CHINA MOVING THE BELT AND ROAD INITIATIVE INTO LATIN AMERICAN COUNTRIES: CHINESE FREE TRADE AGREEMENTS AND LABOR IMPLICATIONS

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INTRODUCTION

In May 2017, Xi Jinping called the Latin American countries "a natural extension of the Maritime Silk Road. . . ."[1] The region,

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1. *Xi Jinping Holds Talks with President Mauricio Macri of Argentina The Two Heads of State Agree to Push China-Argentina Comprehensive Strategic Partnership for Greater Development*, EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN THE REPUBLIC OF

the Community of Latin American and Caribbean States (CELAC),[2] was also called an "important participant" in the Belt and Road Initiative (BRI) by Foreign Minister Wang Yi during the 2018 China-CELAC Ministerial Forum.[3] Recent years of China's increasing trade and investment have affected industries and jobs, and thus, have also given rise to labor issues as Chinese firms tend to hire Chinese nationals rather than local workers, especially in management and highly-skilled roles.[4] "Rules of the Road" governing trade and foreign direct investment (FDI) between China and the Latin American and Caribbean region (LAC), though being negotiated, are not formalized in a comprehensive free trade agreement (FTA) with labor protection provisions, and currently, there are only FTAs with several LAC countries.[5]

For the ten-year period between 2015 and 2025, China's president Xi Jinping set an ambitious goal of $500 billion in trade with LAC and $250 billion in direct investment.[6]

GHANA (May 17, 2017), http://gh.china-embassy.org/eng/zgyw/t1463483.htm

2. CELAC has thirty-three member states: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Republic of Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Santa Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela. *Community of Latin American and Caribbean States* (CELAC), NUCLEAR THREAT INITIATIVE, https://www.nti.org/learn/treaties-and-regimes/community-latin-american-and-caribbean-states-celac/ (last updated Mar. 29, 2019).

3. Margaret Myers, *China's Belt and Road Initiative: What Role for Latin America?*, 17 J. LATIN AM. GEOGRAPHY 239, 240 (2018).

4. Ariel Armony & Enrique Dussel Peters, *Chinese Infrastructure in Latin America: A New Frontier*, CHINA DIALOGUE (Aug. 14, 2018), https://www.chinadialogue.net/article/show/single/en/10776-Chinese-infrastructure-in-Latin-America-A-new-frontier.

5. Ricardo Barrios, *China's Belt and Road Lands in Latin America*, CHINA DIALOGUE (Nov. 7, 2018), https://www.chinadialogue.net/article/show/single/en/10728-China-s-Belt-and-Road-lands-in-Latin-America ("[I]ronically, the importance of 'who is in' and 'who is out' of the BRI may be overstated because China's activities in Latin America have been Belt and Roadesque in substance, if not in style, for a while now").

6. *A New Chapter in China-LAC Friendship and Cooperation*, EMBASSY OF THE PEOPLE'S REPUBLIC IN CHINA IN BARB., (July 31, 2014), http://bb.china-embassy.org/eng/dszl/dsjh/t1179133.htm (aiming to achieve this goal over a ten-year period).

China has been trading and investing with Latin American countries, such as Chile, Peru, Brazil, Mexico, and Argentina, for some years.[7] In 2018, China's Minister of Foreign Affairs presented to the members of CELAC an invitation to participate in its BRI and stated that he considers Latin American and Caribbean countries a "part of the natural extension of the Maritime Silk Route" (part of BRI) and as "indispensable participants in international cooperation of the Belt and Road."[8] According to a Special Declaration of Santiago, Chile, regarding the presentation, "[t]he Ministers of Foreign Affairs of CELAC welcomed, with interest, the presentation of the Chinese Foreign Minister on the Belt and Road initiative for deepening cooperation among Latin American and Caribbean Countries and China in the economic, trade, investment, cultural and tourism

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President Xi proposed a "'1 + 3 + 6' cooperation framework." *Id.* Under the framework, '1' "refer[s] to the establishment of the China-Latin American Countries and Caribbean States Cooperation Plan (2015-2019) with the aim of enhancing the relations and cooperation between China and countries of LAC." *Id.* The '3' symbolizes the "three engines" of "trade, investment and financial cooperation" that would drive cooperation between China and LAC. *Id.* The '6' symbolizes the six industries at the center of China-LAC cooperation—"energy and resources, infrastructure construction, agriculture, manufacturing, scientific and technological innovation, and information technologies." *Id.*; *see also* Megha Rajagopalan, *China's Xi Woos Latin America with $250 billion Investments*, REUTERS (Jan. 7, 2015), https://www.reuters.com/article/us-china-latam/chinas-xi-woos-latin-america-with-250-billion-investments-idUSKBN0KH06Q20150108; DAVID DOLLAR, CHINA'S INVESTMENT IN LATIN AMERICA, BROOKINGS, 1 (2017) https://www.brookings.edu/wp-content/uploads/2017/01/fp_201701_china_investment_lat_am.pdf (Although "it remains to be seen if this degree of integration can be achieved. . . . the investment target numbers are certainly plausible, as China is likely to emerge in the next few years as the world's largest supplier of capital").

7. Fabian Cambero & Dave Sherwood, *China Invites Latin America to Take Part in One Belt, One Road*, REUTERS (Jan. 22, 2018), https://www.reuters.com/article/us-chile-china/china-invites-latin-america-to-take-part-in-one-belt-one-road-idUSKBN1FB2CN; MARK P. SULLIVAN & THOMAS LUM, CONG. RESEARCH SERV., IF10982, CHINA'S ENGAGEMENT WITH LATIN AMERICA AND THE CARIBBEAN (April 11, 2019), https://fas.org/sgp/crs/row/IF10982.pdf.

8. *Special Declaration of Santiago of the II Ministerial Meeting of the CELAC-China Forum on the Belt and Road Initiative*, CELAC (Jan. 22, 2018), http://www.itamaraty.gov.br/images/2ForoCelacChina/Special-Declaration-II-CELAC-CHINA-FORUM-FV-22.1.18.pdf.

sectors, among others."[9]

China's president Xi Jinping set ambitious goals for exchange with the Latin American countries. These goals have diverse obligations arising from international treaties, including commitments to labor standards, International Labour Organization (ILO) labor standards, and cooperation agreements, such as the Chinese FTAs with Chile and Peru, which contain very weak labor protection provisions.[10]

This paper will discuss and analyze the significance in selected Latin American countries of China moving its BRI into LAC and the implications on labor standards as they may interact with international obligations and current domestic labor laws. It will also address the question of whether a regional, multi-lateral FTA, with its economic advantages and uniform labor obligations, may be beneficial to the growing relationships being negotiated.[11] Issues of whether a China-LAC FTA with labor provisions would usefully enhance labor protections by providing an additional uniform monitoring and enforcement regime to the relationship, and how likely it will occur, are discussed below.

Following the introduction, Part II describes Latin America and its FDI and trade activities, focusing on the countries that have significant trading experience with China or are members of the major trading blocs; Part III sets forth the current international and domestic labor obligations in selected countries in the LAC; Part IV provides comparative analyses and discusses

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9. *Id.*

10. *See* Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Chile, Chile-China, art. 108, Nov. 18, 2005 [hereinafter China-Chile FTA], https://www.origin-gi.com/images/GI_database/China_Chile_FTA_1.pdf ("The Parties shall enhance their communication and cooperation on labor, social security and environment through both the Memorandum of Understanding on Labor and Social Security Cooperation, and the Environmental Cooperation Agreement between the Parties"); Free Trade Agreement Between the Government of the People's Republic of China and the Government of the Republic of Peru, China-Peru, art. 161, Apr. 28, 2009 [hereinafter China-Peru FTA], http://fta.mofcom.gov.cn/bilu/annex/bilu_xdwb_en.pdf.

11. Xinhua, *Uruguay Seeks to Advance FTA Talks with China*, CHINA DAILY, http://www.chinadaily.com.cn/business/2017-02/03/content_28092515.htm (last updated Feb. 3, 2017, 14:07).

a possible regional, multi-lateral FTA with China; and Part V concludes.

I. LATIN AMERICA[12]

Latin America, with its diverse countries and territories extending from Mexico to the tip of Argentina, presents to China many choices of engagement under its BRI development initiative for FDI and trade with or without Bilateral Investment Treaties (BITs) and FTAs. These countries have organized themselves into various configurations and trade blocs,[13] and in consideration of regional trade and tariffs, some aspire to achieve common markets in Latin America as well as reach accords with foreign countries.[14] Depending on which countries are involved, Mercosur and the Pacific Alliance stand out as trade bloc organizations with member countries involved in significant amounts of FDI and trade, with CELAC acting to facilitate the developing relationships.

A. *Trade Bloc Organizations*

1. *CELAC as Facilitator*. CELAC, while technically not a trade bloc organization, nevertheless may play an important role in facilitating the China-LAC trade blocs' connections. CELAC has a membership of 33 countries (every country in the Western Hemisphere except the United States and Canada),[15] is the

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12. *List of Latin American Countries*, ENCYCLOPEDIA BRITANNICA https://www.britannica.com/topic/list-of-countries-in-Latin-America-2061416 (last visited Sept. 9, 2019) ("Latin America is generally understood to consist of the entire continent of South America in addition to Mexico, Central America, and the islands of the Caribbean."); *see also Country Directory*, LATIN AM. NETWORK INFO. CTR., http://www1.lanic.utexas.edu/subject/countries/ (last visted Sept. 9, 2019) (listing 42 countries).

13. Rachel Glickhouse, *Explainer: An Alphabet Soup of Regional Integration Organizations*, AM. SOC. COUNCIL OF THE AM. (Mar. 20, 2015), https://www.as-coa.org/articles/explainer-alphabet-soup-regional-integration-organizations (listing integration organizations in Latin America, explaining what they do, and the significance of each one—for example, ACS, OAS ALADI, OEI, ALBA, OECS, APEC, Pacific Alliance, CAN, Rio Group, CARICOM, SELA, CELAC, SICA, MERCOSUR, and UNASUR).

14. *Id.*

15. Brendan O'Boyle, *Explainer: What Is CELAC?*, AM. SOC. COUNCIL OF THE AM.

contact with China on the new BRI Initiative,[16] and "aims to serve as a forum for regional dialogue, promote regional integration, and advance social issues." [17] In Santiago, Chile, in January 2018, at the 2nd CELAC-China Forum, the foreign ministers of CELAC and China committed to strategic cooperation.[18] One of the foreign ministers present at the meeting expressed that CELAC intended "to reach agreements with Beijing on matters such as energy, connectivity, infrastructure, the environment and multilateral relations, including political aspects."[19] In terms of the Silk Road and Belt, the CELAC pro-temp president stated that CELAC "will undertake a . . . review to see to what extent it can facilitate a closer approach to China, something, [CELAC values] very much in times of protectionism in certain parts of the world."[20] Individual Latin American countries have traded with China, and though there is not yet a regional FTA with China, several individual countries have concluded FTAs with China;[21] perhaps BRI will be the catalyst to bring one. This paper focuses on the primary trade blocs with member countries of the Pacific

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(Jan. 27, 2015), https://www.as-coa.org/articles/explainer-what-celac ("CELAC's members include every country in the Americas, with the exception of Canada, the United States, and the territories of European countries in the Western Hemisphere. Altogether, the organization encompasses 33 countries representing roughly 600 million people"); *see also* Vincent Bourgeais, *CELAC Represents the Fifth Most Important Trading Partner of the EU*, EUROSTAT (June 9, 2015), https://ec.europa.eu/eurostat/documents/2995521/6870839/6-09062015-BP-EN.pdf/ae4e41ed-f4c4-4cd1-829c-f498d8f19fef ("Among the CELAC countries, Brazil (33% of total EU exports to CELAC and 32% of total EU imports from CELAC) and Mexico (26% and 18%) were by far the two main trading partners of the EU in 2014, representing also the two countries with whom the EU recorded the highest surpluses in 2014") (omission of emphasis).

16. *See* Prensa Latina, *CELAC–China: Accelerating Commercial Integration*, GRANMA (Jan. 22, 2018, 9:01:17), http://en.granma.cu/mundo/2018-01-22/celac-china-accelerating-commercial-integration.

17. Glickhouse, *supra* note 13.

18. *See* Latina, *supra* note 16.

19. *Id.*

20. *Id.* Peru, Chile, and Costa Rica all have FTAs with China. *China's Free Trade Agreements*, CHINA FTA NETWORK, http://fta.mofcom.gov.cn/english/fta_qianshu.shtml (last visited Nov. 11, 2019).

21. A China-Colombia FTA is under consideration. *China's Free Trade Agreements*, *supra* note 20.

Alliance and Mercosur, countries that have significant trading and FDI experience with China, and discusses how these countries might fit into a regional LAC-China FTA.

2. *Pacific Alliance.*[22] The Pacific Alliance members (Chile, Colombia, Mexico, and Peru) over the last decade had some of the fastest growing economies in the region with a combined gross domestic product (GDP) of roughly $2 trillion.[23] Together, the Pacific Alliance countries "account for 37% of Latin America's population, 35% of its nominal GDP, 46% of its exports, and 50% of its total imports."[24] The objectives of the Pacific Alliance include the following: to build an area of deep economic integration; to move gradually toward the free circulation of goods, services, capital, and persons; to promote economic development, regional competitiveness and greater social welfare; and to become a platform for trade integration with the rest of the world, with a special emphasis on the Asia-Pacific region. One of the requirements for membership is that a country must have

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22. Nneka Etoniru, *Explainer: What Is the Pacific Alliance?*, AM. SOC. COUNCIL OF THE AM. (July 23, 2018), https://www.as-coa.org/articles/explainer-what-pacific-alliance ("On June 6, 2012, the bloc officially launched when the four countries' presidents signed the Pacific Alliance Framework Agreement at the Fourth Summit of the Pacific Alliance in Antofagasta, Chile").

