards it is up to the countries to decide how often to meet. That the Labour Council is made up of senior governmental officials means also that there is a potential power gain for the governments of signatory countries, and also for any interest groups that might have influence with these officials. In the U.S., corporate interests have significant channels of influence with government officials when it comes to trade negotiations. For example, when fast-track authority was being debated, a policy which gives the U.S. Congress the ability to approve or deny a trade agreement without amendments or filibusters, corporate members of the U.S. Business Coalition for TPP made more than one million dollars in campaign contributions to U.S. Senators.<sup>40</sup>

The Labour Council is also designated to consider public submissions (Article 19.9). As noted previously, a process which facilitates public input may be seen as potentially important to the power of workers. Similar text regarding public submissions has also been present in other trade deals. Research by the United States Government Accountability Office (GAO), however, exposes significant limitations with such procedures.<sup>41</sup> This work finds that in the U.S., a country with arguably more resources than most other TPP countries to pursue public submissions, submissions are on average reported on more than a year after their receipt. This is a significant delay from the 180-day time frame indicated in the text of other trade agreements. The TPP Labour Chapter does not itself indicate a time frame for the consideration of public submissions, which may relieve countries with fewer resources from administrative burdens. However, this also limits the ability of stakeholders to hold to account the institutions tasked with considering such submissions. Further, the absence of a deadline for consideration of public submissions can be contrasted with the strict time-limits set for labour dialogues, consultations and dispute settlement between signatory countries. A signatory country may request a labour-related dialogue with another signatory country which must commence within 30 days of the receipt of the request (19.11.3). When a labour dialogue fails to achieve a solution, a signatory country may request a labour consultation, to which the responding country must reply after 7 days (19.15.3). Labour consultations must begin at most 30 days later (19.15.5). If consultations fail to resolve the matter no later than 60 days after the original date of receipt, labour disputes may begin under the recourse of Dispute Settlement provisions (Chapter 28).

The GAO report also finds that between 2008 and 2014, only five public submissions were received by the US Department of Labor in relation to trade agreements. These submissions allege violations in relation to freedom of association, collective bargaining, discrimination, human trafficking, forced labour, child labour and unacceptable working conditions. Union representatives and other stakeholders interviewed by the GAO indicate that the process of public submission is difficult to understand, which is likely limiting the number of submissions. Moreover, of the five submissions received, only one has been resolved. This indicates the likely persistence of conditions that both negatively affect workers and are inconsistent with labour provisions in free trade agreements.

Together these considerations reveal the limits of the TPP's public submission process to improve both workers' power, employment relations and working conditions. They also bring into focus a distribution of power which favors state and corporate actors, over that of workers and the public in general. This uneven power distribution is also reflected in other processes of labour dialogues, consultations and disputes which both establish that dialoguing or disputing Parties can decide whether proceedings and outcomes be made public and exclude public interest or civil society groups (e.g. unions) from bringing disputes.

Uneven power distributions are also reflected in other areas of the Chapter's text. A footnote to the labour rights provisions outlined in Article 19.3, clarifies that a violation can only be claimed in relation to the ILO Declaration in cases where "trade or investment between the Parties" is impacted. This not only limits the significance of these provisions to a certain category of workers (i.e. those working in industries relevant to trade and investment), but also establishes the normative priority of trade over labour standards and workers' rights. Further, since insufficient resources cannot excuse a country from enforcing labour standards (Article 19.5), this provision may lead countries with fewer resources to disproportionately focus these resources on the export market, to the potential detriment of workers in domestic markets.

A final provision to consider in regards to power relations is Article 19.7 which establishes that countries "shall endeavor to encourage enterprises to voluntarily adopt corporate social responsibility initiatives on labour issues". There is debate as to whether or not corporate social responsibility codes improve labour standards, with outcomes largely dependent on the context within which they are implemented.<sup>42,43</sup> Less controversial is the argument that a provision emphasizing corporate social responsibility raises the power of corporate actors and the institutional power of market-based regulation.<sup>44</sup> However, like other labour provisions, this one is hortatory only, as countries merely "shall endeavor to encourage" such initiatives (Readers unfamiliar with trade and investment agreement rules may not appreciate that the phrasing of each Article is extremely important in determining how it might be interpreted by trade/investment lawyers in a dispute.).

In seeking to understand the potential health impacts of the Trans-Pacific Partnership with reference to labour market pathways, it is also important to consider components of the EMCONET framework which are less directly implicated by the Chapter, yet likely associated with labour market changes following implementation of the agreement.

One of the areas of greatest consensus, among both proponents and critics of the TPP, relates to the impact of the agreement on employment. Trade is rarely, if ever, win/win and one country's or sector's employment gain will likely be offset by another's loss. A particularly contentious area of the TPP for example, relates to its impact on employment in the textile and clothing sector.<sup>45-47</sup> This sector is an important source of employment for many middle and low-income countries, especially for women.<sup>48</sup> An industry source reports that the TPP could displace as many as 22,000 workers in El Salvador's textile industry (and another 15,000 jobs indirectly).<sup>49</sup> Another cites 100,000 job losses in South America and 500,000 in the U.S.<sup>50</sup> The textile and clothing sector in Vietnam, by contrast, is expected to heavily gain from the TPP<sup>51</sup> but only through diversion from other producers.<sup>52</sup>

How shifts in employment will impact health will depend in large part on countries' labour market and social protection policies.<sup>20</sup> Previous work has suggested that employment growth in the textile and clothing sector does not

necessarily lead to improved health outcomes in low and middle-income countries, especially in the context of weak labour market and social protection policies.<sup>21</sup> Therefore, while Vietnam is expected to gain employment in the textile and clothing sector, it would be mistaken to assume this will automatically give rise to health improvements, or equity in the distribution of economic benefits, with the most recent TPP modelling estimating a 1% drop in the labour share of GDP in Vietnam by 2025.<sup>28</sup>