23. Claire Felter, Danielle Renwick, & Andrew Chatzky, *Mercosur: South America's Fractious Trade Bloc*, COUNCIL ON FOREIGN REL. (July 10, 2019) https://www.cfr.org/backgrounder/mercosur-south-americas-fractious-trade-bloc#chapter-title-0-3; *see also* Pacific Alliance 2018, COUNTRY ECON., https://countryeconomy.com/countries/groups/pacific-alliance (last visited Sep. 25, 2019); Barret Kupelian & James Loughridge, *Global Economy Watch: Economic Integration: the Key to Unlocking ASEAN's Export Potential?*, PWC ECON. IN BUS. BLOG (Oct. 2017), https://www.pwc.com/gx/en/issues/economy/global-economy-watch/assets/pdfs/gew-october-2017.pdf; *China Exports to Mexico*, TRADING ECON., https://tradingeconomics.com/china/exports-to-mexico (last visited Sep. 25, 2019) (providing that "[e]xports to Mexico in China averaged 3[,]037[,]063.32 USD THO from 2014 until 2019"); *Mexico Exports to China*, TRADING ECON., https://tradingeconomics.com/mexico/exports-to-china (last visited Sep. 25, 2019) (providing that "[e]xports to China in Mexico averaged 510[,]416.57 USD THO from 2014 until 2019").

24. M. ANGELES VILLARREAL, CONG. RESEARCH SERV., R43748, THE PACIFIC ALLIANCE: A TRADE INTEGRATION INITIATIVE IN LATIN AMERICA, 1, 9 (Mar. 29, 2016).

FTAs with all other member countries.[25]

In June 2017, the Alliance announced the inclusion of three Asia-Pacific countries (Australia, New Zealand, and Singapore) as associate members alongside Canada. This associate status represents a new category that entails negotiations of an FTA with the Pacific Alliance as a trade bloc. South Korea has also shown interest in becoming an associate member.[26]

3. *Mercosur*.[27] Mercosur's four active founding members (Brazil, Argentina, Paraguay, and Uruguay), along with Venezuela (suspended since 2016),[28] have a combined GDP of roughly $3.32 trillion, making it one of the world's largest economic blocs. Together, Mercosur members make up "approximately 72% of the territory of South America (12.8 million km^2, equivalent to three times the area of the European Union); 70% of the South American population (275 million inhabitants), and 77% of South America's GDP in 2012 (US$ 3.18 trillion from a total of US$ 4.13 trillion)."[29] Mercosur's "goal is to make member economies more competitive and work toward a common market. . . . [It] also signs trade agreements as a bloc, such as a free trade agreement with the Andean Community and an economic complementation agreement with Mexico." [30]

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25. *Id.*; *see also Pacific Alliance Free Trade Agreement*, AUSTL. GOV'T DEP'T OF FOREIGN AFF. & TRADE, https://dfat.gov.au/trade/agreements/negotiations/pacific alliancefta/Pages/pacific-alliance-free-trade-agreement.aspx (last visited Sep. 25, 2019).

26. Antonio Estevadeordal, *Latin America in the New Asia-Pacific Trade Order*, BROOKINGS (Mar. 22, 2018), https://www.brookings.edu/research/latin-america-in-the-new-asia-pacific-trade-order/.

27. *Mercosur*, BRAZ. MINISTRY OF FOREIGN AFF., http://www.itamaraty.gov.br/en/politica-externa/integracao-regional/6347-mercosur-en (last visited Sept. 9, 2019).

28. *Id.*; Alonso Soto & Lisandra Paraguassu, *Venezuela is Suspended from Mercosur: Brazilian Official,* REUTERS (Dec. 1, 2016, 6:05 AM), https://www.reuters.com/article/us-venezuela-mercosur-brazil-idUSKBN13Q4CC; Clare Pennington, *EU and Mercosur to Re-Initiate Free-Trade Talks Next Week*, ICIS (Sept. 21, 2018), https://www.icis.com/resources/news/2018/09/21/10261355/eu-and-mercosur-to-re-initiate-free-trade-talks-next-week/.

29. *Mercosur*, *supra* note 27.

30. Glickhouse, *supra* note 13 ("The 1991 Treaty of Asunción established Mercosur and the 1994 Treaty of Ouro Preto established the customs union. The presidency rotates

B. *International Trade*[31] *and Foreign Direct Investment*

1. *Trade*. China is the second-most important trade partner of Latin America behind the United States; however, in some of the Latin American countries, China has risen to become the most important trade partner.[32] "Increasing at the rate of 30 percent in 2017 alone, China is the largest trading partner of Peru, Chile and soon also Brazil," and as economic engagement increases, trade is expected to expand, especially in "manufacturing, information technology, scientific innovation, infrastructure, agriculture and natural energy resources."[33]

"[T]rade between China and Latin America was virtually non-

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between members every six months. There are a number of Mercosur institutions, including the Common Market Council for creating economic policy, the Common Market Group for implementing and regulating policy, and a parliament. The organization has a common tariff and guarantees the free movement of goods, people, and services").

31. For a comprehensive overview, see INTERNATIONAL TRADE OUTLOOK FOR LATIN AMERICA AND THE CARIBBEAN (2017), https://repositorio.cepal.org/bitstream/handle/11362/42316/4/S1701117_en.pdf.

32. Detlef Nolte, *China Is Challenging but (Still) Not Displacing Europe in Latin America*, GIGA FOCUS: LATIN AMERICA, Feb. 2018, at 1, 4–5, https://www.giga-hamburg.de/en/publication/china-is-challenging-but-still-not-displacing-europe-in-latin-america ("5.3 per cent of total EU imports came from Latin America, and 6.1 per cent of total EU exports were destined for Latin America, resulting in a small positive trade balance for the European Union. Two-thirds of EU imports from Latin America were primary products, and almost 90 per cent of EU exports to the region were manufactured goods. In the case of China, the relationship is similar: Of Latin American exports to China, 72 per cent are products from primary sector, and approximately 90 per cent of Latin American imports from China are manufactured goods. In 2016 Latin America received 5.4 per cent of China's total exports and contributed 6.4 per cent to total Chinese imports. . . . European investments in Latin America are much higher than European investments in China. Between 2012 and 2015, European direct investment flows to Latin America totaled 363 billion EUR; in the same period, European companies invested 89 billion EUR in China (including Hong Kong). In 2015 the accumulated stock of European FDI in Latin America was nearly 1.3 trillion EUR compared to an investment stock of nearly 168 billion EUR in China. . . . Chinese investment in Latin America is changing, but still dominated (approximately 80 per cent) by state-owned firms. Traditionally, Chinese investment was concentrated in the extractive sector. Currently, though, more than half of China's investment is in the service sector, mostly in transport and infrastructure, but increasingly also in finance, electricity (generation and transmission), information and communication technology, and especially alternative energies") (citations omitted).

33. Sabena Siddiqui, *China to Extend the BRI into Latin America*, CHINA.ORG.CN

existent at the turn of this century," but over the years, it continued to grow.[34] For 2018, imports from China to LAC were $148 billion and LAC exports to China were $158 billion, totaling over $300 billion.[35] "China continues to be the most important import and second largest export market for the LAC region overall."[36]

Trade with China 2016	Imports in US$ (in billions)	Percent of Total Imports	Exports in US$ (in billions)	Percent of Total Exports
Argentina[37]	10.5	18.7	4.4	7.7
Brazil[38]	23.4	17.0	35.1	19.0
Columbia[39]	8.6	19.3	1.1	3.6

(March 15, 2018), http://www.china.org.cn/opinion/2018-03/15/content_50710870.htm. *See generally* INTERNATIONAL TRADE OUTLOOK FOR LATIN AMERICAN AND THE CARIBBEAN, *supra* note 31.

34. Siddiqui, *supra* note 33.

35. SULLIVAN & LUM, *supra* note 7. Figures vary as there are various methods used in collecting the information. *See* Rebecca Ray & Kehan Wang, *China-Latin America Economic Bulletin, 2019 Edition*, B.U. GLOB. DEV. POL'Y CTR. 2 (2019), http://www.bu.edu/gdp/files/2019/02/GCI-Bulletin-Final-2019-1-1.pdf.

36. *2018 China-Latin America Economic Bulletin*, B.U. GLOB. DEV. POL'Y CTR. (Apr. 4, 2018), https://www.bu.edu/gdp/2018/04/04/2018-china-latin-america-economic-bulletin/.

37. *Argentina Product Exports and Imports from China 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/ARG/Year/2016/TradeFlow/EXPIMP/Partner/CHN/Product/all-groups (last visited Jan. 26, 2020); *Argentina Product Exports and Imports 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/ARG/Year/2016/TradeFlow/EXPIMP/Partner/WLD/Product/all-groups (last visited Jan. 26, 2020).

38. *Brazil Product Exports and Imports from China 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/BRA/Year/2016/TradeFlow/EXPIMP/Partner/CHN/Product/all-groups (last visited Jan. 26, 2020); *Brazil Product Exports and Imports 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/BRA/Year/2016/TradeFlow/EXPIMP/Partner/WLD/Product/all-groups (last visited Jan. 26, 2020).

39. *Colombia Product Exports and Imports from China 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/COL/Year/2016/TradeFlow/EXPIMP/Partner/CHN/Product/all-groups (last visited Jan. 26, 2020); *Colombia Product Exports and Imports 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/COL/Year/2016/TradeFlow/EXPI

Chile[40]	14.3	24.1	17.3	28.6
Mexico[41]	69.5	18.0	5.4	1.4
Paraguay[42]	2.6	27.1	<0.1	0.2
Peru[43]	8.2	22.8	8.5	23.4
Uruguay[44]	1.5	18.8	0.9	12.8

In summary, the proposed trade arrangement is significant, in that the members of Mercosur, the largest trading bloc of LAC, including Argentina, Brazil, Paraguay, and Uruguay, have a

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MP/Partner/WLD/Product/all-groups (last visited Jan. 26, 2020).

40. *Chile Product Exports and Imports from China 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/CHL/Year/2016/TradeFlow/EXPIMP/Partner/CHN/Product/all-groups (last visited Jan. 26, 2020); *Chile Product Exports and Imports 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/CHL/Year/2016/TradeFlow/EXPIMP/Partner/WLD/Product/all-groups (last visited Jan. 26, 2020).

41. *Mexico Product Exports and Imports from China 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/MEX/Year/2016/TradeFlow/EXPIMP/Partner/CHN/Product/all-groups (last visited Jan. 26, 2020); *Mexico Product Exports and Imports 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/MEX/Year/2016/TradeFlow/EXPIMP/Partner/WLD/Product/all-groups (last visited Jan. 26, 2020).

42. *Paraguay Product Exports and Imports from China 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/PRY/Year/2016/TradeFlow/EXPIMP/Partner/CHN/Product/all-groups (last visited Jan. 26, 2020); *Paraguay Product Exports and Imports 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/PRY/Year/2016/TradeFlow/EXPIMP/Partner/WLD/Product/all-groups (last visited Jan. 26, 2020).

43. *Peru Product Exports and Imports from China 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/PER/Year/2016/TradeFlow/EXPIMP/Partner/CHN/Product/all-groups (last visited Jan. 26, 2020); *Peru Product Exports and Imports 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/PER/Year/2016/TradeFlow/EXPIMP/Partner/WLD/Product/all-groups (last visited Jan. 26, 2020).

44. *Uruguay Product Exports and Imports from China 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/URY/Year/2016/TradeFlow/EXPIMP/Partner/CHN/Product/all-groups (last visited Jan. 26, 2020); *Uruguay Product Exports and Imports 2016*, WORLD TRADE INTEGRATED SOLUTION, https://wits.worldbank.org/CountryProfile/en/Country/URY/Year/2016/TradeFlow/EXPIMP/Partner/WLD/Product/all-groups (last visited Jan. 26, 2020).

combined GDP of $3.4 trillion.[45] The Pacific Alliance, Latin America's second-largest trading bloc, comprised of Chile, Colombia, Mexico, and Peru, has a total GDP of roughly $2 trillion.[46]

For the 10-year period between 2015 and 2025, China's president Xi Jinping set goals for exchange with the Latin American and Caribbean region at $500 billion in trade (currently at about $300 billion).[47]

2. *Foreign Direct Investment.*[48] Over the last 10 years, the governments of Latin America, including Argentina, Chile, Colombia, and Brazil, have lowered barriers to foreign investment "near the level of the United States"[49] and from 2003 to 2016, as Chinese FDI in Latin America increased, among the top recipients were Brazil, Peru, Mexico, Argentina, Bolivia, and

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45. Felter, Renwick, & Chatzky, *supra* note 23.

46. *Id.*

47. *A New Chapter in China-LAC Friendship and Cooperation*, *supra* note 6 (aiming to achieve this goal over a ten year period); Ray & Wang, *supra* note 35, at 2 (providing, "Latin America and the Caribbean exported $158.6 billion in goods to China, and received $148.8 billion in Chinese imports in return").

48. DOLLAR, *supra* note 6, at 1 ("The outflow of capital from China takes two main forms. These are direct investment, which consists of greenfield investments plus mergers and acquisitions, and lending by China's policy banks, which are the Export-Import Bank of China (China EXIM Bank) and China Development Bank (CDB). China's Ministry of Commerce (MOFCOM) reports the allocation of China's overseas direct investment (ODI) among recipient countries"); *see also* Tojo Jose, *What is the Greenfield versus Brownfield FDI Debate?* INDIANECONOMY.NET (May 15, 2015), https://www.indianeconomy.net/splclassroom/what-is-the-greenfield-versus-brownfield-fdi-debate/ ("Greenfield investment is investment in new plants. It is establishing new production capacity by an investor or company. On the other, Brownfield investment is an investor investing in an existing plant. Brownfield investment is mainly made through merger and acquisitions"); Ray & Wang, *supra* note 35.

49. ROLANDO AVENDANO, ANGEL MELGUIZO & SEAN MINER, CHINESE FDI IN LATIN AMERICA: NEW TRENDS WITH GLOBAL IMPLICATIONS 3 (2017), http://www.atlanticcouncil.org/images/publications/Chinese_FDI_in_Latin_America_web_0626.pdf; *see also Chile and China Establish a Comprehensive Strategic Partnership*, MINISTRY OF FOREIGN AFF. OF CHILE (November 22, 2016), https://minrel.gob.cl/chile-and-china-establish-a-comprehensive-strategicpartnership/minrel/2017-05-03/122721.html ("Chile is the third major trading partner of China in Latin America").

Chile.[50] "Despite ongoing cyclical and structural changes in the Chinese economy, trade and investment relations with Latin America remain solid."[51] Between 2010 and 2014, total Chinese direct investment in LAC was about $106 billion.[52] For the 10-year period between 2015 and 2025, China's president Xi Jinping set goals for exchange with the Latin American and Caribbean region at $250 billion in direct investment.[53] China's BRI will certainly push the figure in LAC toward President Xi's goal.[54]

As the "leading receiver of foreign direct investment (FDI) in the region," Mercosur "received 47.6% of all the FDI flow directed to South America, Central America and Mexico in 2012. . . ."[55] Although "Europe is still the region's largest source of FDI," China is not far behind, accounting "for an average of 10 percent of global FDI flows into Latin America [in 2014 and 2015], a striking turnaround from the low levels of investment even a few

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50. AVENDANO, MELGUIZO, & MINER, *supra* note 49, at 7, 19 ("Chinese overseas FDI is notably hard to track. . . . Differences in reported figures (from IMF, national sources, and others) of China's FDI to Latin America can be explained by under-reporting of official data collected by the Ministry of Commerce"). *See generally* DOLLAR, *supra* note 6, at 2 ("Some of China's overseas investment takes place under the rubric of the 'One Belt, One Road' initiative (OBOR)").

51. David Dollar, *Chinese Investment in Latin America Continues to Expand*, BROOKINGS, (Mar. 20, 2018), https://www.brookings.edu/research/despite-slowdown-chinese-investment-in-latin-america-continues-to-expand/.

52. DOLLAR, *supra* note 6, at 1; *see also* AVENDANO, MELGUIZO, & MINER, *supra* note 49, at 1 ("Now, more than half of all investments target the service sector, especially transport, finance, electricity, information and communications technology (ICT), and alternative energy, increasing China's relevance in the region").

53. *A New Chapter in China-LAC Friendship and Cooperation*, *supra* note 6. *See generally* INTERNATIONAL TRADE OUTLOOK FOR LATIN AMERICAN AND THE CARIBBEAN, *supra* note 31; AVENDANO, MELGUIZO, & MINER, *supra* note 49, at 19 ("Chinese overseas FDI is notably hard to track. . . . Differences in reported figures (from IMF, national sources, and others) of China's FDI to Latin America can be explained by under-reporting of official data collected by the Ministry of Commerce").

54. Maggie Xiaoyang Chen, *Foreign Investment Growth in the Belt and Road Economies,* WORLD BANK, (Oct. 11, 2018), https://blogs.worldbank.org/trade/foreign-investment-growth-belt-and-road-economies ("There is a significant correlation between construction projects by Chinese firms in other BRI countries and increased direct investment."); AVENDANO, MELGUIZO, & MINER, *supra* note 49, at 1 (showing over $20 billion of FDI came into LAC from China during 2015 and 2016).

55. *Mercosur*, *supra* note 27.

years earlier."[56]

Mercosur's trade with China ($4.1 billion), the United States ($4 billion), and the European Union (EU) ($4.5 billion) total nearly half of its $531 billion global trade.[57] Mercosur currently has no FTAs with China or the United States, but recently negotiated an FTA in principle with the EU in 2019.[58]

There is also discussion about the downside of massive investment and loans by China.[59] Between 2010 and 2014, the largest share of direct investment to Latin American and Caribbean countries went to Brazil.[60] "Since 2005, China has extended roughly US$150 billion in state-to-state financing to LAC, around US$27 billion of which has gone toward infrastructure projects, including a road in Costa Rica, railways in Argentina, and a port in Trinidad and Tobago."[61] In addition to Chinese FDI to LAC, "lending from China's policy banks (established to take over the government-directed spending functions of the four state-owned commercial banks) . . . has

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56. AVENDANO, MELGUIZO, & MINER, *supra* note 49, at 6.

57. *The Moment for Mercosur's Trade Agenda Is Now*, STRATFOR WORLDVIEW (July 25, 2018), https://worldview.stratfor.com/article/moment-mercosurs-trade-agenda-now.

58. *EU-Mercosur Reach Agreement on Trade*, EUR. COMMISSION, (June 28, 2019) https://trade.ec.europa.eu/doclib/press/index.cfm?id=2039; *see Trade Agreements in Force,* FOREIGN TRADE INFO. SYS., http://www.sice.oas.org/agreements_e.asp (last visited Feb. 18, 2020).

59. *See* SULLIVAN & LUM, *supra* note 7 (discussing "the potential harmful effects of China's economic engagement on the region's development").

60. FOREIGN DIRECT INVESTMENT IN LATIN AMERICA AND THE CARIBBEAN 36 (2015), https://repositorio.cepal.org/bitstream/handle/11362/38215/4/S1500534_en.pdf (detailing Latin America and the Caribbean's inflow of FDI by country and subregion); DOLLAR, *supra* note 6, at 4; *see also* AVENDANO, MELGUIZO, & MINER, *supra* note 49, at 6 ("Cumulative flows of Chinese FDI in Latin America have reached over $100 billion, with $60 billion to Brazil alone").

61. Barrios, *supra* note 5 ("Ironically, the importance of 'who is in' and 'who is out' of the BRI may be overstated because China's activities in Latin America have been Belt and Road-esque in substance, if not in style, for a while now"). *See generally* BUILDING DEV. FOR A NEW ERA: CHINA'S INFRASTRUCTURE PROJECTS IN LATIN AMERICA AND THE CARIBBEAN 3 (Enrique Dussel Peters, Ariel C. Armony & Shoujun Cui eds., 2018), https://www.ucis.pitt.edu/asc/sites/default/files/BuildingDevelopmentNewEra.pdf. (containing articles that describe various LAC country projects).

surpassed the $140 billion mark since 2005."[62]

However, investing in soft power has had its downsides. It's true that Latin American governments have flocked to Chinese capital, eager to address long-standing infrastructure deficits. However, many Latin Americans have criticized China for its extensive promotion of Chinese firms, labor, and machinery within state-to-state investment contracts, and its lack of local governance standards, including inadequate environment and labor protection.[63]

For many countries, "China's BRI has lost much of its sheen as country after country is [perceiving a] Chinese game plan of unequal treaties and ultimate debt-equity swap, [sensing] that ultimately it will benefit only China, not them."[64] It is argued that China uses economic inducements to gain influence in target

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62. AVENDANO, MELGUIZO, & MINER, *supra* note 49, at 14.

63. Stephen Kaplan, *China Is Investing Seriously in Latin America. Should You Worry?*, WASH. POST (Jan. 24, 2018) (emphasis added), https://www.washingtonpost.com/news/monkey-cage/wp/2018/01/24/china-is-investing-seriously-in-latin-america-should-you-worry/. Another down-side is the growing debt to China.

> China has become an important lender for development projects in Latin America. Between 2005 and 2016, Chinese banks lent more than 140 billion USD to Latin American governments—the majority to Venezuela (62 billion USD) and Brazil (37 billion USD)—mostly for investments in infrastructure (52 per cent) and energy (31 per cent). Chinese banks lent more to Latin America than each of the three big development banks (World Bank, Inter-American Development Bank, and the CAF Andean Development Corporation—Development Bank of Latin America), and in some years even more than all of those development banks together.

Nolte, *supra* note 32, at 5 (citation omitted).

64. Shah Suraj Bharat et al., *China's Belt and Road Initiative: Debt Trap or Hope?*, THE STRAITS TIMES, (Oct. 20, 2018, 5:00 AM), https://www.straitstimes.com/asia/east-asia/chinas-belt-and-road-initiative-debt-trap-or-hope. *See* JONATHAN BRODER, CHINA'S BELT AND ROAD INITIATIVE 16 (Jan. 25, 2019), http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2019012500 (critiquing the BRI); Zack Cooper. *Bridging the Transatlantic Divide on China*, AM. ENTER. INST. (May 9, 2019), https://www.nbr.org/publication/bridging-the-transatlantic-divide-on-china/ (discussing China's expanding influence and a perspective on possible political and military aims of BRI).

countries.[65] For example, "[c]ountries such as Sri Lanka have been forced into debt-for-equity arrangements, with China taking over operations at the US$1.5 billion Hambantota Port, which it helped finance and build, after the government struggled to repay its debts."[66]

Some see another downside of China's FDI in LAC in the labor issues raised by the increasing presence of Chinese workers and company officials in the operation of businesses in LAC.[67]

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65. Bharat et al., *supra* note 64.

66. *Id.*

> [S]ome independent analysts, charge Beijing uses predatory loan practices to finance "white elephant" infrastructure projects that provide few local jobs, offer little training to those residents it does employ and bury poor countries under mountains of debt that force them to surrender strategic assets to China as payment. In the end, these critics charge, BRI projects produce little economic growth for participating countries.
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> . . . .
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> . . . [O]f the $1 trillion in loans that China made to developing countries between 2005 and 2017, according to the American Enterprise Institute's Scissors, more than a third—$370 billion—are "troubled investments," which include nonperforming loans and investments in deals that either have failed altogether or have not produced any profits.

BRODER, *supra* note 64, at 7, 10. "[O]ther experts say the vast majority of BRI projects are economically viable for the host governments." *Id.* at 6. Though much of the BRI investment has been in Asia, where some anxiety over debts has developed, LAC and Africa are also included in the expanding growth of BRI. *Id.* at 4, 6; *see also* Amanda Erickson, *Malaysia Cancels Two Big Chinese Projects, Fearing They Will Bankrupt the Country,* WASH. POST, (Aug. 21, 2018), https://www.washingtonpost.com/world/asia_pacific/malaysia-cancels-two-massive-chinese-projects-fearing-they-will-bankrupt-the-country/2018/08/21/2bd150e0-a515-11e8-b76b-d513a40042f6_story.html (stating lately many recipient countries of China's investment think "the investment comes with too many strings, including closed bidding processes and unfavorable leases and deals that give China prime access to many of the projects once completed").

67. *See* Armony & Peters, *supra* note 4 (arguing companies should increase the share of local born workers to address labor issues that have arisen); *see also* BRODER, *supra* note 64, at 19 ("[T]he appetite for U.S. involvement in development projects is especially strong in sub-Saharan countries, such as Kenya and Tanzania, where leaders have complained about shoddy Chinese workmanship on BRI projects and Beijing's preference

The BRI, which includes "the 21st Century Maritime Silk Road and the Silk Road Economic Belt, involves 65 countries and approximately $900 billion in planned investments around the world." [68] Due to its global reach and size, as of 2016, the BRI "had drawn 847,000 Chinese nationals to work abroad in over 16,000 companies."[69]

With the increase in Chinese nationals working in other countries, "[l]abor issues have also arisen, as firms have tended to hire [these] Chinese nationals rather than local workers, especially in management and highly-skilled roles. . . . For the host countries, concerns about the lack of transparency and surrender of sovereignty have permeated public debates."[70]

And, it is reported that, due to corruption, as "Chinese companies push deeper into emerging markets, inadequate enforcement and poor business practices are turning the BRI into a global trail of trouble."[71] The United States also views the BRI

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for Chinese labor over local workers."); Cooper, *supra* note 64, at 4–5 (discussing concerns regarding Chinese infrastructure projects due to the use of Chinese labor and firms).

68. Meia Nouwens, *China's Use of Private Companies and Other Actors to Secure the Belt and Road Across South Asia*, ASIA POL'Y Apr. 2019, at 13 (footnotes omitted).

69. *Id.*

70. Armony & Peters, *supra* note 4 (emphasis added) (citation omitted).

71. Jonathan E. Hillman, *Corruption Flows Along China's Belt and Road*, CTR. FOR STRATEGIC & INT'L STUD. (Jan. 18, 2019), https://www.csis.org/analysis/corruption-flows-along-chinas-belt-and-road.

> A long list of Chinese companies have been debarred from the World Bank and other multilateral development banks for fraud and corruption, which covers everything from inflating costs to giving bribes.
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> . . . .
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> In many of the 80-plus countries that the BRI aims to connect, corruption is endemic. Among participating economies, the median credit rating is junk, so alternative lenders stay away. Chinese construction companies benefit because—backed by state financing and often state ownership—they are willing to take risks that others will not. They also know that, if the going gets tough, Beijing can intervene politically on their behalf.

Id.

expansion as a threat to its influence.[72]

II. CURRENT LEGAL OBLIGATIONS FOR LABOR STANDARDS

A. *ILO Core Labor Standard Ratifications*

In the selected LAC countries of Argentina, Brazil, Columbia, Chile, Mexico, Paraguay, Peru, and Uruguay, all have ratified the core ILO labor standards, except for Brazil, which has not yet ratified Convention 87, Freedom of Association.[73] China, on the

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> Of course, Chinese companies are not alone in being accused of peddling influence. But authorities in the United States and European Union are more vigilant in policing their own companies abroad. China adopted a foreign bribery law in 2011 but has done little to enforce it. Chinese companies are also among the least transparent according to a Transparency International study of 100 companies in 15 emerging markets.

Id. (citation omitted).

72. *See* Arzan Tarapore, *The U.S. Response to the Belt and Road Initiative: Answering New Threats with New Partnerships* ASIA POL'Y Apr. 2019, at 34 ("Washington has denounced BRI as a 'predatory' program that builds influence through corrupt and secretive 'debt trap' deals") (footnote omitted); *see also Vice President Mike Pence's Remarks on the Administration's Policy Towards China*, HUDSON INST. (Oct. 4, 2018), https://www.hudson.org/events/1610-vice-president-mike-pence-s-remarks-on-the-administration-s-policy-towards-china102018; Helena Legarda & Meia Nouwens, *Guardians of the Belt and Road: The Internationalization of China's Private Security Companies,* CHINA MONITOR, 8–9 (Aug. 16, 2018), https://www.merics.org/sites/default/files/2018-08/180815_ChinaMonitor_Guardians_final.pdf (discussing the alleged risks of China's use of "private security companies").