Furthermore, while aspects of countries' labour market policies are considered by the TPP Labour Chapter, social protection policies, a major component of the EMCONET framework, are not. Of the twelve negotiating TPP countries, five do not have an unemployment benefit programme anchored in legislation: Brunei, Mexico, Malaysia, Peru, and Singapore.<sup>53</sup> Even across negotiating countries with legislated unemployment schemes, the share of unemployed who actually receive benefits ranges from 8.4 % in Vietnam to 52.7% in Australia.<sup>53</sup> Moreover, previous work suggests that those vulnerable to trade-induced employment loss rarely have access to social protection, even when it is legislated at the country-level.<sup>21</sup> The U.S. is unique among the TPP negotiating countries in offering targeted social protection (and job retraining services) for trade displaced workers, however, this protection scheme has been criticized on a variety of fronts, notably for covering a minority of workers displaced by trade.<sup>54</sup>

The implication here is that social protection can provide a means of mediating the health impact of job loss following implementation of the TPP but neither current policies in the negotiating countries nor provisions of the TPP Labour Chapter adequately address this. Health deterioration for many workers losing their employment are thus a likely consequence of TPP implementation.

This brings into greater focus the EMCONET categories of employment which are also absent from acknowledgement in the TPP Labour Chapter: not only the unemployed, but also those in precarious and informal employment. Precarious employment typically refers to work which is insecure, uncertain and unpredictable. This type of employment is on the rise globally and associated with a range of poor health outcomes.<sup>55</sup> In high-income countries, it is estimated that no more than 64.2% of workers are employed on a permanent contract.<sup>56</sup> In lower-income countries, many precarious jobs are found in the informal sector. The informal market in some of the TPP negotiating countries, such as Mexico, Peru and Vietnam, represents more than half of non-agricultural employment.<sup>57</sup>

Processes of globalization, including trade, have been implicated as a main causal factor in the rise of precarious work.<sup>58</sup> That precarious employment is so prevalent also has implications for the ability of labour standards and social protections to have a meaningful impact on a growing majority of workers. This is because whereas the enforcement of labour standards is typically restricted to formal markets, the availability of social protection is usually restricted to standard employment relationships.<sup>56</sup>

Here the implication is two-fold. First, the potential of the TPP Labour Chapter to influence labour standards and rights is limited because so many workers are employed in precarious or informal work. Second, if employment growth following implementation of the TPP is in precarious or informal employment, as evidence from other trade reforms would suggest,<sup>21,58</sup> any potential health benefits, resulting for example, from improved material circumstances, will be limited.

## **Conclusions**

Analyzing the text of the TPP Labour Chapter by utilizing the health policy triangle and EMCONET framework enabled us to perform a theoretically informed analysis which sheds light on the potential health implications of the agreement in relation to labour market pathways.

Our analysis suggests that the agreement's provisions related to labour standards and rights are unlikely to increase the power of workers and thereby improve employment relations important for health. Instead, we find that reference to the ILO Declaration may, in fact, decrease the institutional power of labour standards and the ILO itself. Provisions which deal with the implementation side of the Chapter are found to be largely ornamental and seem to offer little in terms of concrete improvements for employment or working conditions. The Chapter's stipulations are also found to unevenly distribute power to the detriment of workers and establish the priority of trade and market regulation over workers' rights. With these shifts in power relations, the EMCONET framework predicts negative implications for health through a variety of pathways. One possible side-effect we found of the Chapter's provisions is an allocation of monitoring resources towards industries producing for export markets and away from those producing for domestic markets. This could increase labour market, and associated health, inequalities.

Components of the EMCONET framework which are less considered in the TPP Labour Chapter (i.e. social protection and precarious and informal employment) highlight additional ways implementation of the TPP may impact health through labour market pathways. For workers losing their employment, health deterioration can be expected in the context of limited social protection.

Overall, findings from this prospective policy analysis indicate that implementation of the TPP can have important impacts on health through labour market pathways. While the Labour Chapter is being presented by proponents of the agreement as a vehicle for improvement in labour standards, we find little evidence to support this view. Instead, we find several ways the Chapter may actually weaken employment relations to the determinant of health.

Like other public health analyses of the TPP, these findings provide governments with reason to carefully consider similarly worded provisions in any future agreements developed to replace the TPP. The demise of the TPP in its present form

provides governments with an opportunity to consider how a Labour Chapter might be crafted that is effective in enhancing, and not merely preventing erosion of, labour rights. The option of ensuring any future Labour Chapter does so needs to be considered within the wider debate about the use of labour clauses in trade agreements. Advocates of linking trade to labour standards typically seek to address two issues. The first is the weak protections of workers in countries with relatively low labour standards. The second is the perceived comparative and unfair advantage of countries with low labour standards. This second concern is largely vocalized by labour organizations and governments in the Global North and relates to the outsourcing of production from high to lower-income countries.

Opponents of linking trade to labour standards, however, often governments of lower-income countries, fear that provisions will be used for protectionist purposes and contend that labour standards will eventually rise with increases in economic development. Kabeer<sup>59</sup> also brings attention to the fact that tying labour standards to trade agreements may come at the expense of employment opportunities which empower many, especially female, workers in lower-income countries.

The full terms of this debate are beyond the scope of this article, its relevance is simply that it should not be taken for granted that a Labour Chapter should be included in future trade and investment agreements, and that the goals of achieving higher employment standards may be best achieved through other multi-lateral institutions.

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### **Supplementary Material**

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