73. *Ratifications of C105—Abolition of Forced Labour Convention, 1957 (No. 105),* INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250:NO (last visited Aug. 20, 2019); *Ratifications of C138—Minimum Age Convention, 1973 (No. 138),* INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO (last visited Aug. 20, 2019); *Ratifications of C182—Worst Forms of Child Labour Convention, 1999 (No. 182),* INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited Aug. 20, 2019); *Ratifications of C100—Equal Remuneration Convention, 1951 (No. 100),* INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID: 312245:NO (last visited Aug. 20, 2019); *Ratifications of C111—Discrimination (Employment and*

other hand has only ratified half of them.[74] The core ILO labor standards include: "freedom of association and the effective recognition of the right to collective bargaining [Conventions No. 87 & No. 98]; the elimination of all forms of forced and compulsory labour [Conventions No. 29 & No. 105]; the effective abolition of child labour [Conventions No. 138 & No. 182]; and the elimination of discrimination in respect of employment and occupation [Conventions No. 100 & No. 111]."[75]

B. *International Labor Obligations in FTAs Between LAC and China*

1. *LAC-China Individual FTAs*. Currently, there are three China FTAs with individual LAC countries (Peru, Chile, and Costa Rica).[76] However, according to a survey of Chinese FTA catalogues, China had thirteen FTAs in mid-2015,[77] eight of

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Occupation) Convention, 1958 (No. 111), INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256:NO (last visited Aug. 20, 2019); *Ratifications of C087—Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID: 312232:NO (last visited Aug. 20, 2019); *Ratifications of C098—Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID: 312243:NO (last visited Aug. 20, 2019); *Ratifications of C029—Forced Labour Convention, 1930 (No. 29)*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174:NO (last visited Aug. 20, 2019).

74. *Ratifications for China*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103404: (last visited Aug. 16, 2019).

75. *Conventions and Recommendations*, INT'L LAB. ORG., https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang—en/index.htm (last visited Feb. 11, 2020).

76. KATHERINE KOLESKI & ALEC BLIVAS, CHINA'S ENGAGEMENT WITH LATIN AMERICA AND THE CARIBBEAN 7 (2018), https://www.uscc.gov/sites/default/files/Research/China%27s%20Engagement%20with%20Latin%20America%20and%20the%20Caribbean_.pdf.

77. *See* Ronald C. Brown, *A New Leader in Asian Free Trade Agreements? Chinese Style Global Trade: New Rules, No Labor Protections*, 35 UCLA PAC. BASIN L.J. 1, 14 (2017) (arguing there are 16 FTAs, including three in effect that have not been notified to the

which had no labor protection provisions in their text (Association of Southeast Asian Nations (ASEAN), Asia-Pacific, Costa Rica, Hong Kong, Macau, Pakistan, Singapore, and Taiwan) and five that included very weak labor protection standards (Chile, Iceland, New Zealand, Peru, and Switzerland).[78] "Of the five FTAs that have references to labor issues, substantive provisions are not in the texts of FTAs but are in [Memorandum of Understandings ("MOU"s) between the countries]."[79]

The most recent Chinese FTA with a labor MOU is between China and Switzerland, an EU member. Its labor provisions parallel those used by the EU.[80] Perhaps it could serve as a new Chinese model for a future China-LAC FTA?[81]

WTO and do not include a Social Dimension provision with labor protections); Jay Chittooran, *What Do Chinese Rules Mean for Worker Rights?* THIRD WAY (April 14, 2015), http://www.thirdway.org/report/what-do-chinese-rules-mean-for-worker-rights ("In numerous agreements, the words 'labour,' or 'worker' do not appear in the agreement text at all").

78. Chittooran, *supra* note 77; *see also* China-Chile FTA, *supra* note 10, art. 108 (showing the only labor protections included in the agreement to be a reference to previous agreements between the parties); China-Peru FTA, *supra* note 10, art. 161, (showing a reference to the parties' Memorandum of Understanding as inclusion of labor provisions in the agreement). *See generally* Free Trade Agreement Between the Government of the People's Republic of China and the Government of the Republic of Costa Rica, China–Costa Rica, Apr. 8, 2010 [hereinafter China-Costa Rica FTA], http://www.sice.oas.org/Trade/CRI_CHN_FTA/Texts_Apr2010_e/CRI_CHN_Core_text_en.pdf (demonstrating the lack of labor protections incorporated into the agreement).

79. Ronald C. Brown, *EU-China BIT and FTA: Building a Bridge on the Silk Road Not Detoured by Labor Standard Provisions*, 29 U. OF WASH. INT'L L.J. (forthcoming 2019) (manuscript at 19) (on file with author).

80. Agreement on Labor and Employment Cooperation Between the Federal Department of Economic Affairs, Education and Research of the Swiss Confederation and The Ministry of Human Ressources [sic] and Social Security of the People's Republic of China, China-Switz., art. 2, 4, July 6, 2013 [hereinafter 2013 China-Switzerland MOU], http://files.chinagoabroad.com/Public/uploads/v2/uploaded/attachments/1402/Agreement+on+Labour+and+Employment.pdf; *see* James Harrison et al., *Labour Standard Provisions in EU Free Trade Agreements: Reflections on the European Commission's Reform Agenda,* WORLD TRADE REV., Aug. 2018, at 5–6 (stating all recent EU FTAs contain commitments to the ILO's eight core labor conventions, procedural requirements relating to cooperation and dispute resolution, provisions on sustainability and a commitment to protect and uphold domestic protection of labor standards).

81. 2013 China-Switzerland MOU, *supra* note 80, arts. 2. China's one FTA and MOU on labor with an EU Member, Switzerland in 2013, may reflect the likely future

a. China-Chile FTA.[82] The weak labor provisions contained in the China-Chile 2005 MOU, eight years before the more recent Switzerland agreement, are reproduced below:

Source of Standards	The Parties shall carry out mutually agreed co-operation activities, more particularly in the following fields: employment and labour policies and social dialogue, including decent work, labour laws and labour inspection; improvement of working conditions and workers training; globalization and its impact on employment, the working environment, industrial relations and governance, and social security.[83]
Obligations	Co-operation between the Parties shall more particularly be carried out by means of: exchanges of information and expertise in the fields covered by the Memorandum; reciprocal visits of experts and delegations; joint organization of seminars, workshops and meetings for experts, regulatory authorities and other persons concerned; and consultations within the framework of multilateral discussions on employment,

accommodation with EU in an EU-China FTA and possibly with LAC. It contains a commitment to the ILO Declaration and its core labor standards, and it reaffirms the Social Council on Full Employment and Decent Work of 2006, and the ILO Declaration on Social Justice for a Fair Globalization. *Id.* The Parties also agree to a broad range of obligations to enforce their labor laws, to not encourage trade by reducing labor standards, and to not use domestic labor laws to further trade protectionism. *Id.* Issues over its implementation are to be resolved though cooperation, consultation, and dialogue, a dispute resolution scheme similarly embraced by EU FTA labor provisions. *Id.* art. 4.

82. "The Parties shall enhance their communication and cooperation on labor, social security and environment through both the Memorandum of Understanding on Labor and Social Security Cooperation, and the Environmental Cooperation Agreement between the Parties." China-Chile FTA, *supra* note 10, art. 108.

83. Memorandum of Understanding on Labour and Social Security Cooperation between the Ministry of Labour and Social Security of the People's Republic of China and the Ministry of Labour and Social Security of The Republic of Chile, Chile-China, art. 1, Nov. 2, 2005, http://www.sice.oas.org/TPD/CHL_CHN/Negotiations/MOU_e.pdf.

	training, labour and social security issues.[84]
Financing	Each of the Parties shall seek to secure the funds required to support co-operation activities and shall undertake the co-ordination of the departments responsible for the implementation of this Memorandum.[85]
Dispute Resolution	Nothing in this Agreement shall affect in any way the rights and obligations of the Parties resulting from any international legal instrument.[86]

b. China-Peru FTA. The labor provisions of the 2009 China-Peru FTA are contained in Article 161, Labor Cooperation: "The Parties shall enhance their communication and cooperation on labor, social security and environment issues through *Memorandum of Understanding on Labor Cooperation between the Government of the People's Republic of China and the Government of the Republic of Peru*."[87]

c. China-Costa Rica FTA. The China-Costa Rica FTA has no labor provisions or accompanying MOU on labor.[88]

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84. *Id.* art. 2.

85. *Id.* art. 4.

86. *Id.* art. 5.

87. China-Peru FTA, *supra* note 10, art. 161; *see Trade Policy Developments,* FOREIGN TRADE INFO. SYS., http://www.sice.oas.org/tpd/per_chn/PER_CHN_e.ASP (last visited Aug. 14, 2019) (showing the China-Peru FTA is reported to have been finalized on November 19, 2008 and was signed on April 28, 2009).

88. *See* China-Costa Rica FTA, *supra* note 78 (illustrating the agreement contains no labor provisions or references to a previous MOU between the parties); *see also China-Costa Rica FTA Comes into Effect,* CHINA BRIEFING, (Aug. 2, 2011), http://www.china-briefing.com/news/china-costa-rica-fta-comes-into-effect (stating the agreement contains tariff-free entry for products and open service sectors for bilateral free trades and mutual investments); *China-Costa Rica FTA,* CHINA FTA NETWORK, http://fta.mofcom.gov.cn/topic/encosta.shtml (last visited Aug. 19, 2019) ("Costa Rica is China's second largest trading partner in Central America while China is the second largest trading partner of Costa Rica").

2. *New China Model? China-Switzerland FTA.*[89] The 2013 China-Switzerland FTA itself has language similar to the language used by the EU in its FTAs regarding labor standards.[90] Article 13.5, Economic and Technical Cooperation, refers to the 2011 and the 2013 China-Switzerland MOUs on Labor.[91] Perhaps, this new model could be used in a China-LAC FTA to add further labor protections. Mercosur and the EU finalized an FTA, in June 2019, that includes similar language.[92]

The labor provisions in the 2013 China-Switzerland MOU are reproduced below:

Source of Standards	Parties reaffirm the obligations of China and Switzerland as members of the ILO, including their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.[93] Parties reaffirm the commitment of China and Switzerland, under the Ministerial Declaration of the UN Economic and Social Council on Full

89. *See* Free Trade Agreement Between the People's Republic of China and the Swiss Confederation, China-Switz., July 6, 2013 [hereinafter China-Switzerland FTA], http://fta.mofcom.gov.cn/ruishi/xieyi/xieyizw_en.pdf.

90. *See* Harrison et al., *supra* note 80, at 5–6; China-Switzerland FTA, *supra* note 89, arts. 13.5, 15.1–15.11 (referencing the parties' MOU which contains commitments and an issue resolution similar to those found in the EU FTAs).

91. China-Switzerland FTA, *supra* note 89, arts. 13.5; *see* 2013 China-Switzerland MOU, *supra* note 80, arts. 2-3 (reaffirming the parties' cooperation in further improving labor standards and practices consistent with the applicable ILO Conventions); Memorandum of Understanding between the Federal Department of Economic Affairs of the Swiss Confederation and the Ministry of Human Resources and Social Security of the People's Republic of China Regarding Cooperation on Labour and Employment Issues, China-Switz., June 15, 2011 [hereinafter 2011 China-Switzerland MOU] (on file with author) (stating in the preamble a desire to improve working conditions, living standards and basic workers' rights in consideration of the objectives and principles of the International Labor Organization).

92. EU-Mercosur FTA, art. 3, http://trade.ec.europa.eu/doclib/docs/2017/april/tradoc_155481.pdf (proposed) (containing similar labor protective language to the 2011 and 2013 China-Swiss MOUs); *EU-Mercosur Reach Agreement on Trade*, *supra* note 58.

93. 2013 China-Switzerland MOU, *supra* note 80, art. 2.1.

	Employment and Decent Work of 2006, to recognising full and productive employment and decent work for all as a key element of sustainable development.[94] The Parties reaffirm the ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference at its 97th session in 2008.[95]
Obligations	The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws, regulations, policies and practices in China and Switzerland.[96] The Parties recognise that it is inappropriate to set or use domestic labor laws, regulations, policies and practices for trade protectionist purposes in China and Switzerland.[97] The Parties will effectively enforce their respective domestic labour laws.[98] Each Party shall appoint a coordinator as contact point for implementation of the MOU.[99]
Dispute Resolution	Should any issue arise over the interpretation or application of this Agreement, a Party may request consultations with the other Party through the contact points. The Parties will make every effort to reach consensus on the matter through cooperation, consultation and dialogue.[100]

94. *Id.* art. 2.2.
95. *Id.* art. 2.4.
96. *Id.* art. 2.5.
97. *Id.* art. 2.6.
98. *Id.* art. 2.7.
99. *Id.* art. 4.1.
100. *Id.* art. 4.2.

	This Agreement shall enter into force on the sixtieth day upon the issue of the latter notification. It shall remain in force indefinitely unless either Party gives notification of termination to the other Party with six months' notice.[101]

In addition, Article 3.2 of the 2013 China-Switzerland MOU makes reference to the 2011 China-Switzerland MOU cooperative activities[102] that shall be conducted and may, *inter alia,* be implemented through "[d]ialogue, exchange of information and best practices, . . . [m]eetings, visits, and workshops of experts[,] . . . [j]oint studies[,] . . . [j]oint initiatives in multilateral organizations . . . [and] [c]ooperation projects and capacity building."[103]

3. LAC Trade Bloc FTA Negotiations with China and Asia.

a. CELAC. CELAC members' FTAs with countries outside of LAC[104] are found in bilateral agreements rather than with CELAC as a party; however, there are developments by trade blocs within LAC for regional, multi-lateral FTAs.[105] CELAC is

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101. *Id.* art. 5.

102. *Id.* art. 3.2.

103. 2011 China-Switzerland MOU, supra note 91, art. 3.

104. *See* O'Boyle, *supra* note 15.

105. *See Community of Latin America and Caribbean States (CELAC) Cultural Action Plan 2015-2020*, UNESCO, http://www.lacult.unesco.org/lacult_en/docc/Plan_Accion_CLT_CELAC_2015-2020_EN.pdf, (last visited Aug. 19, 2019) (detailing how CELAC acts as facilitator, including the promotion of international trade and investment); *CELAC and China Joint Plan of Action for Cooperation on Priority Areas (2019-2021),* BRAZIL MINISTRY OF FOREIGN AFF., http://www.itamaraty.gov.br/images/2ForoCelacChina/Joint-Action-Plan-II-CELAC-China-Forum-FV-22-01-18.pdf (last visited Nov. 12, 2019) (representing an agreement to adopt the CELAC-China Joint Plan of Action for Cooperation on Priority Areas); *EU-CELAC Relations,* EEAS (July 16, 2018, 11:50), https://eeas.europa.eu/headquarters/headquarters-homepage_en/13042/EU-CELAC%20relations (describing the EU's engagement with CELAC as part of a flexible approach with Latin America and the Caribbean combined with bilateral relations with individual countries and

the contact with China on the new BRI Initiative.[106] Individual LACs have traded with China and several have concluded FTAs with China (Chile, Peru, and Costa Rica), though there has not yet been a regional FTA with China.[107] Perhaps, BRI will be the catalyst to bring it.[108]

b. Pacific Alliance. The Pacific Alliance is attempting to negotiate FTAs outside LAC.[109] The Pacific Alliance—made up of Chile, Colombia, Mexico, and Peru—has been a key player in integrating LAC with Asia. In June 2017, the Pacific Alliance announced the inclusion of three Asia-Pacific countries (Australia, New Zealand, and Singapore) as associate members alongside Canada. This associate status represents a new category that entails negotiations of an FTA with the Pacific Alliance as a trade bloc. South Korea has also shown interest in becoming an associate member.[110]

China has indicated interest in an Asia-Pacific free trade

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other sub-regional or regional groups); Bourgeais, *supra* note 15.

106. Wang Yi, *Join Hands Across the Ocean in a New Era*, ASIA NEWS MONITOR, Jan. 22, 2018, ProQuest, Doc. ID. 1991733388 (discussing the coordination between China and CELAC regarding the BRI Initiative); s*ee also* Myers, *supra* note 3, at 240 ("The region was also called an 'important participant' in the BRI by Foreign Minister Wang Yi during the 2018 China-CELAC Ministerial Forum").

107. *China's Free Trade Agreements*, *supra* note 20 (showing a China-Columbia FTA is also under consideration); *see China Exports to Mexico*, *supra* note 23; *Mexico Exports to China*, *supra* note 23 (showing "[e]xports to China in Mexico averaged 447[,]421.24 USD THO from 2014 until 2017").

108. *See* Barrios, *supra* note 5.

109. *See* VILLARREAL, *supra* note 24, at 12; *Pacific Alliance, Associate Members Enter Fourth Negotiating Round, Look To Clinch Deal by July*, BRIDGES WKLY. May 17, 2018, at 11, https://www.ictsd.org/sites/default/files/bridgesweekly22-17a.pdf.

110. Estevadeordal, *supra* note 26.

> The Pacific Alliance's GDP was worth over USD $1.8 trillion in 2015–16. Over the last decade, Pacific Alliance members had some of the fastest growing economies in the region. The four countries, taken together, account for 37 per cent of Latin America's population, 35 per cent of its nominal GDP, 46 per cent of its exports, and 50 per cent of its total imports.

area, but there is no China-Pacific Alliance FTA. "Chinese president Xi Jinping said [not only] that China is willing to strengthen its dialogue and cooperation with Latin America's Pacific Alliance trade bloc, composed of Colombia, Mexico, Chile and Peru," but also, while "[s]peaking alongside Chile's President Michelle Bachelet," that both Chile and China need "to push for an 'Asia-Pacific free trade area.'" [111]

c. Mercosur.[112] As a "regional integration organization and customs union," Mercosur has "four full members: Argentina, Brazil, Paraguay, and Uruguay."[113] As a bloc, Mercosur signs trade agreements, such as "a free trade agreement with the Andean Community and an economic complementation agreement with Mexico."[114] Because the bloc's full members have veto power, negotiations can be difficult where there is a lack of consensus.[115] Mercosur has actively entered into trade arrangements within the LAC, and more recently, it seeks regional bilateral and multi-lateral trade relations with Asian countries:[116]

Pacific Alliance Free Trade Agreement, *supra* note 25.

111. Anthony Esposito, *China's Xi Seeks More Cooperation with Pacific Alliance Bloc*, REUTERS (Nov. 22, 2016, 4:01 PM), https://uk.reuters.com/article/uk-china-trade-latam/chinas-xi-seeks-more-cooperation-with-pacific-alliance-bloc-idUKKBN13H2IA.

112. Felter, Renwick, & Chatzky, *supra* note 23; *see also The Moment for Mercosur's Trade Agenda Is Now*, *supra* note 57.

113. Glickhouse, *supra* note 13 ("Bolivia, Chile, Colombia, Ecuador, and Peru are associate members and Mexico is an observer").

114. *Id.* Mercosur has "Associate" members, which include Bolivia, Chile, Colombia, Ecuador, Guyana, Peru, and Suriname. Felter, Renwick, & Chatzky, *supra* note 23. Associate members "receive tariff reductions when trading with the full members but do not enjoy full voting rights or free access to their markets. Bolivia was invited to join as a full member in 2012, but its accession is pending authorization from Brazil's congress." *Id.*

115. *The Moment for Mercosur's Trade Agenda Is Now*, *supra* note 57.

116. *Id.*

> Mercosur has also made significant progress in its trade negotiations with the Pacific Alliance, which comprises Mexico, Colombia, Peru and Chile. Unlike Mercosur, the Pacific Alliance is not a common market where every member country has veto power, but a free trade area that

> Mercosur's plans to negotiate free trade agreements with Japan, ASEAN and China are also in their initial stages. Talks with Japan will likely begin in November [2018], while negotiations with ASEAN and China are still in the exploratory phase. Mercosur has yet to reach consensus on its negotiations with China. Uruguay and Argentina favor negotiating a free trade agreement, as both countries see an opportunity to expand their agricultural products to the Chinese market. . . . But Brazil, despite the fact that China is its top trade partner, is Mercosur's main obstacle blocking its pursuit of a free trade agreement with China. Brazil fears its manufacturing industry will be severely if not fatally harmed if trade restrictions with China are lifted. A free trade agreement with China also could put Paraguay's plans to continue attracting manufacturing industries from Brazil at risk.[117]

China is currently discussing a regional, multilateral FTA with Mercosur,[118] and South Korea is also discussing joining with

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> allows Mercosur member countries to negotiate bilaterally with each member of the alliance.

Id.

117. *Id. See generally Mercosur Holds First Negotiating Round for Korea Trade Deal, Looks to EU Next Steps*, BRIDGES WKLY. Sept. 20, 2018, at 18 [hereinafter *Mercosur Holds First Negotiating Round*], https://www.ictsd.org/bridges-news/bridges/news/mercosur-holds-first-negotiating-round-for-korea-trade-deal-looks-to-eu.

118. Xinhua, *supra* note 11. It was reported that the foreign minister of Uruguay, Nin Novoa, "suggested that the negotiations between Uruguay and China could lead to a broader FTA with Mercosur." *Id.* According to Novoa, "until we have established the basis of the treaty and this has been accepted by China, we cannot ask the other Mercosur countries if they want to join us or not . . . Mercosur requires any member to get approval from others to sign an FTA outside the bloc." *Id. See also Uruguay and China Flirt with a Trade Agreement, but Mercosur Is Not Convinced*, MERCOPRESS (Jan. 26, 2018), http://en.mercopress.com/2018/01/26/uruguay-and-china-flirt-with-a-trade-agreement-but-mercosur-is-not-convinced.

China in this FTA:[119] "Both Asian countries have expressed their interest in developing a deal with Mercosur nations due to the protectionist policies imposed by the [United States]."[120]

"While the turn in U.S. trade policy creates uncertainty, especially for closely integrated LAC economies such as Mexico and Central America, it also gives renewed impetus to several projects to improve economic relations between Asia and LAC."[121] Mercosur completed negotiations with the EU in June 2019 for an FTA that includes its four full members: Argentina, Brazil, Paraguay, and Uruguay.[122] The EU now also has bilateral FTAs

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119. *Mercosur Free Trade Agreement Could Be Signed by China and South Korea*, BRAZIL MONITOR (Apr. 23, 2018), http://www.brazilmonitor.com/index.php/2018/04/23/mercosur-free-trade-agreement-could-be-signed-by-china-and-south-korea/; *see also Mercosur Holds First Negotiating Round*, *supra* note 117 (reporting that Mercosur also has begun negotiations with South Korea for an FTA).

120. *Mercosur Free Trade Agreement Could Be Signed by China and South Korea*, *supra* note 119 ("South Korea has also a similar deal signed in February with 5 other countries in South America (Costa Rica, El Salvador, Honduras, Nicaragua, and Panama)").

121. Estevadeordal, supra note 26.

> At the same time, regional efforts to bolster trade within LAC are accelerating, spurred by the efforts of initiatives such as the pacific [sic] Alliance and key countries like Argentina and Brazil. The European Union has had increasing relevance as well, with lengthy trade negotiations with the South American trade bloc Mercosur and major steps to modernize the EU-Mexico Free Trade Agreement both nearing conclusion.
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> . . . [a] subset of LAC countries—Chile, Peru, and, to a lesser extent, Costa Rica, Mexico, and Colombia—account for nearly all formal agreements with Asia. Moving forward, the region should be wary of further divergence between this group of deeply integrated countries and others such as Argentina and Brazil with no current free trade agreements (FTAs) with Asia. Finally, greater emphasis is needed on LAC's own regional integration efforts—particularly as the Pacific Alliance and Mercosur continue to make progress in their convergence agenda.

Id.

122. *EU-Mercosur Reach Agreement on Trade*, *supra* note 58.

with 30 of the 33 LAC members.[123] While a Mercosur-China FTA is not likely soon,[124] China is currently negotiating with Mercosur for a regional multilateral China-Mercosur FTA.[125] China is also having discussions for a bilateral FTA with Uruguay, Mercosur's final member with whom it does not have a bilateral FTA.[126]

4. *LAC FTA Labor Obligations under Non-China FTAs.*[127]

a. Mercosur-EU FTA. The Mercosur-EU FTA proposal

> The European Union and Mercosur reached today a political agreement for an ambitious, balanced and comprehensive trade agreement. The new trade framework—part of a wider Association Agreement between the two regions—will consolidate a strategic political and economic partnership and create significant opportunities for sustainable growth on both sides, while respecting the environment and preserving interests of EU consumers and sensitive economic sectors.

Id.

123. *EU-CELAC Relations*, *supra* note 105.

124. *The Moment for Mercosur's Trade Agenda Is Now*, *supra* note 57.

125. *People's Republic of China-MERCOSUR FTA*, ASIA REGIONAL INTEGRATION CTR., https://aric.adb.org/fta/peoples-republic-of-china-mercosur-fta (last visited Nov. 15, 2019).

126. Xinhua, *supra* note 11; *see also Uruguay and China Flirt with a Trade Agreement, but Mercosur Is Not Convinced*, *supra* note 118. "A major roadblock to the FTA is that Uruguay is a member of Mercosur, which is seeking its group FTA with China. Furthermore, other Mercosur members are not keen to have Chinese goods imported through Uruguay, dodging tariffs or customs requirements." Xinhua, *supra* note 11. It is reported that the foreign minister of Uruguay, Nin Novoa, suggested that the negotiations between Uruguay and China could lead to a broader FTA with Mercosur. *Id.* "We are absolutely convinced and committed that if China wants the treaty, we will do it and the parliament will approve it" said Novoa. *Id.* However, he continued "[u]ntil we have established the basis of the treaty and this has been accepted by China, we cannot ask the other Mercosur countries if they want to join us or not." *Id.* "Mercosur requires any member to get approval from others to sign an FTA outside the bloc." *Id.*

127. "Under the EU-Peru FTA, Orbie and Van den Putte found that in Peru there were 'serious shortcomings' in the implementation of core labour standards and that standards of labour protection on health and safety at work had actually been *lowered* since the agreement came into force. Likewise Marx *et al.* found that, with regard to the TSD chapter in the EU–Colombia FTA, there was a 'shared notion among stakeholders that the EU's approach constitutes little more than "window dressing,"' James Harrison et al., *Governing Labour Standards through Free Trade Agreements: Limits of the*

reaffirms the ILO core labor provisions and provides for the usual EU protocol for dispute resolution of consultation followed by a recommendation of a panel of experts.[128]

b. China-Colombia FTA. The China-Columbia FTA is proposed and under consultation and study.[129]

c. Mexico FTAs. Mexico has 11 FTAs with 46 countries, including most countries in the Western Hemisphere, Israel, Japan, and the EU.[130] More recently, to replace NAFTA, Mexico has entered into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) [131] and an agreement with the United States and Canada, known as the United States-Mexico-Canada Agreement (USMCA),[132] both of which contain labor protection provisions reaffirming ILO core labor

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European Union's Trade and Sustainable Development Chapters, J. COMMON MKT. STUD. 260, 262–63 (2018) (citations omitted), https://onlinelibrary.wiley.com/doi/full/10.1111/jcms.12715.

128. EU-Mercosur FTA, *supra* note 92, art. 3.

129. *People's Republic of China-Colombia FTA*, ASIA REGIONAL INTEGRATION CTR., https://aric.adb.org/fta/peoples-republic-of-china-colombia-free-trade-agreement (last visited Aug. 23, 2019).

130. M. ANGELES VILLARREAL, CONG. RESEARCH SERV., R40784, MEXICO'S FREE TRADE AGREEMENTS 1, 4 (2017) ("These include agreements with many countries in the Western Hemisphere including the United States and Canada, Chile, Colombia, Peru, and Uruguay."); *EU and Mexico Reach New Agreement on Trade*, EUR. COMMISSION (Apr. 21, 2018), http://trade.ec.europa.eu/doclib/press/index.cfm?id=1830; *see Japan-Mexico Economic Partnership Agreement*, MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/policy/economy/fta/mexico.html (last visited Sept. 18, 2019); *Information on Mexico*, FOREIGN TRADE INFO. SYS., http://www.sice.oas.org/ctyindex/MEX/MEXagreements_e.asp (last visited Sept. 10, 2019).

131. *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*, AUSTL. GOV'T DEP'T OF FOREIGN AFF. & TRADE, https://dfat.gov.au/trade/agreements/in-force/cptpp/pages/comprehensive-and-progressive-agreement-for-trans-pacific-partnership.aspx (last visited Sept. 10, 2019). *See generally What Does the CPTPP Mean for Labour?*, GOV'T OF CAN., https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/sectors-secteurs/labour-travail.aspx?lang=eng (last updated Jan. 28, 2018) (summarizing the labor protections in the CPTTP).

132. Everett Rosenfeld, *Canada and US Reach Trade Deal to Replace NAFTA*, CNBC (Sept, 30, 2018), https://www.cnbc.com/2018/10/01/us-canada-nafta-trade-talks.html.

standards.[133] They also permit access to the unified trade dispute settlement process for the resolution of labor disputes.[134] Even more, Chile and Peru are also members of CPTPP.[135] Significantly, Mexico rejects the U.S. argument that the USMCA contains a provision that prohibits Mexico from entering into an FTA with China (the so-called "poison pill").[136] Additionally, the Mexico-EU FTA reaffirms ILO core labor standards and provides for consultation followed by a recommendation of a panel of experts for dispute resolution.[137]

d. Colombia-Peru-EU FTA. The FTA between Colombia, Peru, and the EU, signed May 2012, also reaffirms the ILO core

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133. *Agreement between the United States of America, the United Mexican States, and Canada*, OFF. OF THE U.S. TRADE REPRESENTATIVE ch. 23 (Dec. 13, 2019), https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between [hereinafter USMCA Agreement]; *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*, *supra* note 131; Emel Akan, *USMCA Pact Wins Praise for Boosting Workers' Rights*, THE EPOCH TIMES (Oct. 12, 2018), https://www.theepochtimes.com/revamped-nafta-will-boost-workers-rights_2684102.html; *What Does the CPTPP Mean for Labour?*, *supra* note 131.

134. *What Does the CPTPP Mean for Labour?*, *supra* note 131; USMCA Agreement, *supra* note 133, art. 23.10. *See generally* Eric Gottwald, *Wrong Turn for Workers' Rights: The US-Guatemala CAFTA Labor Arbitration Ruling—And What To Do About It*, INT'L LAB. RTS. FORUM (Apr. 12, 2018), https://laborrights.org/publications/wrong-turn-workers'-rights-us-guatemala-cafta-labor-arbitration-ruling-—-and-what-do (arguing that the process is the most far-reaching dispute resolution mechanism, but has practical issues in its enforcement).

135. Dan Kopf, *The Huge New Pacific Trade Deal is About to Kick Off Without the US*, QUARTZ (Oct. 28, 2018), https://qz.com/1441027/te-cptpp-trade-deal-is-ready-to-go-into-effect/; *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*, *supra* note 131 ("The CPTPP will enter into force for Brunei Darussalam, Chile, Malaysia and Peru 60 days after they complete their respective ratification processes").

136. *Mexico Seeks to Assure China New US Trade Deal Won't Block Other Economic Relations*, SOUTH CHINA MORNING POST (Oct. 14, 2018, 4:26 PM), https://www.scmp.com/news/china/diplomacy/article/2168493/mexico-seeks-assure-china-new-us-trade-deal-wont-block-other; *see Mexico Says New U.S. Trade Deal Won't Block Other Economic Relations*, REUTERS (Oct. 13, 2018, 3:59 PM), https://www.reuters.com/article/us-mexico-trade/mexico-says-new-us-trade-deal-wont-block-other-economic-relations-idUSKCN1MN0TO.

137. *See New EU-Mexico Agreement: The Agreement in Principle*, EUR. COMMISSION 11, 14–15 (Apr. 23, 2018), https://trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156791.pdf.

labor provisions and provides for the usual EU protocol for dispute resolution of consultation followed by a recommendation of a panel of experts.[138]

C. Domestic Labor Law Obligations in LAC and China Under ILO Standards[139]

1. *Argentina*. Argentina has ratified all eight of the ILO's core conventions addressing the four core standards.[140] There are

138. Trade Agreement between the European Union and its Member States, of the One Part, and Colombia, and Peru, of the Other Part, arts. 269, 283-85, 2012 O.J. (L354) 3.

139. *See generally* 2017 LABOUR OVERVIEW—LATIN AMERICA AND THE CARIBBEAN, INT'L LAB. ORG. (2017), https://www.ilo.org/wcmsp5/groups/public/—-americas/—-ro-lima/documents/publication/wcms_618120.pdf; Baker & McKenzie, *Overview of Labor and Employment Law in Latin America*, CORNELL U. ILR SCH. (2008), https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1047&context=lawfirms.

> In Colombia alone, 19 trade unionists were murdered in 2017 and countless more were physically assaulted and received death threats. This year the death toll in Guatemala rose to 87 trade unionists assassinated since 2004 and whose murders remained unprosecuted. In Brazil, three trade union leaders were murdered in a context of growing tensions in industrial relations.
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> Anti-union practices were still widespread in many Latin American countries. Unions faced repeated denial of registration and severe undermining of collective bargaining rights with the prevalence of protection contracts and the creation of yellow unions to prevent genuine workers' representation. In Mexico, for example, Cone Denim Yecapixtla, a garment union, was denied registration three times while in the meantime the company registered its own yellow union. Likewise, the registration of SNTEPE-PEMEX, in the oil and gas industry, has been deliberately slowed down by the ministry since 2014 on unjustified grounds. Dismissals and other anti-union discriminatory measures were also common practice.

2018 ITUC GLOBAL RIGHTS INDEX: THE WORLD'S WORST COUNTRIES FOR WORKERS 18–19 (2018) [hereinafter THE WORLD'S WORST COUNTRIES FOR WORKERS], https://www.ituc-csi.org/IMG/pdf/ituc-global-rights-index-2018-en-final-2.pdf.

140. *Ratifications for Argentina*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102536 (last visited Sept. 9,

laws in Argentina protecting freedom of association and the right to collective bargaining.[141] However, there are undue limitations on the right to strike and restrictions on the formation of new unions.[142] Additionally, Argentinian unions have faced intimidation tactics and anti-union practices, such as unjustified delays for registering new unions and calling in military forces to counter union protests.[143] There are laws eliminating all forms of forced labor and protecting against child labor.[144] However, due to insufficient enforcement, both child labor and forced labor are present in the agriculture and industrial sectors.[145] Argentina has laws protecting against workplace discrimination and specifically outlaws anti-union discrimination.[146] Nevertheless, high levels of unequal pay for women and limited employment access for the disabled still exist.[147]

2. *Brazil.* Brazil has ratified seven of the eight ILO core conventions addressing the four core labor standards.[148] Similar to Argentina, Brazil has laws protecting limited forms of freedom of association and the right to collective bargaining.[149] Brazil

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141. *Survey of Violations of Trade Union Rights in Argentina – According to the Law*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/argentina.html?lang=es#tabs-2 (last updated Sept. 12, 2014).

142. *Id.*

143. *Survey of Violations of Trade Union Rights in Argentina—In Practice*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/argentina.html#tabs-3 (last visited Nov. 15, 2019).

144. U.S. STATE DEP'T, ARGENTINA 2018 HUMAN RIGHTS REPORT, 23–24 (2018) [hereinafter ARGENTINA 2018 HUMAN RIGHTS REPORT], https://www.justice.gov/file/1157721/download.

145. *Id.*

146. *2019 Investment Climate Statements: Argentina*, U.S. ST. DEP'T ch. 11, https://www.state.gov/reports/2019-investment-climate-statements/argentina/ (last visited Feb. 11, 2020); ARGENTINA 2018 HUMAN RIGHTS REPORT, *supra* note 144, at 22.

147. ARGENTINA 2018 HUMAN RIGHTS REPORT, *supra* note 144, at 17, 20.

148. *Ratifications for Brazil*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102571 (last visited Sept. 9, 2019).

149. U.S. STATE DEP'T, BRAZIL 2018 HUMAN RIGHTS REPORT 21 (2018) [hereinafter BRAZIL 2018 HUMAN RIGHTS REPORT], https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/brazil/.

lacks legal protection from anti-union discrimination and has undue barriers to establish new unions.[150] While workers have the right to strike, they are not protected from being replaced.[151] Brazil has also had issues with violence directed at unionists: strikers have been beaten by police and union leaders have been threatened with murder and even killed, as evidenced by the union leader killed in 2017.[152] There are laws eliminating all forms of forced labor and protecting against child labor, but a strict definition of slave labor weakens the effect of these laws.[153] Due to insufficient enforcement, forced labor is reported in mining and forestry.[154] It is also estimated that there are 2.7 million underage workers.[155] Brazil has laws protecting against workplace discrimination, but nevertheless, women are paid an average of 38% less than men.[156]

3. *Colombia.* Similar to Argentina, Colombia has ratified all eight of the ILO's core conventions addressing the four core labor standards.[157] There are laws protecting freedom of association and the right to collective bargaining.[158] However, there are undue restrictions on the right to collective bargaining and limitations on the right to strike.[159] Additionally, union

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150. *Survey of Violations of Trade Union Rights in Brazil—According to the Law*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Brazil.html?lang=es#tabs-2 (last updated Feb. 18, 2014).

151. *Id.*

152. *Survey of Violations of Trade Union Rights in Brazil—In Practice*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Brazil.html#tabs-3 (last visited Nov. 15, 2019).

153. BRAZIL 2018 HUMAN RIGHTS REPORT, supra note 149, at 22–23.

154. *Id.* at 23.

155. *Id.* at 24.

156. *Id.* at 15.

157. *Ratifications for Colombia*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102595 (last visited Sep. 30, 2019).

158. U.S. STATE DEP'T, COLOMBIA 2018 HUMAN RIGHTS REPORT 17, 32 (2018) [hereinafter COLOMBIA 2018 HUMAN RIGHTS REPORT], https://www.state.gov/wp-content/uploads/2019/03/COLOMBIA-2018.pdf.

159. *Survey of Violations of Trade Union Rights in Colombia—According to the Law*,

leaders have been the targets of assassination attempts, and companies have historically withheld owed union dues.[160] There are laws eliminating all forms of forced labor and protecting against child labor; however, due to insufficient enforcement, there is both child labor and forced labor present in informal sectors.[161] Colombia has laws protecting against workplace discrimination and specifically outlaws anti-union discrimination.[162] Nevertheless, it is estimated that women are paid 28% less than men and 85% of disabled persons are unemployed.[163]

4. *Chile*. Chile has also ratified all eight of the ILO's core conventions addressing the four core labor standards.[164] Similar to both Argentina and Columbia, there are laws protecting freedom of association and the right to collective bargaining.[165] However, there are also undue limitations on the right to strike and restrictions on collective bargaining.[166] Additionally, unions may face anti-union practices, for example, dismissing workers for striking while attempting to negotiate.[167] There are laws eliminating all forms of forced labor and protecting against child

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INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Colombia.html?lang=es#tabs-2 (last updated Feb. 18, 2014).

160. *Survey of Violations of Trade Union Rights in Colombia—In Practice*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Colombia.html#tabs-3 (last visited Nov. 16, 2019).

161. COLOMBIA 2018 HUMAN RIGHTS REPORT, *supra* note 158, at 36–39.

162. *Id.* at 26, 32.

163. *Id.* at 40.

164. *Ratifications for Chile,* INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102588 (last visited Nov. 16, 2019).

165. U.S. STATE DEP'T, CHILE 2018 HUMAN RIGHTS REPORT, 15 (2018), https://www.state.gov/wp-content/uploads/2019/03/CHILE-2018.pdf.

166. *Survey of Violations of Trade Union Rights in Chile—Legal*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Chile.html?lang=en#tabs-2 (last updated Sept. 10, 2014).

167. *Survey off Violations of Trade Union Rights in Chile—In Practice*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Chile.html?lang=en#tabs-3_(last visited Nov. 16, 2019).

labor.[168] However, due to insufficient enforcement, child labor is common in the informal economy and there is evidence of forced migrant labor in mining.[169] As in Argentina and Columbia, Chile has laws protecting against workplace discrimination and it specifically prohibits anti-union discrimination.[170] Nevertheless, there are high levels of unequal pay for women, who make 32% less than men on average.[171]

5. *Mexico*. Mexico has also ratified all eight of the ILO core conventions addressing the four core labor standards.[172] There are laws protecting limited forms of freedom of association and the right to strike. Mexico lacks adequate legal protection for anti-union discrimination and the right to collective bargaining.[173] Mexico has issues with anti-union activity.[174] Strikers have been beaten by police, mining trade unionists were murdered in 2017, and a union leader is allegedly living in exile in fear of wrongful prosecution.[175] There are laws eliminating all forms of forced labor and protecting against child labor, but due to insufficient enforcement, forced labor is persistent in the agriculture industry.[176] Child labor is well-regulated in large and medium enterprises but still common in smaller companies, specifically construction.[177] Mexico has laws protecting against workplace discrimination; nevertheless, women are continually paid less

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168. CHILE 2018 HUMAN RIGHTS REPORT, *supra* note 165, at 17–18.

169. *Id.* at 18–19.

170. *Id.* at 9, 14–15.

171. *Id.* at 9.

172. *Ratifications for Mexico*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102764 (last visited Sept. 9, 2019).

173. U.S. STATE DEP'T, MEXICO 2018 HUMAN RIGHTS REPORT 31–32 (2018) [hereinafter MEXICO 2018 HUMAN RIGHTS REPORT], https://www.state.gov/wp-content/uploads/2019/03/MEXICO-2018.pdf.

174. *See Survey of Violations of Trade Union Rights in Mexico—In Practice*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Mexico.html#tabs-3 (last visited Nov. 16, 2019).

175. *Id.*

176. MEXICO 2018 HUMAN RIGHTS REPORT, *supra* note 173, at 33–34.

177. *Id.* at 34.

than men and the laws are not consistently enforced.[178]

On September 20, 2018, the Mexican Senate ratified ILO Convention 98 on the Right to Organize and Collective Bargaining.[179] Mexico is rated in Category 5 among the worst countries for workers in the ITUC Global Rights Index, and ITUC said "implementing the Convention will allow it to improve its ranking."[180] It is reported that employers in Mexico for decades have used "so-called 'protection contracts' where bogus unions make corrupt agreements with employers on behalf of workers without their knowledge or consent."[181]

6. *Paraguay*. Paraguay has also ratified all eight of the ILO's core conventions addressing the four core labor standards.[182] Similar to the countries already discussed, there are laws protecting freedom of association and the right to collective bargaining,[183] but there are undue limitations on the right to strike and on establishing new unions.[184] Additionally, the right to strike has been violated and collective bargaining has been

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178. *Id.* at 24–26, 34.

179. *Major Win for Mexican Workers as Senate Approves ILO Organising and Collective Bargaining Treaty*, INT'L TRADE UNION CONFEDERATION (Sept. 21, 2018), https://www.ituc-csi.org/major-win-for-mexican-workers-as.

180. *See 2018 ITUC Global Rights Index*, INT'L TRADE UNION CONFEDERATION (June 6, 2018), https://www.ituc-csi.org/IMG/pdf/ituc-global-rights-index-map2018-en.pdf; *Major Win for Mexican Workers as Senate Approves ILO Organising and Collective Bargaining Treaty*, *supra* note 179.

181. *Major Win for Mexican Workers as Senate Approves ILO Organising and Collective Bargaining Treaty*, *supra* note 179; see THE WORLD'S WORST COUNTRIES FOR WORKERS, *supra* note 139, at 19.

182. *Ratifications for Paraguay*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102796 (last visited Aug. 22, 2019).

183. U.S. STATE DEP'T, PARAGUAY 2018 HUMAN RIGHTS REPORT 21 (2018), https://www.state.gov/wp-content/uploads/2019/03/PARAGUAY-2018.pdf; *Survey of Violations of Trade Union Rights in Paraguay—According to the Law*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Paraguay.html?id_edi=336&lang=es#tabs-2 (last updated Mar. 3, 2010).

184. PARAGUAY 2018 HUMAN RIGHTS REPORT, *supra* note 183, at 21; *Survey of Violations of Trade Union Rights in Paraguay—According to the Law*, *supra* note 183.

obstructed.[185] There are laws eliminating all forms of forced labor and protecting against child labor.[186] However, due to insufficient enforcement, there is both child labor common in the informal economy and forced labor in ranching and charcoal factories.[187] Paraguay also has laws protecting against workplace discrimination and specifically outlaws anti-union discrimination.[188] Nevertheless, there are high levels of unequal pay for women and anti-union activities.[189]

7. *Peru.*[190] Peru has also ratified all eight of the ILO's core conventions addressing the four core labor standards.[191] There are laws protecting freedom of association and the right to collective bargaining.[192] However, there are reported excessive burdens for establishing new unions, restrictions on collective

185. *See* PARAGUAY 2018 HUMAN RIGHTS REPORT, *supra* note 183, at 21; *Survey of Violations of Trade Union Rights in Paraguay—In Practice*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Paraguay.html?id_edi=336&lang=es#tabs-3 (last visited Nov. 16, 2019).

186. PARAGUAY 2018 HUMAN RIGHTS REPORT, *supra* note 183, at 22–23.

187. *Id.* at 22–23.

188. *Id.* at 21, 24.

189. *Survey of Violations of Trade Union Rights in Paraguay—In Practice*, *supra* note 185; PARAGUAY 2018 HUMAN RIGHTS REPORT, *supra* note 183, at 16–17, 21–22.

190. "Under the EU-Peru FTA [researchers] found that in Peru there were 'serious shortcomings' in the implementation of core labour standards and that standards of labour protection on health and safety at work had actually been *lowered* since the agreement came into force. Likewise, [it was] found that, with regard to the TSD chapter in the EU-Colombia FTA, there was a 'shared notion among stakeholders that the EU's approach constitutes little more than 'window dressing.''" Harrison et al., *supra* note 127, at 262–63 (citation omitted); *see also* U.S. STATE DEP'T, PERU 2018 HUMAN RIGHTS REPORT (2018) [hereinafter PERU 2018 HUMAN RIGHTS REPORT], https://www.state.gov/wp-content/uploads/2019/03/PERU-2018.pdf; *Survey of Violations of Trade Union Rights in Peru—In Practice*, INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Peru.html?lang=en#tabs-3 (last visited Nov. 16, 2019).

191. *Ratifications for Peru*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102805 (last visited Aug. 22, 2019).

192. PERU 2018 HUMAN RIGHTS REPORT, *supra* note 190, at 20; *Survey of Violations of Trade Union Rights in Peru—Legal,* INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Peru.html?lang=en#tabs-2 (last updated Mar. 27, 2014).

bargaining, and barriers to strikes.[193] Additionally, unions claim they have faced intimidation tactics and anti-union practices, such as police repression of strikes and reprisals against union leaders.[194] There are laws eliminating all forms of forced labor and protecting against child labor; however, due to insufficient enforcement, child labor is prevalent in the informal economy as is forced labor in mining and forestry.[195] Peru also has laws protecting against workplace discrimination and specifically prohibits anti-union discrimination, but unions argue that anti-union discrimination is common and rarely enforced.[196] Additionally, women are paid unequally, and terminating pregnant employees is common.[197]

8. *Uruguay*. Uruguay has ratified all eight of the ILO's core conventions addressing the four core labor standards.[198] As with the other countries previously discussed, there are laws protecting freedom of association and the right to collective bargaining;[199] however, there are excessive burdens for establishing new unions, restrictions on collective bargaining, and barriers to strikes.[200] Additionally, unions face anti-unions practices, for example, dismissal of union leaders.[201] There are

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193. PERU 2018 HUMAN RIGHTS REPORT, *supra* note 190, at 21; *Survey of Violations of Trade Union Rights in Peru—Legal*, *supra* note 195.

194. *Survey of Violations of Trade Union Rights in Peru—In Practice*, *supra* note 193.

195. PERU 2018 HUMAN RIGHTS REPORT, *supra* note 190, at 22–23.

196. *Id.* at 20–21, 25; *Survey of Violations of Trade Union Rights in Peru—Legal*, *supra* note 195.

197. PERU 2018 HUMAN RIGHTS REPORT, *supra* note 190, at 15.

198. *Ratifications for Uruguay*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0: :NO:11200:P11200_COUNTRY_ID:102876 (last visited Aug. 22, 2019).

199. U.S. STATE DEP'T, URUGUAY 2018 HUMAN RIGHTS REPORT 20–21 (2018) [hereinafter URUGUAY 2018 HUMAN RIGHTS REPORT], https://www.state.gov/wp-content/uploads/2019/03/URUGUAY-2018.pdf (last visited Feb. 11, 2020); *2019 Investment Climate Statements: Uruguay*, U.S. ST. DEP'T, ch. 11, https://www.state.gov/reports/2019-investment-climate-statements/uruguay/.

200. *See* URUGUAY 2018 HUMAN RIGHTS REPORT, *supra* note 199, at 9, 21.

201. *Survey of Violations of Trade Union Right in: Uruguay—In Practice*, INT'L

laws eliminating all forms of forced labor and protecting against child labor; however, due to insufficient enforcement, there is both forced labor and child labor, with child labor common in the informal economy and forced labor among migrant workers common in the agriculture industry.[202] Uruguay has laws protecting against workplace discrimination and it specifically outlaws anti-union discrimination; however, women are paid unequally, and sexual harassment is common.[203]

9. *China*. China, however, has ratified four of the eight ILO core conventions, addressing only two of the four core labor standards.[204] There are no express laws protecting freedom of association, right to collective bargaining, or right to strike.[205] There is only one union, and it is affiliated with the state, which *de facto* eliminates free association.[206] Additionally, labor activities are closely monitored, and legal sanctions can and do occur.[207] There are laws eliminating all forms of forced labor and protecting against child labor; however, due to insufficient enforcement, both child labor and forced labor are present.[208] China has laws protecting against workplace discrimination; nevertheless, women earn on average 35% less than men, and the

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TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/Uruguay.html?lang=es#tabs-3 (last visited Nov. 17, 2019).

202. URUGUAY 2018 HUMAN RIGHTS REPORT, *supra* note 199, at 21–23.

203. *Id.* at 14, 21, 23.

204. *Ratifications for China*, *supra* note 74.

205. *2019 Investment Climate Statements: China*, U.S. ST. DEP'T ch. 11, https://www.state.gov/reports/2019-investment-climate-statements/china/ (last visited Feb. 11, 2020); *see Survey of Violations of Trade Union Rights in China—According to the Law,* INT'L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/China.html?id_edi=336&lang=es#tabs-2 (last updated Mar. 3, 2010); U.S. STATE DEP'T, CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) 2018 HUMAN RIGHTS REPORT 64–66 (2018) [hereinafter CHINA 2018 HUMAN RIGHTS REPORT], https://www.justice.gov/eoir/page/file/1145001/download.

206. *Survey of Violations of Trade Union Rights in China—According to the Law, supra* note 205; CHINA 2018 HUMAN RIGHTS REPORT, *supra* note 205, at 64–65; *2019 Investment Climate Statements: China*, *supra* note 205, ch. 11.

207. *See* CHINA 2018 HUMAN RIGHTS REPORT, *supra* note 205, at 64–65.

208. *Id.* at 67–68.

gap is even larger in rural areas.[209] However, China does have a non-legally binding policy for fair treatment of workers in its overseas locations, especially in the mining sector.[210]

III. ANALYSIS

A. *Current Status*

Billions of dollars of trade and FDI flow between LAC and China. One report states that, in 2018, trade was close to $306 billion, with Chinese imports from LAC at $158 billion and Chinese exports to LAC at $148 billion.[211] Total cumulative China FDI went over $200 billion in 2017.[212] "Exports from Latin America and the Caribbean have increased by around 13 percent in 2017 and are [near] the $985 billion mark,"[213] with Chinese

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209. *Id.* at 54, 69.

210. *See Safeguarding People and the Env't in Chinese Investments*, FOLLOW THE MONEY, https://www.followingthemoney.org/chapters/chinesestandards/ (last visited Sept. 3, 2019) (providing a list of Chinese policies on overseas investment for BRI projects, including environmental).

> The Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains use the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas as their basis, and will promote the integration and coordination with other related standards, regulations and initiatives. Companies are required to comply with all applicable laws and regulations. Implementation of these Guidelines cannot act as a substitute for such legal or regulatory compliance.

Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, CHINA CHAMBER OF COM. OF METALS, MIN. & CHEMS. IMPS. & EXPS. 3 (footnote omitted), http://www.cccmc.org.cn/docs/2016-05/20160503161408153738.pdf (last visited Sept. 3, 2019).

211. SULLIVAN & LUM, *supra* note 7. Figures vary as there are various methods used in collecting the information.

212. *Id.*

213. *Latin American and Caribbean Exports to China Increased by 30 Percent in 2017*, INTER-AM. DEV. BANK (December 18, 2017), https://www.iadb.org/en/news/news-releases/2017-12-18/trade-trend-estimates-2018%2C12017.html; *see* PAOLO GIORDANO ET.

exports and FDI to LAC at about $162 billion, and LAC exports to China at about $104 billion.[214] Bringing BRI into LAC accelerates this growth, and the migration of companies and workers into the other parties' countries calls for some uniformity in the "Rules of the Road," as provided in FTAs. These obligations also apply to uniform treatment and protection under the labor provisions and enforcement of the FTAs. Currently, of the LAC countries focused upon in this paper—Brazil, Argentina, Mexico, Columbia, Uruguay, Paraguay, Peru, and Chile—only the last two have FTAs with China, and although each have labor provisions, they are weak provisions.[215]

Negotiations and discussions between China and the trade blocs within LAC, potentially leading to trade and investment relations, are ongoing[216] and include a possible FTA between Mercosur and the Pacific Alliance.[217] This possible FTA could promote domestic cooperation and reduce competition between the two, which would enhance the prospect of a China-LAC FTA. Mercosur already has FTAs and agreements to cooperate with countries and organizations outside of LAC.[218]

Could CELAC negotiate an FTA with China? While CELAC membership does include every country in the Western

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AL, TRADE TREND ESTIMATES LATIN AMERICA AND THE CARIBBEAN—2018 EDITION, INTER-AM. DEV. BANK 1 (May 2018), https://publications.iadb.org/handle/11319/8698 ("Revised data indicate that regional exports grew 11.9% in 2017, exhibiting declining rates as the year progressed").

214. Rebecca Ray, *2018 China-Latin America Economic Bulletin*, B.U. GLOB. DEV. POL'Y CTR. (April 4, 2018), https://www.bu.edu/gdp/files/2018/04/C-LAC-Bulletin-2018.pdf ("LAC exported approximately $104 billion in goods to China in 2017, up from $84 billion in 2016. The region imported $140 billion, up from $122 billion. China continues to be the most important export market for South America, and the second largest for LAC overall").

215. *See* China-Peru FTA, *supra* note 10, art. 161; China-Chile FTA, *supra* note 10, arts. 56, 108. Costa Rica has an FTA with China, but it has no labor protection provisions. *See* China-Costa Rica FTA, *supra* note 78 (demonstrating that there are no labor protection provisions).

216. *People's Republic of China-MERCOSUR FTA*, *supra* note 125.

217. Cecilia Tornaghi, *Pacific Alliance and Mercosur Start Plans for Free Trade Agreement*, LATIN FIN. (July 24, 2018), https://www.latinfinance.com/web-articles/2018/7/pacific-alliance-and-mercosur-start-plans-for-free-trade-agreement.

218. *The Moment for Mercosur's Trade Agenda Is Now*, *supra* note 57.

Hemisphere except the United States and Canada, whether CELAC could act as a trading bloc is unlikely at best, as it is not so constituted, and it has an established role as a facilitator.[219] It can, however, act as it has with the EU and assist in laying the framework for relations between China and LAC.[220] Toward that end, CELAC has been coordinating with China to integrate the commercial and other interests of LAC and China.[221] Speaking for CELAC, the Chilean Foreign Minister stated, "[i]n terms of the Silk Road and Belt, CELAC will undertake a profound review to see to what extent it can facilitate a closer approach to China, something we value very much in times of protectionism in certain parts of the world."[222]

The Pacific Alliance (Chile, Colombia, Mexico, and Peru) and China are also discussing an FTA.[223] Importantly, half of the

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219. *See EU-CELAC Relations*, *supra* note 105.

220. *Id.* (noting, "CELAC is the EU's official counterpart for the region-to-region Summit process and strategic partnership").

221. Chilean Foreign Minister, Heraldo Muñoz, explained that "CELAC hopes to reach agreements with Beijing on matters such as energy, connectivity, infrastructure, the environment and multilateral relations, including political aspects." Latina, *supra* note 16.

222. *Id.* "[A] special declaration was signed on the 'One Belt, one Route' initiative, promoted by Chinese President Xi Jinping, which, according to the Minister 'has been unanimously welcomed by Latin American and Caribbean countries.'" *Chancellor Muñoz Describes the II Ministerial Meeting of the CELAC-China Forum as "Historic" and Highlights "The Deep Commitment to Multilateralism,"* FOREIGN MINISTRY OF CHILE (January 22, 2018), https://minrel.gob.cl/chancellor-munoz-describes-the-ii-ministerial-meeting-of-the-celac-china/minrel/2018-01-23/153145.html.

223. *See* Esposito, *supra* note 111. President Xi, in looking toward an FTA in the "Asia-Pacific," *id.* may also have been reflecting on the possible larger FTA—the Free Trade Area of the Asia-Pacific (FTAAP).

> In 2014, APEC members committed to taking a concrete step towards greater regional economic integration by endorsing a roadmap for the Free Trade Area of the Asia-Pacific to translate this vision into a reality. As a first step, APEC is implementing a strategic study on issues related to the realization of a Free Trade Area of the Asia-Pacific. The study will provide an analysis of potential economic and social benefits and costs, analyze the various pathways towards a Free Trade Area and identify challenges economies may face in realizing this goal.

Pacific Alliance (Chile and Peru) already have FTAs with China that include labor provisions.[224] In addition, the Pacific Alliance is reaching out to other non-regional countries for FTAs.[225] This trading bloc could be an important partner with China as the Pacific Alliance members have fast growing economies in the region and, taken together, account for "37% of Latin America's population, 35% of its total GDP; 46% of its exports, and 50% of its imports."[226]

Mercosur is also continuing its FTA discussions with China, and South Korea may possibly join in those discussions.[227] Mercosur is an even larger trading bloc than the Pacific Alliance.[228] In July 2018, these two large trade blocs met and signed a letter of intent to join and create one large regional free-trade group inside the LAC because "[t]ogether, the regional blocks have a population of almost half a billion people and

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Regional Economic Integration Agenda, ASIA-PAC. ECON. COOPERATION, https://www.apec.org/About-Us/About-APEC/Fact-Sheets/Regional-Economic-Integration-Agenda (last visited Sept. 3, 2019).

224. China-Peru FTA, *supra* note 10, art. 161; China-Chile FTA, *supra* note 10, art. 108.

225. *See Joint Statement by High Representative/Vice-President Federica Mogherini and the Pacific Alliance Foreign Ministers*, EUR. EXTERNAL ACTION SERV. (July 17, 2018, 14:10), https://eeas.europa.eu/headquarters/headquarters-homepage/48514/joint-statement-high-representativevice-president-federica-mogherini-and-pacific-alliance_en. Australia and the Pacific Alliance have started negotiating for a free trade agreement, *Pacific Alliance Free Trade Agreement*, *supra* note 25, and South Korea has also shown interest in becoming an associate member, which leads to negotiations for a free trade agreement, Estevadeordal, *supra* note 26.

226. VILLARREAL, *supra* note 24, at summary. "In June 2017, the alliance announced the inclusion of three Asia-Pacific countries (Australia, New Zealand, and Singapore) as associate members alongside Canada. This associate status represents a new category that entails negotiations of a free trade agreement with the Pacific Alliance as a trade bloc." Estevadeordal, *supra* note 26.

227. *See Mercosur Free Trade Agreement Could be Signed by China and South Korea*, *supra* note 119.

228. It "encompasses approximately 72% of the territory of South America (12.8 million km^2, equivalent to three times the area of the European Union); . . . [and the] bloc received 47.6% of all the FDI flow directed to South America, Central America and Mexico in 2012." *Mercosur*, *supra* note 27.

represent 90% of Latin America's GDP."[229]

Nearly all of the ILO core labor provisions have been ratified by members of the Pacific Alliance and Mercosur.[230] Peru and Chile, in addition to their ratifications, also have labor provisions in their FTA agreements with China (and accompanying MOUs), though they are weak.[231] Mexico has additionally obligated itself to ILO labor obligations under the USMCA FTA, though not mutually with China.[232] Moreover, Mexico, Chile, and Peru have agreed to labor protection provisions in the CPTPP.[233] China has ratified only four of the eight ILO core labor provisions.[234] Whether the mosaic of agreed upon ILO labor provisions will be enough to provide an umbrella of some measure of protection for workers in LAC, though not directly enforceable against China without an FTA, is a distinct possibility.

The current differences between China and the LAC's obligations to core ILO labor standards and the differences in labor laws raise issues of whether equal treatment and equally protected labor rights are likely, and whether a uniform FTA might therefore provide improvement by having an additional international mechanism for the mutual enforcement of labor rights.

B. Paving China's Belt and Road Initiative in LAC with an FTA and Protecting Labor Rights

The benefit of an LAC-China FTA, in addition to trade and FDI benefits, is the uniformity and consistency it could bring to a rapidly developing part of the world. Having "Rules of the Road" on tariffs and regulatory standards expands opportunities and fairness in a number of areas, including in labor protections for

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229. Tornaghi, *supra* note 217.

230. *See supra* Part II.

231. China-Peru FTA, *supra* note 10, art. 161; China-Chile FTA, *supra* note 10, art. 108.

232. *See* USMCA Agreement, *supra* note 133, ch. 23.

233. *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*, *supra* note 131; *What Does the CPTPP Mean for Labour?*, *supra* note 131.

234. *Ratifications for China, supra* note 74.

workers in LAC and China.[235]

Experts have proposed that the LAC's approach to integration with Asia should address a few key issues:

> First, market access concerns such as high tariffs, tariff escalation, and burdensome regulatory standards continue to impede LAC's ability to add value to natural resource-based exports. Lowering these barriers must be a priority. Next, a subset of LAC countries—Chile, Peru, and, to a lesser extent, Costa Rica, Mexico, and Colombia—account for nearly all formal agreements with Asia. Moving forward, the region should be wary of further divergence between this group of deeply integrated countries and others such as Argentina and Brazil with no current free trade agreements (FTAs) with Asia.[236]

While the current unpredictability in U.S. trade policy creates uncertainty, it also gives a window of opportunity for renewed impetus to improve economic relations between Asia and LAC. At the same time, regional efforts to bolster trade within LAC are accelerating, and there is an ongoing commitment and shift of LAC countries towards multilateralism and free and fair trade

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235. The problem with agreements without labor provisions is illustrated in the recent turmoil in Africa's EPA treaties with the EU that lacked labor protection provisions. The ITUC's African regional organization and the European Trade Union Confederation "are concerned that trade unions have not been adequately involved in EPA negotiations by governments in the EU or Africa through a process of effective and structured social dialogue. Therefore, the EPAs . . . pose significant risks to sustainable development, stable employment, labour standards and public services." *Joint ITUC-Africa/ETUC/ITUC Statement*, INT'L TRADE UNION CONFEDERATION (October 26, 2018), https://www.ituc-csi.org/IMG/pdf/joint_statement_on_epas_-_ituc-_ituc-ap_-etuc_-_28-09-2018.pdf.

236. Estevadeordal, *supra* note 26. The author, Antoni Estevadeordal, at the time of this article was the sector manager of the integration and trade sector of the Inter-American Development Bank (IDB). *Antoni Estevadeordal*, BROOKINGS, https://www.brookings.edu/experts/antoni-estevadeordal/ (last visited Aug. 22, 2019).

outside of LAC.[237]

Due to the large populations and GDPs of the members of Mercosur, a China-Mercosur FTA would have the broadest reach in bringing China and the LAC together under uniform trading rules; and, it would include associate members Chile and Peru, with whom China has existing FTAs. However,

> [t]he Common Market of the South (Mercosur) has traditionally been slow to pursue free trade deals. Because the bloc's full members have veto power, Mercosur has been vulnerable to its members' domestic politics. But in the past two years, Mercosur reached a consensus to move toward greater trade liberalization and started pursuing free trade agreements with a number of countries and economic blocs.[238]

Alternatives exist to achieve a workable regional FTA between LAC countries and China. This could entail accessions to the CPTPP or to the Regional Comprehensive Economic Partnership (RCEP).[239] "The RCEP currently involves the ten-member states of the Association of Southeast Asian Nations (ASEAN): Brunei, Burma (Myanmar), Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, Vietnam, plus six other countries: Australia, China, India, Japan, South Korea and New Zealand." [240] RCEP currently has no LAC members. LAC joining the RCEP, which is currently being negotiated and of which China is a member, would provide some

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237. For example, the EU is moving closer to concrete FTAs with LAC countries and trade blocs. *See* Gisela Grieger & Roderick Harte, *EU Trade with Latin America and the Caribbean,* EUR. PARLIAMENTARY RES. SERV. 5–6 (Sept. 2018), http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/625186/EPRS_IDA(2018)625186_EN.pdf.

238. *The Moment for Mercosur's Trade Agenda Is Now*, *supra* note 57. Due to recent elections in Brazil and Argentina, this consensus may be threatened. *Id.*

239. *See* Estevadeordal, *supra* note 26.

240. *Regional Comprehensive Economic Partnership, Known as RCEP*, KEI ONLINE, https://www.keionline.org/rcep (last visited Aug. 3, 2019).

trade advantages to LAC and open up relationships with other Asian countries.[241] The drawback of LAC joining RCEP is that RCEP does not include labor protection provisions.[242]

The alternative is to accede to the newly-formed CPTPP, which would reduce barriers on an important number of goods of LAC–Asia trade and would provide labor rights protections.[243] The CPTPP also includes Mexico, Peru, and Chile, as well as Asian partners, such as Japan, Vietnam, Malaysia, Brunei, Singapore, and Australia, New Zealand, and Canada.[244]

Additionally, although work could begin to start negotiations by Asia-Pacific Economic Cooperation's (APEC) 21 members for the Free Trade Area of the Asia-Pacific (FTAAP), the only LAC members are Chile, Peru, and Mexico.[245] At an APEC meeting in 2015, China's president Xi Jinping argued the need for an Asia-Pacific Trade Agreement, focusing on an "appeal for economic unity among the Asia-Pacific economies":[246]

241. *Id.*

242. Keith Johnson, *While Trump Builds Tariff Walls, Asia Bets on Free Trade*, FOREIGN POL'Y (Nov. 1, 2019, 11:09 AM), https://foreignpolicy.com/2019/11/01/trump-tariffs-free-trade-rcep-asean-india-china-bangkok/.

243. *See What Does the CPTPP Mean for Labour?*, *supra* note 131.

244. *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*, *supra* note 131.

245. *Free Trade Agreement Asia Pacific (FTAAP)*, U.S. CHAMBER OF COM., https://www.uschamber.com/free-trade-agreement-asia-pacific-ftaap (last visited Nov. 17, 2019). "APEC's 21 Member Economies are the United States; Australia; Brunei Darussalam; Canada; Chile; China; Hong Kong, China; Indonesia; Japan; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; The Philippines; Russia; Singapore; Republic of Korea; Chinese Taipei; Thailand; and Viet Nam." *Asia-Pacific Economic Cooperation (APEC)*, U.S. ST. DEP'T (Feb. 21, 2019), https://www.state.gov/p/eap/regional/apec/.

246. Shannon Tiezzi, *As TPP Leaders Celebrate, China Urges Creation of Asia-Pacific Free Trade Area*, THE DIPLOMAT (Nov. 19, 2015), https://thediplomat.com/2015/11/as-tpp-leaders-celebrate-china-urges-creation-of-asia-pacific-free-trade-area/.

> In 2014, APEC members committed to taking a concrete step towards greater regional economic integration by endorsing a roadmap for the Free Trade Area of the Asia-Pacific to translate this vision into a reality. As a first step, APEC is implementing a strategic study on issues related to the realization of a Free Trade Area of the Asia-Pacific. The study will provide an analysis of potential economic and

> Part of working in unison, according to China's blueprint, is an all-inclusive free trade agreement. "With various new regional free trade arrangements cropping up, worries about fragmentation are on the increase," Xi said. "We need to accelerate the realization of FTAAP and take regional economic integration forward."
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> . . . .
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> In Xi's speech, FTAAP meshes with China's "Belt and Road" strategy as part of a move toward economic integration. FTAAP will reduce policy barriers to trade, while the "Belt and Road" seeks to facilitate the physical movement of goods thanks to increased infrastructure connectivity. "Through implementing the 'Belt and Road' Initiative, we will go for even broader, deeper, and more sophisticated cooperation at the regional level," Xi promised.[247]

In the final analysis, whatever is the resulting configuration of a China-LAC FTA, an agreement to labor protection provisions should not present an obstacle. All LAC countries, except Brazil,[248] have ratified the core labor provisions of the ILO; and so, the agreement under an FTA brings one more measure of supervision and enforcement.[249] It is of interest to note that China

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> social benefits and costs, analyze the various pathways towards a Free Trade Area and identify challenges economies may face in realizing this goal.

Regional Economic Integration Agenda, ASIA-PAC. ECON. COOPERATION, https://www.apec.org/About-Us/About-APEC/Fact-Sheets/Regional-Economic-Integration-Agenda (last visited Aug. 30, 2019).

247. Tiezzi, *supra* note 246.

248. Brazil has ratified seven of eight. *Ratifications for Brazil*, *supra* note 148.

249. Although there is some disagreement on the effectiveness of labor provisions, a study states that "results suggest that, on average, FTAs has a positive effect on inspection resources and productivity." Sabina Dewan & Lucas Ronconi, *U.S. Free Trade Agreements and Enforcement of Labor Law in Latin America*, INDUS. REL. J. OF ECON. & SOC'Y,

has ratified only four of eight core labor provisions. Peru and Chile have existing FTAs with China that include weak labor provisions, and Mexico has labor protection obligations under other FTAs, such as CPTPP and USMCA. Thus, as China's BRI brings more trade and investment and job growth between LAC and China, there is a need for an FTA to provide uniformity and fairness in the relationship and the "Rules of the Road," as well as additional labor protection, supervision, and enforcement. In that way, workers and investors in LAC and China can reap the benefits of the BRI, newly extended into LAC.

IV. CONCLUSION

With China's expanding trade and investment policies, and its BRI initiative in LAC, stability and uniformity will mutually strengthen its growth. Both parties can benefit from a China-LAC FTA, whether it is with Mercosur or the Pacific Alliance, and labor issues can be better monitored and managed with labor protections in the social dimension provisions of the FTA.

It is a new day for global trade and investment! The current U.S. global position opens opportunities for new competition, China appears more open to include labor protections in its FTAs, such as it did with Switzerland, and China trade and FDI in LAC is rapidly expanding.

Jan. 2018, at 35–37.